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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, February 24, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

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Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–12 of January 15, 2009

Proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the United Arab Emirates Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the United Arab Emirates Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize the Secretary of State to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 15, 2009

[FR Doc. E9–2062
Filed 1–28–09; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2009–13 of January 16, 2009

Eligibility of the Southern African Development Community to Receive Defense Articles and Defense Services under the Foreign Assistance Act of 1961, as Amended, and the Arms Export Control Act, as Amended

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and the laws of the United States, including section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, as amended, I hereby find that the furnishing of defense articles and defense services to the Southern African Development Community will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination to the Congress and to arrange for its publication in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 16, 2009

[FR Doc. E9–2066
Filed 1–28–09; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2009–14 of January 16, 2009

Waiving the Prohibition on the Use of Economic Support Funds with Respect to Various Parties to the Rome Statute Establishing the International Criminal Court

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 671(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Division J, Public Law 110–161), I hereby:

- determine and report that it is important to the national interests of the United States to waive the prohibition of aforementioned section 671(a) with respect to Barbados, Bolivia, Costa Rica, Cyprus, Ecuador, Kenya, Mali, Mexico, Namibia, Niger, Paraguay, Peru, Samoa, South Africa, St. Vincent and the Grenadines, Tanzania, and Trinidad and Tobago; and

- waive the prohibition of aforementioned section 671(a) with respect to these countries.

You are authorized and directed to report this determination to the Congress and to arrange for its publication in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 16, 2009

[FR Doc. E9–2070
Filed 1–28–09; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1231

RIN 2590–AA08

Golden Parachute Payments

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final regulation that sets forth factors to be considered by the Director of FHFA in acting upon the Director's authority to limit golden parachute payments to entity-affiliated parties in connection with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks.

DATES: *Effective Date:* January 29, 2009.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, (202) 414–3788 (not a toll-free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

General Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Act) to establish FHFA as an independent agency of the Federal Government.[1] FHFA was established to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Federal Home Loan Banks (Banks) (collectively, regulated entities) and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Act and rules, regulation, guidelines and orders issued under the Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest.

The Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) will be abolished one year after enactment of the HERA. However, the regulated entities continue to operate under regulations promulgated by OFHEO and FHFB until such regulations are superseded by regulations promulgated by the FHFA.

Background on Golden Parachute Payments

Section 1114 of HERA amended 12 U.S.C. 4518 to provide additional authorities for FHFA in addressing certain compensation and benefits, specifically golden parachute payments and indemnification payments. HERA added a new paragraph (e) to section 4518 addressing regulation and prohibition of these benefits. While paragraphs (e)(1) and (e)(3)–(6) are self executing, Congress provided that for paragraph (e)(2) addressing factors to be taken into account when acting regarding golden parachutes and indemnification, FHFA prescribe, by regulation, factors to be considered. The factors set forth in paragraph (e)(2) are explicit and provide guidance to the Director in taking an action under the statute.

FHFA published an Interim Final Rule that was effective on September 16, 2008, the date of publication in the **Federal Register**. The rule, which was corrected on September 19 and September 23, 2008, addresses only golden parachute payments.[2] During the public notice and comment period, which closed on October 31, 2008, FHFA requested comment on paragraph (2) of section 4518(e), *i.e.*, factors to be taken into account by FHFA when acting regarding golden parachutes. The Interim Final Rule also provided that FHFA would consider other comments on other aspects of the regulation for future revision, if necessary or appropriate.

II. Comment on the Interim Final Rule

General Comment

FHFA received comments from individuals in the general public, nine Federal Home Loan Banks, and Fannie Mae. In general, the public commented that severance should not be paid to departing executives of the Enterprises, particularly the Chief Executive Officers. The consensus among these individuals was that any such payment would be excessive, irresponsible, and grossly unfair to taxpayers.

The Banks commented that they shared widespread public concern over excessive golden parachute payments paid by failed or failing companies. The Banks noted that fulfillment of their housing and liquidity mission, consistent with safe and sound operation, demands a high caliber workforce, and that reasonable and customary separation benefits are an important and appropriate component of the Banks' retention, hiring, and workforce management efforts. To that end, the Banks requested that FHFA consider standards set forth in the Federal Deposit Insurance Corporation (FDIC) regulations on golden parachute payments, which were promulgated pursuant to the Federal Deposit Insurance Act (FDI Act), for guidance as FHFA considers changes to the Interim Final Rule.[3] The Banks requested consideration of the FDIC regulations, as the legislative provisions on which they

[1] *See* Division A, titled the ''Federal Housing Finance Regulatory Reform Act of 2008,'' Title I, Section 1101 of HERA.

[2] 73 FR 53356 (September 16, 2008), with Correcting Amendments at 73 FR 54309 (September 19, 2008) and at 73 FR 54673 (September 23, 2008), to be codified at 12 CFR 1231. The portion of the Interim Final Rule published on September 16, 2008, which relates to indemnification payments, is being promulgated by separate rulemaking that is subject to public comment. *See* Proposed Amendment for Golden Parachute and Indemnification Payments, 73 FR 67424 (November 14, 2008).

[3] *See* 61 FR 5926 (February 15, 1996) and 12 CFR part 359.

are based are similar to the HERA and represent industry practice. For these reasons, many of the Banks' comments suggest specific aspects of the FDIC regulations that the Banks believe should be incorporated into the Final Rule.

Similarly, Fannie Mae suggested that FHFA revise the Interim Final Rule to more closely follow the FDIC regulations, and also the Farm Credit System Insurance Corporation (FCSIC) regulations, which adopted the FDIC's approach.[4] Fannie Mae commented that the FDIC and FCSIC regulations implement legislation similar to the HERA so conformance with regulations would foster uniformity in regulation, public perception of fairness, and competition on a level regulatory playing field for executive talent. Fannie Mae also stated such conformance would reduce administrative burden because of existing guidance and precedent.

FHFA gave careful consideration to the comments of the Banks and Fannie Mae requesting conformance of the provisions of the Interim Final Rule with the provisions of FDIC and FCSIC regulations relating to golden parachutes. In publishing the Interim Final Rule, FHFA primarily sought comment on factors the Director would consider in acting on golden parachute payments. The comments received to the Interim Final Rule address other elements of a golden parachute regulation. For this reason, FHFA has determined that it will consider adding provisions similar to those of the FDIC golden parachute regulation in a subsequent rulemaking. The FDIC regulation describes more specifically benefits included or excluded from the term ''golden parachute payment.'' It should be noted that, consistent with the FDIC regulation, benefits provided under qualified and nonqualified deferred compensation plans are excluded from the term ''golden parachute payment'' under the Interim Final Rule and under this final regulation.

Specific Comment

For purposes of this regulation, FHFA considered a comment by Fannie Mae that addressed one of the factors to be taken into account by the Director when acting regarding golden parachutes, *i.e.*, paragraph (f) of § 1231.5. The paragraph provides that in determining whether to prohibit or limit any golden parachute payment, among the factors, the Director shall consider—

(f) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute payment, including but not limited to negligence, gross negligence, neglect, willful misconduct, breach of fiduciary duty, and malfeasance on the part of an entity-affiliated party.

Fannie Mae requested that paragraph (f) of § 1231.5 be amended to mirror the ''catchall'' factor adopted by the FDIC and the FCSIC in their regulations, whereby the Director would consider: ''Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of section 1318(e) of the Act or this part.'' In commenting on the requested amendment, Fannie Mae stated that there are substantial benefits to regulatory uniformity in terms of predictability and fairness, and there is no apparent difference in congressional intent or in the policy implications of golden parachute restrictions that would call for a different standard in the present context. By mirroring the ''catchall'' factor adopted by the FDIC and the FCSIC, Fannie Mae claimed focus would be on the intent of the statute, and would permit the Director to consider all appropriate factors in determining whether to deny or limit proposed golden parachute payments.

After consideration of Fannie Mae's comment, FHFA determined to amend paragraph (f) of § 1231.5 to follow more closely the statutory language in section 1318 of the Act that the Director may consider in the oversight of compensation of an executive officer. To that end, as relevant facts and circumstances for the Director to consider with respect to golden parachute payments, FHFA has deleted the following language: ''but not limited to negligence, gross negligence, neglect'' and has substituted in lieu thereof the following language: ''any fraudulent act or omission, breach of fiduciary duty, violation of law, rule, regulation, order, or written agreement, and the level of''.

Regulatory Impacts

Paperwork Reduction Act

The Final Rule does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the Final Rule under the Regulatory Flexibility Act. FHFA certifies that the Final Rule is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the regulated entities which are not small entities for the purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1231

Golden Parachutes, Government-Sponsored Enterprises.

Accordingly, the Interim Final Rule at part 1231 of Title 12 CFR Chapter XII, published at 73 FR 53356 on September 16, 2008, and corrected at 73 FR 54309 on September 19, 2008, and at 73 FR 54673 on September 23, 2008, is adopted as a final rule with the following changes:

Subchapter B—Entity Regulations

■ 1. The heading for subchapter B of Chapter XII is revised to read as set forth above.

■ 2. The title of part 1231 is revised to read as set forth below.

PART 1231—GOLDEN PARACHUTE PAYMENTS

■ 3. The authority citation for part 1231 continues to read as follows:

Authority: 12 U.S.C. 4518(e).

■ 4. Amend § 1231.5 by revising paragraph (f) to read as follows:

§ 1231.5 Factors to be taken into account.

* * * * *

(f) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute payment, including any fraudulent act or omission, breach of fiduciary duty, violation of law, rule, regulation, order, or written agreement, and the level of willful misconduct, breach of fiduciary duty, and malfeasance on the part of an entity-affiliated party.

Dated: January 15, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–1517 Filed 1–28–09; 8:45 am]

BILLING CODE 8070–01–P

[4] 12 CFR part 1412.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM08–2–000; Order No. 720]

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act

January 15, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule: Order Granting Extension of Time.

SUMMARY: On November 20, 2008, the Federal Energy Regulatory Commission issued a Final Rule in Order No. 720 which amended part 284 of its regulations to require, in relevant part, major non-interstate natural gas pipelines to post, on a daily basis, certain information regarding scheduled volumes in natural gas to be transported. The date for major non-interstate pipelines to comply with the requirements of Order No. 720 is being extended at the request of the American Gas Association.

DATES: *Compliance date:* The date for major non-interstate pipelines to comply with Order No. 720, published in the **Federal Register** on December 2, 2008 (73 FR 73494) is extended to 150 days following the issuance of a Commission order on rehearing of Order No. 720.

FOR FURTHER INFORMATION CONTACT:

Christopher Ellsworth (Technical), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8228.

Gabriel Sterling (Legal), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8891.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

In the matter of: Docket No. RM08–2–000, Pipeline Posting Requirements under Section 23 of the Natural Gas Act.

Order Granting Extension of Time

Issued January 15, 2009

1. On November 20, 2008, the Federal Energy Regulatory Commission (Commission) issued a Final Rule in Order No. 720,[1] which amended Part 284 of its regulations to require, in relevant part, major non-interstate natural gas pipelines to post, on a daily basis, certain information regarding scheduled volumes of natural gas to be transported. Major non-interstate pipelines were required to comply with Order No. 720 within 150 days following publication of the order in the **Federal Register**.[2]

2. On December 11, 2008, the American Gas Association (AGA) filed a Motion for an Extension of Time to Comply with Order No. 720. AGA further requested expedited treatment of its motion. Answers in support of the motion were subsequently filed by the Texas Pipeline Association (TPA), Pacific Gas and Electric Company (PG&E), and Shell Offshore Inc. (Shell). These parties seek an extension of time for major non-interstate pipelines to comply with the requirements of Order No. 720.

3. The Commission grants an extension of time as requested in the motion and supported in the answers. In particular, we find the answers submitted by commenters to be persuasive. The commenters argue that some major non-interstate pipelines will need additional time in which to determine which receipt and delivery points are subject to the posting requirements, obtain corporate approval for expenditures needed for compliance, and develop Internet posting systems. Additionally, we agree that some compliance activities may be premature prior to the issuance of an order on rehearing of Order No. 720.

4. Therefore, we grant an extension of time for major non-interstate pipelines to comply with the requirements of Order No. 720 until 150 days following the issuance of an order addressing the pending requests for rehearing. We do not modify the deadline by which interstate pipelines must comply with the requirements of Order No. 720. Interstate pipelines must begin posting relevant information regarding no-notice service within 60 days following the publication of Order No. 720 in the **Federal Register**.

The Commission orders:

Major non-interstate pipelines must comply with the requirements of Order No. 720 within 150 days following the issuance of an order on rehearing in this proceeding.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1468 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Pipeline Posting Requirements under Section 23 of the Natural Gas Act,* Order No. 720, FERC Stats. & Regs. ¶ 31,283 (2008).

[2] *Id.* P 168.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157, and 301

[TD 9436]

RIN 1545–BG83

Tax Return Preparer Penalties Under Sections 6694 and 6695; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9436) that were published in the **Federal Register** on Monday, December 22, 2008 (73 FR 78430) implementing amendments to the tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code and related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36) reflecting amendments to the Code made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The final regulations affect tax return preparers and provide guidance regarding the amended provisions.

DATES: This correction is effective January 29, 2009, and is applicable on December 22, 2008.

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622–4910, and Matthew S. Cooper, (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 6060, 6107, 6109, 6694, 6695, 6696, and 7701 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9436) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Generation-skipping transfer taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 26

Generation-skipping transfer taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 41

Excise taxes, Motor vehicles, Reporting and recordkeeping requirements.

26 CFR Part 44

Excise taxes, Gambling, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 55

Excise taxes, Investments, Reporting and recordkeeping requirements.

26 CFR Part 56

Excise taxes, Lobbying, Nonprofit organizations, Reporting and recordkeeping requirements.

26 CFR Part 156

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 157

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157, and 301 are corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6107–1 is amended by revising paragraphs (d) (1) and (2) to read as follows:

§ 1.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

* * * * *

(d) * * *

(1) For the civil penalty for failure to furnish a copy of the return or claim for refund to the taxpayers (or nontaxable entity) as required under paragraph (a) of this section, see section 6695(a) and § 1.6695–1(a).

(2) For the civil penalty for failure to retain a copy of the return or claim for refund, or to retain a record as required under paragraph (b) of this section, see section 6695(d) and § 1.6695–1(d).

* * * * *

■ **Par. 3.** Section 1.6694–1 is amended as follows:

■ 1. The first sentence of paragraph (b)(2) is revised.

■ 2. The second sentence of paragraph (f)(4) *Example 1.* is revised.

■ 3. The eighth sentence of paragraph (f)(4) *Example 2.* is revised.

§ 1.6694–1 Section 6694 penalties applicable to tax return preparers.

* * * * *

(b) * * *

(2) * * * If there is a signing tax return preparer within the meaning of § 301.7701–15(b)(1) of this chapter within a firm, the signing tax return preparer generally will be considered the person who is primarily responsible for all of the positions on the return or claim for refund giving rise to an understatement unless, based upon credible information from any source, it is concluded that the signing tax return preparer is not primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement. * * *

* * * * *

(f) * * *

(4) * * *

Example 1. * * * *Of this amount, $20,000 relates to research and consultation regarding a transaction that is later reported on a return, and $1,000 is for the activities relating to the preparation of the return.* * * *

Example 2. * * * Because K's signature as the signing tax return preparer is on the return, the IRS advises K that K may be subject to the section 6694(a) penalty. * * *

* * * * *

■ **Par. 4.** Section 1.6694–2 is amended by revising the last sentence of each paragraph (d)(1), (d)(2), and (d)(3)(ii) to read as follows:

§ 1.6694–2 Penalty for understatement due to an unreasonable position.

* * * * *

(d) * * *

(1) * * * For an exception to the section 6694(a) penalty for reasonable cause and good faith, see paragraph (e) of this section.

(2) * * * For purposes of determining whether the tax return preparer has a reasonable basis for a position, a tax return preparer may rely in good faith without verification upon information furnished by the taxpayer and information and advice furnished by another advisor, another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), as provided in §§ 1.6694–1(e) and 1.6694–2(e)(5).

(3) * * *

(ii) * * * In addition, disclosure of a position is adequate in the case of a nonsigning tax return preparer if, with respect to that position, the tax return preparer complies with the provisions of paragraph (d)(3)(ii)(A) or (B) of this section, whichever is applicable.

* * * * *

■ **Par. 5.** Section 1.6694–3 is amended by revising the first two sentences of paragraph (c)(2) to read as follows:

§ 1.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

* * * * *

(c) * * *

(2) A tax return preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation has a reasonable basis as defined in § 1.6694–2(d)(2) and is adequately disclosed in accordance with §§ 1.6694–2(d)(3)(i)(A) or (C) or 1.6694–2(d)(3)(ii). In the case of a position contrary to a regulation, the position must represent a good faith challenge to the validity of the regulation and, when disclosed in accordance with §§ 1.6694–2(d)(3)(i)(A) or (C) or 1.6694–2(d)(3)(ii), the tax return preparer must identify the regulation being challenged. * * *

* * * * *

■ **Par. 6.** Section 1.6695–1 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 1.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) * * *

(2) * * *

(ii) In order faithfully to carry out their official duties, have so arranged their affairs that they have less than full knowledge of the property that they hold or of the debts for which they are responsible, if information is deleted from the copy in order to preserve or maintain this arrangement.

* * * * *

■ **Par. 7.** Section 1.6696–1 is amended by revising the introductory text of paragraph (g)(1)(i) to read as follows:

§ 1.6696–1 Claims for credit or refund by tax return preparers or appraisers.

* * * * *

(g) *Time for filing claim.* (1)(i) Except as provided in section 6694(c)(1) and § 1.6694–4(a)(4)(ii) and (5), and in section 6694(d) and § 1.6694–1(d):

* * * * *

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Par. 8.** The authority citation for part 20 is amended by revising an entry for Section 20.6109–1 and removing an entry for Section 20.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 20.6109–1 also issued under 26 U.S.C. 6109(a). * * *

■ **Par. 9.** Section 20.6694–1 is amended by revising paragraph (a) to read as follows:

§ 20.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of estate tax returns or claims for refund, see § 1.6694–1 of this chapter.

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 10.** The authority citation for part 25 is amended by revising an entry for § 25.6109–1 and removing an entry for § 25.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 25.6109–1 also issued under 26 U.S.C. 6109(a). * * *

■ **Par. 11.** Section 25.6694–1 is amended by revising paragraph (a) to read as follows:

§ 25.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of gift tax returns or claims for refund, see § 1.6694–1 of this chapter.

* * * * *

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

■ **Par. 12.** The authority citation for part 26 is amended by revising an entry for § 26.6109–1 and removing an entry for § 26.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 26.6109–1 also issued under 26 U.S.C. 6109(a). * * *

■ **Par. 13.** Section 26.6694–1 is amended by revising paragraph (a) to read as follows:

§ 26.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of generation-skipping transfer tax returns or claims for refund, see § 1.6694–1 of this chapter.

* * * * *

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

■ **Par. 14.** The authority citation for part 31 is amended by removing an entry for § 31.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 15.** Section 31.6694–1 is amended by revising paragraph (a) to read as follows:

§ 31.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of employment tax returns or claims for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, see § 1.6694–1 of this chapter.

* * * * *

■ **Par. 16.** Section 31.6694–3 is amended by revising paragraph (a) to read as follows:

§ 31.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

* * * * *

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

■ **Par. 17.** The authority citation for part 40 is amended by revising an entry for § 40.6109–1 and removing an entry for § 40.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 40.6109–1 also issued under 26 U.S.C. 6109(a). * * *

■ **Par. 18.** Section 40.6060–1 is amended by revising paragraph (a) to read as follows:

§ 40.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of any tax to which this part 40 applies other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

* * * * *

■ **Par. 19.** Section 40.6107–1 is amended by revising paragraph (a) to read as follows:

§ 40.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of any tax to which this part 40 applies shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

* * * * *

■ **Par. 20.** Section 40.6109–1 is amended by revising paragraph (a) to read as follows:

§ 40.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each return or claim for refund of any tax to which this part 40 applies prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

* * * * *

■ **Par. 21.** Section 40.6694–1 is amended by revising paragraph (a) to read as follows:

§ 40.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of returns or claims for refund of any tax to which this part 40 applies, see § 1.6694–1 of this chapter.

* * * * *

■ **Par. 22.** Section 40.6694–2 is amended by revising paragraph (a) to read as follows:

§ 40.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax to which this part 40 applies shall be subject to penalties under section 6694(a) in the manner stated in § 1.6694–2 of this chapter.

* * * * *

■ **Par. 23.** Section 40.6694–3 is amended by revising paragraph (a) to read as follows:

§ 40.6694–3 Penalties for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax to which this part 40 applies shall be subject to penalties under section 6694(b) in the manner stated in § 1.6694–3 of this chapter.

* * * * *

■ **Par. 24.** Section 40.6694–4 is amended by revising paragraph (a) to read as follows:

§ 40.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund of any tax to which this part 40 applies pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

* * * * *

■ **Par. 25.** Section 40.6695–1 is amended by revising paragraph (a) to read as follows:

§ 40.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax to which this part 40 applies shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Internal Revenue Code (Code), failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 6695–1 of this chapter.

* * * * *

■ **Par. 26.** Section 40.6696–1 is amended by revising paragraph (a) to read as follows:

§ 40.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* The rules under § 1.6696–1 of this chapter will apply for claims for credit or refund by a tax return preparer who prepared a return or claim for refund of any tax to which this part 40 applies.

* * * * *

PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES

■ **Par. 27.** The authority citation for part 41 is amended by removing an entry for § 41.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 28.** Section 41.6695–1 is amended by revising paragraph (a) to read as follows:

§ 41.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under section 4481 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign a return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 6695–1 of this chapter.

* * * * *

PART 44—TAXES ON WAGERING; EFFECTIVE JANUARY 1, 1955

■ **Par. 29.** The authority citation for part 44 is amended by revising an entry for § 44.6109–1 and removing an entry for § 44.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 44.6109–1 also issued under 26 U.S.C. 6109(a). * * *

■ **Par. 30.** Section 44.6695–1 is amended by revising paragraph (a) to read as follows:

§ 44.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 6695–1 of this chapter.

* * * * *

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 31.** The authority citation for part 53 is amended by revising an entry for § 53.6109–1 and removing an entry for § 53.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 53.6109–1 also issued under 26 U.S.C. 6109(a). * * *

PART 54—PENSION EXCISE TAXES

■ **Par. 32.** The authority citation for part 54 is amended by revising an entry for § 54.6109–1 and removing an entry for § 54.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.6109–1 also issued under 26 U.S.C. 6109(a). * * *

■ **Par. 33.** In FR Doc. E8–29750 appearing on page 78430 in the **Federal Register** of Monday, December 22, 2008, the following correction is made:

§ 54.6694–3 [Corrected]

On page 78458, in the third column, in paragraph 107, the instruction ''Section 56.6694–3 is added to read as follows:'' is removed and the language ''Section 54.6694–3 is added to read as follows:'' is added in its place.

PART 55—EXCISE TAX ON REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

■ **Par. 34.** The authority citation for part 55 is amended by revising an entry for § 55.6109–1 and removing an entry for § 55.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 55.6109–1 also issued under 26 U.S.C. 6109(a). * * *

PART 56—PUBLIC CHARITY EXCISE TAXES

■ **Par. 35.** The authority citation for part 56 is amended by revising an entry for § 56.6109–1 and removing an entry for § 56.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 56.6109–1 also issued under 26 U.S.C. 6109(a). * * *

PART 156—EXCISE TAX ON GREENMAIL

■ **Par. 36.** The authority citation for part 156 is amended by revising an entry for § 156.6109–1 and removing an entry for § 156.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 156.6109–1 also issued under 26 U.S.C. 6109(a). * * *

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

■ **Par. 37.** The authority citation for part 157 is amended by revising an entry for § 157.6109–1 and removing an entry for § 157.6695–2 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 157.6109–1 also issued under 26 U.S.C. 6109(a). * * *

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 38.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 39.** Section 301.7701–15 is amended by revising paragraph (f)(1)(xi)(B) to read as follows:

§ 301.7701–15 Tax return preparer.

* * * * *

(f) * * *

(1) * * *

(xi) * * *

(B) A waiver of restriction on assessment after initiation of an audit of the taxpayer or another taxpayer if a determination in the audit of the other taxpayer affects, directly or indirectly, the liability of the taxpayer for tax.

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E9–1095 Filed 1–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 223 and 261

RIN 0596–AB81

Sale and Disposal of National Forest System Timber; Special Forest Products and Forest Botanical Products

AGENCY: Forest Service, USDA.

ACTION: Final rule; notice of delay of effective date and comment period.

SUMMARY: In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review,'' published in the **Federal Register** on January 26, 2009, the Department is delaying the effective date and opening for public comment, the rule published on December 29, 2008. This rule regulates the sustainable free use, commercial harvest, and sale of special forest products and forest botanical products from National Forest System lands. The December rule was originally set to take effect January 28, 2009.

DATES: Effective January 28, 2009, the effective date of the rule amending 36 CFR parts 223 and 261 published at 73 FR 79367, December 29, 2008, is delayed until March 30, 2009. Comments must be received by March 2, 2009.

ADDRESSES: The public may send comments to USDA Forest Service, FM, Director, 201 14th Street, SW., Mailstop 1103, Washington, DC 20024, or by e-mail to *wospecialproducts@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Forest Service, Forest Management Staff, (202) 205–1753. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review,'' published in the **Federal Register** on January 26, 2009, 74 FR 4435, the Department is delaying the effective date and opening for public comment, the rule entitled ''Sale and Disposal of National Forest System Timber; Special Forest Products and Forest Botanical Products'', that was published in the **Federal Register** on December 29, 2008, 73 FR 79367.

The Department is seeking comment from the public on any issues or concerns on the policy raised by the December rule. The December rule is needed to promote sustainability in light of the increased public demands for both timber and non-timber special forest products and forest botanical products over the past 10 years. In many cases, these demands are challenging sustainability, particularly in the most heavily used parts of the National Forest System. The December rule will help ensure the continued sustainability of special forest products and forest botanical products.

Dated: January 26, 2009.

Hank Kashdan,

Acting Deputy Under Secretary, FS, NRE.

[FR Doc. E9–1960 Filed 1–28–09; 8:45 am]

BILLING CODE 3410–11–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GEN Docket No. 86–285; FCC 08–209]

Amendment of the Schedule of Application Fees Set

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission makes rule changes to Part 1 of the Commission's rules, and amends its Schedule of Application Fees to adjust its fees for processing applications and other filings.

DATES: Effective January 29, 2009.

SUPPLEMENTARY INFORMATION:

1. By this Order, adopted September 15, 2008 and released September 22, 2008, the Commission makes rule changes to part 1 of the Commission's

rules, and amends its Schedule of Application Fees, 47 CFR 1.1102 *et seq.* to adjust its fees for processing applications and other filings. Section 8(a) of the Communications Act of 1934, as amended (''the Act''), requires the Commission to ''assess and collect application fees at such rates as the Commission shall establish or at such modified rates as it shall establish pursuant to'' Section 8(b). Section 8 contains the Schedule of Charges for a broad range of application categories as well as procedures for modifying and collecting these charges. The Commission began assessing such application fees in 1987, and, as required by section 8(b), it began reviewing the fees every two years beginning after October 1, 1991 to make adjustments to reflect changes in the Consumer Price Index. As required by section 8(e) of the Act, collected fees are deposited in the general fund of the United States Treasury. As required by the statute and consistent with our prior practice, this Order increases application fees to reflect the net change in the Consumer Price Index for all Urban Consumers (''CPI-U'') of 4.9 percent, calculated from October 2005 to October 2007. The adjustments made to the fee schedule comport with the statutory formula set forth in Section 8(b).

2. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *See* 5 U.S.C. 801(a)(1)(A).

3. Accordingly, *it is ordered,* that, pursuant to sections 1, 4(i), 4(j), and 8 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 154(j), and 158, the rule changes specified herein *are adopted* and the Schedule of Application Fees, 47 CFR 1.1102 *et seq., is amended* as set forth in the attached Appendices.

4. *It is further ordered* that the rule changes and amendment to the Schedule of Application Fees made herein shall become effective 90 days after notification to Congress.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the Preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.1102 is revised to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.

Those services designated with an asterisk in the payment type code column have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to § 1.1152 for the appropriate regulatory fee that must be paid for this service. Remit manual filings and/or payment for these services to the: Federal Communications Commission, Wireless Bureau Applications, P.O. Box 979097, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. Marine Coast:			
a. New; Renewal/Modification	601 & 159	120.00	PBMR*
b. Modification; Public Coast CMRS; Non-Profit	601 & 159	120.00	PBMM
c. Assignment of Authorization	603 & 159	120.00	PBMM
d. Transfer of Control	603 & 159	60.00	PATM
Spectrum Leasing for Public Coast	608 & 159		
e. Duplicate License	601 & 159	60.00	PADM
f. Special Temporary Authority	601 & 159	170.00	PCMM
g. Renewal Only	601 & 159	120.00	PBMR*
h. Renewal (Electronic Filing)	601 & 159	120.00	PBMR*
i. Renewal Only (Non-Profit; CMRS)	601 & 159	120.00	PBMM
j. Renewal (Electronic Filing) Non-profit, CMRS	601 & 159	120.00	PBMM
k. Rule Waiver	601, 603 or 608 & 159	175.00	PDWM
l. Modification for Spectrum Leasing for Public Coast Stations	608 & 159	120.00	PBMM
2. Aviation Ground:			
a. New; Renewal/Modification	601 & 159	120.00	PBVR*
b. Modification; Non-Profit	601 & 159	120.00	PBVM
c. Assignment of Authorization	603 & 159	120.00	PBVM
d. Transfer of Control	603 & 159	60.00	PATM
e. Duplicate License	601 & 159	60.00	PADM
f. Special Temporary Authority	601 & 159	170.00	PCVM
g. Renewal Only	601 & 159	120.00	PBVR*
h. Renewal (Electronic Filing)	601 & 159	120.00	PBVR*
i. Renewal Only, Non-Profit	601 & 159	120.00	PBVM
j. Renewal, Non-Profit (Electronic Filing)	601 & 159	120.00	PBVM
k. Rule Waiver	601 or 603 & 159	175.00	PDWM
3. Ship:			
a. New; Renewal/Modification; Renewal Only	605 & 159	60.00	PASR*
b. New; Renewal/Modification; Renewal Only (Electronic Filing)	605 & 159	60.00	PASR*
c. Renewal Only, Non-profit	605 & 159	60.00	PASM
d. Renewal Only, Non-profit (Electronic Filing)	605 & 159	60.00	PASM
e. Modification; Non-profit	605 & 159	60.00	PASM
f. Modification; Non-profit (Electronic Filing)	605 & 159	60.00	PASM
g. Duplicate License	605 & 159	60.00	PADM
h. Duplicate License (Electronic Filing)	605 & 159	60.00	PADM

Service	FCC Form No.	Fee amount ($)	Payment type code
i. Exemption from Ship Station Requirements	605 & 159	175.00	PDWM
j. Rule Waiver	605 & 159	175.00	PDWM
k. Exemption from Ship Station Requirements (Electronic Filing)	605 & 159	175.00	PDWM
l. Rule Waiver (Electronic Filing)	605 & 159	175.00	PDWM
4. Aircraft:			
a. New; Renewal/Modification	605 & 159	60.00	PAAR*
b. New; Renewal/Modification (Electronic Filing)	605 & 159	60.00	PAAR*
c. Modification; Non-Profit	605 & 159	60.00	PAAM
d. Modification Non-Profit (Electronic Filing)	605 & 159	60.00	PAAM
e. Renewal Only	605 & 159	60.00	PAAR*
f. Renewal (Electronic Filing)	605 & 159	60.00	PAAR*
g. Renewal Only Non-Profit	605 & 159	60.00	PAAM
h. Renewal; Renewal/Modification, Non-Profit (Electronic Filing)	605 & 159	60.00	PAAM
i. Duplicate License	605 & 159	60.00	PADM
j. Duplicate License (Electronic Filing)	605 & 159	60.00	PADM
k. Rule Waiver	605 & 159	175.00	PDWM
l. Rule Waiver (Electronic Filing)	605 & 159	175.00	PDWM
5. Private Operational Fixed Microwave and Private DEMS:			
a. New; Renewal/Modification	601 & 159	260.00	PEOR*
b. New; Renewal/Modification (Electronic Filing)	601 & 159	260.00	PEOR*
c. Modification; Consolidate Call Signs; Non-Profit	601 & 159	260.00	PEOM
d. Modification; Consolidate Call Signs; Non-Profit (Electronic Filing)	601 & 159	260.00	PEOM
e. Renewal Only	601 & 159	260.00	PEOR*
f. Renewal (Electronic Filing)	601 & 159	260.00	PEOR*
g. Renewal Only, Non-Profit	601 & 159	260.00	PEOM
h. Renewal Non-Profit (Electronic Filing)	601 & 159	260.00	PEOM
i. Assignment	603 & 159	260.00	PEOM
j. Assignment (Electronic Filing)	603 & 159	260.00	PEOM
k. Transfer of Control;	603 & 159		
Spectrum Leasing	608 & 159	60.00	PATM
l. Transfer of Control;	603 & 159		
Spectrum Leasing (Electronic Filing)	608 & 159	60.00	PATM
m. Duplicate License	601 & 159	60.00	PADM
n. Duplicate License (Electronic Filing)	601 & 159	60.00	PADM
o. Special Temporary Authority	601 & 159	60.00	PAOM
p. Special Temporary Authority (Electronic Filing)	601 & 159	60.00	PAOM
q. Rule Waiver	601, 603 or 608 & 159	175.00	PDWM
r. Rule Waiver (Electronic Filing)	601, 603 or 608 & 159	175.00	PDWM
s. Modification for Spectrum Leasing	608 & 159	260.00	PEOM
t. Modification for Spectrum Leasing (Electronic Filing)	608 & 159	260.00	PEOM
6. Land Mobile:			
PMRS; Intelligent Transportation Service	601 & 159	60.00	PALR*
a. New or Renewal/Modification (Frequencies below 470 MHz (except 220 MHz)) 902–928 MHz & RS.			
b. New; Renewal/Modification (Frequencies below 470 MHz (except 220 MHz)) (Electronic Filing).	601 & 159	60.00	PALR*
c. New; Renewal/Modification (Frequencies 470 MHz and above and 220 MHz Local).	601 & 159	60.00	PALS*
d. New; Renewal/Modification (Frequencies 470 MHz and above and 220 MHz Local) (Electronic Filing).	601 & 159	60.00	PALS*
e. New; Renewal/Modification (220 MHz Nationwide)	601 & 159	60.00	PALT*
f. New; Renewal/Modification (220 MHz Nationwide) (Electronic Filing)	601 & 159	60.00	PALT*
g. Modification; Non-Profit; For Profit Special Emergency and Public Safety; and CMRS.	601 & 159	60.00	PALM
h. Modification; Non-Profit; For Profit Special Emergency and Public Safety; and CMRS (Electronic Filing).	601 & 159	60.00	PALM
i. Renewal Only	601 & 159	60.00 60.00 60.00	PALR* PALS* PALT*
j. Renewal (Electronic Filing)	601 & 159	60.00 60.00 60.00	PALR* PALS* PALT*
k. Renewal Only (Non-Profit; CMRS; For-Profit Special Emergency and Public Safety).	601 & 159	60.00	PALM
l. Renewal (Non-Profit; CMRS; For-Profit Special Emergency and Public Safety) (Electronic Filing).	601 & 159	60.00	PALM
m. Assignment of Authorization (PMRS & CMRS)	603 & 159	60.00	PALM
n. Assignment of Authorization (PMRS & CMRS) (Electronic Filing)	603 & 159	60.00	PALM
o. Transfer of Control (PMRS & CMRS);	603 & 159	60.00	PATM
Spectrum Leasing	608 & 159	60.00	PATM
p. Transfer of Control (PMRS & CMRS);	603 & 159	60.00	PATM
Spectrum Leasing (Electronic Filing)	608 & 159	60.00	PATM

Service	FCC Form No.	Fee amount ($)	Payment type code
q. Duplicate License	601 & 159	60.00	PADM
r. Duplicate License (Electronic Filing)	601 & 159	60.00	PADM
s. Special Temporary Authority	601 & 159	60.00	PALM
t. Special Temporary Authority (Electronic Filing)	601 & 159	60.00	PALM
u. Rule Waiver	601, 603 or 608 & 159	175.00	PDWM
v. Rule Waiver (Electronic Filing)	601, 603 or 608 & 159	175.00	PDWM
w. Consolidate Call Signs	601 & 159	60.00	PALM
x. Consolidate Call Signs (Electronic Filing)	601 & 159	60.00	PALM
y. Modification for Spectrum Leasing	608 & 159	60.00	PALM
z. Modification for Spectrum Leasing (Electronic Filing)	608 & 159	60.00	PALM
7. 218–219 MHz (previously IVDS):			
a. New; Renewal/Modification	601 & 159	60.00	PAIR*
b. New; Renewal/Modification (Electronic Filing)	601 & 159	60.00	PAIR*
c. Modification; Non-Profit	601 & 159	60.00	PAIM
d. Modification; Non-Profit (Electronic Filing)	601 & 159	60.00	PAIM
e. Renewal Only	601 & 159	60.00	PAIR*
f. Renewal (Electronic Filing)	601 & 159	60.00	PAIR*
g. Assignment of Authorization	603 & 159	60.00	PAIM
h. Assignment of Authorization (Electronic Filing)	603 & 159	60.00	PAIM
i. Transfer of Control;	603 & 159	60.00	PATM
Spectrum Leasing	608 & 159	60.00	PATM
j. Transfer of Control;	603 & 159	60.00	PATM
Spectrum Leasing (Electronic Filing)	608 & 159	60.00	PATM
k. Duplicate License	601 & 159	60.00	PADM
l. Duplicate License (Electronic Filing)	601 & 159	60.00	PADM
m. Special Temporary Authority	601 & 159	60.00	PAIM
n. Special Temporary Authority (Electronic Filing)	601 & 159	60.00	PAIM
o. Modification for Spectrum Leasing	608 & 159	60.00	PAIM
p. Modification for Spectrum Leasing (Electronic Filing)	608 & 159	60.00	PAIM
8. General Mobile Radio (GMRS):			
a. New; Renewal/Modification	605 & 159	60.00	PAZR*
b. New; Renewal/Modification (Electronic Filing)	605 & 159	60.00	PAZR*
c. Modification	605 & 159	60.00	PAZM
d. Modification (Electronic Filing)	605 & 159	60.00	PAZM
e. Renewal Only	605 & 159	60.00	PAZR*
f. Renewal (Electronic Filing)	605 & 159	60.00	PAZR*
g. Duplicate License	605 & 159	60.00	PADM
h. Duplicate License (Electronic Filing)	605 & 159	60.00	PADM
i. Special Temporary Authority	605 & 159	60.00	PAZM
j. Special Temporary Authority (Electronic Filing)	605 & 159	60.00	PAZM
k. Rule Waiver	605 & 159	175.00	PDWM
l. Rule Waiver (Electronic Filing)	605 & 159	175.00	PDWM
9. Restricted Radiotelephone:			
a. New (Lifetime Permit)	605 & 159	60.00	PARR
New (Limited Use)	605 & 159		
b. Duplicate/Replacement Permit	605 & 159	60.00	PADM
Duplicate/Replacement Permit (Limited Use)	605 & 159	60.00	PADM
10. Commercial Radio Operator:			
a. Renewal Only; Renewal/Modification	605 & 159	60.00	PACS
b. Duplicate	605 & 159	60.00	PADM
11. Hearing	Corres & 159	11,205.00	PFHM
12. Common Carrier Microwave (Pt. To Pt., Local TV Trans. & Millimeter Wave Service)	601 & 159	260.00	CJPR*
a. New; Renewal/Modification (Electronic Filing Required)			
b. Major Modification; Consolidate Call Signs (Electronic Filing Required)	601 & 159	260.00	CJPM
c. Renewal (Electronic Filing Required)	601 & 159	260.00	CJPR*
d. Assignment of Authorization; Transfer of Control;	603 & 159	95.00	CCPM
Spectrum Leasing	608 & 159	95.00	CCPM
Additional Stations (Electronic Filing Required)	603 or 608 & 159	60.00	CAPM
e. Duplicate License (Electronic Filing Required)	601 & 159	60.00	PADM
f. Extension of Construction Authority (Electronic Filing Required)	601 & 159	95.00	CCPM
g. Special Temporary Authority	601 & 159	120.00	CEPM
h. Special Temporary Authority (Electronic Filing)	601 & 159	120.00	CEPM
i. Major Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	260.00	CJPM
13. Common Carrier Microwave (DEMS):			
a. New; Renewal/Modification (Electronic Filing Required)	601 & 159	260.00	CJLR*
b. Major Modification; Consolidate Call Signs (Electronic Filing Required)	601 & 159	260.00	CJLM
c. Renewal (Electronic Filing Required)	601 & 159	260.00	CJLR*
d. Assignment of Authorization; Transfer of Control;	603 & 159	95.00	CCLM
Spectrum Leasing	608 & 159	95.00	CCLM
Additional Stations (Electronic Filing Required)	603 or 608 & 159	60.00	CALM
e. Duplicate License (Electronic Filing Required)	601 & 159	60.00	PADM

Service	FCC Form No.	Fee amount ($)	Payment type code
f. Extension of Construction Authority (Electronic Filing Required)	601 & 159	95.00	CCLM
g. Special Temporary Authority	601 & 159	120.00	CELM
h. Special Temporary Authority (Electronic Filing)	601 & 159	120.00	CELM
i. Major Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	260.00	CJLM
14. Broadcast Auxiliary (Aural and TV Microwave):			
a. New; Modification; Renewal/Modification	601 & 159	145.00	MEA
b. New; Modification; Renewal/Modification (Electronic Filing)	601 & 159	145.00	MEA
c. Special Temporary Authority	601 & 159	170.00	MGA
d. Special Temporary Authority (Electronic Filing)	601 & 159	170.00	MGA
e. Renewal Only	601 & 159	60.00	MAA
f. Renewal (Electronic Filing)	601 & 159	60.00	MAA
15. Broadcast Auxiliary (Remote and Low Power):			
a. New; Modification; Renewal/Modification	601 & 159	145.00	MEA
b. New; Modification; Renewal/Modification (Electronic Filing)	601 & 159	145.00	MEA
c. Renewal Only	601 & 159	60.00	MAA
d. Renewal (Electronic Filing)	601 & 159	60.00	MAA
e. Special Temporary Authority	601 & 159	170.00	MGA
f. Special Temporary Authority (Electronic Filing)	601 & 159	170.00	MGA
16. Pt 22 Paging & Radiotelephone:			
a. New; Major Mod; Additional Facility; Major Amendment; Major Renewal/Mod; Fill in Transmitter (Per Transmitter) (Electronic Filing Required).	601 & 159	385.00	CMD
b. Minor Mod; Renewal; Minor Renewal/Mod; (Per Call Sign) 900 MHz Nationwide Renewal Net Organ; New Operator (Per Operator/Per City) Notice of Completion of Construction or Extension of Time to Construct (Per Application) (Electronic Filing Required).	601 & 159	60.00	CAD
c. Auxiliary Test (Per Transmitter); Consolidate Call Signs (Per Call Sign) (Electronic Filing Required).	601 & 159	335.00	CLD
d. Special Temporary Authority (Per Location/Per Frequency)	601 & 159	335.00	CLD
e. Special Temporary Authority (Per Location/Per Frequency) (Electronic Filing)	601 & 159	335.00	CLD
f. Assignment of License or Transfer of Control;	603 & 159	385.00	CMD
Spectrum Leasing (Full or Partial) (Per First Call Sign);	608 & 159	385.00	CMD
Additional Call Signs (Per Call Signs) (Electronic Filing Required)	603 or 608 & 159	60.00	CAD
g. Subsidiary Comm. Service (Per Request) (Electronic Filing Required)	601 & 159	170.00	CFD
h. Major Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	385.00	CMD
i. Minor Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	60.00	CAD
17. Cellular:			
a. New; Major Mod; Additional Facility; Major Renewal/Mod (Per Call Sign) (Electronic Filing Required).	601 & 159	385.00	CMC
b. Minor Modification; Minor Renewal/Mod (Per Call Sign) (Electronic Filing Required).	601 & 159	100.00	CDC
c. Assignment of License; Transfer of Control (Full or Partial) (Per Call Sign)	603 & 159	385.00	CMC
Spectrum Leasing (Electronic Filing Required)	608 & 159		
d. Notice of Extension of Time to Complete Construction; (Per Request) Renewal (Per Call Sign) (Electronic Filing Required).	601 & 159	60.00	CAC
e. Special Temporary Authority (Per Request)	601 & 159	335.00	CLC
f. Special Temporary Authority (Per Request) (Electronic Filing)	601 & 159	335.00	CLC
g. Major Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	385.00	CMC
h. Minor Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	100.00	CDC
18. Rural Radio:			
a. New; Major Renew/Mod; Additional Facility (Per Transmitter) (Electronic Filing Required).	601 & 159	175.00	CGRR*
b. Major Mod; Major Amendment (Per Transmitter) (Electronic Filing Required)	601 & 159	175.00	CGRM
c. Minor Modification; (Per Transmitter) (Electronic Filing Required)	601 & 159	60.00	CARM
d. Assignment of License; Transfer of Control (Full or Partial) (Per Call Sign)	603 & 159	175.00	CGRM
Spectrum Leasing	608 & 159	175.00	CGRM
Additional Calls (Per Call Sign) (Electronic Filing Required)	603 or 608 & 159	60.00	CARM
e. Renewal (Per Call Sign); Minor Renewal/Mod (Per Transmitter) (Electronic Filing Required).	601 & 159	60.00	CARR*
f. Notice of Completion of Construction or Extension of Time to Construct (Per Application) (Electronic Filing Required).	601 & 159	60.00	CARM
g. Special Temporary Authority (Per Transmitter)	601 & 159	335.00	CLRM
h. Special Temporary Authority (Per Transmitter) (Electronic Filing)	601 & 159	335.00	CLRM
i. Combining Call Signs (Per Call Sign) (Electronic Filing Required)	601 & 159	335.00	CLRM
j. Auxiliary Test Station (Per Transmitter) (Electronic Filing Required)	601 & 159	335.00	CLRM
k. Major Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	175.00	CGRM
l. Minor Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	60.00	CARM
19. Offshore Radio:			
a. New; Major Mod; Additional Facility; Major Amendment; Major Renew/Mod; Fill in Transmitters (Per Transmitter) (Electronic Filing Required).	601 & 159	175.00	CGF
b. Consolidate Call Signs (Per Call Sign); Auxiliary Test (Per Transmitter) (Electronic Filing Required).	601 & 159	335.00	CLF

Service	FCC Form No.	Fee amount ($)	Payment type code
c. Minor Modification; Minor Renewal/Modification (Per Transmitter); Notice of Completion of Construction or Extension of Time to Construct (Per Application); Renewal (Per Call Sign) (Electronic Filing Required).	601 & 159	60.00	CAF
d. Assignment of License; Transfer of Control (Full or Partial)	603 & 159	175.00	CGF
Spectrum Leasing	608 & 159	175.00	CGF
Additional Calls (Electronic Filing Required)	603 or 608 & 159	60.00	CAF
e. Special Temporary Authority (Per Transmitter)	601 & 159	335.00	CLF
f. Special Temporary Authority (Per Transmitter) (Electronic Filing)	601 & 159	335.00	CLF
g. Major Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	175.00	CGF
h. Minor Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	60.00	CAF
20. Broadband Radio Service (Previously Multipoint Distribution Service)	601 & 159	260.00	CJM
a. New station (Electronic Filing Required)			
b. Major Modification of Licenses (Electronic Filing Required)	601 & 159	260.00	CJM
c. Certification of Completion of Construction (Electronic Filing Required)	601 & 159	755.00	CPM*
d. License Renewal (Electronic Filing Required)	601 & 159	260.00	CJM
e. Assignment of Authorization; Transfer of Control (first station) (Electronic Filing Required).	603 & 159	95.00	CCM
Spectrum Leasing (first station)	608 & 159	95.00	CCM
Additional Station	608 & 159	60.00	CAM
f. Extension of Construction Authorization (Electronic Filing Required)	601 & 159	220.00	CHM
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (Electronic Filing).	601 & 159	120.00	CEM
h. Special Temporary Authority	601 & 159	120.00	CEM
i. Major Modification for Spectrum Leasing (Electronic Filing Required)	608 & 159	260.00	CJM
21. Communications Assistance for Law Enforcement (CALEA) Petitions	Correspondence & 159	5,880.00	CALA

■ 3. Section 1.1103 is revised to read as follows:

§ 1.1103 Schedule of charges for equipment approval, experimental radio services (or service).

Remit manual filings and/or payment for these services to the: Federal Communications Commission, OET Services, P.O. Box 979095, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
Equipment Approval Service(s):			
1. Certification			
a. Receivers (except TV and FM) (Electronic Filing Only)	731 & 159	475.00	EEC
b. Devices Under Parts 11, 15 & 18 (except receivers) (Electronic Filing Only)	731 & 159	1,220.00	EGC
c. All Other Devices (Electronic Filing Only)	731 & 159	615.00	EFT
d. Modifications and Class II Permissive Changes (Electronic Filing Only)	731 & 159	60.00	EAC
e. Request for Confidentiality under Certification (Electronic Filing Only)	731 & 159	175.00	EBC
f. Class III Permissive Changes (Electronic Filing Only)	731 & 159	615.00	ECC
2. Advance Approval of Subscription TV Systems	Corres & 159	3,740.00	EIS
a. Request for Confidentiality for Advance Approval of Subscription TV Systems	Corres & 159	175.00	EBS
3. Assignment of Grantee Code			
a. For all Application Types, except Subscription TV (Electronic Filing Only—Optional Electronic Payment).	Electronic Assignment & Form 159 or Optional Electronic Payment.	60.00	EAG
4. Experimental Radio Service(s)			
a. New Station Authorization	442 & 159	60.00	EAE
b. Modification of Authorization	442 & 159	60.00	EAE
c. Renewal of Station Authorization	405 & 159	60.00	EAE
d. Assignment of License or Transfer of Control	702 & 159 or 703 & 159	60.00	EAE
e. Special Temporary Authority	Corres & 159	60.00	EAE
f. Additional fee required for any of the above applications that request withholding from public inspection.	Corres & 159	60.00	EAE

■ 4. Section 1.1104 is revised to read as follows:

§ 1.1104 Schedule of charges for applications and other filings for media services.

Remit manual filings and/or payment for these services to the: Federal Communications Commission, Media Bureau Services, P.O. Box 979089, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. Commercial TV Services:			
a. New and Major Change Construction Permits (per application) (Electronic Filing)	301 & 159	4,205.00	MVT
b. Minor Change (per application) (Electronic Filing)	301 & 159	940.00	MPT
c. Main Studio Request	Corres & 159	940.00	MPT
d. New License (per application) (Electronic Filing)	302–TV & 159 302–DTV & 159.	285.00	MJT
e. License Renewal (per application) (Electronic Filing)	303–S & 159	170.00	MGT
f. License Assignment; (i) Long Form (Electronic Filing)	314 & 159	940.00	MPT*
(ii) Short Form (Electronic Filing)	316 & 159	135.00	MDT*
g. Transfer of Control; (i) Long Form (Electronic Filing)	315 & 159	940.00	MPT*
(ii) Short Form (Electronic Filing)	316 & 159	135.00	MDT*
h. Call Sign (Electronic Filing)	380 & 159	95.00	MBT
i. Special Temporary Authority	Corres & 159	170.00	MGT
j. Petition for Rulemaking for New Community of License (Electronic Filing)	301 & 159 302–TV & 159.	2,595.00	MRT
k. Ownership Report (Electronic Filing)	323 & 159 Corres & 159.	60.00	MAT*
2. Commercial AM Radio Stations:			
a. New or Major Change Construction Permit (Electronic Filing)	301 & 159	3,740.00	MUR
b. Minor Change (per application) (Electronic Filing)	301 & 159	940.00	MPR
c. Main Studio Request (per request)	Corres & 159	940.00	MPR
d. New License (per application) (Electronic Filing)	302–AM & 159	615.00	MMR
e. AM Directional Antenna (per application) (Electronic Filing)	302–AM & 159	705.00	MOR
f. AM Remote Control (per application) (Electronic Filing)	301 & 159	60.00	MAR
g. License Renewal (per application) (Electronic Filing)	303–S & 159	170.00	MGR
h. License Assignment; (i) Long Form (Electronic Filing)	314 & 159	940.00	MPR*
(ii) Short Form (Electronic Filing)	316 & 159	135.00	MDR*
i. Transfer of Control; (i) Long Form (Electronic Filing)	315 & 159	940.00	MPR*
(ii) Short Form (Electronic Filing)	316 & 159	135.00	MDR*
j. Call Sign (Electronic Filing)	380 & 159	95.00	MBR
k. Special Temporary Authority	Corres & 159	170.00	MGR
l. Ownership Report (Electronic Filing)	323 & 159 or Corres & 159.	60.00	MAR
3. Commercial FM Radio Stations:			
a. New or Major Change Construction Permit (Electronic Filing)	301 & 159	3,365.00	MTR
b. Minor Change (Electronic Filing)	301 & 159	940.00	MPR
c. Main Studio Request (per request)	Corres & 159	940.00	MPR
d. New License (Electronic Filing)	302–FM & 159	195.00	MHR
e. FM Directional Antenna (Electronic Filing)	302–FM & 159	590.00	MLR
f. License Renewal (per application) (Electronic Filing)	303–S & 159	170.00	MGR
g. License Assignment; (i) Long Form (Electronic Filing)	314 & 159	940.00	MPR*
(ii) Short Form (Electronic Filing)	316 & 159	135.00	MDR*
h. Transfer of Control; (i) Long Form (Electronic Filing)	315 & 159	940.00	MPR*
(ii) Short Form (Electronic Filing)	316 & 159	135.00	MDR*
i. Call Sign (Electronic Filing)	380 & 159	95.00	MBR
j. Special Temporary Authority	Corres & 159	170.00	MGR
k. Petition for Rulemaking for New Community of License or Higher Class Channel (Electronic Filing).	301 & 159 or 302–FM & 159.	2,595.00	MRR
l. Ownership Report (Electronic Filing)	323 & 159 or Corres & 159.	60.00	MAR
4. FM Translators:			
a. New or Major Change Construction Permit (Electronic Filing)	349 & 159	705.00	MOF
b. New License (Electronic Filing)	350 & 159	145.00	MEF
c. License Renewal (Electronic Filing)	303–S & 159	60.00	MAF
d. Special Temporary Authority	Corres & 159	170.00	MGF
e. License Assignment (Electronic Filing)	345 & 159 314 & 159 316 & 159.	135.00	MDF*
f. Transfer of Control (Electronic Filing)	345 & 159 315 & 159. 316 & 159.	135.00	MDF*
5. TV Translators and LPTV Stations:			
a. New or Major Change Construction Permit (per application) (Electronic Filing)	346 & 159	705.00	MOL
b. New License (per application) (Electronic Filing)	347 & 159	145.00	MEL
c. License Renewal (Electronic Filing)	303–S & 159	60.00	MAL*
d. Special Temporary Authority	Corres & 159	170.00	MGL
e. License Assignment (Electronic Filing)	345 & 159 314 & 159.	135.00	MDL*

Service	FCC Form No.	Fee amount ($)	Payment type code
	316 & 159.		
f. Transfer of Control (Electronic Filing)	345 & 159 315 & 159 316 & 159.	135.00	MDL*
g. Call Sign (Electronic Filing)	380 & 159	95.00	MBT
6. FM Booster Stations:			
a. New or Major Change Construction Permit (Electronic Filing)	349 & 159	705.00	MOF
b. New License (Electronic Filing)	350 & 159	145.00	MEF
c. Special Temporary Authority	Corres & 159	170.00	MGF
7. TV Booster Stations:			
a. New or Major Change (Electronic Filing)	346 & 159	705.00	MOF
b. New License (Electronic Filing)	347 & 159	145.00	MEF
c. Special Temporary Authority	Corres & 159	170.00	MGF
8. Class A TV Services:			
a. New and Major Change Construction Permits (per application) (Electronic Filing)	301–CA & 159	4,205.00	MVT
b. New License (per application) (Electronic Filing)	302–CA & 159	285.00	MJT
c. License Renewal (per application) (Electronic Filing)	303–S & 159	170.00	MGT
d. Special Temporary Authority	Corres & 159	170.00	MGT
e. License Assignment; (i) Long Form (Electronic Filing)	314 & 159	940.00	MPT*
(ii) Short Form (Electronic Filing)	316 & 159	135.00	MDT*
f. Transfer of Control; (i) Long Form (Electronic Filing)	315 & 159	940.00	MPT*
(ii) Short Form (Electronic Filing)	316 & 159	135.00	MDT*
g. Main Studio Request	Corres & 159	940.00	MPT
h. Call Sign (Electronic Filing)	380 & 159	95.00	MBT
9. Cable Television Services:			
a. CARS License	327 & 159	260.00	TIC
b. CARS Modifications	327 & 159	260.00	TIC
c. CARS License Renewal (Electronic Filing)	327 & 159	260.00	TIC
d. CARS License Assignment	327 & 159	260.00	TIC
e. CARS Transfer of Control	327 & 159	260.00	TIC
f. Special Temporary Authority	Corres & 159	170.00	TGC
g. Cable Special Relief Petition	Corres & 159	1,310.00	TQC
h. Cable Community Registration (Electronic Filing)	322 & 159	60.00	TAC
i. Aeronautical Frequency Usage Notifications (Electronic Filing)	321 & 159	60.00	TAC

■ 5. Section 1.1105 is revised to read as follows:

§ 1.1105 Schedule of charges for applications and other filings for the wireline competition services.

Remit manual filings and/or payment for these services to the: Federal Communications Commission, Wireline Competition Bureau Applications, P.O. Box 979091, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. Domestic 214 Applications:			
a. Domestic Cable Construction	Corres & 159	1,015.00	CUT
b. Other	Corres & 159	1,015.00	CUT
2. Tariff Filings:			
a. Filing Fees (per transmittal or cover letter)	Corres & 159	815.00	CQK
b. Application for Special Permission Filing (request for waiver of any rule in Part 61 of the Commission's Rules) (per request).	Corres & 159	815.00	CQK
c. Waiver of Part 69 Tariff Rules (per request)	Corres & 159	815.00	CQK
3. Accounting:			
a. Review of Depreciation Update Study (single state)	Corres & 159	34,275.00	BKA
(i) Each Additional State	Corres & 159	1,130.00	CVA
b. Petition for Waiver (per petition):			
(i) Waiver of Part 69 Accounting Rules & Part 32 Accounting Rules, Part 43 Reporting Requirements, Part 64 Allocation of Costs Rules, Part 65 Rate of Return & Rate Base Rules.	Corres & 159	7,725.00	BEA
(ii) Part 36 Separation Rules	Corres & 159	7,725.00	BEB

■ 6. Section 1.1106 is revised to read as follows:

§ 1.1106 Schedule of charges for applications and other filings for the enforcement services.

Remit manual filings and/or payment for these services to the: Federal Communications Commission, Enforcement Bureau , P.O. Box 979094, St. Louis, MO 63197–9000 with the exception of Accounting and Audits, which will be invoiced. Carriers should follow invoice instructions when making payment.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. Formal Complaints	Corres & 159	$200.00	CIZ
2. Accounting and Audits:			
a. Field Audit	Carriers will be invoiced for the amount due.	103,215.00	BMA
b. Review of Attest Audit	Carriers will be invoiced for the amount due.	56,340.00	BLA
3. Development and Review of Agreed upon Procedures Engagement	Corres & 159	56,340.00	BLA
4. Pole Attachment Complaint	Corres & 159	250.00	TPC

■ 7. Section 1.1107 is revised to read as follows:

§ 1.1107 Schedule of charges for applications and other filings for the international services.

Remit manual filings and/or payment for these services to the: Federal Communications Commission, International Bureau Applications, P.O. Box 979093, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. International Fixed Public Radio (Public & Control Stations)			
a. Initial Construction Permit (per station)	407 & 159	850.00	CSN
b. Assignment or Transfer (per Application)	702 & 159 or 704 & 159	850.00	CSN
c. Renewal (per license)	405 & 159	615.00	CON
d. Modification (per station)	403 & 159	615.00	CON
e. Extension of Construction Authorization (per station)	701 & 159	310.00	CKN
f. Special Temporary Authority or request for Waiver (per request)	Corres & 159	310.00	CKN
2. Section 214 Applications:			
a. Overseas Cable Construction	Corres & 159	15,120.00	BIT
b. Cable Landing License: (i) Common Carrier	Corres & 159	1,700.00	CXT
(ii) Non-Common Carrier	Corres & 159	16,820.00	BJT
c. All other International 214 Applications	Corres & 159	1,015.00	CUT
d. Special Temporary Authority (all services)	Corres & 159	1,015.00	CUT
e. Assignments or transfers (all services)	Corres & 159	1,015.00	CUT
3. Fixed Satellite Transmit/Receive Earth Stations:			
a. Initial Application (per station)	312 Main & Schedule B & 159.	2,530.00	BAX
b. Modification of License (per station)	312 Main & Schedule B & 159.	175.00	CGX
c. Assignment or Transfer: (i) First station	312 Main & Schedule A & 159.	500.00	CNX
(ii) Each Additional Station	Attachment to 312–Schedule A.	170.00	CFX
d. Renewal of License (per station)	312–R & 159	175.00	CGX
e. Special Temporary Authority (per request)	312 Main & 159	175.00	CGX
f. Amendment of Pending Application (per station)	312 Main & Schedule B & 159.	175.00	CGX
g. Extension of Construction Permit (modification) (per station)	312 Main & 159	175.00	CGX
4. Fixed Satellite transmit/receive Earth Stations (2 meters or less operating in the 4/6 GHz frequency band):			
a. Lead Application	312 Main & Schedule B & 159.	5,605.00	BDS
b. Routine Application (per station)	312 Main & Schedule B & 159.	60.00	CAS
c. Modification of License (per station)	312 Main & Schedule B & 159.	175.00	CGS
d. Assignment or Transfer: (i) First Station	312 Main & Schedule A & 159.	500.00	CNS
(ii) Each Additional Station	Attachment to 312–Schedule A.	60.00	CAS
e. Renewal of License (per station)	312–R & 159	175.00	CGS
f. Special Temporary Authority (per request)	312 Main & 159	175.00	CGS
g. Amendment of Pending Application (per station)	312 Main & Schedule A or B & 159.	175.00	CGS
h. Extension of Construction Permit (modification) (per station)	312 & 159	175.00	CGS
5. Receive Only Earth Stations:			
a. Initial Applications for Registration or License (per station)	312 Main & Schedule B & 159.	385.00	CMO

Service	FCC Form No.	Fee amount ($)	Payment type code
b. Modification of License or Registration (per station)	312 Main & Schedule B & 159.	175.00	CGO
c. Assignment or Transfer: (i) First Station	312 Main & Schedule A & 159.	500.00	CNO
(ii) Each Additional Station	Attachment to 312–Schedule A.	170.00	CFO
d. Renewal of License (per station)	312–R & 159	175.00	CGO
e. Amendment of Pending Application (per station)	312 Main & Schedule A or B & 159.	175.00	CGO
f. Extension of Construction Permit (modification) (per station)	312 Main & 159	175.00	CGO
g. Waivers (per request)	Corres & 159	175.00	CGO
6. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems:			
a. Initial Application (per station)	312 Main & Schedule B & 159.	9,330.00	BGV
b. Modification of License (per system)	312 Main & Schedule B & 159.	175.00	CGV
c. Assignment or Transfer of System	312 Main & Schedule A & 159.	2,495.00	CZV
d. Renewal of License (per system)	312–R & 159	175.00	CGV
e. Special Temporary Authority (per request)	312 & 159	175.00	CGV
f. Amendment of Pending Application (per system)	312 Main & Schedule A or B & 159.	175.00	CGV
g. Extension of Construction Permit (modification) (per system)	312 & 159	175.00	CGV
7. Mobile Satellite Earth Stations:			
a. Initial Applications of Blanket Authorization	312 Main & Schedule B & 159.	9,330.00	BGB
b. Initial Application for Individual Earth Station	312 Main & Schedule B & 159.	2,240.00	CYB
c. Modification of License (per system)	312 Main & Schedule B & 159.	175.00	CGB
d. Assignment or Transfer (per system)	312 Main & Schedule A & 159.	2,495.00	CZB
e. Renewal of License (per system)	312–R & 159	175.00	CGB
f. Special Temporary Authority (per request)	312 & 159	175.00	CGB
g. Amendment of Pending Application (per system)	312 Main & Schedule B & 159.	175.00	CGB
h. Extension of Construction Permit (modification) (per system)	312 & 159	175.00	CGB
8. Space Stations (Geostationary):			
a. Application for Authority to Launch & Operate (per satellite)	312 Main & Schedule S & 159.	115,990.00	BNY
(i) Initial Application	312 Main & Schedule S & 159.	115,990.00	BNY
(ii) Replacement Satellite			
b. Assignment or Transfer (per satellite)	312 Main & Schedule A & 159.	8,285.00	BFY
c. Modification (per satellite)	312 Main & Schedule S (if needed) & 159.	8,285.00	BFY
d. Special Temporary Authority (per satellite)	312 & 159	830.00	CRY
e. Amendment of Pending Application (per satellite)	312 Main & Schedule S (if needed) & 159.	1,660.00	CWY
f. Extension of Launch Authority (per satellite)	312 Main & Corres & 159	830.00	CRY
9. Space Stations (NGSO):			
a. Application for Authority to Launch & Operate (per system of technically identical satellites).	312 Main & Schedule S & 159.	399,455.00	CLW
b. Assignment or Transfer (per system)	312 Main & Schedule A & 159.	11,420.00	CZW
c. Modification (per system)	312 Main & Schedule S (if needed) & 159.	28,535.00	CGW
d. Special Temporary Authority (per request)	Corres & 159	2,860.00	CXW
e. Amendment of Pending Application (per request)	312 Main & Schedule S & 159.	5,710.00	CAW
f. Extension of Launch Authority (per system)	312 Main & 159	2,860.00	CXW
10. Direct Broadcast Satellites:			
a. Authorization to Construct or Major Modification (per satellite)	312 Main & Schedule S & 159.	3,365.00	MTD
b. Construction Permit and Launch Authority (per satellite)	312 Main & Schedule S & 159.	32,660.00	MXD
c. License to Operate (per satellite)	312 Main & Schedule S & 159.	940.00	MPD
d. Special Temporary Authority (per satellite)	312 Main & 159	170.00	MGD
11. International Broadcast Stations:			
a. New Station & Facilities Change Construction Permit (per application)	309 & 159	2,830.00	MSN

Service	FCC Form No.	Fee amount ($)	Payment type code
b. New License (per application)	310 & 159	640.00	MNN
c. License Renewal (per application)	311 & 159	160.00	MFN
d. License Assignment or Transfer of Control (per station license)	314 & 159 or 315 & 159 or 316 & 159.	100.00	MCN
e. Frequency Assignment & Coordination (per frequency hour)	Corres & 159	60.00	MAN
f. Special Temporary Authorization (per application)	Corres & 159	170.00	MGN
12. Permit to Deliver Programs to Foreign Broadcast Stations (per application):			
a. Commercial Television Stations	308 & 159	95.00	MBT
b. Commercial AM or FM Radio Stations	308 & 159	95.00	MBR
13. Recognized Operating Agency (per application)	Corres & 159	1,015.00	CUG

■ 8. Section 1.1108 is revised to read as follows:

§ 1.1108 Schedule of charges for applications and other filings for the international telecommunication services.

Remit payment (along with a copy of invoice) for these services to the: Federal Communications Commission, International Telecommunication Fees, P.O. Box 979096, St. Louis, MO 63197–9000

1. Administrative Fee For Collections (per line item)	99 & 99A	$2.00	IAT
2. Telecommunication Charges	99 & 99A	....	ITTS

■ 9. Section 1.1109 is revised to read as follows:

§ 1.1109 Schedule of charges for applications and other filings for the Homeland services.

Remit manual filings and/or payment for these services to the: Federal Communications Commission, Homeland Bureau Applications, P.O. Box 979092, St. Louis, MO 63197–9000

1. Communication Assistance for Law Enforcement (CALEA) Petitions	Corres & 159	$5,880.00	CLEA

■ 10. Section 1.1113 is amended by revising paragraph (c) to read as follows:

§ 1.1113 Return or refund of charges.

* * * * *

(c) Applicants in the Media Services for first-come, first-served construction permits will be entitled to a refund of the fee, if, within fifteen days of the issuance of a Public Notice indicating there is a previously filed pending application for the same vacant channel, such applicant notifies the Commission that they no longer wish their application to remain on file behind the first applicant and any other applicants filed before his or her application, and the applicant specifically requests a refund of the fee paid and dismissal of his or her application.

* * * * *

[FR Doc. E9–1945 Filed 1–28–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 80, and 90

[WT Docket No. 04–344; FCC 08–208]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts additional measures for domestic implementation of Automatic Identification Systems (AIS), an advanced marine vessel tracking and navigation technology that can significantly enhance our Nation's homeland security as well as maritime safety. Specifically, in the *Second Report and Order* in WT Docket No. 04–344, the Commission designates maritime VHF Channel 87B (161.975 MHz) for exclusive AIS use throughout the Nation, while providing a replacement channel for those geographic licensees that are currently authorized to use Channel 87B in an inland VHF Public Coast (VPC) service area (VPCSA); determines that only Federal Government (Federal) entities should have authority to operate AIS base stations, obviating any present need for the Commission to adopt licensing, operational, or equipment certification rules for such stations; and requires that Class B AIS shipborne devices—which have somewhat reduced functionality vis-à-vis the Class A devices that are carried by vessels required by law to carry AIS equipment, and are intended primarily for voluntary carriage by recreational and other non-compulsory vessels—comply with the international standard for such equipment, while also mandating additional safeguards to better ensure the accuracy of AIS data transmitted from Class B devices. These measures will facilitate the establishment of an efficient and effective domestic AIS network, and will optimize the navigational and homeland security benefits that AIS offers.

DATES: Effective March 2, 2009 except for § 80.231, which contains new information collection requirements, that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. The incorporation by reference listed in the rule is approved by the Director of the Federal Register as of March 2, 2009.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov,* Mobility Division, Wireless Telecommunications Bureau, (202) 418–1617, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Second Report and Order* in WT Docket No. 04–344, FCC 08–208, adopted on September 15, 2008, and released September 19, 2008. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. In this *Second Report and Order,* the Commission concludes that it would promote the primary objectives of this proceeding, and would serve the broader public interest, to designate Channel 87B for exclusive AIS use in the thirty-three inland VPCSAs, just as it previously designated Channel 87B for exclusive use in the nine maritime VPCSAs in the *Report and Order* at 71 FR 60067, October 12, 2006. Making Channel 87B, like Channel 88B, available only for AIS throughout the Nation will serve the public interest by expanding the effectiveness and reliability of AIS.

2. Many commenters argue that Channel 87B should be designated exclusively for AIS use in the inland VPCSAs for reasons independent of the need to accommodate satellite AIS. These commenters note that AIS offers great benefits as a tool to assist vessels in navigating safely on waterways within inland VPCSAs, just as it does with respect to vessels in coastal areas and on the high seas. These commenters echo RTCM's assertion, made earlier in this proceeding, that AIS can provide vessel operators with the ability to ''see'' around islands and bends in narrow, obstructed or winding waterways in a way that radar cannot. According to RTCM, the unique navigational benefits of AIS will be especially important for large passenger vessels, large barge tows and similar vessels that have limited maneuverability on these inland waterways.

3. Commenters assert that designation of a channel other than Channel 87B for inland AIS operations would result in many of the same problems that led the Commission to reject the use of a channel or channels other than Channel 87B for AIS in the maritime VPCSAs, *i.e.*, it would prevent the establishment of a seamless global AIS network (and, in this case, even a seamless nationwide AIS network) and would require vessels transiting an AIS ''fence'' between maritime and inland VPCSAs to switch to a different AIS channel. These commenters believe, in sum, that a failure to designate Channel 87B for AIS use on inland waterways would prevent the United States from realizing the full navigational safety and homeland security benefits of AIS.

4. Most commenters also believe that non-AIS operations should be prohibited on Channel 87B in the inland VPCSAs in order to protect the integrity of AIS operations not only in the inland VPCSAs, but also in the maritime VPCSAs and even in international waters. NTIA contends that the threat of co-channel interference to AIS from non-AIS transmissions on Channel 87B in inland VPCSAs is such that the Commission's main objective in this proceeding—to ensure that AIS is deployed widely, quickly, reliably, and cost-effectively, and in a manner that will maximize its capabilities—''cannot be fully attained unless the Commission designates AIS Channel 87B on a nationwide basis.'' Commenters note, in this regard, that, non-AIS transmissions on Channel 87B from transmitters located within inland VPCSAs would cause interference to AIS transmissions, even on the high seas, due to atmospheric ''ducting,'' which can cause VHF signals to be received several hundred miles away. Even relatively distant non-AIS transmissions on Channel 87B could therefore interfere with and degrade AIS operations, reducing the effectiveness of AIS for homeland security as well as navigational safety.

5. MariTEL disputes the other commenters' arguments that non-AIS operations on Channel 87B, even in inland VPCSAs, will cause interference to AIS operations. MariTEL contends that the Commission previously considered and rejected similar arguments in permitting the use of VPC spectrum for land mobile operations pursuant to waivers. In those waiver decisions, according to MariTEL, the Commission determined that the use of VPC channels for maritime communications would not be compromised if land mobile use of the channels occurred sufficiently distant from the coast and navigable waterways. This argument overlooks the fact that the referenced decisions by the Wireless Telecommunications Bureau's former Public Safety and Critical Infrastructure Division did not permit land mobile use of Channel 87B, and expressly conditioned the non-maritime use of the frequencies on there being no harmful interference to current or future marine communications, including but not limited to AIS. In addition, the waivers granted in those cases were of limited geographic scope. The Commission therefore is not persuaded that those waiver decisions contradict the consensus view of the commenters other than MariTEL that non-AIS operations in inland VPCSAs can cause harmful interference to co-channel AIS communications, or that these decisions otherwise undermine the rationale for a nationwide designation of Channel 87B for AIS. The Commission therefore concludes that the public interest in homeland security and maritime safety would best be served by prohibiting non-AIS operations on Channel 87B throughout the Nation in order to protect the integrity of terrestrial (*i.e.*, non-satellite) AIS communications.

6. In addition, the Commission concludes that non-AIS operations on Channel 87B would likely cause interference to satellite AIS communications. NTIA says that ''[p]reliminary reports demonstrate that, with specific configurations, it is possible for land-based stations reliably to receive AIS signals from approximately 350 nautical miles.'' The Maritime Transportation and Security Act of 2002 (MTSA), however, requires the Coast Guard to develop long-range tracking capabilities, and the Coast Guard's goal in furtherance of that mandate is to extend AIS coverage to two thousand nautical miles from the United States shoreline. NTIA is therefore exploring the possibility of using a low earth orbit communications satellite system to receive, process and relay AIS data, and has contracted with ORBCOMM, a mobile satellite service licensee, to evaluate satellite detection of AIS signals. The consensus of the commenters is that satellite AIS, if it proves feasible, will offer significant advantages over terrestrial AIS by, for example, expanding vessel tracking capabilities to encompass areas of the high seas well beyond the reach of non-satellite AIS.

7. NTIA and other commenters argue that the Commission should bar non-AIS transmissions on Channel 87B, even in inland areas, in order to avoid disruptions to satellite reception of AIS signals, which could, as ORBCOMM

notes, ''hinder the U.S. Coast Guard in fulfilling its critical homeland security role.'' NTIA asserts that a report by the Department of Defense Joint Spectrum Center (JSC) analyzing technical issues relating to satellite AIS demonstrates that non-AIS co-channel signals ''cause[] degradation in AIS signal detection * * * that is both unpredictable and unmanageable,'' and that this signal degradation ''will significantly decrease the effectiveness of the AIS system'' to the point of defeating the purpose of using satellite AIS to expand long-range vessel tracking capabilities. ORBCOMM concurs that there is no current means of controlling non-AIS co-channel interference to satellite AIS, explaining that it is developing protocols/ algorithms that will allow it to address simultaneous AIS transmissions from different ships, but that these do not prevent interference to AIS communications from non-AIS sources.

8. MariTEL argues that the Commission should not designate Channel 87B for AIS in the inland VPCSAs as an accommodation to satellite AIS because ''there is no evidence that space-based monitoring will provide the Coast Guard with any more information than it would otherwise receive from terrestrial monitoring,'' and because, even if such space-based monitoring of AIS transmissions on Channel 87B is deemed beneficial, satellite AIS can co-exist with non-AIS operations on Channel 87B in inland VPCSAs. The Commission finds neither argument to be convincing. MariTEL does not dispute that satellite AIS can greatly enlarge the distance at which AIS transmissions can be received and relayed. In addition, MariTEL's argument that an AIS satellite should be able to distinguish land mobile radio transmissions on Channel 87B in inland VPCSAs from AIS transmissions on the channel elsewhere fails to effectively address the comments submitted by the entities responsible for implementing satellite AIS indicating that it is not currently possible to filter out the non-AIS transmissions, and that those non-AIS transmissions would likely degrade satellite AIS reception, even with respect to AIS transmissions from vessels far from shore. The Commission therefore concludes that non-AIS operations on Channel 87B would likely need to be terminated if satellite AIS proves feasible and is fully implemented.

9. In sum, the Commission agrees with commenters such as NTIA that ''[t]here are compelling safety and national security reasons to designate Channel 87B for AIS on a nationwide basis.'' Because the desirability of deploying AIS in coastal and international waters applies equally to inland rivers and lakes, the optimization of the domestic AIS network clearly requires the designation of Channels 87B and 88B for inland AIS, and permitting any non-AIS uses of Channel 87B anywhere in the Nation would compromise the integrity of the domestic, and by extension the global, AIS network. The Commission also finds that implementation of satellite AIS would serve the public interest, and that clearing Channel 87B of non-AIS operations would be necessary to maximize the effectiveness of satellite AIS operations

10. As a consequence of its designation of Channel 87B for AIS in the inland VPCSAs, the Commission must establish a framework for clearing the channel of non-AIS operations. In the *Report and Order,* the Commission held that site-based VPC and private land mobile radio (PLMR) licensees in the maritime VPCSAs could continue to operate on Channel 87B until the expiration of their current license terms, but authorizations to operate on Channel 87B would not be renewed. In the inland VPCSAs, in contrast, there are no site-based VPC licensees and only two site-based PLMR licensees, one of which is a public safety entity. In addition, there is less maritime activity in the inland VPCSAs, further reducing the short-term potential for Channel 87B licensees in those areas to cause interference to AIS operations. Moreover, the full-scale implementation of satellite AIS is a longer-term project than the implementation of ship-to-ship and ship-to-shore terrestrial AIS operations. Under these circumstances, the Commission concludes that it can afford an additional period of grandfathering protection to the site-based Channel 87B PLMR licensees in inland VPCSAs. Specifically, the Commission will permit them to remain authorized to operate on Channel 87B for fifteen years after the effective date of the rule amendments adopted herein. This will provide incumbent site-based licensees with an ample period of time to adjust to the redesignation of Channel 87B without any disruption to their present operations, while at the same time ensuring eventual clearance of all non-AIS operations from the channel.

11. With respect to geographic licensees in the inland VPCSAs, the Commission noted earlier in this proceeding that two duplex channel pairs in the VHF maritime band have been set aside in each inland VPCSA as public safety interoperability channels. Specifically, Channel 25 (157.250/ 161.850 MHz) is set aside in every inland VPCSA, and either Channel 84 (157.225/161.825 MHz) or Channel 85 (157.275/161.875 MHz) is also set aside in each inland VPCSA. The Commission's ULS database indicates that only four entities are currently licensed pursuant to the set-aside. The Commission noted earlier in this proceeding that it had designated significant additional spectrum for public safety interoperability, in the VHF band and elsewhere, in the years following the set-aside of these VPC channels for that purpose, and it requested comment as to whether, in the event it designated Channel 87B for exclusive AIS use nationwide, any of these set-aside channels should be redesignated for use by inland VPCSA licensees.

12. In light of its determination to redesignate Channel 87B for exclusive AIS use in those VPCSAs, the Commission finds that it is appropriate to redesignate one of the public safety set-aside channel pairs in each inland VPCSA for use by inland VPCSA licensees. The only commenters addressing this issue—MariTEL, PacifiCorp, and RTCM—all favor redesignation of the channels, at least in the absence of any showing that they are needed for public safety interoperability communications. MariTEL argues that ''equity demands nothing less.'' MariTEL also suggests that giving inland VPCSA licensees replacement spectrum would make them ''whole'' for the loss of Channel 87B.

13. The Commission therefore redesignates duplex Channels 84 and 85 for VPC communications in the inland VPCSAs. (The Commission decides to make Channels 84/85 available to inland VPCSA licensees, rather than Channel 25, for several reasons. All four of the public safety licensees are licensed on Channel 25, but not all four are licensed on the other channels. In addition, Channel 25 is more useful for public safety interoperability because it is set aside throughout the inland VPCSAs. Finally, PacifiCorp, the only commenter addressing this precise issue, favors the reallocation of Channels 84 and 85, explaining that the reallocation of those channels would be more beneficial than a reallocation of Channel 25 in providing additional flexibility to inland VPCSA licensees and lessees with respect to signal strength across the border of adjacent VPCSAs.) Like incumbent site-based PLMR licensees operating on Channel 87B, site-based incumbents currently authorized on Channels 84/85 will remain authorized to operate on those

channels for a period of fifteen years following the effective date of these rule amendments. As noted above with respect to incumbents on Channel 87B, a grandfathering period of fifteen years should provide affected public safety licensees with ample time for transition without any disruption to their present operations. In addition, making these former public safety set-aside channels available to inland VPCSA licensees is equitable because it will restore the operating capacity of these licensees, who, unlike the maritime VPCSA licensees, were under no pre-existing obligation to make any of their licensed spectrum available for AIS. This action is also equitable in consideration of the fact that the nationwide AIS designation of Channel 87B is itself intended to promote public safety. The Commission finds that this action will not disserve public safety, especially in light of its determination to temporarily grandfather the existing public safety use of the channels.

14. In order to provide a transition period for inland VPCSA geographic licensees to switch from Channel 87B to Channels 84/85, the Commission will permit inland VPCSA geographic licensees to continue to operate on Channel 87B for up to two years after the effective date of these rules, while allowing them to modify their licenses to replace Channel 87B with Channel 84 or Channel 85, as appropriate, any time after the effective date. This transition period should be ample to avoid any disruption of existing operations by inland VPCSA licensees, and should not otherwise prove onerous to the licensees. At the same time, this limited relief for existing inland VPCSA licensees should not compromise efforts to implement AIS in the United States as quickly and broadly as possible. At the end of the two-year transition period, the Commission will modify any inland VPCSA licenses that were not previously modified to replace Channel 87B with Channel 84 or Channel 85, as appropriate.

15. In the *FNPRM* in this proceeding, the Commission, noting that the International Electro-technical Commission (IEC) was in the process of developing AIS base station equipment standards, asked interested parties to address standards and procedures for authorizing AIS base station equipment under part 80, and sought comment on whether it should adopt rules for the licensing and use of AIS base stations. After reviewing the record, the Commission concludes that AIS base stations should be operated only by Federal entities, and, as a consequence, that the Commission need not adopt any rules pertaining to AIS base station equipment certification, licensing, or operation.

16. Almost all of the commenters addressing this question believe that private sector entities should not be licensed to operate AIS base stations. NTIA states that control of AIS base stations is ''an inherently federal government function.'' According to NTIA, AIS base stations control all aspects of the AIS network, and can override certain shipborne AIS functions. It explains, ''Base stations manage the AIS VHF Data Link by managing communications traffic on AIS through various means to provide for the safety of navigation, to obtain information necessary for VTS [Vessel Traffic Services] and national security purposes, to transmit safety related messages, and to serve as an aid to navigation.'' RTCM adds, ''This power of AIS Base Stations to affect the operating characteristics of AIS systems should only be available to federal agencies with responsibility for navigational safety and security.''

17. Alone among the commenters, MariTEL asserts that AIS base stations should also be permitted to conduct commercial operations. MariTEL also argues that a determination not to permit private sector entities to be licensed for AIS base stations means that Channel 87B will in fact have been reallocated for exclusive Federal use, not the shared Federal/non-Federal use to which the Commission said the channel was being reallocated in the *Report and Order* in this proceeding. The Commission disagrees because, in making this argument, MariTEL ignores the existence of ship-to-ship AIS communications, which do not directly involve AIS base stations, and are authorized under part 80 of the rules pursuant to Commission-issued ship station licenses.

18. The Commission agrees with NTIA and the other commenters who argue that the responsibilities of operating AIS base stations should be undertaken only by Federal entities. AIS base stations will query and send commands to vessels. They will have the capability of overriding certain shipborne AIS functions through remote control. They will serve as aids to navigation, in a fashion similar to lighthouses. They will be responsible for maritime traffic management. Given the critical role played by AIS base stations in the global AIS network, it would be inappropriate to permit private sector entities, or even state or local government entities, to operate such stations in the United States. Permitting non-Federal entities to control AIS base stations could potentially jeopardize maritime domain awareness and maritime safety by diffusing responsibility and accountability for AIS base station operations.

19. It follows from this determination—that only Federal entities should operate AIS base stations—that the Commission should not promulgate rules for the licensing and operation of AIS base stations. The Commission is statutorily prohibited from licensing Federal Government radio stations. There is likewise no reason for the Commission to adopt rules to govern the certification of AIS base station equipment, because the Commission plays no role in certifying equipment for Federal Government stations. Although most commenters favor the international standard, IEC 62320–1, as the basis for equipment certification rules for AIS base stations, the comments do not account for the fact that radiofrequency equipment used in Federal Government radio stations is subject to certification by NTIA, not the Commission. In any event, the Commission has no reason to expect that the Federal Government will employ AIS base station equipment that is not compatible with the international standards. The Commission therefore declines to adopt any rules pertaining to the licensing, operation, or certification of equipment for AIS base stations.

20. The final set of issues presented in the *FNPRM* in this proceeding involved standards for certifying Class B AIS shipborne equipment, and further measures the Commission might adopt to ensure the accuracy of data transmitted from such devices. As the Commission noted in the *FNPRM*, Class B AIS devices are generally intended for use by vessels that are not subject to a mandatory AIS carriage requirement, and provide a less expensive alternative to Class A devices to encourage voluntary AIS carriage. For reasons discussed below, the Commission concludes that it should base part 80 certification of Class B AIS devices on compliance with the pertinent international standard for such devices, IEC 62287–1, as proposed in the *FNPRM*. The Commission therefore adds a new § 80.231 and revises § 80.1101(c)(12) of the Commission's rules to incorporate IEC 62287–1 by reference as the Commission standard for certifying Class B AIS equipment. As suggested by some commenters, however, the Commission also adopts additional requirements as safeguards to better ensure that Class B AIS devices will transmit accurate static data, including the correct Maritime Mobile

Service Identity (MMSI) number. (An MMSI number, also referred to simply as an MMSI, is a unique nine-digit number assigned to commercial and recreational vessels participating in the Global Maritime Distress and Safety System (GMDSS). The MMSI functions as a ''phone number'' for the vessel and must be programmed into the vessel's digital selective calling (DSC) radio. MMSIs are also used for AIS transponders.)

21. The commenters addressing this issue generally favor the Commission's proposal to incorporate by reference IEC 62287–1 as the standard for certifying Class B AIS equipment under part 80. As ACR Electronics explains, the incorporation by reference of IEC 62287–1 is the option most consistent with the paramount goals of this proceeding to facilitate speedy and widespread deployment of AIS equipment. Given that, as ACR Electronics also notes, there currently is no alternative basis for certifying Class B AIS equipment, rejection of IEC 62287–1 as the standard for certifying Class B AIS devices would necessitate the development of a different standard, which would result in a substantial and unacceptable additional delay before Commission certification of Class B AIS devices could begin. Further, reliance on the existing IEC standard will reduce the cost of Class B AIS devices, and thus promote voluntary AIS carriage. It will also moot any concerns regarding interoperability of Class B AIS devices both domestically and on a worldwide basis.

22. The Commission disagrees with MariTEL's contention that the Commission should delay certifying Class B AIS equipment until it determines whether IEC 62287–1 ensures that Class B AIS devices do not cause interference to VPC operations in adjacent spectrum. The Commission already has determined, after reviewing an extensive record that included separate technical studies submitted by MariTEL and NTIA, that ''the interference impact of wideband simplex AIS on VPC operations can be effectively mitigated through commercially reasonable means,'' and MariTEL has not adduced any evidence to suggest that Class B AIS devices would pose a greater interference threat to VPC operations than Class A AIS devices, or that adopting rules for the certification of Class B AIS devices otherwise requires revisiting that earlier determination. The Commission finds, in sum, that certification of Class B AIS equipment in accordance with the established international standard for such equipment would serve the public interest for the same reasons that underlie the Commission's earlier determination to certify Class A AIS equipment in accordance with the established Class A international standard. The Commission therefore amends our rules as proposed to incorporate by reference IEC 62287–1 as the standard for certifying Class B AIS equipment under Part 80.

23. The Commission also agrees in principle with those commenters who believe that the Commission should adopt additional measures, beyond reliance on IEC 62287–1, to ensure the accuracy of MMSIs and other static data programmed into Class B AIS devices. The Commission has reviewed the proposals to that end in the record, some of which are very detailed and extensive. As discussed below, the Commission adopts three measures to provide better assurance that Class B AIS devices will be programmed with the correct static data, and in particular the correct MMSI. None of these measures conflicts with IEC 62287–1, and none should be burdensome for either equipment manufacturers or end users. It is unnecessary, and might be counterproductive, to prescribe more complicated processes, as some comments contemplate.

24. First, as urged by NTIA, the Commission prohibits any person from knowingly entering an incorrect MMSI or other static data in a Class B AIS device. Although this is a very basic measure, it ensures and clarifies that the Commission may impose the full range of sanctions at its disposal for the willful or knowing entry of false data. The Commission says it would view any violations of this requirement as very serious, because the transmission of inaccurate static data could result in the misidentification of vessels, thus compromising the Coast Guard's ability to use AIS to full effect on behalf of its maritime domain awareness efforts. Second, the Commission requires that the static data, including MMSI, be entered by sellers and professional installers of Class B AIS devices, not the end users. As commenters note, IEC 62287–1 prohibits end users from altering MMSIs, once programmed in the unit, but does not prohibit end users from entering the numbers initially. Thus, this requirement would go further than IEC 62287–1 by requiring professional entry of the MMSI number at the point of sale or installation. NTIA proposes such a requirement, and it is consistent with the comments of ACR Electronics, RTCM and the Task Force asking the Commission to require persons that sell and install Class B AIS units to ensure that the appropriate static data is entered, or at least to encourage them to enter the data themselves. Third, and also as recommended by NTIA, as well as by RTCM, the Commission requires manufacturers to include a conspicuous label on Class B AIS devices explaining how to enter and confirm static data, and warning that inputting an MMSI that has not been properly assigned to the end user, or otherwise entering any improper or inaccurate static data, is prohibited. Manufacturers also will be required to include this information in the user's manual. As RTCM notes, IEC 62287–1 contains only minimal guidance on the contents of manuals and user instructions, so adoption of this requirement does not conflict with the standard. NTIA believes that these three measures together provide a significant safeguard to ensure that the static data transmitted from Class B AIS devices, particularly MMSIs, are accurate and reliable. The Commission therefore adopts these measures. The Commission also adopts its proposal, unopposed by any commenter, that applicants for Commission certification of a Class B AIS device first obtain Coast Guard certification of the device, consistent with the Commission's procedures for Class A AIS devices.

25. Finally, the Commission notes that, while the *FNPRM* was pending, equipment manufacturers requested waivers to permit the authorization and use of Class B AIS transponders. The Wireless Telecommunications Bureau's Mobility Division sought comment on the waiver requests, and the commenters support authorizing Class B AIS devices before the conclusion of this proceeding. They assert that allowing voluntary vessels to fit the lower-cost Class B AIS devices as soon as possible will improve maritime security and safety of navigation. The Commission agrees that it is in the public interest to allow the use of Class B devices prior to the effective date of the rules adopted herein. Therefore, the Commission grants the waiver requests to the extent that it will certify Class B equipment that meets the requirements adopted in this *Second Report and Order* prior to the effective date of the new rules.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

26. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the

PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

27. In this present document, we have assessed the effects of establishing labeling requirements for manufacturers of Class B AIS devices, and find that the labeling requirements adopted herein would not impose an undue burden or excessive cost on such manufacturers, including those that have fewer than 25 employees. We also find that the public interest in ensuring that Class B AIS devices transmit accurate static data, including the correct MMSI number, which is the underlying purpose of the labeling requirements, outweighs the incremental compliance cost on manufacturers, including those that have 25 or fewer employees.

B. Report to Congress

28. The Commission will send a copy of this *Second Report and Order* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Second Report and Order:

30. The rules adopted in the *Second Report and Order* are intended to facilitate the implementation of maritime Automatic Identification Systems (AIS) in the United States and its territorial waters. AIS is an important tool for enhancing maritime safety and homeland security. In the *Second Report and Order,* the Commission designates VHF maritime Channel 87B for exclusive AIS use in inland VHF Public Coast service areas (VPCSAs) because such designation will best ensure that the United States can maximize the maritime safety and homeland security benefits of AIS. The exclusive use of VHF maritime Channel 87B for AIS in inland waterways will, among other things, provide an important navigational tool to guide vessels traveling on inland rivers and lakes, avoid the problems that would inhere in requiring vessels to switch AIS channels when transiting an AIS ''fence'' between maritime VPCSAs and inland VPCSAs, facilitate speedy AIS deployment using existing technical standards and infrastructure, and prevent co-channel interference to AIS operations not only in inland waterways but also in coastal and international waters. The *Second Report and Order* also concludes that AIS base stations should be operated only by Federal entities, and, as a consequence, that the Commission need not adopt any rules pertaining to AIS base station equipment certification, licensing or operation. Finally, the Commission adopts rules for the certification of Class B AIS devices, incorporating by reference the applicable international standard as the basis for such certification, while also adopting additional measures to better ensure that Class B AIS devices transmit accurate static data.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA:

31. No comments were submitted specifically in response to the IRFA. However, one of the commenters, MariTEL, Inc. (MariTEL), contends that the Commission should not designate Channel 87B for AIS in inland VPCSAs, should not adopt rules based on international standards for the certification of AIS base station equipment, and should not authorize Class B AIS devices pursuant to the international standards, because such measures would cause interference to VHF Public Coast (VPC) stations operating on adjacent channels. As discussed in detail in Section E of this FRFA, we have considered the potential economic impact on small entities of these rules, and we have considered alternatives that would reduce the potential economic impact on small entities of the rules enacted herein, regardless of whether the potential economic impact was discussed in any comments.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply:

32. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

33. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Wireless Telecommunications,'' which is 1,500 or fewer employees. Between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast (VPC) licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed fifteen million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed three million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities:

34. The rule amendments adopted in the *Second Report and Order* impose new compliance burdens on manufacturers and vendors of Class B AIS devices by requiring that such devices comply with the international standard for Class B AIS equipment, IEC 62287–1, in order to be certified by the Commission for use in the United States, and by requiring that static data be entered into Class B AIS equipment only by the vendor or installer. The rule amendments adopted in the *Second Report and Order* also impose requirements for the professional

installation and labeling of Class B AIS devices to better ensure the accuracy of the static data transmitted from such devices.

Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

35. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

36. In the IRFA for the *FNPRM,* the Commission described, and sought comment on, possible alternatives to the rule amendments under consideration in the *FNPRM* that might minimize the economic impact on small entities. Specifically, the Commission asked interested parties, and in particular inland VPCSA licensees, to provide information on the potential impact on inland VPCSA licensees of designating Channel 87B for AIS use exclusively throughout the Nation. To the extent that commenters foresaw such an impact, they were invited to suggest alternatives that would minimize or eliminate any adverse effect on small entities. It was noted, for example, that commenters could suggest that inland VPCSA licensees be accorded treatment similar to that which was accorded to site-based incumbent licensees, permitting them to continue to operate on Channel 87B on a shared basis with AIS for the remainder of their current license terms, but with no opportunity for renewal of the licenses. Commenters were also invited to address the possibility of migrating such licensees to different channels if such were available.

37. In the *FNPRM,* comment was also invited on rules to govern AIS base stations, including certification standards for AIS base station equipment. In the absence of specific proposals, the Commission invited interested parties to consider generally whether any special measures should be adopted in the AIS base station rules to prevent a significant adverse impact on small entities. Parties providing such comments were asked to address the extent to which they believe small entities may seek to become AIS base station licensees.

38. Finally, the Commission requested comment in the *FNPRM* on the Commission's proposal to incorporate by reference IEC 62287–1 as the standard for certifying Class B AIS devices under Part 80 of the Commission's rules. The Commission stated that incorporating by reference the international standard for Class B AIS devices would reduce costs to manufacturers by eliminating the possible need to design devices to two potentially conflicting standards, and would reduce costs to users of the devices both from a pass-through of manufacturers' cost savings and by eliminating the possible need to fit their vessels with more than one Class B AIS device if they travel outside U.S. territorial waters, i.e., removing the need to carry one Class B AIS device to function within U.S. territorial waters, and another Class B AIS device to function in international waters or other nations' territorial waters. The Commission noted, in addition, that Class B AIS devices are intended generally for use on vessels that are not required by law to carry AIS devices. Since carriage of Class B AIS devices is voluntary, the establishment of standards for certifying such devices should not impose a new compliance burden on vessel operators. However, to the extent that any commenters believed that the establishment of equipment certification standards for Class B AIS devices might impose a significant new compliance burden on any small entities, the Commission invited those commenters to suggest alternative or complementary approaches that might reduce or eliminate that burden, including, but not limited to, the establishment of less rigorous standards, or the provision of exemptions or grandfathering protection for small entities.

39. Although the Commission received no comments specifically addressed to the IRFA for the *FNPRM,* it has considered all comments to the *FNPRM* addressing the impact of any proposed change on small entities and all suggestions for alternative measures that would have a less significant impact on small entities. For reasons discussed below, the Commission has concluded that the rule changes adopted in the *Second Report and Order* will not impose undue compliance burdens on small entities.

40. In order to avoid the disruption of VPC station operations in inland VPCSAs that might otherwise stem from the designation of Channel 87B for exclusive AIS use in the inland VPCSAs, the Commission has provided the licensees of those stations with both a significant transitional period to adjust to the loss of Channel 87B, as well as a replacement channel. Specifically, the Commission has provided that site-based licensees operating on Channel 87B in inland areas may continue to use that channel for fifteen years after the effective date of these rule changes, and that geographic licensees operating on Channel 87B in inland VPCSAs may continue to operate on the channel for a period of two years following the effective date of these rule amendments. In addition, in each inland VPCSA, the Commission is making a duplex channel pair, either Channel 84 or Channel 85, depending on the inland VPCSA, available for VPC use by the geographic licensee as a replacement for Channel 87B. Channel 84/85 will be made available immediately upon the effective date of these rule amendments; thus, licensees will be able to operate on either Channel 84/85 or Channel 87B for a significant period of time, allowing migration of existing users of Channel 87B to alternative spectrum without disruption of existing operations on Channel 87B. In addition, the only commenter opposing the designation of Channel 87B for AIS use in inland VPCSAs has indicated that the redesignation of Channel 84/85 for VPC use could suffice to compensate licensees for the loss of use of Channel 87B.

41. The Commission has determined not to adopt rules for the certification of AIS base station equipment, or for the licensing and operation of AIS base stations, because AIS base stations perform critical maritime safety and homeland security functions, and should therefore be controlled only by Federal entities. Accordingly, there is no present need to further consider how such rules might affect small entities.

42. In addition, the Commission continues to find, for the reasons stated in the IRFA accompanying the *FNPRM,* that adopting rules for the certification of Class B AIS devices based on the international standard, IEC 62287–1, will benefit the manufacturers of such devices, including small entities, because manufacturers would have to manufacture Class B AIS devices in accordance with that standard in any event to serve vessels traveling outside U.S. territorial waters. Adoption of a different standard incompatible with IEC 62287–1 would increase costs of manufacturing Class B AIS equipment by requiring that such equipment conform to both standards. Those costs would be passed on to consumers, and it is even possible that establishment of

a U.S.-specific standard for Class B AIS devices would compel vessel owners and operators, including recreational boaters, to purchase and install two separate Class B AIS devices. Adoption of a different standard would also delay domestic deployment of Class B AIS equipment because no such accepted alternative standard currently exists. Finally, the Commission has noted that the manufacturers addressing this issue all support the incorporation by reference of IEC 62287–1.

43. Finally, the Commission has also determined in the *Second Report and Order* to impose additional requirements pertaining to the labeling, sale, installation and operation of Class B AIS equipment. Specifically, the Commission has adopted rules that: (a) Prohibit any person from entering an incorrect MMSI or other static data in a Class B AIS device; (b) require that sellers and professional installers of Class B AIS devices, not the end users, enter the static data; and (c) require affixation on a Class B AIS device of a conspicuous label explaining how to enter and confirm static data, and warning that it is a violation of the Commission's rules to input an MMSI that has not been properly assigned to the end user, or to otherwise enter any improper or inaccurate static data, and to provide this same information in the user's manual. These provisions do not impose a significant compliance burden on manufacturers, vendors or users of Class B AIS equipment. In any event, the Commission does not see any alternative that would permit differential application of these requirements on small entities without undermining the purpose of these requirements, to promote homeland security and maritime safety by ensuring that Class B AIS devices transmit accurate static data.

F. Report to Congress

44. The Commission will send a copy of this *Second Report and Order* in WT Docket No. 04–344, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 2

Communications equipment.

47 CFR Part 80

Incorporation by reference, Communications equipment, Marine safety, Radio, Vessels.

47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 80 and 90 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, footnote US399, is revised to read as follows:

§ 2.106 Table of Frequency Allocations.

UNITED STATES (US) NOTES

* * * * *

US399 The frequency bands 161.9625–161.9875 MHz (AIS 1 with its center frequency at 161.975 MHz) and 162.0125–162.0375 MHz (AIS 2 with its center frequency at 162.025 MHz) are allocated to the maritime mobile service on a primary basis for Federal Government and non-Federal Government use, and shall be used exclusively for Automatic Identification Systems (AIS). However, in VHF Public Coast Service Areas (VPCSAs) 1–9, site-based stations licensed prior to November 13, 2006, may continue to operate on a co-primary basis in the frequency band 161.9625–161.9875 MHz until expiration of the license term for licenses in active status as of November 13, 2006. Also, in VPCSAs 10–42, site-based stations licensed in the frequency band 161.9625–161.9875 MHz prior to March 2, 2009 may remain authorized to operate on a co-primary basis in that frequency band until March 4, 2024, and geographical stations licensed in the frequency band 161.9625–161.9875 MHz prior to March 2, 2009 may continue to operate on a co-primary basis in that frequency band until March 2, 2011. *See* 47 CFR 80.371(c)(1)(ii) for the definitions of VPCSAs, and geographic license.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

■ 3. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 4. Amend part 80 by adding § 80.231 to read as follows:

§ 80.231 Technical Requirements for Class B Automatic Identification System (AIS) equipment.

(a) Class B Automatic Identification System (AIS) equipment must meet the technical requirements of the International Electro-technical Commission (IEC) 62287–1 International Standard, ''Maritime navigation and radio communication equipment and systems—Class B shipborne equipment of the Automatic Identification System—Part 1: Carrier—sense time division multiple access (CSTDMA) techniques,'' First Edition 2006–03. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center), call 1–888–225–5322 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* IEC publications can be purchased from the International Electro-technical Commission, 3 Rue de Varembe, CH–1211 Geneva 20, Switzerland, or from the American National Standards Institute (ANSI), 25 West 43rd Street, New York, NY 10036, telephone (212) 642–4900, *http://www.ansi.org.*

(b) In addition to the labels or other identifying information required under §§ 2.925 and 2.926 of this chapter, each Class B AIS device shall include a conspicuous label that includes: Instructions on how to accurately enter into the device and confirm static data pertaining to the vessel in which the device is or will be installed; and the following statement: ''WARNING: It is a violation of the rules of the Federal Communications Commission to input an MMSI that has not been properly assigned to the end user, or to otherwise input any inaccurate data in this device.'' Instructions on how to accurately enter and confirm static data in the device shall also be included in the user's manual for the device. The entry of static data into a Class B AIS device shall be performed by the vendor of the device or by an appropriately qualified person in the business of installing marine communications equipment on board vessels. In no event shall the entry of static data into a Class B AIS device be performed by the user of the device or the licensee of a ship station using the device. Knowingly programming a Class B AIS device with inaccurate static data, or causing a Class B AIS device to be programmed with inaccurate static data, is prohibited.

(c) Prior to submitting a certification application for a Class B AIS device, the following information must be submitted in duplicate to the Commandant (CG–521), U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001:

(1) The name of the manufacturer or grantee and the model number of the AIS device; and

(2) Copies of the test report and test data obtained from the test facility showing that the device complies with the environmental and operational requirements identified in IEC 62287–1.

(d) After reviewing the information described in paragraph (c) of this section, the U.S. Coast Guard will issue a letter stating whether the AIS device satisfies all of the requirements specified in IEC 62287–1.

(e) A certification application for an AIS device submitted to the Commission must contain a copy of the U.S. Coast Guard letter stating that the device satisfies all of the requirements specified in IEC 62287–1, a copy of the technical test data, and the instruction manual(s).

■ 5. Amend § 80.275 by revising the heading and paragraph (a) introductory text to read as follows:

§ 80.275 Technical Requirements for Class A Automatic Identification System (AIS) equipment.

(a) Prior to submitting a certification application for a Class A AIS device, the following information must be submitted in duplicate to the Commandant (G–PSE), U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001:

* * * * *

■ 6. Amend § 80.371 by removing the column titled ''Frequency pairs not available for assignment'' in the table in paragraph (c)(1)(ii), and revising paragraphs (c)(1)(i), (c)(1)(ii) introductory text, and (c)(3) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) *Working frequencies in the marine VHF 156–162 MHz band.* (1)(i) The frequency pairs listed in this paragraph are available for assignment to public coast stations for communications with ship stations and units on land.

WORKING CARRIER FREQUENCY PAIRS IN THE 156–162 MHZ BAND [1]

Channel designator	Carrier Frequency (MHz)	
	Ship transmit	Coast transmit
24	157.200	161.800
84	157.225	161.825
25 [5]	157.250	161.850
85 [2]	157.275	161.875
26	157.300	161.900
86	157.325	161.925
27	157.350	161.950
87 [3]	157.375	161.975
28	157.400	162.000
88 [4]	157.425	162.025

[1] For special assignment of frequencies in this band in certain areas of Washington State, the Great Lakes and the east coast of the United States pursuant to arrangements between the United States and Canada, see subpart B of this part.

[2] The frequency pair 157.275/161.875 MHz is available on a primary basis to ship and public coast stations. In Alaska it is also available on a secondary basis to private mobile repeater stations.

[3] The frequency 161.975 MHz is available only for Automatic Identification System communications. No license authorizing a site-based VHF Public Coast Station or a Private Land Mobile Radio Station to operate on the frequency 161.975 MHz will be renewed unless the license is or has been modified to remove frequency 161.975 MHz as an authorized frequency. Licenses authorizing geographic stations to operate on frequency 161.975 MHz will be modified on March 2, 2011 to replace the frequency with either frequency pair 157.225/161.825 MHz (VPCSAs 10–15, 23–30, 33–34, 36–39, and 41–42) or frequency pair 157.275/161.875 MHz (VPCSAs 16–22, 31–32, 35, and 40), unless an application to so modify the license is granted before that date.

[4] The frequency 162.025 MHz is available only for Automatic Identification System communications. One hundred twenty kilometers (75 miles) from the United States/Canada border, the frequency 157.425 MHz is available for intership and commercial communications. Outside the Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

[5] In VPCSAs 10–42, the working carrier frequency pair 157.250/161.850 MHz (Channel 25) is not available for assignment under part 80.

* * * * *

(ii) Service areas in the marine VHF 156–162 MHz band are VHF Public Coast Service Areas (VPCSAs). As listed in the table in this paragraph, VPCSAs are based on, and composed of one or more of, the U.S. Department of Commerce's 172 Economic Areas (EAs). *See* 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico as EA-like areas, and has assigned them EA numbers 173–176, respectively. Maps of the EAs and VPCSAs are available for public inspection and copying at the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, 1–888–225–5322. In addition to the EAs listed in the table in this paragraph, each VPCSA also includes the adjacent waters under the jurisdiction of the United States. In VPCSAs 10–42, the working carrier frequency pair 157.250 MHz/161.850 MHz (Channel 25) is not available for assignment under part 80.

(3) VPCSA licensees may not operate on Channel 228B (162.0125 MHz), which is available for use in the Coast Guard's Ports and Waterways Safety System (PAWSS). In addition, VPCSA licensees may not operate on Channel AIS 1 (161.975 MHz) or Channel AIS 2 (162.025 MHz), which are designated exclusively for Automatic Identification Systems (AIS), except to receive AIS communications to the same extent, and subject to the same limitations, as other shore stations participating in AIS. *See* note 3 to the table in paragraph (c)(1) of this section regarding use of Channel AIS 1 by VPCSA licensees in VPCSAs 10–42.

* * * * *

■ 7. Amend § 80.393 by adding an undesignated center heading ''AIS STATIONS'' immediately above § 80.393 and by revising the section to read as follows:

AIS Stations

§ 80.393 Frequencies for AIS stations.

Automatic Identification Systems (AIS) are a maritime broadcast service. The simplex channels at 161.975 MHz (AIS 1) and 162.025 MHz (AIS 2), each with a 25 kHz bandwidth, may be authorized only for AIS. In accordance with the Maritime Transportation Security Act, the United States Coast Guard regulates AIS carriage requirements for non-Federal Government ships. These requirements are codified at 33 CFR 164.46, 401.20.

■ 8. Amend § 80.1101 by adding paragraph (c)(12)(vi) to read as follows:

§ 80.1101 Performance standards.

* * * * *

(c) * * *

(12) * * *

(vi) With respect to Class B AIS devices only, IEC 62287–1 International Standard, ''Maritime navigation and radio communication equipment and systems—Class B shipborne equipment of the Automatic Identification System—part 1: Carrier—sense time division multiple access (CSTDMA) techniques,'' First Edition 2006–03 (incorporated by reference at § 80.231).

* * * * *

PART 90–PRIVATE LAND MOBILE RADIO SERVICES

The authority citation for part 90 continues to read as follows:

Authority: Secs. 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 9. Amend § 90.20 by removing paragraphs (g)(3) and (g)(4), redesignating paragraph (g)(5) as (g)(3), and revising paragraphs (g) introductory text, (g)(2) and redesignated paragraphs (g)(3)(i), (g)(3)(ii), (g)(3)(iii)(B), (g)(3)(iii)(D), and (g)(3)(vi) to read as follows:

§ 90.20 Public safety pool.

* * * * *

(g) Former public correspondence working channel in the maritime VHF (156–162 MHz) band allocated for public safety use in 33 inland Economic Areas.

* * * * *

(2) In VHF Public Coast Service Areas (VPCSAs) 10–42, the duplex channel pair 157.250 MHz/161.850 MHz (VHF Maritime Channel 25) is allocated for public safety use by entities eligible for licensing under paragraph (a) of this section, and is designated primarily for the purpose of interoperability communications. *See* 47 CFR 80.371(c)(1)(ii) for the definitions of VPCSAs.

(i) The channel pair 157.250 MHz/161.850 MHz was formerly allocated and assigned (under § 80.371(c) (1997) of this chapter) as a public correspondence working channel in the maritime VHF 156–162 MHz band, and was also shared (under former § 90.283 (1997) of this chapter) with private land mobile stations, including grandfathered public safety licensees. Thus, there are grandfathered licensees nationwide (maritime and private land mobile radio stations, including by rule waiver) operating on this channel both inside and outside of VPCSAs 10–42.

(ii) The channel pairs 157.225 MHz/161.825 MHz and 157.275 MHz/161.875 MHz were formerly allocated and assigned under this section as public safety interoperability channels but were reallocated for assignment as VHF public coast station channels under § 80.371(c) of this chapter. Public safety operations licensed on these channels as of March 2, 2009 or licensed pursuant to an application filed prior to September 19, 2008, may remain authorized to operate on the channels on a primary basis until March 4, 2024.

(3) * * *

(i) Provide evidence of frequency coordination in accordance with § 90.175. Public safety coordinators except the Special Emergency Coordinator are certified to coordinate applications for the channel pair 157.250 MHz/161.850 MHz (*i.e.* , letter symbol PX under paragraph (c)(2) of this section).

(ii) Station power, as measured at the output terminals of the transmitter, must not exceed 50 Watts for base stations and 20 Watts for mobile stations, except in accordance with the provisions of paragraph (g)(3)(vi) of this section. Antenna height (HAAT) must not exceed 122 meters (400 feet) for base stations and 4.5 meters (15 feet) for mobile stations, except in accordance with paragraph (g)(3)(vi) of this section. Antenna height (HAAT) must not exceed 122 meters (400 feet) for base stations and 4.5 meters (15 feet) for mobile stations, except in accordance with paragraph (g)(3)(vi) of this section. Such base and mobile channels shall not be operated on board aircraft in flight.

(iii) * * *

(B) Protect stations described in paragraph (g)(2)(i) of this section, by frequency coordination in accordance § 90.175 of this part.

* * * * *

(D) *Where the Public safety designated channel is not a Public safety designated channel in an adjacent VPCSA:* Applicants shall engineer base stations such that the maximum signal strength at the boundary of the adjacent VPCSA does not exceed 5dBμV/m.

* * * * *

(vi) Applicants seeking to be licensed for stations exceeding the power/antenna height limits of the table in paragraph (g)(3)(iv) of this section must request a waiver of that paragraph and must submit with their application an interference analysis, based upon an appropriate, generally-accepted terrain-based propagation model, that shows that co-channel protected entities, described in paragraph (g)(3)(iii) of this section, would receive the same or greater interference protection than the relevant criteria outlined in paragraph (g)(3)(iii) of this section.

* * * * *

[FR Doc. E9–1536 Filed 1–28–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 74, No. 18
Thursday, January 29, 2009

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[FWS–R7–SM–2009–0001; 70101–1261–0000L6]

RIN 1018–AW30

Subsistence Management Regulations for Public Lands in Alaska—2010–11 and 2011–12 Subsistence Taking of Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2010–11 and 2011–12 regulatory years. The Federal Subsistence Board completes the biennial process of revising subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle. When final, the resulting rulemaking will replace the existing subsistence wildlife taking regulations, which expire on June 30, 2010. This rule would also amend the customary and traditional use determinations of the Federal Subsistence Board and the general regulations on subsistence taking of fish and wildlife.

DATES: *Public meetings:* The Federal Subsistence Regional Advisory Councils will hold public meetings to receive comments and make proposals to change this proposed rule on several dates between February 10 and April 1, 2009, and then hold another round of public meetings to discuss and receive comments on the proposals, and make recommendations on the proposals to the Federal Subsistence Board, on several dates between August 25 and October 28, 2009. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, on January 12, 2010. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

Public Comments: Comments and proposals to change this proposed rule must be received or postmarked by April 30, 2009.

ADDRESSES: *Public Meetings:* The Federal Subsistence Board and the Regional Advisory Councils' public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

Public Comments: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery to:* USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503–6199.
- Hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries first published regulations to carry out this program in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations several times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Federal Subsistence Board

Consistent with subpart B of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board is made up of:

- Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- Alaska Regional Director, U.S. Fish and Wildlife Service;
- Alaska Regional Director, U.S. National Park Service;
- Alaska State Director, U.S. Bureau of Land Management;
- Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which set forth the basic program, and they continue to work together on regularly revising the subpart D regulations, which, among other things, set forth specific harvest seasons and limits.

Federal Subsistence Regional Advisory Councils

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

Public Review Process—Comments, Proposals, and Public Meetings

The Regional Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board (Board), through the Regional Councils, will hold meetings on this proposed rule at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council	Petersburg	February 24, 2009.
Region 2—Southcentral Regional Council	Anchorage	March 10, 2009.
Region 3—Kodiak/Aleutians Regional Council	Kodiak	March 31, 2009.
Region 4—Bristol Bay Regional Council	Naknek	March 24, 2009.
Region 5—Yukon-Kuskokwim Delta Regional Council	St. Marys	February 24, 2009.
Region 6—Western Interior Regional Council	Galena	February 18, 2009.
Region 7—Seward Peninsula Regional Council	Nome	February 10, 2009.
Region 8—Northwest Arctic Regional Council	Kotzebue	March 5, 2009.
Region 9—Eastern Interior Regional Council	Central	March 10, 2009.
Region 10—North Slope Regional Council	Barrow	February 17, 2009.

During May 2009, the written proposals to change subpart D hunting and trapping regulations and subpart C customary and traditional use determinations will be compiled and distributed for public review. During the 30-day public comment period, which is presently scheduled to end on June 18, 2009, written public comments will be accepted on the distributed proposals.

The Board, through the Regional Councils, will hold a second series of meetings in August through October 2009, to receive comments on specific proposals and to develop recommendations to the Board at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council	Yakutat	October 6, 2009.
Region 2—Southcentral Regional Council	Cooper Landing	October 13, 2009.
Region 3—Kodiak/Aleutians Regional Council	Kodiak	September 10, 2009.
Region 4—Bristol Bay Regional Council	Dillingham	October 27, 2009.
Region 5—Yukon-Kuskokwim Delta Regional Council	Bethel	October 1, 2009.
Region 6—Western Interior Regional Council	Aniak	October 6, 2009.
Region 7—Seward Peninsula Regional Council	Nome	October 1, 2009.
Region 8—Northwest Arctic Regional Council	Kotzebue	October 27, 2009.
Region 9—Eastern Interior Regional Council	TBA	October 13, 2009.
Region 10—North Slope Regional Council	Barrow	August 25, 2009.

A notice will be published of specific dates, times, and meeting locations in local and statewide newspapers prior to both series of meetings. Locations and dates may change based on weather or local circumstances. The amount of work on each Regional Council's agenda determines the length of each Regional Council meeting.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, AK, on January 12, 2010. The Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional oral testimony may be provided on specific proposals before the Board at that time. At that public meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify wildlife harvest regulations and customary and traditional use determinations must include the following information:

(a) Name, address, and telephone number of the requestor;

(b) Each section and/or paragraph designation in this proposed rule for which changes are suggested;

(c) A statement explaining why each change is necessary;

(d) Proposed wording changes; and

(e) Any additional information that you believe will help the Board in evaluating the proposed change.

The Board rejects proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § __.24, subpart C (the regulations governing customary and traditional use determinations), and §§ __.25, and__.26, subpart D (the general and specific regulations governing the subsistence take of wildlife). During the January 12, 2010, meeting, the Board may defer review and action on some proposals to allow time for local cooperative planning efforts, or to acquire additional needed information. The Board may elect to defer taking action on any given proposal if the workload of staff, Regional Councils, or the Board becomes excessive. These deferrals may be based on recommendations by the affected Regional Council(s) or staff members, or on the basis of the Board's intention to do least harm to the subsistence user and the resource involved. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

Proposed Changes From the 2008–10 Wildlife Seasons and Harvest Limit Regulations

Subpart D regulations are subject to periodic review and revision. The Federal Subsistence Board completes the biennial process of revising subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle.

The text of the 2008–10 subparts C and D final rule published June 24, 2008

(73 FR 35726), serves as the foundation for this 2010–12 subparts C and D proposed rule. The regulations relating to wildlife contained in this proposed rule will take effect on July 1, 2010, unless elements are changed by subsequent Board action following the public review process outlined above in this document.

Compliance With Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0075, which expires October 31, 2009. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no substantial direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part 242 and 50 CFR part 100 for the 2010–11 and 2011–12 regulatory years. The text of the proposed rule is the same as the final rule for the 2008–09 and 2009–10 wildlife regulatory years published in the **Federal Register** June 24, 2008 (73 FR 35726).

Dated: January 6, 2009.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: January 6, 2009.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. E9–1593 Filed 1–28–09; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

POSTAL SERVICE

39 CFR Part 111

New Standards for Domestic Mailing Services

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: In February 2009, the Postal Service will file a notice of mailing services price adjustments with the Postal Regulatory Commission, effective in May 2009. This proposed rule provides the mailing standards that would accompany new prices in 2009 and 2010.

DATES: We must receive your comments on or before March 2, 2009.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov*, with a subject line of ''Price-related Proposal Comments.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, 202–268–7278.

SUPPLEMENTARY INFORMATION: The Postal Service's proposed rule includes: Several mail classification changes, modifications to mailpiece characteristics, and changes in classification terminology. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) that we would adopt to implement the new prices. Additional changes will be included in a separate final rule to support prices established by the Governors.

We think it is vital to share proposed modifications to mailing standards as far in advance as possible; therefore, included are additional proposed revisions scheduled for implementation in May 2010. We summarize the revisions by shape for 2009 and 2010, and provide proposed changes to the mailing standards in the DMM. We invite your comments on the proposed standards.

Proposed Changes for Letters and Flats for May 2009

Letters

In May 2009, we propose alignment of standards for commercial machinable and automation letters so all machinable letters have the physical characteristics required of automation letters, with the exception of a qualifying barcode. Commercial letters that are not machinable are mailed as nonmachinable letters.

We propose a new minimum 0.009-inch thickness standard for automation and machinable letters.

We propose new static charge and the coefficient of friction standards for automation and machinable letters to ensure they do not produce excessive static charge and can be handled efficiently when inducted and removed from processing equipment.

Our proposal revises the list of nonmachinable characteristics. We clarify that letters with nonpaper surfaces, and letters with keys, coins or similar objects that are either loose or thick enough to make a letter nonuniform in thickness, render letters nonmachinable. Letters that do not meet the ''automation-compatible'' physical standards in DMM 201.3.0 would be considered nonmachinable letters.

We propose to allow optional sortation of First-Class Mail and Standard Mail automation letters and Standard Mail machinable letters to all applicable sort levels, with prices matching the level of sortation chosen.

We propose to revise standards for window envelopes on letter-size mailpieces, restricting the size of an address block window to extend no closer to the bottom edge than ¾ inch when the window is within 4¾ inches of the envelope's leading edge and no closer than 1 inch to any other edge. For best compatibility with processing, we recommend a window size no greater than 2 inches by 4½ inches.

Flats

Effective in May 2009, we plan to extend the eligibility for automation prices to certain flat-size mailpieces that are not able to meet the flexibility standards in DMM 301.1.3, but that are able to demonstrate flats machine compatibility through a Pricing and Classification Service Center (PCSC)-administered testing process. Some flat-size mailpieces containing rigid items process adequately on USPS® flats-sorting equipment when the surface of the mailpiece does not fit too tightly around the contents. Once inducted, those pieces with rigid contents, but with a surface that can be grasped at induction, may be processed efficiently. Because machine compatibility for these mailpieces may be defined by a number of characteristics, each type of mailpiece must be individually analyzed to ensure that it will process efficiently. We propose to allow mailers of flat-size pieces containing rigid items to mail at automation flats prices after they obtain PCSC approval. Those pieces that do not meet the published flexibility standards for flats, but were authorized to mail at flats prices by PCSC approval, would be required to be marked ''Automation Flat.''

We propose that the polywrap standards in DMM 301.3.3, currently applicable only to automation flats, be extended to all flat-size mailpieces using polywrap including saturation carrier route flats. The use of automation-compatible polywrap on all flat-size mailpieces improves mail processing efficiency and applies standardization and consistency for mailers of polywrapped flats. We also propose to redefine measurement of height and length dimensions by including polywrap selvage when measuring for maximum dimensions because selvage that extends beyond the maximum height or length may interfere with efficient processing. We would not include selvage when measuring for minimum dimensions, however, because the selvage is not substantial enough for it to be considered part of a uniformly thick flat. Polywrap products approved for flats are available from a number of independent vendors and the approval process for these products is described in DMM 301 and on the USPS *Rapid Information Bulletin Board* (RIBBS™) Web site at *http://ribbs.usps.gov.*

Effective in May 2009, we propose to extend the deflection standards, currently applicable to automation flats, to all flat-size mailpieces, except those mailed at saturation carrier route prices. The deflection standards change to allow one inch less of vertical deflection (droop) than is currently allowed. We propose to eliminate the current exception for oblong flats (those with a bound edge on the shorter side) so all flats would be tested with the length placed perpendicular to the edge of a flat surface. The broader application and revision of deflection standards will improve processing efficiencies within USPS systems, assuring better machinability of flat-size mailpieces.

We propose to simplify mail preparation by eliminating the bundling requirements for First-Class Mail commercial flats. The new tray-based standards streamline mail preparation and processing and improve efficiency for this type of mail. Similar to the current tray-based preparation option for First-Class Mail flats, prices will be based on the sort level of the tray. Mailers may improve efficiency by eliminating bundling, and the minimum number of pieces per tray will be changed to 50 pieces within a tray, rather than the 90 pieces required today.

Parcels

We remove definitions of irregular parcels from the mail preparation standards in DMM 465, 475, and 485, and provide references to the current definition of irregular parcels in DMM 401.

Overview of Proposed Changes for 2010

These initial changes proposed for May 2010 include modifications that enhance processing and delivery efficiency while continuing to offer mailers choices.

Flats

We propose to merge standards for nonautomation and automation flats in May 2010; requiring all machinable flats, whether or not they are barcoded, to have the same physical characteristics. The terminology would likely change to machinable, barcoded machinable, and irregular flats.

We propose new flexibility standards for May 2010. Current standards in DMM 301.1.3 describe minimum flexibility as demonstrated by ''tabletop'' flexibility tests. Effective May 2009, we are proposing to extend automation prices to certain flat-size mailpieces not able to meet the flexibility standards in 301.1.3, but able to demonstrate flat machine compatibility through a PCSC-administered testing process. Delivery of rigid pieces is often more costly than delivery of foldable flats. For May 2010, we propose the flexibility standards noted above, be replaced with a single flexibility standard requiring all machinable flat-size mailpieces to be foldable, parallel to the length, to a height no greater than 5 inches. Flat-size pieces failing to meet this level of flexibility may be categorized as irregular flats.

We propose to modify standards in May 2010 for all flats, except those mailed as saturation carrier route, to prevent inserts from falling out of the host flat-size mailpiece during normal sortation and delivery. We propose that loose inserts less than 75% of the size of a host mailpiece be limited to single-ply unfolded cards, when the mailpiece is not enclosed in polywrap, an envelope, or other wrapper. Allowable loose inserts should be injected well into the body of the mailpiece.

Irregular Flats

For May 2010, we propose a new ''irregular flats'' category. This category encompasses two types of flat-size mailpieces. One example is a flat-size piece that is machinable, but with parcel-like characteristics that affect deliverability, such as pieces with rigid contents because the pieces cannot be folded. Another type of irregular flat would be one that is foldable with favorable delivery characteristics, but is not machinable, such as flimsy pieces that are difficult to process on automation equipment.

Not Flat-Machinable (NFMs)

In 2007, we created a NFM category for Standard Mail items that could not meet revised automation flats standards. In May 2010, we propose to discontinue or redefine the NFM category. Pieces that would have been mailed as NFMs can likely qualify as Standard Mail parcels. Some NFMs, with modifications, might be mailable as machinable or irregular flats in 2010.

General

We encourage customers to comment on the May 2010 proposed changes and hope that this notice provides the opportunity to for mailers prepare for possible operation changes ahead of the proposed May 2010 effective date.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

100 Retail Mail Letters, Cards, Flats, and Parcels

101 Physical Standards

101.1 Physical Standards for Letters

* * * * *

1.2 Nonmachinable Criteria

A letter-size piece is nonmachinable (see 6.4) if it has one or more of the following characteristics (see 601.1.4 to determine the length, height, top, and bottom of a mailpiece):

* * * * *

[Revise item b to add that any nonpaper exterior surface is nonmachinable as follows:]

b. Is polybagged, polywrapped, enclosed in any plastic material, or has an exterior surface made of a material that is not paper. Paper envelopes with windows prepared under 202.5.8 and 601.6.3 do not make mailpieces nonmachinable.

* * * * *

[Revise item d to clarify that letters are nonmachinable when certain items are loose or when they cause the thickness to be uneven, as follows:]

d. Contains items such as pens, pencils, keys, or coins that cause the thickness of the mailpiece to be uneven; or loose keys or coins or similar objects not affixed to the contents within the mailpiece. Loose items may cause a letter to be nonmailable when mailed in paper envelopes; see 601.2.3, *Odd-Shaped Items in Paper Envelopes.*

* * * * *

[Revise item h by referring to sealing standards in 201.3.14.1 for all self-mailers as follows:]

h. Is a self-mailer that is not prepared according to 201.3.14.1.

[Revise item i by referring to sealing standards in 201.3.14.2 for all booklets as follows:]

i. Is a booklet that is not prepared according to 201.3.14.2.

* * * * *

200 Commercial Mail Letters and Cards

201 Physical Standards

1.0 Physical Standards for Machinable Letters and Cards

1.1 Physical Standards for Machinable Letters

1.1.1 Dimensional Standards for Letters

Letter-size mail is:

[Revise item a to increase minimum thickness to 0.009 inch as follows:]

a. Not less than 5 inches long, 3½ inches high, and 0.009-inch thick.

* * * * *

1.1.3 All Machinable Letters

[Revise the first sentence of 1.1.3 as follows:]

All pieces of First-Class Mail and Standard Mail machinable letters must meet the standards for automation-compatible letters in 201.3.0. * * *

* * * * *

2.0 Physical Standards for Nonmachinable Letters

2.1 Criteria for Nonmachinable Letters

[Revise 2.1 by noting that letters not made of paper or that do not meet automation-compatibility standards are nonmachinable; that all letters over 3.3 ounces must have a barcode and claim an automation letter price to avoid a surcharge; and by removing the individual listed items as follows:]

A letter-size piece is nonmachinable if it has an exterior surface that is not made of paper or if it does not meet the standards in 201.3.0. In addition, a letter-size piece is nonmachinable if it weighs more than 3.3 ounces (up to 3.5 ounces) unless it has a barcode and is eligible for and claims automation letter prices or Standard Mail Enhanced Carrier Route letter prices.

* * * * *

3.0 Physical Standards for Automation Letters and Cards

* * * * *

3.2 Dimensions and Shape Standards for Automation Letters

Each letter-size piece must be rectangular (see 1.1.1) and:

* * * * *

[Revise item c to increase minimum thickness to 0.009 inch as follows:]

c. For thickness, no more than 0.25 inch, or less than 0.009-inch thick, except for cards mailed at First-Class Mail postcard prices. Cards eligible for and mailed at postcard prices may be no more than 0.016-inch thick or less than 0.007-inch thick.

[Renumber current 3.3 through 3.15 as new 3.4 through 3.16.]

[Add new 3.3 as follows:]

3.3 Static and Coefficient of Friction

Letter-sized machinable and automation mailpieces must be made of paper material with the following characteristics:

a. Static charge of less than 2 KV when tested using test method ASTM D4470.

b. Kinetic coefficient of friction between 0.26 and 0.34 when tested as paper to same paper using test method ASTM D4917.

* * * * *

202 Elements on the Face of a Mailpiece

* * * * *

5.0 Barcode Placement

* * * * *

5.7 Barcode in Address Block

When the barcode is included as part of the address block:

* * * * *

[Delete item d and relocate text to new 5.8.]

[Redesignate current items e and f as new items d and e.]

* * * * *

[Renumber current 5.8 through 5.11 as new 5.9 through 5.12.]

[Add new 5.8 with revised text from former 5.7d to read as follows:]

5.8 Address Block Barcodes on Inserts in Window Envelopes

If a window envelope is used to display the address and a barcode in the address block, the clearance between the leftmost and rightmost bars and any printing or window edge must be at least 0.125 (1/8) inch. The clearance between the barcode and the top and bottom window edges must be at least 0.040 (1/25) inch for POSTNET barcodes or 0.028 inch for Intelligent Mail barcodes. These clearances must be maintained during the insert's range of movement in the envelope. Address block windows also must meet the standards in 5.12 and 601.6.3.

* * * * *

[Revise heading and text of renumbered 5.11 as follows:]

5.11 Barcode Window Construction

When the barcode is printed in the lower right corner on an insert, a barcode window may be used to allow only the barcode to be read through the window. The barcode window must not extend any further than necessary to accommodate the barcode and required tolerances and must not touch any window used to display the address block. The barcode window must meet these criteria:

a. *Left:* At least 4¾ inches from the right edge of the envelope.

b. *Right:* At least ¼ inch from the right edge of the envelope.

c. *Top:* At least ⅝ inch from the bottom of the envelope.

d. *Bottom:* Form part of the bottom edge of the envelope.

[Revise heading and text of renumbered 5.12 as follows:]

5.12 Window Covers

The following standards apply to window covers for address block windows as well as barcode windows:

a. The window cover must be made of a nontinted clear or transparent material (*e.g.*, cellophane or polystyrene) that permits the address, the barcode and its background, as viewed through the window material, to meet the reflectance standards in 708.4.4.

b. The edges of the window cover must be securely glued to the envelope and must not extend closer than ¾ inch from the bottom mailpiece edge and not closer than 1 inch from any other mailpiece edge.

c. Covered windows may extend to no more than ½ inch from the bottom mailpiece edge when the window is at least 4¾ inches from the leading edge of the mailpiece.

* * * * *

230 First-Class Mail

* * * * *

235 Mail Preparation

* * * * *

[Revise heading of 6.0 as follows:]

6.0 Preparing Automation Letters

* * * * *

6.6 Tray Preparation

* * * Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[Revise items b through d to allow optional preparation and modify grouping requirement as follows:]

b. *3-digit/scheme:* Optional, but required for 3-digit price (150-piece minimum except no minimum for origin or entry 3-digit/scheme); overflow allowed; for Line 1, use L002, Column B.

c. *AADC:* Optional, but required for AADC price (150-piece minimum); overflow allowed; group pieces by 3-digit (or 3-digit scheme) ZIP Code when overflow pieces from 3-digit trays are placed in AADC trays. For Line 1, use L801, Column B.

d. *Mixed AADC:* Required (no minimum); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays. For Line 1 use L201; for mail originating in ZIP Code areas in Column A, use ''MXD'' followed by city, state, and 3-digit ZIP Code prefix in Column C (use ''MXD'' instead of ''OMX'' in the destination line and ignore Column B).

* * * * *

240 Standard Mail

* * * * *

245 Mail Preparation

* * * * *

5.0 Preparing Nonautomation Letters

* * * * *

5.3 Machinable Preparation

* * * * *

5.3.2 Traying and Labeling

* * * Preparation sequence, tray size, and labeling:

* * * * *

[Revise first sentence of 5.3.2 b to allow optional preparation as follows:]

b. AADC (optional, but required for AADC price); 150-piece minimum (overflow allowed); labeling: * * *

* * * * *

[Revise heading of 7.0 as follows:]

7.0 Preparing Automation Letters

* * * * *

7.5 Tray Preparation

* * * Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[Revise items b through d to allow optional preparation and modify grouping requirement as follows:]

b. 3-digit/scheme; optional, but required for 3-digit price (150-piece minimum, except no minimum for optional origin/entry 3-digit/scheme(s)); overflow allowed; for Line 1, use L002, Column B.

c. *AADC:* Optional, but required for AADC price (150-piece minimum); overflow allowed; group pieces by 3-digit (or 3-digit scheme) ZIP Code prefix when overflow pieces from 3-digit/scheme trays are placed in AADC trays. For Line 1, use L801, Column B.

d. *Mixed AADC:* Required (no minimum); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays. For Line 1 labeling: Use L011, Column B. Use L010, Column B if entered at an ASF or BMC or for mail placed on an ASF, BMC, or SCF pallet under the option in 705.8.10.3.

* * * * *

300 Commercial Mail Flats

301 Physical Standards

1.0 Physical Standards for Flats

* * * * *

1.2 Length and Height of Flats

[Revise the text of 1.2 by adding new third and fourth sentences about selvage as follows:]

The length of a flat-size mailpiece is the longest dimension. The height is the dimension perpendicular to the length. When determining the maximum height or length of a flat, include any selvage of polywrap material that may enclose the piece. When determining the minimum height or length of a flat, do not include the selvage of any polywrap material that may enclose the piece.

* * * * *

[Renumber current 1.5 as new 1.7.]

[Move 301.3.2.3 in its entirety, renumber as 1.5, revise heading and text to extend maximum deflection standards to all flat-size mailpieces, and delete item c as follows:]

1.5 Maximum Deflection for Flat-Size Mailpieces

Flat-size mailpieces must be flexible (see 1.3) and must meet maximum deflection standards. Flat-size pieces mailed at saturation carrier route prices are not required to meet these deflection standards. Test deflection as follows:

a. For pieces 10 inches or longer (see Exhibit 1.5a):

1. Place the piece on a flat surface with the length perpendicular to the edge of the surface and extend the piece 5 inches off the edge of the surface. Test square-shaped bound flats by placing the bound edge parallel to the edge. Turn the piece around and repeat the process.

2. The piece is mailable at flat prices if it does not droop more than 3 inches vertically at either end.

Exhibit 1.5a Deflection Test-Pieces 10 Inches or Longer

[Placeholder for new exhibit reflecting new standards.]

b. For pieces less than 10 inches long (see Exhibit 1.5b):

1. Place the piece on a flat surface with the length perpendicular to the edge of the surface and extend the piece one-half of its length off the edge of the surface. Test square-shaped bound flats by placing the bound edge parallel to the edge. Turn the piece around and repeat the process.

2. The piece is mailable at flat prices if it does not droop more than 2 inches less than the extended length. For example, a piece 8 inches long would extend 4 inches off a flat surface. It must not droop more than 2 inches vertically at either end.

* * * * *

[Renumber 301.3.3 in its entirety as new 1.6 and revise text to extend polywrap standards to all flats as follows:]

1.6 Polywrap Coverings

1.6.1 Polywrap Films and Similar Coverings

[Revise renumbered 1.6.1 as follows:]

Mailers using polywrap film or similar material to enclose or cover flat-size mailpieces must use a product meeting the standards in 1.6. Film approved for use under 1.6.5 must meet the specifications in Exhibit 1.6.1 as follows:

a. Films or similar coverings must meet all six properties in Exhibit 1.6.1.

b. If the address label is affixed to the outside of the polywrap, the haze property (property 2) does not apply.

c. Only products listed as approved on the USPS RIBBS Web site (*http://ribbs.usps.gov*) may be used on flat-size mailpieces.

Exhibit 1.6.1 Polywrap Specifications

[Revise the introductory sentence of renumbered exhibit 1.6.1 as follows:]

Mailers who polywrap flats must use polywrap that meets all of the properties in this exhibit.

* * * * *

[Delete renumbered 1.6.4, Polywrap on Mailpieces, in its entirety and redesignate renumbered 1.6.5 to new 1.6.4.]

1.6.4 Polywrap Certification Process for Manufacturers

[Revise the first sentence of the introductory paragraph in 1.6.4 as follows:]

To ensure that all polywrap manufacturers use the same criteria, the Postal Service developed specification USPS–T–3204, *Test Procedures for Polywrap Films.* * * * Manufacturers should follow this procedure before submitting the letter certifying compliance with the specifications:

[Revise item a as follows:]

a. Test each film according to procedures listed in USPS–T–3204, *Test Procedures for Polywrap Films.*

* * * * *

1.7 Flat-Size Pieces Not Eligible for Flat-Size Prices

[Revise text of renumbered 1.7 as follows:]

Mailpieces that do not meet the standards in 1.1 through 1.6 are not eligible for flat-size prices and must pay applicable prices as follows:

a. First-Class Mail—Parcel prices.

b. Standard Mail—Not Flat-Machinable or parcel prices.

c. Bound Printed Matter—Parcel prices.

* * * * *

3.0 Physical Standards for Automation Flats

* * * * *

[Further renumber 3.3 through 3.7 as the new 3.5 through 3.9, and add new 3.3 and 3.4 as follows:]

3.3 Flats-Machine Compatibility

Flat-size mailpieces meeting the standards in 1.0 and 3.0, but unable to meet the minimum flexibility standards described in 1.3, are not eligible for automation prices unless the mailpieces demonstrate flats-machine compatibility. Until May 2010, rigid flat-size mailpieces in paper, polywrap or similar packaging that allows for the pieces to be grasped and inducted into USPS flat-sorting equipment may qualify for automation prices when meeting the following standards:

a. Mailpieces must be enclosed in envelopes or similar packaging capable of withstanding normal processing on USPS flat-sorting equipment.

b. Mailpieces must be approved for automation flats prices by the USPS. Mailers seeking approval for mailpieces under this standard must contact the Pricing and Classification Service Center (PCSC) for instructions on submitting sample mailpieces for testing (see 608.8.0 for address). Mailpieces having a previous approval from the PCSC for automation flats prices, granted after May 2007, are not required to be resubmitted for a new approval. These and all other approvals granted under 3.3 expire in May 2010.

c. Mailpieces approved for automation flats pricing under this standard must print the endorsement ''Automation Flat'' directly under the postage imprint.

3.4 Additional Flexibility Standards for Automation Flats

It is recommended that all automation flats be foldable to a height no greater than 5 inches. Effective May 2010, flat-size automation mailpieces must be foldable, parallel to the length, to a height no greater than 5 inches (in addition to meeting the flexibility standards in 1.3). With a postal employee observing, customers may demonstrate the flexibility, according to these standards, of their own mailpieces. The employee does not then need to perform the test.

* * * * *

302 Elements on the Face of a Mailpiece

* * * * *

4.0 Barcode Placement

* * * * *

4.6 Barcode in Address Block

When the barcode is included as part of the address block:

* * * * *

[Revise 4.6d by adding a new last sentence as follows:]

d. * * * Window envelopes also must meet the specifications in 601.6.3.

* * * * *

330 First-Class Mail Flats

333 Prices and Eligibility

* * * * *

[Revise the heading of 5.0 as follows:]

5.0 Additional Eligibility Standards for Automation First-Class Mail Flats

5.1 Basic Standards for Automation First-Class Mail

All pieces in a First-Class Mail automation price mailing must:

* * * * *

[Revise item e to require an 11-digit barcode as follows:]

e. Bear an accurate barcode meeting the standards in 708.4.0, a delivery point barcode (DPBC), or an Intelligent Mail barcode with a delivery point routing code, either on the piece or on an insert showing through a barcode window.

* * * * *

[Delete 5.2 and renumber current 5.3 through 5.5 as new 5.2 through 5.4.]

[Revise the heading and text of renumbered 5.2 as follows:]

5.2 Price Application

Automation prices apply to each piece that is sorted under 335.6.5, *First-Class Mail Tray-Based Preparation,* into the corresponding qualifying groups:

[Revise items a through c to change eligibility from 90 pieces or more to 50 pieces or more as follows:]

a. Groups of 50 or more pieces in 5-digit trays qualify for the 5-digit price. Preparation to qualify for the 5-digit price is optional and need not be done for all 5-digit destinations.

b. Groups of 50 or more pieces in 3-digit trays qualify for the 3-digit price.

c. Pieces in origin 3-digit trays and groups of 50 or more pieces in ADC trays qualify for the ADC price.

* * * * *

335 Mail Preparation

1.0 General Definition of Terms

* * * * *

1.2 Definition of Mailings

Mailings are defined as:

* * * * *

[Revise item b as follows:]

b. The types of First-Class Mail listed below must not be part of the same mailing despite being in the same processing category (see 705.9.0, *Combining Automation and Nonautomation Flats in Trays and Sacks* for a preparation option for flat-size mail):

1. Automation price and any other type of mail, except under 705.9.0.

2. Presorted price and any other type of mail, except under 705.9.0.

3. Single-piece price and any other type of mail.

4. Machinable and nonmachinable pieces.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item b to change the definition of an automation flats full tray as follows:]

b. For purposes of preparing automation flats, a full flat tray is one that contains at least 50 pieces of automation flats or one that is physically full. For nonautomation flats, a full flat tray is one that is physically full. A physically full tray contains at least a single stack of mail lying flat on the bottom of the tray and filling the tray to the bottom of the handholds. Before additional trays for the same destination are prepared, trays must be filled with additional available pieces (up to the reasonable capacity of the tray).

* * * * *

[Delete current items e through g and redesignate current items h through j as new e through g.]

[Revise redesignated item g as follows:]

g. An instruction to group pieces means the pieces are to be sorted as a unit (as if bundled) but not actually secured into a bundle.

[Delete current item k in its entirety.]

[Redesignate current item l as new item h and revise as follows:]

h. A *''logical'' presort destination* represents the total number of pieces that are eligible for a specific presort level based on the required sortation, but which might not be contained in a single container due to applicable preparation requirements or the size of the individual pieces.

[Delete current item m.]

* * * * *

[Delete 2.0 in its entirety.]

[Renumber current 3.0 through 6.0 as new 2.0 through 5.0.]

* * * * *

2.0 Flat Trays

* * * * *

2.4 Preparation for Flats in Flat Trays

All flat tray preparation is subject to these standards:

* * * * *

[Revise items f through h, to delete the ''optional'' phrasing, as follows:]

f. For automation mailings, one less-than-full overflow tray may be prepared for a presort destination when the total number of pieces for that destination meets the minimum for preparation of the tray level, and when one or more full trays for that destination are also prepared.

g. For automation mailings, if the total number of pieces for a presort destination meets or exceeds the minimum number of pieces required to prepare a tray for that destination, but the total volume does not physically fill a single tray, then the mail for that presort destination may be prepared in a less-than-full tray.

h. Pieces prepared as automation flats do not have to be grouped by 3-digit ZIP Code prefix in ADC trays or by ADC in mixed ADC trays if the mailing is prepared using an MLOCR/barcode sorter and standardized documentation is submitted.

* * * * *

2.5 Preparation for Flats in EMM Letter Trays

Mailers may prepare First-Class Mail flat-size pieces in EMM letter trays instead of flat trays if the following standards are met:

* * * * *

[Revise item c as follows:]

c. All mail must be prepared under 6.6, and must not be prepared in bundles.

* * * * *

4.0 Preparation of Nonautomation Flats

4.1 Basic Standards

[Revise 4.1 to specifically prohibit bundling as follows:]

Each mailing of Presorted First-Class Mail must be prepared under 4.0 and 333.3.0, *Eligibility Standards for First-Class Mail Flats*. All pieces must be in the flat-size processing category. Flat-size pieces must be prepared loose (unbundled) in flat trays under 2.4 and 4.0. All pieces must be marked ''Presorted'' and ''First-Class Mail.''

* * * * *

[Delete 4.4 and renumber 4.5 and 4.6 as new 4.4 and 4.5.]

[Revise the heading and text of renumbered 4.5 as follows:]

4.5 Cotraying With Automation Flats

If a single mailing job contains an automation mailing and a Presorted mailing, and both mailings are reported on the same postage statement, the mailing job must be presorted under the cotraying standards in 705.9.0.

[Revise the heading of renumbered 5.0 as follows:]

5.0 Preparation of Automation Flats

5.1 Basic Standards

[Revise 5.1 to specifically prohibit bundling as follows:]

Automation First-Class Mail flats must be prepared under 5.0 and meet the eligibility standards for the price claimed; trays must bear the appropriate barcoded container labels under 708.6.0, *Standards for Barcoded Tray Labels, Sack Labels, and Container Placards*. Flat-size pieces must be prepared loose (unbundled) in flat trays under 2.4 and 5.0.

* * * * *

[Delete renumbered 5.4 and 5.5.]

[Renumber current 6.6 as new 5.4 and revise heading and text as follows:]

5.4 First-Class Mail Preparation

Tray size, preparation sequence, and Line 1 labeling:

a. 5-digit: Optional, but 5-digit trays required for price eligibility (50-piece minimum); one overflow tray allowed; for Line 1, use city, state, and 5-digit ZIP Code destination of pieces (for military mail see 3.3c). (Preparation to qualify for 5-digit price is optional and need not be done for all 5-digit destinations.)

b. 3-digit: Required (50-piece minimum); one overflow tray allowed; for Line 1, use L002, Column A for 3-digit destinations.

c. *Origin 3-digit:* Required for each 3-digit ZIP Code served by the SCF of the origin (verification) office; no minimum; for Line 1, use L002, Column A for 3-digit destinations.

d. *ADC:* Required (50-piece minimum); one overflow tray allowed; group pieces by 3-digit ZIP Code prefix, except under 2.4h; for Line 1, use L004 (ZIP Code prefixes in Column A must be combined and labeled to the corresponding ADC destination shown in Column B).

e. Mixed ADC (required); no minimum for price eligibility. Group pieces by ADC, except under 2.4h. For Line 1 use L201; for mail originating in ZIP Code areas in Column A, use ''MXD'' followed by city, state, and 3-digit ZIP Code prefix in Column C (use ''MXD'' instead of ''OMX'' in the destination line and ignore Column B).

[Delete current 6.7.]

[Renumber current 6.8 as new 5.5 and revise as follows:]

5.5 Cotraying With Presorted Price Mail

If the mailing job contains an automation mailing and a Presorted mailing, and both mailings are reported on the same postage statement, the mailing job must be prepared under the cotraying standards in 705.9.0.

* * * * *

400 Commercial Mail Parcels

401 Physical Standards

* * * * *

2.0 Additional Physical Standards by Class of Mail

* * * * *

2.2 Standard Mail Parcels and Not Flat-Machinable Pieces

* * * * *

2.2.2 Not Flat-Machinable Pieces

[Revise introductory text of 2.2.2 to indicate ending date of NFM category as follows:]

Rectangular Standard Mail pieces with any of the following characteristics must be prepared as *Not Flat-Machinable* (NFM) pieces (until May 2010) or as parcels:

* * * * *

460 Bound Printed Matter

* * * * *

465 Mail Preparation

* * * * *

5.0 Preparing Presorted Parcels

5.1 Basic Standards

5.1.1 General Preparation Requirements

All mailings of Presorted Bound Printed Matter (BPM) are subject to these general standards:

* * * * *

[Revise item b as follows:]

b. All pieces in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

* * * * *

470 Media Mail

* * * * *

475 Mail Preparation

* * * * *

5.0 Preparing Media Mail Parcels

5.1 Basic Standards

All mailings of Presorted Media Mail are subject to the standards in 5.0 and to these general requirements:

* * * * *

[Revise item b as follows:]

b. All parcels in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

* * * * *

480 Library Mail

* * * * *

485 Mail Preparation

* * * * *

5.0 Preparing Library Mail Parcels

5.1 Basic Standards

All mailings of Presorted Library Mail are subject to the standards in 5.0, *Preparing Library Mail Parcels*, and to these general standards:

* * * * *

[Revise item b as follows:]

b. All pieces in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

6.0 Mailing Containers—Special Types of Envelopes and Packaging

* * * * *

6.3 Window Envelopes

* * * Any window envelope used for letter-size or flat-size mail must meet the following additional standards:

* * * * *

[Redesignate current item e as new item f, and add new item e as follows:]

e. The following standards apply to an address block window on machinable and automation letters:

1. Address block windows on letters over 3 ounces must be covered. Address block windows may be covered on other mail.

2. Uncovered or open windows must be no larger than 2 inches by 4½ inches, and must not extend closer than ¾ inch from the bottom mailpiece edge and not closer than 1 inch from any other mailpiece edge.

3. Covers for address block windows are subject to 202.5.12.

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

[Revise the heading of 9.0 as follows:]

9.0 Combining Automation and Nonautomation Flats in Trays and Sacks

9.1 First-Class Mail

9.1.1 Basic Standards

[Revise text of 9.1.1. to delete references to bundling as follows:]

Flats in an automation mailing prepared under 335.6.5 must be cotrayed with flats in a Presorted mailing under the following conditions:

a. The automation pieces and Presorted pieces are part of the same mailing job and reported on the same postage statement.

b. Pieces in the automation mailing must meet the criteria for a flat under 301.3.0. Pieces in the Presorted mailing must meet the criteria for a flat under 301.1.0.

c. The automation mailing must meet the eligibility criteria in 333.5.0, except that the traying criteria in 9.1.4 must be met rather than the traying criteria in 335.5.0.

d. The Presorted mailing must meet the eligibility criteria in 333.3.0, except that the traying and documentation criteria in 9.1.1 and 9.1.4 must be met rather than the traying and documentation criteria in 335.4.0.

[Delete item e and redesignate current items f through i as new items e through h.]

* * * * *

[Revise redesignated item f as follows:]

f. The pieces from the automation mailing and the pieces from the Presorted mailing must be sorted into the same trays as described in 9.1.2.

* * * * *

[Delete 9.1.2 and 9.1.3 in their entirety.]

[Renumber current 9.1.4 as new 9.1.2 and revise as follows:]

9.1.2 Tray Preparation and Labeling

Presorted and automation pieces must be presorted together into trays (cotrayed) in the sequence listed below. Trays must be labeled using the following information for Lines 1 and 2 and 335.4.0 for other tray label criteria.

a. *5-digit,* required, 50 piece minimum; one less-than-full or overflow tray allowed; labeling:

1. *Line 1:* Use city, state, and 5-digit ZIP Code destination (see 335.4.3 for military mail).

2. *Line 2:* ''FCM FLTS 5D BC/NBC.''

b. *3-digit,* required, 50 piece minimum; one less-than-full or overflow tray allowed; labeling:

1. *Line 1:* Use L002, Column A.

2. *Line 2:* ''FCM FLTS 3D BC/NBC.''

c. *Origin/entry 3-digit,* required for each 3-digit ZIP Code served by the SCF of the origin (verification) office, optional for each 3-digit ZIP Code served by the SCF of an entry office other than the origin office, no minimum; labeling:

1. *Line 1:* Use L002, Column A.

2. *Line 2:* ''FCM FLTS 3D BC/NBC.''

d. *ADC,* required, 50 piece minimum; one less-than-full or overflow tray allowed; use L004 to determine ZIP Codes served by each ADC; labeling:

1. *Line 1:* Use L004, Column B.

2. *Line 2:* ''FCM FLTS ADC BC/NBC.''

e. *Mixed ADC,* required, no minimum; labeling:

1. *Line 1:* Use L201; for mail originating in ZIP Code areas in Column A, use ''MXD'' followed by the city, state, and 3-digit ZIP Code prefix in the corresponding row in Column C (use ''MXD'' instead of ''OMX'' in the destination line and ignore Column B).

2. *Line 2:* ''FCM FLTS BC/NBC WKG.''

* * * * *

[Revise heading of 11.0 as follows:]

11.0 Combining Automation and Nonautomation Flats in Bundles

[Delete 11.1 and renumber current 11.2 through 11.4 as new 11.1 through 11.3.]

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–1862 Filed 1–28–09; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 958

Rules of Practice in Proceedings Relative to Mailing Hazardous Materials

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Accountability and Enhancement Act requires the Postal Service to prescribe regulations for the safe transportation of hazardous materials in the mail, and to prescribe regulations for the conduct of proceedings to determine the implementation of civil penalties, clean-up costs and damages for violations of these hazardous materials regulations. Accordingly, the Postal Service proposes to adopt new rules of practice for its Office of the Judicial Officer.

DATES: Comments must be received on or before March 2, 2009.

ADDRESSES: Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

FOR FURTHER INFORMATION CONTACT: Administrative Judge Gary E. Shapiro, (703) 812–1910.

SUPPLEMENTARY INFORMATION: The Postal Accountability and Enhancement Act (Pub. L. 109–435, 120 Stat. 3198 (December 20, 2006)) inserted section 3018 into title 39, United States Code. Section 3018(a) requires the Postal Service ''to prescribe regulations for the safe transportation of hazardous material in the mail.'' Section 3018(c) requires the Postal Service to implement procedures for the imposition of civil penalties, clean-up costs and damages for violations of these hazardous materials regulations. Section 3018(d) provides that the Postal Service may determine that a person has violated these regulations only after notice and an opportunity for a hearing in accordance with section 3001(m) of title 39, United States Code.

Accordingly, the Postal Service is proposing to adopt implementing regulations as new 39 CFR part 958, which would designate the Chief Postal Inspector as the Postal Service's Determining Official for purposes of these rules. Any hearing would be presided over by an Administrative Law Judge designated by the Postal Service Judicial Officer. Administrative appeals of a Presiding Officer's decision would be determined by the Judicial Officer.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following rules proposed to be codified at title 39, Code of Federal Regulations, part 958.

List of Subjects in 39 CFR Part 958

Administrative practice and procedure, Penalties, Postal Service.

For the reasons stated in the preamble, the Postal Service proposes to amend 39 CFR part 958 as set forth below:

1. Part 958 is added to read as follows:

PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO CIVIL PENALTIES, CLEAN-UP COSTS AND DAMAGES FOR VIOLATION OF HAZARDOUS MATERIAL REGULATIONS

Sec.

Authority: 39 U.S.C. 204; 39 U.S.C. 401; 39 U.S.C. 3001; 39 U.S.C. 3018.

§ 958.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

§ 958.2 Definitions.

(a) *Complaint* refers to the determination by the Determining Official that an individual has violated the prohibition against mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

(b) *Initial Decision* refers to the written decision which the Presiding Officer renders.

(c) *Determining Official* refers to the Chief Postal Inspector or designee.

(d) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or designee within the Judicial Officer Department.

(e) *Party* refers to the Postal Service or the respondent.

(f) *Person* refers to any individual, partnership, corporation, association, or private organization.

(g) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing.

(h) *Recorder* refers to the Recorder of the Judicial Office of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201–3078.

(i) *Representative* refers to an attorney or other advocate.

(j) *Respondent* refers to any person determined by the Determining Official to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

§ 958.3 Petition for hearing.

Within 30 days of being served the Postal Service's Complaint alleging liability under 39 U.S.C. 3018, the respondent may request a hearing by filing a written Hearing Petition with the Recorder. The respondent's Petition must include the following:

(a) The words ''Petition for Hearing Related to Prohibitions Regarding the Mailing of Hazardous Material'' or other words reasonably identifying it as such;

(b) The name of the respondent as well as his or her work and home addresses, and work and home telephone numbers; and other address and telephone number where the respondent may be contacted about the hearing proceedings;

(c) The date on which the respondent received the Complaint issued by the Determining Official;

(d) A statement indicating whether the respondent requests an oral hearing or a decision solely on the written record;

(e) If the respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and

(f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the respondent intends to rely.

§ 958.4 Referral of complaint.

(a) If the respondent fails to request a hearing within the specified period, the Determining Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an Initial Decision based upon the information contained in the Complaint.

(b) If the respondent files a Hearing Petition, the Determining Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

§ 958.5 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record (1) to determine whether the respondent is liable under 39 U.S.C. 3018, and (2) if so, to determine the amount of any civil penalties, clean-up costs and/or damages to be imposed.

(b) The Postal Service must prove its case against a respondent by a preponderance of the evidence.

(c) The parties may offer for insertion onto the record such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 958.6 Notice of docketing and hearing.

(a) Within a reasonable time after receiving the respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve upon the respondent and the Determining Official, a Notice of Docketing and Hearing.

(b) The Notice of Docketing and Hearing required by paragraph (a) of this section may include:

(1) The tentative site, date, and time of the oral hearing, if one is requested;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

(6) Such other information as the Presiding Officer deems appropriate.

§ 958.7 Hearing location.

An oral hearing under this part shall be held:

(a) In the judicial district of the United States in which the respondent resides or transacts business;

(b) In the judicial district of the United States in which the incident or incidents occurred upon which the determination of liability under 39 U.S.C. 3018 was made by the Determining Official; or

(c) In such other place as may be determined by the Presiding Officer.

§ 958.8 Rights of parties.

Subject to the sound discretion of the Presiding Officer, acting under § 958.9, parties to a hearing under this part shall have the right:

(a) To be accompanied, represented, and advised, by an attorney or representative of his or her own choosing;

(b) To participate in any conferences held by the Presiding Officer;

(c) To agree to stipulations of fact or law, which shall be made part of the record;

(d) To make opening and closing statements at the oral hearing;

(e) To present oral and documentary evidence relevant to the issues;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.

§ 958.9 Responsibilities and authority of presiding officer.

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid unnecessary delay, maintain order, and assure that a record of the proceeding is made.

(b) The Presiding Officer's authority includes, but is not limited to, the following:

(1) Establishing, upon adequate notice to all parties, the date and time of the oral hearing, if any, as well as, in accordance with § 958.7, selecting the hearing site;

(2) Holding conferences, by telephone or in person, to identify or simplify the issues, or to consider other matters that may aid in the expeditious resolution of the proceeding;

(3) Continuing or recessing the hearing in whole or in part for a reasonable period of time;

(4) Administering oaths and affirmations to witnesses;

(5) Ruling on all offers, motions, requests by the parties, and other procedural matters;

(6) Issuing any notices, orders, or memoranda to the parties concerning the proceedings;

(7) Regulating the scope and timing of discovery;

(8) Regulating the course of the hearing and the conduct of the parties and their representatives;

(9) Examining witnesses;

(10) Receiving, ruling on, excluding, or limiting evidence in order to assure that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(11) Deciding cases, upon motion of a party, in whole or in part by summary judgment where there is no disputed issue of material fact;

(12) Establishing the record in the case; and

(13) Issuing a written Initial Decision containing findings of fact, conclusions of law, and determinations with respect to whether civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018 should be imposed, and if so, the amounts thereof, after taking into account the penalty considerations contained in 39 U.S.C. 3018(e).

§ 958.10 Prehearing conferences.

(a) At a reasonable time after issuing the Notice of Docketing and Hearing, and with adequate notice to the parties, the Presiding Officer may conduct, in person or by telephone, one or more prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations or admissions of fact or as to the contents and authenticity of documents;

(4) Limitation of the number of witnesses;

(5) Exchange of witness lists, copies of prior statements of witnesses, and copies of hearing exhibits;

(6) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(7) Discovery;

(8) Possible changes in the scheduled oral hearing date, time or site, if requested; and

(9) Any other matters related to the proceeding.

(b) Within a reasonable time after the completion of a prehearing conference, the Presiding Officer shall issue an order detailing all matters agreed upon by the parties, or ordered by the Presiding Officer, at such conference.

§ 958.11 Respondent's access to information.

Except as provided in this paragraph, after receiving the Notice of Docketing and Hearing the respondent may review and obtain a copy of all relevant and material documents, transcripts, records, and other materials which relate to the determination of liability by the Determining Official under 39 U.S.C. 3018, and all exculpatory information in the possession of the Determining Official relating to liability for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018. The respondent is not entitled to review or obtain a copy of any document, transcript, record, or other material which is privileged under Federal law. The Presiding Officer is authorized to issue orders placing limitations on the scope, method, time and place for accessing this information, and provisions for protecting the secrecy of confidential information or documents.

§ 958.12 Depositions; interrogatories; admission of facts; production and inspection of documents.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the Presiding Officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* After the issuance of a Notice of Docketing and Hearing, the parties may mutually agree to, or the Presiding Officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for an order of the Presiding Officer under this paragraph shall specify whether the purpose of the deposition is discovery or for use as evidence.

(1) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Presiding Officer.

(2) No testimony taken by depositions shall be considered as part of the record in the hearing unless and until such testimony is offered and received into evidence by order of the Presiding Officer. Deposition testimony will not ordinarily be received in evidence if an oral hearing is requested by either party, and the deponent is available to testify personally at the hearing. In such instances, however, deposition testimony may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted for a decision on a written record, the Presiding Officer may, in his or her discretion, receive deposition testimony as evidence in supplementation of that record.

(c) *Interrogatories to parties.* After the issuance of a Notice of Docketing and Hearing, a party may serve on the other party written interrogatories. Within 30 days after service, the party served shall answer each interrogatory separately in writing, signed under oath, or file objections thereto. Upon timely objection by the party, the Presiding Officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* After the issuance of a Notice of Docketing and Hearing, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. Upon timely objection by the party, the Presiding Officer will determine the extent to which the request for admission will be permitted. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(e) *Production and inspection of documents.* Upon motion of a party showing good cause therefor, and upon notice, the Presiding Officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery or admissible evidence. If the parties cannot themselves agree thereon, the Presiding Officer shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) *Limitations.* A discovery procedure may not be used to reach documents, transcripts, records, or other material which a person is not entitled to review pursuant to § 958.11.

§ 958.13 Sanctions.

(a) *In general.* The Presiding Officer may sanction a person, including any party, attorney or representative, for:

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) *Reasonableness.* Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) *Failure to comply with an order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) *Failure to prosecute or defend.* If a party fails to prosecute or defend an action under this part, the Presiding Officer may dismiss the action, or enter an order of default and an Initial Decision.

(e) *Failure to file timely.* The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

§ 958.14 Ex parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

§ 958.15 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

§ 958.16 Transcript of proceedings.

Testimony and argument at oral hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 958.17 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written Initial Decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relies upon in determining whether the respondent is liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018, and, if liability is found, shall set forth the amount of any civil penalties, clean-up costs and/or damages imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her Initial Decision. A party may, in accordance with § 958.18, appeal an adverse Initial Decision to the Judicial Officer. Unless a party timely appeals in accordance with § 958.18, the Presiding Officer's Initial Decision, including the findings and determinations, becomes the final agency decision.

§ 958.18 Appeal of initial decision to Judicial Officer.

(a) *Notice of appeal and supporting brief.* A party may appeal an adverse Initial Decision by filing, within 30 days after the Presiding Officer issues the Initial Decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period but only if the party files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(1) The Notice of Appeal must be accompanied by a written brief specifying the party's exceptions, and any reasons for such exceptions, to the Presiding Officer's Initial Decision.

(2) Within 30 days of receiving the party's brief, the opposing party may file with the Judicial Officer a response to the specified exceptions to the Presiding Officer's Initial Decision.

(b) *Form of review.* Review by the Judicial Officer will be based entirely on the record and written submissions.

(1) The Judicial Officer may affirm, reduce, reverse, or remand any determination about a penalty or assessment by the Presiding Officer.

(2) The Judicial Officer shall not consider any argument or objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the argument or objection before the Presiding Officer was caused by extraordinary circumstances.

(3) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer may remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of Judicial Officer.* The Judicial Officer shall promptly serve each party to the appeal with a copy of his or her decision. The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties.

§ 958.19 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), an accurate designation of the document, and the name, address, and telephone number of the party on whose behalf the paper was filed. It shall also be signed by the party or party representative submitting the document.

(b) The original and three copies of all pleadings and documents in a proceeding conducted under this part shall be filed with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201–3078. Normal Recorder business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time. The Recorder will transmit a copy of each document filed to the other party, and the original to the Presiding Officer.

(c) Pleadings or other document transmittals to, or communications with, the Postal Service, other than to the Recorder under paragraph (a) of this section, shall be made through the Determining Official or designated Postal Service attorney. If a notice of appearance by a representative is filed on behalf of the respondent, pleadings or document transmittals to, or communications with, the respondent shall be made through his or her representative.

§ 958.20 Service of notice of docketing and hearing, other documents.

Unless otherwise specified, service of a Notice of Docketing and Hearing or any other document under this part shall be effected by registered or certified mail, return receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the party or other person sought to be served, or his or her agent, a written acknowledgement of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

§ 958.21 Computation of time.

In computing any period of time provided for by this part, or any order issued pursuant to this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day. Except as otherwise provided in these rules or an applicable order, prescribed periods of time are measured in calendar days rather than business days.

§ 958.22 Continuances and extensions.

Continuances and extensions may be granted under these rules for good cause shown.

§ 958.23 Settlement.

Either party may make offers of settlement or proposals of adjustment at any time. The Determining Official has the exclusive authority to compromise or settle any determinations of liability for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018, without the consent of the Presiding Officer or Judicial Officer.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–1864 Filed 1–28–09; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

RIN 0648–AV74

Endangered and Threatened Species; Critical Habitat for the Endangered Distinct Population Segment of Smalltooth Sawfish

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: On November 20, 2008, NMFS proposed to designate critical habitat for the endangered U.S. distinct population segment (DPS) of smalltooth sawfish. As part of that proposal, NMFS provided a 60–day public comment period, ending on January 20, 2009. Additionally, NMFS held two public hearings in Cape Coral and Naples, FL in January 2009. NMFS has received requests for an extension of the public comment period. In response to these requests, NMFS is reopening the public comment period for the proposed action.

DATES: Written comments on this proposed rule must be received by 5 p.m. EST on February 13, 2009. Comments received between the close of the first comment period on January 20, 2009, and the reopening of the comment period on January 29, 2009 will be considered.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (RIN) 0648–AV74, by any of the following methods:

Mail: Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Facsimile (fax) to: 727–824–5309 Attention Shelley Norton.

Electronic Submissions: Submit all electronic comments to *www.regulations.gov* by clicking on ''Search for Dockets'' at the top of the screen, then entering the RIN in the ''RIN'' field and clicking the ''Submit'' tab.

Instructions: All comments received are considered part of the public record and will generally be posted to *http://www.regulations.gov*. All Personal Identifying Information (i.e., name, address, etc.) voluntarily submitted may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Please provide electronic attachments using Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shelley Norton, NMFS, Southeast Regional Office, at 727–824–5312; or Lisa Manning, NMFS, Office of Protected Resources, at 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2008, we published a proposed rule (73 FR 70290) to designate critical habitat for the endangered U.S. DPS of smalltooth sawfish. We held two public hearings on the proposed designation, one in Naples, FL on January 5, 2009, and one in Cape Coral, FL on January 14, 2009. Several requests have been received to reopen the public comment period for the proposed listing. The public comment period for the proposed listing closed on January 20, 2009. NMFS is reopening the public comment period until February 13, 2009, to receive additional local and public information and comments that may be relevant to our consideration of this rulemaking. Public comments received between the close of the first comment period on January 20, 2009, and the reopening of the comment period January 29, 2009 will also be considered timely.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 23, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–1956 Filed 1–28–09; 8:45 am]

BILLING CODE 3510–22–S

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Notices

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the United States Department of Agriculture (USDA) Rural Development administers rural utilities programs through the Rural Utilities Service. USDA Rural Development invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 30, 2009.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB as a revision to an existing collection.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, U.S. Department of Agriculture, STOP 1522, Room 5162, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

Title: 7 CFR Part 1773, Policy on Audits of RUS Borrowers.

OMB Control Number: 0572–0095.

Type of Request: Extension of a currently approved collection.

Abstract: The United States Department of Agriculture (USDA Rural Development administers rural utilities programs through the Rural Utilities Service. The USDA Rural Development relies on the information provided by the borrowers in their financial statements to make lending decision as to borrowers' credit worthiness and to assure that loan funds are approved, advanced and disbursed for proper RE Act purposes. These financial statements are audited by a certified public accountant to provide independent assurance that the data being reported are properly measured and fairly presented.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7.80 hours per response.

Respondents: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents and Recordkeepers: 1,500.

Estimated Number of Responses per Respondent: 1.42.

Estimated Total Annual Burden on Respondents: 16,677 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, Fax: (202) 720–4120.

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

Dated: January 23, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–1949 Filed 1–28–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the United States Department of Agriculture (USDA Rural Development administers rural utilities programs through the Rural Utilities Service. The USDA Rural Development invites comments on the following information collections for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 30, 2009.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development Utilities Programs, 1400 Independence Ave., SW., STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–0784.

Title: Borrower Investments—Telecommunications Loan Program, 7 CFR Part 1744, Subpart E.

OMB Control Number: 0572–0098.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Economic Development Act of 1990, Title XXIII of the Farm Bill, Public Law 101–624, authorized qualified USDA Rural Development borrowers to make investments in rural development projects without the prior approval of the Agency's Administrator provided, however, that such investments do not cause the borrower to exceed its allowable qualified investment level as determined in accordance with the procedures set forth in 7 CFR part 1744, subpart E. When a borrower exceeds these limits, the security for the Government's loans could be in jeopardy. However, in the interest of encouraging rural development, USDA Rural Development will consider approving such investments that exceed a borrower's qualified investment level. This information collection covers those items that a borrower would need to submit to USDA Rural Development for consideration of the borrower's request to make such an investment.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9.5 hours per response.

Respondents: Not for profit institutions; business or other for-profit entities.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 238 hours.

Dated: January 23, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–1951 Filed 1–28–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Watch Duty-Exemption and 7113 Jewelry Duty-Refund Program

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 30, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gregory Campbell, Statutory Import Programs; phone number: (202) 482–2239; fax number: (202) 501–7952; and e-mail address: *gregory_campbell@ita.doc.gov* .

SUPPLEMENTARY INFORMATION:

I. Abstract

The Departments of Commerce and the Interior are required by Public Law 97–446, as amended by Public Law 103–465, Public Law 106–36 and Public Law 108–429, to administer the distribution of watch duty-exemptions and watch and jewelry duty-refunds to program producers in the U.S. insular possessions and the Northern Mariana Islands. The primary consideration in collecting information is the enforcement of the laws and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. The Form ITA–340P is used to provide the data to assist in verification of duty-free shipments of watches into the United States and make certain the allocations are not exceeded. Forms ITA–360P and ITA–361P are necessary to implement the duty-refund program for the watch and jewelry producers. Form ITA–360P requires no information unless the recipient wishes to transfer the certificate. Form ITA–361P must be completed each time a certificate holder wishes to obtain a portion, or all, of the duty-refund authorized by the certificate. The duty-refund benefit is issued biannually and the forms are used for the distribution of the duty-refund benefit.

II. Method of Collection

Paper format or electronically.

III. Data

OMB Control Number: 0625–0134.

Form Number(s): ITA–340P, ITA 360P, and ITA–361P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7.

Estimated Time per Response: 6 minutes for Form ITA–340P; 10 minutes for Form ITA–361P; and 1 minute to transfer a certificate using Form ITA–360P.

Estimated Total Annual Burden Hours: 8.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–1886 Filed 1–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Commercial Service; Proposed Information Collection; Comment Request; User Satisfaction Surveys

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 30, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Susan Crawford, phone: 202–482–2050, e-mail: *Susan.Crawford@mail.doc.gov,* fax: 202–482–2599.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Commercial Service (CS) requests a revision to the currently approved collection for User Satisfaction Surveys associated with the following export assistance programs and services:

- Export counseling,
- Pay-for-use export services such as matchmaking and due diligence,
- Trade promotion and educational events such as trade fairs, seminars and Webinars,
- Trade Information Call Center,
- Advocacy services.

The CS is mandated to provide export assistance to U.S. firms and the feedback obtained from the User Satisfaction Surveys is crucial to ensuring that clients are provided with effective and appropriate export services. This feedback enables CS to improve services to better meet the needs of their clients.

Clients that work with the CS have the opportunity to provide feedback via an electronic link to a comment card at the completion of each pay-for-use service, trade promotion event and advocacy case.

CS would also like to provide clients with the opportunity to give feedback at any time during the course of their working relationship with a CS trade specialist. CS proposes to revise their information collection by providing a feedback opportunity to their clients via a comment card link in a tagline at the bottom of CS staff's e-mail messages.

II. Method of Collection

Comment cards (sent to a client after the completion of a pay-for-use export service, trade promotion event or educational seminar/Webinar, and advocacy case) in an e-mail message delivering a hot link to a Web enabled survey. If the client does not respond to the survey within two weeks, another e-mail reminder is sent to the client.

The e-mail tagline comment card will also be a link to a Web enabled survey.

An automated telephone survey will be used for the Trade Information Call Center survey, so that callers can immediately respond without having to provide their e-mail address.

III. Data

OMB Control Number: 0625–0217.

Form Number(s): ITA–4107.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,667.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–1900 Filed 1–28–09; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China: Initiation of New Shipper Review

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

DATES: *Effective Date:* January 29, 2009.

SUMMARY: On December 22, 2008, ABC Tools MFG. Corp. (ABC Tools) filed a request for a new shipper review of the antidumping duty order on hand trucks and certain parts thereof (hand trucks) from the People's Republic of China (PRC). The Department of Commerce (the Department) has determined that ABC Tools' request meets the statutory and regulatory requirements for initiation and we are, accordingly, initiating a new shipper review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(a). The period of review (POR) is December 1, 2007, through November 30, 2008.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0408 or (202) 482–0469, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on hand trucks from the PRC was published on December 2, 2004. See *Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China,* 69 FR 70122 (December 2, 2004). On December 22, 2008, we received a timely request for a new shipper review from ABC Tools in accordance with 19 CFR 351.214(c). ABC Tools certified that it is both the producer and exporter of the subject merchandise upon which the request for a new shipper review is based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), ABC Tools certified that it did not export hand trucks to the United States during the period of investigation (POI), April 1, 2003 through September 30, 2003. In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), ABC Tools certified that since the initiation of the investigation it has never been affiliated with any exporter or producer who exported hand trucks to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), ABC Tools also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), ABC Tools submitted documentation establishing the following: (1) The date on which it first shipped hand trucks for export to the United States; (2) the volume of its first shipment; (3) an entry of subject merchandise for consumption in the United States; and (4) a sale of subject hand trucks by ABC Tools to an unaffiliated customer in the United States during the twelve-month period immediately preceding the annual anniversary month of the antidumping duty order on hand trucks from the PRC.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we find that the request submitted by ABC Tools meets the threshold requirements for initiation of a new shipper review of hand trucks from the PRC produced and exported by ABC Tools.

This review covers the period from December 1, 2007, through November 30, 2008. *See* 19 CFR 351.214(g)(1)(i)(A). We intend to issue preliminary results of this review no later than 180 days from the date of initiation, and final results no later than 90 days from the date the preliminary results are issued. *See* section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Although ABC Tools has provided some of this information in its new shipper request, we will issue a questionnaire to ABC Tools, including a separate-rate section. The review will proceed if the response provides sufficient indication that ABC Tools is not subject to either *de jure* or *de facto* government control with respect to its exports of hand trucks. However, if ABC Tools does not demonstrate its eligibility for a separate rate, it will be deemed not separate from other companies that exported during the POI, and its new shipper review will be rescinded.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in a new shipper review. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of hand trucks produced and exported by ABC Tools must continue to post cash deposits of estimated antidumping duties on each entry of subject merchandise at the PRC-wide entity rate of 383.6 percent. *See Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From The People's Republic of China,* 69 FR 70122 (December 2, 2004).

Interested parties needing access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: January 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–1936 Filed 1–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Mission Statement; Aerospace Executive Service at Latin America Aero and Defence 2009 April 14–17, 2009

AGENCY: Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing an Aerospace Executive Service (AES) trade mission to the Latin America Aero and Defence (LAAD) 2009 show, in Rio de Janeiro, Brazil, April 14–17, 2009. LAAD is in its sixth biennial year and is a certified U.S. Department of Commerce trade show. The AES will include representatives from a variety of U.S. aerospace-industry manufacturers and service providers. The mission participants will benefit from individual, pre-screened appointments at the Riocentro trade show location with potential agents, distributors, and end-users whose capabilities are targeted to each U.S. participant's requirements. Participating companies will also benefit from exhibitor access to the trade show, a product literature display at LAAD, country briefings, and logistical support during the trade mission program.

Commercial Setting

LAAD features equipment and services for the internal security and Special Forces, as well as state-of-the-art equipment and services to the conventional armed forces of Latin America. Visitors include military, aerospace, and airline decision makers from throughout Latin America and the world. In 2007, 315 companies from 28 countries exhibited a wide range of commercial and military aerospace and ground support equipment and services, including aerospace materials and interiors, airport ground support equipment, aircraft maintenance services and equipment, avionics and radar systems, simulators and training equipment and unmanned aerial vehicles.

Latin America's defense market represents emerging opportunities for aerospace manufacturers with a growing demand for new and upgraded fighters, surveillance and patrol platforms, air-to-air tankers and counter-insurgency/anti-narcotics equipment. Military expenditures in Latin America are expected to reach $32.2 billion in 2009. In addition, Latin American governments plan to introduce new and updated systems. Specifically Brazil, Colombia, Mexico, and Chile are planning to procure nuclear-powered submarine capability, technologies for counter-insurgency operations against guerillas and illicit drug crops, counter-narcotics, and tanker aircraft for in-flight refueling.

In Brazil, the armed forces are continuing to modernize its equipment and systems. The Government of Brazil is making financing a priority in order for the Brazilian Air Force to address its most urgent updating requirements. Additionally, Latin American countries are participating in United Nations-sponsored peace keeping and disaster relief missions throughout the world, creating additional procurement requirements.

Mission Goals

The goal of the AES at Latin America Aerospace and Defence (LAAD) 2009 is to facilitate an effective presence for small- to medium-sized U.S. companies that may not yet be ready to incur the major expenses associated with purchasing and staffing exhibition space. The AES enables U.S. aerospace companies to familiarize themselves with this important trade fair, to conduct market research, and to explore export opportunities through pre-screened meetings with potential partners. With Commercial Service staff on hand to help further company-specific objectives, the AES provides access to Brazil and other international markets and business partners in a manner that cannot be matched by simply attending the show as a visitor.

Mission Scenario

The AES at LAAD will formally begin on Tuesday, April 14, 2009, with a company briefing and visit to the trade show on the opening day. On Wednesday, April 15, and Thursday, April 16, AES participants will benefit from pre-screened meetings (with up to eight appointments per company) with prospective distributors and end-users arranged by the Commercial Service in Brazil. These meetings will be held in private rooms at the Riocentro Convention Center. No exhibition or larger demonstration items will be permitted, unless the AES participating company separately purchases exhibitor booth space directly from Clarion Expo, the show organizer. On the final day of the show, Friday, April 17, AES participants can visit the show floor at LAAD and hold their own independently scheduled follow up meetings, with Commercial Service staff available at the show to assist, as needed.

The AES package at LAAD 2009 also includes the following:

• Official show entry (or exhibitor) passes.

• Listing in the LAAD 2009 Exhibitor's Directory.

• Company product literature on display in the U.S. booth.

• Logistical support (interpreter for pre-scheduled meetings, ground transportation to/from the show each day, and coordination of hotel arrangements).

Proposed Mission Timetable

Monday, April 13, 2009	Companies arrive in Rio de Janeiro.
Tuesday, April 14, 2009	Official trade show briefing and visit to LAAD 2009.
Wednesday, April 15, Thursday, April 16	Pre-screened individual meetings at show location.
Friday, April 17	Companies visit LAAD for individual follow-up. AES concludes.

Participation Requirements

All parties interested in participating in the AES at LAAD 2009 must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 5 and maximum of 6 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in Latin America as well as U.S. companies seeking to enter Latin American markets for the first time may apply.

Fees and Expenses:

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $4,500 for large firms and $3,000 for a small or medium-sized enterprise (SME).* The fee for each additional firm representative (large firm or SME) is $350. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation:

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

• Each applicant's products must meet LAAD 2009 trade fair rules. Regulation information can be found at the show's Web site at *http://www.laadexpo.com/2009/eng/index.asp.*

Selection Criteria: Selection will be based on the following criteria:

• Suitability of the company's products or services to the Latin American market.

• Applicant's potential for business in Latin America, including likelihood of exports resulting from the mission.

• Relevance of the company's business line to the mission's goals.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register** posting on the Commerce Department trade missions calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet Web sites, publication in domestic trade publications and association newsletters, mailings from internal mailing lists, faxes to internal database aerospace clients, email to aerospace distribution lists, and announcements at industry meetings, conferences, and trade shows. ITA Aerospace and Defense Technology Team members in U.S. Export Assistance Centers will have the lead in recruiting the AES Program.

Recruitment for the mission will begin immediately and conclude no later than March 1, 2009. Applications will be available online at *http://www.buyusa.gov/connecticut/laad2009.html.* They can also be obtained by contacting the Mission Contacts listed below. The mission will open on a first come first served basis. Applications received after March 1, 2009 will be considered only if space and scheduling constraints permit.

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (*see http://www.export.gov/newsletter/march2008/initiatives.html for additional information*).

Contacts:

Melissa Grosso, U.S. Commercial Service Middletown, Tel: 860–638–6955, *Melissa.Grosso@mail.doc.gov.*
Genard Burity, U.S. Commercial Service, Rio de Janeiro, Tel: 55–21–3823–2401, *Genard.Burity@mail.doc.gov.*
Daniele Andrews, U.S. Commercial Service, Brasilia , Tel: 55–61–312–7458, *Daniele.Andrews@mail.doc.gov*,

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. E9–1866 Filed 1–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Court Decision Not in Harmony With Final Results of Administrative Review

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

SUMMARY: On December 22, 2008, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department) results of redetermination pursuant to the CIT's remand and entered final judgment in *Husteel Company, Ltd., and SeAH Corp., Ltd.,* v. *United States,* Consol. Ct. No. 06–00075, Slip Op. 08–139 (CIT December 22, 2008) (*Husteel* v. *United States II*). *See Results of Redetermination on Remand Pursuant to Husteel Company, Ltd., and SeAH Corp., Ltd.,* v. *United States,* dated August 29, 2008, and *Results of Redetermination on Remand Pursuant to Husteel Company, Ltd., and SeAH Corp., Ltd.,* v. *United States,* dated December 5, 2008 (available at *http://ia.ita.doc.gov/remands*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the antidumping duty order on oil country tubular goods, other than drill pipe, from Korea covering the period of review (POR) of August 1, 2003 through July 31, 2004. *See Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review,* 71 FR 13091 (March 14, 2006) (*Final Results*).

DATES: *Effective Date:* December 22, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0780.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2006, the Department issued its final results in the antidumping duty administrative review of oil country tubular goods, other than drill pipe, from Korea covering the POR of August 1, 2003 through July 31, 2004. *See Final Results.* In the *Final Results,* the Department found that the use of third country sales to a non-market economy (the People's Republic of China (PRC), in this case) is inappropriate for determining normal value, because these sales are not representative. *Id.* As such, in calculating normal value for SeAH Steel Corp. Ltd. (SeAH), the Department used SeAH's third country sales to Canada, and in calculating normal value for Husteel Co. Ltd. (Husteel), the Department utilized constructed value. Therefore, SeAH was assigned a rate of 6.84 percent, and Husteel was assigned a rate of 12.30 percent. *Id.*

In *Husteel Company, Ltd., and SeAH Corp., Ltd.,* v. *United States,* Consol. Ct. No. 06–00075, Slip Op. 08–62 (CIT June 2, 2008) (*Husteel* v. *United States I*), the CIT remanded the *Final Results,* holding that the Department's finding that sales into a non-market economy are not representative was not supported by substantial record evidence. The CIT directed the Department to either present persuasive record evidence that SeAH's and Husteel's sales into the PRC were not representative within the meaning of 19 U.S.C. 1677b(a)(1)(B)(ii)(I), or find the sales into the PRC to be representative, and then recalculate and assign SeAH and Husteel new antidumping duty assessment rates. On August 29, 2008, the Department issued its final results of redetermination pursuant to *Husteel* v. *United States I. See Results of Redetermination on Remand Pursuant to Husteel Company, Ltd., and SeAH Corp., Ltd.,* v. *United States* (August 29, 2008) (*Remand Results*). The remand redetermination explained that, in accordance with the CIT's instructions, after finding sales to the PRC to be representative, the Department recalculated the assessment rate for SeAH and Husteel. Specifically, the Department determined SeAH's new weighted-average margin to be 0.59 percent, and Husteel's new weighted-average margin to be 0.62 percent.

However, in the *Remand Results,* the Department inadvertently treated certain Korean inventory carrying costs as if they were denominated in U.S. dollars when they, in fact, had been denominated in Korean won. Therefore, in *Husteel Company Ltd. and SeAH Corp. Ltd.,* v. *United States,* Consol. Ct. No. 06–000075, Slip Op. 08–127 (CIT November 21, 2008), the CIT upheld the Department's *Remand Results,* with the exception of the calculation of certain inventory carrying costs. The CIT ordered the Department to correct its calculation of Husteel's Korean inventory carrying costs. In accordance with the CIT's order, the Department corrected its calculation with regard to Husteel's Korean inventory carrying costs. *See Results of Redetermination on Remand Pursuant to Husteel Company, Ltd., and SeAH Corp., Ltd.,* v. *United States* (December 5, 2008). As a result, Husteel's new dumping margin is now *de minimis* , and SeAH's margin remains 0.59 percent.

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision in *Husteel* vs. *United States II,* on December 22, 2008, constitutes a final decision of that court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from Husteel and SeAH based on the revised assessment rates calculated by the Department.

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

Dated: January 21, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–1940 Filed 1–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Multispecies Days-at-Sea Leasing Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 30, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Douglas Potts, National Marine Fisheries Service, (978) 281–9341 or *Douglas.Potts@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

A proposed emergency rule for the NE Multispecies Fishery Management Plan (FMP) was published in the **Federal Register** on April 24, 2003 (68 FR 200096). The emergency rule was used to continue management measures specified in the Settlement Agreement Among Certain Parties, which were implemented as ordered by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on May 23, 2002. The emergency rule included several management measures designed to reduce overfishing on species managed under the NE Multispecies FMP, including a Days-At-Sea (DAS) Leasing Program, and was published in order to continue the measures until the implementation of Amendment 13 to the NE Multispecies FMP. The final rule, RIN 0648–AN17, for implementing Amendment 13 to the NE Multispecies FMP, was published in the **Federal Register** on April 27, 2004 (69 FR 22906). Amendment 13 was developed by the New England Fishery Management Council (Council) primarily to end overfishing on all groundfish stocks and to rebuild all groundfish stocks that are overfished. Amendment 13 included substantial reductions in the amount of effort available to target groundfish stocks. Therefore, Amendment 13 resulted in considerable reductions in the number of DAS for NE multispecies vessels.

The reduction in the DAS allocated to NE multispecies permit holders limited the ability of some vessels to participate in the fishery, resulting in a loss of revenue and/or the ability to operate at a profit. In order to mitigate some of the adverse economic impacts of the effort reductions, the DAS Leasing Program was established by the Council, among other provisions, in Amendment 13. The DAS Leasing Program enables vessels to increase their revenue by either leasing additional DAS from another vessel or using them to increase their participation in the fishery, or by leasing their allocated DAS that they may not use to another vessel.

II. Method of Collection

Applications will be submitted by mail.

III. Data

OMB Control Number: 0648–0475.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,400.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 583.

Estimated Total Annual Cost to Public: $1,158.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–1947 Filed 1–28–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0011]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense (Networks and Information Integration)/DoD Chief Information Officer. DoD.

ACTION: Notice.

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

DATES: Consideration will be given to all comments received by March 30, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of DoD Chief Information Officer, ATTN: Ms. Sandra Smith, 1225 South Clark St., Suite 910, Arlington, VA, 22202.

Title; Associated Form; and OMB Number: Information Assurance Scholarship Program (IASP); OMB Control Number 0704–TBD.

Needs and Uses: The National Security Agency (NSA) is the Executive Administrator of the Information Assurance Scholarship Program (IASP), serving on behalf of the Office of the Assistant Secretary of Defense (Networks and Information Integration)/DoD Chief Information Officer. Those who wish to participate in the IASP Recruitment program must complete and submit an application package through their college or university to NSA. Centers of Academic Excellence in Information Assurance Education (CAE/IAEs) interested in applying for capacity-building grants must complete and submit a written proposal, and all colleges and universities subsequently receiving grants must provide documentation on how the grant funding was utilized. In addition, IASP participants and their faculty advisors (Principal Investigators) are required to complete annual program assessment documents. Without this written documentation, the DoD has no means of judging the quality of applicants to the program or collecting information regarding program performance.

Affected Public: ''Individuals or households,'' specifically college students at institutions designated as CAE/IAEs who are interested in, and qualified to, apply for a scholarship; ''Not-for-profit institutions,'' specifically CAE/IAEs interested in submitting proposals for capacity-building grants, and faculty advisors (Principal Investigators).

Annual Burden Hours: 1,755.

Number of Respondents: 422.

Responses per Respondent: 1.

Average Burden per Response: 4.16 hours.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The IASP, authorized by Section 2200 of title 10 of the United States Code, is designed to: increase the number of new entrants to DoD who possess key Information Assurance (IA) and IT skill sets, and serve as a tool to develop and retain well-educated military and civilian personnel who support the Department's critical IT management and infrastructure protection functions. The IASP recruitment track is for college students who, on completion of the program, come to work for the DoD. The retention track is for current DoD employees who are excused from duty to attend college courses through the IASP. Pending availability of funds, the IASP may also award capacity-building grants to colleges and universities designated as CAE/IAEs for such purposes as developing IA curricula and faculty, and building IA laboratories. The recruitment, retention and grant programs all require a competitive application process. Additionally, there is an assessment process which examines how grant funds were spent, as well as an assessment process requiring status reports from students in the program, and university faculty representatives (Principal Investigators) for the purpose of program evaluation.

In order to apply for any aspect of the program, paperwork is required so that the DoD may judge the merits of a given application and determine how best to allocate IASP funds.

The Recruitment, Capacity-Building, and Assessment aspects of the IASP apply to non-DoD employee members of the general public who choose to become involved in the program and thus become subject to information collection requirements. The Retention aspect of the IASP applies only to current DoD personnel, and thus its information collection requirements are not addressed in this request.

Dated: January 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–1906 Filed 1–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Task Force on Sexual Assault in the Military Services

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness); DoD.

ACTION: Committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in Government Act of 1976 (5 U.S.C. 522b, as amended), 41 CFR 102–3.140, 41 CFR 102–3.150, and 41 CFR 102–3.160 announcement is made of the following committee meeting of the Defense Task Force on Sexual Assault in the Military Services (hereafter referred to as the Task Force).

DATES: Open meeting: February 13, 2009 (8 a.m. to 12 p.m. Pacific Standard Time (hereafter referred to as PST).

Administrative and/or Preparatory work activities meeting: 1 p.m. to 3 p.m. PST.

ADDRESSES: San Diego, California. A specific location is still to be determined.

FOR FURTHER INFORMATION CONTACT: Colonel Jackson-Chandler, Designated Federal Officer, Defense Task Force on Sexual Assault in the Military Services, 2850 Eisenhower Avenue, Suite 100, Alexandria, Virginia 22314; Telephone: (703) 325–6640; Fax: (703) 325–6710/6711; DSN number 221–6640; *cora.chandler@wso.whs.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the open meeting is to obtain and discuss information on the Task Force's congressionally mandated task to examine matters related to sexual assault in the military services through briefings from and discussion with Task Force Sub-committees, Department of Defense (DoD) officials, subject matter experts, victim testimonials and comments from the general populace including Service Members.

The purpose of the Administrative and/or Preparatory work activities meeting:

a. Administrative work activities: to discuss administrative matters or to receive administrative information from a Federal officer or agency; and

b. Preparatory work activities: to gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the advisory committee, or to draft position papers for deliberation by the advisory committee.

Pursuant to 41 CFR 102–3.160 meetings convened solely for Administrative and/or Preparatory work activities meetings are exempt from open meeting requirements and is not open to the public.

Agenda Summary:

8 a.m.–12 a.m. Open Meeting.

8 a.m.–11 a.m. Discussion topics: Process Review.

11 a.m.–12 p.m. Public Comment Period.
12 a.m.–1 p.m. Noon Meal.
1 p.m.–3 p.m. Administrative and Preparatory Work Activities Meeting.

The Task Force's open meetings will be held at a place to be determined in San Diego, California from 8 a.m. to 12 p.m. PST, Friday, February 2009 followed by an Administrative and/or Preparatory work activities meeting from 1 p.m. The open meeting is open to the public pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space; the Administrative and/or Preparatory work activities meeting, however, is not open to the public and is exempt from open meeting requirements pursuant to 41 CFR 102–3.160.

Pursuant to 41 CFR 102–3.105(j), 102–3.140(c), section 10(a)(3) of the Federal Advisory Committee Act, as amended, and subject to the procedures outlined in this notice any member of the public or interested organization may submit a written statement to the Defense Task Force on Sexual Assault in the Military Services membership about the stated agency and/or to give input as to the mission and function of the task force. Though written statements may be submitted at any time for consideration or in response to a stated agenda to a planned meeting, statements must be received in a timely fashion for consideration at a specific meeting.

All written statements intended to be considered for the open meeting that is subject to this notice shall be submitted to the Designated Federal Officer for the Defense Task Force on Sexual Assault in the Military Services no later than 5 p.m. Eastern Standard Time (hereafter referred to as EST), Wednesday, February 4, 2009. This individual will review all timely submitted written statements and will provide those statements to the task force membership for consideration.

Persons desiring to make an oral presentation to the committee must notify the Designated Federal Officer no later than 5 p.m. EST, Wednesday, February 4, 2009. Oral presentations by members of the public will be permitted only on February 13, 2009, from 11 a.m. to 12 p.m. before the task force. Presentations will be limited to ten (10) minutes each. Number of oral presentations to be made will depend on the number of requests received from members of the public and the time allotted. Each person desiring to make an oral presentation must provide the Designated Federal Officer for the Defense Task Force on Sexual Assault in the Military Services with one (1) written copy of the presentation by 5 p.m. EST, Wednesday, February 4, 2009, and bring 15 written copies of any material that is intended for distribution at the meeting. Contact information for the Designated Federal Officer is provided in this notice or can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Task Force on Sexual Assault in the Military Services. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements and/or live testimony that are in response to the stated agenda for the planned meeting in question.

Dated: January 22, 2009.

Patrica Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–1905 Filed 1–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–585–000]

Commission Information Collection Activities (FERC–585); Comment Request; Extension

January 23, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due March 24, 2009.

ADDRESSES: An example of the FERC–585 contingency plan may be obtained from the Commission's Web site (at *http://www.ferc.gov/docs-filing/elibrary.asp*). Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09–585–000. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.*

Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* First time users will have to establish a user name and password (*http://www.ferc.gov/docs-filing/eregistration.asp*) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling.

Commenters filing electronically should not make a paper filing. Commenters that are not able to file electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription (at *http://www.ferc.gov/docs-filing/esubscription.asp*). In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's Web site using the ''eLibrary'' link and searching on Docket Number IC09–585. For user assistance, contact FERC Online Support (e-mail at *ferconlinesupport@ferc.gov,* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659).

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–585 ''Reporting of Electric Energy Shortages and Contingency Plans under PURPA'' (OMB No. 1902–0138) is used by the Commission to implement the statutory provisions of section 206 of the Public Utility Regulatory Policies Act of 1979 (PURPA) Public Law 95–617, 92 Stat. 3117. Section 206 of PURPA amended the Federal Power Act (FPA) by adding a new subsection (g) to section 202, under which the Commission by rule, was to require each public utility to (1) report to the Commission and appropriate state regulatory authorities of any anticipated shortages of electric energy or capacity which would affect the utility's capability to serve its wholesale customers; and (2) report to the Commission and any appropriate state regulatory authority contingency plan that would outline what circumstances might give rise to such occurrences.

In Order No. 575, the Commission modified the reporting requirements in 18 CFR 294.101(b) to provide that, if a public utility includes in its rates schedule, provisions that: (a) During electric energy and capacity shortages it will treat firm power wholesale customers without undue discrimination or preference; and (b) it will report any modifications to its contingency plan for accommodating shortages within 15 days to the appropriate state regulatory agency and to the affected wholesale customers, then the utility need not file with the Commission an additional statement of contingency plan for accommodating such shortages. This revision merely changed the reporting mechanism; the public utility's contingency plan would be located in its filed rate rather than in a separate document.

In Order No. 659, the Commission modified the reporting requirements in 18 CFR 294.101(e) to provide that the means by which public utilities must comply with the requirements to report shortages and anticipated shortages is to submit this information electronically using the Office of Electric Reliability's pager system at *emergency@ferc.gov* in lieu of submitting an original and two copies with the Secretary of the Commission.

The Commission uses the information to evaluate and formulate an appropriate option for action in the event an unanticipated shortage is reported and/or materializes. Without this information, the Commission and State agencies would be unable to: (1) Examine and approve or modify utility actions, (2) prepare a response to anticipated disruptions in electric energy, and (3) ensure equitable treatment of all public utility customers under the shortage situations. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 294.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated at:

FERC data collection (FERC–585)	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
Contingency Plan	1	1	73	73
Capacity Shortage	1	1	0.25	0.25

Estimated annual cost to respondents is $4,450.78 (73.25 hours/2,080 hours per year times $126,384 per year average per employee = $4,450.78).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1889 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–45–000, CP09–48–000]

Colorado Interstate Gas Company and Chipeta Processing LLC; Notice of Application

January 23, 2009.

Take notice that on January 13, 2009, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, CO 80944, filed an application in Docket No. CP09–45–000, pursuant to section 7(b) of the Natural Gas Act and section 157.5 of the Commission's regulations, requesting permission and approval to abandon, by sale and transfer to Chipeta Processing LLC (Chipeta), CIG's existing Natural Buttes Compressor Station and Processing Plant along with certain pipeline facilities and appurtenances located in Uintah County, Utah. Take further notice that on January 15, 2009, Chipeta, 1099 18th Street, Suite 1800, Denver, CO 80202, filed an application in Docket No. CP09–48–000, pursuant to Rule 207(a)(2) of the Commission's regulations, requesting a Declaratory Order disclaiming jurisdiction and declaring certain facilities (The facilities CIG proposes to abandon by sale in Docket No. CP09–45–000) and services to be exempt from Regulation under the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application, Docket No. CP09–45–000, should be directed to Richard Derryberry, Director, Regulatory Affairs, Colorado Interstate Gas Company, PO Box 1087 Colorado Springs, CO 80944, telephone: (719) 520–3782, Fax: (719) 667–7534, e-mail: *CIGregulatoryaffairs@elpaso.com.*

Any questions regarding this application, Docket No. CP09–48–000, should be directed to Alex T. Wyche, Andarko Petroleum Corporation, 1099 18th St., Suite 1800, Denver, CO 80202, telephone: (720) 929–6073, e-mail: *alex.wyche@andarko.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 13, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1894 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2496–194]

Eugene Water and Electric Board; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 23, 2009.

a. *Type of Application:* Amendment of License.

b. *Project Number:* 2496–194.

c. *Date Filed:* December 24, 2008.

d. *Applicant:* Eugene Water and Electric Board.

e. *Name of Project:* Leaburg-Walterville Hydroelectric Project.

f. *Location:* The project is located on the McKenzie River in Lane County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. W. Brian Connors, FERC License Coordinator, Eugene Water and Electric Board, 500 East 4th Avenue, P.O. Box 10148, Eugene, Oregon 97440; telephone: (541) 344–6311 ext. 3435.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments and or motions:* February 23, 2009.

k. *Description of Request:* Eugene Water and Electric Board proposes to construct a new boat-launch facility at Leaburg Lake near the Goodpasture Covered Bridge. The facility would consist of an entrance from the McKenzie Highway to an access road that would lead to a parking area and a 20-foot wide concrete boat ramp. The boat-launch facility would have parking for 10 vehicle-trailer combinations and 8 conventional vehicles, and a new vault toilet. The licensee consulted with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Oregon State Marine Board, Oregon Department of Fish and Wildlife, and the Oregon Parks and Recreation Department. The Oregon State Marine Board provided comments on the application.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2496) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–2496–194). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1890 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF90–196–002]

Formosa Plastic Corp, Louisiana; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

January 23, 2009.

Take notice that on December 11, 2008, Formosa Plastics Corp, Louisiana, located in Baton Rouge Louisiana on Gulf States Road filed with the Federal Energy Regulatory Commission an application for certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(b) of the Commission's regulations.

Formosa Plastics operates a topping-cycle cogeneration facility in which gas is used as the source of fuel to two General Electric flame Six Gas Turbines and to supplemental firing in the associated Heat Recovery Boilers. The power production capacity of the facility is 94,000 kw at 80 °F ambient conditions. Formosa's mailing address is P.O. Box 271, Baton Rouge, LA. 70821–0271.

Formosa Plastics is connected to the electrical grid through Entergy-Gulf States. Entergy—Gulf States furnishes electricity to Formosa Plastics' Baton Rouge site primarily for the purpose of providing ''standby maintenance'' and ''emergency'' power. Entergy-Gulf States provides this service through ''General Service'' and ''Standby/Maintenance'' utility contracts.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time February 6, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1892 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 420–069]

Ketchikan Public Utilities; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 23, 2009.

Take notice that the following application has been filed with the

Commission and is available for public inspection:

a. *Application Type:* Amendment of License (Modify Project Operation).

b. *Project No.:* 420–069.

c. *Date filed:* November 17, 2008.

d. *Applicant:* Ketchikan Public Utilities.

e. *Name of Project:* Ketchikan Lakes Hydroelectric Project.

f. *Location:* The project is located on Ketchikan Creek and Granite Basin Creek, partially within the City of Ketchikan, in Ketchikan Gateway Borough, Alaska. The Project is located on federal lands within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Ms. Jennifer Soderstrom, Ketchikan Public Utilities, 2930 Tongass Avenue, Ketchikan, AK 99901, (907) 228–4733.

i. *FERC Contact:* Tom Papsidero at 202–502–6002, or e-mail *thomas.papsidero@ferc.gov.*

j. *Deadline for filing comments and or motions:* February 24, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–420–069) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests Commission approval to modify the project operation to (1) Reduce the minimum emergency flow release to Ketchikan Creek required under article 405; (2) change the way ramping rates are measured, as currently required under article 407, to define ramping rage limits in terms of plant discharge; and (3) consult with fish and wildlife agency representatives regarding the need for an annual project review meeting, currently required under article 413.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210,.211,.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1891 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2157–167–Washington]

Snohomish County; Public Utility District No. 1; Notice of Designation of Commission Staff as Non-Decisional

January 22, 2009.

Commission staff member Bob Easton (Office of Energy Projects, 202–502–6045; *robert.easton@ferc.gov*) is designated as ''non-decisional'' staff and assigned to participate in settlement discussions and provide guidance on the Commission's policies and authorities for the Jackson Hydroelectric Project in the above-referenced proceeding.

As ''non-decisional'' staff, Mr. Easton will not participate in an advisory capacity in the Commission's review of any offer of settlement or settlement agreement, or deliberations concerning the disposition of the relicense application in the above-referenced proceeding.

Different Commission ''advisory staff'' will be assigned to review any offer of settlement or settlement agreement, and to process the relicense application, including providing advice to the Commission with respect to the agreement and the application. Non-decisional staff and advisory staff are prohibited from communicating with one another concerning the merits of the settlement and the relicense application.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1912 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG09–1–000; EG09–2–000; EG09–3–000; EG09–4–000; EG09–5–000; EG09–6–000; EG09–7–000; EG09–8–000]

Tanglewood Storage & Transportation LLC; Krayn Wind LLC; Otay Mesa Energy Center, LLC; Red Hills Wind Project, LLC; Barton Windpower II LLC; Barton Windpower LLC; Elm Creek Wind, LLC; Farmers City Wind, LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

January 22, 2009.

Take notice that during the month of December 2008, the status of the above-captioned entities as Exempt Wholesale Generators Companies became effective by operation of the Commission's regulations 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1908 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–30–000]

Mountain States Transmission Intertie, LLC; NorthWestern Corporation; Notice of Filing

January 22, 2009.

Take notice that on January 15, 2009, Mountain States Transmission Intertie, LLC (MSTI) and NorthWestern Corporation (NorthWestern) filed a Petition for Declaratory Order on Rate Treatments and Open Season for Transmission Export Project. MSTI and NorthWestern request the Commission to confirm that MSTI may charge negotiated rates for a proposed new high voltage transmission project to provide service from the NorthWestern system to southern Idaho, and that MSTI's proposal to give customers in NorthWestern's current MSTI service request queue a preference to the extent capacity is over-subscribed in the MSTI open season and to terminate the NorthWestern queue is not unduly discriminatory.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 17, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1910 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–29–000]

NorthWestern Corporation; Notice of Filing

January 22, 2009.

Take notice that on January 15, 2009, NorthWestern Corporation (NorthWestern) filed a Petition for Declaratory Order requesting that the Commission approve NorthWestern's open season process for its contemplated Collector Project and grant certain requested waivers to effectuate the open season.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 17, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1909 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–539–000]

Aspire Capital Management LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 22, 2009.

This is a supplemental notice in the above-referenced proceeding of Aspire Capital Management LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 11, 2009.

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

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

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

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1911 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR08–30–000, PR07–12–003, PR07–12–004]

Enterprise Texas Pipeline, LLC; Notice of Motion for Bifurcation of Issues and Deferral of Review of Rate Proposal

January 22, 2009.

On January 14, 2009, Enterprise Texas Pipeline, LLC (Enterprise Texas) filed a request to defer review of its September 30, 2008 Petition for Rate Approval. It also requests that the Commission move forward on a separate track to complete its review of and ruling on all of the matters related to the Enterprise Texas Statement of Operating Conditions (SOC) that have been raised by intervenors in the above-captioned dockets and that are the subject of certain data requests.

The request states that Enterprise Texas has experienced a delay in placing the Sherman Lateral fully into service for the performance of services pursuant to Natural Gas Policy Act section 311 and it does not anticipate charging the proposed incremental rate until some time in the future. Enterprise Texas commits that it will not charge its proposed incremental rate for any interim service on the Sherman Lateral, but rather will only charge a rate no greater than the currently effective rate for the Enterprise Texas system that was approved in Docket No. PR07–12.

Notice is hereby given that answers to the motion are due no later than January 29, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1907 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–46–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

January 22, 2009.

Take notice that on January 14, 2009, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in Docket No. CP09–46–000, a prior notice request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to increase the certificated Maximum Allowable Operating Pressure (MAOP) for Line K-M2 and a portion of Line K, originating and terminating in Erie County, New York, and to thereafter operate these lines up to and including the higher MAOP, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, National Fuel proposes to uprate the MAOP of Lines K and K–M2 from the current MAOP of 220 psig to the requested MAOP of 320 psig. National Fuel states that the uprating of the MAOP of the lines will improve system reliability and flexibility. National Fuel estimates the cost of the project to be $200,000.

Any questions regarding the application should be directed to David W. Reitz, Deputy, General Counsel, National Fuel Gas supply Corporation, 6363 Main Street, Williamsville, New York 14221, at (716) 857–7949.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1913 Filed 1–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08–591–000]

Equitrans, L.P.; Notice of Technical Conference

January 23, 2009.

Take notice that the Commission Staff will convene a technical conference in the above-referenced proceedings on Wednesday, January 28, 2009, at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

On August 29, 2008, Equitrans, L.P. (Equitrans) filed tariff sheets to establish a new Tennessee Capacity Surcharge Tracker to recover reservation charges incurred by Equitrans under a Gas Transportation Agreement with Tennessee Gas Pipeline Company (Tennessee) and establish rules and procedures for Equitrans's shippers to utilize the Tennessee capacity. On September 30, 2008, the Commission accepted and suspended Equitrans's proposed tariff sheets, to become effective October 1, 2008, subject to refund and conditions, and further review.[1] Following the Commission's September 30th Order, Commission Staff issued two data requests to which Equitrans responded. On January 6, 2009, after its second response, Equitrans filed a motion for a technical conference to clarify and resolve issues raised by Commission Staff in the data requests before Commission Staff makes a recommendation to the Commission. During the technical conference, Commission Staff and interested persons will have the opportunity to discuss all of the issues raised by Equitrans's filing.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Anna Fernandez at (202) 502–6682 or e-mail *Anna.Fernandez@ferc.gov.*

[1] *Equitrans,* L.P., 124 FERC ¶ 61,310 (2008) (September 30th Order).

Kimberly D. Bose,
Secretary.
[FR Doc. E9–1888 Filed 1–28–09; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2003–2; FRL–8769–3]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Thoroughbred Generating Company, LLC—Thoroughbred Generating Station; Central City (Muhlenberg County), KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an Order, dated January 8, 2009, denying a petition to object to a state operating permit issued by the Kentucky Division for Air Quality (KDAQ) to Thoroughbred Generating Company, LLC—Thoroughbred Generating Station (TGS) located near Central City, Muhlenberg County, Kentucky. This Order constitutes final action on the petition submitted by the Natural Resources Defense Council, Sierra Club, Valley Watch, the National Parks Conservation Association, the Ohio Valley Environmental Coalition, and Elizabeth and Hannah Crowe (Petitioners) on January 24, 2003. Pursuant to section 505(b)(2) of the Clean Air Act (the Act), any person may seek judicial review of the Order in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307(b) of the Act.

ADDRESSES: Copies of the final Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final Order is also available electronically at the following address: *http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/thoroughbred_decision2003.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, to object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Petitioners submitted a petition on January 24, 2003, requesting that EPA object to a state title V operating permit issued by KDAQ to TGS. However, on December 15, 2008, Thoroughbred Generating Company relinquished the permit at issue in the petition. Therefore, on January 8, 2009, the Administrator issued an Order denying the petition as moot since no permit about which EPA could object existed. The Order further explains EPA's rationale for denying the petition.

Dated: January 20, 2009.

J.I. Palmer, Jr.,
Regional Administrator, Region 4.
[FR Doc. E9–1918 Filed 1–28–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8769–4]

Science Advisory Board Staff Office; Notification of Upcoming Meeting of the Science Advisory Board Expert Elicitation Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting of the Science Advisory Board Expert Elicitation Advisory Panel to review EPA's draft *Expert Elicitation Task Force White Paper.*

DATES: The meeting dates are Wednesday, February 25, 2009 from 9 a.m. to 5:30 p.m. through Thursday, February 26, 2009 from 9 a.m. to 1 p.m. (Eastern Time).

ADDRESSES: The meeting will be held in the SAB Conference Center, located at 1025 F Street, NW., Room 3705, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO). Dr. Nugent may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail; (202) 343–9981; fax (202) 233–0643; or e-mail at *nugent.angela@epa.gov.* General information about the EPA SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Expert Elicitation Advisory Panel will hold a public meeting to review EPA's draft *Expert Elicitation Task Force White Paper.* The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA's Science Policy Council (SPC) formed the Expert Elicitation Task Force in April of 2005 to initiate a thorough discussion of Expert Elicitation, and to investigate how to conduct and use this method to support EPA regulatory and non-regulatory analyses and decision-making. The Task Force, with representation across EPA program offices and Regions, developed the *Expert Elicitation Task Force White Paper.* The White Paper discusses the potential utility of using expert elicitation to support EPA regulatory and non-regulatory analyses and decision-making, provides recommendations for expert elicitation ''good practices'' based on a review of the literature and actual experience within EPA and other federal agencies and describes steps for a broader application across EPA. EPA's Office of the Science Advisor has requested SAB review of EPA's draft *Expert Elicitation Task Force White Paper* to provide advice regarding the potential usefulness of expert elicitation, how to strengthen the scientific basis for its use, and the implications for possible implementation at EPA.

EPA's Science Advisory Board Staff Office formed the SAB Expert Elicitation Advisory Panel after announcing the advisory activity in the **Federal Register** on June 28, 2007 (72 FR 35463–35465) and requesting nominations of experts. Information on the panel and the advisory activities can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Expert%20Elicitation%20White%20Paper?OpenDocument. Availability of Meeting Materials:* EPA's draft *Expert Elicitation Task Force White Paper* will be posted on the EPA Office of Science Advisor Web site at *http://www.epa.gov/osa/spc/expertelicitation.* The EPA technical contact for the draft *Expert Elicitation Task Force White Paper* is Mr. Robert Hetes, EPA Office of Research and Development. Mr. Hetes may be contacted by telephone at (919) 541–1589, or via e-mail at *hetes.bob@epa.gov.* The agenda and other material for the upcoming public meeting will be posted on the SAB Web site at *http://www.epa.gov/sab.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB Panel to consider on the topics included in this advisory activity and/or group conducting the activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Nugent, DFO, in writing (preferably via e-mail) at the contact information noted above, by February 18, 2009 to be placed on a list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by February 18, 2009 so that the information may be made available to the SAB Panel members for their consideration. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Nugent at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: January 23, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–1919 Filed 1–28–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012044–001.

Title: MOL/CMA CGM Slot Charter Agreement.

Parties: CMA CGM, S.A. and Mitsui O.S.K. Lines, Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody, LLP; Gas Company Tower; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment adds the ports of Seattle and Tacoma to the geographic scope of the agreement.

Agreement No.: 012061.

Title: CMA CGM/Maersk Line Space Charter, Sailing and Cooperative Working Agreement Western Mediterranean-U.S. East Coast.

Parties: CMA CGM, S.A. and A.P. Moller-Maersk A/S.

Filing Party: Wayne R. Rohde, Esq.; Sher and Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between U.S. East Coast ports and ports in the Western Mediterranean.

Agreement No.: 201200.

Title: Houston Marine Terminal Operators/Freight Handlers Agreement.

Parties: Ceres Gulf, Inc.; Chaparral Stevedoring Company of Texas, Inc.; CT Stevedoring, Inc. dba Cooper/T. Smith Stevedoring Co.; Ports America Texas, Inc.; GP Terminals, LLC; Shippers Stevedoring Company; and SSA Gulf, Inc.

Filing Party: Deanna E. Rose, Esq.; Manelli Denison and Selter, PLLC; 2000

M Street, NW.; 7th Floor; Washington, DC 20036–3307.

Synopsis: The agreement authorizes the parties to meet, discuss, and voluntarily agree on matters of common interest at the Port of Houston (the Port), including recommended rates and charges to be published in the Port's tariffs. The parties request expedited review.

Dated: January 23, 2009.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9–1831 Filed 1–28–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 2009.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Max Bancorp, LLC, New York, New York, to become a bank holding company by acquiring at least 50 percent of the voting shares of Allegiance Community Bank, South Orange, New Jersey.

Board of Governors of the Federal Reserve System, January 26, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–1937 Filed 1–28–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0937–0198]

Agency Information Collection Request: 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

Agency Information Collection Request: 60-Day Public Comment Request.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Public Health Service Polices on Research Misconduct (42 CFR Part 93)—OMB No. 0937–0198–Extension—Office of Resource Integrity.

Abstract: This is a request to extend the currently approved collection. The purpose of the Annual Report on Possible Research Misconduct (Annual Report) form is to provide data on the amount of research misconduct activity occurring in institutions conducting PHS supported research. In addition this provides an annual assurance that the institution has established and will follow administrative policies and procedures for responding to allegations of research misconduct that comply with the Public Health Service (PHS) Policies on Research Misconduct (42 CFR Part 93). Research misconduct is defined as receipt of an allegation of research misconduct and/or the conduct of an inquiry and/or investigation into such allegations. These data enable the ORI to monitor institutional compliance with the PHS regulation. Lastly, the form will be used to respond to congressional requests for information to prevent misuse of Federal funds and to protect the public interest.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
PHS–6349	Awardee Institutions	5246	1	6/60	525

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–1847 Filed 1–28–09; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees at Vitro Manufacturing in Canonsburg, Pennsylvania, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On January 16, 2009, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All AWE employees who worked at Vitro Manufacturing in Canonsburg, Pennsylvania, from August 13, 1942 through December 31, 1957, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on February 15, 2009, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: January 26, 2009.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–1954 Filed 1–28–09; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees at the Mallinckrodt Chemical Co., Destrehan Street Plant in St. Louis, Missouri, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On January 16, 2009, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of DOE, its predecessor agencies, and their contractors and subcontractors who worked in the Uranium Division at the Mallinckrodt Chemical Co., Destrehan Street Plant in St. Louis, Missouri, from January 1, 1958 to December 31, 1958, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the SEC.

This designation will become effective on February 15, 2009, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: January 26, 2009.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–1955 Filed 1–28–09; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees at the Metallurgical Laboratory in Chicago, Illinois, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On January 16, 2009, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All AWE employees who worked at the Metallurgical Laboratory in Chicago, Illinois, from August 13, 1942 through June 30, 1946, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation will become effective on February 15, 2009, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: January 26, 2009.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–1958 Filed 1–28–09; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Nima Afshar, PhD., University of California, San Francisco: Based on a University of California, San Francisco (UCSF) report and Respondent's own admission, the U.S. Public Health Service (PHS) found that Dr. Nima Afshar, former postdoctoral fellow at UCSF engaged in research misconduct in research supported by National Cancer Institute (NCI), National Institutes of Health (NIH), grant T32 CA108462 and National Institute of General Medical Sciences (NIGMS), NIH, grant R01 GM59704.

PHS found that Respondent engaged in research misconduct in the performance of research on yeast to test whether disruption of the tight controls, to prevent re-replication, on the initiation of DNA replication could produce gene amplifications with a copy number greater than two (2).

Specifically, Respondent falsified files containing raw scanned microarray images from another researcher's experiments to demonstrate that in experiments that she claimed to have conducted, she successfully observed gene amplifications with a copy number greater than two (2); there were 36 such instances of falsifying data files.

Dr. Afshar has entered into a Voluntary Settlement Agreement in which she has voluntarily agreed, for a period of three (3) years, beginning on December 22, 2008:

(1) To exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) that any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses the Respondent in any capacity on PHS supported research, or that submits a report of PHS-funded research in which the Respondent is involved, must concurrently submit a plan for supervision of the Respondent's duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of the Respondent's research contribution. Respondent agrees to ensure that a copy of the supervisory plan also is submitted to ORI by the institution for ORI approval. Respondent agrees that she will not participate in any PHS-supported research until such a supervisory plan is submitted to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John E. Dahlberg,

Acting Director, Office of Research Integrity.

[FR Doc. E9–1819 Filed 1–28–09; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

M. Nguyen, M.D., University of California, Los Angeles: Based on a University of California, Los Angeles (UCLA) report and Respondent's own admission, the U.S. Public Health Service (PHS) found that Dr. M. Nguyen, former Associate Professor at UCLA, engaged in scientific misconduct in research supported by National Cancer Institute (NCI), National Institutes of Health (NIH), grant 1 R01 CA69433, National Center for Complementary and Alternative Medicine (NCCAM), NIH, grant 1 P50 AT00I51–01, and National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), NIH, grant T32 DK03688.

Specifically, PHS found that Respondent engaged in scientific misconduct by:

1. Dr. Nguyen's laboratory conducted a single experiment on the effect of Livistona extract on the growth of 10^6 mouse fibrosarcoma (FSA) cells injected into C3H mice. The drug was administered in the drinking water of the treated mice and tumor sizes were measured twice weekly with calipers. Dr. Nguyen falsified and fabricated the results of this experiment in Figure 3 of *Oncology Reports* 8:1355–1357, 2001:

A. The data reported for the control group were from an experiment in nude mice implanted with human breast tumor implants, rather than with mouse fibrosarcoma cell implants, as Dr. Nguyen reported in the paper. The control data for FSA implanted C3H mice could not be located in the laboratory records.

2. Dr. Nguyen's laboratory conducted a single experiment on the effect of Livistona extract on the growth of 10^8 MDA–MD–231 cells injected into nude mice. The drug was administered in the drinking water of the treated mice and tumor sizes measured twice weekly with calipers. Dr. Nguyen falsified and fabricated the results of this experiment in Figure 9 of NIH grant application P50 AT00151–01, dated May 19, 1999, by:

A. Falsely stating in the associated text that there were ten mice per group and that the experiments were repeated once, while in fact, there were only five mice per group with no repetition of this experiment

B. Omitting data on the control curve for two of the measurement times (at 2 and 3.5 weeks) and falsely reporting the times at which three other measurements were taken.

3. Dr. Nguyen's laboratory conducted a single experiment (1998–99) testing the anti-angiogenic effects of *Livistona chinensis* extract on human umbilical vein endothelial cells (HUVEC). HUVEC cells were counted from duplicate wells when exposed to extract and controls were counted from single wells:

A. Figure 8 of NIH grant application P50 AT00I51–01, dated 5/19/99, plots the data as a bar graph. However, the same data were reported in Figure 1 of *Oncology Reports* 8:1355–1357, 2001, by falsely expressing them as the rate of growth obtained by measuring the uptake of radioactive thymidine into cellular DNA and plotting the data as normalized to control values. UCLA concluded that Figure 1 was falsified by claiming the data were obtained by a state-of-the-art technique not actually employed by the Respondent to obtain the data for that figure (Admission). This falsification did not bear upon the findings of the paper.

4. Dr. Nguyen's laboratory tested whether the levels of bFGF (basic fibroblast growth factor) and VEGF (vascular endothelial growth factor) in nipple fluid aspirates were significantly elevated in breast cancer patients in comparison to values from normal lactating and non-lactating breasts. Dr. Nguyen falsified the number of subjects who were lactating in The Lancet 356:567–569, 2000, by claiming that bFGF data were obtained from four separate subjects while in fact the data were from both breasts of two subjects.

Dr. Nyugen has entered into a Voluntary Settlement Agreement with ORI. As part of that Agreement, Dr. Nyugen admits to UCLA's findings of fact but denies ORI's findings that the actions rise to the level of scientific misconduct. The settlement is not an admission of liability on the part of the Respondent. Dr. Nyugen voluntarily agreed, for a period of three (3) years, beginning on December 29, 2008:

(1) Not to serve in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That although Respondent is not currently engaged in PHS–supported research, any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses the Respondent in any capacity on PHS supported research, or that submits a report of PHS-funded research in which the Respondent is involved, must concurrently submit a plan for supervision of the Respondent(s duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of the Respondent(s research contribution. Respondent agreed to ensure that a copy of the supervisory plan also is submitted to ORI by the institution for ORI approval. Respondent agreed to not participate in any PHS-supported research until such a supervisory plan is submitted to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. E9–1933 Filed 1–28–09; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the eighteenth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 10 a.m. to approximately 5:30 p.m. on Thursday, March 12, 2009, and 8:30 a.m. to approximately 3 p.m. on Friday, March 13, 2009, at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

At this meeting, the Committee will begin to explore issues related to genetics and the future of the health care system with the first in a series of roundtables focusing on perspectives of stakeholders in the payer community. Other agenda items include a session on developments related to informed consent for genomic data sharing, discussion of the Committee's next steps to address concerns related to consumer-initiated genomic services, and updates on Department of Health and Human Services and agency priorities.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov*. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting, who is in need of special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://oba.od.nih.gov/SACGHS/sacghs_home.html*.

Dated: January 22, 2009.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. E9–1867 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Assessing Organizational Responses to AHRQ's Health Literacy Pharmacy Tools.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invitesthe public to comment on this proposed information collection.

DATES: Comments on this notice must be received by March 30, 2009.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.leflowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project: Assessing Organizational Responses to AHRQ's Health Literacy Pharmacy Tools

According to the 2003 National Assessment of Adult Literacy, only 12 percent of adults have proficient health literacy-the capacity to obtain, process, and understand basic health information and services needed to make appropriate health decisions. Limited health literacy often leads to medication errors. For example, one study found that a majority of adults with low health literacy did not understand instructions to ''take medication on an empty stomach.'' Overall, it is estimated that low health literacy costs the U.S. health care system $50 billion to $73 billion per year. Pharmacies can serve as an important source of medication information for people with limited health literacy, but relatively few pharmacies have implemented health literacy practices (Praska *et al.,* 2005).

Recognizing that pharmacies may need outside knowledge and assistance to improve their health literacy practices, AHRQ, through a previous task order, supported the creation of the following four health literacy tools for pharmacy settings, which have been validated in institutional pharmacy settings.

1. Is Our Pharmacy Meeting Patients' Needs? A Pharmacy Health Literacy Assessment Tool User's Guide (Jacobson *et al.,* 2007)

2. Strategies to Improve Communication between Staff and Patients: Training Program for Pharmacy Staff (Kripalini & Jacobson, 2007).

3. How to Create a Pill Card (Jacobson *et al.,* 2008).

4. Telephone Reminders: A Tool to Help Refill Medications on Time (Jacobson *et al.,* 2008)

AHRQ now proposes to distribute these tools to a more diverse set of pharmacies and to conduct in-depth case studies to enhance our understanding about the conditions that may facilitate or impede the adoption of the tools in these settings. AHRQ would use insights gained to develop materials (promotional implementation guides) that could assist interested pharmacies in putting the tools into practice and anticipating and overcoming obstacles to doing so.

The pharmacy health literacy tools will be disseminated through an AHRQ Web site, which will also provide technical assistance to pharmacies that wish to implement the tools. A description of the tools and site will be distributed to pharmacists through national pharmacy organizations' trade publications and a direct mailing to chain pharmacy headquarters. We anticipate that we would be able to reach as many as 60,000 individual pharmacists across the country through these channels.

This project is being conducted pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to: The quality, effectiveness, efficiency, appropriateness and value of health care services; quality measurement and improvement; and health care costs, productivity, organization, and market forces. 42 U.S.C. 299a(a)(1), (2), and (6).

Method of Collection

Case Studies

Through its contractor, AHRQ proposes to conduct 7 in-depth case studies to assess pharmacies' experiences with implementation of one or more of these four health literacy tools, using interviews, site visits, review of documents and a survey of pharmacy staff from case study pharmacies. In addition, AHRQ will conduct 2 more limited studies of pharmacies that were aware of the tools but chose not to implement them.

A 2-day site visit with be conducted with each of the 7 sites that implement at least one of the tools. Each site visit will include a walk-through of the pharmacy site to see the physical layout, an interview with the key informant or contact person, and individual interviews with up to eight additional pharmacy employees, including the pharmacy manager, staff pharmacists, pharmacy technicians, and pharmacy clerks.

Therefore, up to 63 interviews will be completed across the 7 sites that implement one or more of the tools. In addition, up to 12 pharmacy staff at each of the 7 implementation sites will complete the tool's Pharmacy Staff Survey contained in the Pharmacy Health Literacy Assessment Tool.

For each of the two pharmacies which do not implement the tools, interviews will be conducted with up to 2 informants per site. The content of this interview will be similar, but not identical, to the interviews with staff at the implementing sites.

Web Site Visitors' Survey

For pharmacists and other visitors to the AHRQ Web site, we will conduct a voluntary survey regarding health literacy in general, and feedback regarding AHRQ's health literacy tools. The Web site visitors' survey will be available on-line.

Estimated Annual Respondent Burden

Exhibit I shows the estimated annualized burden hours for the respondents' time to participate in this case study. The staff interview at the implementation sites will be completed with up to 9 pharmacy staff members from each of the 7 pharmacies that implement all or part of the health literacy tools. Staff interviews at the two nonimplementation sites will be completed with up to 2 individuals per pharmacy. The staff interviews are estimated to last 1 hour. The pharmacy staff survey will be completed by up to 12 staff from the 7 implementation pharmacies and is estimated to take approximately 20 minutes. Lastly, the Web site visitor's survey will be completed by about 150 respondents and is estimated to take up to 12 minutes to complete. The total burden hours for all data collections is estimated to be 125 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents' time to provide the requested data. The estimated total cost burden is about $3,791.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form Name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Staff interview-implementing sites	7	9	1	63
Staff interview-non-implementing sites	2	2	1	4
Pharmacy staff survey	7	12	20/60	28
Web site visitors survey	150	1	12/60	30
Total	166	na	na	125

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form Name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Staff interview-implementing sites	7	63	$30.33	$1,911
Staff interview-non-implementing sites	2	4	30.33	121
Pharmacy staff survey	7	28	30.33	849

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form Name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Web site visitors survey	150	30	30.33	910
Total	166	125	na	3,791

*The average hourly wage rate of $30.33 was calculated based on the following mean hourly wage rates: pharmacists—$47.58; pharmacy manager [medical & health services manager category]—$50.34; pharmacy tecimicians—$13.25; and pharmacy aides $10.15. The mean hourly wage rates for these occupations were obtained from the Bureau of Labor & Statistics on ''Occupational Employment and Wages, May 2007,'' found at: *http//www.bls.gov/OES/current/oes291051.htm*.

Estimated Annual Costs to the Government

The total cost of this contract to the government is $400,000. The project extends over three fiscal years. Exhibit 3 shows a breakdown of the total cost as well as the annualized cost.

EXHIBIT 3

Cost component	Total cost	Annualized cost
Project Development	$54,822	$18,274
Data Collection Activities	111,509	37,170
Data Processing and Analysis	129,089	43,030
Publication of Results	63,736	21,245
Project Management	40,845	13,615
Total	400,000	133,333

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the *following:* (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity on the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 16, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–1751 Filed 1–28–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Protection and Advocacy (P&A) Voting Access Application and Annual Report.

OMB No.: 0970–0326.

Description: This is a revision to include the application for the previously cleared Help America Vote Act (HAVA) Annual report.

An application is required by Federal statute (the Help America Vote Act (HAVA) of 2002, Pub. L. 107–252, Section 291, Payments for Protection and Advocacy Systems, 42 U.S.C. 15461). Each State Protection & Advocacy (P&A) System must prepare an application in accordance with the program announcement.

There is no application kit; the P&As application may be in the format of its choice. It must, however, be signed by the P&As Executive Director or the designated representative, and contain the assurances as outlined under Part I. C. Use of Funds. The P&As designated representatives may signify their agreement with the conditions/assurances by signing and returning the assurance document Attachment B, found in Part IV of this Instruction. The assurance document signed by the Executive Director of the P&A, or other designated person, should be submitted with the application to the Administration on Developmental Disabilities.

An annual report is required by Federal statute (the Help America Vote Act (HAVA) of 2002, Pub. L. 107–252, Section 291, Payments for Protection and Advocacy Systems, 42 U.S.C. 15461). Each State Protection & Advocacy (P&A) System must prepare and submit an annual report at the end of every fiscal year. The report addresses the activities conducted with the funds provided during the year. The information from the annual report will be aggregated into an annual profile of how HAVA funds have been spent. The report will also provide an overview of the P&A goals and accomplishments and permit the Administration on Developmental Disabilities to track progress to monitor grant activities.

Respondents: Protection & Advocacy Systems—All States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, American Samoa, and Guam.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Protection and Advocacy (P&A) Voting Access Application	55	1	20	1,100
Protection and Advocacy (P&A) Voting Access Annual Report	55	1	16	880

Estimated Total Annual Burden Hours: 1,980.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register** . Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: January 26, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–1925 Filed 1–28–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 5, 2009, from 8:30 a.m. to 4:00 p.m.

Location: Hilton Washington DC/ Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6793, fax: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512532. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss biologics license application (BLA) 125293, pegloticase, Savient Pharmaceuticals, Inc., as a therapy for patients with treatment failure gout.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 19, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or February 10, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 11, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C.app. 2).

Dated: January 21, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–1820 Filed 1–28–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Allergenic Products Advisory Committee;Blood Products Advisory Committee; Cellular, Tissue, and Gene Therapies Advisory Committee; Transmissible Spongiform Encephalopathies Advisory Committee; and the Vaccines and Related Biological Products Advisory Committee. Nominations will be accepted for current vacancies and those that will or may occur through September 30, 2009.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this document.

ADDRESSES: All nominations for membership should be sent electronically to *CV@OC.FDA.GOV*, or by mail to Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, rm. 15A–12, Rockville, MD 20857. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site at*http://www.fda.gov/oc/advisory/default.htm*.

FOR FURTHER INFORMATION CONTACT: Linda Amendt, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration,1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–1370, e-mail:*Linda.Amendt@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Vacancies

FDA is requesting nominations of voting members with appropriate expertise for vacancies listed as follows:

TABLE 1.

Committee and Expertise Needed	Current & Upcoming Vacancies	Approximate Date Needed
Allergenics Products Advisory Committee—allergy, immunology, pediatrics, internal medicine, biochemistry, statistics, and related specialties	3 2	Immediately August 31, 2009
Blood Products Advisory Committee—clinical and administrative medicine, hematology, immunology, blood banking, tissue banking, surgery, anesthesia, critical care, internal medicine, infectious diseases, biochemistry, engineering, biological and physical sciences, biotechnology, computer technology, statistics, epidemiology, sociology/ethics, clinical trial design, and other related professions	2 4	Immediately September 30, 2009
Cellular, Tissue, and Gene Therapies Advisory Committee—cellular therapies, tissue transplantation, gene transfer therapies and xenotransplantation including biostatistics, bioethics, hematology/oncology, human tissues and transplantation, reproductive medicine, general medicine and various medical specialties including surgery and oncology, immunology, virology, molecular biology, cell biology, developmental biology, tumor biology, biochemistry, rDNA technology, nuclear medicine, gene therapy, infectious diseases, and cellular kinetics	4 3	Immediately March 31, 2009
Transmissible Spongiform Encephalopathies Advisory Committee—clinical and administrative medicine, hematology, virology, neurovirology, neurology,infectious diseases, immunology, transfusion medicine, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, sociology/ethics, and other related professions	1 4	Immediately January 31, 2009
Vaccines and Related Biological Products Advisory Committee— immunology, molecular biology, rDNA, virology, bacteriology, epidemiology or biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, and biochemistry	4 1	Immediately January 31, 2009

II. Functions

A. Allergenic Products Advisory Committee

The committee reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases.

B. Blood Products Advisory Committee

The committee reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood, products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, of treatment of human diseases.

C. Cellular, Tissue, and Gene Therapies Advisory Committee

The committee reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies, and xenotransplantation products which are intended for transplantation, implantation, infusion, and transfer in the prevention and treatment of a broad spectrum of human diseases and in the reconstruction, repair or replacement of tissues for various conditions.

D. Transmissible Spongiform Encephalopathies Advisory Committee

The committee reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

E. Vaccines and Related Biological Products Advisory Committee

The committee reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases.

III. Qualifications

Persons nominated for membership on the committees shall have adequately diversified experience appropriate to the work of the committee in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The particular need for vacancies on each committee for the calendar years 2008 and 2009 is shown in table 1 of this document. The term of office is up to 4 years depending on the appointment date. Committees meet one to five times a year. Most meetings are for 2 days.

IV. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination. Potential candidates will be required to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: January 21, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–1821 Filed 1–28–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Loan Repayment Program for Repayment of Health Professions Educational Loans

Announcement Type: Initial.

CFDA Number: 93.164.

Key Dates: January 16, 2009 first award cycle deadline date, September 30, 2009 entry on duty deadline date.

I. Funding Opportunity Description

The Indian Health Service (IHS) estimated budget request for Fiscal Year (FY) 2009 includes $17,488,854 for the IHS Loan Repayment Program (LRP) for health professional educational loans (undergraduate and graduate) in return for full-time clinical service in Indian health programs.

This program announcement is subject to the appropriation of funds. This notice is being published early to coincide with the recruitment activity of the IHS, which competes with other Government and private health management organizations to employ qualified health professionals.

This program is authorized by Section 108 of the Indian Health Care Improvement Act (IHCIA) as amended, 25 U.S.C. 1601 *et seq.* The IHS invites potential applicants to request an application for participation in the LRP.

II. Award Information

The estimated funds available is approximately $17,488,854 to support approximately 391 competing awards averaging $44,740 per award for a two year contract. One year contract continuations will receive priority consideration in any award cycle. Applicants selected for participation in the FY 2009 program cycle will be expected to begin their service period no later than September 30, 2009.

III. Eligibility Information

1. Eligible Applicants

Pursuant to Section 108(b), to be eligible to participate in the LRP, an individual must:

(1) (A) Be enrolled—

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) In an approved graduate training program in a health profession; or

(B) Have a degree in a health profession and a license to practice in a state; and

(2) (A) Be eligible for, or hold an appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service (PHS); or

(B) Be eligible for selection for service in the Regular or Reserve Corps of the PHS; or

(C) Meet the professional standards for civil service employment in the IHS; or

(D) Be employed in an Indian health program without service obligation; and

(E) Submit to the Secretary an application for a contract to the LRP. The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant. Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. All Indian health program sites are annually prioritized within the Agency by discipline, based on need or vacancy.

Any individual who owes an obligation for health professional service to the Federal Government, a State, or other entity is not eligible for the LRP unless the obligation will be completely satisfied before they begin service under this program.

Section 108 of the IHCIA, as amended by Public Laws 100–713 and 102–573, authorizes the IHS LRP and provides in pertinent part as follows:

"(a)(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the "Loan Repayment Program") in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs."

Section 4(n) of the IHCIA, as amended by the Indian Health Care Improvement Technical Corrections Act of 1996, Public Law 104–313, provides that:

"Health Profession" means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, and allied health profession, or any other health profession.

For the purposes of this program, the term ''Indian health program'' is defined in Section 108(a)(2)(A), as follows:

(A) The term ''Indian health program'' means any health program or facility funded, in whole or in part, by the Service for the benefit of Indians and administered—

(i) Directly by the Service;

(ii) By any Indian Tribe or Tribal or Indian organization pursuant to a contract under—

(I) The Indian Self-Determination Act, or

(II) Section 23 of the Act of April 30, 1908, (25 U.S.C. 47), popularly known as the Buy Indian Act; or

(iii) By an urban Indian organization pursuant to Title V of this act.''

Section 108 of the IHCIA, as amended by Public Laws 100–713 and 102573, authorizes the IHS to determine specific health professions for which IHS LRP contracts will be awarded. The list of priority health professions that follows is based upon the needs of the IHS as well as upon the needs of American Indians and Alaska Natives.

(a) Medicine: Allopathic and Osteopathic.

(b) Nurse: Associate, B.S., and M.S. Degree.

(c) Clinical Psychology: PhD only.

(d) Social Work: Masters level only.

(e) Chemical Dependency Counseling: Baccalaureate and Masters level.

(f) Dentistry.

(g) Dental Hygiene.

(h) Pharmacy: B.S., Pharm. D.

(i) Optometry.

(j) Physician Assistant.

(k) Advanced Practice Nurses: Nurse Practitioner, Certified Nurse Midwife, Registered Nurse Anesthetist (Priority consideration will be given to Registered Nurse Anesthetists.).

(l) Podiatry: D.P.M.

(m) Physical Rehabilitation Services: Physical Therapy, Occupational Therapy, Speech-Language Pathology, and Audiology: M.S. and D.P.T.

(n) Diagnostic Radiology Technology: Certificate, Associate, and B.S.

(o) Medical Technology: Associate, and B.S.

(p) Public Health Nutritionist/ Registered Dietitian.

(q) Engineering (Environmental): B.S. (Engineers must provide environmental engineering services to be eligible.).

(r) Environmental Health (Sanitarian): B.S.

(s) Health Records: R.H.J.T. and R.H.T.A.

(t) Respiratory Therapy.

(u) Ultrasonography.

2. Cost Sharing or Matching

Not applicable.

3. Other Requirements

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for FY 2009. These priorities will remain in effect until superseded.

IV. Application and Submission Information

1. Address to Request Application Package

Application materials may be obtained by calling or writing to the address below. In addition, completed applications should be returned to: IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, PH: 301/443–3396 [between 8 am. and 5 p.m. (EST) Monday through Friday, except Federal holidays].

2. Content and Form of Application Submission

Applications must be submitted on the form entitled ''Application for the Indian Health Service Loan Repayment Program,'' identified with the Office of Management and Budget approval number of OMB #0917–0014.

3. Submission Dates and Times

Completed applications may be submitted to the IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852. Applications for the FY2009 LRP will be accepted and evaluated monthly beginning January 16, 2009, and will continue to be accepted each month thereafter until all funds are exhausted for FY 2009. Subsequent monthly deadline dates are scheduled for Friday of the second full week of each month.

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service.

Private metered postmarks are not acceptable as proof of timely mailing.).

Applications received after the monthly closing date will be held for consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 2009, will be notified in writing.

4. Intergovernmental Review

This program is not subject to review under Executive Order 12372.

5. Funding Restrictions

Not applicable.

6. Other Submission Requirements

All applicants must sign and submit to the Secretary, a written contract agreeing to accept repayment of educational loans and to serve for the applicable period of obligated service in a priority site as determined by the Secretary, and submit a signed affidavit attesting to the fact that they have been informed of the relative merits of the U.S. PHS Commissioned Corps and the Civil Service as employment options.

V. Application Review Information

1. Criteria

The IHS has identified the positions in each Indian health program for which there is a need or vacancy and ranked those positions in order of priority by developing discipline-specific prioritized lists of sites. Ranking criteria for these sites may include the following:

(a) Historically critical shortages caused by frequent staff turnover;

(b) Current unmatched vacancies in a health profession discipline;

(c) Projected vacancies in a health profession discipline;

(d) Ensuring that the staffing needs of Indian health programs administered by an Indian Tribe or Tribal health organization receive consideration on an equal basis with programs that are administered directly by the Service; and, (e) Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached LRP contracts entered into under this section.

Consistent with this priority ranking, in determining applications to be approved and contracts to accept, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian Tribes or Tribal or Indian organizations.

2. Review and Selection Process

Loan repayment awards will be made only to those individuals serving at facilities which have a site score of 70 or above during the first and second quarters and the first month of the third quarter of FY 2009, if funding is available.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria being equal, will be selected.

(a) An applicant's length of current employment in the IHS, Tribal, or urban program.

(b) Availability for service earlier than other applicants (first come, first served).

(c) Date the individual's application was received.

3. Anticipated Announcement and Award Dates

Not applicable.

VI. Award Administration Information

1. Award Notices

Notice of awards will be mailed on the last working day of each month. Once the applicant is approved for participation in the LRP, the applicant will receive confirmation of his/her loan repayment award and the duty site at which he/she will serve his/her loan repayment obligation.

2. Administrative and National Policy Requirements

Applicants may sign contractual agreements with the Secretary for two years. The IHS may repay all, or a portion of the applicant's health profession educational loans (undergraduate and graduate) for tuition expenses and reasonable educational and living expenses in amounts up to $20,000 per year for each year of contracted service. Payments will be made annually to the participant for the purpose of repaying his/her outstanding health profession educational loans. Payment of health profession education loans will be made to the participant within 120 days, from the date the contract becomes effective. The effective date of the contract is calculated from the date it is signed by the Secretary or his/her delegate, or the IHS, Tribal, urban, or ''Buy-Indian'' health center entry-on duty date, whichever is more recent.

In addition to the loan payment, participants are provided tax assistance payments in an amount not less than 20 percent and not more than 39 percent of the participant's total amount of loan repayments made for the taxable year involved. The loan repayments and the tax assistance payments are taxable income and will be reported to the Internal Revenue Service (IRS). The tax assistance payment will be paid to the IRS directly on the participant's behalf. LRP award recipients should be aware that the IRS may place them in a higher tax bracket than they would otherwise have been prior to their award.

3. Contract Extensions

Any individual who enters this program and satisfactorily completes his or her obligated period of service may apply to extend his/her contract on a year-by-year basis, as determined by the IHS. Participants extending their contracts may receive up to the maximum amount of $20,000 per year plus an additional 20 percent for Federal withholding.

VII. Agency Contacts

Please address inquiries to Ms. Jacqueline K. Santiago, Chief, IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, PH: 301/443–3396 [between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays].

VIII. Other Information

IHS Area Offices and Service Units that are financially able are authorized to provide additional funding to make awards to applicants in the LRP, but not to exceed $35,000 a year plus tax assistance. All additional funding must be made in accordance with the priority system outlined below. Health professions given priority for selection above the $20,000 threshold are those identified as meeting the criteria in 25 U.S.C. 1616a(g)(2)(A) which provides that the Secretary shall consider the extent to which each such determination

(i) Affects the ability of the Secretary to maximize the number of contracts that can be provided under the LRP from the amounts appropriated for such contracts;

(ii) Provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

(iii) Provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the LRP.

Contracts may be awarded to those who are available for service no later than September 30, 2009, and must be in compliance with any limits in the appropriation and Section 108 of the IHCIA not to exceed the amount authorized in the IHS appropriation (up to $32,000,000 for FY 2009). In order to ensure compliance with the statutes, Area Offices or Service Units providing additional funding under this section are responsible for notifying the LRP of such payments before funding is offered to the LRP participant.

Should an IHS Area Office contribute to the LRP, those funds will be used for only those sites located in that Area. Those sites will retain their relative ranking from the national site-ranking list. For example, the Albuquerque Area Office identifies supplemental monies for dentists. Only the dental positions within the Albuquerque Area will be funded with the supplemental monies consistent with the national ranking and site index within that Area.

Should an IHS Service Unit contribute to the LRP, those funds will be used for only those sites located in that Service Unit. Those sites will retain their relative ranking from the national site-ranking list. For example, Chinle Service Unit 15 identifies supplemental monies for pharmacists. The Chinle Service Unit consists of two facilities, namely the Chinle Comprehensive Health Care Facility and the Tsaile PHS Indian Health Center. The national ranking will be used for the Chinle Comprehensive Health Care Facility (Score = 44) and the Tsaile PHS Indian Health Center (Score = 46). With a score of 46, the Tsaile PHS Indian Health Center would receive priority over the Chinle Comprehensive Health Care Facility.

Dated: January 21, 2009.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E9–1793 Filed 1–28–09; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: February 17–18, 2009.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel at the Chevy Chase Pavilion, Chevy Chase Pavilion, 4300 Military Rd, NW., Washington, DC 20015.

Contact Person: Helen Lin, PhD, Scientific Review Administrator, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1959 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Oligosaccharides Autimicrobial and Prebiotic—RFA.

Date: February 26, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1967 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board Ad Hoc Subcommittee on Communications, February 2, 2009, 6:30 p.m. to 8 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20814 and the meeting of the National Cancer Advisory Board, February 3–4, 2009, 8 a.m. to 12 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892, which was published in the **Federal Register** on January 21, 2009 74 FR 3622.

This notice is amended to cancel the meeting of the National Cancer Advisory Board Ad Hoc Subcommittee on Communications and to change the end time of the National Cancer Advisory Board closed session on February 3 to 5:15 p.m. The closed session will be held from 4 p.m. to 5:15 p.m. Also, to change the start time of the open session of the National Cancer Advisory Board meeting on February 4 to 8:30 a.m.

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1863 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Methods Manufacturing Cancer Therapeutics.

Date: February 26, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Conference Room 406, Rockville, MD 20852 Telephone Conference Call).

Contact Person: Joyce C. Pegues, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovations in Cancer Sample Preparation.

Date: March 11–12, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Blvd., Room 8053, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Sherwood Githens, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8053, Bethesda, MD 20892, 301/435–1822, *githenss@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Anticancer Agents.

Date: March 12–13, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activites, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7142, Bethesda, MD 20892, 301–594–9582, *vollbert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Novel Antibody Epitope Mapping Technologies.

Date: March 17, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Wlodek Lopaczynski, MD, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8131, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Application of Emerging Technologies for Cancer Research.

Date: March 19–20, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Viatcheslav A. Soldatenkov, MD, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8050A, Bethesda, MD 20892–8329, 301–451–4758, soldatenkovv@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; Antibody Array for Cancer Detection.

Date: March 24, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892–7405, 301–496–7575, *palekarl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1869 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Review Committee.

Date: March 5, 2009.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NHGRI Twinbrook Library, 5635 Fishers Lane Room 4076, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1853 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Translational Research Center in Behavioral Science.

Date: March 5, 2009.

Time: 1 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Allan F. Mirsky, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Rm. 6157, MSC 9609, Bethesda, MD 20892–9609, 301–496–2551, *afmirsky@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Eating Disorders.

Date: March 9, 2009.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1852 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel;

Date: March 19, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Victor Henriquez, PhD, Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–594–3169.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1854 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: February 19–20, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, DC, 1515 Rhode Island Ave., NW., State Room, Washington, DC 20005.

Contact Person: Katrin Eichelberg, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–0818, *keichelberg@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1855 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; CDRC Conflicts.

Date: February 24, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/ NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Translating Basic Research into Clinical Tools for Human Health.

Date: February 25, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christopher Moore, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd., Rm 400C, Bethesda, MD 20892–7180, 301–402–3587, *moorechristopher@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; R03 Hearing and Balance Small Grants Review.

Date: March 19, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, Bethesda, MD 20814.

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1865 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Uterine Leiomyoma Research Center Program.

Date: February 24, 2009.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01C, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human

Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1948 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Research Education Grants.

Date: March 20, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Allan F. Mirsky, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Rm. 6157, MSC 9609, Bethesda, MD 20892–9609, 301–496–2551, *afmirsky@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1962 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Kidney Disease Ancillary Studies.

Date: March 5, 2009.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; GI Program Projects.

Date: March 17, 2009.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1964 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Biobehavioral and Behavioral Sciences Subcommittee.

Date: February 24–25, 2009.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Washington DC, 1250, 22nd Street, NW., Washington, DC 20037.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1966 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the eighteenth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 10 a.m. to approximately 5:30 p.m. on Thursday, March 12, 2009, and 8:30 a.m. to approximately 3 p.m. on Friday, March 13, 2009, at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

At this meeting, the Committee will begin to explore issues related to genetics and the future of the health care system with the first in a series of roundtables focusing on perspectives of stakeholders in the payer community. Other agenda items include a session on developments related to informed consent for genomic data sharing, discussion of the Committee's next steps to address concerns related to consumer-initiated genomic services, and updates on Department of Health and Human Services and agency priorities.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov*. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting, who is in need of special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://oba.od.nih.gov/SACGHS/sacghs_home.htm* l.

Dated: January 22, 2009.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. E9–1868 Filed 1–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3300-EM;Docket ID FEMA–2008–0018]

District of Columbia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the District of Columbia (FEMA–3300–EM), dated January 13, 2009, and related determinations.

DATES: *Effective Date:* January 13, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 13, 2009, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the District of Columbia resulting from the 56th Presidential Inauguration during the period of January 17–21, 2009, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (the Stafford Act). Therefore, I declare that such an emergency exists in the District of Columbia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide direct Federal assistance at 100 percent Federal funding for the period of January 17–21, 2009; and reimbursement of emergency protective measures (Category B), under the Public Assistance program, at 100 percent Federal funding for work performed on January 20, 2009. FEMA will reimburse for eligible emergency protective measures performed on January 20, 2009, only if the District has expended on the Presidential Inauguration during the period of January 17–21, 2009, the $15 million appropriated to it for ''Emergency Planning and Security Costs'' by the Continuing Appropriations Resolution 2009, P.L. 110–329. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the District of Columbia have been designated as adversely affected by this declared emergency:

The District of Columbia for direct Federal assistance at 100 percent Federal funding for the period of January 17–21, 2009; and reimbursement of emergency protective measures (Category B), under the Public Assistance program, at 100 percent Federal funding for work performed on January 20, 2009. FEMA will reimburse for eligible emergency protective measures performed on January 20, 2009, only if the District has expended on the Presidential Inauguration during the period of January 17–21, 2009, the $15 million appropriated to it for ''Emergency Planning and Security Costs'' by the Continuing Appropriations Resolution 2009, Public Law 110–329.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–1878 Filed 1–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3297–EM; Docket ID FEMA–2008–0018]

New Hampshire; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New Hampshire (FEMA–3297–EM), dated December 13, 2008, and related determinations.

DATES: *Effective Date:* December 23, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective December 23, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–1884 Filed 1–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3299–EM; Docket ID FEMA–2008–0018]

New York; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York (FEMA–3299–EM), dated December 18, 2008, and related determinations.

DATES: *Effective Date:* January 16, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of December 18, 2008.

Albany, Columbia, Delaware, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–1880 Filed 1–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1814–DR; Docket ID FEMA–2008–0018]

Hawaii; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–1814–DR), dated January 5, 2009, and related determinations.

DATES: *Effective Date:* January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 5, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Hawaii resulting from severe storms and flooding during the period of December 10–16, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Hawaii.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kenneth R. Tingman, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Hawaii have been designated as adversely affected by this major disaster:

City and County of Honolulu for Individual Assistance and Public Assistance.

Kauai County for Public Assistance.

All counties within the State of Hawaii are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–1874 Filed 1–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1815–DR; Docket ID FEMA–2008–0018]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1815–DR), dated January 9, 2009, and related determinations.

DATES: *Effective Date:* January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 9, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from a severe winter storm and flooding during the period of December 11–29, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maine have been designated as adversely affected by this major disaster:

Androscoggin, Cumberland, Knox, Lincoln, Sagadahoc, Waldo, and York Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–1879 Filed 1–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1813–DR; Docket ID FEMA–2008–0018]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–1813–DR), dated January 5, 2009, and related determinations.

DATES: *Effective Date:* January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 5, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts resulting from a severe winter storm and flooding beginning on December 11, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this major disaster:

Berkshire, Franklin, Hampden, Hampshire, and Worcester Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the Commonwealth of Massachusetts are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–1875 Filed 1–28–09; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1812–DR; Docket ID FEMA–2008–0018]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1812–DR), dated January 2, 2009, and related determinations.

DATES: *Effective Date:* January 2, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 2, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from a severe winter storm beginning on December 11, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–1877 Filed 1–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1816–DR; Docket ID FEMA–2008–0018]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1816–DR), dated January 14, 2009, and related determinations.

DATES: *Effective Date:* January 14, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 14, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Vermont resulting from a severe winter storm during the period of December 11–18, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Vermont have been designated as adversely affected by this major disaster:

Bennington and Windham Counties for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–1881 Filed 1–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1813–DR; Docket ID FEMA–2008–0018]

Massachusetts; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Massachusetts (FEMA–1813–DR), dated January 5, 2009, and related determinations.

DATES: *Effective Date:* January 16, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Massachusetts is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 5, 2009.

Essex and Middlesex Counties for Public Assistance, including direct Federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–1876 Filed 1–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1812–DR; Docket ID FEMA–2008–0018]

New Hampshire; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–1812–DR), dated January 2, 2009, and related determinations.

DATES: *Effective Date:* December 23, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 23, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–1882 Filed 1–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5293–N–01]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2009–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2009–1). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder's Information Package (BIP) was made available to qualified bidders on January 9, 2009. Bids for the loans must be submitted on the bid date, which is currently scheduled for February 4, 2009. HUD anticipates that awards will be made on or before February 5, 2009. Closings are expected to take place between February 11, 2009 and February 18, 2009.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm.* Please mail and fax executed documents to KDX Ventures: KDX Ventures, c/o The Debt Exchange, 133 Federal Street, 10th Floor, Boston, MA 02111, Attention: MHLS 2009–1 Sale Coordinator, Fax: 1–617–531–3499.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Individuals with hearing-or speech impairments may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2009–1 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised primarily of non-performing mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into several mortgage loan pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans or may bid on individual loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan. Interested Mortgagors should review the Qualification Statement to determine whether they may also be eligible to qualify to submit bids on one or more pools of Mortgage Loans or on individual loans in MHLS 2009–1.

The Bidding Process

The BIP will describe in detail the procedure for bidding in MHLS 2009–1. The BIP will also include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement).

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. In the event the bidder's aggregate bid is less than $100,000.00, the minimum deposit shall be not less than fifty percent (50%) of the bidder's aggregate bid. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur between February 11, 2009 and February 18, 2009.

These are the essential terms of sale. The Loan Sale Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP will describe the due diligence process for reviewing loan files in MHLS 2009–1. Qualified bidders will be able to access loan information remotely via a high-speed Internet connection. Further information on performing due diligence review of the Mortgage Loans will be provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2009–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans pursuant to Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, 12 U.S.C. 1715z–11a(a).

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2009–1:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, part 24, and Title 2 of the Code of Federal Regulations, part 2424;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2009–1;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2009–1;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2009–1;

(7) Any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD on or before January 27, 2009, audited financial statements for fiscal years 2000 through 2007 for a project securing a Mortgage Loan;

(8) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before January 27, 2009;

(9) Any entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to January 1, 2009, is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, but may bid on loan pools that do not contain Mortgage Loans that they have serviced or held at any time during the 2-year period prior to January 1, 2009; and

(10) Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence (paragraph 9); (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2009–1.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2009–1, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to MHLS 2009–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated there under.

Scope of Notice

This notice applies to MHLS 2009–1 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: January 23, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing.

[FR Doc. E9–1927 Filed 1–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L10200000–MJ0000–LLORL00100; HAG 09–0062]

Southeast Oregon Resource Advisory Council: Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast Oregon Resource Advisory Council: Meeting.

Pursuant to the Federal Advisory Committee Act, the Department of the Interior Bureau of Land Management (BLM) announces the following advisory committee meeting:

Name: Southeast Oregon Resource Advisory Council (SEORAC).

Time and Date: 1 p.m. February 26, 2009; 8 a.m. February 27, 2009.

Place: Best Western Rory and Ryan Inns, 534 Highway 20 N, Hines, Oregon 97738.

Status: Open to the public.

SUMMARY: The SEORAC will be briefed on BLM's wild horse and burro program, BLM's sagebrush habitat treatments and the current status of the Oregon Explorer grant. Council members will also provide orientation to new members, conduct chair elections, establish their 2009 annual work plan and meeting schedule, receive organizational updates from designated federal officials, give interest area updates, implement a subgroup establishment process, identify new subgroup members, present active subgroup reports and develop agenda items for the next meeting. Any other matters that may reasonably come before the SEORAC may also be addressed.

The public is welcome to attend all portions of the meeting and may contribute during the public comment period at 11 a.m. on February 27, 2009. Those who verbally address the SEORAC during the public comment period are asked to provide a written statement of their comments or presentation. Unless otherwise approved by the SEORAC chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of five minutes.

FOR FURTHER INFORMATION CONTACT: Program information, meeting records and a roster of council members may be obtained from Scott Stoffel, Public Affairs Specialist, 1301 South G Street, Lakeview, OR 97630, (541) 947–6237. The meeting agenda will be posted at *http://www.blm.gov/or/rac/seorrac-minutes.php* when available.

Should you require reasonable accommodation, please contact the Lakeview District BLM at (541) 947–2177 as soon as possible.

Dated: January 20, 2009.

Carol A. Benkosky,

District Manager.

[FR Doc. E9–1896 Filed 1–28–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability for the Draft White-Tailed Deer Management Plan/Environmental Impact Statement, Indiana Dunes National Lakeshore, IN

AGENCY: National Park Service.

ACTION: Notice of Availability for the Draft White-tailed Deer Management Plan/Environmental Impact Statement, Indiana Dunes National Lakeshore, Indiana.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), the National Park Service (NPS) announces the availability of a draft White-tailed Deer Management Plan and Environmental Impact Statement (EIS) for Indiana Dunes National Lakeshore, Indiana (Lakeshore).

DATES: The draft EIS will remain available for public review for 60 days following the publishing of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency. A public meeting will be held during the 60-day review period, but the specific date and location will be announced in local and regional media sources of record and on the Lakeshore Web site.

You may submit your comments by any one of several methods. You may comment via the Internet through the NPS Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov/indu*); simply click on the link to the White-tailed Deer Management Plan. You may mail comments to Superintendent Constantine Dillon, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304. You may send comments by facsimile to 219–395–1550. Finally, you may hand-deliver comments to the Lakeshore headquarters at the address above.

ADDRESSES: Copies of the draft EIS are available from the Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304.

SUPPLEMENTARY INFORMATION: This EIS and plan describes four alternatives for the management of deer at the Lakeshore. Action is needed at this time to ensure that the local deer population does not become a dominant force that negatively influences ecosystem components within the Lakeshore, such as sensitive vegetation or other wildlife. Impacts to these Lakeshore resources would compromise the Lakeshore's purpose to preserve the exceptional biodiversity found within its boundaries. The Lakeshore staff currently implements resource management actions to protect other resources but no specific deer management plan exists.

Under Alternative A (no action), current deer management actions (including limited fencing, limited use of repellents, and inventorying and monitoring efforts) would continue; no new deer management actions would be taken. Alternative B would include all actions described under alternative A, but would also incorporate non-lethal actions to possibly reduce deer numbers in the Lakeshore. The additional actions would include the construction of additional small- and new large-scale exclosures, more extensive use of repellents in areas where fenced exclosures would not be appropriate or feasible, and phasing in reproductive control of does when there is a federally approved fertility control agent for application to free-ranging populations that provides multi-year (more than four years) efficacy for does. Alternative C would include all actions described under alternative A, but would also incorporate a direct reduction of the deer herd size through sharpshooting and capture/euthanasia, where appropriate. Alternative D would also include all the actions described under alternative A, but would incorporate a combination of specific lethal and non-lethal actions from alternatives B and C. These actions would include the reduction of the deer herd through sharpshooting, in combination with capture/euthanasia and phasing in reproductive control of does (as described in alternative B) for longer-term maintenance of lower herd numbers when there is a federally approved fertility control agent for application to free-ranging populations that provides multi-year (more than four years) efficacy for does.

The potential environmental consequences of the alternatives are addressed for vegetation, soils and water quality, white-tailed deer, other wildlife and wildlife habitat, sensitive and rare species, archeological resources, cultural landscapes, visitor use and experience, social values, visitor and employee health and safety, soundscapes, socioeconomic conditions, and national Lakeshore management and operations.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Dillon at the address above or by telephone at 219–926–7561.

Before including your address, telephone number, electronic mail address, or other personal identifying information in your comments, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials, of organizations or businesses, available for public inspection in their entirety.

Dated: October 20, 2008.

Ernest Quintana,

Director, Midwest Region.

Editorial Note: This document was received in the Office of the Federal Register on January 26, 2009.

[FR Doc. E9–1887 Filed 1–28–09; 8:45 am]

BILLING CODE 4310–FH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1014, 1016, 1017 (Review)]

In the Matter of Polyvinyl Alcohol From China, Japan, and Korea; Notice of Commission Determination To Conduct a Portion of the Hearing in camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon its own initiative, the Commission has determined to conduct a portion of its hearing in the above-captioned reviews scheduled for January 27, 2009, *in camera*. *See* Commission rules 207.24(d), 207.66(b), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 207.66(b), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Mary Jane Alves, Office of the General Counsel, United States International Trade Commission, 202–708–2969. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: In these reviews, there are only three domestic PVA producers, of which only two sell in the commercial market. There is only one producer of subject merchandise in Korea. Only one of several foreign producers in China and only one of four producers of subject merchandise in Japan submitted questionnaire responses in these reviews. In addition, there are only a limited number of importers of polyvinyl alcohol into the United States. Because much of the data in these reviews is confidential, the Commission believes that a closed session is justified by the need to discuss data that involve business proprietary information (BPI) concerning imports, individual foreign industries, the domestic industry, and prices. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by parties supporting continuation of the antidumping duty orders and those in support of revocation of these orders, with questions from the Commission. In addition, the hearing will include a ten minute *in camera* session for a confidential presentation by parties supporting revocation of the antidumping duty orders. This session will be followed by questions from the Commission relating to the BPI and a ten-minute *in camera* rebuttal presentation by parties supporting continuation of the orders, if needed. Following the *in camera* session, the Commission will reopen the hearing to the public for the public rebuttal/closing statements. During the *in camera* session, the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in these reviews. *See* 19 CFR 201.35(b). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall time allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that a portion of the Commission's hearing in *Polyvinyl Alcohol from China, Japan, and Korea,* Invs. Nos. 731–TA–1014, 1016, and 1017 (Review), may be closed to the public to prevent the disclosure of BPI.

Issued: January 26, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–1920 Filed 1–28–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–003]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 5, 2009 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1143 (Final) (Small Diameter Graphite Electrodes from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before February 18, 2009.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 26, 2009.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9–1944 Filed 1–28–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

[OMB Number 1105–0025]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Federal Coal Lease Request.

The Department of Justice (DOJ), Antitrust Division (ATR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 223, page 68448 on November 18, 2008, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment March 2, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially regarding the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jill Ptacek, Antitrust Division, United States Department of Justice 450 5th Street, NW., Suite 4000, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Coal Lease Reserves

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: ATR–139 and ATR–140, Antitrust Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Business or other for Profit. *Other:* None. The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of federal coal leases. These forms seek information regarding a prospective coal lessee's existing coal reserves. The Department uses this information to determine whether the issuance, transfer or exchange of the federal coal lease is consistent with the antitrust laws.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. It is estimated that 20 respondents will complete each form, with each response taking approximately two hours.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 40 annual burden hours associated with this collection, in total.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–1917 Filed 1–28–09; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0009]

Agency Information Collection Activities: Proposed Collection; Comments Requested:

ACTION: 60-Day Notice of Information Collection Under Review: Revised Application for Suspension of Deportation (40).

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 30, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John N. Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation (40).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–40, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual aliens determined to be removable from the United States. Other: None. Abstract: This information collection is necessary to determine the statutory eligibility of individual aliens, who have been determined to be deportable from the United States, for suspension of their deportation pursuant to former section 244 of the Immigration and Nationality Act and 8 CFR 1240.56 (2005).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 200 respondents will complete the form annually with an average of 5 hours, 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,150 total annual burden hours associated with this collection.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–1914 Filed 1–28–09; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0006]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR–28).

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 30, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John N. Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms

of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–28. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys and qualified representatives notifying the Immigration Court that they are representing an alien in immigration proceedings. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Immigration Court that he or she is representing an alien before the Immigration Court.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 91,700 respondents will complete the form annually with an average of six minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 9,170 total burden hours associated with this collection annually.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–1915 Filed 1–28–09; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0012]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Request for Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR–31).

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 30, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John N. Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–31. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Non-profit organizations seeking to be recognized as legal service providers by the Board of Immigration Appeals (Board) of the Executive Office for Immigration Review (EOIR). Other: None. Abstract: This information collection is necessary to determine whether the organization meets the regulatory and relevant case law requirements for recognition by the Board as a legal service provider, which then would allow its designated representative or representatives to seek full or partial accreditation to practice before EOIR and/or the Department of Homeland Security.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 110 respondents will complete the form annually with an average of 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 220 total annual burden hours associated with this collection.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–1916 Filed 1–28–09; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 23, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register** . In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: 13 Carcinogens Standard (29 CFR 1910.1003, 1915.1003, and 1926.1103).

OMB Control Number: 1218–0085.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 93.

Estimated Total Annual Burden Hours: 1,604.

Estimated Total Annual Costs Burden: $88,734.

Description: The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse effects associated with the occupational exposure to the following carcinogens: 4-Nitrobiphenyl, alpha-Naphthylamine, methyl chloromethyl ether, 3,3-Dichlorobenzidine (and its salts), bis-chloromethyl ether, beta-Naphthylamine, Benzidine, 4-Aminodiphenyl, Ethyleneimine, beta-Propiolactone, 2-Acetylaminofluorene, 4-Dimethylaminoazo-benzene, and N-Nitrosodimethylamine. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at Vol. 73 FR 55870 on September 26 2008. PRA documentation prepared in association with the preclearance notice is available on *http://www.regulations.gov* under docket number OSHA 2008–0030.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Asbestos in Construction Standard (29 CFR 1926.1101).

OMB Control Number: 1218–0134.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 255,271.

Estimated Total Annual Burden Hours: 4,957,808.

Estimated Total Annual Costs Burden: $28,279,071.

Description: The Asbestos in Construction Standard requires employers to train employees about the hazards of asbestos, monitor employee exposure, provide medical surveillance, and maintain accurate records of employee exposure to asbestos. These records are used by employers, employees and the Government to ensure that employees are not harmed by exposure to asbestos in the workplace. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at Vol. 73 FR 61913 on October 17, 2008. PRA documentation prepared in association with the preclearance notice is available on *http://www.regulations.gov* under docket number OSHA 2008–0039.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Permit-Required Confined Spaces (29 CFR 1910.146).

OMB Control Number: 1218–0203.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 219,456.

Estimated Total Annual Burden Hours: 1,475,091.

Estimated Total Annual Costs Burden: $0.

Description: The collections of information are needed by employers and employees involved in the entry of permit-required confined spaces to prevent injuries and death from exposure to the hazards associated with such entries. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at Vol. 73 FR 66683 on November 10, 2008. PRA documentation prepared in association with the preclearance notice is available on *http://www.regulations.gov* under docket number OSHA 2008–0044.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–1922 Filed 1–28–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 23, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Independent Contractor Registration and Identification.

OMB Control Number: 1219–0040.

Form Number: MSHA 7000–52.

Estimated Number of Respondents: 17,145.

Estimated Total Annual Burden Hours: 20,549.

Estimated Total Annual Cost Burden: $520.

Affected Public: Business or other for profits (Mines).

Description: Title 30 CFR part 45 sets forth information requirements and procedures for independent contractors to obtain a MSHA identification number and procedures for service of documents upon independent contractors. The information is used by MSHA during inspections to determine proper responsibility for compliance with safety and health standards and to facilitate proper service of documents. This information is reviewed by MSHA inspectors semi-annually at surface mines, and quarterly at underground mines. MSHA uses the information to issue a permanent MSHA identification number to the independent contractor. This number allows MSHA to keep track of a contractor's violation history so that appropriate civil penalties can be assessed for violations of the Federal Mine Safety and Health Act (Pub. L. 91–173) or its accompanying mandatory health and safety standards contained in Title 30 of the United States Code of Federal Regulations. For additional information, see related notice published on October 10, 2008 at Vol. 73 FR 60356.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Noise Exposure Assessment; Audiometric Testing Evaluation, and Records and Training in all Mines.

OMB Control Number: 1219–0120.

Form Number: None.

Estimated Number of Respondents: 14,726.

Estimated Total Annual Burden Hours: 84,146.

Estimated Total Annual Cost Burden: $5,472,049.

Affected Public: Business or other for profits (Mines).

Description: Records of miner exposures to noise are necessary so that mine operators and MSHA can evaluate the need for and effectiveness of engineering controls, administrative controls, and personal protective equipment to protect miners from harmful levels of noise exposure. Collection of such records is authorized under Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91–173). 30 CFR 62.110, 62.130, 62.170, 62.171, 62.172, 62.173, 62.174, 62.175, 62.180, and 62.190—Noise exposure assessment; audiometric testing, evaluation, and records and training in all mines, establishes uniform requirements and recordkeeping for the mining industry. For additional information, see related notice published on October 10, 2008 at Vol. 73 FR 60357.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Part 46 Training, Plans, and Records.

OMB Control Number: 1219–0131.

Form Number: None.

Estimated Number of Respondents: 6,325.

Estimated Total Annual Burden Hours: 295,779.

Estimated Total Annual Cost Burden: $493,634.

Affected Public: Business or other for profits (Mines).

Description: MSHA's regulations at 30 CFR part 46 set forth health and safety training and related recordkeeping requirements for shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines. The records allow operators to show that miners have received the required training. MSHA inspectors use the records to determine that training required by the regulations has been provided. The purpose of these requirements is to decrease accidents, injuries, and fatalities in mining environments. For additional information, see related notice published on October 23, 2008 at Vol. 73 FR 63209.

Darrin A, King,

Departmental Clearance Officer.

[FR Doc. E9–1924 Filed 1–28–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 26, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin A. King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Training Administration.

Type of Review: Revision of a Currently Approved Collection.

Title of Collection: National Agriculture Workers Survey (NAWS).

OMB Control Number: 1205–0453.

Description: NAWS provides an understanding of the manpower resources available to U.S. agriculture. It is the national source of information on the demographic, occupational health and employment characteristics of hired crop workers. For additional information, see related notices published at Volume 73 FR 50983 on September 5, 2007 and Volume 73 FR 21376 April 21, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–1934 Filed 1–28–09; 8:45 am]

BILLING CODE 4510–FN–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 9 a.m., March 30, 2009.

PLACE: On board MISSISSIPPI V at City Front, Caruthersville, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., March 31, 2009.

PLACE: On board MISSISSIPPI V at Tunica River Park, Tunica, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 1, 2009.

PLACE: On board MISSISSIPPI V at City Front, Vicksburg, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 3, 2009.

PLACE: On board MISSISSIPPI V at City Dock, Baton Rouge, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries;

(2) District Commander's overview of current project issues within the Vicksburg District, and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

George T. Shepard,

Colonel, EN, Secretary, Mississippi River Commission.

[FR Doc. E9–2008 Filed 1–27–09; 11:15 am]

BILLING CODE 3720–58–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 3 p.m., Wednesday, January 28, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of supervisory activities. Closed pursuant to Exemptions (4), (6), (8) and (9)(A)(ii).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. E9–2055 Filed 1–27–09; 4:15 p.m.]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. PRM–50–85; NRC–2007–0014]

Mr. Eric Epstein, Chairman, Three Mile Island Alert, Inc.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM) submitted by Mr. Eric Epstein, Chairman of Three Mile Island Alert, Inc. (TMIA). The petitioner requested that the NRC amend its emergency preparedness regulations to require that all host school pick-up centers be located at least 5 to 10 miles beyond the radiation plume exposure boundary zone to ensure that all school children are protected in the event of a radiological emergency.

DATES: The docket for PRM–50–85 is closed on January 29, 2009.

ADDRESSES: Publicly available documents related to this petition, including public comments, the PRM, and the NRC's letter of denial to the petitioner, may be viewed electronically at *http://www.regulations.gov* (search Docket ID NRC–2007–0014) or on public computers in the NRC's Public Document Room (PDR), O–1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are also available electronically via the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this Web site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff by telephone at (800) 387–4209 or (301) 415–4737 or by e-mail at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT:
Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–3092; e-mail *Harry.Tovmassian@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On April 11, 2007, the NRC received a PRM (ADAMS Accession No. ML071070475) from Mr. Eric Epstein, Chairman of TMIA. The NRC docketed the petition on April 17, 2007, and assigned it Docket No. PRM–50–85. The petitioner requested that the Commission amend its emergency preparedness regulations in Title 10, Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of the *Code of Federal Regulations* (10 CFR part 50) to require that all host school pick-up centers be located at least 5 to 10 miles beyond the radiation plume exposure boundary zone to properly ensure that all school children are protected in the event of a radiological emergency. The petitioner observed that this criterion applies to the general population relocation centers and that the lack of such a criterion for host school pick-up centers is a ''regulatory gap.''

The NRC notes that, as discussed herein, the Federal Emergency Management Agency (FEMA) distinguishes host school pick-up centers from general population relocation centers. Host school pick-up centers serve as temporary locations where school children can be held while they wait for their parents or guardians to pick them up, whereas general population relocation centers offer longer term assistance to people displaced from their homes. FEMA guidance provides for the location of host schools outside the plume exposure pathway emergency planning zone (EPZ), whereas joint NRC and FEMA guidance provides for the location of general population relocation centers at least 5 miles and preferably 10 miles beyond the boundaries of the EPZ.

Discussion

The Commission is responsible for licensing and regulating nuclear facilities as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and other applicable statutes. These responsibilities include protecting public health and safety, protecting the environment, and protecting and safeguarding nuclear materials and nuclear power plants in the interest of national security. In June 1979, the Commission began formal reconsideration of the role of emergency planning in ensuring the continued protection of the public health and safety. This effort resulted in the issuance of emergency preparedness regulations published in the **Federal Register** on August 19, 1980 (45 FR 55402), and the development of onsite and offsite emergency plans within the EPZ of each nuclear power plant located in the U.S.

Although the NRC is the sole Federal agency responsible for licensing and regulating nuclear reactors, Federal oversight of radiological emergency planning and preparedness for nuclear facilities involves both FEMA and the NRC. Executive Order No.12148—Federal Emergency Management, dated July 15, 1979, assigned FEMA the authority and responsibility to establish Federal regulations and policies and to coordinate civilian emergency planning within emergency preparedness programs. In December 1979, a Presidential Directive assigned FEMA the lead Federal responsibility for State and local emergency planning and preparedness activities with respect to jurisdictions near nuclear reactors, while assigning onsite emergency planning and preparedness oversight to the NRC. The NRC and FEMA entered into a memorandum of understanding (MOU) that delineated the agencies' roles in ensuring adequate emergency preparedness. Under the provisions of this MOU (Appendix A, ''Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission,'' to 44 CFR part 353, ''Fee for Services in Support, Review, and Approval of State and Local Government or Licensee Radiological Emergency Plans and Preparedness''), FEMA reviews State and local emergency plans and preparedness and approves them based upon its findings and determinations with respect to the adequacy of the State and local plans and the capabilities of State and local governments to effectively implement these plans and preparedness measures. Accordingly, FEMA is the lead authority concerning the direction, recommendations, and determinations regarding offsite State and local government radiological emergency planning efforts necessary for the public health and safety.

FEMA provides its findings and determinations on offsite preparedness to the NRC for use in its licensing processes. The NRC reviews these findings and determinations and, in conjunction with its assessment of the onsite preparedness and capabilities, determines whether the overall state of emergency preparedness satisfies the requirements for the issuance of operating licenses for, or for the continued operation of, nuclear reactors.

In keeping with their respective statutory authorities, the NRC and FEMA issue and maintain regulations and regulatory guidance concerning emergency preparedness. The NRC and FEMA jointly developed broadly worded planning standards that onsite and offsite emergency plans would be required to meet in order to receive a favorable determination of preparedness. The respective agency regulations codified these planning standards (see 10 CFR 50.47(b) and 44 CFR 350.5(a)), and the NRC and FEMA provided supporting guidance in the agencies' jointly-prepared NUREG–0654/FEMA–REP–1, Revision1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' dated November 30, 1980 (ML040420012), and addenda, dated March 31, 2001 (ML021050240). Each agency has further supplemented that guidance with guidance documents addressing emergency preparedness topics within its respective cognizance—the NRC with onsite topics and FEMA with offsite topics.

Public Comments

On July 10, 2007 (72 FR 37470), the NRC published a notice of receipt of

PRM–50–85 and invited interested persons to submit their comments. The NRC received 14 comment letters in response. Comment letters came from five private citizens, three representatives from State government agencies, and six public advocacy organizations. Thirteen of the comment letters supported the petition while giving varying reasons for doing so.

Comments Supporting the Petition

The NRC received 13 comment letters supporting the petition. One commenter stated that the granting of the petition is in accordance with the recommendations of the U.S. Department of Homeland Security (DHS). Another individual expressed the opinion that the current regulations allow evacuees to be taken to centers just over the 10-mile evacuation line, which could possibly have ''some very bizarre results, such as children being evacuated across a street or to a neighbor's house,'' and recommended that the NRC consider this ''reasonable and well thought out petition.''

While supporting the petition, a State Representative from the Commonwealth of Pennsylvania reiterated the petitioner's observation that there is an inconsistency in the treatment of host school pick-up centers and general population relocation centers. Although host school pick-up centers may be just outside the 10-mile radiation exposure boundary zone, the commenter noted that ''general population relocation centers * * * according to NRC and DHS/FEMA regulations, are required to be at least 5 miles and recommended to be at least 10 miles beyond'' the EPZ.

A representative of a public advocacy group, Beyond Nuclear, supported the TMIA petition, but stated that the relocation centers are also designed to be ''decontamination centers'' and ''reunification locations'' and should be located at least ''10 to 20 miles beyond the currently designated 50 mile radius of the ingestion pathway zone.'' This commenter believes that the decontamination and reunification centers should be located at least 70 to 100 miles away from the reactor accident site.

A commenter representing Pilgrim Watch submitted two comment letters that differed only in the list of organizations and individuals cited as supporting the comments submitted. In addition to supporting the TMIA petition, the commenter cited several reasons for his opinion that NRC emergency planning regulations are not soundly based. The commenter believes that the 10-mile EPZ established by the NRC is arbitrary and that the NRC has relied on outdated and inappropriate radiation plume distribution models to justify emergency planning regulations and guidance regarding the placement of relocation centers.

The Environmental Coalition on Nuclear Power and the Sierra Club Pennsylvania Chapter endorse the TMIA petition but further comment that ''the additional five to ten miles of protective distance would be inadequately protective for children.'' These organizations cited the magnitude of potential releases, weather and travel conditions, time of day, and other factors as conditions that should be considered in siting the collection and relocation centers.

Comment Opposed to Granting the Petition

One commenter, representing the State of Tennessee, Tennessee Emergency Management Agency Program, opposed granting the petition. This commenter believes that it is not practical or wise to extend the distance for relocating children an additional 5 to 10 miles beyond the EPZ. He noted that the same buses will be needed for the evacuation during the general emergency and that greater distances of travel for school children increase the chance for a bus accident.

NRC Evaluation

The petitioner asserted that ''according to the NRC regulations listed in NUREG–0654r1, general population relocation centers are required to be located at least 5 miles beyond the radiation plume exposure boundary zone'' and that the absence of such a requirement for host school pick-up centers constitutes a ''regulatory gap.'' The NRC does not agree with the petitioner's statement of concern. NUREG–0654/FEMA–REP–1, Rev. 1, does not contain NRC regulations or requirements. Regulatory Guide 1.101, Revision 4, ''Emergency Planning and Preparedness for Nuclear Power Reactors,'' issued July 2003 (ML032020276), identifies NUREG–0654/FEMA–REP–1, Rev. 1 as an acceptable method for showing compliance with the Commission's emergency preparedness regulations. The NRC uses the methods described in this guide, including NUREG–0654/FEMA–REP–1, Rev. 1, to evaluate emergency plans for nuclear power reactors. As with all NRC regulatory guidance, compliance is not required and applicants or licensees may propose alternative methods of complying with the requirements. Similarly, the NRC recognizes that FEMA may find alternatives used by State and local governments to be acceptable means for meeting the planning standards and the evaluation criteria in NUREG–0654/FEMA–REP–1, Rev 1.

Section II.J of NUREG–0654/FEMA–REP–1, Rev. 1, provides evaluation criteria for the planning standard in 10 CFR 50.47(b)(10), which addresses protective measures for ''emergency workers and the public.'' Although the NRC has not defined ''public,'' it is generally understood that it includes all segments of the population including school children. Section II.J.10 requires that an organization's plan to implement protective measures may include various capabilities and resources. Evaluation Criterion II.J.10.h in NUREG–0654/FEMA–REP–1, Rev 1, provides for the establishment of relocation centers (also known as ''reception centers'') where evacuees are monitored, decontaminated (if necessary), and registered. Evaluation Criterion II.J.10.h provides that these facilities should be located at least 5 miles and preferably 10 miles beyond the boundaries of the EPZ. The NRC notes that, in the absence of exclusionary modifiers, this criterion applies to relocation centers for all segments of the population including school children. Furthermore, FEMA Guidance Memorandum EV–2, ''Protective Actions for School Children,'' provides for temporary sheltering outside the EPZ in host schools (or ''host school pick-up centers'' or ''evacuation centers'') with no further stipulation regarding distance beyond the EPZ.

The NRC intentionally used broad language in the planning standards of 10 CFR 50.47(b) because they apply to applicants, licensees, State governments, and local governments. The planning standards do not contain prescriptive requirements but instead give the organizations the flexibility to develop plans and procedures that best fit their specific needs and the needs of the affected public that they are charged with protecting. The NRC and FEMA believe that numeric criteria, such as the minimum distance to a relocation center, properly belong in regulatory guidance. Because the existing regulatory structure already has minimum distance criteria for relocation centers for all segments of the population, including school children, no revision to 10 CFR part 50 is necessary in response to the petitioner's request.

In accordance with the NRC and FEMA MOU (44 CFR part 353), the NRC forwarded a copy of this petition to, and has discussed the petitioner's request with, FEMA. Subsequently, in a May 14, 2008, letter to Mr. Anthony C. McMurtray (NRC) (ML081570134); Ms. Vanessa E. Quinn (FEMA) stated that the Commonwealth of Pennsylvania's current practice of designating host schools for temporary sheltering of school children at locations outside the EPZ conforms with existing FEMA guidance. The FEMA letter clarifies that host schools are pre-designated sites outside the EPZ specifically designed to receive and provide temporary shelter to evacuated students outside the EPZ until their parents or guardians regain custody of them. Host schools are generally located in the same school district as the primary school to make it easy for parents or guardians to pick up their students. If a parent or guardian has not picked up his or her student, the student is then transported to a relocation center for longer term protection and care. As such, these designated sites do not serve as relocation centers as identified in Evaluation Criterion II.J.10.h and, therefore, do not need to meet the siting criteria that apply to a relocation center.

The NRC observes that the schools specifically identified in the petition are all located in the West Shore School District. Based upon information provided to the community in the 2008–2009 West Shore School District Handbook (ML082890467), the NRC has determined that the district encompasses communities and schools within and outside of the EPZ. The West Shore District planning designates four West Shore District schools, all located outside the EPZ, as evacuation centers. Students at these four schools that reside within the EPZ would remain there until their parents or guardians pick them up. For two of the four schools, students who reside outside the EPZ would be sent home when buses were available provided that it was safe to do so. Students at other West Shore District schools located within the EPZ would be evacuated to one of the four designated evacuation centers to wait for their parents or guardians to pick them up. In its May 14, 2008, letter, FEMA stated that the Commonwealth of Pennsylvania's current practice of designating host schools for temporary sheltering of school children at locations outside the EPZ conforms with existing FEMA guidance.

The emergency planning basis provided in NUREG–0654/FEMA–REP–1, Rev. 1, summarizes the considerations that went into the establishment of the 10-mile EPZ. This basis provides that it would be unlikely that any protective action would be required beyond the EPZ and that the detailed planning for the EPZ would provide a substantial base for expansion of response efforts in the event of a highly unlikely worse case accident. The location of the relocation center that is stipulated in Evaluation Criterion II.J.10.h is generally based on avoiding the need to evacuate a relocation center in the unlikely event that it became necessary to expand protective actions beyond 10 miles. Host schools are not similarly affected because they are only a temporary arrangement until parents or guardians pick up their students. As such, the petitioner's request to apply the numeric criteria of Evaluation Criterion II.J.10.h to host schools that are used solely as evacuation pick-up sites is unwarranted.

The petitioner asserted that host schools that are located close to the EPZ do not provide the same level of protection as would facilities that are located further beyond the EPZ. Although the NRC agrees that radiation exposure decreases with increasing distance, the impact of the exposure on the persons exposed to the radiation is also a function of the duration of the exposure. As indicated in the May 14, 2008, FEMA letter, host school pick-up centers are only pick up points, and any students whose parents or guardians have not picked them up would be transported to a reception center. Thus, the duration of the students' stay at a host school is expected to be short, after which their parents or guardians would evacuate them further to the relocation center or to other individually arranged locations (*e.g.*, residences of friends, hotels). The NRC notes that these host schools are located in residential communities outside of the EPZ. According to NUREG–0654/FEMA–REP–1, Rev. 1, protective actions would not likely be required beyond the EPZ. Thus, students in these host schools would be afforded the same level of protection as that of the other residents in that community. As noted on the Pennsylvania Emergency Management Agency's Web site at *http://www.pema.state.pa.us/pema/cwp/view.asp?A=566&Q=254894,* school children are usually relocated before the evacuation of the general public as a precautionary measure, which further increases the likelihood that parents or guardians will have picked up their school children before the onset of a radioactive release.

Based upon this evaluation of the petitioner's request and in consultation with FEMA, the NRC has found no sufficient basis to question the adequacy of FEMA guidance and findings regarding the adequacy of the protective action arrangements for school children. This finding, in conjunction with the finding that the existing regulations and regulatory guidance are adequate, is the basis for the Commission's decision to deny the petitioner's request.

Consistent with the reasons provided above for denying the petition, the NRC finds that the commenters do not present evidence to compel the NRC to consider seeking changes to the existing regulatory structure. In addition, commenters raised two issues that concern the size of the EPZ and the distance of the host schools from the EPZ that is required to provide adequate safety to school children. The NRC notes that although these issues exceed the scope of the petition, the existing regulations and guidance provide reasonable assurance of adequate protection for all members of the public in the event of a radiological incident at a nuclear power plant.

One commenter stated, without providing specific examples, that ''many host pick-up schools are located within [the EPZ].'' The petition does not make this claim and includes information from the West Shore School District explaining that all of the host school pick-up centers ''are outside the ten[-]mile zone from TMI [Three Mile Island].''

Another commenter identified an implementation issue that may be encountered in the event that host school pick-up centers are sited an additional distance beyond the EPZ. Because FEMA reviews the adequacy of offsite emergency plans and preparedness and the capabilities of State and local governments to effectively implement these plans and preparedness measures and because the NRC reviews FEMA findings and determinations, the current regulatory structure already addresses the issue highlighted by the commenter.

Reason for Denial

The Commission is denying PRM–50–85 submitted by Mr. Epstein of TMIA. Current NRC regulations and NRC and FEMA regulatory guidance provide reasonable assurance of adequate protection of all members of the public, including school children, in the event of a nuclear power plant incident. Because it is prescriptive in nature and existing regulations and guidance already cover the petitioner's request, PRM–50–85 is hereby denied.

Dated at Rockville, Maryland, this 23rd day of January 2009.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–1904 Filed 1–28–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278; NRC–2009–0033]

Entergy Nuclear Operations, Inc.; Peach Bottom Atomic Power Station Unit Nos. 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix R, Section III.G, ''Fire Protection of Safe Shutdown Capability,'' for the use of operator manual actions in lieu of the requirements specified in Section III.G.2 as requested by Exelon Generation Company, LLC, (the licensee, in addition to PSEG Nuclear, LLC) for operation of Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3 located in York and Lancaster Counties, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption to 10 CFR Part 50, Appendix R, Section III.G.2 for 25 operator manual actions contained in the licensee's Fire Protection Program (FPP). The licensee's FPP requires that the identified operator manual actions be performed outside of the control room to achieve shutdown following fires in certain fire areas. The licensee states that each of the manual actions were subjected to a manual action feasibility review for PBAPS that determined that the manual actions are feasible and can be readily performed.

The proposed action is in accordance with the licensee's application dated October 5, 2007, as supplemented on May 1 and December 11, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession Numbers ML072820129, ML081220873 and ML083470170, respectively).

The Need for the Proposed Action

The proposed exemption from 10 CFR Part 50, Appendix R, was submitted in response to the need for an exemption as identified by NRC Regulatory Information Summary (RIS) 2006–10, ''Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions.'' The RIS noted that NRC inspections identified that some licensees had relied upon operator manual actions, instead of the options specified in 10 CFR Part 50, Appendix R, Section III.G.2, as a permanent solution to resolve issues related to Thermo-Lag 330–1 fire barriers. The licensee indicates that the operator manual actions, referenced in the October 5, 2007, application, were previously included in correspondence with the NRC and found acceptable in a fire protection-related Safety Evaluation (1993 SE) dated September 16, 1993 (ADAMS Accession Number ML081690220). However, RIS 2006–10 identifies that an exemption under 10 CFR Part 50.12 is necessary for use of the manual actions in lieu of the requirements of 10 CFR Part 50, Appendix R, Section III.G.2, even if the NRC previously issued a safety evaluation found the manual actions acceptable. The proposed exemption provides the formal vehicle for NRC approval for the use of the specified operator manual actions instead of the options specified in 10 CFR Part 50, Appendix R, Section III.G.2.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that the exemption will not present an undue risk to the public health and safety. The details of the NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

In the 1993 SE, the NRC staff evaluated the operator manual actions presented in the proposed exemption, and found that they maintained a safe shutdown capability that satisfies the requirements of 10 CFR Part 50, Appendix R, Section III.G. In addition, the licensee supplemented the October 5, 2007, request for exemption with additional information in a letter dated December 11, 2008, to confirm that the operator manual actions addressed in the 1993 SE are feasible and that the safety basis for these actions remains valid. Therefore, the proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The NRC staff, thus, concludes that granting the proposed exemption would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for PBAPS Units 1, 2, and 3, dated April 1973, and for PBAPS Units 2 and 3, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' (NUREG–1437, Supplement 10), dated January 2003.

Agencies and Persons Consulted

In accordance with its stated policy, on August 8, 2008, the NRC staff consulted with the Pennsylvania State official, Dennis Dyckman of the Pennsylvania State Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 5, 2007, as supplemented on May 1 and December 11, 2008 (ADAMS Accession Numbers ML072820129, ML081220873 and ML083470170, respectively). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of January 2009.

For the Nuclear Regulatory Commission.

John D. Hughey,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–1903 Filed 1–28–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0013]

Safety Culture Policy Statement Development: Public Meeting and Request for Public Comments; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 23, 2009 (74 FR 4260), that informs the public of the public meeting and Request for Comments on topics relating to the development of the policy statement. In addition to announcing the public meeting, the NRC is using this notice to request comments on the topics discussed in this notice. These topics can be found in section D (Topics for Discussion of the Supplementary Information).

FOR FURTHER INFORMATION CONTACT: June Cai at (301) 415–5192; *june.cai@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 4262, column 1, in the fourth complete paragraph, in the 17th line, is corrected to delete ''Some of the questions use terminology such as 'your organization,' but input from individual stakeholders who may not be part of a specific organization in the topic area are requested as well.''

On page 4262, column 1, in the seventh paragraph, in the 46th line, is corrected to read: ''How do you generally view the relationship or hierarchy between safety and security functions and decision making''?

On page 4262, column 1, in the eighth paragraph, in the 61st line, is corrected to read: ''Are there any other examples where efforts to maintain safety and security require different approaches or result in competing outcomes that need to be addressed to achieve the desired outcome or goal''?

Dated at Rockville, Maryland, this 23rd day of January 2009.

For the Nuclear Regulatory Commission.

Stewart L. Magruder,

Deputy Director, Office of Enforcement.

[FR Doc. E9–1902 Filed 1–28–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Trade Surplus in Certain Sugar Goods of Peru

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with relevant provisions of the Harmonized Tariff Schedule of the United States (HTS), the Office of the United States Trade Representative (USTR) is providing notice of its determination of the trade surplus in certain sugar goods of Peru. As described below, the level of Peru's trade surplus in these goods relates to the quantity of sugar goods for which the United States grants duty-free tariff treatment under the United States—Peru Trade Promotion Agreement (Peru TPA).

DATES: *Effective Date:* February 1, 2009.

ADDRESSES: Inquiries may be mailed or delivered to Leslie O'Connor, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Leslie O'Connor, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to section 101 of the United States—Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138; 19 U.S.C. 3805 note), Presidential Proclamation No. 8341 of January 16, 2009 (74 FR 4105) implemented the Peru TPA on behalf of the United States and modified the HTS to reflect the tariff and rules of origin treatment provided for in the Peru TPA.

U.S. Note 28(c) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Peru's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.20, 1702.40, and 1702.60, except that Peru's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that are originating goods under the Peru TPA and Peru's exports to the United States of goods classified under HS subheadings 1701.11, 1701.12, 1701.91, and 1701.99 are not included in the calculation of Peru's trade surplus.

U.S. Note 28(d) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Peru entered under subheading 9822.06.10 in an amount equal to the lesser of Peru's trade surplus or the specific quantity set out in that note for that calendar year.

During calendar year (CY) 2007, the most recent year for which data is available, Peru's imports of the sugar goods described above exceeded its exports of those goods by 245,132 metric tons according to data published by its customs authority, the *Superintendencia Nacional de Administration Tributaria.* Based on this data, USTR determines that Peru's trade surplus is negative. Therefore, in accordance with U.S. Note 28(d) to subchapter XXII of HTS chapter 98, goods of Peru are not eligible to enter the United States duty-free under subheading 9822.06.10 in CY2009.

James Murphy,

Assistant United States Trade Representative.

[FR Doc. E9–1830 Filed 1–28–09; 8:45 am]

BILLING CODE 3190–W9–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, January 29, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Acting Chairman Walter, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, January 29, 2009 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

A litigation matter;

A collection matter;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 23, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–1883 Filed 1–28–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59199; File No. SR–DTC–2008–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Existing Operational Arrangements

Correction

In notice document E9–349 beginning on page 1266 in the issue of Monday January 12, 2009 make the following correction:

On page 1268, in the second column, in the last line of the first paragraph, ''January 29, 2009'' should read ''February 2, 2009''.

[FR Doc. Z9–349 Filed 1–28–09; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59171; File No. SR–ISE–2008–98]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Fee Changes

Correction

In notice document E8–31351 beginning on page 482 in the issue of Tuesday, January 6, 2009 make the following corrections:

1. On page 482, the department docket number is corrected to read as set forth above.

2. On page 483, in the second column, in the last line of the last paragraph, ''January 26, 2009'' should read ''January 27, 2009''.

[FR Doc. Z8–31351 Filed 1–28–09; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59275; File No. SR–NASDAQ–2008–104]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt a Modified Sponsored Access Rule

January 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On January 8, 2009, Nasdaq filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to adopt a proposed rule change to modify the requirements for members that provide ''Sponsored Access'' to Nasdaq's execution system.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.[3]

* * * * *

4611. Nasdaq Market Center Participant Registration

(a)–(c) No change.

(d) *Members may provide ''Sponsored Access'' to the Nasdaq Market Center in accordance with the provisions below:* [Sponsored Participants. A Sponsored Participant may obtain authorized access to the Nasdaq Market Center only if such access is authorized in advance by one or more Nasdaq members as follows:]

[(1) Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring Members establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Nasdaq Market Center. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (2) below.]

[(2) For a Sponsored Participant to obtain and maintain authorized access to the Nasdaq Market Center, a Sponsored Participant and its Sponsoring Member must agree in writing to the following Sponsorship Provisions:

(A) Sponsored Participant and its Sponsoring Member must have entered into and maintained a User Agreement with The NASDAQ Stock Market LLC. The Sponsoring Member must designate the Sponsored Participant by name in its User Agreement as such.

(B) Sponsoring Member acknowledges and agrees that

(i) All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring Member and

(ii) Sponsoring Member is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.

(C) Sponsoring Member shall comply with the Nasdaq Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Nasdaq Market Center and Sponsored Participant shall comply with Nasdaq Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Nasdaq Market Center, as if Sponsored Participant were a Nasdaq Member.

(D) Sponsored Participant shall maintain, keep current and provide to

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.complinet.com.*

the Sponsoring Member a list of individuals authorized to obtain access to the Nasdaq Market Center on behalf of the Sponsored Participant.

(E) Sponsored Participant shall familiarize its authorized individuals with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Nasdaq Market Center.

(F) Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to the Nasdaq Market Center.

(G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the Nasdaq Market Center, including unauthorized entry of information into the Nasdaq Market Center, or the information and data made available therein. Sponsored Participant understands and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof.

(H) Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents' and customers' use and access to the Nasdaq Market Center for compliance with the terms of this agreement.

(I) Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring Member, Nasdaq, or any other third parties that arise from the Sponsored Participant's access to and use of the Nasdaq Market Center. Such amounts include, but are not limited to applicable exchange and regulatory fees.]

[(3) The Sponsoring Member must provide Nasdaq with a Notice of Consent acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.]

(1) Definition. Sponsored Access is the practice by a member firm (''Sponsoring Member'') of providing access to Nasdaq to another firm or customer (''Sponsored Participant''). Sponsored Access takes multiple forms, including but not limited to: (a) Direct market access, where the Sponsored Participant's orders pass through the Sponsoring Member's systems prior to reaching Nasdaq (''Direct Market Access''), (b) sponsored access, where the Sponsored Participant enters orders directly into Nasdaq via a dedicated port provided by the Sponsoring Member (''Direct Sponsored Access''), and (c) direct access where a service bureau or other third party provides Sponsored Participants with technology to access Nasdaq under the auspices of and via an arrangement with the Sponsoring Member (''Third Party Sponsored Access'').

(2) Compliance. Irrespective of the form of Sponsored Access provided, Sponsoring Members are responsible for the conduct of their Sponsored Participants as if the conduct were their own. To ensure that Sponsored Access is consistent with high market quality and the protection of investors, Sponsoring Members shall at a minimum comply with the Contractual Provisions, Financial Controls, and Regulatory Controls set forth in sections (3), (4), and (5) below.

(3) Contractual Provisions. A Sponsoring Member that provides Direct Sponsored Access or Third Party Sponsored Access shall execute and maintain agreements with each Sponsored Participant containing the commitments below. A Sponsoring Member that provides Third Party Sponsored Access must execute and maintain agreements with each service bureau or other entity that facilitates such Third Party Sponsored Access providing that such entity will execute and maintain agreements with each Sponsored Participant containing the commitments below for the benefit of the Sponsoring Member.

(A) All trading activity by the Sponsored Participant shall comply with all applicable federal securities laws and rules and Exchange rules, including but not limited to the Nasdaq Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Nasdaq Market Center (''Regulatory Requirements'').

(B) Sponsored Participant shall provide Sponsoring Member with access to its books and records promptly upon request, and otherwise cooperate with the Sponsoring Member in furtherance of Sponsoring Member's compliance with applicable Regulatory Requirements.

(C) Sponsored Participant shall maintain its trading activity within the credit, product or other financial limits specified by the Sponsoring Member.

(D) Sponsored Participant shall maintain all technology permitting sponsored access to Nasdaq in a physically secure manner and may not permit unauthorized individuals to use or obtain access to Nasdaq. Sponsored Participant shall familiarize its authorized individuals with the Regulatory Requirements and will provide appropriate training prior to use or access to Nasdaq.

(E) Sponsored Participant shall provide the Sponsoring Member complete and current corporate and financial information about the Sponsored Participant.

(F) Sponsored Participant shall agree that the Sponsoring Member or Nasdaq may immediately terminate the Sponsored Access if the Sponsored Participant or third party access provider fails to abide by its commitments.

(4) Financial Controls. Each Sponsoring Member shall establish adequate procedures and controls that permit it to effectively monitor and control the Sponsored Access to systemically limit the Sponsoring Member's financial exposure. At minimum, the Sponsored Access system shall:

(A) Prevent each Sponsored Participant from entering orders that in aggregate exceed appropriate pre-set credit thresholds. Sponsoring Members may also set finely-tuned credit thresholds by sector, security or otherwise.

(B) Prevent Sponsored Participants from trading products that the Sponsored Participant or Sponsoring Member is restricted from trading.

(C) Prevent Sponsored Participants from submitting erroneous orders by providing for the rejection of orders that exceed certain price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

(5) *Regulatory Controls.*

(A) Each Sponsoring Member shall have systemic controls to ensure compliance by the Sponsored Participant with applicable Regulatory Requirements, including but not limited to compliance with rules relating to short selling; trading halts; proper uses of order types; proper use of Intermarket Sweep Orders; trading ahead of customer limit orders; prohibitions against manipulative trading practices, including wash sales and marking the close; restricted lists of securities for purposes of SEC Rule 10b–18; and applicable margin rules.

(B) Each Sponsoring Member shall ensure that compliance personnel receive timely reports of all trading activity by its Sponsored Participants sufficient to permit the Sponsoring Member to comply with applicable Regulatory Requirements, and to monitor for illegal activity such as market manipulation or insider trading. At minimum, the member firm's compliance unit should receive immediate post-trade execution reports

of trading activity of its Sponsored Participants, including their identities; all required audit trail information by no later than the end of the trading day; all information necessary to create and maintain the trading records required by Regulatory Requirements by no later than the end of the trading day.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify Rule 4611(d) which sets forth the requirements applicable to Nasdaq members that provide ''Sponsored Access'' by providing customers with electronic access to Nasdaq's execution system using the member's market participant identifier (''MPID''). Currently, Rule 4611(d) is substantially similar to Sponsored Access rules adopted by other national securities exchanges, including New York Stock Exchange Rule 123B and NYSE Arca Exchange Rule 7.29(b). Nasdaq is proposing to amend Rule 4611(d) to ensure that member firms that are assuming responsibility for their customers' trading activity have effective financial and regulatory oversight of the Sponsored Participant, and that Nasdaq has access to all information necessary to provide effective exchange oversight.

The proposal defines Sponsored Access as taking one of three general structures. First, ''direct market access'' occurs where the Sponsored Participant's orders pass-through the member's systems prior to reaching the exchange. Member firms routinely offer this form of access in the ordinary course of business presumably with effective regulatory and financial controls in place that are equivalent to those applied to the member firm's own orders. Second, ''direct sponsored access'' occurs where the Sponsored Participant is provided a dedicated line or port to Nasdaq, so that its orders do not first pass through the member's systems. As explained in more detail below, each port that permits entry of quotes and orders into Nasdaq is registered to and affiliated with a unique Nasdaq member firm but Nasdaq is not able to control or determine what external controls exist to ensure that quotes and orders entered into that port comply with applicable regulatory requirements, Third, ''third party sponsored access'' occurs where a service bureau, such as LAVA Trading, provides Sponsored Participants the technology to access the exchange and arranges for use of the member's MPID in connection with that arrangement under the auspices and via an arrangement with the Sponsoring Member. These definitions are non-exhaustive and designed to address the changing needs of the marketplace with flexibility while maintaining rigorous oversight.

The proposed rule re-affirms that member firms that offer any form of Sponsored Access assume responsibility for their Sponsored Participants' trading activity. The member firm must effectively assure compliance by each Sponsored Participant with appropriate financial controls and applicable regulatory requirements. As described more fully below, this would be accomplished through a combination of contractual commitments, financial and regulatory controls, and the monitoring of current activity reports that is designed to limit financial exposure and bolster regulatory compliance.

To facilitate effective oversight of Sponsored Access arrangements by Nasdaq and the member firms, Nasdaq is proposing to require members to obtain a contractual commitment from each Sponsored Access Participant that is provided direct access to Nasdaq through a dedicated port (''Direct Sponsored Access''). Access to Nasdaq's system is available through telecommunications ports that Nasdaq's offers exclusively to Nasdaq members. Each port is uniquely identified and is registered to one and only one Nasdaq member. Each message delivered to that port, delivered from that port into Nasdaq's systems, or delivered to the port by Nasdaq is tagged with the unique identifier for that port. As a result, every quotation, order, or execution that interacts with or is processed by Nasdaq's systems is attributable to a single Nasdaq member. That member is responsible for all trading activity occurring via that port, including activity of Sponsored Participants.

Where Sponsored Access is provided through a third party such as a service bureau (''Third Party Sponsored Access''), the member registers for a port but enables the service bureau to manage access to and activity of that port. In that case, the member firm will be required to obtain a contractual commitment from the service bureau that would include a commitment by the service bureau to obtain from each of its Sponsored Participant an appropriate contractual commitment for the benefit of the member firm. Through these contractual arrangements, Nasdaq will have the ability to obtain from its members any information necessary properly to monitor and address trading activity of Sponsored Participants. Pursuant to Rule 8210, members are required to comply with all requests for information, such as those stemming from investigations and enforcement actions, which may require the provision of information regarding individual Sponsored Participants.

To satisfy the proposed Contractual Provisions requirement, the Sponsored Participant or service bureau, as appropriate, will be required at minimum to commit to the following:

- All trading activity by the Sponsored Participant shall comply with all applicable federal securities laws and rules and Exchange rules, including but not limited to the Nasdaq Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Nasdaq Market Center (''Regulatory Requirements'').
- Sponsored Participant shall provide Sponsoring Member with access to its books and records promptly upon request, and otherwise cooperate with the Sponsoring Member in furtherance of Sponsoring Member's compliance with applicable Regulatory Requirements.
- Sponsored Participant shall maintain its trading activity within the credit, product or other financial limits specified by the Sponsoring Member.
- Sponsored Participant shall maintain all technology permitting sponsored access to Nasdaq in a physically secure manner and may not permit unauthorized individuals to use or obtain access to Nasdaq. Sponsored Participant shall familiarize its authorized individuals with the Regulatory Requirements and will provide appropriate training prior to use or access to Nasdaq.
- Sponsored Participant shall provide the Sponsoring Member complete and current corporate and financial information about the Sponsored Participant.

- Sponsored Participant shall agree that the Sponsoring Member or Nasdaq may immediately terminate the Sponsored Access if the Sponsored Participant or third party access provider fails to abide by its commitments.

Nasdaq is also proposing that member firms be required to assure that the Sponsored Access front-end or other functionality includes controls that systemically limit the member firm's financial exposure. At minimum, the Sponsored Access system must:

- Prevent each Sponsored Participant from entering orders that in aggregate exceed appropriate pre-set credit thresholds. Sponsoring Members may also set finely-tuned credit thresholds by sector, security or otherwise.
- Prevent Sponsored Participants from trading products that the Sponsored Participant or Sponsoring Member is restricted from trading.
- Prevent Sponsored Participants from submitting erroneous orders by providing for the rejection of orders that exceed certain price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

The member firm would be required to assure that the Sponsored Access front-end or other functionality includes controls that assure compliance with SEC and Nasdaq rules that can be systemically enforced. At minimum, the Sponsored Access system should assure compliance with: Rules relating to short selling; trading halts; proper uses of order types; proper use of Intermarket Sweep Orders; trading ahead of customer limit orders; prohibitions against manipulative trading practices, including wash sales and marking the close; restricted lists of securities for purposes of SEC Rule 10b-18; and applicable margin rules.

Finally, Nasdaq is proposing that member firms be required to assure that its compliance unit receives timely reports of all trading activity by its Sponsored Participants sufficient to permit the member firm to comply with applicable SEC and Nasdaq recordkeeping and reporting requirements, and to monitor for illegal activity such as market manipulation or insider trading. At minimum, the member firm's compliance unit should receive immediate post-trade execution reports of trading activity of its Sponsored Participants, including their identities; all required audit trail information no later than the end of the trading day; all information necessary to create and maintain the trading records required by Regulatory Requirements, no later than the end of the trading day.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general and with Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposal is consistent with these obligations because it updates the standards for providing Sponsored Access, and clearly articulates the obligations in the Nasdaq's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ–2008–104 and should be submitted on or before February 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1871 Filed 1–28–09; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78(f).

[5] 15 U.S.C. 78f–3(6) [*sic*].

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59291; File No. SR–NASDAQ–2009–002]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Compliance Period Applicable to Companies That Fail To Meet the Market Value of Listed Securities Requirement

January 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the compliance period applicable to listed companies that fail to meet the market value of listed securities requirement.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].[4]

4310. Listing Requirements for Domestic and Canadian Securities.

To qualify for listing in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a), (b), and (c) hereof. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a)–(b) No change

(c) In addition to the requirements contained in paragraph (a) and (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for listing on Nasdaq:

(1)–(7) No change.

(8) (A)–(B) No change.

(C) A failure to meet the continued listing requirement for market value of listed securities shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of [30] *90* calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [30] *90* day compliance period.

(D)–(E) No change.

(9)–(30) No change.

(d) No change.

4320. Listing Requirements for Non-Canadian Foreign Securities and American Depositary Receipts.

To qualify for listing on Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b), and (e) of this Rule. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a) and (b), the security shall satisfy the criteria set out in this subsection for listing on Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued listing on Nasdaq.

(1) No change.

(2) (A)–(C) No change.

(D) A failure to meet the continued listing requirements for market value of listed securities shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of [30] *90* calendar days from such notification to achieve compliance with the applicable continued listing standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [30] *90* day compliance period.

(E) No change.

(3)–(26) No change.

(f) No change.

* * * * *

4450. Quantitative Maintenance Criteria.

After listing as a Nasdaq Global Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e) (f), (g), (h) or (i) below to continue to remain listed on the Nasdaq Global Market. A security maintaining its listing under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a)–(d) No change.

(e) Compliance Periods

(1)–(3) No change.

(4) A failure to meet the continued listing requirements for market [capitalization] *value of listed securities* shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of [30] *90* calendar days from such notification to achieve compliance with the applicable continued listing standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [30] *90* day compliance period.

(f)–(i) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify the procedures applicable to listed companies that fail to meet the market value of listed securities requirement. A company fails to meet the continued listing requirement for market value of listed securities if the market value of listed securities is below the applicable threshold for a period of 10 consecutive business days.[5] Upon such a failure, the company is currently provided a ''compliance period'' of 30 calendar days to achieve compliance. Compliance is achieved by meeting the requirement for a minimum of 10

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

[5] *See* Rules 4310(c)(8)(C), 4320(e)(2)(D) and 4450(e)(4).

consecutive business days during the 30 day compliance period.

Nasdaq has come to believe that the 30 day compliance period afforded by the existing rules is too short a period, especially during periods of market turmoil. Further, while companies are only allowed a 30 day period to regain compliance with the market value of listed securities requirement, they are allowed a 90 day compliance period to regain compliance with the requirement for market value of publicly held securities,[6] which is a subset of all listed securities.[7] As such, Nasdaq proposes to modify the compliance period applicable to a company that fails to meet the market value of listed securities requirement to extend the compliance period from 30 days to 90 days, making it the same as the compliance period for the market value of publicly held securities requirement.[8]

Nasdaq proposes that any company that previously received a delisting notification for failing to meet the market value of listed securities requirement would continue to be subject to delisting for that reason, unless a Hearings Panel grants the company an exception pursuant to Rule 4802(b)(2). A company that has not yet received a delisting notification from Nasdaq staff would have its compliance period extended to 90 calendar days from the date it was notified of the original deficiency. Thus, for example, if 25 days had elapsed since the company was notified of its 30-day compliance period under the old rule, the company would have an additional 65 days (including the five days remaining in the original compliance period), for a total compliance period of 90 days from the original notification.[9]

[6] *See* Rules 4310(c)(8)(B) and 4450(e)(1).

[7] Nasdaq also notes that the market value of listed securities requirement operates as an alternative to other listing requirements. *See* Rules 4310(c)(3), 4320(e)(2)(B), 4350(a) and 4350(b). However, while a company that previously qualified under any of the alternative listing requirements is permitted by Rule 4803(a)(1)(A) to provide Nasdaq staff with a plan to regain compliance and could receive a staff exception of up to 105 calendar days, a company that qualified under the market value of listed securities requirement is only permitted 30 calendar days to regain compliance if it becomes deficient.

[8] The company could also regain compliance by meeting one of the alternative listing requirements. For example, a company that fails to meet the market value of listed securities requirement could raise enough equity during the 90 day compliance period to meet the applicable equity requirement.

[9] Nasdaq also proposes to correct a reference in Rule 4450(e)(4) that currently refers to ''market capitalization'' to instead refer to ''market value of listed securities.'' Nasdaq inadvertently failed to change this reference when it changed the description of the underlying initial and continued listing requirement. See Securities Exchange Act Release No. 45283 (January 15, 2002), 67 FR 3520 (January 24, 2002) (approving SR–NASD–2001–84).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general and with Section 6(b)(5) of the Act,[11] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would modify Nasdaq's treatment of non-compliance with the market value of listed securities requirement in order to help allow companies sufficient time to cure a deficiency, especially during turbulent market environments, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will conform the length of the compliance period for a failure to meet the continued listing requirement for market value of listed securities with the current compliance period for a failure to meet the continued listing requirement for market value of publicly held shares. Because the publicly held shares listing requirement is merely a subset of the market value of listed securities requirement, the Commission believes that allowing companies that are deficient in the market value of listed securities requirement the same maximum time of 90 days that is currently available to cure a market value of publicly held securities deficiency raises no new regulatory issues. In addition, the Commission believes that waiving the 30-day operative delay will allow Nasdaq to immediately afford companies that may be deficient in the market value of listed securities requirement due to recent market volatility and conditions an additional 60 days to regain compliance.[16] For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See* discussion *supra* regarding companies already in a compliance period and companies that have already received a delisting notification.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–002 and should be submitted on or before February 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1943 Filed 1–28–09; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59185; File No. SR–NYSE–2008–141]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Pilot Period for the NYSE Realtime Reference Prices Pilot Program

Correction

In notice document E9–9 beginning on page 749 in the issue of Wednesday, January 7, 2009 make the following correction:

On page 750, in the third column, in the last line of the first paragraph, ''January 27, 2009'' should read ''January 28, 2009''.

[FR Doc. Z9–9 Filed 1–28–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT of STATE

[Public Notice 6499]

Bureau of Educational and Cultural Affairs (ECA)

Request for Grant Proposals: American Serbia & Montenegro Youth Leadership Exchange (A–SMYLE) Program.

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–09–19.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: March 27, 2009.

Executive Summary: The Office of Citizen Exchanges' Youth Programs Division announces an open competition for the American Serbia & Montenegro Youth Leadership Exchange (A–SMYLE) Program, for high school students from Montenegro and Serbia. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select high school students aged 15–17 from Montenegro and Serbia, place them with host families and schools for an academic year of study in the United States, provide activities that will enable the students to learn about leadership, civic responsibility, community activism, democracy, and American society, as well as to educate Americans about their countries and cultures, and to support alumni in projects at home.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for program is provided through Support for East European Democracy (SEED) legislation.

Purpose

The goals of the program are to develop a sense of civic responsibility and commitment to community development among youth; to foster relationships among youth from different ethnic, religious, and national groups; to assist the successor generation of Montenegro and Serbia in developing the qualities it will need to lead their countries in the 21st century; and to promote mutual understanding between the people of the United States and the people of Montenegro and Serbia.

With these goals in mind, the Bureau of Educational and Cultural Affairs (ECA) is sponsoring this program to provide scholarships for secondary school students from Montenegro and Serbia to spend one academic year in the United States, living with U.S. host families and attending high school. Programmatic activities will introduce students to the principles of youth leadership, civic education, civil society, and community service, as they are practiced in the United States. Upon the students' return to Montenegro and Serbia, the program will continue to support the students with follow-on and alumni activities as they apply their experiences in the United States to their lives at home.

Applicants should identify specific objectives that will demonstrate progress toward the goals stated above through the program. These will be the basis of an evaluation designed to measure the program's success. Please see Section IV.3d.3. on program monitoring and evaluation.

Guidelines

Applicants must be able to implement the program components both in the United States and in Montenegro and Serbia. The organization must have an established office in Montenegro and/or Serbia, and must be able to dedicate key staff to this program who possesses a thorough understanding of the secondary school student J Exchange Visitor Program regulations.

Student participants will arrive in their host communities during the month of August, and remain for 10 or 11 months until their departure between mid-May and June.

Proposed funding would support approximately 85 participants for an academic year program in 2010–11. Approximately 21% of the total number should be recruited from Montenegro; the rest should be recruited from all regions of Serbia.

Applicants should include a recruitment planning schedule.

The students will enroll in a U.S. high school and live with an American family, developing an understanding of U.S. life and culture. In addition to these firsthand experiences, students will participate in activities specifically designed to teach them about community life, citizen participation in a democracy, and U.S. culture during the exchange period. While in the United States, the focus of many of the students' enhancement activities will include principles of civil society, community service, and leadership through focused training and facilitation. Participants will have the opportunity to give presentations on their country and culture in community forums.

Upon the students' return to Montenegro and Serbia, the program will continue to support them as they apply their experiences in the United States to their lives at home. The ability of the grant recipient to track and engage alumni is a critical factor in the success of the program. Appropriate financial and organizational support for the follow-on component for alumni is as important as the U.S. exchange.

II. Award Information

Type of Award: Grant Agreement.
Fiscal Year Funds: 2009.
Approximate Total Funding: $1,360,000.
Approximate Number of Awards: One.
Approximate Average Award: $1,360,000.
Anticipated Award Date: Proposed start date is July 2009.
Anticipated Project Completion Date: July 2012.
Additional Information: Pending successful implementation of this program in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $1,360,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package: Please contact the Youth Programs Division, Office of Citizen Exchanges (ECA/PE/C/PY), U.S. Department of State, SA–44, 301 4th Street, SW., Room 220, Washington, DC 20547, telephone: (202) 453–8158, fax: (202) 453–8169; e-mail: *SchulzAJ@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–09–19 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Amy Schulz and refer to the Funding Opportunity Number ECA/PE/C/PY–09–19 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/ or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

Those who do not file IRS Form 990 must submit information above in the format of their choice.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa. The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

a. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Alumni Outreach/Follow-on Programming and Engagement: Please refer to the Proposal Submissions Instruction (PSI) document for additional guidance.

IV.3d.4 Describe your plans for: i.e. sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements etc.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1 Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. Budget requests may not exceed $1,360,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2 Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: March 27, 2009.

Reference Number: ECA/PE/C/PY–09–19.

Methods of Submission: Applications may be submitted in one of two ways: (1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or (2.) electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications. Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition.

Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–09–19, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Sections at the U.S. embassies for their review.

IV.3f.2 Submitting Electronic Applications. Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process: The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas at the U.S. Embassy in Belgrade and Podgorica. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program Planning and Ability To Achieve Program Objectives: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. Reviewers will assess the degree to which proposals engage participants in community activities that involve skills development and leadership training.

3. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, host families, schools, program venues and program evaluation) and program content (orientations, program meetings, resource materials and follow-up activities).

5. Institutional Capacity and Institution's Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Reviewers will assess the applicant and its partners to determine if they offer adequate resources, expertise, and experience to fulfill program objectives. Partner activities should be clearly defined. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Follow-on Activities: Proposals should provide a plan for continued follow-on activity ensuring that Bureau supported programs are not isolated events.

7. Program Monitoring and Evaluation: Proposals should include a plan to monitor and evaluate the program's success, both as the activities unfold and at the end of the program. Reviewers will assess your plans to monitor student progress and program activities, particularly in regard to intended outcomes indicated in your proposal. The successful applicant will be expected to submit quarterly reports, which should be included as an inherent component of the work plan. A draft survey questionnaire or other technique, plus description of a methodology to use to link outcomes to original project objectives, is recommended.

8. Cost-effectiveness and Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Preference will be given to organizations whose proposals demonstrate a quality, cost-effective program.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1.) A final program and financial report no more than 90 days after the expiration of the award;

(2.) Quarterly program and financial reports which should include both quantitative and qualitative data you have available.

(3.) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements. This report does not replace the last quarterly report.

(4.) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Program Data Requirements: Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Amy Schulz, Office of Citizen Exchanges, ECA/PE/C/PY, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 453–8158 Fax number: (202) 453–8169, E-mail address: *SchulzAJ@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–09–19.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: January 22, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–1926 Filed 1–28–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6497]

Culturally Significant Objects Imported for Exhibition Determinations: ''Titian, Tintoretto, Veronese: Rivals in Renaissance Venice''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et. seq.*; 22 U.S.C. 6501 note, *et. seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: ''Titian, Tintoretto, Veronese: Rivals in Renaissance Venice,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, MA, from on or about March 15, 2009, until on or about July 19, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 22, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–1929 Filed 1–28–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6498]

Culturally Significant Objects Imported for Exhibition Determinations: ''Art of the Korean Renaissance, 1400–1600''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March

27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: ''Art of the Korean Renaissance, 1400–1600,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about March 17, 2009, until on or about June 21, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 13, 2009.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–1932 Filed 1–28–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6490]

Notice of Meeting

Title: Shipping Coordinating Committee; Notice of Meeting.

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, February 18, 2009, in Room 6103 of the United States Coast Guard Headquarters building, 2100 Second Street, SW., Washington, DC 20593. The primary purpose of the meeting is to prepare for the 13th session of the Sub-Committee on Bulk Liquids and Gases (BLG 13) of the International Maritime Organization (IMO) to be held March 2–6, 2009 at the IMO's London Headquarters. The primary matters to be considered at BLG 13 include:

—Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments;
—Application of the requirements for the carriage of bio-fuels and bio-fuel blends;
—Development of guidelines and other documents for uniform implementation of the 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention);
—Development of provisions for gas-fuelled ships;
—Casualty analysis;
—Consideration of International Association of Classification Societies (IACS) unified interpretations;
—Development of international measures for minimizing the transfer of invasive aquatic species through bio-fouling of ships;
—Review of the Recommendation for material safety data sheets for MARPOL Annex I cargoes and marine fuel oils;
—Revision of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code);
—Safety requirements for natural gas hydrate pellet carriers;
—Review of relevant non-mandatory instruments as a consequence of the amended MARPOL Annex VI and the NO_X Technical Code; and
—Amendments to MARPOL Annex I on the use and carriage of heavy grade oil on ships in the Antarctic area.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. T. J. Felleisen, U.S. Coast Guard (CG–5223), Room 1210, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 372–1424.

Dated: January 21, 2009.

Mark Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E9–1931 Filed 1–28–09; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice–6492]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Thursday, February 12, 2009, in Room 6103 of the United States Coast Guard Headquarters building, 2100 Second Street, SW., Washington, DC 20593. The primary purpose of the meeting is to prepare for the 52nd session of the Sub-Committee on Ship Design and Equipment (DE 52) of the International Maritime Organization (IMO) to be held March 16–20, 2009 at the IMO's London Headquarters. The primary matters to be considered at DE 52 include:

—Amendments to resolution A.744(18) regarding longitudinal strength of tankers;
—Measures to prevent accidents with lifeboats;
—Compatibility with life-saving appliances;
—Test standards for extended service intervals of inflatable life rafts;
—Amendments to the Guidelines for ships operating in Arctic ice-covered waters;
—Revision of resolution A.760(18) regarding symbols related to life-saving appliances and arrangements;
—Guidelines for uniform operating limitations of high-speed craft;
—Consideration of International Association of Classification Societies (IACS) unified interpretations;
—Cargo oil tank coating and corrosion protection;
—Guidelines for maintenance and repair of protective coatings;
—Performance standards for recovery systems;
—Guidance to ensure consistent policy for determining the need for watertight doors to remain open during navigation;
—Revision of the Code on Alarms and Indicators (resolution A.830(19)); and
—Amendments to the Code for the Construction and Equipment of Mobile Offshore Drilling Units (MODU Code).

Printed copies of documents associated with DE 52 will be available at this meeting of the SHC. To request further copies of documents please write to the address provided below. Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek additional information by writing to Mr. Wayne Lundy, Commandant (CG–5213), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1300, Washington, DC 20593–0001 or by calling (202) 372–1379.

Dated: January 22, 2009.

Mark Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E9–1938 Filed 1–28–09; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Delegation of Authority No. 323]

Re-Delegation From the Deputy Secretary of State of Certain Authorities During the Transition Period

By virtue of the authority vested in the Secretary of State by the laws of the United States, and delegated to me by Delegation of Authority 245, dated April 23, 2001, I hereby delegate to the following officials to the extent authorized by law all authorities vested in the specified positions, including all authorities vested in the Secretary of State that have been or may be delegated or redelegated to those positions:

- To Deputy Assistant Secretary Steven J. Rodriguez, the authorities of the Assistant Secretary for Administration.
- To Deputy Assistant Secretary Eliot Kang, the authorities of the Assistant Secretary for International Security and Nonproliferation.
- To Deputy Spokesman, Robert A. Wood, the authorities of the Assistant Secretary for Public Affairs.
- To Deputy Assistant Secretary James L. Millette, the authorities of the Assistant Secretary for Resource Management.
- To Deputy Assistant Secretary Karin L. Look, the authorities of the Assistant Secretary for Verification, Compliance and Implementation.
- To Assistant Chief of Protocol for Diplomatic Affairs, Gladys Boluda authorities of the Chief of Protocol.
- To the Deputy Director, Edward Lacey, the authorities of the Director of Policy Planning.
- To Ruth E. Bennett, the authorities of the Senior Adviser on Women's Empowerment and the Director of the Office of International Women's Issues.
- To Nan E. Kennelly, the authorities of the Director of the Office to Monitor and Combat Trafficking in Persons.

Any authorities covered by this delegation are also hereby delegated to the Deputy Secretary for Management and Resources, the Under Secretary for Political Affairs and the Under Secretary for Management, and may also be exercised by the Secretary and the Deputy Secretary. Nothing in this delegation of authority shall be deemed to supersede any existing delegation of authority, which shall remain in full force and effect during and after this delegation.

This delegation shall become effective at noon on January 20, 2009, and shall expire upon the appointment and entry upon duty in each specific case of a subsequently appointed individual to serve in the respective position.

This memorandum shall be published in the **Federal Register**.

Dated: January 16, 2009.

John D. Negroponte,

Deputy Secretary of State.

[FR Doc. E9–1928 Filed 1–28–09; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Delegation of Authority No. 319]

Re-Delegation from the Deputy Secretary of State of Certain Authorities Vested in the Under Secretary for Democracy and Global Affairs and Coordinator

By virtue of the authority vested in the Secretary of State by the laws of the United States, and delegated to me by Delegation of Authority 245, dated April 23, 2001, I hereby delegate to the following officials to the extent authorized by law all authorities vested in the Under Secretary of State for Democracy and Global Affairs and Coordinator, including all authorities vested in the Secretary of State that have been or may be delegated or redelegated to that Under Secretary:

(1) To the Principal Deputy Assistant Secretary of State for Oceans and International Environmental Scientific Affairs, insofar as these authorities relate to the responsibilities of the Bureau of Oceans and International Environmental Scientific Affairs;

(2) To the Principal Deputy Assistant Secretary of State for Democracy, Human Rights and Labor, insofar as these authorities relate to the responsibilities of the Bureau of Democracy, Human Rights and Labor; and

(3) To the Principal Deputy Assistant Secretary of State for Population, Refugees and Migration, insofar as these authorities relate to the responsibilities of the Bureau of Population, Refugees and Migration.

Any authorities covered by this delegation are also hereby delegated to the Deputy Secretary for Management and Resources, the Under Secretary for Political Affairs and the Under Secretary for Management, and may also be exercised by the Secretary and the Deputy Secretary. Nothing in this delegation of authority shall be deemed to supersede any existing delegation of authority, which shall remain in full force and effect during and after this delegation.

This delegation shall become effective at noon on January 20, 2009, and shall expire upon the appointment and entry upon duty of a subsequently appointed individual to serve as Under Secretary for Democracy and Global Affairs and Coordinator.

This memorandum shall be published in the **Federal Register**.

Dated: January 16, 2009.

John D. Negroponte,

Deputy Secretary of State.

[FR Doc. E9–1826 Filed 1–28–09; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Delegation of Authority No. 322]

Re-Delegation From the Deputy Secretary of State of Certain Authorities Vested in the Under Secretary for Economic, Energy and Agricultural Affairs

By virtue of the authority vested in the Secretary of State by the laws of the United States, including Section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a), and delegated to me by Delegation of Authority 245, dated April 23, 2001, I hereby delegate to the Principal Deputy Assistant Secretary of State for the Bureau of Economic, Energy, and Business Affairs, to the extent authorized by law, all authorities vested in the Under Secretary of State for Economic, Energy and Agricultural Affairs, including all authorities vested in the Secretary of State that have been or may be delegated or redelegated to that Under Secretary.

Any authorities covered by this delegation are also hereby delegated to the Deputy Secretary for Management and Resources, the Under Secretary for Political Affairs and the Under Secretary for Management, and may also be exercised by the Secretary and the Deputy Secretary. Nothing in this delegation of authority shall be deemed to supersede any existing delegation of authority, which shall remain in full force and effect during and after this delegation.

This delegation shall become effective at noon on January 20, 2009, and shall expire upon the appointment and entry upon duty of a subsequently appointed individual to serve as Under Secretary for Economic, Energy and Agricultural Affairs.

This memorandum shall be published in the **Federal Register**.

Dated: January 16, 2009.

John D. Negroponte,

Deputy Secretary of State.

[FR Doc. E9–1930 Filed 1–28–09; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Delegation of Authority No. 321]

Re-Delegation From the Deputy Secretary of State of Certain Authorities Vested in the Under Secretary for Arms Control and International Security

By virtue of the authority vested in the Secretary of State by the laws of the United States, including the Foreign Assistance Act of 1961, the Arms Export Control Act, the Foreign Affairs Reform and Restructuring Act of 1998, and Section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a), and delegated to me by Delegation of Authority 245, dated April 23, 2001, I hereby delegate to Stephen D. Mull of the Office of the Under Secretary for Political Affairs, to the extent authorized by law, all authorities vested in the Under Secretary of State for Arms Control and International Security, including all authorities vested in the Secretary of State that have been or may be delegated or redelegated to that Under Secretary.

Any authorities covered by this delegation are also hereby delegated to the Deputy Secretary for Management and Resources, the Under Secretary for Political Affairs and the Under Secretary for Management, and may also be exercised by the Secretary and the Deputy Secretary. Nothing in this delegation of authority shall be deemed to supersede any existing delegation of authority, which shall remain in full force and effect during and after this delegation.

This delegation shall become effective at noon on January 20, 2009, and shall expire upon the appointment and entry upon duty of a subsequently appointed individual to serve as Under Secretary of State for Arms Control and International Security.

This memorandum shall be published in the **Federal Register**.

Dated: January 16, 2009.

John D. Negroponte,

Deputy Secretary of State.

[FR Doc. E9–1935 Filed 1–28–09; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Delegation of Authority No. 320]

Re-Delegation From the Deputy Secretary of State of Certain Authorities Vested in the Under Secretary for Public Diplomacy and Public Affairs

By virtue of the authority vested in the Secretary of State by the laws of the United States, including the Mutual Educational and Cultural Exchange Act of 1961, the United States Information and Educational Exchange Act of 1948, and the State Department Basic Authorities Act of 1956, and delegated to me by Delegation of Authority 245, dated April 23, 2001, I hereby delegate to the following officials to the extent authorized by law all authorities vested in the Under Secretary of State for Public Diplomacy and Public Affairs, including all authorities vested in the Secretary of State that have been or may be delegated or redelegated to that Under Secretary:

(1) To the Deputy Spokesman, Bureau of Public Affairs, insofar as these authorities relate to the responsibilities of the Bureau of Public Affairs;

(2) To the Principal Deputy Assistant Secretary of State for Educational and Cultural Affairs, insofar as these authorities relate to the responsibilities of the Bureau of Educational and Cultural Affairs, including responsibilities with respect to the John F. Kennedy Center for the Performing Arts and the President's Committee on the Arts and the Humanities; and

(3) To the Coordinator for International Information Programs, insofar as these authorities relate to the responsibilities of the Bureau of International Information Programs, including responsibilities with respect to the National Endowment for Democracy and the Broadcasting Board of Governors.

Any authorities covered by this delegation are also hereby delegated to the Deputy Secretary for Management and Resources, the Under Secretary for Political Affairs and the Under Secretary for Management, and may also be exercised by the Secretary and the Deputy Secretary. Nothing in this delegation of authority shall be deemed to supersede any existing delegation of authority, which shall remain in full force and effect during and after this delegation.

This delegation shall become effective at noon on January 20, 2009, and shall expire upon the appointment and entry upon duty of a subsequently appointed individual to serve as Under Secretary of State for Public Diplomacy and Public Affairs.

This memorandum shall be published in the **Federal Register**.

Dated: January 16, 2009.

John D. Negroponte,

Deputy Secretary of State.

[FR Doc. E9–1941 Filed 1–28–09; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0354]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: COMPASS Portal Customer Satisfaction Assessment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The collection involves the assessment of FMCSA's strategic decision to integrate its Information Technology (IT) with its business processes using portal technology to consolidate its systems and databases through the FMCSA COMPASS modernization initiative. The information to be collected will be used to assess the satisfaction of Federal, State, and industry customers with the FMCSA COMPASS Portal.

DATES: We must receive your comments on or before March 30, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket Number FMCSA–2008–0354 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC, 20590–0001 between 9 a.m. and 5

p.m., e.t., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR 19476). This information is also available at *http://docketsinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Schlicht, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4441; e-mail: *adam.schlicht@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Title II, section 207 of the E-Government Act of 2002 requires Government agencies to improve the methods by which government information, including information on the Internet, is organized, preserved, and made accessible to the public. To meet this goal, FMCSA plans to provide a survey on the FMCSA Portal, allowing users to assess its functionality. This functionality includes the capability for Federal, State, and Industry users to access the Agency's existing safety IT systems with a single set of credentials and have easy access to safety data about the companies that do business with FMCSA. The COMPASS program will also focus on improving the accuracy of data to help ensure information, such as carrier name and address, is valid and reliable.

FMCSA's legacy information systems are currently operational. However, having this many stand-alone systems has led to data quality concerns, a need for excessive IDs and passwords, and significant operational and maintenance costs. Integrating our information technologies with our business processes will, in turn, improve our operations considerably, particularly in terms of data quality, ease of use, and reduction of maintenance costs.

In early 2007, FMCSA' COMPASS program launched a series of releases of a new FMCSA Portal to its Federal, State and Industry customers. Over the coming years, more than 15 releases are planned. These releases will use portal technology to fuse and provide numerous services and functions via a single user interface and provide tailored services that seek to meet the needs of specific constituencies within our customer universe.

The FMCSA COMPASS Portal will entail considerable expenditure of Federal Government dollars over the years and will fundamentally impact the nature of the relationship between the Agency and its Federal, State, and Industry customers. Consequently, the Agency intends to conduct regular and ongoing assessments of customer satisfaction with COMPASS.

The primary purposes of this assessment are to:

• Determine the extent to which the FMCSA Portal functionality continues to meet the needs of Agency customers;

• Identify and prioritize additional modifications;

• Determine the extent that the FMCSA Portal has impacted FMCSA's relationships with its main customer groups.

The assessment will address:

• Overall customer satisfaction;

• Customer satisfaction against specific items;

• Performance of systems integrator against agreed objectives;

• Desired adjustments and modifications to systems;

• Demonstrated value of investment to FMCSA and DOT;

• Items about the FMCSA Portal that customers like best;

• Customer ideas for making the FMCSA Portal better.

Title: COMPASS Portal Customer Satisfaction Assessment.

OMB Control Number: 2126–0042.

Type of Request: Revision of the currently-approved information collection request.

Respondents: Federal, State, and Industry customers/users.

Estimated Number of Respondents: 100,422.

Estimated Time per Response: Five (5) minutes.

Expiration Date: 08/31/2009.

Frequency of Response: 4 times per year.

Estimated Total Annual Burden: 34,474 hours [(5 minutes to complete survey x 4 times per year = 20 minutes/60 minutes x 140,000 annual industry respondents x .70 (70%) response rate = 32,667) + (5 minutes to complete survey x 4 times per year = 20 minutes/60 minutes x 2,691 State government users x .90 (90%) response rate) = 807 burden hours].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA's performance including its utility in fostering assessment of the Portal; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize and/or include your comments in the request for OMB's clearance of this information collection request.

Issued on: January 12, 2009.

Terry Shelton,

Associate Administrator for Research and Information Technology.

[FR Doc. E9–1870 Filed 1–28–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 22, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 2, 2009 to be assured of consideration.

Office of Domestic Finance

OMB Number: 1505–0001.
Type of Review: Extension.
Title: Treasury International Capital Form S, ''Purchases and Sales of Long-term Securities by Foreigners''.
Form: S.
Description: Form S is required by law and is designed to collect timely information on international portfolio capital movements, including foreigners' purchases and sales of long-term securities in transactions with U.S. persons. The information will be used in the computation of the U.S. balance of payments accounts and international investment position, as well as in the formulation of U.S. international financial and monetary policies.
Respondents: Businesses or other for-profit institutions.
Estimated Total Reporting Burden: 20,107 hours.
OMB Number: 1505–0199.
Type of Review: Extension.
Title: Treasury International Capital (TIC) Form D: Report of Holdings of, and Transactions in, Financial Derivatives Contracts with Foreign Residents.
Form: D.
Description: Form D is required by law and is designed to collect timely information on International portfolio capital movements, including U.S. residents' holdings of, and transactions in, financial derivatives contracts with foreign residents. The information will be used in the computation of the U.S. balance of payments accounts and international investments position, as well as in the formulation of U.S. International financial and monetary policies.
Respondents: Businesses or other for-profit institutions.
Estimated Total Reporting Burden: 4,200 hours.
Clearance Officer: Dwight Wolkow, Treasury Office of Domestic Finance, RM 5205 MT, 1500 Pennsylvania Avenue, Washington, DC 20220, (202) 622–7448.
OMB Reviewer: OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *oira_submission@omb.eop.gov*.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–1846 Filed 1–28–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 22, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before March 2, 2009 to be assured of consideration.

Bureau of Engraving and Printing (BEP)

OMB Number: 1520–0001.
Type of Review: Extension.
Form: BEP 5283.
Title: Owner's Affidavit of Partial Destruction of Mutilated Currency.
Description: The Office of Currency Standards, Bureau of Engraving & Printing requests owners of partially destroyed U.S. currency to complete a notarized affidavit (BEP 5283) for each claim submitted when substantial portions of notes are missing.
Respondents: Individuals or households.
Estimated Total Burden Hours: 90 hours.

OMB Number: 1520–0002.
Type of Review: Extension.
Title: Claim for Amounts Due in the Case of Deceased Owner of Mutilated Currency.
Form: BEP 5287.
Description: BEP 5287 is used when Treasury is required to determine owner-ship in cases of a deceased owner of damaged or mutilated currency.
Respondents: Individuals or households.
Estimated Total Burden Hours: 1,821 hours.
Clearance Officer: Cary Conn (202) 874–2396, Bureau of Engraving and Printing, 14th & C Street, SW., Washington, DC 20228.
OMB Reviewer: OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *oira_submission@omb.eop.gov*.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–1859 Filed 1–28–09; 8:45 am]

BILLING CODE 4840–01–P

Thursday,
January 29, 2009

Part II

Federal Reserve System

12 CFR Parts 205, 226, 227, and 230

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 535

National Credit Union Administration

12 CFR Part 706

Electronic Fund Transfers; Proposed Rule; Truth in Lending; Unfair or Deceptive Acts or Practices; Truth in Savings; Final Rules and Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1343]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is proposing to amend Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The proposal would limit the ability of a financial institution to assess an overdraft fee for paying automated teller machine (ATM) withdrawals and one-time debit card transactions that overdraw a consumer's account, unless the consumer is given notice of the right to opt out of the payment of such overdrafts, and the consumer does not opt out. As an alternative approach, the proposal would limit the ability of a financial institution to assess an overdraft fee for paying ATM withdrawals and one-time debit card transactions that overdraw a consumer's account, unless the consumer affirmatively consents, or opts in, to the institution's payment of overdrafts for these transactions. In addition, the proposal would prohibit financial institutions from assessing an overdraft fee if the overdraft would not have occurred but for a debit hold placed on funds in the consumer's account that exceeds the actual amount of the transaction.

DATES: Comments must be received on or before March 30, 2009.

ADDRESSES: You may submit comments, identified by Docket No. R–1343, by any of the following methods:

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

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper 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: Ky Tran-Trong, Counsel, Dana Miller, Attorney, or Vivian Wong, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) (EFTA or Act), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of the types of transactions covered by the Act and regulation include transfers initiated through an ATM, point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation provide for the disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account activity statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. Further, the Act and regulation restrict the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) interprets the requirements of Regulation E to facilitate compliance and provides protection from liability under Sections 915 and 916 of the EFTA for financial institutions and other persons subject to the Act. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

II. Background

Overview of Overdraft Services

Historically, if a consumer sought to engage in a transaction that would overdraw his or her deposit account, the consumer's financial institution used its discretion on an ad hoc basis to determine whether to pay the overdraft. If an overdraft was paid, the institution usually imposed a fee on the consumer's account. In recent years, many institutions have largely automated the overdraft payment process. Automation is used to apply specific criteria for determining whether to honor overdrafts and to set limits on the amount of coverage provided.

Overdraft services vary among institutions but often share certain common characteristics. In most cases, consumers that meet a depository institution's criteria are automatically enrolled in overdraft services. While institutions generally do not underwrite on an individual account basis when enrolling the consumer in an overdraft service, most institutions will review individual accounts periodically to determine whether the consumer continues to qualify for the service and the amount of overdraft coverage provided. Most institutions disclose that the payment of overdrafts is discretionary, and that the institution has no legal obligation to pay any overdraft.[1]

In the past, institutions generally provided overdraft coverage only for check transactions. In recent years, however, the service has been extended to cover overdrafts resulting from non-check transactions, including ATM withdrawals, debit card transactions at POS, online transactions, preauthorized transfers, and ACH transactions.[2]

[1] These transactions are generally not covered under Regulation Z (Truth in Lending) if there is no written agreement between the consumer and institution to pay an overdraft and impose a fee. *See* 12 CFR 226.4(c)(3).

[2] According to the FDIC's Study of Bank Overdraft Programs, nearly 70 percent of banks surveyed implemented their automated overdraft program after 2001. In addition, 81 percent of banks surveyed that operate automated programs allow overdrafts to be paid at ATMs and POS debit card terminals. *See* FDIC Study of Bank Overdraft Programs 8, 10 (November 2008) (hereinafter, *FDIC Study*) (available at: *http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_FinalTOC.pdf*). *See also Overdraft Protection: Fair Practices for Consumers: Hearing before the House Subcomm. on Financial Institutions and Consumer Credit, House Comm. on Financial Services,* 110th Cong., at 72 (2007) (*hereinafter, Overdraft Protection Hearing*) (available at *http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr0705072.shtml*) (stating that as recently as 2004, 80 percent of banks still declined ATM and debit card transactions without charging a fee when account holders did not have sufficient funds in their account).

A flat fee is charged each time an overdraft is paid, regardless of the amount of the overdraft. Institutions commonly charge the same amount for paying the overdraft as they would if they returned the item unpaid. Some institutions may also impose a fee for each day the account remains overdrawn.

According to a recent report from the Government Accountability Office (GAO), the average cost of overdraft and insufficient funds fees was just over $26 per item in 2007.[3] The GAO also reported that large institutions on average charged between $4 and $5 more for overdraft and insufficient fund fees compared to smaller institutions.[4] In addition, the GAO noted that a small number of institutions (primarily large banks) apply tiered fees to overdrafts, charging higher fees as the number of overdrafts in the account increases.[5]

Industry and Consumer Group Perspectives

From the industry's perspective, automated overdraft services enable institutions to reduce the cost of manually reviewing individual items, and also ensure that all consumers are treated consistently with respect to overdraft payment decisions. Industry representatives observe that whether an overdrawn check is paid or returned, the consumer will be charged the same amount by the consumer's financial institution. Industry representatives also assert, however, that when an overdrawn check is paid, consumers receive significant benefits because they can avoid additional fees that would be charged by the merchant if the item was returned unpaid, and other adverse consequences, such as the furnishing of negative information to a consumer reporting agency.[6]

In contrast, consumer groups assert that overdraft transactions are a high-cost form of lending that trap low- and moderate-income consumers into paying high fees. Consumer groups also state that consumers are often enrolled in overdraft services automatically without their request or consent. In addition, consumer groups believe that by honoring overdrafts, institutions encourage consumer reliance on the service and therefore, consumers incur greater costs in the long run than they would if the transactions were not honored. Consumer groups note, for example, that historically, institutions declined a consumer's request for an ATM withdrawal or debit card transaction if the consumer did not have sufficient funds in his or her account.[7] Today, however, institutions are more likely to cover those overdrafts and assess a fee on the consumer's account for doing so.[8] According to consumer groups, this practice can be particularly costly in connection with debit card overdrafts because the dollar amount of the fee is likely to considerably exceed the dollar amount of the overdraft.[9] In addition, multiple fees may be assessed in a single day for a series of small-dollar transactions. Because of these costs, consumer groups assert that most consumers would prefer that their bank decline debit card transactions if the transactions would overdraw their account.[10]

Previous Agency Actions

In February 2005, the Board, Federal Deposit Insurance Commission (FDIC), Office of the Comptroller of the Currency (OCC), and National Credit Union Administration (NCUA) (collectively, the federal banking agencies) issued guidance on overdraft protection programs in response to the increased availability and customer use of overdraft protection services (Joint Guidance).[11] The Joint Guidance addresses three primary areas—safety and soundness considerations, legal risks, and best practices. The Office of Thrift Supervision (OTS) issued separate guidance (OTS Guidance) that focuses on safety and soundness considerations and best practices.[12] The best practices described in the Joint Guidance and the OTS Guidance address the marketing and communications that accompany the offering of overdraft services, as well as the disclosure and operation of program features, including the provision of consumer choice to opt out of the overdraft service.[13]

In May 2005, the Board revised Regulation DD and the staff commentary pursuant to its authority under the Truth in Savings Act (TISA) to address concerns about institutions' disclosure of overdraft fees generally, and the advertisement of overdraft services.[14] The goal of the Regulation DD revisions was to improve the uniformity and adequacy of disclosures provided to consumers about overdraft and returned-item fees to assist consumers in better understanding the costs associated with the payment of overdrafts. In addition, the final rule addressed some of the Board's concerns about institutions' marketing practices with respect to overdraft services.

May 2008 FTC Act and Regulation DD Proposals

In May 2008, the Board, along with the OTS and the NCUA (collectively, the Agencies), proposed to exercise their authority under the Federal Trade Commission Act (FTC Act) to prohibit institutions from assessing any fees on a consumer's account in connection

[3] *See Bank Fees: Federal Banking Regulators Could Better Ensure That Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts,* GAO Report 08–281, at 14 (January 2008) (hereinafter, *GAO Bank Fees Report*). *See also Bankrate 2008 Checking Account Study,* posted October 27, 2008 (available at: *http://www.bankrate.com/brm/news/chk/chkstudy/20081027-bounced-check-fees-a1.asp?caret=2*) (reporting an average overdraft fee of approximately $29 per item).

[4] *See GAO Bank Fees Report* at 16. A recent survey suggests that the cost difference in overdraft fees between small and large institutions may be larger than reported by the GAO, however. *See also* ''Disparities in Checking Overdraft Fees by Geography and Size,'' Press release, Moeb$ Services (October 25, 2008) (*Moeb$ 2008 Pricing Survey Press Release*) (available at: *http://moebs.com/AboutUs/Pressreleases/tabid/58/ctl/Details/mid/380/ItemID/29/Default.aspx*) (reporting that banks with more than $20 billion in assets charged on average $33.43 per overdrawn check compared to $24.28 per overdrawn check for banks and credit unions with less than $100 million in assets).

[5] According to the GAO, of the financial institutions that applied up to three tiers of fees in 2006, the average overdraft fees were $26.74, $32.53 and $34.74, respectively. *See GAO Bank Fees Report* at 14.

[6] *See, e.g., Overdraft Protection Hearing* at 44.

[7] *See, e.g., Overdraft Protection Hearing* at 72 (stating that as recently as 2004, 80 percent of banks still declined ATM and debit card transactions without charging a fee when account holders did not have sufficient funds in their account).

[8] *See, e.g., FDIC Study* at 10 (reporting that 81 percent of banks surveyed that operate automated programs allow overdrafts to be paid at ATMs and POS debit card terminals).

[9] *See, e.g., Overdraft Protection Hearing* at 72.

[10] *See* Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options,* Ctr. for Responsible Lending (April 16, 2008) (reporting the results of a survey indicating that 80 percent of consumers would prefer that a debit card transaction be declined if a $5 purchase would result in an overdraft and an accompanying $34 fee) (available at: *http://www.responsiblelending.org/pdfs/final-caravan-survey-4-16-08.pdf*). *But see 80 Percent of Consumers Have Not Paid Overdraft Fees in Past Year, Says ABA Survey,* Press Release, American Bankers Association (August 30, 2007) (reporting survey results indicating that of those consumers who had paid an overdraft fee in the past 12 months, 88 percent had wanted the payment covered) (available at: *http://www.aba.com/Press+Room/083007ABASurvey.htm*).

[11] *See* Interagency Guidance on Overdraft Protection Programs, 70 FR 9127, Feb. 24, 2005.

[12] *See* OTS Guidance on Overdraft Protection Programs, 70 FR 8428, Feb. 18, 2005.

[13] The federal banking agencies have also published a consumer brochure on overdraft services. The brochure, entitled ''Protecting Yourself from Overdraft and Bounced-Check Fees,'' can be found at: *http://www.federalreserve.gov/pubs/bounce/default.htm.*

[14] 70 FR 29582, May 24, 2005. A substantively similar rule applying to credit unions was issued separately by the NCUA. 71 FR 24568, Apr. 26, 2006.

with an overdraft service, unless the consumer is given notice and the right to opt out of the institution's overdraft service, and the consumer does not opt out. 73 FR 28904, May 19, 2008. The proposed opt-out right would have applied to overdrafts resulting from all methods of payment, including checks, ACH transactions, ATM withdrawals, recurring payments, and POS debit card transactions. The proposal also would have required institutions to provide consumers with the option of opting out only of the payment of overdrafts for ATM withdrawals and debit card transactions at POS. In addition, the proposal would have prohibited institutions from assessing overdraft fees where the overdraft would not have occurred but for a debit hold placed on funds in the consumer's account in excess of the actual transaction amount.

Concurrent with the issuance of the May 2008 FTC Act Proposal, the Board separately issued a proposal under Regulation DD (Truth in Savings), which set forth proposed form, content, and timing requirements for providing the opt-out notice. 73 FR 28730, May 19, 2008. To facilitate compliance, the Regulation DD proposal contained a model form that institutions could use to satisfy the opt-out notice requirement. Collectively, the two proposals on overdraft services were intended to ensure that consumers understand how overdraft services operate generally and have the opportunity to avoid the associated costs where such services do not meet their needs.

In addition to the proposed requirements regarding the form and content of the opt-out notice, the Regulation DD proposal set forth proposed revisions that would require all institutions to provide aggregate totals for overdraft fees and for returned item fees for the statement period and the year-to-date. Currently, only institutions that promote the payment of overdrafts are subject to this requirement. The Regulation DD proposal also addressed balance disclosures provided to consumers through automated systems, such as ATMs and online banking services. These provisions are adopted in final form under Regulation DD elsewhere in today's **Federal Register**.

Overview of Comments Received

The Agencies received approximately 1,500 comment letters on the proposed opt-out right for overdraft services under the May 2008 FTC Act Proposal. Consumer groups, members of Congress, the FDIC, and individual consumers supported the Agencies' proposal, but urged the Agencies to require institutions to obtain a consumer's affirmative consent (that is, an opt-in) before any fees could be charged for paying an overdraft. Some of these commenters also argued that overdraft services provide extensions of credit that should be subject to the Truth in Lending Act (TILA) so that consumers would be better able to compare the cost of overdraft services to the cost of other credit alternatives.

In contrast, the majority of industry commenters opposed the proposed rule. Industry commenters asserted that consumers derive substantial benefit from overdraft services, particularly in connection with check transactions. While institutions generally assess the same fee whether a check is paid or returned, industry commenters observed that the payment of overdrafts for checks enables consumers to avoid other adverse consequences, such as merchant fees, the furnishing of negative information for credit reports, and violations of bad check laws. Some industry commenters urged the Board to instead use other regulatory authority, such as Regulations DD or E, to address concerns about overdraft services.

Industry commenters also asserted that consumers may not fully understand the implications of opting out, and that those who elect to do so might unintentionally incur significant costs. In this regard, industry commenters and the OCC stated that if the opt-out right applied to check transactions, more checks would be returned unpaid. Industry commenters and the OCC also noted a potential unintended consequence of the proposal could be that institutions would lengthen their availability schedules to the extent permitted by the Board's Regulation CC, 12 CFR part 229, to ensure that there are sufficient funds in the payor's account to cover a deposited check. As a result, they argued, consumers may experience a longer waiting period before gaining access to deposited funds than currently is the case today.

With respect to implementing the proposed opt-out requirement, industry commenters raised a number of operational issues. These commenters were most concerned about the feasibility of limiting the opt-out right only to overdrafts paid in connection with ATM withdrawals and POS debit card transactions. Some industry commenters, however, argued that if the Agencies deemed it necessary to create a consumer opt-out right, it should be limited to ATM withdrawals and POS debit card transactions. These commenters noted that the majority of complaints about overdraft services arise in connection with debit card transactions in which the amount of the overdraft fee is substantially higher than the amount of the overdraft. Industry commenters also questioned the merits of requiring institutions to provide an opt-out notice following the assessment of an overdraft fee in light of the costs of printing and mailing additional opt-out notices.

With respect to the debit hold provision, individual consumers and consumer groups generally supported the Agencies' proposal. Industry commenters, in contrast, expressed concern about the operational burdens associated with the proposal because it could require institutions to retroactively monitor, and adjust, overdraft fees that have been assessed to a consumer's account. Industry commenters also urged the Agencies to instead adopt a disclosure-based rule applying to merchants that are responsible for placing the hold.

The Board also received over 600 comments in response to the Regulation DD proposal regarding the timing, format and content of the opt-out notice. Most of the comments came from individual consumers, who supported the proposed rule. The remaining comments came from financial institutions, industry trade associations, consumer groups, members of Congress, other federal banking agencies, state and local governments, and others.

Consumer groups supported the proposed content and model form for notifying consumers of their right to opt out of an overdraft service, but urged the Board to enhance the model form in various ways, including making the opt-out notice more prominent. Several industry commenters argued that the proposed model form was unduly biased towards encouraging consumers to opt out, and did not sufficiently explain that the payment of overdrafts was discretionary. Some industry commenters also urged the Board to eliminate the requirement to provide notice of the opt-out right following the assessment of an overdraft fee, stating that an initial notice was sufficient to apprise consumers of that right.

Consumer Testing

In addition to reviewing the comments received on the two proposals, the Board worked with a testing consultant, Macro International, Inc. (Macro), to revise the proposed model opt-out notice and conduct consumer testing of the revised notice. Two rounds of one-on-one interviews with a diverse group of consumers were completed in the fall of 2008. In general, after reviewing the model disclosures, test participants generally understood the concept of overdraft coverage, and that they would be charged fees if their institution paid their overdrafts. Participants also appeared to understand that if they opted out of overdraft coverage, this meant their checks would not be paid and they could be charged fees by both their institution and by the merchant.

During the first round of testing, Macro tested an opt-out form that allowed consumers to opt out of the payment of overdrafts for all transaction types, including checks and recurring debits. In the second round of testing, Macro tested an opt-out form that limited the opt-out right to ATM withdrawals and one-time debit card transactions made at POS and online. The majority of participants during both rounds indicated that they likely would not opt out if the opt-out also applied to checks. However, when asked if they would opt out if the choice was limited to opting out of overdrafts in connection with ATM withdrawals and one-time debit card purchases, half of the participants indicated that they would consider doing so.[15]

III. Summary of Proposal

Overdrafts

The Board is proposing amendments to Regulation E and the staff commentary to assist consumers in understanding how overdraft services provided by their institutions operate and to ensure that consumers have the opportunity to limit the overdraft costs associated with ATM withdrawals and one-time debit card transactions where such services do not meet their needs. The Board is proposing two alternative approaches in proposed § 205.17 of Regulation E. In addition, as stated elsewhere in today's **Federal Register**, the Board is not taking action on the May 2008 FTC Act (Regulation AA) and Regulation DD Proposals regarding consumers' right to opt out of overdraft services.

Under the first approach, institutions would be required to provide consumers with notice of the right to opt out of the institution's overdraft service for ATM withdrawals and one-time debit card transactions. The notice must be provided to the consumer before the institution may assess any fees or charges to a consumer's account for paying such overdrafts. Under this approach, the opt-out notice would generally be given at account opening (or any time before any overdraft fees are assessed) and subsequently for each periodic statement cycle in which the institution assesses a fee or charge to the consumer's account for paying an overdraft.

Under the second approach, institutions would be required to provide consumers with notice of the right to opt in, or affirmatively consent, to the institution's overdraft service for ATM withdrawals and one-time debit card transactions. The notice must be provided, and the consumer's affirmative consent obtained, before the institution could assess a fee or charge on the consumer's account for paying such overdrafts. Under this approach, additional notices following the assessment of a fee or charge for paying an ATM or one-time debit card overdraft would not be required once the consumer has opted in to the overdraft service.

Both approaches would permit institutions to implement the consumer's choice by providing an account that would not permit the payment of overdrafts for ATM withdrawals and one-time debit card transactions. The proposal provides two alternatives for implementing the consumer's choice for both of the opt-out and opt-in approaches. Under one alternative, the proposal would require an institution to provide an account that has the same terms, conditions, or features that are provided for consumers who do not opt out, except for features that limit the institution's payment of such overdrafts. Under another alternative, the proposal would allow institutions to vary the terms, conditions, or features for the account that does not permit the payment of ATM and one-time debit card overdrafts, provided that the differences are not so substantial that they discourage a reasonable consumer from exercising his or her right to opt out of the payment of such overdrafts (or compel a reasonable consumer to opt in).

To facilitate compliance, the proposal provides model forms that institutions may use to satisfy their disclosure obligations. The Board intends to conduct additional consumer testing of the proposed model forms following issuance of this proposal.

Debit Holds

The Board is also proposing to prohibit institutions from assessing an overdraft fee where the overdraft would not have occurred but for a debit hold placed on funds in an amount that exceeds the actual transaction amount and where the merchant can determine the actual transaction amount within a short period of time after authorization of the transaction (for example, fuel purchases at a gas station). The prohibition, set forth in proposed § 205.19, would not apply if the institution adopts procedures designed to release the hold within a reasonable period of time.

In light of this proposal, and as discussed elsewhere in today's **Federal Register**, the Board is not taking action on the proposed FTC Act (Regulation AA) amendments regarding debit holds.

IV. Legal Authority

The Board is issuing the proposed opt-out (and opt-in) and debit hold provisions of this proposal pursuant to its authority under Sections 904(a) and 904(c) of the EFTA (15 U.S.C. 1693b). Section 904(a) of the EFTA authorizes the Board to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA are to establish ''the rights, liabilities, and responsibilities of participants in electronic fund transfer systems'' and to provide ''individual consumer rights.'' *See* EFTA Section 902(b); 15 U.S.C. 1693. In addition, Section 904(c) of the EFTA provides that regulations prescribed by the Board may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers, that the Board deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance.

The legislative history of the EFTA makes clear that the Board has broad regulatory authority. The Senate Report states that section 904 of the EFTA ''authorizes the Federal Reserve Board to promulgate regulations to carry out the act's purposes'' and notes that the Senate Committee on Banking, Housing, and Urban Affairs ''regards regulations as essential to the act's effectiveness.''[16] According to the Senate Report, such regulations ''will add flexibility to the act by permitting the Board to modify the act's requirements to suit the characteristics of individual EFT services. Moreover, since no one can foresee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply.''[17] The Senate Report states that the intent was to give the Board ''flexibility in determining whether new or developing electronic services should be covered by

[15] *See Review and Testing of Overdraft Notices.* Macro International, December 8, 2008.

[16] S. Rep. No. 95–1273, 95th Cong., 2d Sess., at 26 (Oct. 4, 1978).

[17] S. Rep. No. 95–1273, at 26.

the act and, if so, to what extent.''[18] ''This delegation of authority to the Board is an important aspect of this legislation as it would enable the Board to examine new services on a case-by-case basis and would contribute substantially to the act's overall effectiveness.''[19]

The proposed opt-out (and opt-in) rules are intended to carry out the express purposes of the EFTA by: (a) Establishing notice requirements to help consumers better understand the cost of overdraft services for certain EFTs; and (b) providing consumers with a choice as to whether they want overdraft services for ATM withdrawals and one-time debit card transactions in light of the costs associated with those services. The proposed opt-out (and opt-in) rules include provisions designed to prevent circumvention or evasion of the requirement to provide the consumer with choice regarding these overdraft services. These rules also include provisions, including exceptions, designed to facilitate compliance by financial institutions in light of certain operational constraints.

The proposed debit hold rule is intended to carry out the express purposes of the EFTA by ensuring that consumers generally are not assessed fees for overdrafts that would not have occurred but for the placement of the hold. The proposed debit hold rule contains classifications, differentiations, and other provisions, including adjustments and exceptions, designed to facilitate compliance by financial institutions in light of certain operational constraints.

The proposed disclosures that would implement the proposed opt-out (and opt-in) requirements are issued pursuant to the Board's authority under Sections 904, 905 and 906(b) of the EFTA. 15 U.S.C. 1693b, 1693c and 1693d(c).

V. Section-by-Section Analysis

Section 205.12 Relation to Other Laws

Section 205.12(a) explains the relationship between Regulation E and Regulation Z when an access device permits a consumer to obtain an extension of credit incident to an EFT. In general, Regulation E governs the issuance of access devices and the addition of an EFT service to an accepted credit card, and Regulation Z governs the issuance of a combined credit card and access device and the addition of a credit feature to an accepted credit card. *See* § 205.12(a).

The proposal would amend Regulation E to clarify that both the issuance of an access device with an overdraft service and the addition of an overdraft service to an accepted access device are governed by Regulation E.

Currently, § 205.12(a)(1)(ii) states that the EFTA and Regulation E govern the ''issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.'' As the Board stated in the original March 1979 final rule, this provision was intended to clarify that Regulation E, rather than Regulation Z, applies to the issuance of ''access devices that are also credit cards solely by virtue of their capacity to access an existing overdraft credit line attached to the consumer's account.'' 61 FR 18468, 18472, March 28, 1979 (adopting § 205.4(c) where this provision originally appeared).

When the rule was originally adopted, the primary means of covering overdrafts incurred in connection with EFTs was through an overdraft line of credit linked to a debit card or other access device. Today, however, consumers are more likely to have these overdrafts covered by their institution's overdraft service, rather than by a separate overdraft line of credit. In both cases, the Board believes that Regulation E should apply to ensure consistent treatment.

Accordingly, the Board is proposing to amend § 205.12(a)(1)(ii) to provide that Regulation E governs the issuance of an access device that permits extensions of funds under an overdraft service (as defined below under proposed § 205.17) when the consumer's account is overdrawn. Proposed § 205.12(a)(1)(iii) provides that Regulation E also covers the addition of an overdraft service to a previously accepted access device. *See* also comment 12(a)–2, as proposed to be revised. Proposed comment 12(a)–3 clarifies that the addition of an overdraft service to an accepted access device does not constitute the addition of a credit feature under Regulation Z.

In addition, the Board is also proposing to amend § 205.12(a)(1)(i) to conform the regulation to reflect the redesignation of the definition of the term ''accepted credit card'' under Regulation Z, adopted elsewhere in today's **Federal Register**. *See* 12 CFR 226.12, comment 2. Current § 205.12(a)(1)(iii), which provides that Regulation E's liability limits and error resolution rules also apply to extensions of credit under an overdraft line of credit, would be redesignated as § 205.12(a)(1)(iv) and revised to include a reference to overdraft services.

Section 205.17 Requirements for Overdraft Services

Background

In the February 2005 Joint Guidance on overdraft protection services, the federal banking agencies recommended as a best practice that institutions obtain a consumer's affirmative consent to receive overdraft protection. Alternatively, the Joint Guidance stated that where overdraft protection is automatically provided, institutions should provide consumers the opportunity to ''opt out'' of the overdraft program and provide consumers with a clear disclosure of this option. 70 FR at 9132.[20]

Although it appears that most institutions provide consumers the right to opt out of overdraft services, this practice is not uniform across all institutions.[21] Moreover, even where an opt-out right is provided, this right may not be clearly disclosed to consumers. For example, some institutions may disclose the opt-out right in a clause in their deposit agreement, which many consumers may not notice or may not consider relevant because they do not expect to overdraw their accounts. In other cases, the clause may not be written in clearly understandable language. Accordingly, to ensure that all consumers are given a meaningful choice regarding overdraft services, the May 2008 FTC Act Proposal would have established notice and opt-out requirements for institutions providing such services. The content and format of the opt-out notice were set forth in the Board's Regulation DD Proposal.

Discussion

Based on the comments received in response to the May 2008 FTC Act and Regulation DD Proposals, the results of limited consumer testing, and its own analysis, the Board believes that concerns about overdraft services can be appropriately addressed under its rulemaking authority under the EFTA

[18] S. Rep. No. 95–1273, at 25.

[19] S. Rep. No. 95–1273, at 26.

[20] The OTS made similar recommendations in its separate guidance. *See* 70 FR at 8431.

[21] According to the FDIC's Study of Bank Overdraft Programs, 75.1% of institutions surveyed permit consumers to opt out of their automated overdraft program, while 11.1% of institutions require consumers to opt in. According to the FDIC, banks that do not promote automated programs were less likely to give consumers either the option to opt in or to opt out of the automated overdraft program. *See FDIC Study* at 27. *See also Moeb$ 2008 Pricing Survey Press Release* (reporting that 89.9% of institutions offer some form of a consumer opt-out).

and Regulation E. The Board has a number of reasons for reaching this conclusion.

First, the Board has considered the benefits to consumers of covering check transactions under an overdraft service. In particular, while a consumer will generally be charged the same fee by the financial institution whether or not a check is paid, if the institution covers an overdrawn check, the consumer may avoid other adverse consequences, such as the imposition of additional merchant returned item fees.[22] Such benefits are not evident, however, with regard to the payment of overdrafts for certain types of EFTs, specifically ATM withdrawals and one-time debit card transactions. For those types of transactions, if the transaction is declined because of insufficient funds in the consumer's account, the consumer would not incur any merchant returned item fees and typically would avoid any fees assessed by the financial institution. Accordingly, the Board believes it is unnecessary to apply an opt-out (or opt-in) rule to check transactions in the proposed rule and that a more targeted rule covering overdraft services is appropriate.

Second, the Board has considered the cost impact to consumers from overdraft fees assessed in connection with ATM and debit card overdrafts.[23] For one-time debit card transactions in particular, the amount of the fee assessed may substantially exceed the amount overdrawn.[24] Given the costs associated with overdraft services in these circumstances, consumers may prefer not to have these overdrafts paid. In the Board's limited consumer testing, some participants stated that they would prefer to have ATM withdrawals and debit card transactions declined if they had insufficient funds, rather than incur an overdraft fee.

Third, the Board notes that addressing overdrafts under its authority under the EFTA and Regulation E would ensure that if finalized, the rule would apply to all depository institutions, including state-chartered credit unions which would not have been covered by the NCUA's FTC Act authority.

Thus, for the reasons discussed above, the Board is proposing to prohibit account-holding financial institutions from assessing overdraft fees or charges on a consumer's account for paying an overdraft on an ATM withdrawal or one-time debit card transaction (whether at POS, online or by telephone), unless the consumer is given notice and a reasonable opportunity to opt out of the institution's overdraft service in connection with those transactions, and the consumer does not opt out. As discussed below, the Board is also proposing an alternative approach that would prohibit an account-holding financial institution from assessing any fees on a consumer's account for paying an ATM withdrawal or one-time debit card transaction that overdraws the account, unless the consumer opts in, or affirmatively consents, to the service.

1. First Alternative Approach—Opt-Out Requirement

A. Definition—§ 205.17(a)

Proposed § 205.17(a) defines ''overdraft service'' to mean a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. The term is intended to cover circumstances when an institution assesses a fee for paying an overdraft pursuant to any automated program or service, whether promoted or not, or as a non-automated, ad hoc accommodation. The term does not include an institution's payment of overdrafts pursuant to a line of credit subject to the Board's Regulation Z, including transfers from a credit card account, a home equity line of credit, or an overdraft line of credit. The term also does not include any overdrafts paid pursuant to a service that transfers funds from another account of the consumer (including any account that may be jointly held by the consumer and another person) held at the institution. The Board is not proposing to include these methods of covering overdrafts under this proposal because they require the express agreement of the consumer.

B. Opt-Out Requirement—§ 205.17(b)

General rule and scope of opt-out. Proposed § 205.17(b)(1) sets forth the general rule prohibiting an account-holding institution from assessing a fee or charge on a consumer's account for paying an overdraft on an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service, unless the consumer is given notice and a reasonable opportunity to opt out of the service, and the consumer does not opt out.[25] The proposed opt-out would apply to any ATM withdrawal, including withdrawals made at proprietary or foreign ATMs. The proposed opt-out would also apply to any one-time debit card transaction, regardless of whether the consumer uses a debit card at a point-of-sale (for example, at a merchant or a store), in an online transaction, or in a telephone transaction.

Proposed comment 17(b)–1 clarifies that a consumer's election to opt out of a financial institution's overdraft service does not prohibit the institution from paying any overdrafts for ATM withdrawals or one-time debit card transactions. If the institution pays an overdraft for these transactions, however, it would generally be prohibited from assessing an overdraft fee or charge, except as permitted under the exceptions set forth in proposed § 205.17(b)(5), discussed below. The rule would not, however, limit the institution's ability to debit the consumer's account for the amount of the overdraft, if the institution is permitted to do so under applicable law.

The proposed opt-out would not apply to other types of transactions, including check transactions and preauthorized EFTs.[26] As discussed above with respect to checks, the payment of overdrafts for these transactions may enable consumers to avoid other possible adverse consequences that might result if such items are returned unpaid, such as merchant returned item fees. Consumers may also be more likely to use checks

[22] According to one survey, the average merchant fee for a returned check is $27.78. *See Moeb$ 2008 Pricing Survey Press Release. See also FDIC Study* at 16 n.18 (stating that the fee amounts for paying an overdraft and for returning an item unpaid were the same for 98.1 of the surveyed institutions operating automated overdraft programs that reported the two fees).

[23] According to the FDIC's Study of Bank Overdraft Programs, the median dollar amount for debit card transactions resulting in an overdraft is $20. The FDIC's study also reported that POS/debit overdraft transactions accounted for the largest share of all insufficient funds transactions (41.0%). *See FDIC Study* at 78–79. This compares to the average cost of overdraft and insufficient funds fees of over $26 per item in 2007, as reported by the GAO. *See Bank Fees: Federal Banking Regulators Could Better Ensure That Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts*, GAO Report 08–281, at 14 (January 2008). *See also FDIC Study* at 15, 18 (reporting a median per item overdraft fee of $27 for banks surveyed); Eric Halperin, Lisa James and Peter Smith, *Debit Card Danger: Banks Offer Little Warning and Few Choices as Customers Pay a High Price for Debit Card Overdrafts*, Ctr. for Responsible Lending at 8 (January 25, 2007) (estimating that the median amount by which a consumer overdraws his or her account for a debit card purchase is $17).

[24] *See Overdraft Protection Hearing* at 72 (stating that consumers pay $1.94 in fees for every one dollar borrowed to cover a debit card POS overdraft).

[25] As further discussed below under proposed § 205.17(c), notice must be provided both before the institution's assessment of any fees or charges for paying an overdraft, and subsequently after the consumer has incurred any such fees or charges.

[26] The EFTA and Regulation E generally do not apply to check transactions. *See* § 205.3(c).

and preauthorized EFTs to pay for significant household expenses, such as utilities and rent. In the Board's limited consumer testing, participants indicated that they were more likely to pay important bills using checks and preauthorized EFTs, and to use debit cards for their discretionary purchases.

The opt-out also generally would not apply to ACH transactions. For example, if the consumer provides his or her checking account number to authorize an ACH transfer online or by telephone, the institution would be permitted to pay the item if it overdraws the consumer's account and assess a fee for doing so. The Board notes that in many cases, ACH transactions serve as a replacement for check transactions, such as where a check is converted to a one-time ACH debit to the consumer's account.[27] In addition, the payment of an overdraft for an ACH transaction could enable consumers to avoid merchant returned item fees.

Operational considerations. As discussed above, the May 2008 FTC Act Proposal would have required institutions to offer consumers the option of opting out of the payment of overdrafts only for ATM withdrawals and POS debit card transactions in addition to the option to opt out of the payment of overdrafts for all transaction types. In response, industry commenters stated that many processors do not currently have systems set up to distinguish paying overdrafts for some, but not all, payment channels, and that the reprogramming costs would be significant. Specifically, industry commenters stated that most systems today could either pay overdrafts for all transaction types or pay overdrafts for none; however, these systems were not set up to pay overdrafts for certain transaction types (*e.g.*, checks and ACH), but not others (*e.g.*, ATM and POS debit card transactions). Some industry commenters also asserted that most systems today are unable to readily differentiate between POS debit card transactions and other types of debit card transactions, such as a preauthorized transfer. A few industry commenters, however, argued that any opt-out right should be limited to ATM withdrawals and POS debit card transactions because the majority of complaints about overdraft services arise in connection with these transactions.

Notwithstanding the programming changes that would be required by the proposed rule, the benefits of enabling consumers to have a choice regarding the payment of overdrafts for ATM withdrawals and one-time debit card transactions may outweigh the associated reprogramming costs. From a consumer's perspective, any benefits from overdrawing the consumer's account for ATM withdrawals and one-time debit card transactions may be substantially outweighed by the costs associated with the overdraft. Unlike for check and ACH transactions where the consumer could be assessed fees by both the institution and the merchant or other payee, the consequence of not having overdraft services for ATM and one-time debit card transactions is to have a transaction denied with no fees assessed. If a one-time debit card transaction is denied, the consumer can provide another form of payment, such as cash or a credit card. For ATM transactions, consumers may reasonably expect that their withdrawal request will be denied if they do not have sufficient funds in their accounts.

For these reasons, the Board is proposing to limit the scope of the opt-out to ATM withdrawals and one-time debit card transactions. To minimize the cost impact on institutions, however, the Board anticipates allowing substantial lead time for institutions to implement the necessary programming changes. Comment is requested on whether the proposed opt-out should also apply to recurring debit card transactions and ACH transactions. Comment is also solicited on an appropriate implementation period for the proposed rule.

Reasonable opportunity for opt-out. Proposed § 205.17(b)(1)(ii) provides that once a consumer has received an opt-out notice, the consumer must be given a reasonable opportunity to opt out of an institution's overdraft service for ATM withdrawals and one-time debit card transactions. Proposed comment 17(b)–2 provides examples to illustrate what would constitute a reasonable opportunity to opt out, including reasonable methods for opting out.

The first three examples provide a generally applicable safe harbor for opt-out periods of 30 days after the consumer is provided an initial notice informing the consumer of the opt-out right. During this period, an institution generally would be prohibited from assessing any fees or charges for paying an overdraft for an ATM withdrawal or a one-time debit card transaction. Although 30 days would be a safe harbor, an institution may decide that a shorter waiting period could be adequate depending on the circumstances. Comment is requested regarding whether a shorter time frame, such as 15 or 20 days, may be more appropriate.

Proposed comment 17(b)–2.i contains an example of a reasonable method of opting out when the institution provides a written form that the consumer can fill out and mail to opt out. *See* proposed Model Form A–9(A) in Appendix A, discussed below. Proposed comment 17(b)–2.ii provides that an institution could also provide a toll-free telephone number that the consumer may call to exercise the opt-out. Proposed comment 17(b)–2.iii provides that an institution may provide an electronic means to opt out, such as a form that can be accessed and processed at an Internet Web site, provided that the institution directs the consumer to the specific Web site address where the form may be located, rather than solely referring to the institution's home page.

The fourth example provides that an institution may provide an opt-out notice prior to or at account-opening and require the consumer to decide whether to opt out as a necessary step to opening the account. *See* proposed comment 17(b)–2.iv. For operational reasons, an institution may not want to set up an account for the consumer with overdraft services, only to have to implement a consumer's opt-out a short time later when the consumer opts out within 30 days after receiving an initial opt-out notice.

Comment is requested whether the Board should require institutions to provide a toll-free telephone number to ensure that consumers can easily opt out. Participants in the Board's consumer testing indicated that even if the institution provided a form with a check-off box for the consumer's convenience, participants would still prefer to call their institution to opt out. Comment is also requested regarding whether the Board should add examples of methods of opting out that would not satisfy the requirement to provide a reasonable opportunity to opt out, such as requiring the consumer to write a letter to opt out.

Conditioning the opt-out. Proposed § 205.17(b)(2) provides that a financial institution shall not condition a consumer's right to opt out of the institution's payment of ATM withdrawals and one-time debit card transactions pursuant to the institution's overdraft service on the consumer also opting out of the institution's overdraft service with respect to checks, ACH transactions or other types of transactions (such as preauthorized EFTs). The Board is concerned that consumers may be discouraged from exercising their opt-out rights with

[27] *See* Geoffrey Gerdes, ''Recent Payment Trends in the United States,'' *Federal Reserve Bulletin* at A79 (October 2008) (noting that the number of checks converted to electronic payments in 2006 was 2.6 billion up from 0.3 billion in 2003).

respect to the institution's payment of ATM and debit card overdrafts if the consumer's opt-out choice would also preclude the consumer from having overdrafts paid for checks, ACH transactions, and other types of transactions.[28]

To prevent circumvention of the opt-out right, the proposed rule also would prohibit an institution from declining to pay checks, ACH transactions, or other types of transactions that overdraw the consumer's account because the consumer has opted out of the institution's overdraft service for ATM and one-time debit card transactions. Although the payment of overdrafts is generally at the discretion of the institution, the Board is concerned that some institutions may exercise that discretion in a manner that effectively prevents consumers from exercising a meaningful choice regarding overdraft services. Thus, the proposed rule generally would require an institution to apply the same criteria for deciding whether to pay overdrafts on checks, ACH transactions, or other types of transactions regardless of the consumer's opt-out choice with respect to ATM and one-time debit card overdrafts. For example, if an institution's internal criteria would lead the institution to pay a check overdraft if the consumer had not opted out of the institution's overdraft service, it must also apply that same criteria in a consistent manner in determining to pay the check overdraft if the consumer has opted out.

This provision is not intended to create a contractual requirement for the institution to pay overdrafts on checks, ACH transactions, or other types of transactions. Comment is requested on whether there are other, more effective means of ensuring that consumers are not discouraged from opting out of an institution's overdraft service for ATM withdrawals and one-time debit card transactions.

Notwithstanding the Board's concerns about potential chilling effects, the Board is also proposing a modified version of proposed § 205.17(b)(2) that would expressly permit institutions to condition the consumer's ability to opt out of an institution's overdraft service for ATM withdrawals and one-time debit card transactions on the consumer also opting out of the institution's overdraft service for checks and other transaction types. Under this alternative approach, an institution could also decline checks, ACH transactions, and other types of transactions because the consumer has opted out of the service for ATM withdrawals and one-time debit card transactions. This alternative would address the potential operational issues associated with implementing a partial opt-out rule.

The Board solicits comment on the merits of both alternatives. The Board also seeks comment on other approaches that may sufficiently balance concerns about the potential chilling effects from institutions declining to pay overdrafts for checks and other transactions if a consumer opts out of the payment of overdrafts for ATM withdrawals and one-time debit card transactions against the operational difficulties of implementing a partial opt-out rule.

Implementation of opt-out. Some institutions may choose to implement a consumer's decision to opt out at the account level and decline to pay overdrafts for ATM withdrawals and one-time debit card transactions for those consumers that have opted out. Other institutions for operational reasons may prefer to implement the consumer's choice at the product level and offer two different accounts, one account that allows the institution to pay overdrafts for ATM withdrawals and one-time debit card transactions, and another that is specifically designed for consumers who opt out (''opt-out'' account). Proposed § 205.17(b)(3) is intended to provide operational flexibility to financial institutions to implement an opt-out using either approach.

This provision would not, however, permit an institution to discourage, or chill, a reasonable consumer's exercise of the right to opt out. The Board is concerned that institutions may circumvent the proposed opt-out requirement and discourage consumers from opting out by, for example, imposing higher fees, paying lower interest rates, or limiting the features of the opt-out account. Thus, the proposal sets forth two alternative approaches to address this concern.

Under the first alternative, if the institution is providing an opt-out account that does not permit the payment of ATM and one-time debit card overdrafts, the account must have the same terms, conditions, and features, including interest rates paid and fees assessed, as an account that permits the payment of such overdrafts, except for features that limit the institution's payment of such overdrafts.[29]

Under the second alternative, an institution may alter some of the terms, conditions, or features of an account that does not permit the payment of overdrafts on ATM withdrawals and one-time debit card transactions. For example, the institution may wish to price some account services differently for the opt-out account. In light of the Board's concern about possible chilling effects, however, the second alternative permits an institution to vary the terms, conditions, or features of the opt-out account, provided that the differences in the terms, conditions, or features are not so substantial that they would discourage a reasonable consumer from exercising his or her right to opt out of the payment of overdrafts on ATM withdrawals and one-time debit card transactions.[30] For example, an institution may not decline to provide ATM and debit card services altogether because the consumer has opted out of the institution's overdraft service for ATM withdrawals and one-time debit card transactions. *See* proposed comment 17(b)(3)–1 to this second alternative.

The Board requests comment on both approaches. Specifically, the Board requests comment on whether institutions that currently offer an opt-out implement an opt-out at the account level (*i.e.*, within the same type of account) or at the product level (*i.e.*, by placing the consumer in a separate opt-out account). The Board also requests comment on whether institutions that currently offer an opt-out vary any other terms, conditions, or features of a separate opt-out account, and if so, which terms, conditions, or features are varied and why.

Exceptions to the notice and opt-out requirements. In response to the May 2008 FTC Act Proposal, several commenters urged the Agencies to exclude institutions that require consumers to opt into the institution's overdraft service from the requirement to provide opt-out notices to consumers. These commenters stated that the Agencies' proposed rule would impose

[28] In the Board's limited consumer testing, participants indicated that they would likely not opt out if checks and preauthorized EFTs would be returned because they used these methods of payment to pay important household bills, such as rent and utilities. In contrast, several participants stated that they would prefer that their institution decline their ATM withdrawals and one-time debit card transactions if they did not have sufficient funds in their accounts in order to avoid overdraft fees.

[29] As discussed in proposed comment 17(b)–1, a consumer's election to opt out of an institution's overdraft service for ATM and one-time debit card transactions does not prohibit the institution from paying overdrafts in such cases. However, the institution generally would not be permitted to assess a fee or charge for paying the overdraft.

[30] An institution that varies a term, condition, or feature of an account if a consumer opts out of the institution's overdraft service would have to comply with the change-in-terms notice requirements in § 205.8 and 12 CFR 230.5, as applicable.

unnecessary costs on such institutions. Moreover, these commenters stated that consumers would likely be confused by notices informing them of their right to opt out of a service that they have affirmatively requested.

In addition, some institutions may have a policy and practice of declining any ATM withdrawals or debit card transactions when the institution has a reasonable belief that the consumer does not have sufficient funds available in his or her account to cover the requested transaction at the time of authorization. An opt-out requirement would serve little purpose in these circumstances, and could lead to potential consumer confusion.

The Board is proposing to create exceptions to the notice and opt-out requirements in the circumstances described above. Proposed § 205.17(b)(4) contains the two proposed exceptions. First, institutions that have a policy and practice of declining to pay ATM withdrawals or one-time debit card transactions for which authorization is requested if the institution has a reasonable belief that the consumer does not have sufficient funds available to cover the transaction at the time of the authorization request would not have to provide consumers with notice and the right to opt out of overdraft services. Second, institutions that require the consumer's affirmative consent, or opt-in, before assessing any fees or charges for paying an ATM or one-time debit card overdraft also would not be subject to § 205.17.[31]

Proposed comment 17(b)(4)–1 states that institutions that qualify for either of the exceptions in § 205.17(b)(4) would not be required to provide consumers notice and a reasonable opportunity to opt out of the institution's payment of overdrafts for ATM withdrawals and one-time debit card transactions. Proposed comment 17(b)(4)–2 clarifies that an institution is not required to obtain the consumer's affirmative consent prior to each transaction that may overdraw the consumer's account to qualify for the opt-in exception in § 205.17(b)(4)(ii).

Exceptions allowing assessment of overdraft fees when a consumer opts out. In limited circumstances, an institution may be unable to avoid paying a transaction that would overdraw a consumer's account. The proposal sets forth two exceptions that would permit an institution to assess a fee or charge to a consumer's account for paying an overdraft for an ATM withdrawal or one-time debit card transaction, even if the consumer has opted out of the institution's overdraft service.

FTC Act Proposal. The May 2008 FTC Act Proposal would have permitted fees to be charged for an overdraft in two circumstances, notwithstanding the consumer's decision to opt out. The first circumstance was where the purchase amount presented at settlement by a merchant for a debit card transaction exceeded the amount originally requested for pre-authorization. The second circumstance was where a merchant or other payee presented a debit card transaction for payment by paper-based means, rather than electronically using a card terminal, and where the payee did not obtain authorization from the card-issuing financial institution at the time of the transaction.

In the supplementary information accompanying the May 2008 FTC Act Proposal, the Agencies stated that they had considered, but did not propose, an exception that would allow an institution to impose an overdraft fee despite a consumer's opt-out election as long as the institution did not ''knowingly'' authorize a transaction that resulted in an overdraft. The Agencies expressed concern that given the difficulty in determining a consumer's real-time account balance, such an exception could undercut the protections provided by a consumer's election to opt out. Nonetheless, the Agencies sought comment on other circumstances in which an exception may be appropriate to allow an institution to impose a fee or charge for paying an overdraft even if the consumer has opted out of the institution's overdraft service.

Industry commenters urged the Board to consider additional exceptions. Some industry commenters urged the Board to adopt a broad principles-based exception allowing fees to be charged when overdrafts are paid despite a consumer's decision to opt out. These commenters suggested the following principles-based exceptions: if an institution does not ''knowingly'' authorize the transaction that would overdraw the consumer's account; or if the institution authorizes a transaction on the ''good faith belief'' that there are sufficient funds in the consumer's account.

Other industry commenters listed specific exceptions that the Agencies should consider. Several commenters urged the Agencies to allow fees to be assessed if an overdraft was paid when the institution used a stand-in processor to authorize the transaction because the card network was temporarily off-line. Industry commenters also stated that the rule should permit fees to be assessed for ''force-post'' or ''must pay'' debit card transactions where an institution authorizes payment at the time of the transaction based on a determination that the consumer had sufficient funds. Under these circumstances, card network rules require institutions to honor or pay the transaction even if intervening transactions (for example, checks that are presented for payment or ATM withdrawals) causes the consumer to have insufficient funds when the transaction is presented for settlement. In addition, industry commenters supported exceptions permitting fees to be charged where a consumer subsequently has a deposited item returned, and where the transaction is not submitted for authorization by the merchant.

Reasonable belief exception. Proposed § 205.17(b)(5)(i) would permit a financial institution to assess an overdraft fee or charge for paying an ATM withdrawal or one-time debit card transaction, notwithstanding the consumer's opt-out, if the institution has a reasonable belief that there are sufficient funds available in the consumer's account at the time the institution authorizes the transaction. Thus, an institution could assess an overdraft fee if the institution has authorized a transaction on the reasonable belief that there were sufficient funds available to cover the transaction, but sufficient funds were not, in fact, available at settlement.

This could occur, for instance, where an authorization balance is not updated in real-time. For example, some institutions use a daily batch balance method for authorizing transactions and authorization decisions may be based upon a balance which is not updated during the day to reflect other account activity that occurred before the authorization request. In such cases, the institution may authorize a debit card transaction even though prior transactions that have posted or otherwise taken place during the day may cause the consumer's account to have insufficient funds for the debit card transaction. The proposed exception would permit the institution to pay the debit card transaction and assess an overdraft fee on the consumer's account because the institution authorized the transaction on the reasonable belief that there were sufficient available funds in the account to cover the transaction.

An institution could also assess an overdraft fee if it authorizes a

[31] This exception assumes that the Board adopts a rule requiring consumer opt-out, rather than opt-in, as is proposed under the second alternative approach discussed below.

transaction on the reasonable belief that a previously deposited check or other item was deposited on good funds, and the item is subsequently returned, causing the transaction to overdraw the consumer's account. For example, an institution may provide immediate availability for a $100 check that a consumer has deposited, and subsequently authorize a $75 debit card transaction on the belief that the check was written on sufficient funds. However, if the check is later returned due to insufficient funds in the check writer's account, the institution could permissibly charge the account of the consumer that had deposited that check if the debit card transaction overdraws the account because of the returned deposit.

The proposed exception would also apply where the settlement amount exceeds the amount submitted for pre-authorization. For example, a consumer may use his or her debit card at a pay-at-the-pump fuel dispenser to purchase $50 of fuel. At the time of authorization, the gas station may request a pre-authorization hold of $1 to verify the validity of the card. Assuming the card-issuing financial institution does not increase the amount of the hold, if the consumer has less than $50 in his or her account when the transaction is presented for settlement, the institution would be permitted to pay the transaction and assess a fee, even if the consumer has opted out of the institution's overdraft service.

Finally, an institution could assess an overdraft fee or charge in connection with force-post, or must-pay, debit card transactions that the institution is required to honor even if, at settlement, intervening transactions by the consumer have reduced the consumer's available balance below the authorized amount of the transaction. For example, a consumer may use his debit card to make a $50 purchase, which the institution authorizes based on the consumer's available balance at the time of authorization. However, because settlement may not occur for some period of time after completion of the transaction, intervening transactions may post to the consumer's account before the $50 transaction is presented for settlement. If there are insufficient funds in the consumer's account at the time of settlement, this exception would allow the institution to assess a fee to the consumer's account for paying the overdraft even if the consumer has opted out of the institution's overdraft service. Proposed comment 17(b)(5)–1 sets forth examples illustrating this exception.

The proposed exception in § 205.17(b)(5)(i) is not intended to permit an institution to assess an overdraft fee where a merchant has not submitted the transaction to the institution for authorization. A transaction may not be submitted for authorization, for example, because it is below the floor limits established by card network rules requiring authorization. Similarly, a merchant may decide not to submit the transaction for authorization because the small dollar amount of the transaction does not pose significant payment risk to the merchant. In either case, the consumer's financial institution would be unable to decline the transaction if the consumer did not have sufficient funds in the consumer's account. Nevertheless, the Board believes that institutions should not be permitted to assess a fee on the consumer's account in these cases when the consumer has opted out. From the perspective of a consumer who has opted out, it is reasonable to expect that the transaction would be declined if he or she did not have sufficient funds in the account. The merchant's decision not to seek authorization for small dollar transactions generally is not transparent to the consumer. In addition, because small-dollar transactions are those most frequently not submitted for authorization, prohibiting institutions from assessing overdraft fees in these circumstances would reduce the possibility that the consumer will incur overdraft fees that exceed the amount of the overdraft. An institution may, however, debit the consumer's account for the amount of the overdraft if permitted to do so under applicable law.

Similarly, the proposal would not permit the institution to assess a fee if the institution uses a stand-in processor to authorize the transaction and an overdraft was paid as a result. A stand-in processor may be used by an institution when the debit card network is temporarily unavailable. In such cases, the authorization decision may be made by the processor based on the institution's pre-determined amount, rather than the consumer's account balance. The Board is concerned about the appropriateness of permitting an institution to assess an overdraft fee on the consumer's account in these rare circumstances because a consumer who has opted out would reasonably expect the transaction to be declined if he or she did not have sufficient funds in the account. The institution may, however, debit the consumer's account for the amount of the overdraft if permitted to do so under applicable law. Proposed comment 17(b)(5)–2 provides examples of circumstances where an institution would not be permitted to assess a fee for paying an overdraft if the consumer has opted out because a transaction was never submitted to the institution for authorization.

Paper-based debit card transaction exception. Proposed § 205.17(b)(5)(ii) would permit an institution to assess an overdraft fee or charge, notwithstanding the consumer's opt-out election, where a merchant or other payee presents a debit card transaction for payment by paper-based means, rather than electronically using a card terminal, and the institution has not previously authorized the transaction. For example, the merchant may use a card imprinter to take an imprint of the consumer's card and later submit the sales slip to its acquirer for payment.

The Board believes this circumstance is analogous to a check transaction that is later returned for insufficient funds. In this case, the institution cannot authorize the transaction because of the way in which the transaction is processed. The consumer should be aware that the merchant is not obtaining authorization from the financial institution when the merchant takes an imprint of the consumer's card. Thus, the consumer could reasonably expect that he or she would be charged a fee if there are not sufficient available funds to pay for the transaction. In contrast, where a merchant swipes a consumer's card to capture the card information, but chooses not to submit the transaction for authorization, the merchant's decision not to seek authorization is not transparent to the consumer. Therefore, in the latter circumstance, the consumer may reasonably expect that if he or she did not have sufficient funds in his or her account that the transaction would be declined. Proposed comment 17(b)(5)–3 illustrates this exception.

C. Timing—§ 205.17(c)

The May 2008 FTC Act and Regulation DD Proposals would have required institutions to provide notice of the opt-out both before the institution's assessment of any fees or charges for paying an overdraft, and subsequently after the consumer has incurred any such fees or charges. The subsequent notice could be given on each periodic statement reflecting any fees or charges imposed in connection with an overdraft service, or at least once per statement cycle on any notice sent promptly after the institution's payment of an overdraft under an overdraft service. Proposed § 205.17(c) sets forth essentially the same requirements under Regulation E.

In response to the May 2008 FTC Act and Regulation DD Proposals, the majority of industry commenters stated that the rule should only require notices to be provided at account opening. These commenters argued that the subsequent notice requirement would impose unnecessary costs on institutions based on the expense of producing and mailing the additional notices. In the alternative, industry commenters recommended that the Board permit institutions to provide a shorter opt-out notice on periodic statements to limit statement costs.

Consumer groups urged the Board to require institutions to provide initial opt-out notices at account opening, segregated from other account documents, to ensure that the notice would be noticeable. In addition, consumer groups urged the Board to require institutions to provide subsequent notice of the opt-out right both on the periodic statement as well as on any notices the institution may send immediately after an overdraft so that if the consumer failed to read the opt-out language on the notice sent after an overdraft, it would also appear on the periodic statement.

Proposed § 205.17(c)(1) would require an institution to provide an opt-out notice before the institution assesses a fee or charge for paying an ATM withdrawal or one-time debit card transaction pursuant to the institution's overdraft service for accounts opened after the effective date of the final rule. For example, notice may be given at account opening, either within the deposit account agreement or in a stand-alone document. Institutions may also choose to provide the opt-out notice closer to the time the overdraft service is available, so long as the notice is provided before the institution assesses any fees or charges for paying an ATM withdrawal or one-time debit card transaction that overdraws the consumer's account. Proposed § 205.17(c)(1) also provides that the consumer must be given a reasonable opportunity to exercise the opt-out right after receiving the notice before such fees or charges may be assessed to the consumer's account. *See* proposed comment 17(b)–2 (providing that a consumer has a reasonable opportunity to opt out if the consumer is given 30 days after receiving an opt-out notice before an overdraft fee is assessed). Comment is requested whether institutions should be required to segregate the opt-out notice from other account disclosures to help ensure that the notice can be seen by the consumer.

Under the proposal, initial opt-out notices would not have to be provided to accounts that are opened prior to the effective date of the final rule. In response to the May 2008 Regulation DD proposal, consumer groups urged the Board to require institutions to provide initial opt-out notices to existing accountholders. The Board is concerned, however, that the costs of mailing initial opt-out notices to the millions of existing accountholders may exceed any consumer benefit. As further discussed below, existing consumers will still be alerted to their right to opt out of the overdraft service because they will receive an opt-out notice if and when they are assessed a fee or charge by their financial institution for paying an ATM or debit card overdraft.

If a consumer has not opted out (in the case of a joint account, where no joint account holder has opted out) or the consumer has revoked a prior opt-out election, proposed § 205.17(c)(2) would require institutions to provide an opt-out notice following the assessment of any overdraft fees or charges for paying an ATM withdrawal or one-time debit card transaction. The subsequent notice requirement would apply to all accounts, including existing accounts as of the effective date of the final rule.

The requirement to provide an opt-out notice following the assessment of an overdraft fee or charge is designed to ensure that consumers are given notice of their right to opt out at a time that may be most relevant to them, that is, after they have been assessed fees or other charges for the service. Consumers receiving an opt-out notice only at account opening may not focus on the significance of the information at that time because they may assume that they will not overdraw the account. Or, consumers may not notice the opt-out information provided with other account-opening documents.

Under the proposal, institutions would have the option of placing an opt-out notice on the periodic statement reflecting an overdraft fee or charge assessed to the consumer's account or on any notice sent promptly after the ATM or debit card overdraft. If the subsequent notice is included on the periodic statement, proposed § 205.17(c)(2)(i) would require the notice to be placed in close proximity to any aggregate totals for overdraft and returned item fees required to be disclosed by 12 CFR 230.11(a), as adopted under the Board's final rules under Regulation DD, published elsewhere in today's **Federal Register**. During consumer testing, a version of the opt-out form was placed directly below the cost totals associated with overdrawing the account. This placement enabled consumers to easily notice the information about their opt-out right.

The requirement to provide subsequent notice of the opt-out terminates once the consumer has opted out. That is, once the consumer has opted out, an institution need not provide notice of the opt-out right following the assessment of any overdraft fees or charges to the consumer's account (for example, under one of the exceptions in § 205.17(b)(5)). Of course, if the consumer opts out after having incurred an overdraft fee, the opt-out applies only to subsequent transactions and the institution could permissibly assess an overdraft fee without violating the general rule in § 205.17(b). Similarly, if the consumer has opted out but incurs an overdraft before the opt-out has been implemented, the institution would be permitted to assess a fee for paying the overdraft. *See also* proposed comment 17(g)–1 (stating that a consumer's subsequent opt-out does not require the institution to waive or reverse any overdraft fees assessed to the consumer's account prior to the institution's implementation of the opt-out).

Comment is requested as to whether the rule should permit institutions to include the opt-out notice on periodic statements in any cycle in which the consumer has been assessed an overdraft fee or charge, even if that fee or charge was not incurred in connection with an ATM withdrawal or a one-time debit card transaction. For example, the rule could permit institutions to provide an opt-out notice on a periodic statement if the consumer incurred an overdraft fee in connection with a check transaction. Comment is also requested as to whether institutions should be permitted to include the opt-out notice on the periodic statement if the consumer did not incur any overdraft fees or charges during the statement cycle. Prohibiting institutions from including the opt-out notice on each periodic statement where no fee has been assessed could impose additional costs on institutions because it would require a dynamic statement process that only permits the opt-out notice to appear on statements that reflect an overdraft fee. The Board is concerned, however, that consumers may dismiss the opt-out notice as boilerplate language if the opt-out notice were included on every periodic statement.

Proposed comment 17(c)(1)–1 contains guidance regarding the applicability of the notice requirements in § 205.17(c) to existing consumers. As discussed above, the requirement to provide notice before overdraft fees are assessed would apply only to accounts opened on or after the effective date of the final rule, that is, on or after the mandatory compliance date. However, the requirement to provide subsequent notice of the opt-out right after the consumer has overdrawn the account and assessed a fee or charge on the account would apply to all accounts on or after the effective date of the final rule, including existing accounts.

D. Content and Format—§ 205.17(d)

Proposed § 205.17(d) specifies the information that an institution would be required to include in its opt-out notices. In general, the proposal includes information similar to what would have been required under the May 2008 Regulation DD proposal, with certain revisions to reflect industry and consumer group comments, as well as the Board's consumer testing.

Two different notices are set forth in the proposal. First, the proposal contains a detailed notice about the institution's overdraft service and the consumer's opt-out right that would be provided before an institution can assess any fees or charges for paying an ATM or one-time debit card transaction that overdraws the consumer's account. Second, the proposal includes a shorter notice which could be provided to the consumer after an overdraft fee has been assessed (for example, on a periodic statement) that generally informs the consumer of his or her opt-out right and instructs the consumer to contact the institution for more information.[32] Model forms that institutions may use to comply with the rule are also included in this proposal. *See* proposed Model Forms A–9(A) and A–9(B) in Appendix A.

Initial notice content. Proposed § 205.17(d)(1) sets forth the information that must be included in the initial opt-out notice provided to consumers before an institution may assess any fees or charges for paying an overdraft. Proposed § 205.17(d)(1) would also require that the initial opt-out notice be in a form substantially similar to Model Form A–9(A) in Appendix A.

Proposed § 205.17(d)(1)(i) would require the institution to provide a general description of the financial institution's overdraft services and the types of EFTs for which an overdraft fee may be imposed, including ATM withdrawals and one-time debit card transactions.

Proposed § 205.17(d)(1)(ii) would require the initial notice to include information about the dollar amount of any fees or charges assessed on the consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service. Some institutions may vary the fee amount that may be imposed based upon the number of times the consumer has overdrawn his or her account, the amount of the overdraft, or other factors. Under these circumstances, the institution must disclose the maximum fee that may be imposed or a range of fees. Proposed comment 17(d)(1)–1 provides that the institution may indicate that the consumer may be assessed a fee ''up to'' the maximum fee or provide the range of fees. Comment is requested whether additional guidance is necessary if an overdraft fee is determined by other means, such as a percentage of the overdraft or the transaction that caused the overdraft.

Proposed § 205.17(d)(1)(iii) would require institutions to disclose any daily dollar limits on the amount of overdraft fees or charges that may be assessed. If the institution does not limit the amount of fees that can be imposed, it must disclose this fact. The May 2008 Regulation DD Proposal contained a similar disclosure, but also would have required institutions to state any dollar limits on the amount of fees that may be imposed in a statement period. Upon further analysis, however, a requirement to state any limits on the amount of fees that may be imposed in a statement cycle is not included in this proposal because the Board believes that this information is unlikely to be relevant or helpful to consumers.

Proposed § 205.17(d)(1)(iv) would require institutions to inform consumers of the right to opt out of the institution's payment of overdrafts for ATM and one-time debit card transactions, including the method(s) that the consumer may use to exercise the opt-out right and how to contact the institution for more information. *See also* proposed § 205.17(b)(1)(ii); comment 17(b)–2. An institution may also include an explanation regarding the type of transactions that would not be covered by the opt-out. *See* proposed comment 17(d)(1)–2, discussed below.

Several industry commenters in response to the Regulation DD proposed model forms urged the Board to add language to the forms stating that the payment of overdrafts is discretionary even if the consumer does not opt out. In addition, industry commenters urged the Board to include language stating that the consumer's decision to opt out would not ensure that overdrafts would not be paid. The proposed model form does not include specific language regarding the discretionary nature of overdraft services. However, institutions would be permitted to include in their opt-out notices language indicating that the payment of overdrafts is at their discretion. *See* proposed comment 17(d)(1)–2.

Proposed § 205.17(d)(1)(v) provides that institutions must state whether they offer any alternatives for the payment of overdrafts. Specifically, if an institution offers an overdraft line of credit or a service that transfers funds from another account of the consumer held at the institution to cover the overdraft (including an account held jointly with another consumer), the institution must state that fact and how to obtain more information about these alternatives. Institutions may also, but are not required to, list any additional alternatives they may offer to overdraft services. This provision incorporates a recommendation from the February 2005 Joint Guidance that institutions should inform consumers generally of other overdraft services and credit products, if any, that are available when describing an overdraft protection program.[33]

In some cases, these alternatives for paying overdrafts may be less costly than the overdraft service offered by the institution.[34] Consequently, requiring disclosures regarding these alternatives may enable consumers to make an informed decision about the merits of the overdraft service or whether other alternatives would be more appropriate to their needs. Consumer testing indicated that participants found information about alternatives helpful. Participants also generally understood that they would have to qualify for an overdraft line of credit, without a reference in the notice to any qualification requirements.

Some institutions may wish to explain to consumers the consequences of opting out of overdraft services. Proposed comment 17(d)(1)–2 provides that institutions may briefly describe these consequences. For example, the institution may state that if a consumer opts out of the institution's overdraft service for ATM withdrawals and one-time debit card transactions, the

[32] Alternatively, after assessing an overdraft fee or charge to the consumer's account, the institution could provide a notice containing the same content as the initial notice.

[33] *See* 70 FR at 9131.

[34] The FDIC Study on Bank Overdraft Programs indicated that the median per usage fee charged by banks for automated overdraft programs was $27. In contrast, the median per usage fee for linked-account programs and overdraft lines of credit was $5. *FDIC Study* at 15, 20 and 23.

institution may decline such transactions if the consumer's account does not have sufficient funds. Institutions that include an explanation of the consequences of opting out, the type of transactions that would not covered by the opt-out, or that the payment of overdrafts is at the institution's discretion, would not violate the requirement that opt-out notices be substantially similar to Model Forms A–9(A) or A–9(B), as applicable. *But see* proposed § 205.17(b)(3) (prohibiting institutions from declining to pay checks, ACH transactions, or other types of transactions that overdraw a consumer's account because the consumer opted out of the institution's overdraft service for ATM withdrawals and one-time debit card transactions). Comment is requested regarding whether the rule should permit or require any other information to be included in the overdraft notice.

Notice following assessment of overdraft fee. Proposed § 205.17(d)(2) sets forth the content requirements for the short form notice that institutions may provide to consumers following an institution's assessment of a fee or charge to the consumer's account for paying an ATM withdrawal or one-time debit card transaction pursuant to the institution's overdraft service (assuming that the consumer has not opted out).

The May 2008 Regulation DD Proposal would have required both the initial notice and subsequent notice of the opt-out right to contain the same content. Industry commenters urged that the Board to eliminate the subsequent notice requirement to reduce compliance burdens and costs. Alternatively, industry commenters urged the Board to permit institutions to provide an abbreviated notice on periodic statements that would generally remind consumers of their opt-out right and instruct them to contact the institution for additional information. Consumer group commenters supported the Board's proposal to require the same content on all notices informing consumers of their opt-out right to ensure that consumers can make an informed decision at the time they review the opt-out notice.

Upon further analysis, the Board believes that permitting institutions to provide a short-form opt-out notice may strike an appropriate balance between including sufficient information to inform consumers of their options regarding overdraft services and keeping such notices short, simple, and cost-effective. The Board recognizes that requiring institutions to provide the same amount of detail in the subsequent notice as provided in the initial notice could impose significant statement production and mailing costs. In addition, participants during consumer testing indicated that it was sufficient for them to receive all of the required information about the institution's overdraft service at account opening. Nevertheless, test participants indicated that it would be helpful to receive a concise reminder of their right to opt out after they were assessed an overdraft fee or charge.

Thus, proposed § 205.17(d)(2) provides institutions with the flexibility to provide either a notice containing the same content as the initial opt-out notice or an abbreviated notice that is substantially similar to Model Form A–9(B) in Appendix A. The proposed abbreviated model notice generally states the consumer's right to opt out, the availability of alternatives to the institution's overdraft service, and how to contact the institution for more information.

Model forms. As noted above, proposed § 205.17(d)(1) would require the initial opt-out notice to be substantially similar to Model Form A–9(A) in Appendix A. The model form has been revised from the model form in the May 2008 Regulation DD proposal to reflect the more limited opt-out right and to highlight near the top of the notice key information about the consumer's opt-out right, including the information about alternatives to the institution's overdraft service. To comply with the subsequent notice requirement, proposed § 205.17(d)(2) permits institutions to use a notice substantially similar to proposed Model Form A–9(A) or an abbreviated notice substantially similar to proposed Model Form A–9(B). The Board expects to conduct additional consumer testing of both proposed model forms following issuance of this proposal.

E. Additional provisions addressing consumer opt-out right—§ 205.17(e)–(h)

Joint accounts. Proposed § 205.17(e) would require a financial institution to treat an opt-out direction by any joint holder of an account as an opt-out for the account from all of the joint consumers. This provision takes into account recognizes the operational difficulties that would otherwise arise if an institution had to determine which account holder was responsible for a particular transaction and then decide whether to authorize that transaction based on that account holder's opt-out choice. Thus, if one joint consumer notifies the institution that he or she wishes to opt out of the institution's overdraft service, the institution must treat the choice as applying to all overdrafts triggered by an ATM withdrawal or debit card transaction for that account.

Continuing right to opt-out and time to implement opt-out. Proposed § 205.17(f) provides that a consumer may opt out of an institution's overdraft service at any time in the manner described in the institution's opt-out notice. Proposed § 205.17(g) provides that institutions must comply with a consumer's opt-out request as soon as reasonably practicable after the institution receives it. Comment is requested regarding the need for additional guidance on the ''as soon as reasonably practicable'' standard. Proposed comment 17(g)–1 would clarify that an institution is not required to waive or reverse any overdraft fees or charges assessed to the consumer's account prior to the institution's implementation of the consumer's opt-out request.

Duration of opt-out. Proposed § 205.17(h) provides that once a consumer opts out, the opt-out remains in effect until revoked by the consumer in writing or electronically. Comment is requested on whether consumers should also be permitted to revoke prior opt-out elections orally, whether by telephone or in-person.

F. Request for Comment

The Board requests comment on all aspects of the opt-out proposal, including the various alternatives set forth in the proposal. Comment is also requested on the costs and benefits of the proposed opt-out rule to consumers and financial institutions.

2. Second Alternative Approach—Opt-In Requirement

The Board is also soliciting comment on an alternative—an opt-in approach. An opt-in requirement may be appropriate where the rule is limited to the payment of overdrafts for ATM withdrawals and one-time debit card transactions, and would not apply to the payment of overdrafts for other types of transactions, including checks and ACH transactions. While a check or ACH transaction that is returned for insufficient funds may cause the consumer to incur possible merchant fee(s) for the returned item or late payment penalties, as well as an insufficient funds fee assessed by the consumer's financial institution, a declined ATM or debit card transaction does not result in the same adverse consequences.

Under an opt-out approach, consumers who may prefer to have ATM and debit card transactions declined if they would result in an overdraft may nonetheless incur overdraft fees simply because they fail to act on the notice.[35] For such consumers, establishing an opt-in rule that generally does not allow institutions to impose fees for paying these overdrafts unless a consumer affirmatively consents to the overdraft service would enable consumers to avoid fees for a service that they did not request or were unaware they had. An opt-in rule would also provide an incentive for institutions to persuade consumers of the benefits of the overdraft service and enable the consumer to make an informed choice about the merits of the service before he or she incurs any overdraft fees.

However, for consumers who rarely, if ever, overdraw their accounts, the occasional coverage of overdrafts by their institutions may be a positive benefit.[36] For such consumers, an opt-in regime may result in more declined transactions even though the consumer may have preferred to have the overdraft paid, despite the overdraft fee that may be charged by the consumer's financial institution. Such a consumer could be precluded from completing an important transaction when there are insufficient funds in the consumer's account and the consumer does not have another means of payment. For example, a consumer may need emergency funds and attempt to withdraw such funds from an ATM using a debit card. Or, the consumer may use a debit card to purchase essential groceries or medicine and have no other means of payment. In such cases, if the consumer has not opted in, the consumer would not be able to complete the transaction if the consumer does not have another form of payment.

Thus, while an opt-in approach may benefit some consumers, it may not be the optimal outcome for others. In addition, an opt-in rule could result in greater inefficiency for processing systems due to the potential increase in transactions that are declined. Accordingly, because there are both benefits and costs associated with the opt-in and opt-out approaches, the Board is soliciting comment on both approaches.

A. Definition—§ 205.17(a)

The proposed definition of ''overdraft service'' is the same under both the opt-out and the opt-in approaches, and means a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. *See* § 205.17(a). The term would cover circumstances when an institution assesses a fee for paying an overdraft pursuant to any automated program or service, whether promoted or not, or as a non-automated, ad hoc accommodation. The term does not include an institution's payment of overdrafts pursuant to a line of credit subject to the Board's Regulation Z, including transfers from a credit card account, a home equity line of credit, or an overdraft line of credit. The term also does not include any overdrafts paid pursuant to a service that transfers funds from another account of the consumer (including any account that may be jointly held by the consumer and another person) held at the institution. The Board is not proposing to include these methods of covering overdrafts in this proposal because they require the express agreement of the consumer.

B. Opt-In Requirement—§ 205.17(b)

General rule and scope of opt-in. Proposed § 205.17(b)(1) sets forth the general rule prohibiting an account-holding institution from assessing a fee or charge on a consumer's account held at the institution for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service, unless the consumer is provided with notice explaining the institution's overdraft service for such transactions and a reasonable opportunity to affirmatively consent, or opt in, to the service, and the consumer affirmatively consents, or opts in, to the service. If the consumer opts in, the institution must provide written confirmation of the consumer's consent.

The proposed opt-in would apply to any ATM withdrawal, including withdrawals made at proprietary or foreign ATMs. The proposed opt-in would also apply to any one-time debit card transaction, regardless of whether the consumer uses a debit card at a point-of-sale (for example, at a merchant or a store), in an online transaction, or in a telephone transaction.

Proposed comment 17(b)–1 clarifies that a financial institution may pay overdrafts for ATM withdrawals and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the institution's overdraft service. If an institution pays an overdraft for these transactions and the consumer has not opted in to the service, however, the financial institution would generally be prohibited from assessing a fee or charge for doing so, except as permitted under the exceptions set forth in proposed § 205.17(b)(5). The rule would not, however, limit the institution's ability to debit the consumer's account for the amount of the overdraft, provided that the institution is permitted to do so by applicable law.

Proposed comment 17(b)–2 clarifies that § 205.17 does not require an institution to pay or honor any overdrafts on an ATM withdrawal or a one-time debit card transaction even if a consumer affirmatively consents to the institution's overdraft service for such transactions.

Similar to the opt-out approach, the proposed rule requiring consumer opt-in would not apply to other types of transactions, such as checks, ACH transactions or preauthorized EFTs. In many of these cases, the institution would assess the same fee amount whether the item is paid or returned, but payment pursuant to the overdraft service would enable the consumer to avoid other adverse consequences, such as merchant returned item fees. In contrast, if a consumer does not opt in to the payment of overdrafts for ATM withdrawals or one-time debit card transactions, the transaction would generally be declined and the consumer would not be assessed any fees either by the financial institution or the merchant.

To enable consumers to make an informed choice about an institution's overdraft service, proposed § 205.17(b)(1)(i) would require the institution to provide a consumer a notice explaining the institution's overdraft service for ATM withdrawals and one-time debit card transactions that is segregated from everything else,

[35] Various studies suggest that consumers are likely to adhere to the established default rule, that is, theoutcome that would apply if the consumer takes no action, even if the default rule may not always be in their best interest. For example, studies of automatic enrollment in 401(k) savings plans indicate a significant increase in employee participation if the default rule provides that a consumer is automatically enrolled in the plan unless they opt out, instead of requiring employees to affirmatively agree to participate in the plan. *See, e.g.,* Brigette Madrian and Dennis Shea, *The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior,* 116 Quarterly Journal of Economics 1149 (2001).

[36] Available data indicates that the majority of account holders do not overdraw their accounts in a given year. In its Study of bank Overdraft Programs, the FDIC reported that almost 75 percent of consumer accounts for banks that had an automated doverdraft program had no overdrafts during the 12-month period examined. *See FDIC Study* at 76. *See also 80 Percent of Consumers Have Not Paid Overdraft Fees in Past year, Says ABA Survey,* Press release, american Bankers Association (August 30, 2007) (available at *http://www.aba.com/Press+Room/083007ABASurvey.htm*).

including other account disclosures. In addition, the proposal would provide that the notice may not contain any information that is not specified or otherwise permitted by this section (see proposed § 205.17(d) and comment 17(d)–2, discussed below). The separate notice requirement is designed to ensure that this information is not buried within other account documents and overlooked by the consumer. Otherwise, institutions could include information about the overdraft service in preprinted language in an account-opening disclosure, and a consumer might inadvertently consent to the institution's overdraft service merely by signing a signature card or other account-opening document acknowledging acceptance of the account terms.

Reasonable opportunity to opt in. Proposed § 205.17(b)(1)(ii) requires an institution to provide a reasonable opportunity for the consumer to affirmatively consent to the institution's overdraft service for ATM withdrawals and one-time debit card transactions. Proposed comment 17(b)–3 contains examples to illustrate what would constitute a reasonable opportunity to affirmatively consent, including the provision of reasonable method(s) to provide affirmative consent.

Proposed comment 17(b)–3.i contains an example of a reasonable method of opting in when the institution provides a written form that the consumer can fill out and mail to opt in. *See* proposed § 205.17(b)(1)(i) and proposed Model Form A–9 in Appendix A, discussed below. The institution may not, however, obtain a consumer's affirmative consent in writing by including preprinted language about the overdraft service in an account disclosure provided with a signature card or contract that the consumer must sign to open the account and that acknowledges the consumer's acceptance of the account terms. Nor may an institution obtain a consumer's affirmative consent by providing a signature card that contains a pre-selected check box indicating that the consumer is requesting the service.

Proposed comment 17(b)–3.ii illustrates that an institution could also provide a toll-free telephone number that the consumer may call to provide affirmative consent. Proposed 17(b)–3.iii illustrates that an institution may provide an electronic means for the consumer to affirmatively consent, such as a form that can be accessed and processed at an Internet Web site, provided that the institution directs the consumer to the specific Web site address where the form is located, rather than solely referring to the institution's home page.

Proposed comment 205.17(b)–4 states that an institution may provide an opt-in notice prior to or at account opening and require the consumer to decide whether to opt in to the payment of ATM withdrawals or one-time debit card transactions pursuant to the institution's overdraft service as a necessary step to opening an account. For example, the institution could require the consumer prior to or at account opening to choose between an account that does not permit the payment of ATM withdrawals or one-time debit card transactions pursuant to the institution's overdraft service or an account that permits the payment of such overdrafts.

Written confirmation. Proposed § 205.17(b)(1)(iii) requires that upon obtaining the consumer's affirmative consent to the institution's overdraft service, the institution must provide the consumer with written confirmation documenting the consumer's choice, to help ensure that the consumer intended to opt in to the service. An institution could comply with the proposed written confirmation requirement, for example, by providing a copy of a consumer's completed opt-in form or sending a letter to the consumer acknowledging that the consumer has elected to opt in to the institution's service if the consumer has opted out by telephone or in person.

Conditioning payment of overdrafts on consumer's affirmative consent. Proposed § 205.17(b)(2) of the opt-in approach provides that an institution shall not condition the payment of any overdrafts for checks, ACH transactions, or other types of transactions on the consumer also affirmatively consenting to the institution's payment of overdrafts for ATM withdrawals and one-time debit card transactions. The Board is concerned that some institutions may seek to tie the ability of a consumer to have overdrafts paid for checks, ACH transactions, and other types of transactions to the consumer affirmatively consenting to the institution's payment of ATM and debit card overdrafts. As discussed above, many consumers may prefer that their account-holding financial institution cover overdrafts by check. These consumers may elect to opt in to an institution's overdraft service if not doing so would mean that checks would be returned unpaid.

To prevent circumvention of the opt-out right, the proposed rule also would prohibit an institution from declining to pay checks, ACH transactions, or other types of transactions because the consumer has not also affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions. The proposed provision is designed to ensure that institutions do not exercise their discretion regarding the payment of overdrafts in such a manner as to prevent consumers from exercising a meaningful choice regarding overdraft services. Thus, the proposed rule generally would require an institution to apply the same criteria for deciding when to pay overdrafts for checks, ACH transactions, and other types of transactions, whether or not the consumer has affirmatively consented to the institution's overdraft service with respect to ATM and one-time debit card overdrafts. For example, if an institution's internal criteria would lead the institution to pay a check overdraft if the consumer had affirmatively consented to the institution's overdraft service, it must also apply that same criteria in a consistent manner in determining to pay the check overdraft if the consumer has not opted in. This provision is not intended to create a contractual requirement for the institution to pay overdrafts on checks, ACH transactions, or other types of transactions in any circumstances. *See also* proposed comment 17(b)–2. Comment is requested on whether there are other, more effective means of ensuring that consumers are not effectively compelled to opt in to an institution's overdraft service for ATM withdrawals and one-time debit card transactions.

Notwithstanding the Board's concerns about potential consumer compulsion to opt in, the Board is proposing a modified version of proposed § 205.17(b)(2) that would expressly permit institutions to condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer also affirmatively consenting to the institution's payment of ATM withdrawals and one-time debit card transactions pursuant to the institution's overdraft service. Under the alternative approach, an institution could also decline checks, ACH transactions, and other types of transactions because the consumer has not affirmatively consented to the institution's overdraft service for ATM withdrawals and one-time debit card transactions. *See* proposed § 205.17(b)(2). This alternative would address the potential operational issues associated with implementing an opt-in that would apply to ATM withdrawals and one-time debit card transactions, but not to other types of transactions.

The Board solicits comment on the merits of both alternatives. The Board also seeks comment on other approaches that may sufficiently balance concerns about consumers being effectively compelled to opt in to an institution's overdraft service for ATM withdrawals and one-time debit card transactions in order to have overdrafts paid for checks and other transactions against the operational difficulties of implementing a rule that enables consumers to decide whether to have overdrafts paid for some but not all types of transactions.

Implementation of opt-in. Some institutions may choose to implement a consumer's affirmative consent at the account level and pay overdrafts for ATM withdrawals and one-time debit card transactions for those consumers that have opted in. Other institutions for operational reasons may prefer to implement the consumer's choice at the product level and open different accounts for consumers depending on whether the consumer has provided affirmative consent to the institution's overdraft service for ATM withdrawals and one-time debit card transactions (''opt-in'' account) or not (''no opt-in'' account). Proposed § 205.17(b)(3) is intended to provide operational flexibility to institutions to implement a consumer's affirmative consent using either approach.

The Board is concerned, however, that institutions could circumvent the proposed opt-in right and effectively compel the consumer to affirmatively consent to the institution's payment of overdrafts for ATM withdrawals and one-time debit card transactions by providing a ''no opt-in'' account with significantly less favorable terms, conditions, or features compared to the opt-in account. Thus, the proposal sets forth two alternative approaches to address this concern.

Under the first alternative, an institution must provide to consumers who do not affirmatively consent to the institution's overdraft service for ATM withdrawals and one-time debit card transactions an account with the same terms, conditions, and features, including interest rates paid and fees assessed, as it provides to consumers who do affirmatively consent, except for the features that limit the institution's payment of such overdrafts.

Under the second alternative, an institution may wish to alter some of the terms, conditions, or features of the account that does not permit the payment of overdrafts on ATM withdrawals and one-time debit card transactions. For example, the institution may wish to price some account services differently for the ''no opt-in'' account. In light of the Board's concern about possible chilling effects, however, the second alternative permits an institution to vary the terms, conditions, or features of the ''no opt-in'' account only if the differences in the terms, conditions, or features are not so substantial as to effectively compel a reasonable consumer to affirmatively consent to the institution's payment of overdrafts on ATM withdrawals and one-time debit card transactions. For example, an institution may not decline to provide ATM and debit card services altogether if the consumer has not affirmatively consented to the institution's overdraft service for ATM withdrawals and one-time debit card transactions. *See* proposed comment 17(b)(3)–1 of this second alternative.

The Board requests comment on both approaches. For institutions that require consumers to opt in to the institution's overdraft service, the Board requests comment on whether the consumer's choice is implemented at the account level (*i.e.*, within the same type of account) or at the product level (*i.e.*, by placing the consumer in a different type of account). The Board also requests comment on whether institutions that currently require an opt-in for overdraft services, or that offer accounts to certain subsets of consumers (such as high-risk consumers) that limit the consumer's ability to overdraw the account, vary any other terms, conditions, or features of the account depending upon whether the consumer opts in or not. If so, comment is solicited on which terms, conditions or features are varied and why.

Exception to the notice and opt-in requirements. Proposed § 205.17(b)(4) creates an exception to the proposed notice and opt-in requirement. Specifically, no notice would be required (nor affirmative consent obtained) when the institution has a policy and practice of declining to pay any ATM withdrawals or one-time debit card transactions for which authorization is requested if the institution has a reasonable belief that if the consumer's account does not have sufficient funds available to cover the transaction at the time of the authorization request.

Exceptions to the fee prohibition. Proposed § 205.17(b)(5) contains two exceptions to the fee prohibition that are identical to the exceptions proposed under the opt-out approach. These exceptions would allow institutions to assess a fee or charge for paying an ATM or debit card overdraft in certain circumstances even if the consumer has not affirmatively consented to the overdraft service.

Under the first exception, an institution would be permitted to assess an overdraft fee or charge for paying an ATM withdrawal or one-time debit card transaction, notwithstanding the absence of the consumer's affirmative consent, if the institution has a reasonable belief that there are sufficient funds available in the consumer's account at the time it authorizes a transaction. *See* proposed § 205.17(b)(5)(i). Under the second exception, an institution would be permitted to assess an overdraft fee or charge, notwithstanding the absence of the consumer's affirmative consent, where a merchant or payee presents a debit card transaction for payment by paper-based means, rather than electronically using a card terminal, and the institution has not previously authorized the transaction. *See* proposed § 205.17(b)(5)(ii). These exceptions, and the reasons for proposing them, are discussed in greater detail in the section regarding the proposed opt-out approach. Proposed comments 17(b)(5)–1 through –3 contain examples illustrating the proposed exceptions for the opt-in approach.

C. Timing—§ 205.17(c)

Proposed § 205.17(c) would generally require that a financial institution provide an opt-in notice to the consumer about the institution's overdraft service before the institution assesses any fee or charge on the consumer's account for paying an ATM withdrawal or one-time debit card transaction pursuant to the institution's overdraft service. However, once a consumer has opted in, financial institutions would not be required to provide a notice regarding the institution's overdraft service following the assessment of any overdraft fees or charges to the consumer's account. The Board believes such a requirement is not necessary when the consumer has affirmatively elected to enroll in the overdraft service.

The proposed provision would apply differently depending on when the account is opened. For new accounts opened on or after the effective date of the final rule, the opt-in notice must be provided prior to the assessment of any fee or charge on the consumer's account for paying an ATM withdrawal or one-time debit card transaction pursuant to the institution's overdraft service.

In contrast to the opt-out approach, the opt-in rule would not require institutions to provide a notice after a consumer has been assessed an overdraft fee or charge. Thus, existing consumers may be unaware of their right to determine whether to enroll in their institution's overdraft service for ATM withdrawals and one-time debit card transactions, absent being given an ''initial'' opt-in notice. Accordingly, the proposed opt-in approach would require institutions to provide notices regarding their opt-in right to existing customers.

For existing accounts, that is, accounts opened prior to the effective date of the final rule, an institution may elect to provide an opt-in notice to all of its account holders on or with the first periodic statement sent after the effective date of the final rule. Alternatively, the institution may provide an opt-out notice to existing consumers following the first assessment of an overdraft fee or charge to the consumer's account on or after the effective date of the final rule.

The notice requirements for existing accounts would apply only for accounts for which overdraft services are provided as of the effective date of the final rule. Thus, institutions would not be required to provide notices to consumers that have previously opted out of, or, for those institutions that require an opt-in, to consumers that have not affirmatively consented to, the service. Institutions that elect to provide notices to consumers prior to the effective date of the final rule also would not be required to provide new notices once the rule becomes effective for consumers that have not affirmatively consented to the service (provided that the consumer was given a reasonable amount of time to opt in).

As discussed below under proposed § 205.17(g), if an existing consumer has not opted in within 60 days of receiving the opt-in notice, the institution must cease assessing any fees or charges to existing consumer accounts for paying an ATM withdrawal or one-time debit card transaction pursuant to the institution's overdraft service, except for fees that are permitted by the exceptions in § 205.17(b)(5).

The Board solicits comment on whether another approach may be more appropriate for existing customers. Specifically, the Board requests comment on whether it should adopt a hybrid approach consisting of an opt-out rule for existing accounts and an opt-in rule for new accounts. Under this approach, an institution could continue to pay overdrafts (and assess fees) for ATM withdrawals and one-time debit card transactions for existing consumers who have not opted out, but would be prohibited from paying such overdrafts and assessing an overdraft fee or charge on new consumers who have not affirmatively consented to the institution's overdraft service.

D. Content and Format—§ 205.17(d)

Proposed § 205.17(d) sets forth content requirements for the notice that must be provided to the consumer before the consumer may affirmatively consent to the institution's overdraft service. In addition, proposed § 205.17(d) requires that the opt-in notice be in a form substantially similar to Model Form A–9 in Appendix A. The content requirements are discussed in greater detail in the section regarding the proposed opt-out approach. However, the Board has modified these content requirements (and the accompanying proposed commentary) from the proposed opt-out approach to reflect the requirement to obtain the consumer's affirmative consent. *See* proposed § 205.17(d) and proposed comments 17(d)–1 and –2.

The Board expects to conduct consumer testing of this proposed model form (and the proposed model forms for the opt-out) following issuance of this proposal.

E. Additional Provisions Addressing Consumer Opt-in Right—§ 205.17(e)–(g)

Joint accounts. Proposed § 205.17(e) requires a financial institution to treat affirmative consent provided by any joint consumer of an account as affirmative consent for the account from all of the joint consumers. As also discussed above with regard to the opt-out approach, this provision takes into account the operational difficulties that would otherwise arise if an institution had to determine which account holder was responsible for a particular transaction and then make an authorization decision based on whether the consumer had affirmatively consented to the institution's overdraft service. Thus, if one joint consumer opts in to the institution's overdraft service, the institution must treat the consent as applying to all overdrafts triggered by an ATM withdrawal or debit card transaction for that account.

Continuing right to opt-in. Proposed § 205.17(f) provides that a consumer may affirmatively consent to a financial institution's overdraft service at any time in the manner described in the opt-in notice. This provision allows consumers to decide later in the account relationship that they wish to have overdrafts paid for ATM withdrawals and one-time debit card transactions.

Time to comply for existing customers. As discussed above under § 205.17(c), institutions would have the option of implementing the opt-in requirement for existing accounts either by providing a notice to all existing accounts on or with the first periodic statement sent on or after the effective date of the final rule. Alternatively, an institution could provide an opt-in notice to existing accounts after the first assessment of an overdraft fee or charge for an ATM or one-time debit card overdraft on or after the effective date of the final rule. In either case, under proposed § 205.17(g), if a consumer has not affirmatively consented to the service within 60 days after the institution sends the opt-in notice, the institution shall cease assessing any fees or charges on the consumer's account for paying such overdrafts, except if permitted by the exceptions in § 205.17(b)(5).

The 60-day period is intended to provide sufficient time for the consumer to respond to the opt-in notice, and for the institution to implement the consumer's decision. During this time, an institution may continue to assess overdraft fees for paying ATM withdrawals and one-time debit card transactions. Comment is requested on the 60-day period, and whether the period should be longer or shorter.

Duration of opt-in. Proposed § 205.17(h) provides that a consumer's affirmative consent to the institution's overdraft service is generally effective until revoked by the consumer. An institution may also terminate the consumer's access to the overdraft service at its discretion, for example, if the institution determines that there is excessive usage of the service by the consumer.

F. Request for Comment

The Board requests comment on all aspects of the opt-in proposal, including the various alternatives set forth in the proposal. Comment is requested on the costs and benefits of the proposed opt-in rule to consumers and financial institutions. Comment is also solicited on which approach (opt-out or opt-in) may be optimal for both consumers, and whether one approach may present unique operational or cost issues that would not be associated with the other approach.

Section 205.19 Debit Holds

Background

When a consumer uses a debit card to make a purchase, a block, or hold, may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in his or her account when the transaction is presented for settlement. This type of block or hold is commonly referred to as a ''debit hold.'' During the time the debit hold remains in place, which may be up to three days after authorization, those funds may be unavailable for the consumer's use in other transactions.

In some cases, the actual purchase amount is not known at the time the transaction is authorized, such as when a consumer uses a debit card to pay for gas at the pump, check into a hotel room, or pay for a meal at a restaurant. Consequently, the debit hold may be placed for an estimated amount that exceeds the actual transaction amount. The consumer may engage in subsequent transactions reasonably assuming that his or her account has only been debited for the actual transaction amount. Or, prior transactions may be presented for settlement after the hold is placed. Because of the excess hold, however, the consumer may incur overdraft fees for those transactions.

For example, a consumer with $100 in a deposit account may swipe his or her debit card at a pay-at-the-pump dispenser to purchase $20 worth of fuel. When this transaction is authorized, the consumer's financial institution may increase the merchant's $1 pre-authorization hold [37] to $75 to cover the maximum amount the institution guarantees to pay the gas station under card network rules.[38] Because the final $20 transaction amount is not settled immediately, the $75 debit hold amount may remain in place for some period of time, up to three days for signature-based debit card transactions.[39] However, the consumer would be unaware that $55 more than the purchase amount has been temporarily made unavailable for use until the merchant presents the transaction for settlement. Thus, prior to settlement of the transaction, the consumer may make subsequent purchases assuming that his or her account has been debited by only $20, and inadvertently spend more than the available amount in his or her account. As a result, the consumer could be charged an overdraft fee even though the account contained sufficient funds to pay for all of the consumer's purchases.

May 2008 FTC Act Proposal. The Agencies proposed in the May 2008 FTC Act Proposal to prohibit institutions from assessing an overdraft fee where the overdraft would not have occurred but for the placement of an excess debit hold. While consumer groups endorsed the Agencies' proposal, industry commenters expressed strong opposition, stating that it would present significant operational difficulties.

Several industry commenters asserted the rule would require banks to monitor retroactively, and manually adjust, transactions and fees that have posted to the account. A few of these commenters believed that the proposal would have a disproportionate cost impact on smaller institutions that do not have the systems or staff to handle the research and manual adjustments necessary to correct the consumer's account. Alternatively, institutions would have to stop placing debit holds altogether which, industry commenters argued, would raise potential safety and soundness concerns. Nonetheless, a few financial institution commenters stated that they either do not currently place holds on authorizations from gas stations, hotels, or rental car companies, or do not increase the $1 merchant pre-authorization amount in connection with fuel purchases.

Rather than adopting a substantive FTC Act rule, industry commenters urged the Agencies to use other existing regulatory authority. For example, industry commenters recommended that the Board exercise its authority under Regulation E to require merchants to disclose at the point-of-sale when holds may be placed on debit card transactions. Many industry commenters also stated that the Agencies' concerns were already largely addressed by recent card network initiatives intended to reduce the length of the hold time for debit holds. For example, one payment card network has recently implemented changes intended to reduce the hold times for pay-at-the-pump fuel dispensers. Under these new rules, fuel merchants would be encouraged to transmit a transaction for settlement within two hours of authorization. If the merchant does so, the card-issuing institution will be required to drop the hold within the two-hour time frame, thus reducing the hold times to a matter of hours, instead of days.

Discussion

A. General Rule—§ 205.19(a)

After reviewing the comments received on the May 2008 FTC Act Proposal and based on its own analysis, the Board is proposing to address debit holds under the EFTA and Regulation E. Proposed § 205.19(a) generally would prohibit financial institutions from assessing a fee or charge for paying an overdraft pursuant to the institution's overdraft service if the overdraft would not have occurred but for a debit hold placed in a consumer's account if the amount of the hold exceeds the actual transaction amount. The proposed rule would not apply to transactions in which the amount of the hold equals or is less than the actual amount of the transaction. Similarly, the proposed rule would not apply if the actual amount of the transaction would also have caused the overdraft to occur.

Under the proposal, the scope of the debit hold provision would be limited to debit card transactions in which the actual transaction amount generally can be determined by the merchant or other payee within a short period of time after the institution authorizes the transaction. For example, in pay-at-the-pump fuel purchases, the actual transaction amount can be calculated once the consumer has finished pumping fuel. Similarly, when a consumer uses a debit card to pay a restaurant bill, the actual transaction amount can be determined once the consumer has signed the receipt and added a service tip. According to data submitted by one card network on the Board's May 2008 FTC Act Proposal, restaurant and fuel purchases comprise over 95 percent of all transactions in which the settlement amount typically does not match the authorization amount.[40]

The proposed rule would not apply, however, to debit holds in other retail environments where the actual transaction amount generally cannot be determined for a considerable period of time after the merchant has submitted a transaction for authorization. For example, when a consumer provides his or her debit card at check-in for a multi-night hotel stay, the transaction will not be submitted for settlement until the end of the consumer's stay. In this case, a hold may be placed on funds in the consumer's account at check-in, but will not be released until the consumer completes his or her stay (or when the hold is required to be released under card network rules, whichever comes first). Similarly, if a consumer uses his

[37] Pre-authorization describes the dollar amount of funds that are held on a consumer's account when a card is swiped to initiate a transaction.

[38] In a signature-based debit card transaction at a pay-at-the-pump dispenser, the merchant typically obtains a $1 pre-authorization to activate the pump. The card issuer may increase this amount to the maximum amount guaranteed to the merchant (currently $75 in most cases under card network rules) to protect itself against risk of loss. In contrast, in a PIN-based debit card transaction where the cardholder enters his or her personal identification number (PIN) to complete the transaction, the merchant obtains pre-authorization for an estimated transaction amount, which under current card network rules generally may not exceed $75.

[39] Unlike signature-based debit card transactions, PIN-based debit card transactions that take place before the processing cut-off time for that day will typically settle soon after completion of the transaction.

[40] *See* Visa comment letter at 8.

or her debit card to reserve or pick up a rental car, the actual amount of the transaction will not be known until the car is returned. In these circumstances, the general rule would not apply because the actual amount of the transaction generally cannot be determined within a short period of time after. It seems impracticable to craft a rule in such cases because it would be impossible to determine a reasonable hold period in all such circumstances.

Moreover, the Board believes that overdraft fees are less likely to occur for hotel and car rental transactions because consumers tend to use credit cards for these transactions. In addition, data provided by one commenter indicates that even where debit cards are used in hotel and car rental transactions, they comprise a very small proportion of transactions overall involving a debit hold. The Board has received few complaints regarding overdraft fees incurred as a result of debit holds placed in connection with hotel and car rental transactions.

For these reasons, the Board is proposing a targeted rule for debit holds that would apply only in circumstances when the actual transaction amount can be determined within a short period of time after the institution authorizes the transaction. As stated above, the proposed rule would appear to cover approximately 95 percent of all transactions (pay-at-the-pump and restaurants) in which the actual transaction amount and the authorization amount do not match. Thus, the proposed rule would cover the areas of greatest concern regarding overdraft fees incurred because of a debit hold. Proposed comment 19(a)–1 provides examples of transactions covered by the proposed rule.

The prohibition against assessing an overdraft fee in connection with a debit hold applies only if the overdraft is caused solely by the existence of the hold. Proposed comment 19(a)–2 provides that an institution may assess an overdraft fee or charge if the consumer's account is overdrawn for other reasons. These reasons may include prior debit card transactions that may have been authorized but not yet presented for settlement, or when a deposited check in the consumer's account is returned.

Proposed comment 19(a)–3 clarifies that a financial institution does not violate the prohibition in § 205.19 if it promptly waives or refunds any overdraft fees assessed on a consumer's account caused by a debit hold placed on funds in the consumer's account that is in excess of the actual amount of the transaction. However, the institution may not require the consumer to provide notice or other information that an overdraft fee was caused by a debit hold on funds in the consumer's account before waiving or refunding the fee. Proposed comment 19(a)–3 includes an example illustrating this provision.

Proposed comments 19(a)–4 through –7 set forth examples to illustrate application of the rule.

B. Safe Harbor—§ 205.19(b)

The proposed rule provides a safe harbor that would allow a financial institution to assess a fee or charge for paying an overdraft that is caused solely by a debit hold in certain cases. Specifically, proposed § 205.19(b) permits an institution to assess an overdraft fee or charge to the consumer's account in connection with a debit hold if the institution has adopted procedures and practices designed to remove the hold within a reasonable period of time. This safe harbor is intended to mitigate the potential compliance burden on institutions. Thus, an institution would not be required to recalculate each transaction which may appear to be overdrawn due to an excess hold to determine whether an overdraft fee was properly assessed if the hold is removed within a reasonable period of time following authorization. Proposed § 205.19(b) provides that an institution has procedures and practices designed to release the hold within a reasonable period of time if the institution releases debit holds for the transactions covered by the proposed rule within two hours of authorization.[41] Proposed comment 19(b)–1 illustrates the safe harbor.

The two-hour time period for removing a hold is consistent with industry efforts to minimize current hold times in certain retail environments. As discussed above, one payment card network has recently implemented changes designed to significantly reduce the hold times at pay-at-the-pump fuel dispensers. This industry initiative, however, is voluntary and, by itself, may not be sufficient to protect consumers from being assessed overdraft fees caused by an excess hold. In addition, this initiative is currently limited to pay-at-the-pump debit card transactions, and would not apply in other circumstances in which the actual transaction amount can be determined within a short period of time after authorization was obtained, such as at restaurants. Nonetheless, the introduction of a two-hour hold period, even on a voluntary basis, suggests that such a standard is feasible.

The Board recognizes that the proposed safe harbor in § 205.19(b) would not prevent in all cases the assessment of overdraft fees caused by a debit hold even though the consumer had sufficient funds in the account. For example, a consumer may use his or her debit card to purchase groceries an hour after completing a fuel purchase. The proposed safe harbor would not preclude the consumer's financial institution from assessing an overdraft fee or charge for the grocery purchase where an excess hold placed in connection with the fuel purchase causes the consumer to have insufficient funds at the time of authorization for the grocery purchase. (However, if the consumer has opted out under § 205.17 (or not opted in), the institution would not be permitted to assess a fee or charge for paying the debit card overdraft. *See* proposed comment 19(b)–2, discussed below.) The Board nonetheless believes that in the vast majority of cases, consumers would not be assessed a fee for an overdraft that was caused by an excess debit hold in light of the short time period (2 hours) that the hold would be in place before it would be released by institutions that follow the safe harbor. However, the Board solicits comment on this approach.

Proposed comment 19(b)–2 illustrates the interaction between the debit hold provision in § 205.19 and the opt-out (or opt-in) requirements in § 205.17. Specifically, if a consumer is not enrolled in the institution's overdraft service for ATM withdrawals and one-time debit card transactions (because the consumer has opted out or not opted in), the institution may not assess any overdraft fees incurred in connection with a debit hold even if the institution otherwise is not prohibited from doing so by the debit hold provision. For example, assume a consumer has $100 in his or her deposit account and has opted out of the institution's overdraft service. The consumer uses his or her debit card to purchase $30 of fuel at a pay-at-the-pump fuel dispenser. At the time of authorization, the financial institution increased the gas station's $1 preauthorization hold to $75. One hour after completing the fuel purchase, the consumer makes a $60 debit card purchase at a grocery store. Notwithstanding the fact that the consumer made the purchase within the two-hour safe harbor, the institution would not be permitted to assess an

[41] Where an institution has released a debit hold before the transaction is presented for payment in order to take advantage of the safe harbor, it would be permitted to assess an overdraft fee if the actual transaction amount presented for settlement causes the consumer to overdraw his or her account.

overdraft fee because the consumer had opted out of (or not opted in to) the institution's overdraft service.

C. Other Potential Approaches

The proposal does not require merchants to disclose debit holds as a substitute for a substantive rule, as some industry commenters had suggested. The Board does not believe that a disclosure-based approach would be effective in pay-at-the-pump and restaurant transactions. For example, a notice posted at a gas pump or in a restaurant is unlikely to be noticed by the consumer. Even if the consumer were to notice a point-of-sale disclosure about debit holds, the consumer would not know how long the hold will remain in place. Moreover, for signature-based pay-at-the-pump debit card purchases, the merchant does not know whether the financial institution will increase the $1 pre-authorization hold. Therefore, merchant disclosures at point-of-sale regarding debit holds do not appear to provide a workable solution in most circumstances.

D. Request for Comment

The Board requests comment on all aspects of the debit hold proposal, including whether additional guidance is necessary regarding transactions in which the actual purchase amount is determined within ''a short period of time.'' Comment is also requested on the costs and benefits of the proposed rule to consumers and financial institutions.

Comment is requested on the appropriateness of the proposed safe harbor, including whether other time periods may be more appropriate in light of operational constraints at smaller institutions which may only receive authorization and settlement information periodically during the day.

In addition, comment is requested whether the Board should exercise its authority under Section 904 of the EFTA to also require merchants (or their acquirers or processors) to promptly submit transactions covered by this rule for settlement. Specifically, the Board seeks comment on whether the final rule should also require merchants (or their acquirers or processors) to submit such transactions for settlement within the safe harbor period.

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule is likely to have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The Board is proposing revisions to Regulation E to prohibit financial institutions that hold a consumer's account from assessing a fee or charge for paying ATM withdrawals and one-time debit card transactions pursuant to the institution's overdraft service, unless the consumer is given the right to opt out of the service, and the consumer does not opt out. The proposal also sets forth an alternative approach that would require that a consumer affirmatively consent to the institution's overdraft service before overdraft fees could be assessed for these transactions. Under the proposal, financial institutions would be prohibited from assessing a fee or charge for certain debit card transactions that overdraw the consumer's account if the overdraft would not have occurred but for a hold placed on funds in the consumer's account in excess of the actual transaction, unless the institution has adopted procedures and practices designed to release the hold within a reasonable period of time. A safe harbor is provided if an institution has adopted procedures to release the hold within two hours after the institution authorized the transaction.

The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C. 1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The Act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, . . . as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion [of the Act], or to facilitate compliance [with the Act].'' 15 U.S.C. 1693b(c). The Board believes that the revisions to Regulation E discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute. These revisions facilitate a consumer's ability to avoid overdrawing his or her account in connection with an electronic fund transfer the consumer has requested.

2. *Small entities affected by the proposed rule.* The number of small entities affected by this proposal is unknown. Account-holding institutions would be required to provide consumers with a notice of their right to opt out of the payment of overdrafts at ATMs and for one-time debit transactions, and a reasonable opportunity to opt out, before assessing any overdraft fee. These institutions would also be required to provide notice of the opt-out right subsequent to any overdraft fee assessment, whether on the consumer's periodic statement or on a notice provided promptly after the occurrence of the overdraft. Under the alternative proposed approach, account-holding institutions would be required to obtain affirmative consent to the institution's overdraft service before assessing overdraft fees for ATM withdrawals and one-time debit card transactions. According to the FDIC's Study of Bank Overdraft Programs, 75.1 percent of banks with an automated overdraft program currently provide some form of an opt-out right to consumers, and 11.1 percent provide an opt-in right.[42] Thus, institutions that already have an opt-out or an opt-in process in place would have to reprogram their systems to provide the notices required by the proposal. Institutions would also have to reprogram their systems to differentiate between overdrafts for different transaction types. As some industry commenters noted, some systems are not currently set up to pay overdrafts for certain transaction types (*e.g.*, checks and ACH), but not others (*e.g.*, ATM and one-time debit card transactions).

The Board is aware that some small institutions do not pay overdrafts at ATMs or for one-time debit card transactions.[43] These institutions would not be subject to the proposed opt-out (or opt-in) requirements. With respect to the opt-out approach, the Board believes that many institutions are already providing customers a method to opt out of their overdraft service, or an affirmative opt-in. These institutions would need to conform their opt-out (or

[42] *See FDIC Study* at 27.

[43] *See FDIC Study* at 10 (reporting that 81 percent of institutions surveyed provide overdraft services for ATM and POS/debit card transactions).

opt-in) procedures to the proposal. Also, those institutions that currently provide a form of opt-out or opt-in notice would need to review and revise this disclosure. Further, the Board believes that many institutions currently notify consumers who have incurred overdrafts promptly following an overdraft. Under the proposed opt-out approach, these institutions may need to review and perhaps revise this notification to add the opt-out notice.

In addition, financial institutions would be prohibited from assessing a fee or charge for certain debit card transactions that overdraw the consumer's account if the overdraft would not have occurred but for a hold placed on funds in the consumer's account in excess of the actual transaction, unless they have adopted procedures designed to release the hold within a reasonable period of time. A safe harbor is provided if an institution has adopted procedures to release the hold within two hours after the institution authorized the transaction. The Board believes the proposed safe harbor will significantly decrease the burden of compliance with the rule.

3. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation E.

4. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that would reduce regulatory burden associated with this proposed rule on small entities.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this proposed rule is found in 12 CFR part 205. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1693 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months, but this regulation does not specify types of records that must be retained.

The EFTA and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services debiting or crediting a consumer's account. The disclosures required by the EFTA and Regulation E are triggered by certain specified events. The disclosures inform consumers about the terms of the electronic fund transfer service, activity on the account, potential liability for unauthorized transfers, and the process for resolving errors. To ease institutions' burden and cost of complying with the disclosure requirements of Regulation E (particularly for small entities), the Board publishes model forms and disclosure clauses.

Regulation E applies to all financial institutions, not just state member banks (SMBs). In addition, certain provisions in Regulation E apply to entities that are not financial institutions, including those that act as service providers or ATM operators, as well as merchants and other payees that engage in electronic check conversion transactions, the electronic collection of returned item fees, or preauthorized transfers. The Federal Reserve accounts for the paperwork burden associated with Regulation E only for the financial institutions it supervises [44] and that meet the criteria set forth in the regulation. Other federal agencies account for the paperwork burden imposed on the entities for which they have regulatory enforcement authority.

As mentioned in the **SUPPLEMENTARY INFORMATION** above, under Alternative 1, the proposed rule (§ 205.17) would prohibit account-holding financial institutions from assessing a fee or charge for paying ATM withdrawals and one-time debit card transactions pursuant to the institution's overdraft service, unless the consumer is given the right to opt out of the service, and the consumer does not opt out. Alternative 1 would also require these institutions to provide notice of the opt-out right subsequent to any overdraft fee assessment, whether on the consumer's periodic statement or on a notice provided promptly after the occurrence of the overdraft. The proposal also sets forth an alternative approach, Alternative 2, that would require that a consumer affirmatively consent, or opt-in, to the institution's overdraft service before overdraft fees could be assessed for these transactions.

Under alternative 1 the Federal Reserve estimates that, to comply with the proposed opt-out notice requirement, 1,205 respondents regulated by the Federal Reserve would take, on average, 16 hours (two business days) to revise and update initial disclosures (§ 205.7(b)) for new customers and that 327 respondents [45] regulated by the Federal Reserve would take, on average, 16 hours (two business days) to revise and update periodic statements (§ 205.9(b)) for existing customers.

The Federal Reserve estimates the total annual one-time burden for respondents to be 24,512 hours and believes that, on a continuing basis, there would be no additional increase in burden as the disclosures would be sufficiently accounted for once incorporated into the current initial account disclosure (§ 205.7(b)) and periodic statements (§ 205.9(b)). This would increase the total annual burden to 84,414 hours for Federal Reserve-regulated financial institutions that are required to comply with Regulation E. To ease the burden of compliance model forms that institutions may use are available in Appendix A (*See* proposed Model Forms A–9(A) and A–9(B)).

Under alternative 2 the Federal Reserve estimates that, to comply with the proposed opt-in notice requirement, 1,205 respondents regulated by the Federal Reserve would again take, on average, 16 hours (two business days) to revise and update initial disclosures (§ 205.7(b)) for new customers. The Federal Reserve estimates that 1,205 respondents regulated by the Federal Reserve would take, on average, 16 hours (two business days) to prepare and send new opt-in notices for existing customers.

The Federal Reserve estimates the total annual one-time burden for respondents to be 38,560 hours and believes that, on a continuing basis, there would be no additional increase in burden as the disclosure would be sufficiently accounted for once incorporated into the current initial account disclosure (§ 205.7(b)). This would increase the total annual burden to 98,462 hours for Federal Reserve-regulated financial institutions that are required to comply with Regulation E. To ease the burden of compliance a

[44] State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations, organizations operating under section 25 or 25(a) of the Federal Reserve Act.

[45] To avoid double counting and to be consistent with the current burden associated with periodic statements, burden for the 878 state member banks will be taken under Regulation DD.

model form that institutions may use is available in Appendix A (*See* proposed Model Forms A–9).

The Federal Reserve estimates that on average 5,136,693 consumers would spend as much as 5 minutes reviewing and responding to an opt-in or opt-out notice. This would increase the total annual burden for this information collection by 428,058 hours.

Overall, the burden could increase, depending on the alternative implemented, between 452,570 hours for alternative 1 and 466,618 hours for alternative 2 (for 512,472 hours or 526,520 hours total, respectively).

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total estimated annual burden for all financial institutions subject to Regulation E, including Federal Reserve-supervised institutions, would be approximately 1,041,011 hours.[46] The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including depository institutions (of which there are approximately 17,200), potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

Comments are invited on: a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions including (a) Whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503.

[46] This estimate does not include consumer burden.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation and staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 and the Official Staff Commentary, as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

2. Section 205.12 is amended by revising paragraph (a) to read as follows:

§ 205.12 Relation to other laws.

(a) *Relation to truth in lending.* (1) The Electronic Fund Transfer Act and this part govern—

(i) The addition to an accepted credit card as defined in Regulation Z (12 CFR 226.12**[**(a)(2), footnote 21**]**►, comment 12–2◄), of the capability to initiate electronic fund transfers;

(ii) The issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution ►or an overdraft service, as defined in § 205.17(a)◄) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; [and]

►(iii) The addition of an overdraft service, as defined in § 205.17(a), to an accepted access device; and◄

[(iii)**]**►(iv)◄ A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit ►or an overdraft service, as defined in § 205.17(a),◄ when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) The Truth in Lending Act and Regulation Z (12 CFR ►part◄ 226), which prohibit the unsolicited issuance of credit cards, govern—

(i) The addition of a credit feature to an accepted access device; and

(ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device.

* * * * *

3. Section 205.17 is added to read as follows:

Alternative 1

►§ 205.17 Requirements for overdraft services.

(a) *Definition.* For purposes of this section, the term ''overdraft service'' means a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. The term ''overdraft service'' does not include any payment of overdrafts pursuant to—

(1) A line of credit subject to the Federal Reserve Board's Regulation Z (12 CFR part 226), including transfers from a credit card account, home equity line of credit, or overdraft line of credit; or

(2) A service that transfers funds from another account held individually or jointly by a consumer.

(b) *Opt-out requirement.* (1) *General.* Except as provided under paragraphs (b)(4) and (b)(5) of this section, a financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service, unless:

(i) The institution provides notice to the consumer explaining that it may pay overdrafts on such transactions pursuant to the institution's overdraft service and assess a fee or charge on the consumer's account for doing so;

(ii) The consumer is given a reasonable opportunity to opt out of the institution's overdraft service for such transactions; and

(iii) The consumer has not opted out.

(2) *Conditioning the opt-out.* If a consumer opts out of a financial institution's overdraft service for ATM withdrawals and one-time debit card transactions, the institution [shall not/may]:

(i) Condition the consumer's right to opt out of the institution's overdraft service for ATM withdrawals and one-time debit card transactions on the consumer also opting out of the institution's overdraft service with respect to the payment of checks, ACH transactions, and other types of transactions; or

(ii) Decline to pay checks, ACH transactions, or other types of transactions that overdraw the consumer's account because the consumer has opted out of the institution's overdraft service for ATM withdrawals and one-time debit card transactions.

Alternative A—Paragraph (b)(3)

(3) *Implementation of opt-out.* A financial institution shall implement the consumer's election to opt out of the institution's overdraft service for ATM withdrawals and one-time debit card transactions by providing to the consumer an account that has the same terms, conditions, and features, including interest rates paid and fees assessed, as are provided to consumers who do not opt out, except for features that limit the institution's payment of such overdrafts as provided in this section.

Alternative B—Paragraph (b)(3)

(3) *Implementation of opt-out.* A financial institution shall implement the consumer's election to opt out of the institution's overdraft service for ATM withdrawals and one-time debit card transactions by providing an account on the same or reasonably comparable terms. The institution may vary the terms, conditions, and features for the account that does not permit the payment of overdrafts on ATM withdrawals and one-time debit card transactions, provided that the differences in the terms, conditions, or features are not so substantial that they would discourage a reasonable consumer from exercising his or her right to opt out of the payment of such overdrafts.

(4) *Exceptions to the notice and opt-out requirement.* The requirements of this section do not apply to any financial institution that:

(i) Has a policy and practice of declining to pay any ATM withdrawals or one-time debit card transactions for which authorization is requested if the institution has a reasonable belief that the consumer's account does not have sufficient funds available to cover the transaction at the time of the authorization request; or

(ii) Requires consumers to affirmatively consent to the institution's overdraft service for the payment of any ATM withdrawals or one-time debit card transactions before the institution assesses any fees or charges to the consumer's account for paying such overdrafts.

(5) *Exceptions to the fee prohibition.* Notwithstanding a consumer's election to opt out, a financial institution may assess a fee or charge on a consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service if:

(i) The institution has a reasonable belief that there are sufficient funds available in the consumer's account at the time the institution authorizes the transaction; or

(ii) In the case of a debit card transaction, the transaction is presented for payment by the merchant through paper-based means, rather than electronically through a card terminal, and the institution has not previously authorized the transaction.

(c) *Timing.* The notice described in paragraph (b)(1)(i) of this section shall be provided:

(1) For accounts opened on or after [the effective date of the final rule], prior to the financial institution's assessment of any fee or charge on the consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service, so long as the consumer has a reasonable opportunity to exercise the opt-out right before the assessment of any such fee or charge; and

(2) For any account for which an opt-out has not been exercised or for which a prior opt-out has been revoked, following the assessment of any fee or charge assessed on the consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service:

(i) On each periodic statement that reflects any such fee or charge, in close proximity to the disclosures required to be disclosed by 12 CFR 230.11(a); or

(ii) At least once per statement cycle on any notice sent promptly after the institution's payment of an overdraft for an ATM withdrawal or a one-time debit card transaction during that statement cycle.

(d) *Content and format.* (1) *Initial notice.* The notice required by paragraph (c)(1) of this section shall be substantially similar to Model Form A–9(A) set forth in Appendix A of this part, and include all applicable items in this paragraph.

(i) *Overdraft policy.* A general description of the financial institution's overdraft service, and the types of electronic fund transfers for which a fee or charge for paying an overdraft may be imposed, including ATM withdrawals and one-time debit card transactions.

(ii) *Fees imposed.* The dollar amount of any fees or charges assessed on the consumer's account by the financial institution for paying an ATM withdrawal or a one-time debit card transaction, as applicable, pursuant to the institution's overdraft service. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed or provide a range of fees that may be imposed.

(iii) *Limits on fees charged.* The maximum amount of overdraft fees or charges that may be assessed for transactions per day, or, if applicable, that there is no limit to the fees that can be imposed.

(iv) *Disclosure of opt-out right.* An explanation of the consumer's right to opt out of the financial institution's payment of overdrafts for ATM withdrawals and one-time debit card transactions pursuant to the institution's overdraft service, including the method(s) by which the consumer may exercise that right and how to contact the institution for more information.

(v) *Alternative payment options.* A statement that the financial institution offers other alternatives for the payment of overdrafts, if applicable. If the institution offers a line of credit subject to the Board's Regulation Z (12 CFR part 226) or a service that transfers funds from another account of the consumer (including joint accounts) held at the institution to cover the overdraft, the institution shall also state that fact and how to obtain more information about these alternatives. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.

(2) *Subsequent notice.* The notice required by paragraph (c)(2) of this section shall be substantially similar to either Model Form A–9(A) in Appendix A of this part, or Model Form A–9(B) in Appendix A of this part.

(e) *Joint relationships.* If two or more consumers jointly hold an account, the financial institution shall treat an opt-out direction by any of the joint consumers as an opt-out for that account.

(f) *Continuing right to opt-out.* A consumer may opt out of the institution's future payment of overdrafts at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section.

(g) *Time to comply with opt-out.* A financial institution shall comply with a consumer's opt-out request as soon as reasonably practicable after the institution receives it.

(h) *Duration of opt-out.* A consumer's opt-out is effective until revoked by the consumer in writing or electronically.

Alternative 2

►§ 205.17 Requirements for overdraft services.

(a) *Definition.* For purposes of this section, the term ''overdraft service'' means a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. The term ''overdraft service'' does not include any payment of overdrafts pursuant to—

(1) A line of credit subject to the Federal Reserve Board's Regulation Z (12 CFR part 226), including transfers from a credit card account, home equity line of credit, or overdraft line of credit; or

(2) A service that transfers funds from another account held individually or jointly by a consumer.

(b) *Opt-in requirement.* (1) *General.* Except as provided under paragraphs (b)(4) and (b)(5) of this section, a financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service, unless the institution:

(i) Provides the consumer with a notice explaining the institution's overdraft service for such transactions that is segregated from everything else, and does not contain any information not specified in or otherwise permitted by paragraph (d) of this section;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for such transactions; and

(iii) Obtains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM withdrawals or one-time debit card transactions pursuant to the institution's overdraft service, and provides the consumer with written confirmation of the consumer's consent.

(2) *Conditioning payment of other overdrafts on consumer's affirmative consent.* A financial institution [shall not/ may]:

(i) Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer also affirmatively consenting to the institution's payment of ATM withdrawals and one-time debit card transactions pursuant to the institution's overdraft service; or

(ii) Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account because the consumer has not affirmatively consented to the institution's overdraft service for ATM withdrawals and one-time debit card transactions.

Alternative A—Paragraph (b)(3)

(3) *Implementation of opt-in.* A financial institution shall provide to consumers who do not affirmatively consent to the institution's overdraft service for ATM withdrawals and one-time debit card transactions an account with the same terms, conditions, and features, including interest rates paid and fees assessed, as it provides to consumers who affirmatively consent, except for features that limit the institution's payment of such overdrafts as provided in this section.

Alternative B—Paragraph (b)(3)

(3) *Implementation of opt-in.* A financial institution shall implement the consumer's affirmative consent to the institution's overdraft service for ATM withdrawals and one-time debit card transactions by providing an account on the same or reasonably comparable terms. The institution may vary the terms, conditions, and features for the account that does not permit the payment of overdrafts on ATM withdrawals and one-time debit card transactions, provided that the differences in the terms, conditions, or features are not so substantial that they would compel a reasonable consumer to affirmatively consent to the payment of such overdrafts.

(4) *Exception to the notice and opt-in requirements.* The requirements of this section do not apply to any financial institution that has a policy and practice of declining to pay any ATM withdrawals or a one-time debit card transactions for which authorization is requested when the institution has a reasonable belief that the consumer's account does not have sufficient funds available to cover the transaction at the time of the authorization request.

(5) *Exceptions to the fee prohibition.* Notwithstanding the absence of a consumer's affirmative consent, a financial institution may assess a fee or charge on the consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service if:

(i) The institution has a reasonable belief that there are sufficient funds available in the consumer's account at the time the institution authorizes the transaction; or

(ii) In the case of a debit card transaction, the transaction is presented for payment by the merchant through paper-based means, rather than electronically through a card terminal, and the institution has not previously authorized the transaction.

(c) *Timing.* The notice required by paragraph (b)(1)(i) of this section shall be provided:

(1) For accounts opened and for which an overdraft service is provided prior to [the effective date of the final rule], at the institution's option—

(i) On or with the first periodic statement sent on or after [the effective date of the final rule]; or

(ii) Following the first assessment on or after [the effective date of the final rule] of any fee or charge on the consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service; or

(2) For accounts opened on or after [the effective date of the final rule], before the financial institution assesses any fee or charge on the consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service.

(d) *Content and format.* The notice required by paragraph (b)(1)(i) of this section shall be substantially similar to Model Form A–9 set forth in Appendix A of this part, and include all applicable items in this paragraph.

(1) *Overdraft policy.* A general description of the financial institution's overdraft services and the types of electronic fund transfers for which a fee or charge for paying an overdraft may be imposed, including ATM withdrawals and one-time debit card transactions.

(2) *Fees imposed.* The dollar amount of any fees or charges assessed on the consumer's account by the financial institution for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed or provide a range of fees that may be imposed.

(3) *Limits on fees charged.* The maximum amount of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit to the fees that can be imposed.

(4) *Disclosure of opt-in right.* An explanation of the consumer's right to affirmatively consent to the financial institution's payment of overdrafts for ATM withdrawals and one-time debit card transactions pursuant to the institution's overdraft service, including the method(s) by which the consumer

may consent to the service and how to get more information; and

(5) *Alternative payment options.* A statement that the financial institution offers other alternatives for the payment of overdrafts, if applicable. If the institution offers a line of credit subject to the Board's Regulation Z (12 CFR part 226) or a service that transfers funds from another account of the consumer (individual or joint) held at the institution to cover the overdraft, the institution must also state that fact and how to obtain more information about these alternatives. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.

(e) *Joint relationships.* If two or more consumers jointly hold an account, the financial institution shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account.

(f) *Continuing right to opt-in.* A consumer may affirmatively consent to the financial institution's overdraft service at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section.

(g) *Time to comply for existing customers.* For accounts opened prior to [the effective date of the final rule], if a consumer has not affirmatively consented to a financial institution's overdraft service within 60 days after the institution sends the notice required under paragraph (c)(1) of this section, the institution shall cease assessing any fees or charges on a consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the service.

(h) *Duration of opt-in.* A consumer's affirmative consent to the institution's overdraft service is effective until revoked by the consumer, or until the financial institution decides for any reason to terminate the service for the consumer, such as due to the consumer's excessive usage of the service.◄

4. Section 205.19 is added to read as follows:

►§ 205.19 Debit holds.

(a) *General rule.* A financial institution shall not assess a fee or charge for paying an overdraft pursuant to the institution's overdraft service, as defined in § 205.17(a), if the overdraft would not have occurred but for a hold placed on funds in the consumer's account in connection with a debit card transaction if the actual amount of the transaction can be determined by the merchant or other payee within a short period of time after the financial institution authorizes the transaction. A financial institution may, however, assess a fee or charge for paying an overdraft for a debit card transaction incurred in connection with a hold placed on funds for that transaction if the amount of the hold is less than or equal to the actual amount of the transaction.

(b) *Safe harbor.* Notwithstanding paragraph (a) of this section, a financial institution may assess an overdraft fee if the institution has procedures and practices in place designed to release a debit hold subject to this section within a reasonable period of time. An institution is deemed to have procedures and practices designed to release the hold within a reasonable period of time if the institution releases the hold within two hours of the institution's authorization of the transaction.◄

5. In Appendix A to Part 205, Appendix A–9 Model Forms for Overdraft Services (§ 205.17) is added to read as follows:

Appendix a to Part 205—Model Disclosure Clauses and Forms

* * * * *

BILLING CODE 6210–01–P

A-9 – MODEL FORMS FOR OVERDRAFT SERVICES (§ 205.17)

ALTERNATIVE 1 – MODEL FORM A-9(A)

A-9(A) Model Opt-Out Form for Account Opening (ALTERNATIVE 1 ONLY)

EXPLANATION OF OVERDRAFT COVERAGE

<u>Overview of Coverage</u>

We currently provide overdraft coverage for your account. This means that if you attempt to spend or withdraw more money than you have in your account, we may decide to pay the overdrawn amount. Having overdraft coverage does not guarantee that we will pay your overdrafts. If we do, we will charge you fees. This coverage differs from other overdraft services we offer, such as linking your account to another account with us or an overdraft line of credit

<u>Your Right to Opt Out of Overdraft Coverage</u>

You may tell us <u>not</u> to pay overdrafts for ATM withdrawals and debit card purchases you make at a store, online, or by telephone. [If you do, we will decline these transactions if you do not have enough money in your account to cover them.] As a result, you may pay fewer overdraft fees.

Your decision to opt out will not affect whether we pay overdrafts for other types of transactions, including checks. We may still cover these transactions and charge you a fee. See below for more information about your overdraft coverage, including how to contact us to opt out.

<u>Overdraft Fees</u>

- We will charge you a fee of [up to] [$__] each time that we pay an overdraft.
- We will also charge you a fee of [$__] for each day your account remains overdrawn.
- [There is no limit on the daily fees we can charge you for overdrawing your account.]

<u>Other Ways We Can Cover Your Overdrafts</u>

We offer other ways of covering your overdrafts that may be less expensive, such as linking your account to another account with us or an overdraft line of credit. Contact us to learn more about these options.

<u>How to Opt Out or Get More Information</u>

To opt out of our overdraft coverage, or for information about alternatives we offer for covering overdrafts, please: [include as applicable]

- Contact us at 1-8xx-xxx-xxxx.
- Contact us at [insert Internet address].
- Complete the form below and mail it to [insert address]

- -

___ I do not want overdraft coverage for my ATM withdrawals and debit card purchases.

Printed Name: ________________________

Date: ________________________

Account Number: ________________________

A-9(B) Model Opt-Out Form for Periodic Statements (ALTERNATIVE 1 ONLY)

You have the right to tell us <u>not</u> to pay overdrafts for ATM withdrawals and debit card purchases you make at a store, online, or by telephone. [If you do, we will decline these transactions if you do not have enough money in your account to cover them.] As a result, you may pay fewer overdraft fees.

To opt out of our overdraft coverage, or for information about alternatives we offer for covering overdrafts (including linking this account to another account with us), contact us at 1-8xx-xxx-xxxx or [insert Internet address].

ALTERNATIVE 2 – MODEL FORM A-9

A-9 Model Consent Form for Overdraft Services (ALTERNATIVE 2 ONLY)

EXPLANATION OF OVERDRAFT COVERAGE

Your Right to Request Overdraft Coverage

We will not pay your overdrafts for ATM withdrawals and debit card purchases you make at a store, online, or by telephone, unless you tell us you want overdraft coverage for these transactions. Even if you do not request overdraft coverage for ATM withdrawals and debit card purchases, we may still pay your overdrafts for other types of transactions, including checks.

Having overdraft coverage does not guarantee that we will pay your overdrafts. If we decide to pay an overdraft, you will be charged fees as described below.

Overdraft coverage differs from other overdraft services we offer, such as linking your account to another account with us or an overdraft line of credit. See below for more information, including how to contact us if you want overdraft coverage to apply to your ATM withdrawals and debit card purchases.

Overdraft Fees

- We will charge you a fee of [up to] [$__] each time we pay an overdraft.
- We will also charge you a fee of [$__] for each day your account remains overdrawn.
- [There is no limit on the daily fees we can charge you for overdrawing your account.]

Other Ways We Can Cover Your Overdrafts

We offer other ways of covering your overdrafts that may be less expensive, such as linking your account to another account with us or an overdraft line of credit. Contact us to learn more about these options.

How to Request Overdraft Coverage or Get More Information

To request overdraft coverage for your ATM withdrawals and debit card purchases, or for information about other alternatives we offer for covering overdrafts, please:

- Contact us at 1-8xx-xxx-xxxx.
- Contact us at [insert Internet address].
- Complete the form below and mail it to [insert address].

- -

___ I want overdraft coverage for my ATM withdrawals and debit card purchases.

Printed Name: ________________________

Date. ________________________

Account Number: ________________________

BILLING CODE 6210–01–C

6. In Supplement I to part 205,

a. Under Section 205.12 Relation to other laws, under *12(a) Relation to truth in lending,* paragraph 2. is revised, and paragraph 3. is added.

b. Section 205.17—Requirements for Overdraft Services is added.

c. Section 205.19—Debit Holds is added.

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.12—Relation to Other Laws

12(a) Relation to Truth in Lending

* * * * *

2. *Issuance rules.* For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) ►or an overdraft service, as defined in § 205.17(a)◄. Regulation Z (12 CFR ►part◄ 226) rules apply if there is another type of credit feature, for example, one permitting direct extensions of credit that do not involve the asset account.

►3. *Overdraft service.* The addition of an overdraft service, as that term is defined in § 205.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (§ 205.6) and the requirement to provide consumers an opportunity to opt out of the service before any fees or charges for paying an overdraft may be assessed to the account (§ 205.17).◄

* * * * *

►Section 205.17—Requirements for Overdraft Services

Alternative 1

17(b) Opt-Out Requirement

1. *Effect of opt-Out.* A consumer's election to opt out of a financial institution's overdraft service does not prohibit the institution from paying overdrafts for ATM withdrawals and one-time debit card transactions. If the institution pays such an overdraft, however, it may not impose a fee or charge for doing so if the consumer has opted out, except as permitted under the exceptions set forth in § 205.17(b)(5). These provisions do not limit the

institution's ability to debit the consumer's account for the amount of the overdraft if permitted to do so under applicable law.

2. *Examples of reasonable opportunity to opt out.* A financial institution gives a consumer a reasonable opportunity to opt out if:

i. *By mail.* The institution provides a form for the consumer to fill out and mailto opt out. The consumer is given 30 days from the date the consumer is provided the initial opt-Out notice to opt out before an overdraft fee or charge is assessed to the consumer's account.

ii. *By telephone.* The institution provides a toll-free telephone number that consumers may call to opt out. The consumer is given 30 days from the date the consumer is provided the initial opt-out notice to opt out before an overdraft fee or charge is assessed to the consumer's account.

iii. *By electronic means.* The institution provides an electronic means to opt out, such as a form that can be accessed and processed at an Internet Web site, provided that the institution directs the consumer to the specific Web site address where the form is located, rather than solely referring to the institution's home page. The consumer is given 30 days from the date the consumer is provided the initial opt-out notice to opt out before an overdraft fee or charge is assessed to the consumer's account.

iv. *At the time of account-opening.* The institution provides the opt-out notice prior to or at account-opening and requires the consumer to decide whether to opt out of the institution's payment of ATM withdrawals and one-time debit card transactions pursuant to the institution's overdraft service as a necessary step to opening the account.

Paragraph 17(b)(3)—Implementation of Opt-out

Alternative B Only

1. *Example of impermissible variation in account terms.* A financial institution may not vary the terms, conditions, or features of an account that does not permit the payment of overdrafts for ATM withdrawals and one-time debit card transactions such that the differences in the terms, conditions, or features are so substantial that they would discourage a reasonable consumer from opting out of the institution's overdraft service. For example, an institution may not decline to provide ATM and debit card services altogether because the consumer has opted out of the institution's overdraft service for ATM and one-time debit card transactions.

Paragraph 17(b)(4)—Exceptions to the Notice and Opt-out Requirement

1. *Compliance.* A financial institution that qualifies for either of the exceptions in § 205.17(b)(4) is not subject to the requirements to provide a consumer notice and a reasonable opportunity to opt out of the institution's payment of overdrafts for ATM withdrawals and one-time debit card transactions.

2. *Opt-in.* A financial institution that requires the consumer's affirmative consent before paying overdrafts on the consumer's behalf need not obtain the consumer's affirmative consent prior to each transaction that may cause the consumer to overdraw the account. It is sufficient for the institution to require that the consumer affirmatively consent to the institution's overdraft service prior to the institution's assessment of any fees or charges for paying an overdraft.

Paragraph 17(b)(5)—Exceptions to the Fee Prohibition

1. *Examples of transactions authorized on an institution's reasonable belief.*

i. *Balances not updated in real-time.* A consumer has opted out of a financial institution's overdraft service. The financial institution uses a daily batch balance method for authorizing transactions, and updates the balance used for authorization at the end of the processing day. The consumer has $100 in her deposit account after the institution has finished processing transactions at the end of the day. The next day, the consumer makes two $40 debit card purchases followed by a $25 debit card purchase. Because the institution does not update the authorization balance during the day, each transaction, including the $25 debit card purchase, is authorized by the institution based on the same $100 balance that was calculated at the end of the prior day's processing. Under these circumstances, the institution may assess a fee for paying or honoring the $25 debit card purchase because the institution authorized the transaction on the reasonable belief that the consumer had sufficient funds available in her account to cover the transaction.

ii. *Returned deposit.* A consumer has opted out of a financial institution's overdraft service. The consumer has $30 in his deposit account and deposits a $100 check. The institution provides immediate availability to the consumer for the deposited funds. Subsequently, the consumer makes a $75 debit card purchase which is authorized by the institution based on a balance of $130. The $100 check is later returned on insufficient funds. Under these circumstances, the institution may assess a fee for paying or honoring the $75 debit card transaction because the institution authorized the transaction on the reasonable belief that the consumer had sufficient funds available in his account to cover the transaction.

iii. *Settlement amount exceeds authorization amount.* A consumer has opted out of an institution's overdraft service. The consumer has $30 in her deposit account and uses a debit card to purchase fuel. Before permitting the consumer to use the fuel pump, the merchant verifies the validity of the card by requesting a pre-authorization hold from the institution for $1. The institution does not increase the amount of the hold. The consumer purchases $50 of fuel. If the institution pays or honors the transaction, it may assess an overdraft fee because the actual amount of the transaction exceeds the amount requested for authorization and causes the consumer to overdraw her account.

iv. *Intervening transactions between authorization and settlement of a ''force pay'' debit card transaction.* A consumer has opted out of a financial institution's overdraft service. The consumer has $100 in his deposit account and uses his debit card to make a $50 purchase at a store, and the institution authorizes the transaction. Before the transaction is presented for settlement, however, checks written by the consumer totaling $75 are posted to the consumer's account. Under these circumstances, and assuming no intervening deposits are made by the consumer, the institution may assess a fee or charge for paying or honoring an overdraft when the $50 is presented for settlement because the institution authorized that transaction on the reasonable belief that the consumer had sufficient funds available in his account to cover the transaction.

2. *Examples of transactions not submitted for authorization.* The exception under § 205.17(b)(5)(i) permitting an overdraft fee to be charged to a consumer's account when a financial institution has a reasonable belief that the consumer has sufficient funds available for the requested transaction does not apply where the transaction is not submitted to the institution for authorization. Under these circumstances, the general rule in § 205.17(b)(1) prohibits the institution from assessing a fee on the consumer's account for paying or honoring an ATM withdrawal or one-time debit card transaction that overdraws the consumer's account if the consumer has opted out of the institution's overdraft service. If otherwise permitted under

applicable law, the institution may debit the consumer's account for the amount of the overdraft.

i. *Small-dollar transactions not submitted for authorization.* A consumer has opted out of a financial institution's overdraft service. The consumer purchases a $3 cup of coffee using his debit card. Because of the small dollar amount of the transaction, the merchant does not submit the transaction to the consumer's financial institution for authorization. At the time of the transaction, the consumer's account does not have sufficient available funds to cover the transaction. The institution may not assess an overdraft fee to the consumer's account for paying or honoring the debit card transaction. If otherwise permitted under applicable law, the institution may debit the consumer's account for the amount of the overdraft.

ii. *Stand-in processing.* A consumer has opted out of a financial institution's overdraft service. The consumer withdraws $20 from an ATM. At the time the consumer initiates the withdrawal request, the card network is temporarily unavailable and the request is not submitted to the institution for authorization. Instead, the consumer's financial institution uses a ''stand-in'' processor to authorize transactions based on the institution's pre-determined amount, rather than the consumer's account balance. The consumer's account does not have sufficient available funds at settlement to cover the transaction. The institution may not assess an overdraft fee to the consumer's account for paying or honoring the debit card transaction. If otherwise permitted under applicable law, the institution may debit the consumer's account for the amount of the overdraft.

3. *Example of a transaction presented by paper-based means.* A consumer has opted out of a financial institution's overdraft service. The consumer has $50 in her deposit account and presents her debit card to make a $60 purchase. At that time, the merchant takes an imprint of the card but does not submit the transaction for authorization. Later that day, the merchant submits a sales slip with the card imprint to its processor for payment. If the transaction overdraws the consumer's account and the consumer's institution pays the transaction, the institution may assess a fee or charge for paying or honoring the overdraft.

17(c) Timing

Paragraph 17(c)(1)

1. *Existing customers.* The requirement to provide notice before overdraft fees are assessed for payment of an ATM withdrawal or one-time debit card transaction pursuant to a financial institution's overdraft service is applicable only to accounts opened on or after [the effective date of the final rule]. However, the requirement to provide notice of the opt-out right following the institution's assessment of a fee or charge for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service applies on or after [the effective date of the final rule], unless the consumer has previously opted out and the consumer has not revoked the opt-out.

17(d) Content and Format

Paragraph 17(d)(1)—Initial Notice

1. *Range of fees.* If the amount of a fee will vary from transaction to transaction, the financial institution may indicate that the consumer may be assessed a fee ''up to'' the maximum fee or provide the range of fees.

2. *Additional opt-out notice content.* Section 205.17(b)(1) requires an opt-out notice that is substantially similar to Model Forms A–9(A) and A–9(B). A financial institution, may, however, briefly describe in its notice the consequences of the consumer's election to opt out of the institution's payment of overdrafts. For example, the institution may state that if a consumer opts out of the institution's overdraft service for ATM withdrawals and one-time debit card transactions, the institution may decline such transactions if the consumer's account does not have sufficient funds. An institution may also include language describing other types of transactions that are not subject to the opt-out right or indicating that the institution pays overdrafts at its discretion.

17(g) Time to Comply With Opt-Out

1. *Fees or charges assessed prior to implementing opt-out.* Section 205.17(g) provides that a consumer may opt out of a financial institution's future payment of overdrafts at any time. If a consumer, who has not initially opted out, later elects to exercise his or her opt-out right, this provision does not require the institution to waive or reverse any overdraft fees or charges assessed to the consumer's account prior to the institution's implementation of the consumer's opt-out request.

Alternative 2

17(b) Opt-In Requirement

1. *No affirmative consent.* A financial institution may pay overdrafts for ATM withdrawals and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the institution's overdraft service. If the institution pays such an overdraft, however, it may not impose a fee or charge for doing so without the consumer's affirmative consent, except as permitted under the exceptions set forth in § 205.17(b)(5). These provisions do not limit the institution's ability to debit the consumer's account for the amount of the overdraft if the institution is permitted to do so under applicable law.

2. *Overdraft transactions not required to be paid or honored.* Section 205.17 does not require a financial institution to pay or honor an overdraft on an ATM withdrawal or a one-time debit card transaction even if the consumer has affirmatively consented to an institution's overdraft service for such transactions.

3. *Examples of reasonable opportunity to provide affirmative consent.* A financial institution provides a reasonable opportunity for the consumer to affirmatively consent to the institution's overdraft service if—

i. *By mail.* The institution provides a form for the consumer to fill out and mail to affirmatively request the service.

ii. *By telephone.* The institution provides a toll-free telephone number that consumers may call to provide affirmative consent.

iii. *By electronic means.* The institution provides an electronic means for the consumer to affirmatively consent, such as a form that can be accessed and processed at an Internet Web site, provided that the institution directs the consumer to the specific Web site address where the form is located, rather than solely referring to the institution's home page.

4. *Implementing opt-in at account-opening.* A financial institution may provide a notice regarding the institution's overdraft service prior to or at account-opening and, as a necessary step to opening an account, require a consumer to choose whether to opt in to the payment of ATM withdrawals or one-time debit card transactions pursuant to the institution's overdraft service. For example, the institution could require the consumer at account opening to choose between an account that does not permit the payment of ATM withdrawals or one-time debit card transactions pursuant to the institution's overdraft service or an

account that permits the payment of such overdrafts.

Paragraph 17(b)(3)—Implementation of Opt-In

Alternative B Only

1. *Example of impermissible variation in account terms.* A financial institution may not vary the terms, conditions, or features of an account that does not permit the payment of overdrafts for ATM withdrawals and one-time debit card transactions such that the differences in the terms, conditions, or features are so substantial that they would compel a reasonable consumer to opt in to the institution's overdraft service. For example, an institution may not decline to provide ATM and debit card services altogether unless the consumer affirmatively consents to the institution's overdraft service for ATM withdrawals and one-time debit card transactions.

Paragraph 17(b)(5)—Exceptions to the Fee Prohibition

1. *Examples of transactions authorized on an institution's reasonable belief.*

i. *Balances not updated in real-time.* A consumer has not affirmatively consented to a financial institution's overdraft service. A financial institution uses a daily batch balance method for authorizing transactions, and updates the balance used for authorization at the end of the processing day. The consumer has $100 in her deposit account after the institution has finished processing transactions at the end of the day. The next day, the consumer makes two $40 debit card purchases followed by a $25 debit card purchase. Because the institution does not update the authorization balance during the day, each transaction, including the $25 debit card purchase, is authorized by the institution based on the same $100 balance that was calculated at the end of the prior day's processing. Under these circumstances, the institution may assess a fee for paying or honoring the $25 debit card purchase because the institution authorized the transaction on the reasonable belief that the consumer had sufficient funds available in her account to cover the transaction.

ii. *Returned deposit.* A consumer has not affirmatively consented to a financial institution's overdraft service. The consumer has $30 in his deposit account and deposits a $100 check. The institution provides immediate availability to the consumer for the deposited funds. Subsequently, the consumer makes a $75 debit card purchase which is authorized by the institution based on the $130 balance. The $100 check is later returned on insufficient funds. Under these circumstances, the institution may assess a fee for paying or honoring the $75 debit card transaction because the institution authorized the transaction on the reasonable belief that the consumer had sufficient funds available in his account to cover the transaction.

iii. *Settlement amount exceeds authorization amount.* A consumer has not affirmatively consented to a financial institution's overdraft service. The consumer has $30 in her deposit account and uses a debit card to purchase fuel. Before permitting the consumer to use the fuel pump, the merchant verifies the validity of the card by requesting a pre-authorization hold from the institution for $1. The institution does not increase the amount of the hold. The consumer purchases $50 of fuel. If the institution pays or honors the transaction, it may assess an overdraft fee because the actual amount of the transaction exceeds the amount requested for authorization and causes the consumer to overdraw her account.

iv. *Intervening transactions between authorization and settlement of a ''force pay'' debit card transaction.* A consumer has not affirmatively consented to a financial institution's overdraft service. The consumer has $100 in a deposit account and uses his debit card to make a $50 purchase at a store. The institution authorizes the transaction. Before the transaction is presented for settlement, however, checks written by the consumer totaling $75 are posted to the consumer's account. Under these circumstances, and assuming no intervening deposits are made by the consumer, the institution may assess a fee or charge for paying or honoring an overdraft when the $50 is presented for settlement because the institution authorized that transaction on the reasonable belief that the consumer had sufficient funds available in his account to cover the transaction.

2. *Examples of transactions not submitted for authorization.* The exception under § 205.17(b)(5)(i) permitting an overdraft fee to be charged to a consumer's account when a financial institution has a reasonable belief that the consumer has sufficient funds available for the requested transaction does not apply where the transaction is not submitted to the institution for authorization. Under these circumstances, the general rule in § 205.17(b)(1) prohibits an institution from assessing a fee to the consumer's account for paying or honoring an ATM withdrawal or one-time debit card transaction that overdraws the consumer's account if the consumer has not affirmatively consented to the institution's overdraft service. If otherwise permitted under applicable law, the institution may debit the consumer's account for the amount of the overdraft.

i. *Small-dollar transactions not submitted for authorization.* A consumer has not affirmatively consented to a financial institution's overdraft service. The consumer purchases a $3 cup of coffee using his debit card. Because of the small dollar amount of the transaction, the merchant does not submit the transaction to the consumer's financial institution for authorization. At the time of the transaction, the consumer's account does not have sufficient available funds to cover the transaction and the consumer has not affirmatively consented to the institution's overdraft service. The institution may not assess an overdraft fee to the consumer's account for paying or honoring the debit card transaction. If otherwise permitted under applicable law, the institution may debit the consumer's account for the amount of the overdraft.

ii. *Stand-in processing.* A consumer has not affirmatively consented to a financial institution's overdraft service. The consumer withdraws $20 from an ATM. At the time the consumer initiates the withdrawal request, the card network is temporarily unavailable and the request is not submitted to the consumer's financial institution for authorization. Instead, the institution uses a ''stand-in'' processor to authorize transactions based on the institution's pre-determined amount, rather than the consumer's account balance. The consumer's account does not have sufficient available funds at settlement to cover the transaction. The institution may not assess an overdraft fee to the consumer's account for paying or honoring the debit card transaction. If otherwise permitted under applicable law, the institution may debit the consumer's account for the amount of the overdraft.

3. *Example of a transaction presented by paper-based means.* A consumer has not affirmatively consented to a financial institution's overdraft service. The consumer has $50 in her deposit account and presents her debit card to make a $60 purchase. At that time, the merchant takes an imprint of the card but does not submit the transaction for authorization. Later that day, the merchant submits a sales slip with the card imprint to its processor for payment. If the transaction overdraws the consumer's account and the

consumer's institution pays the transaction, the institution may assess a fee or charge for paying or honoring the overdraft.

17(d) Content and Format

1. *Range of fees.* If the amount of a fee may vary from transaction to transaction, the financial institution may indicate that the consumer may be assessed a fee ''up to'' the maximum fee or provide the range of fees.

2. *Additional consent notice content.* Section 205.17(d)(1) requires an opt-in notice that is substantially similar to Model Form A–9. A financial institution may, however, briefly describe in its notice the benefits of the institution's payment of ATM withdrawals or debit card transactions. For example, the institution may state that if a consumer does not affirmatively consent to the institution's overdraft service in connection with ATM withdrawals and one-time debit card transactions, the institution may decline such transactions if the consumer's account does not have sufficient funds. An institution may also include language describing other types of transactions that are not subject to the opt-in right or indicating that even if the consumer affirmatively consents to the overdraft service, the institution pays overdrafts at its discretion.◄

* * * * *

►Section 205.19—Debit Holds

19(a) General Rule

1. *Transactions for which the actual transaction amount can be determined shortly after authorization.* Examples of transactions involving a hold in connection with a debit card transaction for which the actual transaction amount can be determined within a short period of time after authorization is obtained include:

i. A fuel purchase at a pay-at-the-pump dispenser.

ii. The payment of a restaurant bill where an estimated amount is added to the amount of the requested authorization to account for service tips.

2. *Additional reasons for overdraft.* Section 205.19 does not limit a financial institution from assessing an overdraft fee or charge for paying a particular transaction pursuant to the institution's overdraft service if the consumer would have incurred an overdraft for other reasons, such as a prior debit card transaction that may have been authorized but not yet presented for settlement or if a deposited check is returned.

3. *Waiver of overdraft fees caused by debit holds.* A financial institution does not violate § 205.19 if it promptly waives or refunds any overdraft fees or charges assessed to the consumer's account caused by a debit hold in excess of the actual amount of the transaction. For example, assume that a consumer has $50 in a deposit account. An institution does not violate § 205.19 if it assesses an overdraft fee on the consumer's account as a result of a $75 hold placed in connection with a pay-at-the-pump fuel transaction, but promptly waives or refunds the overdraft fee after determining that the consumer has only purchased $40 worth of fuel. The institution may not require the consumer to provide notice or other information that an overdraft fee was caused by a debit hold on funds in the consumer's account before the institution waives or refunds the fee.

4. *Example of prohibition in connection with a debit hold placed for same transaction.* A consumer has $50 in a deposit account and is enrolled in a financial institution's overdraft service. The consumer makes a fuel purchase using his debit card. Before permitting the consumer to use the fuel pump, the merchant obtains a pre-authorization hold for $1 to verify that the consumer's account is valid. The institution increases the amount of the hold to $75, or the maximum amount it guarantees to the merchant for the authorized transaction under card network rules. The $75 hold exceeds the consumer's funds. The consumer purchases $20 of fuel. Under these circumstances, the financial institution is prohibited from assessing a fee or charge in connection with the debit hold because the overdraft would not have occurred but for the excess amount of the debit hold. However, if the consumer had purchased $60 of fuel, the institution could assess a fee or charge for an overdraft because the transaction exceeds the funds in the consumer's account.

5. *Example of prohibition in connection with a debit hold placed for another transaction.* A consumer has $100 in a deposit account and is enrolled in a financial institution's overdraft service. The consumer makes a fuel purchase using her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains a pre-authorization hold for $1, which the institution increases to $75, or the maximum amount it guarantees to the merchant for the authorized transaction under card network rules. The consumer purchases $20 of fuel, but the transaction is not presented for settlement for two days. The next day, the consumer withdraws $75 at an ATM. Under these circumstances, § 205.19 prohibits the institution from assessing a fee or charge for paying an overdraft with respect to the $75 withdrawal because the overdraft would not have occurred but for the $75 hold.

6. *Example of prohibition when authorization and settlement amounts are held for the same transaction.* A consumer has $100 in a deposit account and is enrolled in a financial institution's overdraft service. The consumer makes a $50 fuel purchase using his debit card. Before permitting the consumer to use the fuel pump, the merchant obtains a pre-authorization hold for $1, which the institution increases to $75, or the maximum amount it guarantees to the merchant for the authorized transaction. The consumer purchases $50 of fuel. When the merchant presents the $50 transaction for settlement, it uses a different transaction code to identify the transaction than it had used for the pre-authorization, causing both the $75 hold and the $50 purchase amount to be temporarily posted to the consumer's account at the same time. As a result, the consumer's account becomes overdrawn. Under these circumstances, and assuming no other transactions, § 205.19 prohibits the institution from assessing a fee or charge for paying an overdraft because the overdraft would not have occurred but for the $75 hold.

7. *Example of permissible overdraft fees in connection with a debit hold.* A consumer has $100 in a deposit account and is enrolled in a financial institution's overdraft service. The consumer makes a fuel purchase using her debit card. Before permitting the consumer to use the fuel pump, the merchant obtains a pre-authorization hold for $1, which the institution increases to $75, or the maximum amount it guarantees to the merchant for the authorized transaction. The consumer purchases $35 of fuel, but the transaction is not presented for settlement for two days. The next day, the consumer withdraws $75 at an ATM. Notwithstanding the existence of the hold, the consumer's financial institution may charge the consumer an overdraft fee for the $75 ATM withdrawal because the consumer would have incurred the overdraft even if the debit hold had been for the actual amount of the fuel purchase.

19(b) Safe Harbor

1. *Example of two-hour safe harbor.* A consumer has $100 in his deposit account and is enrolled in a financial institution's overdraft service. The consumer makes a $35 fuel purchase using his debit card. Before permitting the consumer to use the fuel pump, the

merchant obtains pre-authorization hold for $1, which the institution increases to $75, or the maximum amount it guarantees to the merchant for the authorized transaction. One hour after the transaction is completed, but before the transaction is presented for settlement, the consumer withdraws $55 at an ATM. Notwithstanding the existence of the debit hold, the consumer's financial institution may charge the consumer an overdraft fee for the $55 ATM withdrawal even though the overdraft was caused by the hold, because the institution has procedures and practices to release the hold within two hours and the ATM withdrawal occurred within the two-hour safe harbor period.

2. *Relationship between § 205.17 and § 205.19.* If a consumer is not enrolled in the institution's overdraft service for ATM withdrawals and one-time debit card transactions (because the consumer has opted out or not opted in), the institution may not assess any fees or charges to the consumer's account for paying a debit card overdraft even if the institution is not otherwise prohibited from doing so by the debit hold provision in § 205.19. For example, assume a consumer has $100 in her deposit account and has opted out of the institution's overdraft service. The consumer uses her debit card to purchase $30 of fuel at a pay-at-the-pump fuel dispenser. At the time of authorization, the financial institution increased the gas station's $1 preauthorization hold to $75. One hour after completing the fuel purchase, the consumer makes a $60 debit card purchase at a grocery store. Notwithstanding the fact that the consumer made the purchase within the two-hour safe harbor, the institution would not be permitted to assess an overdraft fee because the consumer had opted out of the institution's overdraft service.◀

By order of the Board of Governors of the Federal Reserve System, December 18, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–31184 Filed 1–28–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1286]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

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

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

DATES: The rule is effective July 1, 2010.

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

SUPPLEMENTARY INFORMATION:

I. Background on TILA and Regulation Z

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

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

II. Summary of Major Changes

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

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

- Adopting new format requirements for the summary table, including rules regarding: type size and use of boldface type for certain key terms, and placement of information.
- Revising content, including: a requirement that creditors disclose the duration that penalty rates may be in effect, a shorter disclosure about variable rates, new descriptions when a grace period is offered on purchases or when no grace period is offered, and a reference to consumer education materials on the Board's Web site.

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

- Disclosing certain key terms in a summary table at account opening, in order to summarize for consumers key information that is most important to informed decision-making. The table is substantially similar to the table required for credit and charge card applications and solicitations.
- Adopting a different approach to disclosing fees, to provide greater clarity for identifying fees that must be disclosed. In addition, creditors would have flexibility to disclose charges (other than those in the summary table) in writing or orally.

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

- Itemizing interest charges for different types of transactions, such as purchases and cash advances, grouping interest charges and fees separately, and providing separate totals of fees and interest for the month and year-to-date.
- Eliminating the requirement to disclose an ''effective APR.''
- Requiring disclosure of the effect of making only the minimum required payment on the time to repay balances, as required by the Bankruptcy Act.

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

- Increasing advance notice before a changed term can be imposed from 15 to 45 days, to better allow consumers to obtain alternative financing or change their account usage.
- Requiring creditors to provide 45 days' prior notice before the creditor increases a rate either due to a change in the terms applicable to the consumer's account or due to the consumer's delinquency or default or as a penalty.
- When a change-in-terms notice accompanies a periodic statement, requiring

a tabular disclosure on the front side of the periodic statement of the key terms being changed.

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

- Requiring advertisements that state a periodic payment amount on a plan offered to finance the purchase of goods or services to state, in equal prominence to the periodic payment amount, the time period required to pay the balance and the total of payments if only periodic payments are made.
- Permitting advertisements to refer to a rate as ''fixed'' only if the advertisement specifies a time period for which the rate is fixed and the rate will not increase for any reason during that time, or if a time period is not specified, if the rate will not increase for any reason while the plan is open.

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

- In setting reasonable cut-off hours for mailed payments to be received on the due date and be considered timely, deeming 5 p.m. to be a reasonable time.
- Requiring creditors that do not accept mailed payments on the due date, such as on weekends or holidays, to treat a mailed payment received on the next business day as timely.
- Clarifying that advances that are separately underwritten are generally not open-end credit, but closed-end credit for which closed-end disclosures must be given.

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

A. Advance Notices of Proposed Rulemaking

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

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

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

B. Notices of Proposed Rulemakings

June 2007 Proposal. The Board published proposed amendments to Regulation Z's rules for open-end plans that are not home-secured in June 2007. 72 FR 32948, June 14, 2007. The goal of the proposed amendments to Regulation Z was to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account. In developing the proposal, the Board conducted consumer research, in addition to considering comments received on the two ANPRs. Specifically, the Board retained a research and consulting firm (Macro International) to assist the Board in using consumer testing to develop proposed model forms, as discussed in C. *Consumer Testing* of this section, below. The proposal would have made changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

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

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

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

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

For advertisements that state a minimum monthly payment on a plan offered to finance the purchase of goods or services, the June 2007 Proposal required additional information about

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

the time period required to pay the balance and the total of payments if only minimum payments are made. The proposal also limited the circumstances under which an advertisement may refer to a rate as ''fixed.''

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

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

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

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

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

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

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

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

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

C. Consumer Testing

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

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

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

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

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

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

- Testing participants generally read the summary table provided in direct-mail credit card solicitations and applications and ignored information presented outside of the table. The June 2007 Proposal would have required that information about events that trigger penalty rates and about important fees (late-payment fees, over-the-credit-limit fees, balance transfer fees, and cash advance fees) be placed in the table. Currently, this information may be placed outside the table.
- With respect to the account-opening disclosures, consumer testing indicates that consumers commonly do not review their account agreements, which currently are often in small print and dense prose. The June 2007 Proposal would have required creditors to include a table summarizing the key terms applicable to the account, similar to the table required for credit card applications and solicitations. The goal of setting apart the most important terms in this way is to better ensure that consumers are apprised of those terms.
- With respect to periodic statement disclosures, many consumers more easily noticed the number and amount of fees when the fees were itemized and grouped together with interest charges. Consumers also noticed fees and interest charges more readily when they were located near the disclosure of the transactions on the account. The June 2007 Proposal would have required creditors to group all fees together and describe them in a manner consistent with consumers' general understanding of costs (''interest charge'' or ''fee''), without regard to whether the fees would be considered ''finance charges,'' ''other charges'' or neither under the regulation.
- With respect to change-in-terms notices, creditors commonly provide notices about changes to terms or rates in the same envelope with periodic statements. Consumer testing indicates that consumers may not typically look at the notices if they are provided as separate inserts given with periodic statements. In such cases under the June 2007 Proposal, a table summarizing the change would have been required on the periodic statement directly above the transaction list, where consumers are more likely to notice the changes.

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

With respect to the summary table provided in direct-mail credit card solicitations and applications, participants who read the heading ''How to Avoid Paying Interest on Purchases'' on the row describing a grace period generally understood what the phrase meant. The May 2008 Proposal would have required issuers to use that phrase, or a substantially similar phrase, as the row heading to describe an account with a grace period for purchases, and the phrase ''Paying Interest,'' or a substantially similar phrase, if no grace period is offered. (The same row headings were also proposed for tables provided at account-opening and with checks that access credit card accounts.)

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

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

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

Consumers also were asked to review periodic statements that disclosed an impending rate increase, with a tabular summary of the change appearing on statement, as proposed by the Board in

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

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

June 2007. This testing was used in the development of final Samples G–20 and G–21, which give creditors guidance on how advance notice of impending rate increases or changes in terms should be presented.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

information be grouped, creditors are not required to format this information in any particular manner.

D. Other Outreach and Research

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

E. Reviewing Regulation Z in Stages

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

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

IV. The Board's Rulemaking Authority

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

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

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

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

V. Discussion of Major Revisions

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

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

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

connection with the review of Regulation Z.

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

A. Credit Card Applications and Solicitations

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

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

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

Summary of final rule.

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

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

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

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

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

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

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

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

B. Account-Opening Disclosures

Regulation Z requires creditors to disclose costs and terms before the first transaction is made on the account. The disclosures must specify the

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

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

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

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

Summary of final rule.

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

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

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

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

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

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

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

C. Periodic Statements

Creditors are required to provide periodic statements reflecting the account activity for the billing cycle (typically, about one month). In addition to identifying each transaction on the account, creditors must identify each ''finance charge'' using that term, and each ''other charge'' assessed against the account during the statement period. When a periodic interest rate is applied to an outstanding balance to compute the finance charge, creditors must disclose the periodic rate and its corresponding APR. Creditors must also disclose an ''effective'' or ''historical''

APR for the billing cycle, which, unlike the corresponding APR, includes not just interest but also finance charges imposed in the form of fees (such as cash advance fees or balance transfer fees). Periodic statements must also state the time period a consumer has to pay an outstanding balance to avoid additional finance charges (the ''grace period''), if applicable.

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

Summary of final rule.

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

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

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

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

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

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

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

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

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

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

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

interest and fee totals for the cycle and year-to-date will better serve the same purpose. In addition, the interest and fee total disclosure requirements should address concerns that elimination of the effective APR would remove disincentives for creditors to introduce new fees.

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

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

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

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

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

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

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

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

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

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

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

Summary of final rule.

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

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

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

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

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

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

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

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

E. Advertisements

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

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

Summary of final rule.

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

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

F. Other Disclosures and Protections

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Section-by-Section Analysis

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

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

Introduction

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

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

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

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

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

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(2) Advertisement

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

2(a)(4) Billing Cycle or Cycle

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

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

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

2(a)(6) Business Day

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

2(a)(15) Credit Card

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

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

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

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

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

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

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

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

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

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

2(a)(17) Creditor

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

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

2(a)(20) Open-End Credit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Verification of collateral. Several commenters stated that comment 2(a)(20)–5 should expressly permit routine collateral valuation and verification procedures at any time, including as a condition of approving an advance. One of these commenters stated that Regulation U (Credit by Banks and Persons Other than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock) requires a bank in connection with margin lending, to not advance funds in excess of a certain collateral value. 12 CFR part 221. The commenter also pointed out that for some accounts, a borrower's credit limit is determined from time to time based on the market value of the collateral securing the account.

In response to commenters' concerns, new comment 2(a)(20)–(6) is added to clarify that creditors that otherwise meet the requirements of § 226.2(a)(20) extend open-end credit notwithstanding the fact that the creditor must verify collateral values to comply with federal, state, or other applicable laws or verifies the value of collateral in connection with a particular advance under the plan. Current comment 2(a)(20)–6 is renumbered as comment 2(a)(20)–7.

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

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

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

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

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

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

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

2(a)(24) Residential Mortgage Transaction

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

Section 226.3 Exempt Transactions

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

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

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

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

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

3(g) Employer-Sponsored Retirement Plans

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

The June 2007 Proposal included a new § 226.3(g), which would have exempted loans taken by employees against their employer-sponsored retirement plans qualified under Section 401(a) of the Internal Revenue Code and tax-sheltered annuities under Section 403(b) of the Internal Revenue Code, provided that the extension of credit is comprised of fully-vested funds from such participant's account and is made in compliance with the Internal Revenue Code. 26 U.S.C. 1 *et seq.*; 26 U.S.C. 401(a); 26 U.S.C. 403(b). The Board stated several reasons for this proposed exemption in the supplementary information to the June 2007 Proposal, including the fact that the consumer's interest and principal payments on such a loan are reinvested in the consumer's own account and there is no third-party creditor imposing finance charges on the consumer. In addition, the costs of a loan taken against assets invested in a 401(k) plan, for example, are not comparable to the costs of a third-party loan product, because a consumer pays the interest on a 401(k) loan to himself or herself rather than to a third party.

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

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

Section 226.4 Finance Charge

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

4(a) Definition

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

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

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

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

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

Few commenters addressed proposed comment 4(a)–4. Some commenters supported the proposed comment, including a financial institution (although the commenter noted that its support of the proposal was predicated on the effective APR disclosure requirements being eliminated, as the Board proposed under one alternative). Other commenters opposed the proposed comment, some expressing concern that including all transaction fees as finance charges might cause the effective APR to exceed statutory interest rate limits contained in other laws (for example, the 18 percent statutory interest rate ceiling applicable to federal credit unions).

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

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

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

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

in U.S. dollars) with a foreign merchant, such as via a merchant's Web site. For example, a consumer may use a credit card to make a purchase in Bermuda, in U.S. dollars, and the card issuer may impose a fee because the transaction took place outside the United States. The comment also clarifies that foreign transaction fees include charges imposed by the card issuer and charges imposed by a third party that performs the conversion, such as a credit card network or the card issuer's corporate parent. (For example, in a transaction processed through a credit card network, the network may impose a 1 percent charge and the card-issuing bank may impose an additional 2 percent charge, for a total of a 3 percentage point foreign transaction fee being imposed on the consumer.)

However, the comment also clarifies that charges imposed by a third party are included only if they are directly passed on to the consumer. For example, if a credit card network imposes a 1 percent fee on the card issuer, but the card issuer absorbs the fee as a cost of doing business (and only passes it on to consumers in the general sense that the interest and fees are imposed on all its customers to recover its costs), then the fee is not a foreign transaction fee that must be disclosed. In another example, if the credit card network imposes a 1 percent fee for a foreign transaction on the card issuer, and the card issuer imposes this same fee on the consumer who engaged in the foreign transaction, then the fee is a foreign transaction fee and must be included in finance charges to be disclosed. The comment also makes clear that a card issuer is not required to disclose a charge imposed by a merchant. For example, if the merchant itself performs the currency conversion and adds a fee, this would be not be a foreign transaction fee that card issuers must disclose. Under § 226.9(d), the card issuer is not required to disclose finance charges imposed by a party honoring a credit card, such as a merchant, although the merchant itself is required to disclose such a finance charge (assuming the merchant is covered by TILA and Regulation Z generally).

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

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

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

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

Existing comment 4(b)(2)–1 (which is not revised in the final rule) states that if a checking or transaction account charge imposed on an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge. Comment 4(b)(2)–1 and revised comment 4(a)–4 address different situations.

Charges in comparable cash transactions. Comment 4(a)–1 provides examples of charges in comparable cash transactions that are not finance charges. Among the examples are discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular institution. In the June 2007 Proposal, the Board solicited comment on whether the example is still useful, or should be deleted as unnecessary or obsolete. No comments were received on this issue. Nonetheless, because many of the examples provide guidance to creditors offering closed-end credit, comment 4(a)–1 is retained in the final rule and the examples will be reviewed in a future rulemaking addressing closed-end credit.

4(b) Examples of Finance Charges

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

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

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

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

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

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

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

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

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

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

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

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

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

4(b)(9) Discounts

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

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

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

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

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

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

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

4(d) Insurance and Debt Cancellation Coverage

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

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

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

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

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

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

A few commenters addressed the proposed disclosure for debt suspension programs that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. A commenter suggested that in programs combining elements of debt cancellation and debt suspension, the disclosure should not be required. The final rule retains the disclosure requirement in § 226.4(d)(3)(iii). However, comment 4(d)(3)–4 has been added stating that if the debt can be cancelled under certain circumstances, the disclosure may be modified to reflect that fact. The disclosure could, for example, state (in addition to the language required by § 226.4(d)(3)(iii)) that ''in some circumstances, my debt may be cancelled.'' However, the disclosure would not be permitted to list the specific events that would result in debt cancellation, to avoid ''information overload.''

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

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

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

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

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

4(d)(4) Telephone Purchases

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

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

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

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

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

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

As stated in the June 2007 Proposal, the Board has considered each of these factors carefully, and based on that review, believes it is appropriate to exempt, for open-end (not home-secured) plans, telephone sales of credit insurance or debt cancellation or debt suspension plans from the requirement to obtain a written signature or initials from the consumer. Requiring a consumer's written signature or initials is intended to evidence that the consumer is purchasing the product voluntarily; the proposal contained safeguards intended to insure that oral purchases are voluntary. Under the proposal and as adopted in the final rule, creditors must maintain tapes or other evidence that the consumer received required disclosures orally and affirmatively requested the product. Comment 4(d)(4)–1 indicates that a creditor does not satisfy the requirement to obtain an affirmative request if the creditor uses a script with leading questions or negative consent. In addition to oral disclosures, under the proposal consumers will receive written disclosures shortly after the transaction.

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

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

Section 226.5 General Disclosure Requirements

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

5(a) Form of Disclosures

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

5(a)(1) General

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

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

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

In the June 2007 Proposal, the Board also proposed to add comment 5(a)(1)–3 to provide guidance on the meaning of the readily noticeable standard. Specifically, the Board proposed that to meet the readily noticeable standard, the following disclosures must be given in a minimum of 10-point font: Disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(4) (adopted as § 226.6(b)(1) below), highlighted disclosures accompanying checks that access a credit card account under

§ 226.9(b)(3), highlighted change-in-terms disclosures under § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or as a penalty under § 226.9(g)(3)(ii).

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

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

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

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

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

5(a)(1)(ii)

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

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

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

One industry commenter stated its concerns that oral disclosure may make it difficult for creditors to demonstrate compliance with TILA. As the Board discussed in the June 2007 Proposal, creditors may continue to comply with

TILA by providing written disclosures at account opening for all fees. The Board anticipates that creditors will likely continue to identify fees in the account agreement for contract and other reasons even if the regulation does not specifically require creditors to do so.

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

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

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

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

5(a)(1)(iii)

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

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

5(a)(2) Terminology

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

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

Terms required to be more conspicuous than others. TILA Section 122(a) requires that the terms ''annual percentage rate'' and ''finance charge'' be disclosed more conspicuously than other terms, data, or information. 15 U.S.C. 1632(a). The Board has implemented this provision in current § 226.5(a)(2) by requiring that the terms ''finance charge'' and ''annual percentage rate,'' when disclosed with a corresponding amount or percentage rate, be disclosed more conspicuously than any other required disclosure. Currently, the terms do not need to be more conspicuous when used under §§ 226.5a, 226.7(d), 226.9(e), and 226.16. In June 2007, the Board proposed to expand this list to include the account-opening disclosures that would be highlighted under proposed § 226.6(b)(4) (adopted as § 226.6(b)(1) and (b)(2) below), the disclosure of the effective APR under proposed § 226.7(b)(7) under one approach, disclosures on checks that access a credit card account under proposed § 226.9(b)(3), the information on change-in-terms notices that would be highlighted under proposed § 226.9(c)(2)(iii)(B), and the disclosures given when a rate is increased due to delinquency, default or as a penalty under proposed § 226.9(g)(3)(ii). In addition, the Board sought comment in the June 2007 Proposal on ways to address criticism by the United States Government Accountability Office (GAO) that credit card disclosure documents ''unnecessarily emphasized specific terms.'' [13]

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

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

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

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

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

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

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

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

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

Consistent with the Board's proposal under the advertising rules in the June 2007 Proposal, proposed § 226.5(a)(2)(iii), would have provided that if required to be disclosed in a tabular format, an APR may be described as ''fixed,'' or using any similar term, only if that rate will remain in effect unconditionally until the expiration of a specified time period. If no time period is specified, then the term ''fixed,'' or any similar term, may not be used to describe the rate unless the rate remains in effect unconditionally until the plan is closed. The final rule adopts § 226.5(a)(2)(iii) as proposed, consistent with the Board's decision with respect to use of the term ''fixed'' in describing an APR stated in an advertisement, as further discussed in the section-by-section analysis to § 226.16(f) below.

5(a)(3) Specific Formats

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

5(b) Time of Disclosures

5(b)(1) Account-opening Disclosures

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

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

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

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

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

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

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

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

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

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

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

Numerous industry commenters supported the Board's proposal. Consumer group commenters, on the other hand, opposed the Board's proposal, arguing that all charges should be required to be disclosed at account opening before the first transaction. While consumer group commenters acknowledged that disclosure of the amount of the fee at a time when the consumer is about to incur it is a good business practice, the commenters indicated that the Board's proposal would encourage creditors to create new fees that are not specified to be given in writing at account-opening. The final rule adopts § 226.5(b)(1)(ii) and comment 5(b)(1)(ii)–1 largely as proposed with some clarifying amendments and additional illustrative examples.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TILA Section 127(a) requires creditors to provide specified disclosures ''before opening any account.'' 15 U.S.C. 1637(a). Section 226.5(b)(1) requires these disclosures (identified in § 226.6) to be furnished before the first transaction is made under the plan. Currently and under the June 2007 and

May 2008 Proposals, creditors may collect or obtain the consumer's promise to pay a membership fee before the account-opening disclosures are provided, if the consumer can reject the plan after receiving the disclosures. If a consumer rejects the plan, the creditor must promptly refund the fee if it has been paid or take other action necessary to ensure the consumer is not obligated to pay the fee. In the June 2007 Proposal, guidance currently in comment 5(b)(1)–1 about creditors' ability to assess certain membership fees before consumers receive the account-opening disclosures was moved to § 226.5(b)(1)(iv).

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

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

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

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

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

In the June 2007 Proposal, the Board proposed to provide guidance in comment 5(b)(1)(i)–1 on what it means to ''use'' the account. The June 2007 proposed clarification was intended to address concerns about some subprime card accounts that assess a large number of fees at account opening. In the May 2008 Proposal, this provision was moved to new proposed comment 5(b)(1)(iv)–3 and revised to clarify that a consumer does not ''use'' an account when the creditor assesses fees to the account (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures). The May 2008 Proposal also clarified in comment 5(b)(1)(iv)–3 that the consumer does not ''use'' an account when, for example, a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances. In the May 2008 Proposal, the Board also proposed to add that a consumer is not considered to ''use'' an account when, for example, a consumer receives a credit card in the mail and calls to activate the card for security purposes.

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

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

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

5(b)(2) Periodic Statements

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

5(b)(2)(i)

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

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

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

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

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

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

Instituting collection proceedings. Creditors need not send statements if ''delinquency collection proceedings have been instituted'' under § 226.5(b)(2)(i). In the June 2007 Proposal, the Board proposed to add comment 5(b)(2)(i)–3 to clarify that a collection proceeding entails a filing of a court action or other adjudicatory process with a third party, and not merely assigning the debt to a debt collector. Several consumer groups strongly supported the Board's proposal while industry commenters recommended that the Board provide greater flexibility in interpreting when delinquency collection proceedings have been instituted. In particular, an industry commenter stated that the minimum payment warning could conflict with the creditor's collection demand and create consumer confusion. Nonetheless, as discussed in more detail in the section-by-section analysis to § 226.7(b)(12), the minimum payment disclosure is not required where a fixed repayment period has been specified in the account agreement, such as where the account has been closed due to delinquency and the required monthly payment has been reduced or the balance decreased to accommodate a fixed payment for a fixed period of time designed to pay off the outstanding balance.

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

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

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

5(b)(2)(ii)

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

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

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

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

5(b)(2)(iii)

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

5(c) Through 5(e)

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

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

Section 226.5a Credit and Charge Card Applications and Solicitations

TILA Section 127(c), implemented by § 226.5a, requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.[14] 15 U.S.C. 1637(c). The format and content requirements differ for cost disclosures in card applications or solicitations, depending on whether the applications or solicitations are given through direct mail, provided electronically, provided orally, or made available to the general public such as in ''take-one'' applications and in catalogs or magazines. Disclosures in applications and solicitations provided by direct mail or electronically must be presented in a table. For oral applications and solicitations, certain cost disclosures must be provided orally, except that issuers in some cases are allowed to provide the disclosures later in a written form. Applications and solicitations made available to the general public, such as in a take-one application, must contain one of the following: (1) The same disclosures as for direct mail presented in a table; (2) a narrative description of how finance charges and other charges are assessed; or (3) a statement that costs are involved, along with a toll-free telephone number to call for further information.

5a(a) General Rules

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

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

because the two tables are substantially similar.

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

5a(a)(1) Definition of Solicitation

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

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

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

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

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

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

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

The Board adopts § 226.5a(a)(2)(i) and deletes current § 226.5a(a)(2)(ii) and comment 5a(a)(2)–5 as proposed. The final rule amends § 226.5a(a)(2)(i) to require these fees to be disclosed in the table, so that consumers can easily identify them. In the consumer testing conducted for the Board prior to the June 2007 Proposal, participants consistently identified these fees as among the most important pieces of information they consider as part of the credit card offer. With respect to the disclosure of these fees, the Board tested placement of these fees in the table and immediately below the table. Participants who were shown forms where the fees were disclosed below the table tended not to notice these fees compared to participants who were shown forms where the fees were presented in the table. These final revisions are adopted in part pursuant to TILA Section 127(c)(5), which authorizes the Board to add or modify § 226.5a disclosures as necessary to carry out the purposes of TILA. 15 U.S.C. 1637(c)(5).

Highlighting APRs and fee amounts in the table. Section 226.5a generally requires that certain information about rates and fees applicable to the card offer be disclosed to the consumer in card applications and solicitations. This information includes not only the APRs and fee amounts that will apply, but also explanatory information that gives context to these figures. The Board seeks to enable consumers to identify easily the rates and fees disclosed in the table. Thus, in the June 2007 Proposal, the Board proposed to add § 226.5a(a)(2)(iv) to require that when a tabular format is required, issuers must disclose in bold text any APRs required to be disclosed, any discounted initial rate permitted to be disclosed, and most fee amounts or percentages required to be disclosed.

The Board also proposed to add comment 5a(a)(2)–5 to explain that proposed Samples G–10(B) and G–10(C) provide guidance on how to show the rates and fees described in bold text. In addition, proposed comment 5a(a)(2)–5 also would have explained that proposed Samples G–10(B) and G–10(C) provide guidance to issuers on how to disclose the percentages and fees described above in a clear and conspicuous manner, by including these percentages and fees generally as the first text in the applicable rows of the table so that the highlighted rates and fees generally are aligned vertically. In consumer testing conducted for the Board prior to the June 2007 Proposal, participants who saw a table with the APRs and fees in bold and generally before any text in the table were more likely to identify the APRs and fees quickly and accurately than participants who saw other forms in which the APRs and fees were not highlighted in such a fashion.

The final rule adopts § 226.5a(a)(2)(iv) and comment 5a(a)(2)–5 with several technical revisions. Section 226.5a(a)(2)(iv) is amended to provide that maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state must not be disclosed in bold text. Comment 5a(a)(2)–5 provides guidance on when maximum limits must be disclosed in bold text. For example, assume an issuer will charge a cash advance fee of $5 or 3 percent of the cash advance transaction amount, whichever is greater, but the fee will not exceed $100. The maximum limit of $100 for the cash advance fee must not be highlighted in bold text. In contrast, assume that the amount of the late fee varies by state, and the range of amount of late fees disclosed is $15–$25. In this case, the maximum limit of $25 on the late fee amount must be highlighted in bold text. In both cases, the minimum fee amount (e.g., $5 or $15) must be disclosed in bold text.

Comment 5a(a)(2)–5 also provides guidance on highlighting periodic fees. Section 226.5a(a)(2)(iv) provides that any periodic fee disclosed pursuant to § 226.5a(b)(2) that is not an annualized amount must not be disclosed in bold. For example, if an issuer imposes a $10 monthly maintenance fee for a card account, the issuer must disclose in the table that there is a $10 monthly maintenance fee, and that the fee is $120 on an annual basis. In this example, the $10 fee disclosure would not be disclosed in bold, but the $120 annualized amount must be disclosed in bold. In addition, if an issuer must disclose any annual fee in the table, the amount of the annual fee must be disclosed in bold.

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

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

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

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

In addition, although this Bankruptcy Act provision refers to credit card solicitations (where no application is required), in the June 2007 Proposal, the Board proposed to apply the Bankruptcy Act provision relating to electronic offers to both electronic solicitations and applications pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1601(a), 1604(a). Specifically, the Board proposed to amend § 226.5a(c) to require that applications and solicitations that are provided in electronic form contain the same disclosures as applications and solicitations sent by direct mail. With respect to both electronic applications and solicitations, it is important for consumers who are shopping for credit to receive accurate cost information before submitting an electronic application or responding to an electronic solicitation. The final rule adopts this change to § 226.5a(c), as proposed.

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

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

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

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

The final rule adopts § 226.5a(a)(2)(vi)(B) and comment 5a(a)(2)–1.ii as proposed, with several revisions. Specifically, comment 5a(a)(2)–1.ii is revised to be consistent with the revisions to comment 5a(a)(2)–8 made in the November 2007 Final Electronic Disclosure Rule. Comment 5a(a)(2)–1.ii provides that if the table required by § 226.5a is provided electronically, the table must be provided in close proximity to the application or solicitation. Card issuers have flexibility in satisfying this requirement. Methods card issuers could use to satisfy the requirement include, but are not limited to, the following examples: (1) The disclosures could automatically appear on the screen when the application or reply form appears; (2) the disclosures could be located on the same Web page as the application or reply form (whether or not they appear on the initial screen), if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable; (3) card issuers could provide a link to the electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or (4) the disclosures could be located on the same Web page as the application or reply form without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application or reply. Whatever method is used, a card issuer need not confirm that the consumer has read the disclosures. Comment 5a(a)(2)–8 is deleted as unnecessary.

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

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

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

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

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

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

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

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

5a(a)(5) Exceptions

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

5a(b) Required Disclosures

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

5a(b)(1) Annual Percentage Rate

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

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

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

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

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

Periodic rate. Currently, comment 5a(b)(1)–1 allows card issuers to disclose the periodic rate in the table in addition to the required disclosure of the corresponding APR. In the June 2007 Proposal, the Board proposed to delete comment 5a(b)(1)–1, and thus, prohibit disclosure of the periodic rate in the table. Based on consumer testing conducted for the Board prior to June 2007, consumers do not appear to shop using the periodic rate, nor is it clear that this information is important to understanding a credit card offer. Allowing the periodic rate to be disclosed in the table may distract from more important information in the table, and contribute to ''information overload.'' In an effort to streamline the information that appears in the table, the Board proposed to prohibit disclosure of the periodic rate in the table. Commenters generally did not oppose the Board's proposal to prohibit disclosure of the periodic rate in the table. Thus, the Board is deleting current comment 5a(b)(1)–1 as proposed. In addition, new comment 5a(b)(1)–8 is added to state that periodic rates must not be disclosed in the table. The Board notes that card issuers may disclose the periodic rate outside of the table. *See* § 226.5a(a)(2)(ii).

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

1. *Index and margins.* Currently, the variable rate information is required to be disclosed separately from the applicable APR, in a row of the table with the heading ''Variable Rate Information.'' Some card issuers include the phrase ''variable rate'' with the disclosure of the applicable APR and include the details about the index and margin under the ''Variable Rate Information'' heading. In the consumer testing conducted for the Board prior to the June 2007 Proposal, many participants who saw the variable rate information as described above understood that the label ''variable'' meant that a rate could change, but could not locate information on the tested form regarding how or why these rates could change. This was true even if the index and margin information was taken out of the row of the table with the heading ''Variable Rate Information'' and placed in a footnote to the phrase ''variable rate.'' Many participants who did find the variable rate information were confused by the variable-rate margins, often interpreting them erroneously as the actual rate being charged. In addition, very few participants indicated that they would use the margins in shopping for a credit card account.

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

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

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

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

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

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

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

In addition, under TILA Sections 127(c)(6)(A) and 127(c)(7), as added by Sections 1303(a) and 1304 of the Bankruptcy Act, the term ''introductory'' must be used in immediate proximity to each listing of a discounted initial rate in a direct mail or electronic application or solicitation; or promotional materials accompanying such application or solicitation. In the June 2007 Proposal, the Board proposed to expand the requirement to other applications or solicitations where a table under § 226.5a is given, to promote the informed use of credit by consumers, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). Thus, the Board proposed to add new § 226.5a(b)(1)(ii) to specify that if an issuer provides a discounted initial rate in the table along with the rate required to be disclosed, the card issuer must use the term ''introductory'' in immediate proximity to the listing of the initial discounted rate. Because ''intro'' is a commonly understood abbreviation of the term ''introductory,'' and consumer testing indicates that consumers understand this term, the Board proposed to allow creditors to use ''intro'' as an alternative to the requirement to use the term ''introductory'' and proposed to clarify this approach in new § 226.5a(b)(1)(ii). Also, to give card issuers guidance on the meaning of ''immediate proximity,'' the Board proposed to provide a safe harbor for card issuers that place the word ''introductory'' or ''intro'' within the same phrase as each listing of the discounted initial rate. This guidance was set forth in proposed comment 5a(b)(1)–3.

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

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

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

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

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

Similarly, and for the same reasons stated above, § 226.5a(b)(1)(vii) also requires that card issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** disclose in the table any rate that will apply after a premium initial rate (as described in § 226.5a(b)(1)(iii)) expires. A conforming change has been made to § 226.5a(b)(1)(iii). Consistent with comment 5a(b)(1)–3.ii., discussed above, a new comment 5a(b)(1)–4 has been added to the final rule to clarify that an issuer's reservation of the right to change rates after account-opening does not by itself make an initial rate a premium initial rate, even if the issuer subsequently decreases the rate. The comment notes, however, that issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** may be subject to limitations on rate decreases.

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

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

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

As a result of this testing, in the June 2007 Proposal, the Board proposed to add § 226.5a(b)(1)(iv) and amend new comment 5a(b)(1)–4 (previously comment 5a(b)(1)–7) to require card issuers to briefly disclose in the table the specific event or events that may result in the imposition of a penalty rate. In addition, the Board proposed that the penalty rate and the specific events that cause the penalty rate to be imposed must be disclosed in the same row of the table. *See* proposed Model Form G–10(A). In describing the specific event or events that may result in an increased rate, the Board proposed to amend new comment 5a(b)(1)–4 to provide that the descriptions of the triggering events in the table should be brief. For example, if an issuer may increase a rate to the penalty rate because the consumer does not make the minimum payment by 5 p.m., Eastern time, on its payment due date, the proposal would have indicated that the issuer should describe this circumstance in the table as ''make a late payment.'' Proposed Samples G–10(B) and G–10(C) would have provided additional guidance on the level of detail that issuers should use in describing the specific events can trigger the penalty rate.

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

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

Also, the Board proposed to add language to new § 226.5a(b)(1)(iv) to specify that in disclosing a penalty rate, card issuers must include a brief description of the circumstances under which any discounted initial rates may be revoked and the rate that will apply after the discounted initial rate is revoked. Sections 1303(a) and 1304 of the Bankruptcy Act require that for a direct mail or electronic credit card application or solicitation, a clear and conspicuous description of the circumstances that may result in revocation of a discounted initial rate offered with the card and the rate that will apply after the discounted initial rate is revoked must be disclosed in a prominent location on or with the application or solicitation. 15 U.S.C. 1637(c)(6)(C). The Board proposed that this information be disclosed in the table along with other penalty rate information for all applications and solicitations where a table under § 226.5a is given, to promote the informed use of credit by consumers, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

In response to the June 2007 Proposal, some consumer group commenters requested that the Board delete the statement that the card issuer need not disclose the increased rate that would be imposed if credit privileges are permanently terminated. They viewed this provision as inconsistent with the Board's other efforts to ensure that consumers are aware of penalty rates. They believed card issuers should be required to disclose this information in the table if the rate is different than the penalty rate that otherwise applies.

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

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

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

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

The Board has amended comment 5a(b)(1)–5.i. (proposed as comment 5a(b)(1)–4) to provide specific guidance to issuers that are subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. Such an issuer may have penalty rate triggers that apply to new transactions that differ from the penalty rate triggers applicable to outstanding balances. For example, an issuer might apply the penalty rate to new transactions, subject to the notice requirements in § 226.9(g), based on a consumer making a payment three days late, but may increase the rate applicable to outstanding balances only if the consumer pays more than 30 days late. Comment 5a(b)(1)–5.i., as adopted, includes guidance stating that if an issuer may increase a rate that applies to a particular balance because the account is more than 30 days late, the issuer should describe this circumstance in the table as ''make a late payment.'' The comment has also been amended to clarify that the issuer may not distinguish between the events that may result in an increased rate for existing balances and the events that may result in an increased rate for new transactions.

In addition, as proposed in May 2008, the final rule deletes the current provision that an issuer need not disclose an increased rate that would be imposed if credit privileges were permanently terminated.[16] Thus, to the extent an issuer is charging an increased rate different from the penalty rate when credit privileges are permanently terminated, this different rate must be disclosed along with the penalty rate. The Board agrees with consumer group commenters that requiring the disclosure of the rate when credit privileges are permanently terminated is consistent with the Board's efforts to ensure that consumers are aware of the potential for increased rates.

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

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

The final rule requires that the circumstances under which a discounted initial rate may be revoked be disclosed directly beneath the table, rather than in the table. Credit card issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** will be prohibited from increasing an introductory rate unless the consumer's account becomes more

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

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

than 30 days late. Accordingly, for most issuers subject to § 226.5a, the disclosure provided under this paragraph will be identical, because an introductory rate may be increased only if the account becomes more than 30 days late. As a result, the Board does not believe that most consumers will use the information about the revocation of a discounted initial rate in shopping for a credit card, since it will not vary from product to product. Therefore, while this information should be disclosed clearly and conspicuously with the table, the Board believes it should not be included in the table, where it may contribute to ''information overload'' and detract from the disclosure of other terms that may be of more use to consumers in shopping for credit.

Comment 5a(b)(1)–5 (proposed as comment 5a(b)(1)–4) is restructured to be consistent with new § 226.5a(b)(1)(iv). In addition, comment 5a(b)(1)–5.ii. is revised to clarify that the information about revocation of a discounted initial rate and the rate that will apply after revocation must be provided even if the rate that will apply after the discounted initial rate is revoked is the rate that would have applied at the end of the promotional period, and not a higher ''penalty rate.'' Also, comment 5a(b)(1)–5.ii. clarifies that in describing the rate that will apply after revocation of the discounted initial rate, if the rate that will apply after revocation of the discounted initial rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of a discounted initial rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as ''standard APRs,'' the issuer may refer to the ''standard APR'' when describing the rate that will apply after revocation of a discounted initial rate.

In addition, comment 5a(b)(1)–5.ii. is revised to specify that the description of the circumstances in which a discounted initial rate could be revoked should be brief. For example, if an issuer may increase a discounted initial rate because the consumer does not make the minimum payment within 30 days of the due date, the issuer should describe this circumstance directly beneath the table as ''make a late payment.'' In addition, if the circumstances in which a discounted initial rate could be revoked are already listed elsewhere in the table, the issuer is not required to repeat the circumstances again, but may refer to those circumstances in a clear and conspicuous manner. For example, if the circumstances in which an initial discounted rate could be revoked are the same as the event or events that may trigger a ''penalty rate'' as described in § 226.5a(b)(1)(iv)(A), the issuer may refer to the actions listed in the Penalty APR row, in describing the circumstances in which the introductory rate could be revoked. Sample G–10(C) sets forth a disclosure labeled ''Loss of Introductory APR'' directly below the table to provide guidance to card issuers on how to meet the requirements in § 226.5a(b)(1)(iv)(B) and accompanying comment 5a(b)(1)–5.

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

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

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

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

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

The Board adopts § 226.5a(b)(1)(v) and comment 5a(b)(1)–6 (proposed as comment 5a(b)(1)–5) with several revisions. Consistent with the proposal, § 226.5a(b)(1)(v) specifies that if a rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the card issuer must disclose the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. Generally, issuers are not allowed to disclose only the lowest rate, the median rate or the highest rate that could apply. *See* comment 5a(b)(1)–6 (proposed as comment 5a(b)(1)–5). The Board believes that requiring card issuers to disclose all the possible rates (as either specific rates, or as a range of rates) provides more useful information to consumers than allowing issuers to disclose only the lowest, median or highest APR. If a consumer sees a range or several specific rates, the consumer may be better able to understand the possible rates that may apply to the account.

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

Comment 5a(b)(1)–6 (proposed as comment 5a(b)(1)–5) also is revised to clarify that § 226.5a(b)(1)(v) applies even if other factors are used in combination with a consumer's creditworthiness to determine the rate for which a consumer may qualify at account opening. For example, § 226.5a(b)(1)(v) would apply if the issuer considers the type of purchase the consumer is making at the time the consumer opens the account, in combination with the consumer's creditworthiness, to determine the rate for which the consumer may qualify at account opening. If other factors are considered, the issuer must amend the statement about creditworthiness, to indicate that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness and other factors. Nonetheless, if a consumer's creditworthiness is not one of the factors that will determine the rate for which the consumer may qualify at account opening (for example, if the rate is based solely on the type of purchase that the consumer is making at the time the consumer opens the account, or is based solely on whether the consumer has other banking relationships with the card issuer), § 226.5a(b)(1)(v) does not apply.

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

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

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

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

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

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

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

Rate based on another rate on the account. In response to the June 2007 Proposal, one commenter asked the Board to clarify how a rate should be disclosed if that rate is based on another rate on the account. For example, assume that a penalty rate as described in § 226.5a(b)(1)(iv)(A) is determined by adding 5 percentage points to the current purchase rate, which is 10 percent. The Board adopts new comment 5a(b)(1)–7 to clarify how such a rate should be disclosed. Pursuant to comment 5a(b)(1)–7, a card issuer, in this example, must disclose 15 percent as the current penalty rate. If the purchase rate is a variable rate, then the penalty rate also is a variable rate. In that case, the card issuer also must disclose the fact that the penalty rate may vary and how the rate is determined, such as ''This APR may vary with the market based on the Prime Rate.'' In describing the penalty rate, the issuer may not disclose in the table the amount of the margin or spread added to the current purchase rate to determine the penalty rate, such as describing, in this example, that the penalty rate is determined by adding 5 percentage points to the purchase rate.

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

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

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

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

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

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

In the June 2007 Proposal, the Board proposed to amend § 226.5a(b)(2) to require additional information about periodic fees. 15 U.S.C. 1637(c)(5). Currently, issuers are required to disclose only the annualized amount of the fee. The Board proposed to amend § 226.5a(b)(2) to require issuers also to disclose the amount of the periodic fee, and how frequently it will be imposed. For example, if an issuer imposes a $10 monthly maintenance fee for a card account, the issuer must disclose in the table that there is a $10 monthly maintenance fee, and that the fee is $120 on an annual basis.

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

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

Currently, and under the June 2007 and May 2008 Proposals, comment 5a(b)(2)–2 provides that fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) shall not be disclosed in the table if the basic account may be opened without paying such fees. The Board is aware that some subprime cards may charge a fee for an additional card on the account, beyond the first card on the account. For example, if there were two primary cardholders listed on the account, only one card on the account would be issued, and the cardholders would be charged a fee for another card if the cardholders request an additional card, so that each cardholder would have his or her own card. The Board is amending comment 5a(b)(2)–2 to clarify that issuing a card to each primary cardholder (not authorized users) is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, must be disclosed as a fee for issuance or availability. Thus, a fee to obtain an additional card on the account beyond the first card (so that each primary cardholder would have his or her own card) must be disclosed in the table as a fee for issuance or availability under § 226.5a(b)(2). This fee must be disclosed even if the fee is optional in that the fee is charged only if the cardholder requests one or more additional cards.

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

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

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

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

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

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

In response to the May 2008 Proposal, industry commenters generally supported this aspect of the proposal. One industry commenter suggested a

$5.00 threshold, because with the proposed $1.00 threshold, when operational costs are considered, for most banks it will be simpler to disclose any and all minimum or fixed finance charges. Another industry commenter suggested eliminating the minimum or fixed finance charge disclosure altogether, and adding a disclosure for cards that charge a monthly fee in lieu of the APR. In addition, one industry commenter suggested that the Board eliminate the minimum or fixed finance charge disclosure and monitor if issuers change their minimum or fixed finance charge calculations as a result. Consumer group commenters generally opposed the proposal because issuers would no longer be required to disclose an important cost to consumers (especially subprime consumers, where the fee might be significant in relation to the small initial available credit on subprime cards).

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

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

In addition, in a technical edit, the final rule is amended to specify that the $1.00 amount would be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The final rule specifies that the Board shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on the June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. Comments 5a(b)(3)–1 and –2 are also adopted with technical modifications.

5a(b)(4) Transaction Charges

Section 226.5a(b)(4), which implements TILA Section 127(c)(1)(A)(ii)(III), requires that card issuers disclose any transaction charge imposed on purchases. In the June 2007 Proposal, the Board proposed to amend § 226.5a(b)(4) to explicitly exclude from the table fees charged for transactions in a foreign currency or that take place in a foreign country. In an effort to streamline the contents of the table, the Board proposed to highlight only those fees that may be important for a significant number of consumers. In consumer testing for the Board prior to the June 2007 Proposal, participants did not mention foreign transaction fees as important fees they use to shop. In addition, there are few consumers who may pay these fees with any frequency. Thus, in the June 2007 Proposal, the Board proposed to except foreign transaction fees from disclosure of transaction fees in an application or solicitation, but to include such fees in the proposed account-opening summary table to ensure that interested consumers can learn of the fees before using the card. *See* proposed § 226.6(b)(4).

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

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

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

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

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

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

5a(b)(5) Grace Period

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5a(b)(6) Balance Computation Method

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

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

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

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

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

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

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

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

The final rule continues to require that issuers disclose the name of the balance computation method beneath the table because this disclosure is required by TILA Section 127(c)(1)(A)(iv). Consumers and others will have access to information about the balance calculation method used on the credit card account if they find it useful. Under final rules issued by the Board and other federal banking agencies published elsewhere in today's

Federal Register, most credit card issuers are prohibited from using the ''two cycle'' balance computation method. Nonetheless, this final rule retains the ''two-cycle'' disclosure because not all issuers are covered by the final rules published elsewhere in today's **Federal Register** which preclude use of the two-cycle balance computation method.

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

5a(b)(8) Cash Advance Fee

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

A new comment 5a(b)(8)–1 is added to refer issuers to Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the cash advance fee. In addition, as discussed in the section-by-section analysis to § 226.5a(b)(4), new comment 5a(b)(8)–2 is added to clarify that cash advance fees includes any charge imposed by the card issuer for cash advances in a foreign currency or that take place outside the United States or with a foreign merchant. In addition, comment 5a(b)(8)–2 clarifies that if an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G–10(B) and (C). Otherwise, the issuer will need to revise the foreign transaction fee shown in Samples G–10(B) and (C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances. Moreover, comment 5a(b)(8)–2 provides a cross reference to comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the card issuer.

In addition, consistent with the account-opening disclosures required in § 226.6, comment 5a(b)(8)–3 is added to clarify that any charge imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system is not a cash advance fee that must be disclosed in the table pursuant to § 226.5a(b)(8).

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

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

Cross References to Penalty Rate

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

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

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

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

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

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

5a(b)(14) Available Credit

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

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

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

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

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

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

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

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

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

The final rule adopts § 226.5a(b)(16) with several modifications, and renumbers the provision as § 226.5a(b)(14). Specifically, the final rule amends the proposal to provide that fees or security deposits that are not charged to the account are not subject to the disclosure requirements in § 226.5a(b)(14). In addition, comment 5a(b)(14)–1 (proposed as comment 5a(b)(16)–1) is revised from the proposal to clarify that in calculating the amount of the available credit including optional fees, if optional fees could be charged multiple times, the issuer shall assume that the optional fee is only imposed once. For example, if an issuer charges a fee for each additional card issued on the account, the issuer in calculating the amount of the available credit including optional fees must assume that the cardholder requests only one additional card. Also, comment 5a(b)(14)–1 is revised to specify that in disclosing the available credit, an issuer must round down the available credit amount to the nearest whole dollar.

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

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

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

G–10(C) sets forth an example of how the available credit disclosure may be made.

5a(b)(15) Web Site Reference

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

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

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

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

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

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

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

In response to the June 2007 Proposal, several commenters recommended the Board test a simplified payment allocation disclosure that covers cases other than low rate balance transfers offered with a credit card. In consumer testing conducted for the Board in March 2008, the Board tested the following payment allocation disclosure: ''Payments may be applied to balances with lower APRs first. If you have balances at higher APRs, you may pay more in interest because these balances cannot be paid off until all lower-APR balances are paid in full

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

(including balance transfers you make at the introductory rate).'' Some participants understood from prior experience that issuers typically will apply payments to lower APR balances first and the fact that this method causes them to incur higher interest charges. For those participants that did not know about payment allocation methods from prior experience, the disclosure tested was not effective in explaining payment allocation to them.

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

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

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

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

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

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

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

1. *Minimum payment formula*. In response to the June 2007 Proposal, several consumer groups urged the Board to require issuers to disclose in the table the minimum payment formula. They believed that this would allow consumers to understand what portion of principal balance repayment is being included in the minimum payment. Several industry commenters supported the Board's proposal not to require the minimum payment formula in the table. The final rule does not require the minimum payment formula in the table. In the consumer testing conducted for the Board, participants did not tend to mention the minimum payment formula as one of the terms on which they shop for a card. In addition, minimum payment formulas used by card issuers can be complicated and

would be hard to describe concisely in the table.

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

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

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

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

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

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

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

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

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

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

5. *Fees*. In response to the June 2007 Proposal, several consumer groups suggested that in addition to the fees that the Board has proposed to be included in the table, the Board should require that any fee that a creditor charges to more than 5 percent of its cardholders be disclosed in the table. In addition, one member of Congress suggested that issuers be required to disclose in the table fees to pay by phone or on the Internet.

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

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

5a(c) Direct Mail and Electronic Applications

5a(c)(1) General

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

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

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

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

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

5a(d) Telephone Applications and Solicitations

5a(d)(1) Oral Disclosure

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

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

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

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

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

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

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

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

5a(d)(2) Alternative Disclosure

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

Account is not approved. In response to the June 2007 Proposal, one commenter suggested that the Board clarify that the written alternative disclosures would only be necessary if the application for the account is approved. The Board notes that current comment 5a(d)–1 indicates that the oral and alternative written disclosure requirements do not apply in situations where no card will be issued because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card. This comment is retained in the final rule.

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

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

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

The Board expects that issuers will provide the account-opening table described in § 226.6(b)(1) in lieu of the alternative written disclosures described in § 226.5a(d)(2). The final rule revises comment 5a(d)–2 to specify that the right to reject the plan referenced in § 226.5a(d)(2) with respect to the alternative written disclosures is the same as the right to reject the plan described in § 226.5(b)(1)(iv) with respect to account-opening disclosures. An issuer may substitute the account-opening summary table described in § 226.6(b)(1) in lieu of the written alternative disclosures specified in § 226.5a(d)(2)(ii). In that case, the disclosure about the right to reject specified in § 226.5a(d)(2)(ii)(B) must appear in the table, if the issuer is required to do so pursuant to § 226.6(b)(2)(xiii). Otherwise, the disclosure specified in § 226.5a(d)(2)(ii)(B) may appear either in or outside the table containing the required credit disclosures.

5a(d)(3) Accuracy

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

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

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

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

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

5a(e)(4) Accuracy

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

5a(f) In-Person Applications and Solicitations

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

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

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

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

In the June 2007 Proposal, the Board proposed to cover in-person applications and solicitations under § 226.5a, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). In the June 2007 Proposal, existing comment 5a(a)(3)–2 (which would be moved to comment 5a(a)(5)–1) and comment 5a(e)–2 would have been revised to be consistent with § 226.5a(f). No comments were received on these proposed changes.

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

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

5a(g) Balance Computation Methods Defined

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

In response to the June 2007 Proposal, several industry commenters suggested that the Board add the ''daily balance method'' to the list of balance computation methods listed in the regulation. These commenters indicated that the ''daily balance method'' is one of the most common balance computation methods used by card issuers. Currently, comment 5a(g)–1 provides that card issuers using the daily balance method may disclose it using the *name average daily balance (including new purchases)* or *average daily balance (excluding new purchases)*, as appropriate. Alternatively, such card issuers may explain the method. The final rule revises § 226.5a(g) to include daily balance method as one of the balance computation methods named in the regulation. As a result, card issuers may disclose ''daily balance method'' as the name of the balance computation method used as part of the disclosures required by § 226.5a, and are not required to provide a description of the balance computation method. The Board deletes current comment 5a(g)–1, which provides that card issuers using the daily balance method may disclose it using the name *average daily balance (including new purchases)* or *average daily balance (excluding new purchases)*, as appropriate. *See also* § 226.6(b)(2)(vi) and § 226.7(b)(5), which allow creditors using balance calculation methods identified in § 226.5a(g) to provide abbreviated disclosures at account opening and on periodic statements.

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

Section 226.6 Account-Opening Disclosures

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

6(a) Rules Affecting Home-Equity Plans

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

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

Several technical revisions to commentary provisions described in the June 2007 Proposal are adopted for clarity and in some cases for consistency with corresponding comments to § 226.6(b)(4), which addresses rate disclosures for open-end (not home-secured) plans; these revisions are not intended to be substantive. *See*, for example, comments 6(a)(1)(ii)–1 and 6(b)(4)(i)(B)–1, which address disclosing ranges of balances. For the reasons set forth in the section-by-section analysis to § 226.6(b)(3), the Board updates references to ''free-ride period'' as ''grace period'' in the regulation and commentary to § 226.6(a), without any intended substantive change.

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

Model forms and clauses. Revisions to current forms and a new form that creditors offering HELOCs may use are adopted as proposed. In response to comments received on the June 2007 Proposal, the Board proposed in May 2008 to add a new paragraph to Appendix G–1 (Balance Computation

Methods Model Clauses) to part 226 to describe the daily balance computation method. A new Appendix G–1(A) to part 226 was also proposed for creditors offering open-end (not home-secured) plans. *See* section-by-section analysis to § 226.6(b)(4)(i)(D).

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

In addition, for the reasons discussed in the section-by-section analysis to §§ 226.12 and 226.13, model language has been added to Model Clause G–2 (Liability for Unauthorized Use Model Clause), Model Form G–3 (Long-form Billing-error Rights Model Form Home-equity Plans) and Model Form G–4 (Alternative Billing-error Rights Model Form Home-equity Plans) regarding consumers' use of electronic communication relating to unauthorized transactions or billing disputes. Like with Model Clauses G–1 and G–1(A), the Board is adding new forms G–3(A) and G–4(A) for creditors offering open-end (not home-secured) plans, which a creditor offering HELOCs may use, at the creditor's option. See comment app. G–3.

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

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

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

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

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

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

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

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

The Board's revisions to rules affecting open-end (not home-secured) plans contain a limited number of specific words or phrases that creditors are required to use. The Board, however, has not adopted a glossary of terms nor mandated use of terms as defined in such a glossary, to provide flexibility to creditors. Although the Board is supportive of creditors that provide real-time account agreements on their Web sites, the Board believes requiring all creditors to do so would be overly burdensome at this time, and has not adopted such a requirement.

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

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

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

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

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

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

In response to the June 2007 Proposal, some commenters urged the Board to require identical disclosure requirements under § 226.6 and § 226.5a. Others supported greater flexibility. As discussed below, the disclosure requirements for the two summary tables remain very similar but are not identical in all respects. The final rule includes comment 6(b)(1)–1, adopted substantially as proposed as comment 6(b)(4)–1, which provides guidance on how the summary table for § 226.5a differs from the table for § 226.6. For clarity, rules under § 226.5a that do not apply to account-opening disclosures are specifically noted.

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

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

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

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

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

Thus, the final rule provides in § 226.6(b)(1)(iii) that creditors imposing fees such as late-payment fees or returned-payment fees that vary by state and providing the disclosures required by § 226.6(b) in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose in the account-opening table either (1) the specific fee applicable to the consumer's account, or (2) the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening summary table where the amount of the fee applicable to the consumer's account is disclosed, for example in a list of fees for all states. Currently, creditors that establish open-end plans at point of sale provide account-opening disclosures at point of sale before the first transaction, and commonly provide an additional set of account-opening disclosures when, for example, a credit card is sent to the consumer. The Board believes that this practice would continue and that the account-opening disclosures provided later, for example with the credit card, would contain the specific rates and fees applicable to the consumer's account, as the creditor must provide for consumers who open accounts other than at the point of sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Discounted and premium initial rates. Currently, a discounted initial rate may, but is not required to, be disclosed in the table accompanying a credit or charge card application or solicitation. Card issuers that choose to include such a rate must also disclose the time period during which the discounted initial rate will remain in effect. *See* § 226.5a(b)(1)(ii). Creditors, however, must disclose these terms in account-opening disclosures. The June 2007 Proposal would have required any initial temporary rate, the circumstances under which that rate expires, and the rate that will apply after the temporary rate expires to be disclosed in the account-opening table. *See* proposed § 226.6(b)(4)(ii)(B).

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

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

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

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

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

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

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

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

For the reasons discussed in the section-by-section analysis to § 226.5a(b)(3), § 226.6(b)(2)(iii) is revised and new comment 6(b)(2)(iii)–1 is added, consistent with § 226.5a(b)(3). As noted in the section-by-section analysis to § 226.5a(b)(3), under the June 2007 Proposal, card issuers may substitute the account-opening table for the table required by § 226.5a. Conforming the fixed finance charge and minimum interest charge disclosure requirement for the two tables promotes consistency and uniformity. Because minimum interest charges of $1.00 or less would no longer be required to be disclosed in the account-opening table, these charges could be disclosed at any time before the consumer agrees to pay or becomes obligated to pay for the charge, pursuant to the disclosure timing requirements of § 226.5(b)(1)(ii). Creditors may provide disclosures of these charges in writing but are not required to do so. *See* section-by-section analysis to § 226.5(a)(1) above. The Board believes creditors will continue to disclose minimum interest charges of $1.00 or less in writing at account opening, to meet the timing requirement to disclose the fee before the consumer becomes obligated for the charge. In addition, creditors that choose to charge more than $1.00 would be required to include the cost in the account-opening table. Thus, the Board is adopting § 226.6(b)(2)(iii) (proposed in May 2008 as § 226.6(b)(4)(iii)(D)) with technical changes described in the section-by-section analysis to § 226.5a(b)(3).

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

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

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

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

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

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

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

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

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

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

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

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

Cross References to Penalty Rate

For the reasons stated in the supplementary information regarding proposed § 226.5a(b)(13), the Board has withdrawn a requirement in proposed § 226.6(b)(4)(iii)(C) which provided that if a creditor may impose a penalty rate for one or more of the circumstances for which a late-payment fee, over-the-limit fee, or returned-payment fee is charged, the creditor must disclose the fact that the penalty rate also may apply and a cross reference to the penalty rate.

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

For the reasons discussed in the section-by-section analysis to § 226.5a(b)(13), as permitted by applicable law, creditors that require credit insurance, or debt cancellation or debt suspension coverage, as part of the plan are required to disclose the cost of the product and a reference to the location where more information about the product can be found with the account-opening materials, as applicable. *See* § 226.6(b)(2)(xii).

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

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

Commenters generally supported the proposal, which is generally adopted as proposed with several revisions noted below. *See* section-by-section analysis to § 226.5a(b)(14) regarding comments received on the proposed disclosure of available credit in the summary table provided on or with credit card applications or solicitations. Consistent with § 226.5a(b)(14), § 226.6(b)(2)(xiii) of the final rule (proposed as § 226.6(b)(4)(vii)) reduces the threshold for determining whether the available credit disclosure must be given to 15 percent or more of the minimum credit limit offered on the account.

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

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

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

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

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

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

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

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

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

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

6(b)(3) Disclosure of Charges Imposed as Part of Open-End (Not Home-Secured) Plans

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

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

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

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

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

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

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

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

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

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

Comment 6(b)(3)(ii)–2 has been revised from the June 2007 Proposal. The comment, as proposed in June 2007 as comment 6(b)(1)(i)–2, included a fee to receive paper statements as an example of a fee that affects the plan. This example is not included in the final rule. Creditors are required to provide periodic statements in writing in connection with open-end plans, and the Board did not intend with the inclusion of this example to express a view on the permissibility of charging consumers a fee to receive paper statements.

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

6(b)(4) Disclosure of Rates for Open-End (Not Home-Secured) Plans

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

6(b)(4)(i)

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

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

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

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

Model clauses. Model clauses that explain commonly used balance computation methods, such as the average daily balance method, are at Appendix G–1 to part 226. In the June 2007 Proposal, the Board requested comment on whether model clauses for methods such as ''adjusted balance'' and ''previous balance'' should be deleted as obsolete, and more broadly, whether

Model Clauses G–1 should be eliminated entirely because creditors no longer use the model clauses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For the reasons stated in the section-by-section analysis to § 226.5a(b)(1), the Board is eliminating the exception:

creditors that increase rates when credit privileges are permanently terminated must disclose that increased rate in the account-opening table.

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

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

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

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

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

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

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

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

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

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

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

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

Section 226.7 Periodic Statement

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

7(a) Rules Affecting Home-Equity Plans

Periodic statement disclosure and format requirements for HELOCs subject to § 226.5b were unaffected by the June 2007 Proposal, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a future rulemaking. To facilitate compliance, the substantively unrevised requirements applicable only to HELOCs are grouped together in § 226.7(a). (*See* redesignation table below.)

For HELOCs, creditors are required to comply with the disclosure requirements under § 226.7(a)(1) through (a)(10). Except for the addition of an exception that HELOC creditors may utilize at their option (further discussed below), these rules and accompanying commentary are substantively unchanged from current § 226.7(a) through (k) and the June 2007 Proposal. As proposed, § 226.7(a) also provides that at their option, creditors offering HELOCs may comply with the requirements of § 226.7(b). The Board understands that some creditors may use a single processing system to generate periodic statements for all open-end products they offer, including HELOCs. These creditors would have the option to generate statements according to a single set of rules.

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

7(a)(4) Periodic Rates

TILA Section 127(b)(5) and current § 226.7(d) require creditors to disclose all periodic rates that may be used to compute the finance charge, and an APR that corresponds to the periodic rate multiplied by the number of periods in a year. 15 U.S.C. 1637(b)(5); § 226.14(b). Currently, comment 7(d)–1 interprets the requirement to disclose all periodic rates that ''may be used'' to mean ''whether or not [the rate] is applied during the billing cycle.'' In June 2007, the Board proposed for open-end (not home-secured) plans a limited exception to TILA Section 127(b)(5) regarding promotional rates that were offered but not actually applied, to effectuate the purposes of TILA to require disclosures that are meaningful and to facilitate compliance.

For the reasons discussed in the section-by-section analysis to § 226.7(b)(4)(ii), under the June 2007 Proposal, creditors would have been required to disclose promotional rates only if the rate actually applied during the billing period. The Board noted that interpreting TILA to require the disclosure of all promotional rates would be operationally burdensome for creditors and result in information overload for consumers. The proposed exception did not apply to HELOCs covered by § 226.5b, and the Board requested comment on whether the class of transactions under the proposed exceptions should apply more broadly to include HELOCs subject to § 226.5b, and if so, why.

Commenters generally supported the proposal under § 226.7(b)(4). Although few commenters addressed the issue of whether the exception should also apply to HELOCs subject to § 226.5b, these commenters favored extending the exception to HELOCs because concerns about information overload on consumers and operational burdens on creditors apply equally in the context of HELOC disclosures. The Board is adopting the exception as it applies to open-end (not home-secured) plans as proposed, with minor changes to the description of the time period to which the promotional rate applies. For the reasons stated above and in the section-by-section analysis to § 226.7(b)(4), the Board also extends the exception to HELOCs subject to § 226.5b. Section 226.7(a)(4) and comment 7(a)(4)–1 are revised accordingly. Extending this exception to HELOCs does not require creditors offering HELOCs to revise any forms or procedures. Therefore, no additional burden is associated with revising the rules governing HELOC disclosures. Comment 7(a)(4)–5, which provides guidance when the corresponding APR and effective APR are the same, is revised to be consistent with a creditor's option, rather than a requirement, to disclose an effective APR, as discussed below.

7(a)(7) Annual Percentage Rate

The June 2007 Proposal included two alternative approaches to address concerns about the effective APR. The section-by-section analysis to § 226.7(b) discusses in detail the proposed approaches and the reasons for the Board's determination to adopt the proposed approach that eliminates the requirement to disclose the effective APR. Thus, under this approach, the effective APR is optional for creditors offering HELOCs. Section 226.7(a) expressly provides, however, that a HELOC creditor must provide disclosures of fee and interest in accordance with § 226.7(b)(6) if the creditor chooses not to disclose an effective APR. Comment 7(a)(7)–1 is revised to provide that creditors stating an annualized rate on periodic statements in addition to the corresponding APR required by § 226.7(a)(4) must calculate that additional rate in accordance with § 226.14(c), to avoid the disclosure of rates that may be calculated in different ways.

Currently and under the June 2007 Proposal, HELOC creditors disclosing the effective APR must label it as ''annual percentage rate.'' The final rule adds comment 7(a)(7)–2 to provide HELOC creditors with additional guidance in labeling the APR as calculated under § 226.14(c) and the periodic rate expressed as an annualized rate. HELOC creditors that choose to disclose an effective APR may continue to label the figure as ''annual percentage rate,'' and label the periodic rate expressed as an annualized rate as the ''corresponding APR,'' ''nominal APR,'' or a similar term, as is currently the practice. Comment 7(a)(7)–2 further provides that it is permissible to label the APR calculated under § 226.14(c) as the ''effective APR'' or a similar term. For those creditors, the periodic rate expressed as an annualized rate could be labeled ''annual percentage rate,'' consistent with the requirement under § 226.7(b)(4). If the two rates are different values, creditors must label the rates differently to comply with the regulation's standard to provide clear disclosures.

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

The June 2007 Proposal contained a number of significant revisions to periodic statement disclosures for open-end (not home-secured) plans, grouped together in proposed § 226.7(b). The Board proposed for comment two alternative approaches to disclose the effective APR: The first approach attempted to improve consumer understanding of this rate and reduce creditor uncertainty about its computation. The second approach eliminated the requirement altogether. In addition, the Board proposed to add new paragraphs § 226.7(b)(11) and (b)(12) to implement disclosures regarding late-payment fees and the effects of making minimum payments in Section 1305(a) and 1301(a) of the Bankruptcy Act. TILA Section 127(b)(11) and (12); 15 U.S.C. 1637(b)(11) and (12).

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

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

The statutory requirement of an effective APR is intended to provide the consumer with an annual rate that reflects the total finance charge, including both the finance charge due to application of a periodic rate (interest) and finance charges that take the form of fees. This rate, like other APRs required by TILA, presumably was intended to provide consumers information about the cost of credit that would help consumers compare credit costs and make informed credit decisions and, more broadly, strengthen competition in the market for consumer credit. 15 U.S.C. 1601(a). There is, however, a longstanding controversy about the extent to which the requirement to disclose an effective APR advances TILA's purposes or, as some argue, undermines them.

As discussed in greater detail in the Board's June 2007 Proposal, industry and consumer groups disagree as to whether the effective APR conveys meaningful information. Creditors argue that the cost of a transaction is rarely, if ever, as high as the effective APR makes it appear, and that this tendency of the rate to exaggerate the cost of credit makes this APR misleading. Consumer groups contend that the information the rate provides about the cost of credit, even if limited, is meaningful. The effective APR for a specific transaction or set of transactions in a given cycle may provide the consumer a rough indication that the cost of repeating such transactions is high in some sense or, at least, higher than the corresponding APR alone conveys. Consumer advocates and industry representatives also disagree as to whether the effective APR promotes credit shopping. Industry and consumer group representatives find some common ground in their observations that consumers do not understand the effective APR well.

Industry representatives also claim that the effective APR imposes direct costs on creditors that consumers pay indirectly. They represent that the effective APR raises compliance costs when they introduce new services, including costs of: (1) Conducting legal analysis of Regulation Z to determine whether the fee for the new service is a finance charge and must be included in the effective APR; (2) reprogramming software if the fee must be included; and (3) responding to telephone inquiries from confused customers and accommodating them (*e.g.*, with fee waivers or rebates).

Consumer research conducted for the Board prior to the June 2007 Proposal. As discussed in the June 2007 Proposal, the Board undertook research through a consultant on consumer awareness and understanding of the effective APR, and on whether changes to the presentation of the disclosure could increase awareness and understanding. The consultant used one-on-one cognitive interviews with consumers; consumers were provided mock disclosures of periodic statements that included effective APRs and asked questions about the disclosure designed to elicit their understanding of the rate. In the first round the statements were copied from examples in the market. For subsequent testing rounds, the language and design of the statements were modified to better convey how the effective APR differs from the corresponding APR. Several different approaches and many variations on those approaches were tested.

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

The form in the final round of testing prior to the June 2007 Proposal labeled the rate ''Fee-Inclusive APR'' and placed it in a table separate from the corresponding APR. The ''Fee-Inclusive APR'' table included the amount of interest and the amount of transaction fees. An adjacent sentence stated that the ''Fee-Inclusive APR'' represented the cost of transaction fees as well as interest. Similar approaches had been tried in some of the earlier rounds, except that the effective APR had been labeled ''Effective APR.''

The Board's proposed two alternative approaches. After considering the concerns and issues raised by industry and consumer groups about the effective APR, as well as the results of the consumer testing, the Board proposed in June 2007 two alternative approaches for addressing the effective APR. The first approach attempted to improve consumer understanding of this rate and reduce creditor uncertainty about its computation. The second approach proposed to eliminate the requirement to disclose the effective APR.

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

Under proposed § 226.7(b)(7)(i) and Sample G–18(B), creditors would have disclosed an effective APR for each feature, such as purchases and cash advances, in a table with the heading ''Fee-Inclusive APR.'' Creditors would also have indicated that the Fee-Inclusive APRs are ''APRs that you paid this period when transactions or fixed fees are taken into account as well as interest.'' A composite effective APR for two or more features would no longer have been permitted, as it is more difficult to explain to consumers. In addition to the effective APR(s) for each feature, the table would have included, by feature, the total of interest, labeled as ''interest charges,'' and the total of the fees included in the effective APR, labeled as ''transaction and fixed charges.'' To facilitate understanding, proposed § 226.7(b)(6)(iii) would have required creditors to label the specific fees used to calculate the effective APR either as ''transaction'' or ''fixed'' fees, depending on whether the fee relates to a specific transaction. Such fees would also have been disclosed in the list of transactions. If the only finance charges in a billing cycle are interest charges, the corresponding and effective APRs are identical. In those cases, creditors would have disclosed only the corresponding APRs and would not have been required to label fees as ''transaction'' or ''fixed'' fees since there would be no fees that are finance charges in such cases. These requirements would have been illustrated in forms under G–18 in Appendix G to part 226, and creditors would have been required to use the model form or a substantially similar form.

The proposal also sought to simplify computation of the effective APR, both to increase consumer understanding of the disclosure and facilitate creditor compliance. Proposed § 226.14(e) would have included a specific and exclusive list of finance charges that would be included in calculating the effective APR.[18]

[18] Under the statute, the numerator of the quotient used to determine the historical APR is the total

Continued

2. *Second alternative proposal.* Under the second alternative proposal, disclosure of the effective APR would no longer have been required. The Board proposed this approach pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1).

Under the second alternative proposal, disclosure of an effective APR would have been optional for creditors offering HELOCs, as discussed above in the section-by-section analysis to § 226.7(a)(7). For creditors offering open-end (not home-secured) plans, the regulation would have included no effective APR provision, and § 226.7(b)(7) would have been reserved.

Comments on the proposal. Many industry commenters supported the Board's second alternative proposal to eliminate the requirement to disclose the effective APR. Commenters supporting this alternative generally echoed the reasons given by the Board for this alternative in the June 2007 Proposal. For example, they contended that the effective APR cannot be used for shopping purposes because it is backward-looking and only purports to represent the cost of credit for a particular cycle; the effective APR confuses and misleads consumers; and the effective APR requirement imposes compliance costs and risks on creditors (for example, cost of legal analysis to determine whether new fees must be included in the effective APR, litigation risk, and costs of responding to inquiries from confused consumers).

Another argument commenters made in support of eliminating the effective APR was that the disclosure would be unnecessary, in light of the Board's proposal for disclosure of interest and fees totaled by period and year to date (*see* the section-by-section analysis to § 226.7(b)(6)). Some commenters also indicated that retaining the effective APR, in combination with the proposal to include all transaction fees in the finance charge, might result in a creditor violating restrictions on interest rates. Some commenters contended that the Board's proposal to rename the effective APR the ''Fee-Inclusive APR'' would not solve the problems of consumer misunderstanding and might in fact exacerbate such problems, although one industry commenter stated that if the Board decided to retain the effective APR requirement (which this commenter did not favor), the term ''Fee-Inclusive APR'' might represent an improvement.

Industry commenters also expressed concern about the Board's proposal to specify precisely the fees that are to be included in the effective APR calculation (in proposed § 226.14(e), as discussed above). One commenter said that if the effective APR requirement were to be retained, the Board would need to better clarify in § 226.14(e) which fees must be included. Another commenter stated that the proposed approach would not solve the problem of creditor uncertainty about which fees are to be included in the effective APR, because new types of fees will arise and create further uncertainty.

Other commenters, including consumer groups and government agencies, supported the Board's first alternative proposal to retain the effective APR requirement. Commenters supporting this alternative believe that consumers need the effective APR in order to be able to properly evaluate and compare costs of card programs; commenters also contended that if the effective APR were eliminated, creditors could impose additional fees that would escape effective disclosure. Many of these commenters urged not only that the effective APR requirement should be retained, but in addition that all fees, or at least more fees than under the current regulation (for example, late-payment fees and over-the-limit fees) should be included in its calculation.

Some commenters noted that even if the effective APR were retained, if the proposed approach (in proposed § 226.14(e)) of specifying the fees to be included in the effective APR were followed, creditors could introduce new fees that might qualify as finance charges, but might not be included in the effective APR. One commenter supporting retention suggested that the Board try further consumer testing of an improved disclosure format for the effective APR, but that if the testing showed that consumers still did not understand the effective APR, then it should be eliminated.

Consumer group commenters also expressed concern about the proposal to require disclosure of separate effective APRs for each feature on a credit card account. Commenters stated that such an approach would understate the true cost of credit, and would ''dilute'' the effect of multiple fees, because the fees would be shared among several different APRs. One creditor commenter also expressed concern about this proposal, stating that it would increase programming costs.

Additional consumer research. In March 2008, and again after the May 2008 Proposal, the Board conducted further consumer research using one-on-one interviews in the same manner as in the consumer research prior to the June 2007 Proposal, discussed above. Three rounds of testing were conducted. A majority of participants in all rounds did not offer a correct explanation of the effective APR; instead, they offered a variety of incorrect explanations, including that the effective APR represented: the interest rate paid on fee amounts; the interest rate if the consumer paid late (the penalty rate); the APR after the introductory period ends; or the year-to-date interest charges expressed as a percentage. Two different labels were used for the effective APR in the statements shown to participants: the ''Fee-Inclusive APR'' and the ''APR including Interest and Fees''. The label that was used did not have a noticeable effect on participant comprehension.

In addition, in September 2008 the Board conducted additional consumer research using quantitative methods for the purpose of validating the qualitative research (one-on-one interviews) conducted previously. The quantitative consumer research involved surveys of 1,022 consumers at shopping malls in seven locations around the country. Two research questions were investigated; the first was designed to determine what percentage of consumers understand the significance of the effective APR. The interviewer pointed out the effective APR disclosure for a month in which a cash advance occurred, triggering a transaction fee and thus making the effective APR higher than the nominal APR (interest rate). The interviewer then asked what the effective APR would be in the next month, in which the cash advance balance was not paid off but no new cash advances occurred. A very small percentage of respondents gave the correct answer (that the effective APR would be the same as the nominal APR). Some consumers stated that the effective APR would be the same in the

finance charge. *See* TILA Section 107(a)(2), 15 U.S.C. 1606(a)(2). The Board has authority to make exceptions and adjustments to this calculation method to serve TILA's purposes and facilitate compliance. *See* TILA Section 105(a), 15 U.S.C. 1604(a). The Board has used this authority before to exclude certain kinds of finance charges from the effective APR. *See* § 226.14(c)(2) and (c)(3).

next month as in the current month, others indicated that they did not know, and the remainder gave other incorrect answers.

The second research question was designed to determine whether the disclosure of the effective APR adversely affects consumers' ability to correctly identify the current nominal APR on cash advances. Some consumers were shown a periodic statement disclosing an effective APR, while other consumers were shown a statement without an effective APR disclosure. Consumers were then asked to identify the nominal APR on cash advances. A greater percentage of consumers who were shown a statement without an effective APR than of those shown a statement with an effective APR correctly identified the rate on cash advances. This finding was statistically significant, as discussed in the December 2008 Macro Report on Quantitative Testing. Some of the consumers who did not correctly identify the rate on cash advances instead identified the effective APR as that rate.

The quantitative consumer research conducted by the Board validated the results of the qualitative testing conducted both before and after the June 2007 proposal; it indicates that most consumers do not understand the effective APR, and that for some consumers the effective APR is confusing and detracts from the effectiveness of other disclosures.

Final rule. After considering the comments on the proposed alternatives and the results of the consumer testing, the Board has determined that it is appropriate to eliminate the requirement to disclose an effective APR. The Board takes this action pursuant to its exception and exemption authorities under TILA Section 105.

Section 105(f) directs the Board to make an exemption determination in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are: (1) The amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, has concluded that it has satisfied the criteria for the exemption determination. Consumer testing conducted prior to the June 2007 Proposal, in March 2008, and after the May 2008 Proposal indicates that consumers find the current disclosure of an APR that combines rates and fees to be confusing. The June 2007 Proposal would have required disclosure of the nominal interest rate and fees in a manner that is more readily understandable and comparable across institutions. The Board believes that this approach can better inform consumers and further the goals of consumer protection and the informed use of credit for all types of open-end credit.

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

The consumer testing conducted for the Board supports this determination. With the exception of one round of testing conducted prior to the June 2007 Proposal, the overall results of the testing demonstrated that most consumers do not correctly understand the effective APR. Some consumers in the testing offered no explanation of the difference between the corresponding and effective APR, and others appeared to have an incorrect understanding. The results were similar in the consumer testing conducted in March 2008 and in the qualitative and quantitative testing conducted after the May 2008 proposal; in all rounds of the testing, a majority of participants did not offer a correct explanation of the effective APR.

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

The Board is adopting its second alternative proposal under which disclosure of an effective APR is not required. Under the second alternative proposal, § 226.7(b)(7) would have been reserved. In the final rule, proposed § 226.7(b)(14) (change-in-terms and increased penalty rate summary) is renumbered as § 226.7(b)(7). In addition, Sample G–18(B), as proposed in June 2007 as part of the first alternative proposal, is not adopted.

Format requirements for periodic statements. TILA and Regulation Z currently contain few formatting requirements for periodic statement disclosures. The Board proposed several proximity requirements in June 2007, based on consumer testing that showed targeted proximity requirements on periodic statements tended to improve the effectiveness of disclosures for consumers. Under the June 2007 Proposal, interest and fees imposed as part of the plan during the statement period would have been disclosed in a simpler manner and in a consistent location. Transactions would have been grouped by type, and fee and interest charge totals would have been required to be located with the transactions. If an advance notice of changed rates or terms is provided on or with a periodic statement, the June 2007 Proposal would have required a summary of the change beginning on the front of the first page of the periodic statement. The proposal would have linked by proximity the payment due date with the late payment fee and penalty rate that could be triggered by an untimely payment. The minimum payment amount also would have been linked by proximity with the new warning required by the Bankruptcy Act about the effects of making only minimum payments on the account. Grouping these disclosures together was intended to enhance consumers' informed use of credit.

Model clauses were proposed to illustrate the revisions, to facilitate compliance. The Board published for the first time proposed forms illustrating front sides of a periodic statement, as a compliance aid. The Board published Forms G–18(G) and G–18(H) to illustrate how a periodic statement might be designed to comply with the requirements of § 226.7. Proposed Forms G–18(G) and G–18(H) would have contained some additional disclosures that are not required by Regulation Z. The forms also would have presented information in some additional formats that are not required by Regulation Z.

Some consumer groups applauded the Board's prescriptive approach for periodic statement disclosures, to give effect to the Board's findings about presenting information in a manner that makes it easier for consumers to understand. A federal banking agency noted that standardized periodic statement disclosures may reduce consumer confusion that may result from variations among creditors.

Most industry commenters strongly opposed the Board's approach as being overly prescriptive and costly to implement. They strongly urged the Board to permit additional flexibility, or simply to retain the current requirement to provide ''clear and conspicuous'' disclosures. For example, these commenters asked the Board to eliminate any requirement that dictated the order or proximity of disclosures, along with any requirement that creditors' disclosures be substantially similar to model forms or samples. Although the Board's testing suggested certain formatting may be helpful to consumers, many commenters believe other formats might be as helpful. They stated that not all consumers place the same value on a certain piece of information, and creditors should be free to tailor periodic statements to the needs of their customers. Further, although participants in the Board's consumer testing may have indicated they preferred one format over another, commenters believe consumers are not confused by other formats, and the cost to reformat paper-based and electronic statements is not justified by the possible benefits. For example, commenters said the proposed requirements will require lengthier periodic statements, which is an additional ongoing expense independent of the significant one-time cost to redesign statements.

The final rule retains many of the formatting changes the Board proposed. In response to further consumer testing results and comments, however, the Board is providing flexibility to creditors where the changes proposed by the Board have not demonstrated consumer benefit sufficient to justify the expense to creditors of reformatting the periodic statement. For example, while the Board is adopting the proposal to group interest and fees, the Board is not adopting the requirement to group transactions (including credits) by transaction type. *See* the section-by-section analysis to § 226.7(b)(2), (b)(3), and (b)(6) below. Furthermore, if an advance notice of a change in rates or terms is provided on or with a periodic statement, the final rule requires that a summary of the change appear on the front of the periodic statement, but unlike the proposal, the summary is not required to begin on the front of the first page of the statement. *See* the section-by-section analysis to § 226.7(b)(7). Moreover, proximity requirements for certain information in the periodic statement have been retained, but the information does not need to be presented substantially similar to the Board's model forms. *See* the section-by-section analysis to § 226.7(b)(13).

Deferred interest plans. Current comment 7–3 provides guidance on various periodic statement disclosures for deferred-payment transactions, such as when a consumer may avoid interest charges if a purchase balance is paid in full by a certain date. The substance of comment 7–3, revised to conform to other proposed revisions in § 226.7(b), was proposed in June 2007 as comment 7(b)–1, which applies to open-end (not home-secured) plans. The comment permits, but does not require, creditors to disclose during the promotional period information about accruing interest, balances, interest rates, and the date in a future cycle when the balance must be paid in full to avoid interest.

Some industry commenters asked the Board to provide additional guidance about how and where this optional information may be disclosed if the Board adopts proposed formatting requirements for periodic statements. Some consumer commenters urged the Board to require creditors to disclose on each periodic statement the date when any promotional offer ends.

Comment 7(b)–1 is adopted as proposed, with technical revisions for clarity without any intended substantive change. For example, the transactions described in the comment are now referred to as ''deferred interest'' rather than ''deferred-payment.'' The comment also has been revised to note that it does not apply to card issuers that are subject to 12 CFR 227.24 or similar law which does not permit the assessment of deferred interest.

The Board believes the formatting requirements for periodic statements do not interfere with creditors' ability to provide information about deferred interest transactions or other promotions. Comment 7(b)–1, retained as proposed, clarifies that creditors are permitted, but not required, to disclose on each periodic statement the date in a future cycle when the balance on the deferred interest transaction must be paid in full to avoid interest charges. Similarly, subject to the requirement to provide clear and conspicuous disclosures, creditors may, but are not required to, disclose when promotional offers end. The final rule does not require creditors to disclose on each periodic statement the date when any promotional offer ends. The Board believes that many creditors currently provide such information prior to the end of the promotional period.

7(b)(2) Identification of Transactions

Under the June 2007 Proposal, § 226.7(b)(2) would have required creditors to identify transactions in accordance with rules set forth in § 226.8. This provision implements TILA Section 127(b)(2), currently at § 226.7(b). The section-by-section analysis to § 226.8 discusses the Board's proposal to revise and significantly simplify the rules for identifying transactions, which the Board adopts as proposed.

Under the June 2007 Proposal, the Board introduced a format requirement to group transactions by type, such as purchases and cash advances, based on consumer testing conducted for the Board. In consumer testing conducted prior to the June 2007 Proposal, participants in the Board's consumer testing found such groupings helpful. Moreover, participants noticed fees and interest charges more readily when transactions were grouped together, the fees imposed for the statement period were not interspersed among the transactions, and the interest and fees were disclosed in proximity to the transactions. Proposed Sample G–18(A) would have illustrated the proposal.

Most industry commenters opposed the proposed requirement to group transactions by type. Overall, commenters opposing this aspect of the proposal believe the cost to implement the change exceeds the benefit consumers might receive. Some commenters reported that their customers or consumer focus groups preferred chronological listings. Similarly, some commenters believe consumer understanding is enhanced by a chronological listing that permits fees related to a transaction, such as foreign transaction fees, to appear immediately below the transaction. Other commenters were concerned that under the proposal, creditors would no longer be able to disclose transactions grouped by authorized user, or by other sub-accounts such as for promotions.

In quantitative consumer testing conducted in the fall of 2008, the Board tested consumers' ability to identify specific transactions and fees on periodic statements that grouped transactions by transaction type versus those that listed transactions in chronological order. After they were shown either a grouped periodic statement or a chronological periodic statement, consumer testing participants were asked to identify the dollar amount of the first cash advance in the statement period. In order to test the effect of grouping fees, participants also were asked to identify the number of fees charged during the statement period. While testing evidence showed that the grouped periodic statement performed better among participants with respect to both questions, the improved performance of the grouped periodic statement was more significant with regard to consumers' ability to identify fees.

Based on these testing results and comments the Board received on the proposal to require transactions to be grouped by transaction type on periodic statements, the final rule requires creditors to group fees and interest together into a separate category but permits flexibility in how transactions may be listed. The Board believes that it is especially important for consumers to be able to identify fees and interest in order to assess the overall cost of credit. As further discussed below in the section-by-section analysis to § 226.7(b)(6), because testing evidence suggests that consumers can more easily find fees when they are grouped together under a separate heading rather than when they are combined with a consumer's transactions in a chronological list, the Board is adopting the proposal that would require the grouping of fees and interest on the statement.

With respect to grouping of transactions, such as purchases and cash advances, the Board believes that the modest improvement in consumers' ability to identify specific transactions in a grouped periodic statement may not justify the high cost to many creditors of reformatting periodic statements and coding transactions in order to group transactions by type. Furthermore, providing flexibility in how transactions may be presented would allow creditors to disclose transactions grouped by authorized user or by other sub-accounts, which consumers may find useful. In addition, in consumer testing conducted for the Board prior to the fall of 2008, most consumers indicated that they already review the transactions on their periodic statements. The Board expects that consumers will continue to review their transactions, and that consumers generally are aware of the transactions in which they have engaged during the billing period.

Accordingly, the Board has withdrawn the requirement to group transactions by type in proposed § 226.7(b)(2). Comment 7(b)(2)–1 has been revised from the proposal to permit, but not require, creditors to group transactions by type. Therefore, creditors may list transactions chronologically, group transactions by type, or organize transactions in any other way that would be clear and conspicuous to consumers. However, consistent with § 226.7(b)(6), all fees and interest must be grouped together under a separate heading and may not be interspersed with transactions.

7(b)(3) Credits

Creditors are required to disclose any credits to the account during the billing cycle. Creditors typically disclose credits among other transactions. The Board did not propose substantive changes to the disclosure requirements for credits in June 2007. However, consistent with the format requirements proposed in § 226.7(b)(2), the June 2007 Proposal would have required credits and payments to be grouped together. Proposed Sample G–18(A) would have illustrated the proposal.

Few commenters directly addressed issues related to disclosing credits on periodic statements, although many industry commenters opposed format requirements to group transactions (thus, credits) by type rather than in a chronological listing. In response to a request for guidance on the issue, comment 7(b)(3)–1 is modified from the proposal to clarify that credits may be distinguished from transactions in any way that is clear and conspicuous, for example, by use of debit and credit columns or by use of plus signs and/or minus signs.

As discussed in the section-by-section analysis to § 226.7(b)(2) above, the Board is not requiring creditors to group transactions by type. For the reasons discussed in that section and in the section-by-section analysis to § 226.7(b)(6) below, the Board is only requiring creditors to group fees and interest into a separate category, while credits, like transactions, may be presented in any manner that is clear and conspicuous to consumers.

Combined deposit account and credit account statements. Currently, comment 7(c)–2 permits creditors to commingle credits related to extensions of credit and credits related to non-credit accounts, such as for a deposit account. In June 2007, the Board solicited comment on the need for alternatives to the proposed format requirements to segregate transactions and credits, such as when a depository institution provides on a single periodic statement account activity for a consumer's checking account and an overdraft line of credit.

As discussed above in the section-by-section analysis to § 226.7(b)(2) above, the Board is not requiring creditors to segregate transactions and credits. Therefore, formatting alternatives for combined deposit account and credit account statements are no longer necessary. Comment 7(b)(3)–3, as renumbered in the June 2007 Proposal, is revised for clarity and is adopted as proposed.

7(b)(4) Periodic Rates

Periodic rates. TILA Section 127(b)(5) and current § 226.7(d) require creditors to disclose all periodic rates that may be used to compute the finance charge, and an APR that corresponds to the periodic rate multiplied by the number of periods in a year. 15 U.S.C. 1637(b)(5); § 226.14(b). In the June 2007 Proposal, the Board proposed to eliminate, for open-end (not home-secured) plans, the requirement to disclose periodic rates on periodic statements.

Most industry commenters supported the proposal, believing that periodic rates are not important to consumers. Some consumer groups opposed eliminating the periodic rate as a disclosure requirement, stating that it is easier for consumers to check the calculation of their interest charges when the rate appears on the statement. One industry commenter asked the Board to clarify that the rule would not prohibit creditors from providing, at their option, the periodic rate close to the APR and balance to which the rates relate.

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

The Board considered each of these factors carefully, and based on that review and the comments received, determined that the exemption is appropriate. In consumer testing conducted for the Board prior to the June 2007 Proposal, consumers indicated they do not use periodic rates to verify interest charges. Consistent with the Board's June 2007 Proposal not to allow periodic rates to be disclosed in the tabular summary on or with credit card applications and disclosures, requiring periodic rates to be disclosed on periodic statements may detract from more important information on the statement, and contribute to information overload. Eliminating periodic rates from the periodic statement has the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for open-end (not home-secured) credit.

The Board notes that under the final rule, creditors may continue to disclose the periodic rate, so long as the additional information is presented in a way that is consistent with creditors' duty to provide required disclosures clearly and conspicuously. *See* comment app. G–10.

Labeling APRs. Currently creditors are provided with considerable flexibility in identifying the APR that corresponds to the periodic rate. Current comment 7(d)–4 permits labels such as "corresponding annual percentage rate," "nominal annual percentage rate," or "corresponding nominal annual percentage rate." The June 2007 Proposal would have required creditors offering open-end (not home-secured) plans to label the APR disclosed under proposed § 226.7(b)(4) as "annual percentage rate." The proposal was intended to promote uniformity and to distinguish between this "interest only" APR and the effective APR that includes interest and fees, as proposed to be enhanced under one alternative in the June 2007 Proposal.

Commenters generally supported the proposal, and the labeling requirement is adopted as proposed. Forms G–18(F) and G–18(G) illustrate periodic statements that disclose an APR but no periodic rates.

Rates that "may be used." Currently, comment 7(d)–1 interprets the requirement to disclose all periodic rates that "may be used" to mean "whether or not [the rate] is applied during the cycle." For example, rates on cash advances must be disclosed on all periodic statements, even for billing periods with no cash advance activity or cash advance balances. The regulation and commentary do not clearly state whether promotional rates, such as those offered for using checks accessing credit card accounts, that "may be used" should be disclosed under current § 226.7(d) regardless of whether they are imposed during the period. *See* current comment 7(d)–2. The June 2007 Proposal included a limited exception to TILA Section 127(b)(5) to effectuate the purposes of TILA to require disclosures that are meaningful and to facilitate compliance.

Under § 226.7(b)(4)(ii) of the June 2007 Proposal, creditors would have been required to disclose promotional rates only if the rate actually applied during the billing period. For example, a card issuer may impose a 22 percent APR for cash advances but offer for a limited time a 1.99 percent promotional APR for advances obtained through the use of a check accessing a credit card account. Creditors are currently required to disclose, in this example, the 22 percent cash advance APR on periodic statements whether or not the consumer obtains a cash advance during the previous statement period. The proposal clarified that creditors are not required to disclose the 1.99 percent promotional APR unless the consumer used the check during the statement period. In the June 2007 Proposal, the Board noted its belief that interpreting TILA to require the disclosure of all promotional rates would be operationally burdensome for creditors and result in information overload for consumers. The proposed exception did not apply to HELOCs covered by § 226.5b.

Industry and consumer group commenters generally supported the proposal that requires promotional rates to be disclosed only if the rate actually applied during the billing period. Some consumer groups urged the Board to go further and prohibit creditors from disclosing a promotional rate that has not actually been applied, to avoid possible consumer confusion over a multiplicity of rates. For the reasons stated in the June 2007 Proposal and discussed above, the Board is adopting § 226.7(b)(4)(ii) as proposed, with minor changes to the description of the rate and time period, consistent with § 226.16(g). *See* also section-by-section analysis to § 226.7(a)(4), which discusses extending the exception to HELOCs subject to § 226.5b.

Combining interest and other charges. Currently, creditors must disclose finance charges attributable to periodic rates. These costs are typically interest charges but may include other costs such as premiums for required credit insurance. If applied to the same balance, creditors may disclose each rate, or a combined rate. *See* current comment 7(d)–3. As discussed below, consumer testing for the Board conducted prior to the June 2007 Proposal indicated that participants appeared to understand credit costs in terms of "interest" and "fees," and the June 2007 Proposal would have required disclosures to distinguish between interest and fees. To the extent consumers associate periodic rates with "interest," it seems unhelpful to consumers' understanding to permit creditors to include periodic rate charges other than interest in the dollar cost disclosed. Thus, in the June 2007 Proposal guidance permitting periodic rates attributable to interest and other finance charges to be combined would have been eliminated for open-end (not home-secured) plans.

Few comments were received on this aspect of the proposal. Some consumer groups strongly opposed the proposal if the Board determined to eliminate the effective APR, as proposed under one alternative in the June 2007 Proposal. They believe that because the required credit insurance premium is calculated as a percentage of the outstanding balance, creditors could understate the percentage consumers must pay for carrying a balance, which would conceal the true cost of credit.

The final rule provides that creditors offering open-end (not home-secured) plans that impose finance charges attributable to periodic rates (other than interest) must disclose the amount in dollars, as a fee, as proposed. *See* section-by-section analysis to § 226.7(b)(6) below. Many fees associated with credit card accounts or other open-end plans are a percentage of the transaction or balance, such as balance transfer or cash advance fees. The Board believes that disclosing fees such as for credit insurance premiums as a separate dollar amount rather than as part of a percentage provides consistency and, based on the Board's consumer testing, may be more helpful to many consumers.

In addition, a new comment 7(b)(4)–4 (proposed in June 2007 as comment 7(b)(4)–7) is added to provide guidance to creditors when a fee is imposed, remains unpaid, and interest accrues on the unpaid balance. The comment, adopted as proposed, provides that creditors disclosing fees in accordance with the format requirements of § 226.7(b)(6) need not separately disclose which periodic rate applies to the unpaid fee balance.

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

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

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

Amount of balance. The June 2007 Proposal did not change how creditors are required to disclose the amount of the balance on which finance charges are computed. Proposed comment 7(b)(5)–4 would have permitted creditors, at their option, not to include an explanation of how the finance charge may be verified for creditors that use a daily balance method. Currently, creditors that use a daily balance method are permitted to disclose an average daily balance for the period, provided they explain that the amount of the finance charge can be verified by multiplying the average daily balance by the number of days in the statement period, and then applying the periodic rate. The Board proposed to retain the rule permitting creditors to disclose an average daily balance but would have eliminated the requirement to provide the explanation. Consumer testing conducted for the Board prior to the June 2007 Proposal suggested that the explanation may not be used by consumers as an aid to calculate their interest charges. Participants suggested that if they attempted without satisfaction to calculate balances and verify interest charges based on information on the periodic statement, they would call the creditor for assistance. Thus, the final rule adopts comment 7(b)(5)–4, as proposed, which permits creditors, at their option, not to include an explanation of how the finance charge may be verified for creditors that use a daily balance method.

The June 2007 Proposal would have required creditors to refer to the balance as ''balances subject to interest rate,'' to complement proposed revisions intended to further consumers' understanding of interest charges, as distinguished from fees. The final rule adopts the required description as proposed. *See* section-by-section analysis to § 226.7(b)(6). Forms G–18(F) and 18(G) (proposed as Forms G–18(G) and G–18(H)) illustrate this format requirement.

Explanation of balance computation method. The June 2007 Proposal would have contained an alternative to providing an explanation of how the balance was determined. Under proposed § 226.7(b)(5), a creditor that uses a balance computation method identified in § 226.5a(g) would have two options. The creditor could: (1) Provide an explanation, as the rule currently requires, or (2) identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain more information from the creditor about how the balance is computed and resulting interest charges are determined. If the creditor uses a balance computation method that is not identified in § 226.5a(g), the creditor would have been required to provide a brief explanation of the method. The Board's proposal was guided by the following factors.

Calculating balances on open-end plans can be complex, and requires an understanding of how creditors allocate payments, assess fees, and record transactions as they occur during the cycle. Currently, neither TILA nor Regulation Z requires creditors to disclose on periodic statements all the information necessary to compute a balance, and requiring that level of detail appears not to be warranted. Although the Board's model clauses are intended to assist creditors in explaining common methods, consumers continue to find these explanations lengthy and complex. As stated earlier, consumer testing conducted prior to the June 2007 Proposal indicated that consumers call the creditor for assistance when they attempt without success to calculate balances and verify interest charges.

Providing the name of the balance computation method (or a brief explanation, if the name is not identified in § 226.5a(g)), along with a reference to where additional information may be obtained provides important information in a simplified way, and in a manner consistent with how consumers obtain further balance computation information.

Some consumer groups urged the Board to continue to require creditors to disclose the balance computation method on the periodic statement. They believe that the information is important for consumers that check creditors' interest calculations. Consumers, a federal banking agency and a member of Congress were among those who suggested banning a computation method commonly called ''two-cycle.'' As an alternative, the agency suggested requiring a cautionary disclosure on the periodic statement about the two-cycle balance computation method for those creditors that use the method.

Industry commenters generally favored the proposal, although one commenter would eliminate identifying the name of the balance computation method. Some commenters urged the Board to add ''daily balance'' method to § 226.5a(g), to enable creditors that use that balance computation method to take advantage of the alternative disclosure.

Some consumer groups further urged the Board to require creditors, when responding to a consumer who has called the creditor's toll-free number established pursuant to the proposed rules, to offer to mail consumers a document that provides a complete set of rules for calculating the balances and applying the periodic rate, and to post this information on creditors' Web sites. An industry commenter asked the Board to permit a creditor, in lieu of a reference to a toll-free telephone number, to reference the Board's Web site address that will be provided with the application and account-opening summary tables, or the creditor's Web site address, because a Web site can better provide accurate, clear, and consistent information about balance computation methods. The Board is adopting § 226.7(b)(5), as proposed for the reasons stated above. See also § 226.5a(g), which is revised to include the daily balance method as a common balance computation method. The Board is not requiring creditors also to refer to the creditor's Web site for an explanation of the balance computation method, or to mail written explanations upon consumers' request, to ease compliance. Consumers who do not understand the written or Web-based explanation will likely call the creditor in any event. However, a creditor could choose to disclose a reference to its Web site or provide a written explanation to consumers, at the creditor's option. Current comment 7(e)–6, which refers creditors to guidance in comment 6(a)(3)–1 about disclosing balance computation methods is deleted as unnecessary, as proposed. Elsewhere in today's **Federal Register**, the Board is adopting a rule that prohibits the two-cycle balance computation method as unfair for consumer credit card accounts. Therefore any cautionary disclosure is largely unnecessary.

7(b)(6) Charges Imposed

As discussed in the section-by-section analysis to § 226.6, the Board proposed in June 2007 to reform cost disclosure rules for open-end (not home-secured) plans, in part, to ensure that all charges assessed as part of an open-end (not home-secured) plan are disclosed before they are imposed and to simplify the rules for creditors to identify such charges. Consistent with the proposed revisions at account opening, the proposed revisions to cost disclosures on periodic statements were intended to simplify how creditors identify the dollar amount of charges imposed during the statement period.

Consumer testing conducted for the Board prior to the June 2007 Proposal indicated that most participants reviewing mock periodic statements could not correctly explain the term ''finance charge.'' The revisions proposed in June 2007 were intended to conform labels of charges more closely to common understanding, ''interest'' and ''fees.'' Format requirements were intended to help ensure that consumers notice charges imposed during the statement period.

Two alternatives were proposed: One addressed interest and fees in the context of an effective APR disclosure, the second assumed no effective APR is required to be disclosed.

Charges imposed as part of the plan. Proposed § 226.7(b)(6) would have required creditors to disclose the amount of any charge imposed as part of an open-end (not home-secured) plan, as stated in § 226.6(b)(3) (proposed as § 226.6(b)(1)). Guidance on which charges are deemed to be imposed as part of the plan is in § 226.6(b)(3) and accompanying commentary. Although coverage of charges was broader under the proposed standard of ''charges imposed as part of the plan'' than under current standards for finance charges and other charges, the Board stated its understanding that creditors have been disclosing on the statement all charges debited to the account regardless of whether they are now defined as ''finance charges,'' ''other charges,'' or charges that do not fall into either category. Accordingly, the Board did not expect the proposed change to affect significantly the disclosure of charges on the periodic statement.

Interest charges and fees. For creditors complying with the new cost disclosure requirements proposed in June 2007, the current requirement in § 226.7(f) to label finance charges as such would have been eliminated. *See* current § 226.7(f). Testing of this term with consumers conducted prior to the June 2007 Proposal found that it did not help them to understand charges. Instead, charges imposed as part of an open-end (not home-secured) plan would have been disclosed under the labels of ''interest charges'' or ''fees.'' Consumer testing also supplied evidence that consumers may generally understand interest as the cost of borrowing money over time and view other costs—regardless of their characterization under TILA and Regulation Z—as fees (other than interest). The Board's June 2007 Proposal was consistent with this evidence.

TILA Section 127(b)(4) requires creditors to disclose on periodic statements the amount of any finance charge added to the account during the period, itemized to show amounts due to the application of periodic rates and the amount imposed as a fixed or minimum charge. 15 U.S.C. 1637(b)(4). This requirement is currently implemented in § 226.7(f), and creditors are given considerable flexibility regarding totaling or subtotaling finance charges attributable to periodic rates and other fees. *See* current § 226.7(f) and comments 7(f)–1, –2, and –3. To improve uniformity and promote the informed use of credit, § 226.7(b)(6)(ii) of the June 2007 Proposal would have required creditors to itemize finance charges attributable to interest, by type of transaction, labeled as such, and would have required creditors to disclose, for the statement period, a total interest charge, labeled as such. Although creditors are not currently required to itemize interest charges by transaction type, creditors often do so. For example, creditors may separately disclose the dollar interest costs associated with cash advance and purchase balances. Based on consumer testing conducted prior to the June 2007 Proposal, the Board stated its belief that consumers' ability to make informed decisions about the future use of their open-end plans—primarily credit card accounts—may be promoted by a simply-labeled breakdown of the current interest cost of carrying a purchase or cash advance balance. The breakdown enables consumers to better understand the cost for using each type of transaction, and uniformity among periodic statements allows consumers to compare one account with other open-end plans the consumer may have.

Because the Board believes that consumers benefit when interest charges are itemized by transaction type, which many creditors do currently, the Board is adopting § 226.6(b)(6)(ii) as generally proposed, with one clarification that all interest charges be grouped together. As a result, all interest charges on an account, whether they are attributable to different authorized users or sub-accounts, must be disclosed together.

Under the June 2007 Proposal, finance charges attributable to periodic rates other than interest charges, such as required credit insurance premiums, would have been required to be identified as fees and would not have been permitted to be combined with interest costs. *See* proposed comment 7(b)(4)–3. The Board did not receive comment on this provision, and the comment is adopted as proposed.

Current § 226.7(h) requires the disclosure of ''other charges'' parallel to the requirement in TILA Section 127(a)(5) and current § 226.6(b) to disclose such charges at account opening. 15 U.S.C. 1637(a)(5). Consistent with current rules to disclose ''other charges,'' proposed § 226.7(b)(6)(iii) required that other costs be identified consistent with the feature or type, and itemized. The proposal differed from current requirements in the following respect: Fees were required to be grouped together and a total of all fees for the statement period were required. Currently, creditors typically include fees among other transactions identified under § 226.7(b). In consumer testing conducted prior to the June 2007 Proposal, consumers were able to more accurately and easily determine the total cost of non-interest charges when fees were grouped together and a total of fees was given than when fees were interspersed among the transactions without a total. (Proposed § 226.7(b)(6)(iii) also would have required that certain fees included in the computation of the effective APR pursuant to § 226.14 must be labeled either as ''transaction fees'' or ''fixed fees,'' under one proposed approach. This proposed requirement is discussed in further detail in the general discussion on the effective APR in the section-by-section analysis to § 226.7(b).)

To highlight the overall cost of the credit account to consumers, under the June 2007 Proposal, creditors would have been required to disclose the total amount of interest charges and fees for the statement period and calendar year to date. Comment 7(b)(6)–3 would have provided guidance on how creditors may disclose the year-to-date totals at the end of a calendar year. This aspect of the proposal was based on consumer testing that indicated that participants noticed year-to-date cost figures and would find the numbers helpful in making future financial decisions. The proposal was intended to provide consumers with information about the cumulative cost of their credit plans over a significant period of time. This requirement is discussed further below.

Format requirements. In consumer testing conducted for the Board prior to the June 2007 Proposal, consumers consistently reviewed transactions identified on their periodic statements and noticed fees and interest charges, itemized and totaled, when they were grouped together with the transactions on the statement. Some creditors also disclose these costs in account summaries or in a progression of figures associated with disclosing finance charges attributable to periodic rates. The June 2007 Proposal did not affect creditors' flexibility to provide this information in such summaries. *See* Proposed Forms G–18(G) and G–18(H), which would have illustrated, but not required, such summaries. However, the Board stated in the June 2007 Proposal its belief that TILA's purpose to promote the informed use of credit would be furthered significantly if consumers are uniformly provided, in a location they routinely review, basic cost information—interest and fees—that enables consumers to compare costs among their open-end plans. The Board proposed that charges required to be disclosed under § 226.7(b)(6)(i) would be grouped together with the transactions identified under § 226.7(b)(2), substantially similar to Sample G–18(A) in Appendix G to part 226. Proposed § 226.7(b)(6)(iii) would have required non-interest fees to be itemized and grouped together, and a total of fees to be disclosed for the statement period and calendar year to date. Interest charges would have been required to be itemized by type of transaction, grouped together, and a total of interest charges disclosed for the statement period and year to date. Proposed Sample G–18(A) in Appendix G to part 226 would have illustrated the proposal.

Labeling costs imposed as part of the plan as fees or interest. Commenters generally supported the Board's approach to label costs as either ''fees'' or ''interest charge'' rather than ''finance charge'' as aligning more closely with consumers' understanding.

For the reasons stated above, the requirement in § 226.7(b)(6) to label costs imposed as part of the plan as either fees or interest charge is adopted as proposed. Because the Board is adopting the alternative to eliminate the requirement to disclose an effective APR, the proposed requirement to label fees as ''transaction'' or ''fixed'' fees as a part of the proposed alternative to improve consumers' understanding of the effective APR is not included in the final rule.

Grouping fees together, identified by feature or type, and itemized. Some consumer groups supported the proposal to group fees together, and to identify and itemize them by feature or type. They believe that segregating and highlighting fees is likely to make consumers more aware of fees, and in turn, to assist consumers in avoiding them.

Most industry commenters opposed this aspect of the proposal, as overly prescriptive. As discussed in the section-by-section analysis to § 226.7(b)(2) regarding the requirement to group transactions together, many commenters believe the proposal would hinder rather than help consumer understanding if transaction-related fees are disclosed in a separate location from the transaction itself. They assert that consumers prefer a chronological listing of debits and credits to the account, and even if consumers prefer groupings, chronological listings are not confusing and consumer preference does not justify the cost to the industry to redesign periodic statements.

Other industry commenters stated that currently they separately display account activity in a variety of ways, such as by user, feature, or promotion. They believe consumers find these distinctions to be helpful in managing their accounts, and urged the Board to allow creditors to continue to display information in this manner.

As discussed in the section-by-section analysis to § 226.7(b)(2) above, in the fall of 2008, the Board tested consumers' ability to identify specific transactions and fees on periodic statements where transactions were grouped by transaction type and on periodic statements that listed transactions in chronological order. Testing evidence showed that the grouped periodic statement performed better among participants with respect to identifying specific transactions and fees, though the improved performance of the grouped periodic statement was more significant with regard to the identification of fees.

Moreover, consumers' ability to match a transaction fee to the transaction giving rise to the fee was also tested. Among participants who correctly identified the transaction to which they were asked to find the corresponding fee, a larger percentage of consumers who saw a statement on which account activity was arranged chronologically were able to match the fee to the transaction than when the statement was grouped. However, out of the participants who were able to identify the transaction to which they were asked to find the corresponding fee, the percentage of participants able to find the corresponding fee was very high for both types of listings.

The Board believes that the ability to identify all fees is important for consumers to assess their cost of credit. As discussed above, since the vast majority of consumers do not appear to comprehend the effective APR, the Board believes highlighting fees and interest for consumers will more effectively inform consumers of their costs of credit. Because consumer testing results indicate that grouping fees together helped consumers find them more easily, the Board is adopting the proposal under § 226.7(b)(6)(iii) to require creditors to group fees together. All fees assessed on the account must be grouped together under one heading even if fees may be attributable to different users of the account or to different sub-accounts.

Cost totals for the statement period and year to date. Consumer group commenters supported the proposal to disclose cost totals for the statement period, as well as a year-to-date total. One commenter urged the Board to disclose total fees and interest charged for the cycle, regardless of the Board's decision regarding the effective APR. The commenter also stated that year-to-date totals in dollars provide consumers with the overall cost of the credit on an annualized basis.

In general, industry commenters opposed the requirement for year-to-date totals as unnecessary and costly to implement. Some trade associations urged the Board to discuss with data processors potential costs to implement the year-to-date totals, and to provide sufficient implementation time if the requirement is adopted. Suggested alternatives to the proposal included providing the information on the first or last statement of the year, at the end of the year to consumers who request it, or to provide access to year-to-date information on-line.

The Board believes that providing consumers with the total of interest and fee costs, expressed in dollars, for the statement period and year to date is a significant enhancement to consumers' ability to understand the overall cost of credit for the account, and has adopted the requirement as proposed. The Board's testing indicates consumers notice and understand credit costs expressed in dollars. Aggregated cost information enables consumers to evaluate how the use of an account may impact the amount of interest and fees charged over the year and thus promotes the informed use of credit. Discussions with processors indicated that programming costs to capture year-to-date information are not material.

Comment 7(b)(6)–3 has been added to provide additional flexibility to creditors in providing year-to-date totals, in response to a commenter's request. Under the revised comment, creditors sending monthly statements may comply with the requirement to provide a year-to date total using a January 1 through December 31 time period, or the period representing 12 monthly cycles beginning in November and ending in December of the following year or beginning in December and ending in January of the following year. This guidance also applies when creditors send quarterly statements.

Some commenters asked the Board to provide guidance on creditors' duty to reflect refunded fees or interest in year-to-date totals. Comment 7(b)(6)–5 has been added to reflect that creditors may, but are not required to, reflect the adjustment in the year-to-date totals, nor, if an adjustment is made, to provide an explanation about the reason for the adjustment, to ease compliance. Such adjustments should not affect the total fees or interest charges imposed for the current statement period.

7(b)(7) Change-in-terms and Increased Penalty Rate Summary for Open-end (not Home-secured) Plans

A major goal of the Board's review of Regulation Z's open-end credit rules is to address consumers' surprise at increased rates (and/or fees). In the June 2007 Proposal, the Board sought to address the issue in § 226.9(c)(2) and (g) to give more time before new rates and changes to significant costs become effective. The Board and other federal banking agencies further proposed in May 2008, subject to certain exceptions, a prohibition on increasing the APR applicable to balances outstanding at the end of the fourteenth day after a notice disclosing the change in the APR is provided to the consumer.

As part of the June 2007 Proposal, the Board also proposed new § 226.7(b)(14), which would have required a summary of key changes to precede transactions when a change-in-terms notice or a notice of a rate increase due to delinquency or default or as a penalty is provided on or with a periodic statement. Samples G–20 and G–21 in Appendix G to part 226 illustrated the proposed format requirement under § 226.7(b)(14) and the level of detail required for the notice under § 226.9(c)(2)(iii) and (g)(3). Proposed Sample Forms G–18(G) and G–18(H) would have illustrated the placement of these notices on a periodic statement. The summary would have been required to be displayed in a table, in no less than 10-point font. *See* § 226.9(c)(2)(iii)(B) and (g)(3)(ii), § 226.5(a)(3). The proposed format rule was intended to enable consumers to notice more easily changes in their account terms. Increasing the time period to act is ineffective if consumers do not see the change-in-terms notice. In consumer testing conducted prior to the June 2007 Proposal, consumers who participated in testing conducted for the Board consistently set aside change-in-terms notices in inserts that accompanied periodic statements. Research conducted for the Board indicated that consumers do look at the front side of periodic statements and do look at transactions.

Consumer groups supported the proposed format requirements, as being more readable and pertinent than current change-in-term notices provided with periodic statements. Industry commenters opposed the proposal for a number of reasons. Many commenters stated that creditors use pre-printed forms and have limited space to place non-recurring messages on the front of the statement. These commenters asserted that the proposed requirement to place a change-in-term notice or a penalty rate increase notice preceding the transactions would be costly to implement. Some commenters asked the Board to permit creditors to refer consumers to an insert where the change-in-term or penalty increase could be described, if the requirement for a summary table was adopted. Others asked for more flexibility, such as by requiring the disclosures to precede transactions, without a further requirement to provide disclosures in a form substantially similar to proposed Forms G–18(G) and G–18(H), and Samples G–20 and G–21. One commenter urged the Board to require that the summary table be printed in a font size that is consistent with TILA's general ''clear and conspicuous'' standard, rather than require a 10-point font. Others noted that proposed Forms G–18(G) and G–18(H) were designed in a portrait format, with the summary table directly above the transactions, and asked that the Board clarify whether creditors could provide the table in a landscape format, with the summary table to the right or left of the transactions. One commenter asked the Board to provide guidance in the event both a change-in-terms notice and a penalty rate increase notice are included in a periodic statement. One commenter suggested the effect of the proposal will be to drive creditors to use separate mailings, to reduce redesign costs.

As discussed in more detail in the section-by-section analysis to § 226.9(c) and 226.9(g), the final rule requires that a creditor include on the front of the periodic statement a tabular summary of changes to certain key terms, when a change-in-terms notice or notice of the imposition of a penalty rate is included with the periodic statement. However, consistent with the results of the consumer testing conducted on behalf of the Board, this tabular summary is not required to appear on the front of the first page of the statement prior to the list of transactions, but rather may appear anywhere on the front of the periodic statement. Conforming changes have been made to § 226.7(b)(7) in the final rule. The summary table on the model forms continues to be disclosed on the front of the first page of the periodic statement; however, this is not required under the final rule. *See* Forms

G–18(F) and G–18(G) (proposed as Forms G–18(G) and G–18(H)). In a technical change, proposed § 226.7(b)(14) has been renumbered as § 226.7(b)(7) in the final rule.

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

Consumers who allege billing errors must do so in writing. 15 U.S.C. 1666; § 226.13(b). Creditors must provide on or with periodic statements an address for this purpose. *See* current § 226.7(k). Currently, comment 7(k)–2 provides that creditors may also provide a telephone number along with the mailing address as long as the creditor makes clear a telephone call to the creditor will not preserve consumers' billing error rights. In many cases, an inquiry or question can be resolved in a phone conversation, without requiring the consumer and creditor to engage in a formal error resolution procedure.

In June 2007, the Board proposed to update comment 7(k)–2, renumbered as comment 7(b)(9)–2, to address notification by e-mail or via a Web site. The proposed comment would have provided that the address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or via a Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning. *See* also comment 13(b)–2, which addresses circumstances under which electronic notices are deemed to satisfy the written billing error requirement. Commenters generally supported the proposal. Some consumer groups urged the Board to discourage creditors' policies not to accept electronic delivery of dispute notices, and that if a creditor accepts electronic dispute notices, the creditor should be required to accept these electronic submissions as preserving billing rights. The final rule adopts comment 7(b)(9)–2, as proposed. The rule provides consumers with flexibility to attempt to resolve inquiries or questions about billing statements informally, while advising them that if the matter is not resolved in a telephone call or via e-mail, the consumer must submit a written inquiry to preserve billing error rights.

7(b)(10) Closing Date of Billing Cycle; New Balance

Creditors must disclose the closing date of the billing cycle and the account balance outstanding on that date. As a part of the June 2007 Proposal to implement TILA amendments in the Bankruptcy Act regarding late payments and the effect of making minimum payments, the Board proposed to require creditors to group together, as applicable, disclosures of related information about due dates and payment amounts, including the new balance. The comments received on these proposed formatting requirements are discussed in the section-by-section analysis to § 226.7(b)(11) and (b)(13) below.

Some consumer commenters urged the Board to require credit card issuers to disclose the amount required to pay off the account in full (the ''payoff balance'') on each periodic statement and pursuant to a consumer's request by telephone or through the issuer's Web site. The Board's final rule does not contain such a requirement. At the time the payoff balance would be disclosed, the issuer may not be aware of some transactions that are still being processed and that have not yet been posted to the account. In addition, finance charges can continue to accrue after the payoff balance is disclosed. If a consumer relies on the disclosure to submit a payment for that amount, the account still may not be paid off in full.

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

TILA Section 127(b)(12), added by Section 1305(a) of the Bankruptcy Act, requires creditors that charge a late-payment fee to disclose on the periodic statement (1) the payment due date or, if different, the earliest date on which the late-payment fee may be charged, and (2) the amount of the late-payment fee. 15 U.S.C. 1637(b)(12). The June 2007 Proposal would have implemented those requirements in § 226.7(b)(11) by requiring creditors to disclose the payment due date on the front side of the first page of the periodic statement and, closely proximate to the due date, any cut-off time if the time is before 5 p.m. Further, the amount of any late-payment fee and any penalty APR that could be triggered by a late payment would have been required to be in close proximity to the due date.

Home-equity plans. The Board stated in the June 2007 Proposal its intent to implement the late payment disclosure for HELOCs as a part of its review of rules affecting home-secured credit. Creditors offering HELOCs may comply with § 226.7(b)(11), at their option.

Charge card issuers. TILA Section 127(b)(12) applies to ''creditors.'' TILA's definition of ''creditor'' includes card issuers and other persons that offer consumer open-end credit. Issuers of ''charge cards'' (which are typically products where outstanding balances cannot be carried over from one billing period to the next and are payable when a periodic statement is received) are ''creditors'' for purposes of specifically enumerated TILA disclosure requirements. 15 U.S.C. 1602(f); § 226.2(a)(17). The new disclosure requirement in TILA Section 127(b)(12) is not among those specifically enumerated.

The Board proposed in June 2007 that the late payment disclosure requirements contained in the Bankruptcy Act and to be implemented in new § 226.7(b)(11) would not apply to charge card issuers because the new requirement is not specifically enumerated to apply to charge card issuers. The Board noted that for some charge card issuers, payments are not considered ''late'' for purposes of imposing a fee until a consumer fails to make payments in two consecutive billing cycles. It would be undesirable to encourage consumers who in January receive a statement with the balance due upon receipt, for example, to avoid paying the balance when due because a late-payment fee may not be assessed until mid-February; if consumers routinely avoided paying a charge card balance by the due date, it could cause issuers to change their practice with respect to charge cards.

One industry commenter that offers a charge card account with a revolving feature supported the proposal. The commenter further asked the Board to clarify how card issuers with such products may comply with the late payment disclosure requirement.

Creditors are required to provide the disclosures set forth in § 226.7 as applicable. Section § 226.7(b)(11)(ii) has been revised to make clear the exemption is for periodic statements provided solely for charge card accounts; periodic statements provided for accounts with charge card and revolving features must comply with the late fee disclosure provision as to the revolving feature. Comment app. G–9 has been added to provide that creditors offering card accounts with a charge card feature and a revolving feature may revise the late payment (and minimum payment) disclosure to make clear the feature to which the disclosures apply. For creditors subject to § 226.7(b)(11), the late payment disclosure is not required to be made on a statement where no payment is due (and no late payment could be triggered), because the disclosure would not apply.

Payment due date. Under the June 2007 Proposal, creditors must disclose the due date for a payment if a late-payment fee or penalty rate could be imposed under the credit agreement, as discussed in more detail as follows. This rule is adopted, as proposed.

Courtesy periods. In the June 2007 Proposal, the Board interpreted the due date to be a date that is required by the legal obligation. This would not encompass informal ''courtesy periods'' that are not part of the legal obligation and that creditors may observe for a short period after the stated due date before a late-payment fee is imposed, to account for minor delays in payments such as mail delays. Proposed comment 7(b)(11)–1 would have provided that creditors need not disclose informal ''courtesy periods'' not part of the legal obligation.

Commenters generally supported this aspect of the proposal, which is adopted as proposed.

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

The Board considered additional disclosures on the periodic statement that would more fully explain the consequences of paying after the due date and before the date triggering the late-payment fee, but such an approach appeared cumbersome and overly complicated. For those reasons, under the June 2007 Proposal, creditors would have been required to disclose the due date under the terms of the legal obligation, and not a later date, such as when creditors are required by state or other law to delay imposing a late-payment fee for a specified period when a payment is received after the due date. Consumers' rights under state laws to avoid the imposition of late-payment fees during a specified period following a due date were unaffected by the proposal; that is, in the above example, the creditor would disclose March 10 as the due date for purposes of § 226.7(b)(11), but could not, under state law, assess a late-payment fee before March 21.

Commenters supported the Board's interpretation, and for the reasons stated above, the proposal is adopted. In response to a request for guidance, the substance of the above discussion regarding the due date disclosure when state or other laws affect the assessment of a late-payment fee is added in a new comment 7(b)(11)–2.

Cut-off time for making payments. As discussed in the section-by-section analysis to § 226.10(b) to the June 2007 Proposal, creditors would have been required to disclose any cut-off time for receiving payments closely proximate to each reference of the due date, if the cut-off time is before 5 p.m. on the due date. If cut-off times prior to 5 p.m. differ depending on the method of payment (such as by check or via the Internet), the proposal would have required creditors to state the earliest time without specifying the method to which it applies, to avoid information overload. Cut-off hours of 5 p.m. or later could continue to be disclosed under the existing rule (including on the reverse side of periodic statements).

Comments were divided on the proposed cut-off hour disclosure for periodic statements. Industry representatives that have a cut-off hour earlier than 5 p.m. for an infrequently used payment means expressed concern about consumer confusion if the more commonly used payment method is later than 5 p.m. Consumer groups urged the Board also to adopt a ''postmark'' date on which consumers could rely to demonstrate their payment was mailed sufficiently in advance for the payment to be timely received, or to eliminate cut-off hours altogether. Both consumer groups and industry representatives asked the Board to clarify by which time zone the cut-off hour should be measured.

As discussed in the section-by-section analysis to § 226.10(b) to the May 2008 Proposal, the Board proposed that to comply with the requirement in § 226.10 to provide reasonable payment instructions, a creditor's cut-off hour for receiving payments *by mail* can be no earlier than 5 p.m. in the location where the creditor has designated the payment to be sent. The Board requested comment on whether there would continue to be a need for creditors to disclose cut-off hours before 5 p.m. for payments made by telephone or electronically.

Consumer groups suggested the Board should require a cut-off hour no earlier than 5 p.m. for all methods of payment. They stated that different cut-off hours are confusing for consumers. Moreover, they argue that consumers have no control over the time electronic payments are posted. They suggested having a uniform cut-off hour would not require creditors to process and post payments on the same day or to change processing systems; such a rule would merely prohibit the creditor from imposing a late fee.

Industry commenters generally opposed a requirement to disclose any cut-off hour for receiving payments made other than by mail closely proximate to each reference of the due date. They stated that such a disclosure is unnecessary because creditors disclose cut-off times with other payment channels, such as the telephone or Internet. If a cut-off hour were to be required on the front side of periodic statements, one trade association suggested permitting a reference to cut-off hours on the back of the statement, to avoid cluttering the statement with information that, in their view, would not be helpful to many consumers in any event. Others suggested moving the timing and location of cut-off hour disclosures to account-opening, below the account-opening box, or disclosing the cut-off time for each payment channel on the periodic statement. One service provider suggested as an alternative to a cut-off hour disclosure, a substantive rule requiring a one-day period following the due date before the payment could be considered late.

In the two rounds of testing following the May 2008 Proposal, the Board conducted additional testing on cut-off hour disclosures for receiving payments other than by mail. Consumers were shown mock periodic statements which disclosed near the due date a 2 p.m. cut-off time for electronic payments and a reference to the back of the statement for cut-off times for other payment methods. The disclosure on the back of the statement stated that mailed payments must be received by 5 p.m. on the due date. When asked what time a mailed payment would be due, about two-thirds of the participants incorrectly named 2 p.m., the cut-off hour identified for electronic payments. Although the mock statement referred the reader to the back of the statement for more information about cut-off hours, only one participant in each round was able to locate the information. Most other participants understood that cut-off hours may differ for various payment channels, but they were unable to locate more specific information on the statement.

Based on the comments received and on the Board's consumer testing, the Board is not adopting an additional requirement to disclose any cut-off hour for receiving payments made other than by mail closely proximate to each reference of the due date. Testing showed that abbreviated disclosures were not effective. The Board believes that fully explaining each cut-off hour is too cumbersome for the front of the first side of the periodic statement. Creditors currently disclose relevant cut-off hours when consumers use the Internet or telephone to make a payment, and the Board expects creditors will continue to do so. *See* section-by-section analysis to § 226.10 regarding substantive rules regarding cut-off hours, generally.

Fee or rate triggered by multiple events. Some industry commenters asked for guidance on complying with the late payment disclosure if a late fee or penalty rate is triggered after multiple events, such as two late payments in six months. Comment 7(b)(11)–3 has been added to provide that in such cases, the creditor may, but is not required to, disclose the late payment and penalty rate disclosure each month. The disclosures must be included on any periodic statement for which a late payment could trigger the late payment fee or penalty rate, such as after the consumer made one late payment in this example.

Amount of late payment fee; penalty APR. Creditors must disclose the amount of the late-payment fee and the payment-due date on periodic statements, under TILA amendments contained in the Bankruptcy Act. The purpose of the new late payment disclosure requirement is to ensure consumers know the consequences of paying late. To fulfill that purpose, the June 2007 Proposal would have required that the amount of the late-payment fee be disclosed in close proximity to the due date. If the amount of the late-payment fee is based on outstanding balances, the proposal would have required the creditor to disclose the highest fee in the range.

In addition, the Board proposed to require creditors to disclose any increased rate that may apply if consumers' payments are received after the due date. The proposal was intended to address the Board's concern about a potential increase in APRs as a consequence of paying late. If, under the terms of the account agreement, a late payment could result in the loss of a promotional rate, the imposition of a penalty rate, or both, the proposal would have required the creditor to disclose the highest rate that could apply, to avoid information overload. The June 2007 Proposal would have required creditors to disclose the increased APR closely proximate to the fee and due date to fulfill Congress's intent to warn consumers about the effects of paying late. *See* proposed § 226.7(b)(13).

Some consumer groups and a member of Congress generally supported the Board's proposal to require creditors to disclose any penalty rate, as well as a late payment fee, that could be imposed if a consumer makes an untimely payment. One trade association and a number of industry commenters noted that under the proposal, consumers are warned about the consequences of paying late on or with the application or solicitation for a credit or charge card and at account-opening, and thus repeating disclosures each month was unnecessary. As an alternative, the trade association suggested requiring an annual reminder about triggers for penalty pricing or a preprinted statement on the back of the periodic statement. Some industry commenters opposed the proposal as overly burdensome.

The Board continues to believe that the late-payment warning should include a disclosure of any penalty rate that may apply if the consumer makes a late payment. For some consumers, the increase in rate associated with a late payment may be more costly than the imposition of a fee. Disclosing only the fee to these consumers would not inform them of one of the primary costs of making late payment. Accordingly, the Board believes that disclosure of both the penalty rate and fee should be required. For the reasons stated above, the proposal is adopted.

Scope of penalties disclosed. Some consumer groups urged the Board also to require disclosure of the earliest date after which a creditor could impose ''any negative consequence,'' as a catch-all to address new fees and terms that are not specifically addressed in the proposal. The Board is concerned that a requirement to disclose the amount of ''any other negative consequence'' is overly broad and unclear and would increase creditors' risk of litigation and thus is not included in the final rule.

Many consumers, consumer groups, and others also urged the Board to ban ''excessive'' late fees and penalty rates. Elsewhere in today's **Federal Register**, the Board is adopting a rule that prohibits institutions from increasing the APR on outstanding balances, with some exceptions. The Board is also adopting a rule that requires institutions to provide consumers with a reasonable amount of time to make their payments, which should help consumers avoid late fees and penalty rates resulting from late payment. No action is taken under this rulemaking that affects the amount of fees or rates creditors may impose.

Range of fees and rates. An industry commenter asked for more flexibility in disclosing late-payment fees and penalty rates that could be imposed under the account terms but could vary, for example, based on the outstanding balance. In other cases, the creditor may have the contractual right to impose a specified penalty rate but may choose to impose a lower rate based on the consumer's overall behavior. The commenter suggested permitting creditors to disclose the range of fees or rates, or ''up to'' the maximum late-payment fee or rate that may be imposed on the account. In the commenter's view, this approach would provide more accurate disclosures and provide consumers with a better understanding of the possible outcome of a late payment. Modified from the proposal, § 226.7(b)(11)(i)(B) provides that if a range of late-payment fees or penalty rates could be imposed on the account, creditors may disclose the highest late-payment fee and rate and at creditors' option, an indication (such as using the phrase ''up to'') that lower fees or rates may be imposed. Comment 7(b)(11)–4 has been added to illustrate the requirement. The final rule also permits creditors to disclose a range of fees or rates. This approach recognizes the space constraints on periodic statements about which industry commenters express concern, but gives creditors more flexibility in disclosing possible late-payment fees and penalty rates.

Some creditors are subject to state law limitations on the amount of late-payment fees or interest rates that may be assessed. Currently, where disclosures are required but the amount is determined by state law, such creditors typically disclose a matrix disclosing which rates and fees are applicable to residents of various states. Under the June 2007 Proposal, creditors would have been required to disclose the late-payment fee applicable to the consumer's account. To ease burden, one commenter urged the Board to permit these creditors to disclose the highest late-payment fee (or penalty rate) that could apply in any state. The Board is mindful of compliance costs associated with customizing the disclosure to reflect disclosure requirements of various states; however, the Board believes the purposes of TILA would not be served if a consumer received a late-payment fee disclosure for an amount that exceeded, perhaps substantially, the amount the consumer could be assessed under the terms of the legal obligation of the account. For that reason, § 226.7(b)(11)(i)(B) provides that ranges or the highest fee must be those applicable to the consumer's account. Accordingly, a creditor may state a range only if all fee amounts in that range would be permitted to be imposed on the consumer's account under applicable state law, for example if the state law permits a range of late fees that vary depending on the outstanding account balance.

Penalty rate in effect. Industry commenters asked the Board to clarify the penalty rate disclosure requirements when a consumer's untimely payment has already triggered the penalty APR. Comment 7(b)(11)–5 is added to provide that if the highest penalty rate has previously been triggered on an account, the creditor may, but is not required to, delete as part of the late payment disclosure the amount of the penalty rate and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the creditor may, but is not required to, modify the language to indicate that the penalty rate has been increased due to previous late payments, if applicable.

7(b)(12) Minimum Payment

The Bankruptcy Act amends TILA Section 127(b) to require creditors that extend open-end credit to provide a disclosure on the front of each periodic statement in a prominent location about the effects of making only minimum payments. 15 U.S.C. 1637(b)(11). This disclosure must include: (1) A ''warning'' statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) a hypothetical example of how long it would take to pay off a specified balance if only minimum payments are made; and (3) a toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay his or her actual account balance.

Under the Bankruptcy Act, depository institutions may establish and maintain their own toll-free telephone numbers or use a third party. In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act directs the Board to prepare a ''table'' illustrating the approximate number of months it would take to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other advances are made. The Board is directed to create the table by assuming a significant number of different APRs, account balances, and minimum payment amounts; instructional guidance must be provided on how the information contained in the table should be used to respond to consumers' requests. The Board is also required to establish and maintain, for two years, a toll-free telephone number for use by customers of creditors that are depository institutions having assets of $250 million or less.[19] The Federal Trade Commission (FTC) must maintain a toll-free telephone number for creditors that are subject to the FTC's authority to enforce TILA and Regulation Z as to the card issuer. 15 U.S.C. 1637(b)(11)(A)–(C).[20]

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

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

[19] The Board expects to activate its toll-free telephone number for use by small depository institutions by April 1, 2009, even though institutions are not required to include a telephone number on periodic statements issued before the rule's mandatory compliance date. The Board will subsequently issue a press release announcing the toll-free number and its activation date.

[20] The FTC also expects to activate its toll-free telephone number for use by entities under its jurisdiction by April 1, 2009, even though these entities are not required to include a telephone number on periodic statements issued before the rule's mandatory compliance date. The FTC also expects to subsequently issue a press release announcing the toll-free number and the exact date on which it will be activated.

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

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

In the June 2007 Proposal, the Board proposed to exempt open-end credit plans other than credit card accounts from the minimum payment disclosure requirements. This would have exempted, for example, HELOCs (including open-end reverse mortgages), overdraft lines of credit and other general purpose personal lines of credit. In response to the June 2007 Proposal, industry commenters generally supported exempting open-end credit plans other than credit card accounts from the minimum payment disclosure requirements. Several consumer group commenters urged the Board to require the minimum payment disclosures for HELOCs, as well as credit card accounts.

The final rule limits the minimum payment disclosures to credit card accounts, as proposed pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). The Congressional debate on the minimum payment disclosures indicates that the principal concern of Congress was that consumers may not be fully aware of the length of time it takes to pay off their credit card accounts if only minimum monthly payments are made. For example, Senator Grassley, a primary sponsor of the Bankruptcy Act, in discussing the minimum payment disclosures, stated:

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

understanding of what their financial situation is.

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

With respect to HELOCs, the Board understands that most HELOCs have a fixed repayment period. Thus, for those HELOCs, consumers could learn from the current disclosures the length of the draw period and the repayment period. *See* current § 226.6(e)(2). The minimum payment disclosures would not appear to provide additional information to consumers that is not already disclosed to them. The cost of providing this information a second time, including the costs to reprogram periodic statement systems and to establish and maintain a toll-free telephone number, appears not to be justified by the limited benefit to consumers. Thus, the final rule exempts HELOCs from the minimum payment disclosure requirements as not necessary to effectuate the purposes of TILA, using the Board's TILA Section 105(a) authority.

As proposed, the final rule also exempts overdraft lines of credit and other general purpose credit lines from the minimum payment disclosure requirements for several reasons. First, these lines of credit are not in wide use. The 2004 Survey of Consumer Finances data indicates that few families—1.6 percent—had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. (In terms of comparison, 74.9 percent of families had a credit card, and 58 percent of these families had a credit card balance at the time of the interview.)[21] Second, these lines of credit typically are neither promoted, nor used, as long-term credit options of the kind for which the minimum payment disclosures are intended. Third, the Board is concerned that the operational costs of requiring creditors to comply with the minimum payment disclosure requirements with respect to overdraft lines of credit and other general purpose lines of credit may cause some institutions to no longer provide these products as accommodations to consumers, to the detriment of consumers who currently use these products. For these reasons, the Board is using its TILA Section 105(a) authority to exempt overdraft lines of credit and other general purpose credit lines from the minimum payment disclosure requirements, because in this context the Board believes the minimum payment disclosures are not necessary to effectuate the purposes of TILA.

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

In response to the June 2007 Proposal, several commenters suggested revisions to the structure of the regulatory text in § 226.7(b)(12) to make the regulatory text in this section easier to read and understand. In the final rule, § 226.7(b)(12) is restructured to accomplish these goals. The final rule in § 226.7(b)(12)(i) clarifies that issuers can choose one of three ways to comply with the minimum payment disclosure requirements: (1) Provide on the periodic statement a warning about making only minimum payments, a hypothetical example, and a toll-free telephone number where consumers may obtain generic repayment estimates as described in Appendix M1 to part 226; (2) provide on the periodic statement a warning about making only minimum payments, and a toll-free telephone number where consumers may obtain actual repayment disclosures as described in Appendix M2 to part 226; or (3) provide on the periodic statement the actual repayment disclosure as described in Appendix M2 to part 226.

7(b)(12)(ii) Generic Repayment Example and Establishment of a Toll-Free Telephone Number

The final rule in § 226.7(b)(12)(ii) sets forth requirements that credit card issuers must follow if they choose to comply with the minimum payment disclosure provisions by providing on the periodic statement a warning about making only minimum payments, a hypothetical example, and a toll-free telephone number where consumers may obtain generic repayment estimates. Under the Bankruptcy Act, the hypothetical example that creditors must disclose on periodic statements varies depending on the creditor's minimum payment requirement. Generally, creditors that require minimum payments equal to 4 percent or less of the account balance must disclose on each statement that it takes 88 months to pay off a $1000 balance at an interest rate of 17 percent if the consumer makes a ''typical'' 2 percent minimum monthly payment. Creditors that require minimum payments exceeding 4 percent of the account balance must disclose that it takes 24 months to pay off a balance of $300 at an interest rate of 17 percent if the consumer makes a ''typical'' 5 percent minimum monthly payment (but a creditor may opt instead to disclose the statutory example for 2 percent minimum payments). The 5 percent minimum payment example must be disclosed by creditors for which the FTC has the authority under TILA to enforce the act and this regulation. Creditors also have the option to substitute an example based on an APR that is greater than 17 percent. The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. 15 U.S.C. 1637(b)(11)(A)–(E).

Wording of the examples. The Bankruptcy Act sets forth specific language for issuers to use in disclosing the applicable hypothetical example on the periodic statement. In the June 2007 Proposal, the Board proposed to modify the statutory language to facilitate consumers' use and understanding of the disclosures, pursuant to its authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). First, the Board proposed to require that issuers disclose the payoff periods in the hypothetical examples in years, rounding fractional years to the nearest whole year, rather than in months as provided in the statute. Thus, issuers would have disclosed that it would take over 7 years to pay off the $1,000 hypothetical balance, and about 2 years for the $300 hypothetical balance. The Board believes that the modification of the examples will further TILA's purpose to assure a meaningful disclosure of credit terms. 15 U.S.C. 1601(a). The final rule adopts the examples as proposed. The Board believes that disclosing the payoff period in years allows consumers to better comprehend the repayment period without having to convert it themselves from months to years. Participants in the consumer testing conducted for the Board reviewed disclosures with the estimated payoff period in years, and they indicated they understood the length of time it would take to repay the balance if only minimum payments were made.

Second, the statute requires that issuers disclose in the examples the minimum payment formula used to calculate the payoff period. In the $1,000 example above, the statute would require issuers to indicate that a ''typical'' 2 percent minimum monthly payment was used to calculate the repayment period. In the $300 example above, the statute would require issuers to indicate that a 5 percent minimum monthly payment was used to calculate the repayment period. In June 2007, the Board proposed to eliminate the specific minimum payment formulas from the

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

examples. The references to the 2 percent minimum payment in the $1,000 example, and a 5 percent minimum payment in the $300 example, are incomplete descriptions of the minimum payment requirement. In the $1,000 example, the minimum payment formula used to calculate the repayment period is the greater of 2 percent of the outstanding balance, or $20. In the $300 example, the minimum payment formula used to calculate the repayment period is the greater of 5 percent of the outstanding balance, or $15. In fact, in each example, the hypothetical consumer always pays the absolute minimum ($20 or $15, depending on the example).

In response to the June 2007 Proposal, several consumer group commenters suggested that the Board include in the example the statutory reference to the ''typical'' minimum payment formula (either 2 percent or 5 percent as described above), because without this reference, the example implies that minimum payment formulas do not vary from creditor to creditor.

Like the proposal, the final rule does not include in the examples a reference to the minimum payment formula used to calculate the repayment period given in the examples. The Board believes that including the entire minimum payment formula, including the floor amount, in the disclosure could make the example too complicated. Also, the Board did not revise the disclosures to indicate that the repayment period in the $1,000 balance was calculated based on a $20 payment, and the repayment period in the $300 balance was calculated based on a $15 payment. The Board believes that revising the statutory requirement in this way would change the disclosure to focus consumers on the effects of making a fixed payment each month as opposed to the effects of making minimum payments. Moreover, disclosing the minimum payment formula is not necessary for consumers to understand the essential point of the examples—that it can take a significant amount of time to pay off a balance if only minimum payments are made. In testing conducted for the Board, the $1,000 balance example was tested without including the 2 percent minimum payment disclosure required by the statute. Consumers appeared to understand the purpose of the disclosure—that it would take a significant amount of time to repay a $1,000 balance if only minimum payments were made. For these reasons, the final rule requires the hypothetical examples without specifying the minimum payment formulas used to calculate repayment periods in the examples. The Board believes that the modification of the examples will further TILA's purpose to assure a meaningful disclosure of credit terms. 15 U.S.C. 1601(a).

In response to the June 2007 Proposal, one industry commenter suggested that if an issuer already includes on the first page of the periodic statement a toll-free customer service telephone number, the Board should permit the issuer to reference that telephone number within the minimum payment disclosure, rather than having to repeat that number again in the minimum payment disclosure. The final rule requires issuers to state the toll-free telephone number in the minimum payment disclosure itself, even if the same toll-free telephone number is listed in other places on the first page of the periodic statement. The Board believes that listing the toll-free telephone number in the minimum payment disclosure itself makes the disclosure easier for consumers to use.

The final regulatory language for the examples is set forth in new § 226.7(b)(12)(ii). As proposed in June 2007, in addition to the revisions mentioned above, the final rule also adopts several stylistic revisions to the statutory language, based on plain language principles, in an attempt to make the language of the examples more understandable to consumers. Furthermore, the language has been revised to reflect comments from the Board's consultation with the other federal banking agencies, the NCUA, and the FTC, pursuant to Section 1309 of the Bankruptcy Act, as discussed immediately below.

Clear and conspicuous disclosure of examples. The Bankruptcy Act requires the Board, in consultation with the other federal banking agencies, the NCUA, and the FTC, to provide guidance on clear and conspicuous disclosure of the examples the Board is requiring under § 226.7(b)(12)(ii)(A)(*1*), (b)(12)(ii)(A)(*2*), and (b)(12)(ii)(B) to ensure that they are reasonably understandable and designed to call attention to the nature and significance of the information in the notice. 15 U.S.C. 1637 note (Regulations). In the June 2007 Proposal, the Board set forth exact wording for creditors to use for the examples based on language provided in the Bankruptcy Act, as discussed immediately above. The Board also proposed that the headings for the notice be in bold text and that the notice be placed closely proximate to the minimum payment due on the periodic statement, as discussed below in the supplementary information to § 226.7(b)(13).

The other federal banking agencies, the NCUA, and the FTC generally agreed with the Board's approach. These agencies, however, suggested that the heading be changed from ''Notice about Minimum Payments'' to ''Minimum Payment Warning,'' consistent with the heading provided in the Bankruptcy Act. The agencies the Board consulted were concerned that without the term ''warning'' in the heading, the Board's proposed heading would not sufficiently call attention to the nature and significance of the information contained in the notice. The Board agrees with the agencies, and the final rule adopts the ''Minimum Payment Warning'' heading.

One of the agencies the Board consulted also suggested that the wording in the examples be modified to refer to the example balance amount a second time in order to clarify to which balance the time period to repay refers. Thus, in the example under § 226.7(b)(12)(ii)(A)(*1*), the agency suggested that the phrase ''of $1,000'' be added to the end of the sentence in the notice that states, ''For example, if you had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance.'' The agency suggested similar amendments to the examples under § 226.7(b)(12)(ii)(A)(*2*) and (b)(12)(ii)(B). The Board believes that including a second reference to the example balance in the notice would be redundant and would unnecessarily extend the length of the notice. Therefore, the Board declines to amend the notice to add the second reference.

Adjustments to the APR used in the examples. The Bankruptcy Act specifically authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. In the June 2007 Proposal, the Board proposed not to adjust the APR used in the hypothetical examples. The final rule adopts this approach. The Board recognizes that the examples are intended to provide consumers with an indication that it can take a long time to pay off a balance if only minimum payments are made. Revising the APR used in the example to reflect the average APR paid by consumers would not significantly improve the disclosure, because for many consumers an average APR would not be the APR that applies to the consumer's account. Moreover, consumers will be able to obtain a more tailored disclosure of a repayment period based on the APR applicable to their accounts by calling the toll-free telephone number provided as part of the minimum payment disclosure.

Small depository institutions. Under the Bankruptcy Act, the Board is required to establish and maintain, for two years, a toll-free telephone number for use by customers of creditors that are depository institutions having assets of $250 million or less. The FTC must maintain a toll-free telephone number for creditors that are subject to the FTC's authority to enforce TILA and Regulation Z as to the card issuer. 15 U.S.C. 1637(b)(11)(F). Like the proposal, the final rule defines ''small depository institution issuers'' as card issuers that are depository institutions (as defined by section 3 of the Federal Deposit Insurance Act), including federal credit unions or state-chartered credit unions (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250 million. The final rule clarifies the determination whether an institution's assets exceed $250 million should be made as of December 31, 2009. 15 U.S.C. 1637(b)(11)(F)(ii). Generally, small depository institution issuers may disclose the Board's toll-free telephone number on their periodic statements. Nonetheless, some card issuers may fall within the definition of ''small depository institution issuers'' and be subject to the FTC's enforcement authority, such as small state-chartered credit unions. New comment 7(b)(12)(ii)(A)(*3*)–1 clarifies that those card issuers must disclose the FTC's toll-free telephone number on their periodic statements.

Web site address. In response to the June 2007 Proposal, one industry commenter suggested that the Board provide the option to include in the minimum payment disclosure a Web site address (in addition to the toll-free telephone number) where consumers may obtain the generic repayment estimates or actual repayment disclosures, as applicable. New comment 7(b)(12)–4 is added to allow issuers at their option to include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain generic repayment estimates or actual repayment disclosures as applicable, so long as the information provided on the Web site complies with § 226.7(b)(12), and Appendix M1 or M2 to part 226, as applicable. The Web site link disclosed must take consumers directly to the Web page where generic repayment estimates or actual repayment disclosures may be obtained. The Board believes that some consumers may find it more convenient to obtain the repayment estimate through a Web site rather than calling a toll-free telephone number.

New § 226.7(b)(12)(ii)(A)(*3*) sets forth the disclosure that small depository institution issuers must provide on their periodic statements if the issuers use the Board's toll-free telephone number. New § 226.7(b)(12)(ii)(B) sets forth the disclosure that card issuers subject to the FTC's enforcement authority must provide on their periodic statements. These disclosure statements include two toll-free telephone numbers: one that is accessible to hearing-impaired consumers and one that is accessible to other consumers. In addition, the disclosures include a reference to the Board's Web site, or the FTC's Web site as appropriate, where generic repayment estimates may be obtained.

Toll-free telephone numbers. Under Section 1301(a) of the Bankruptcy Act, depository institutions generally must establish and maintain their own toll-free telephone numbers or use a third party to disclose the repayment estimates based on the ''table'' issued by the Board. 15 U.S.C. 1637(b)(11)(F)(i). At the issuer's option, the issuer may disclose the actual repayment disclosure through the toll-free telephone number.

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

In the June 2007 Proposal, the Board proposed to add new § 226.7(b)(12)(iv) and accompanying commentary to implement the above statutory provisions related to the toll-free telephone numbers. In addition, proposed comment 7(b)(12)(iv)–3 would have provided that once a consumer has indicated that he or she is requesting the generic repayment estimate or the actual repayment disclosure, as applicable, card issuers may not provide advertisements or marketing information to the consumer prior to providing the repayment information required or permitted by Appendix M1 or M2 to part 226, as applicable.

The final rule moves these provisions to § 226.7(b)(12)(ii) and comments 7(b)(12)–1, 2 and 5, with several revisions. In addition, comment 7(b)(12)–3 is added to clarify that an issuer may provide as part of the minimum payment disclosure a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to select to receive the generic repayment estimate or actual repayment disclosure, as applicable, through that toll-free telephone number is prominently disclosed to the consumer. For automated systems, the option to select to receive the generic repayment estimate or actual repayment disclosure is prominently disclosed if it is listed as one of the options in the first menu of options given to the consumer, such as ''Press or say '3' if you would like an estimate of how long it will take you to repay your balance if you make only the minimum payment each month.'' If the automated system permits callers to select the language in which the call is conducted and in which information is provided, the Board has amended comment 7(b)(12)–3 to state that the menu to select the language may precede the menu with the option to receive the repayment disclosure.

In addition, proposed comment 7(b)(12)(iv)–3 dealing with advertisements and marketing information has been moved to comment 7(b)(12)–5. This comment is revised to specify that once a consumer has indicated that he or she is requesting the generic repayment estimate or the actual repayment disclosure, as applicable, card issuers may not provide advertisements or marketing information (except for providing the name of the issuer) to the consumer prior to providing the repayment information required or permitted by Appendix M1 or M2 to part 226, as applicable. Furthermore, new comment 7(b)(12)–5 clarifies that educational materials that do not solicit business are not considered advertisements or marketing materials for purposes of § 226.7(b)(12). Also, comment 7(b)(12)–5 contains examples of how the prohibition on providing advertisements and marketing information applies in two contexts. In particular, comment 7(b)(12)–5 provides an example where the issuer is using a toll-free telephone number that is designed to handle customer service calls generally and the option to select to receive the generic repayment estimate or actual repayment disclosure is given as one of the options in the first menu of options given to the consumer. Comment 7(b)(12)–5 clarifies in that context that once the consumer selects the option to receive the generic repayment estimate or the actual repayment disclosure, the issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required or permitted by Appendix M1 or M2 to part 226, as applicable. In addition, if an issuer discloses a link to a Web site as part of the minimum payment disclosure on the periodic statement, the issuer may not provide advertisements or marketing materials (except for providing the name of the issuer) on the Web page accessed by the link, including pop-up marketing materials or banner marketing materials, prior to providing the information required or permitted by Appendix M1 or M2 to part 226, as applicable.

In response to the June 2007 Proposal, several consumer groups suggested that the Board prohibit issuers from providing advertisements or marketing materials even after the repayment information has been given, if the issuer is providing generic repayment estimates through the toll-free telephone number. Nonetheless, if the issuer is providing actual repayment disclosures through the toll-free telephone number, these commenters suggested that the Board allow the issuer to provide advertisements or marketing materials after the repayment information is given, to encourage creditors to provide actual repayment disclosures instead of generic repayment estimates. The final rule does not adopt this approach. The Board believes that allowing advertisements or marketing materials after the repayment information is given is appropriate regardless of whether the repayment information provided are generic repayment estimates or actual repayment disclosures, because consumers could end the telephone call (or exit the Web page) if they were not interested in listening to or reviewing the advertisements or marketing materials given.

7(b)(12)(iii) Actual Repayment Disclosure Through Toll-free Telephone Number

Under the Bankruptcy Act, a creditor may use a toll-free telephone number to provide consumers with the actual number of months that it will take consumers to repay their outstanding balance instead of providing an estimate based on the Board-created table. Creditors that choose to give the actual number via the telephone number need not include a hypothetical example on their periodic statements. Instead, they must disclose on periodic statements a warning statement that making the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance, along with a toll-free telephone number that consumers may use to obtain the actual repayment disclosure. 15 U.S.C. 1637(b)(11)(I) and (K). In the June 2007 Proposal, the Board proposed to implement this statutory provision in new § 226.7(b)(12)(ii)(A). The final rule moves this provision to § 226.7(b)(12)(iii), with one revision described below.

Wording of disclosure on periodic statement. Under the Bankruptcy Act, if a creditor chooses to provide the actual repayment disclosure through the toll-free telephone number, the statute provides specific language that issuers must disclose on the periodic statement. In particular, this statutory language reads: ''Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: __________.'' In the June 2007 Proposal, the Board proposed that issuers use this statutory disclosure language. *See* proposed § 226.7(b)(12)(ii)(A). In response to the June 2007 Proposal, several consumer groups suggested that the Board revise the disclosure language to communicate more clearly to consumers the type of information that consumers will receive through the toll-free telephone number. The final rule in § 226.7(b)(12)(iii) revises the disclosure language to read: ''For an estimate of how long it will take to repay your balance making only minimum payments, call this toll-free telephone number: __________.'' The Board adopts this change to the disclosure language pursuant to its authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). The Board believes that this change will further TILA's purpose of assuring a meaningful disclosure of credit terms. 15 U.S.C. 1601(a).

7(b)(12)(iv) Actual Repayment Disclosure on the Periodic Statement

In the June 2007 Proposal, the Board proposed to provide that if card issuers provide the actual repayment disclosure on the periodic statement, they need not disclose the warning, the hypothetical example or a toll-free telephone number on the periodic statement, nor need they maintain a toll-free telephone number to provide the actual repayment disclosure. *See* proposed § 226.7(b)(12)(ii)(B). In the supplementary information to the June 2007 Proposal, the Board strongly encouraged card issuers to provide the actual repayment disclosure on periodic statements, and solicited comments on whether the Board could take other steps to provide incentives to card issuers to use this approach.

In response to the June 2007 Proposal, several consumer group commenters suggested that the Board should require issuers to disclose the actual repayment disclosure on the periodic statement in all cases. Industry commenters generally supported the option to provide the actual repayment disclosure on the periodic statement.

As proposed in June 2007, the final rule in new § 226.7(b)(12)(iv) provides that an issuer may comply with the minimum payment requirements by providing the actual repayment disclosure on the periodic statement. Consistent with the statutory requirements, the Board is not requiring that issuers provide the actual repayment disclosure on the periodic statement.

The Board is adopting an exemption from the requirement to provide on periodic statements a warning about the effects of making minimum payments, a hypothetical example, and a toll-free telephone number consumers may call to obtain repayment periods, and to maintain a toll-free telephone number for responding to consumers' requests, if the card issuer instead provides the actual repayment disclosure on the periodic statement.

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

As discussed in the supplementary information to the June 2007 Proposal, the Board believes that certain cardholders would find the actual repayment disclosures more helpful than the generic repayment estimates, as suggested by a recent study conducted by the GAO on minimum payments. For this study, the GAO interviewed 112 consumers and collected data on whether these consumers preferred to receive on the periodic statement (1) customized minimum payment disclosures that are based on the consumers' actual account terms (such as the actual repayment disclosure), (2) generic disclosures such as the warning statement and the hypothetical example required by the Bankruptcy Act; or (3) no disclosure.[22] According to the GAO's report, in the interviews with the 112 consumers, most consumers who typically carry credit card balances (revolvers) found customized disclosures very useful and would prefer to receive them in their billing statements. Specifically, 57 percent of the revolvers preferred the customized disclosures, 30 percent preferred the generic disclosures, and 14 percent preferred no disclosure. In addition, 68 percent of the revolvers found the customized disclosure extremely useful or very useful, 9 percent found the disclosure moderately useful, and 23 percent found the disclosure slightly useful or not useful. According to the GAO, the consumers that expressed a preference for the customized disclosures preferred them because such disclosures: would be specific to their accounts; would change based on their transactions; and would provide more information than generic disclosures. *GAO Report on Minimum Payments*, pages 25, 27.

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

7(b)(12)(v) Exemptions

As explained above, the final rule requires the minimum payment disclosures only for credit card accounts. *See* § 226.7(b)(12)(i). Thus, creditors would not need to provide the minimum payment disclosures for HELOCs (including open-end reverse mortgages), overdraft lines of credit or other general purpose personal lines of credit. For the same reasons as discussed above, the final rule exempts these products even if they can be accessed by a credit card device as discussed in the June 2007 Proposal, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). Specifically, new § 226.7(b)(12)(v) would exempt the following types of credit card accounts: (1) HELOCs that are subject to § 226.5b, even if the HELOC is accessible by credit cards; (2) overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; and (3) lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines. *See* new § 226.7(b)(12)(v)(A)–(C). The final rule also exempts charge cards from the minimum payment disclosure requirements, to implement TILA Section 127(b)(11)(I). 15 U.S.C. 1637(b)(11)(I); *see* new § 226.7(b)(12)(v)(D).

Exemption for credit card accounts with a fixed repayment period. In the June 2007 Proposal, the Board proposed to exempt credit card accounts where a fixed repayment period for the account is specified in the account agreement and the required minimum payments will amortize the outstanding balance within the fixed repayment period. *See* proposed § 226.7(b)(12)(iii)(E).

In response to the June 2007 Proposal, several consumer group commenters urged the Board not to provide an exemption for credit with a defined fixed repayment period. These commenters believed that the Board should develop a special warning for these types of loans, indicating that paying more than the required minimum payment will result in paying off the loan earlier than the date of final payment and will save the consumer interest charges. Industry commenters generally supported the exemption for credit card accounts with a specific repayment period.

The final rule in § 226.7(b)(12)(v)(E) adopts the exemption for credit card accounts with a specific repayment period as proposed, with several technical edits, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). The minimum payment disclosure does not appear to provide additional information to consumers that they do not already have in their account agreements. In addition, as discussed below, this exemption will typically be used with respect to accounts that have been closed due to delinquency and the required monthly payment has been reduced or the balance decreased to accommodate a fixed payment for a fixed period of time designed to pay off the outstanding balance. In these cases, consumers will likely be aware of the fixed period of time to repay because it has been specifically negotiated with the card issuer.

In order for this proposed exemption to apply, a fixed repayment period must be specified in the account agreement. As discussed above, this exemption would be applicable to, for example, accounts that have been closed due to delinquency and the required monthly payment has been reduced or the balance decreased to accommodate a fixed payment for a fixed period of time designed to pay off the outstanding balance. *See* comment 7(b)(12)(v)–1. This exemption would not apply where the credit card may have a fixed repayment period for one credit feature, but an indefinite repayment period on another feature. For example, some

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

retail credit cards have several credit features associated with the account. One of the features may be a general revolving feature, where the required minimum payment for this feature does not pay off the balance in a specific period of time. The card also may have another feature that allows consumers to make specific types of purchases (such as furniture purchases, or other large purchases), and the required minimum payments for that feature will pay off the purchase within a fixed period of time, such as one year. Comment 7(b)(12)(v)–1 makes clear that the exemption relating to a fixed repayment period for the entire account does not apply to the above situation, because the retail card account as a whole does not have a fixed repayment period, although the exemption under § 226.7(b)(12)(v)(F) might apply as discussed below.

Exemption where balance has fixed repayment period. In the June 2007 Proposal, the Board proposed to exempt credit card issuers from providing the minimum payment disclosures on periodic statements in a billing cycle where the entire outstanding balance held by consumers in that billing cycle is subject to a fixed repayment period specified in the account agreement and the required minimum payments applicable to that balance will amortize the outstanding balance within the fixed repayment period. *See* proposed § 226.7(b)(12)(iii)(G). This exemption was meant to cover the retail cards described above in those cases where the entire outstanding balance held by a consumer in a particular billing cycle is subject to a fixed repayment period specified in the account agreement. On the other hand, this exemption would not have applied in those cases where all or part of the consumer's balance for a particular billing cycle is held in a general revolving feature, where the required minimum payment for this feature does not pay off the balance in a specific period of time set forth in the account agreement. The final rule in § 226.7(b)(12)(v)(F) adopts this exemption as proposed, with one technical edit, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). *See also* comment 7(b)(12)(v)–2. The minimum payment disclosures would not appear to provide additional information to consumers in this context because consumers would be able to determine from their account agreements how long it would take to repay the balance. In addition, these fixed repayment features are often promoted in advertisements by retail card issuers, so consumers will typically be aware of the fixed repayment period when using these features.

Exemption where cardholders have paid their accounts in full for two consecutive billing cycles. In the June 2007 Proposal, the Board proposed to provide that card issuers are not required to include the minimum payment disclosure in the periodic statement for a particular billing cycle if a consumer has paid the entire balance in full in that billing cycle and the previous billing cycle. *See* proposed § 226.7(b)(12)(iii)(F).

In response to the June 2007 Proposal, several consumer groups suggested that the Board not adopt this exemption and not provide any exemption based on consumers' payment habits. Several industry commenters suggested that the Board broaden this exemption. Some industry commenters suggested that issuers should only be required to comply with minimum payment disclosure requirements for a particular billing cycle if the consumer has made minimum payments for the past three consecutive billing cycles. Other industry commenters suggested that issuers should only by required to comply with the minimum payment disclosure requirements for a particular billing cycle if the consumer has made at least three minimum payments in the past 12 months. Another industry commenter suggested that there should be an exemption for any consumer who has paid his or her account in full during the past 12 months, or has promotional balances that equal 50 percent or more of his or her total account balance.

The final rule adopts in § 226.7(b)(12)(v)(G) the exemption as proposed, with one technical edit, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). The final rule exempts card issuers from the requirement to provide the minimum payment disclosures in the periodic statement for a particular billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero balance or had a credit balance. The Board believes this approach strikes an appropriate balance between benefits to consumers of the disclosures, and compliance burdens on issuers in providing the disclosures. Consumers who might benefit from the disclosures will receive them. Consumers who carry a balance each month will always receive the disclosure, and consumers who pay in full each month will not. Consumers who sometimes pay their bill in full and sometimes do not will receive the minimum payment disclosures if they do not pay in full two consecutive months (cycles). Also, if a consumer's typical payment behavior changes from paying in full to revolving, the consumer will begin receiving the minimum payment disclosures after not paying in full one billing cycle, when the disclosures would appear to be useful to the consumer. In addition, creditors typically provide a grace period on new purchases to consumers (that is, creditors do not charge interest to consumers on new purchases) if consumers paid both the current balance and the previous balance in full. Thus, creditors already currently capture payment history for consumers for two consecutive months (or cycles).

The Board notes that card issuers are not required to use this exemption. A card issuer may provide the minimum payment disclosures to all of its cardholders, even to those cardholders that fall within this exemption. If issuers choose to provide voluntarily the minimum payment disclosures to those cardholders that fall within this exemption, the Board encourages issuers to follow the disclosures rules set forth in § 226.7(b)(12), the accompanying commentary, and Appendices M1–M3 to part 226 (as appropriate) for those cardholders.

Exemption where minimum payment would pay off the entire balance for a particular billing cycle. In response to the June 2007 Proposal, several commenters requested that the Board add an exemption where issuers would not be required to comply with the minimum payment disclosure requirements for a particular billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle. For example, if the entire outstanding balance on an account for a particular billing cycle is $20 and the minimum payment is $20, an issuer would not need to comply with the minimum payment disclosure requirements for that particular billing cycle. The final rule contains this exemption in new § 226.7(b)(12)(v)(H), pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

Other exemptions. In response to the June 2007 Proposal, several commenters suggested other exemptions to the minimum payment requirements, as discussed below. For the reasons discussed below, the final rule does not include these exemptions.

1. *Exemption for discontinued credit card products.* In response to the June 2007 Proposal, one industry commenter asked the Board to provide an exemption for discontinued products for which no new accounts are being opened, and for which existing accounts are closed to new transactions. The commenter indicated that the number of accounts that are discontinued are usually very small and the computer systems used to produce the statements for the closed accounts are being phased out. The Board does not believe that this exception is warranted. Issuers will need to make changes to their periodic statement systems as a result of changes to other periodic statement requirements in this final rule and issuers could make changes to the periodic statement system to incorporate the minimum payment disclosure on the periodic statement at the same time they make other changes required by the final rule.

2. *Exemption for credit card accounts purchased within the last 18 months.* In response to the June 2007 Proposal, several commenters urged the Board to provide an exemption for accounts purchased by a credit card issuer. With respect to these purchased accounts, one commenter urged the Board to exempt issuers from providing the minimum payment disclosures during a transitional period (up to 18 months) while the purchasing issuer converts the new accounts to its statement system. In this situation, the commenters indicated that the purchase of credit card accounts is often followed by a change-in-terms notice, which may include a change in the minimum payment formula. If this occurs, disclosing one estimated repayment period immediately after the account is purchased and then disclosing a different repayment period for the same balance after the change in terms becomes effective would be confusing to many consumers. The Board does not believe that such an exemption is warranted. A consumer may be alerted that his or her minimum payment has changed, either through reading the change-in-terms notice, or seeing different minimum payment amounts disclosed on his or her periodic statement. Thus, consumers may be aware that their minimum payment has changed, and as a result, may not be confused about receiving a different repayment period for the same or similar balance.

3. *Promotional plans.* One industry commenter suggested that the Board exempt any account where there is a balance in a promotional credit plan, such as a deferred interest plan, until expiration of the promotional plan. Another industry commenter suggested that the Board not require an issuer to provide the minimum payment disclosures to any consumer that has promotional balances that equal 50 percent or more of his or her total account balance. The final rule does not include these exemptions for promotional plans. Not all consumers will necessarily pay off the promotional balances by the end of the promotional periods. Thus, the Board believes that some consumers that have taken advantage of promotional plans may still find the minimum payment disclosures useful.

4. *General purpose lines of credit.* One commenter suggested that the final rule include an exemption for general purpose lines of credit. This commenter indicated that general purpose lines can be accessed by check or credit union share draft, by personal request at a branch, or via telephone or Internet. The Board notes that § 226.7(b)(12)(i) makes clear that the minimum payment disclosure requirements only apply to credit card accounts. Thus, to the extent that a general purpose line of credit is not accessed by a credit card, it is not subject to the requirements in § 226.7(b)(12).

7(b)(13) Format Requirements

Under the June 2007 Proposal, creditors would have been required to group together disclosures regarding when a payment is due (due date and cut-off time if before 5 p.m.), how much is owed (minimum payment and ending balance), the potential costs for paying late (late-payment fee, and penalty APR if triggered by a late payment), and the potential costs for making only minimum payments. Proposed Samples G–18(E) and G–18(F) in Appendix G to part 226 would have illustrated the proposed requirements. The proposed format requirements were intended to fulfill Congress's intent to have the new late payment and minimum payment disclosures enhance consumer understanding of the consequences of paying late or making only minimum payments, and were based on consumer testing conducted for the Board that indicated improved understanding when related information is grouped together.

Consumer group commenters, a member of Congress and one trade association supported the format requirements, as being helpful to consumers.

Industry commenters generally opposed the requirements as being overly prescriptive. They urged the Board to permit additional flexibility, or instead to retain the current requirement to provide ''clear and conspicuous'' disclosures. They asked the Board to require a ''closely proximate'' standard that would allow additional flexibility in how creditors design their statements, and to eliminate any requirement that creditors' disclosures be substantially similar to model forms or samples. They stated that there is no evidence that under the current ''clear and conspicuous'' standard consumers are unable to locate or understand the due date, balances, and minimum payment amount.

Some industry commenters opposed the requirement to place the late payment disclosures on the front of the first page. Some commenters asserted that locating that disclosure on the top of the first page places a disproportionate emphasis on the disclosure.

The Board tested the formatting of information regarding payments in two rounds of consumer testing conducted after May 2008. Participants were presented with two different versions of the periodic statement, in which the information was grouped, but the formatting was varied. These changes had no noticeable impact on how easily participants could locate the warning regarding the potential costs for paying late and the potential costs for making only minimum payments.

The Board also tested different formats for the grouped information in the quantitative testing conducted in September and October 2008. Participants were shown versions of the periodic statement in which the information was grouped, but formatted in three different ways. In order to assess whether formatting had an impact on consumers' ability to locate these disclosures, the Board's testing consultant focused on whether the format in which payment information was provided impacted consumer awareness of the late payment warning. Participants were asked whether there was any information on the statement about what would happen if they made a late payment. Participants who noticed the late payment warning were then asked a series of questions about what would happen if they made a late payment. Consistent with the prior rounds of consumer testing, the results of the quantitative testing demonstrated that the formatting of the grouped payment information does not have a statistically significant impact on consumers' ability to locate or understand the late payment warning.

Because the Board's consumer testing demonstrated that formatting of the information about payments does not have an impact on consumer awareness of these disclosures if the information is grouped together, § 226.7(b)(13) as adopted does not require that disclosures regarding when a payment is due, how much is owed, the potential costs for paying late, and the potential costs for making only minimum payments be ''substantially similar'' to Sample G–18(D) or G–18(E) (proposed as Samples G–18(E) and G–18(F)). The final rule does require, however, that these terms be grouped together, in close proximity, consistent with the proposal. For the reasons discussed in the supplementary information to § 226.7(b)(11), the final rule does not require a disclosure of the cut-off time on the front of the periodic statement, and the reference to a cut-off time disclosure that was included in proposed § 226.7(b)(13) has been deleted.

In response to a request for guidance, comment app. G–10 is added to clarify that although the payment disclosures appear in the upper right-hand corner of Forms G–18(F) and G–18(G) (proposed as Forms G–18(G) and G–18(H)), the disclosures may be located elsewhere, as long as they appear on the front side of the first page.

Combined deposit account and credit account statements. Some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. Industry commenters asked for guidance on how to comply with format requirements requiring disclosures to appear on the ''front of the first page'' for these combined statements. Comment 7(b)(13)–1 is added to clarify that for purposes of providing disclosures on the front of the first page of the periodic statement pursuant to § 226.7(b)(13), the first page of such a combined statement shall be deemed to be the page on which credit transactions first appear. For example, assume a combined statement where credit transactions begin on the third page and deposit account information appears on pages one and two. For purposes of providing disclosures on the front of the first page of the periodic statement under Regulation Z, this comment clarifies that page three is deemed to be the first page of the periodic statement.

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

Section 226.8 Identifying Transactions on Periodic Statements

TILA Section 127(b)(2) requires creditors to identify on periodic statements credit extensions that occurred during a billing cycle. 15 U.S.C. 1637(b)(2). The statute calls for the Board to implement requirements that are sufficient to identify the transaction or to relate the credit extension to sales vouchers or similar instruments previously furnished. The rules for identifying transactions are implemented in § 226.8, and vary depending on whether: (1) The sales receipt or similar credit document is included with the periodic statement, (2) the transaction is sale credit (purchases) or nonsale credit (cash advances, for example), and (3) the creditor and seller are the ''same or related.'' TILA's billing error protections include consumers' requests for additional clarification about transactions listed on a periodic statement. 15 U.S.C. 1666(b)(2); § 226.13(a)(6).

''Descriptive billing'' statements. In June 2007, the Board proposed revisions to the rules for identifying sales transactions when the sales receipt or similar document is not provided with the periodic statement (so called ''descriptive billing''), which is typical today. The proposed revisions reflect current business practices and consumer experience, and were intended to ease compliance. Currently, creditors that use descriptive billing are required to include on periodic statements an amount and date as a means to identify transactions. As an additional means to identify transactions, current rules contain description requirements that differ depending on whether the seller and creditor are ''same or related.'' For example, a retail department store with its own credit plan (seller and creditor are same or related) sufficiently identifies purchases on periodic statements by providing the department such as ''jewelry'' or ''sporting goods''; item-by-item descriptions are not required. Periodic statements provided by issuers of general purpose credit cards, where the seller and creditor are not the same or related, identify transactions by the seller's name and location.

The June 2007 Proposal would have permitted all creditors to identify sales transactions (in addition to the amount and date) by the seller's name and location. Thus, creditors and sellers that are the same or related could, at their option, identify transactions by a brief identification of goods or services, which they are currently required to do in all cases, or they could provide the seller's name and location for each transaction. Guidance on the level of detail required to describe amounts, dates, the identification of goods, or the seller's name and location would have remained unchanged under the proposal.

Commenters addressing this aspect of the June 2007 Proposal generally supported the proposed revisions. For the reasons stated below, the final rule provides additional flexibility to creditors that use descriptive billing to identify transactions on periodic statements.

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

The Board notes, however, that some retailers offering their own open-end credit plans tie their inventory control systems to their systems for generating sales receipts and periodic statements. In these cases, purchases listed on periodic statements may be described item by item, for example, to indicate brand names such as ''XYZ Sweater.'' This item-by-item description, while not required under current or revised rules, remains permissible.

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

The commentary to § 226.8 is reorganized and consolidated but is not substantively changed, as proposed. Comments 8–1, 8(a)(1)–1, and 8(a)(2)–4 are deleted as duplicative. Similarly, comments 8–6 through 8–8, which provide creditors with flexibility in describing certain specific classes of transactions regardless of whether they are ''related'' or ''nonrelated'' sellers or creditors, are deleted as unnecessary. Revised § 226.8(a)(1)(ii) and comments 8(a)–3 and 8(a)–7, which provide guidance for identifying mail or telephone transactions, are updated to refer to Internet transactions.

Examples of sale credit. Proposed comment 8(a)–1 republished an existing example of sales credit—a funds transfer service (such as a telegram) from an intermediary— and proposed a new example—expedited payment service from a creditor. One commenter addressed the proposed comment, suggesting that the entire comment be deleted. The commenter asserted creditors should have the flexibility to post a funds transfer service as a cash advance but that the comment forces creditors to post the transaction as a purchase, and, similarly, creditors should have discretion in how to post fees for creditors' services.

The requirements of § 226.8 are limited to how creditors must identify transactions on periodic statements and do not impact how creditors may otherwise characterize transactions, such as for purposes of pricing. The Board believes a consumer's purchase of a funds transfer service from a third party is properly characterized as sales credit for purposes of identifying transactions on a card issuer's periodic statement. Consumers are likely to recognize the name of the funds transfer merchant, as would be the typical case where the card issuer and funds transfer merchant are not the same or related. Thus, the example is retained although a more current illustration (wire transfer) replaces the existing illustration (telegram).

Additional guidance is added to comment 8(a)–1 regarding permissible identification of creditors' services that are purchased by the consumer and are ''costs imposed as part of the plan,'' in response to the commenter's concerns. The comment provides that for the purchase of such services (for example, a fee to expedite a payment), card issuers and creditors comply with the requirements for identifying transactions under § 226.8 by disclosing the fees in accordance with the requirements of § 226.7(b)(6)(iii). The example of voluntary credit insurance premiums as ''sale credit'' is deleted, because such premiums are costs imposed as part of the plan under § 226.6(b)(3)(ii)(F). To ease compliance, the comment further provides that for purchases of services that are not costs imposed as part of the plan, card issuers and creditors may, at their option, identify transactions under this section or in accordance with the requirements of § 226.7(b)(6)(iii). This flexibility is intended to avoid technical compliance violations.

Aggregating small dollar purchases. One commenter urged the Board to permit card issuers to aggregate, for billing purposes, small dollar purchases at the same merchant. Aggregating such purchases, in the view of the commenter, could enhance consumers' ability to track small dollar spending at particular merchants in a more meaningful way.

The Board believes further study is desirable to consider the potential ramifications of permitting card issuers to aggregate small dollar transactions on periodic statements. Furthermore, consistent rules should be considered under Regulation E (Electronic Fund Transfer). 12 CFR part 205. Thus, the final revisions do not include rules permitting aggregation of small dollar purchases.

Receipts accompany statements. Rules for identifying transactions where receipts accompany the periodic statement were not affected by the June 2007 Proposal, and are retained. Comments 8–4 and 8(a)(2)–3, which provide guidance when copies of credit or sales slips accompany the statement, are deleted, as proposed. The Board believes this practice is no longer common, and to the extent sales or similar credit documents accompany billing statements, additional guidance seems unnecessary.

Section 226.9 Subsequent Disclosure Requirements

Section 226.9 currently sets forth a number of disclosure requirements that apply after an account is opened, including a requirement to provide billing rights statements annually, a requirement to provide at least 15 days' advance notice whenever a term required to be disclosed in the account-opening disclosures is changed, and a requirement to provide finance charge disclosures whenever credit devices or features are added on terms different from those previously disclosed.

9(a) Furnishing Statement of Billing Rights

Section 226.9(a) requires creditors to mail or deliver a billing error rights statement annually, either to all consumers or to each consumer entitled to receive a periodic statement. *See* 15 U.S.C. 1637(a)(7). Alternatively, creditors may provide a shorter billing rights statement on each periodic statement. Regulation Z contains model forms creditors may use to satisfy the notice requirements under § 226.9(a). *See* Model Forms G–3 and G–4.

The June 2007 Proposal would have revised both the regulation and commentary under § 226.9(a) to conform to other changes elsewhere in the proposal, but otherwise would have left the provision unchanged substantively. In addition, the Board proposed new Model Forms G–3(A) (long form billing rights notice) and G–4(A) (short form alternative billing rights notice) in the June 2007 Proposal to improve the readability of the current notices. For HELOCs subject to the requirements of § 226.5b, the June 2007 Proposal would have given creditors the option of using the current Model Forms G–3 and G–4, or the revised forms.

One industry commenter opposed the proposed changes in Model Forms G–3(A) and G–4(A), largely due to the increased compliance burden from having separate forms for HELOCs and for other open-end plans. This commenter further noted that the Board did not conduct consumer research on the readability of the proposed notices. Another industry commenter opposed the revised language in Model Forms G–3(A) and G–4(A) regarding the merchant claims and defenses under § 226.12(c), stating that mere dissatisfaction with the good or service would not be enough to trigger the consumer's rights. Consumer groups generally supported the revised forms, but urged the Board to add additional language in the short form billing rights notice (Model Form G–4(A)) to note that a consumer need not pay any interest if the error is resolved in the consumer's favor, consistent with language in the long-form notice (Model Form G–3(A)). Consumer groups also suggested that the Board add optional language in the event a creditor allows a cardholder to provide billing error notices electronically.

The final rule retains Model Forms G–3(A) and G–4(A), largely as proposed. To address concerns about potential compliance burdens from using multiple forms, the final rule permits creditors to use Model Forms G–3(A) and G–4(A) in all cases to comply with their disclosure obligations for all open-end products. Thus, for open-end (not home-secured) plans, creditors may use Model Forms G–3(A) and G–4(A). For HELOCs subject to the requirements of § 226.5b, creditors may use the revised forms, or continue to use Model Forms G–3 and G–4. In addition, while the new model forms were not tested with individual consumers, the forms were reviewed by the Board's testing consultant which enabled the Board to draw upon the consultant's experience, both from the insights obtained through the testing of other notices in connection with this rulemaking, as well as from working with plain language disclosures in other contexts.

To address consumer group concerns, language has been added to Model Form G–4(A) (the short form alternative billing rights notice for open-end (not home-secured) plans) to inform the consumer that he or she need not pay any interest if the error is resolved in the consumer's favor, consistent with identical language used in the long form (Model Form G–3(A)). In addition, each of the model forms has been revised to include optional language a creditor may use if it permits a cardholder to provide billing error notices electronically. As discussed below in the section-by-section analysis to § 226.13, if a creditor indicates that it will accept notices submitted electronically, it must treat notices received in such manner as preserving billing error rights. *See* § 226.13(b); comment 13(b)–2, discussed below. Lastly, both Model Forms G–3(A) and G–4(A) have been revised in the final rule to clarify that for merchant claims (*see* § 226.12(c)), the consumer must first attempt in good faith to correct the problem with the merchant before asserting the claim with the issuer.

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

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

In June 2007, the Board proposed to retain the current rules set forth in §§ 226.9(b)(1) and (b)(2) for all credit devices and credit features except checks that access a credit card account. With respect to checks that access a credit card account, the Board proposed to create a new § 226.9(b)(3) that would require certain information to be disclosed each time checks that access a credit card account are mailed to a consumer, for checks mailed more than 30 days following the delivery of the account-opening disclosures.

The June 2007 Proposal would have required the following key terms to be disclosed on the front of the page containing the checks: (1) Any discounted initial rate, and when that rate will expire, if applicable; (2) the type of rate that will apply to the checks after expiration of any discounted initial rate (such as whether the purchase or cash advance rate applies) and the applicable APR; (3) any transaction fees applicable to the checks; and (4) whether a grace period applies to the checks, and if one does not apply, that interest will be charged immediately. The disclosures would have been required to be accurate as of the time the disclosures are given. The June 2007 Proposal provided that a variable APR is accurate if it was in effect within 30 days of when the disclosures are given. Proposed § 226.9(b)(3) would have required that these key terms be disclosed in a tabular format substantially similar to Sample G–19 in Appendix G to part 226. The Board solicited comment on the operational burden associated with customizing the checks to disclose the actual APR, and on alternatives, such as whether providing a reference to the type of rate that will apply, accompanied by a toll-free telephone number that a consumer could call to receive additional information, would provide sufficient benefit to consumers while limiting the burden on creditors.

In the May 2008 Proposal, the Board proposed to add to the summary table in § 226.9(b)(3) another disclosure that would have required additional information regarding the expiration date of any offer of a discounted initial rate. The additional disclosure was set forth in proposed § 226.9(b)(3)(i)(C), pursuant to the Board's authority under TILA Section 105(a). 15 U.S.C. 1604(a). Specifically, the disclosure would have been required to include any date by which the consumer must use the checks in order to receive the discounted initial rate. Furthermore, if the creditor will honor the checks if they are used after the disclosed date but will apply to the advance a rate other than the discounted rate, proposed § 226.9(b)(3)(i)(C) would have required the creditor to disclose that fact and the type of rate that will apply under those circumstances. The Board also proposed to revise proposed § 226.9(b)(3)(i)(E) (proposed in June 2007 as § 226.9(b)(3)(i)(D)) regarding disclosure of any grace period applicable to the checks and to add a new comment 9(b)(3)(i)(E)–1 which set forth language that creditors could have used to describe in the tabular disclosure any grace period (or lack of a grace period) offered on check transactions.

APRs. The Board received several comments on the proposal to require disclosure of the actual APR or APRs applicable to the checks. Several industry commenters noted that there would be operational burdens associated with disclosing the actual rate applicable to the checks that access a credit card account. These commenters encouraged the Board to consider alternatives, such as providing a reference to the type of rate that will apply or providing a toll-free number that consumers can use to get customized information. One issuer noted that all cardholders do not receive the same rate and/or fees even if they receive checks at the same time and stated that convenience check printing would have to be done in batches, raising the production costs. Another issuer noted that it has only one rate that applies to all features (purchases, cash advances, and balance transfers) under a given pricing plan, so its cardholders were unlikely to be confused about the rate that will apply after the expiration of a promotional rate. That commenter stated that redisclosing the rate applicable to the account on the page containing the checks would require customization by pricing plan. One issuer commented that the burden of customizing checks would fall disproportionately on smaller issuers because they would not be able to obtain efficiencies of scale if customization was required. Finally, one commenter also stated that, in addition to being operationally burdensome, the disclosure of the actual "go-to" rate could be confusing for consumers, because it may be inaccurate by the time any promotional offer expires.

Consumer groups, a trade association for community banks, and a credit union trade association supported the disclosure of the actual rate applicable to the checks. These commenters stated that it is important that consumers be aware of the costs associated with using checks that access a credit card account and that consumers should not have to use a toll-free number to receive the information. One commenter pointed out that the testing conducted on behalf of the Board indicated that consumers generally did not notice or pay attention to a cross reference contained in the convenience check disclosure.

The final rule requires that the tabular disclosure accompanying checks that access a credit card account include a disclosure of the actual rate or rates applicable to the checks, consistent with the June 2007 Proposal. The Board believes that disclosing the actual rate that will apply to checks once any promotional rate expires is a crucial piece of information necessary to assist consumers in deciding whether, and in what manner, to use the checks. While the actual post-promotional rate disclosed at the time the checks are sent to a consumer may be inaccurate by the time the promotional offer expires, due, for example, to fluctuations in the index used to determine a variable rate, the Board notes that this is not materially different from the situation where a post-promotional rate is disclosed in the disclosures provided to a consumer with an application or solicitation under § 226.5a or with the account-opening disclosures given pursuant to § 226.6. In either case, the exact post-promotional rate may differ from the rate disclosed by the time it becomes applicable to the consumer's account; however, the Board believes that disclosure of the actual post-promotional rate in effect at the time that the checks are sent to the consumer is an important piece of information for the consumer to use in making an informed decision about whether to use the checks.

The requirement to disclose the actual rate applicable to the checks also is consistent with the policy considerations underlying TILA Section 127(c)(6)(A), as added by Section 1303(a) of the Bankruptcy Act. 15 U.S.C. 1637(c)(6)(A). As discussed in the supplementary information to § 226.16(g), TILA Section 127(c)(6)(A) requires in connection with credit card direct mail applications and solicitations or accompanying promotional materials that a creditor disclose the time period in which the introductory period will end and the APR that will apply after the end of the introductory period. The requirements in TILA Section 127(c)(6)(A) do not apply to checks that access a credit card account because such checks are generally provided in connection with an existing account, not in connection with an application or solicitation for a new credit card account. However, the Board believes, consistent with the intent of TILA Section 127(c)(6)(A), that requiring creditors to disclose with access checks the actual rate that will apply upon expiration of any promotional rate will ensure that consumers to whom an initial discounted rate is being promoted also receive, with the materials promoting the initial discounted rate, a disclosure of the actual rate that will apply after that promotional rate expires.

Testing conducted on behalf of the Board also suggests that a disclosure of the actual rate, rather than a toll-free telephone number, will help to enhance consumer understanding of the rate that will apply when the promotional rate expires. Consumer testing conducted after the June 2007 Proposal supports the notion that consumers tend to look for a rate rather than a narrative disclosure when identifying the APR applicable to the checks. In March 2008, the form of access check disclosures tested contained a disclosure of the actual APR that would apply upon expiration of the promotional rate. All of the participants who noticed the disclosures [23] in the March 2008 interviews successfully identified the rate that would apply after the promotional rate expired. In July and August 2008, however, participants were presented with disclosures on the front of the page containing the checks that did not disclose the actual APR, but rather stated the type of rate that would apply (the cash advance rate) and a toll-free number that the consumer could call to learn the current APR. Almost all of the participants in the July and August 2008 testing were able to identify either the type of rate that would apply or the toll-free number. However, several consumers in the July and August 2008 testing who looked for a rate rather than a narrative disclosure mistakenly identified the fee for use of the checks, which was presented as a numerical rate, as the rate that would apply after expiration of the promotional rate. In addition, several participants who were presented with forms that did not provide an actual rate commented that this information could be obtained only by calling the creditor.

Finally, the Board also has reduced the operational burden associated with printing the disclosure of the actual rate applicable to the checks by adopting a 60-day accuracy requirement for the disclosure of a variable rate rather than the 30-day accuracy requirement that was proposed in June 2007. The June 2007 Proposal would have provided in § 226.9(b)(3)(ii) that a variable APR disclosed pursuant to § 226.9(b)(3)(i) is accurate if it was in effect within 30 days of when the disclosures are given. Several commenters stated that mailed convenience checks should be subject to the same 60-day accuracy requirement that applies to other mailed offers as contemplated in § 226.5a(c)(2)(i) for direct mail applications and solicitations. The commenters stated that card issuers may have trouble complying with the 30-day requirement, because the APR applicable to transactions in a given billing cycle sometimes is not determined until the end of a billing cycle, for example, if an issuer defines its index as of the last day of the cycle. Consequently, for those issuers, if the checks are printed several days before the checks are mailed, the APR obtained from the issuer's system may not be one in effect within 30 days of the mail date for some subset of that issuer's customers. The final rule in § 226.9(b)(3)(ii) incorporates the 60-day accuracy provisions requested by these commenters. The Board believes that it

[23] As discussed below, in the March 2008 testing, some consumers did not notice the disclosures that accompanied the checks that access a credit card account when they were included on an insert with the periodic statement and not on the front of the page containing the checks.

is appropriate to have the same timing provision for convenience checks as for direct mail credit card applications and solicitations, and that a 60-day period will effectively balance consumer benefit against the burden on issuers.

One commenter noted that the proposed wording in § 226.9(b)(3)(ii) that refers to when the account-opening disclosures ''are given'' creates confusion in the context of mailed disclosures, because it is unclear when a mailed disclosure is ''given'' even though it may be known when it is mailed. Sections 226.9(b)(3)(i) and (ii) of the final rule refer to when the account-opening disclosures ''are mailed or delivered.'' The Board believes that this will provide useful clarification to issuers, and is consistent with the existing provision for other supplemental credit access devices, which is retained in the final rule as § 226.9(b)(1) and (b)(2).

Location and format. Many industry commenters on the June 2007 Proposal urged the Board to provide flexibility regarding the required location of the tabular disclosure for checks that access a credit card account. Several commenters asked the Board to relax the location requirement for the § 226.9(b)(3) disclosures. One commenter stated that a creditor should be permitted to provide the table on the first page of a multiple-page advertising offer, even if the checks are printed on the second page. Another commenter stated that creditors should be permitted to provide a cross reference to the disclosures when the checks are included with a periodic statement. Finally, another commenter asked that the location requirements be relaxed for single checks inserted as standalone inserts in mailings. Several commenters opposed prescriptive location requirements more generally and advocated that the Board adopt only a clear and conspicuous standard, as opposed to the more specific standard proposed, for location of the tabular disclosures.

Proposed § 226.9(b)(3) stated that the disclosures were required on the front of the page containing the checks. Consumer testing conducted on behalf of the Board prior to the issuance of the June 2007 Proposal showed that consumers were more aware of the information included in the tabular disclosure when it was located on the front of the page containing the checks rather than on the back. In addition, approximately half of the participants in a round of testing conducted in March 2008 failed to notice the tabular disclosure when it was included as an insert with the periodic statement rather than on the page containing the checks. With several clarifications discussed below for multiple-page check offers, the final rule retains the location requirement as proposed because testing has shown that consumers are more likely to notice and pay attention to the disclosures when they are located on the front of the page containing the checks.

Several commenters asked the Board to clarify how the location requirement would apply in situations where checks are printed on multiple pages rather than a single page. For example, one commenter asked the Board to clarify that redundant disclosures are not required when the offer contains checks on multiple pages. A second commenter asked the Board to provide flexibility for checks printed in a mini-book or accordion-fold multi-panel booklet containing checks. New comment 9(b)(3)(i)–1 is adopted to clarify that for an offer with checks on multiple pages, the tabular disclosure need only be provided on the front of the first page containing checks. Similarly, for a mini-book or accordion-fold multi-panel booklet, comment 9(b)(3)(i)–1 clarifies that the tabular disclosures need only be provided on the front of the mini-book or accordion-fold booklet. The proposed requirement that disclosures be provided on the front of the page containing the checks was intended to draw a consumer's attention to the disclosures. The Board believes that the clarifications for multiple-page offers and mini-books included in the commentary will achieve the goal of attracting consumer attention while mitigating burden on creditors that would be associated with providing the disclosures on each page containing checks.

One commenter requested clarification that the tabular disclosure could be printed on the solicitation letter if the checks were on the same page as the letter, separated only by perforations. Comment 9(b)(3)(i)–1 provides the requested clarification.

Another commenter stated that a creditor should be permitted to disclose the required terms within the same table with respect to multiple APRs applying to different checks within the same offer. Such a situation would arise, for example, where a consumer receives a single offer that gives the consumer a choice between checks with a higher APR for a longer promotional period or a lower APR for a shorter promotional period. The Board believes that § 226.9(b)(3) as proposed would have permitted a single tabular disclosure of multiple APRs applicable to checks within the same offer, provided that the disclosure is provided on the front of the page containing the checks; therefore, such a single disclosure as described by the commenter also is permitted by the final rule. The Board believes that no additional clarification is necessary in the regulation or the commentary.

Use-by date. As discussed above, the May 2008 Proposal included a new § 226.9(b)(3)(i)(C), which would have required additional disclosures regarding the date by which the consumer must use the checks in order to receive any discounted initial rate offered on the checks. This requirement is adopted as proposed, renumbered as § 226.9(b)(3)(i)(A)(*3*) in the final rule, as discussed below. Both industry and consumer commenters generally supported this proposal, and several large issuers indicated that they already provide a disclosure of a date by which access checks must be used. In addition, consumer testing conducted on behalf of the Board suggests that consumers who see the disclosure tend to understand the use-by date, while consumers who do not see the disclosure are unaware that there may be a use-by date. More than half of the participants in consumer testing conducted after the May 2008 Proposal noticed the use-by date disclosure and understood from the disclosure that if they used the check after the ''use-by'' date the introductory rate would not apply. Most participants that did not see the use-by date disclosure assumed that no use-by date existed, and they could use the check, and obtain the discounted initial rate, until the end of the promotional period. The results of this testing suggest that consumers are not generally aware from their own experience that the offer of a promotional rate for access checks might be subject to a use-by date.

One industry commenter stated that its checks often are offered through a seasonal program, and that checks are pre-printed with a disclosure that the checks are ''good for only 90 days'' rather than with a disclosure of a date certain by which the checks must be used to qualify for a promotional rate. The commenter indicated that the proposed changes could increase the costs associated with check printing. New § 226.9(b)(3)(i)(A)(*3*), consistent with the proposal, requires however that the creditor disclose the date on which the offer of the discounted initial rate expires. A consumer may have no way of knowing on exactly what date the checks were mailed and the Board believes, therefore, that a general statement such as ''good for only 90 days'' is not sufficient to inform a consumer of when the promotional rate offer expires. A creditor would still be free to specify a number of days for which the promotional rate will be in effect (e.g., 90 days from the date of use) rather than a particular calendar date on which the promotional rate will end.

Grace period disclosure. In the May 2008 Proposal, the Board proposed to revise proposed § 226.9(b)(3)(i)(E) (proposed in June 2007 as § 226.9(b)(3)(i)(D)) and to add a new comment 9(b)(3)(i)(E)–1 which set forth language that creditors could have used to describe in the tabular disclosure any grace period (or lack of grace period) offered on check transactions, consistent with the grace period disclosures proposed under § 226.5a. For the reasons discussed in the supplementary information to § 226.5a(b)(5), § 226.9(b)(3)(i)(D) and comment 9(b)(3)(i)(D)–1 (proposed as § 226.9(b)(3)(i)(E) and comment 9(b)(3)(i)(E)–1) are adopted as proposed. New comment app. G–11 is added to provide guidance on the headings that must be used when describing in the tabular disclosure a grace period (or lack of a grace period) offered on check transactions that access a credit card account.

Terminology. In June 2007, the Board proposed in new § 226.9(b)(3)(i)(A) to require creditors to use the term ''introductory'' or ''intro'' in immediate proximity to the listing of any discounted initial rate in the access check disclosures. The May 2008 Proposal would have deleted this requirement, consistent with changes to terminology in proposed § 226.16(e)(2), and would have revised Sample G–19 accordingly. Consistent with the May 2008 Proposal, the final rule does not require creditors to use the term ''introductory'' or ''intro'' in access check disclosures, and Sample G–19 is adopted as proposed. *See* § 226.16(g)(2) and (g)(3) (proposed as § 226.16(e)(2) and (e)(3)).

Additional disclosures. One commenter asked that the Board include an additional disclosure in the table describing the payment allocation applicable to the checks. As noted in the supplementary information to the proposal published in May 2008 and in the supplementary information to the final rule issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, the Board and other agencies originally sought to address payment allocation issues by developing disclosures explaining payment allocation and the impact of payment allocation on accounts with multiple balances at different APRs. However, despite extensive consumer testing conducted for the Board, a significant percentage of consumers still did not comprehend how payment allocation can affect the amount of interest assessed. As a result, the Board and other agencies are addressing payment allocation through a substantive rule, and no disclosure regarding payment allocation has been added to the tabular disclosure provided with checks that access a credit card account.

One consumer group commenter suggested that the Board require creditors to disclose on each check that accesses a credit card account the following statement: ''The use of this check will trigger immediate interest and fees.'' The final rule does not require this disclosure on the checks. The Board believes that the final rule already addresses fees and the possible lack of a grace period by means of the disclosures under § 226.9(b)(3)(i)(C) and (b)(3)(i)(D). In consumer testing conducted for the Board, most consumers saw these disclosures presented on the front of the page containing the checks and understood them.

A federal banking agency stated that the Board should require a disclosure with checks that access a credit card account that certain substantive protections that apply to credit cards do not apply to the checks. The final rule does not require such a disclosure. As discussed above with regard to § 226.2(a)(15), the Board believes that existing provisions under state UCC law governing checks, coupled with the billing error provisions under § 226.13, provide consumers with sufficient protections from the unauthorized use of access checks. Thus, the Board has declined to extend TILA's protections for credit cards to such checks. Similarly, the Board believes that a disclosure that certain substantive protections applicable to credit cards do not apply to the checks is not necessary and may contribute to ''information overload.''

Exceptions. Some commenters asked the Board to require the tabular disclosure only if the checks were not specifically requested by the customer. These commenters indicated that customers may, and do, request checks, and that these checks may be supplied through third-party check printers that do not have access to the information required to be included in the new § 226.9(b)(3) tabular disclosure. The final rule, as proposed, requires that the tabular disclosure accompany the checks that access a credit card account, even if those checks were specifically requested by the consumer. The Board believes that consumer requests for access checks are uncommon for most credit card accounts. The Board believes that regardless of whether a consumer requests the checks that access a credit card account, the consumer should receive disclosures of the costs of using the checks, to better enable the consumer to make an informed decision regarding usage of the checks. Furthermore, it is the Board's understanding that any third-party processor must already receive from the issuer some personalized information, such as the consumer's name and address or a special routing number to link the checks to the consumer's account, that is used in the preparation and printing of the checks. The Board anticipates that creditors can build on their existing processes for providing personalized information to a third party processor in order to comply with the requirement to disclose account-specific information about rates and fees with the checks.

Other industry commenters requested exceptions to the disclosure requirements when checks are sent within a certain period of time after full disclosures are provided, such as full disclosures sent upon automatic card renewal, or when checks accompanied by the required disclosures were sent previously within a given time frame. The Board has not included either of these exceptions in the final rule. The Board believes that the tabular disclosures accompanying the checks are important to enable consumers to make informed decisions regarding check usage. For example, a consumer may receive a set of checks in the mail and may discard them because, at that time, he or she has no intention of using the checks. If that consumer receives a second set of checks, even a short time later, the consumer should receive a disclosure of the terms applicable to the second set of checks, which he or she may have interest in using, without having to retain and refer back to the disclosure accompanying the first set of checks. The Board believes that consumers generally will benefit from receiving the required disclosures each time they receive checks that access a credit card account, but has retained, for consistency with existing language in § 226.9(b)(1), an exception for checks provided during the first 30 days after the account-opening disclosures are mailed or delivered to that consumer.

In the June 2007 Proposal, the Board sought comment as to whether there are other credit devices or additional features that creditors add to consumers' accounts to which this proposed rule should apply. The Board received no comments advocating that the new

§ 226.9(b)(3) disclosures be required for products other than checks that access a credit card account. Accordingly, the final rule is limited to access checks.

Technical amendments. The Board also made several technical revisions to § 226.9(b) in the final rule. First, § 226.9(b)(3) has been reorganized for clarity without substantive change. Second, § 226.9(b)(3)(i)(A) has been amended to clarify that the term ''promotional rate'' has the meaning set forth in § 226.16(g)(2)(i). Finally, the Board also proposed in the June 2007 Proposal several technical revisions to improve the clarity of § 226.9(b) and the associated commentary. The Board received no comments on these technical revisions, and they are included in the final rule.

9(c) Change in Terms

The June 2007 Proposal included several revisions to the regulation and commentary designed to improve consumers' awareness about changes in their account terms or increased rates due to delinquency or default or as a penalty. The proposed revisions generally would have applied when a creditor changes terms that must be disclosed in the account-opening summary table under proposed § 226.6(b)(4), or increases a rate due to delinquency or default or as a penalty. First, the Board proposed to give consumers earlier notice of a change in terms, or for increased rates due to delinquency or default or as a penalty. Second, the Board proposed to expand the circumstances under which consumers receive advance notice of changed terms, or increased rates due to delinquency, or for default or as a penalty. Third, the Board proposed to introduce format requirements to make the disclosures about changes in terms or for increased rates due to delinquency, default or as a penalty more effective.

Timing. Currently, § 226.9(c)(1) provides that whenever any term required to be disclosed under § 226.6 is changed or the required minimum payment is increased, a written notice must be mailed or delivered to the consumer at least 15 days before that change becomes effective. Proposed § 226.9(c)(2)(i) would have extended the notice period from 15 days to 45 days.

In response to the June 2007 Proposal, individual consumers and consumer group commenters were generally supportive of the extension of the notice period for a change in terms to 45 days. These commenters agreed with the Board's observation that an extended notice period would give consumers the opportunity to transfer or pay off their balances, in order to potentially avoid or mitigate the cost associated with the change in terms. Some consumer and consumer group commenters urged the Board to consider extending the notice period even further, to as many as 90 or 180 days.

A federal banking agency that commented on the June 2007 Proposal supported the proposed 45-day change-in-terms notice period. This commenter suggested, however, that the notice requirement should be supplemented with a consumer right to opt out of certain changes, including changes that are made unilaterally by the creditor or changes in the consumer's rate under a universal default clause.

A number of industry commenters indicated that 45 days is too long and would not provide financial institutions with the ability to respond promptly to changes in market conditions. Some commenters suggested that the increased period of advanced notice would undermine the effectiveness of risk-based pricing and would lead to higher pricing at the outset to hedge for the risk associated with more risky borrowers. Some industry commenters stated that a 45-day advance notice requirement would, in practice, result in many consumers receiving 60 to 90 days advance notice, particularly when a change-in-terms notice is included with a periodic statement that is sent out on a monthly cycle. Some industry commenters stated that the notice period should remain at 15 days, while others advocated a 30-day or one billing cycle notice period. These commenters indicated that 15 or 30 days is ample time for consumers to act to transfer or pay off balances in advance of the effective date of any changed term. Finally, some commenters stated that a 45-day requirement might create an incentive for issuers to send change-in-terms notices separately from the periodic statement, which these commenters believe consumers are less likely to read.

Consistent with the proposal, the final rule requires 45 days' advance notice for changes to terms required to be disclosed pursuant to § 226.9(c)(2)(i). The Board believes that the shorter notice periods suggested by some commenters, such as 30 days or one billing cycle, would not provide consumers with sufficient time to shop for and possibly obtain alternative financing. The 45-day advance notice requirement refers to when the change-in-terms notice must be sent, but as discussed in the June 2007 Proposal it may take several days for the consumer to receive the notice. As a result, the Board believes that the 45-day advance notice requirement will give consumers, in most cases, at least one calendar month after receiving a change-in-terms notice to seek alternative financing or otherwise to mitigate the impact of an unexpected change in terms.

As discussed above, some commenters raised concerns about whether creditors would be able to respond promptly to changes in market conditions in light of the proposed 45-day notice period. Notwithstanding the 45-day advance notice requirement, the Board believes that creditors still have the ability to respond appropriately to changes in market conditions. First, a creditor may choose to offer products with variable rates, which vary with the market in accordance with a designated index. If the annual percentage rate applicable to a consumer's account changes due to fluctuations in an index value as set forth in the consumer's credit agreement, such changes can take effect immediately without any notice required under § 226.9(c)(2). If a creditor chooses to offer a product with a rate that does not vary in accordance with an index, that creditor will be required to wait 30 days longer than the current rule requiring 15 days' notice before imposing a new, increased rate to a consumer's account.

The Board has declined to adopt a longer period, such as 90 or 180 days, as suggested by some commenters. The Board believes that such an extended advance notice period would inappropriately restrict creditors' ability to respond to market or other conditions and is not necessary for consumers to have a reasonable opportunity to seek alternative financing. The intent of extending the advance notice period to 45 days is for consumers to have time to avoid costly surprises; the Board believes that a consumer having at least one calendar month to seek alternate financing appropriately balances burden on creditors against benefit to consumers. In addition, the Board notes that final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** provide additional substantive protections for consumers regarding rate increases.

The Board is aware that operational issues associated with including change-in-terms notices with periodic statements may lead to certain consumers receiving more than 45 days' notice. As noted above, some industry commenters specifically indicated that a 45 day notice requirement could in practice result in consumers receiving 60 or 90 days' notice, if the notice is included with the periodic statement. While the Board encourages creditors to include change-in-terms notices with periodic statements, § 226.9(c) also permits change-in-terms notices to be sent in a separate mailing. A creditor that does not wish to wait a longer period before changing terms on a consumer's account could send the change-in-terms notice separately from the statement to avoid delays in changes in terms in excess of the 45 day period.

As discussed in the supplementary information to § 226.9(g), the Board has adopted examples in comment 9(g)–1 to illustrate the interaction between the requirements of the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** and the subsequent disclosure requirements under Regulation Z. Some of those examples also provide guidance to an issuer providing a notice pursuant to § 226.9(c)(2)(i); the Board also has adopted a new comment 9(c)(2)(i)–6 which cross references those examples.

As discussed in the June 2007 Proposal, the 45-day notice period was only proposed for those changes in terms that affect charges required to be disclosed as a part of the account-opening table under proposed § 226.6(b)(4) or for increases in the required minimum periodic payment. A different disclosure requirement would have applied when a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under proposed § 226.6(b)(1) but is not required to be disclosed as part of the account-opening summary table under proposed § 226.6(b)(4). Under those circumstances, the proposal would have required the creditor to either, at its option (1) provide at least 45 days' written advance notice before the change becomes effective, or (2) provide notice orally or in writing of the amount of the charge to an affected consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge.

Consumer groups expressed concern that allowing any oral notice may provide insufficient information or time for a consumer's consideration and that even written notice with no advance disclosure would be insufficient. The comments also suggested that the proposed disclosure regime, which limits the 45-day advance written notice of a change in terms to a specific, finite list of terms, presents the possibility that card issuers could generate new fees or terms not in the list that will not be subject to the advance notice requirement.

Consistent with the proposal, and as discussed in the supplementary information for § 226.5, the final rule permits notice of the amount of a charge that is not required to be disclosed under § 226.6(b)(1) and (b)(2) (proposed as § 226.6(b)(4)) to be given orally or in writing at a relevant time before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. As discussed above, the Board intends to continue monitoring credit card products for the introduction of new types of fees and costs on those accounts. If new costs are introduced that the Board believes are fees of which consumers should be aware when the account is opened, the Board would likely add such fees to the specified costs in § 226.6(b)(2). The Board notes that a change-in-terms notice would be required, however, in connection with a change in any fee of a type that must be disclosed in the account-opening table.

Changes in type of applicable rate. The final rule includes new comments 9(c)(2)(iv)–3 and 9(c)(2)(iv)–4 to clarify that if a creditor changes a rate applicable to a consumer's account from a non-variable rate to a variable rate, or from a variable rate to a non-variable rate, a change-in-terms notice is required under § 226.9(c), even if the current rate at the time of the change is higher than the new rate at the time of the change. The Board believes that this clarification is appropriate to clarify the relationship between comments 9(c)(2)(iii)(A)–3 and 9(c)(2)(iii)(A)–4 and § 226.9(c)(2)(iv), which were proposed in June 2007 and have been adopted in the final rule. Comments 9(c)(2)(iii)(A)–3 and 9(c)(2)(iii)(A)–4 set forth guidance as to how a creditor should disclose a change from one type of rate to another type of rate. Section 226.9(c)(2)(iv) states, in part, consistent with the current rule, that a notice is not required when a change involves the reduction of any component of a finance or other charge. The Board recognizes that changing from one type of rate (e.g., variable or non-variable) to another type of rate might result in a temporary reduction in a finance charge. For example, a creditor might change the rate from a variable rate that is currently 16.99% to a non-variable rate of 15%. However, over time as the value of the index used to determine the variable rate fluctuates, the new rate may in some cases ultimately be higher than the value of the rate that applied prior to the change. In the example above, this could occur if the value of the index used to compute the variable rate effective before the change decreases by two percentage points, so that the variable rate that would have been calculated using the formula effective before the change in terms is 14.99%.

The Board notes that an issuer that is subject to final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** may only change rates as permitted pursuant to those rules. For example, those rules limit, in some circumstances, a card issuer's ability to change a rate applicable to a consumer's credit card account from a non-variable rate to a variable rate.

Changes in late-payment fees and over-the-limit fees. Creditors currently are not required to provide notice of changes to late-payment fees and over-the-limit fees, pursuant to current § 226.9(c)(2). The June 2007 Proposal would have required 45 days' advance notice for changes involving late-payment fees or over-the-limit fees, other than a reduction in the amount of the charges, which is consistent with the inclusion of late-payment fees and over-the-limit fees in the tabular disclosure provided at account-opening under proposed § 226.6(b)(4) for open-end (not home-secured) plans. The proposed amendment would have required that 45 days' advance notice be given only when a card issuer changes the amount of a late-payment fee or over-the-limit fee that it can impose, not when such a fee is actually applied to a consumer's account.

Several commenters asked the Board to reduce or eliminate the advance notice requirement for prospective changes to fees, such as late-payment fees or over-the-limit fees, and for other changes in terms that do not affect an existing balance (such as a change in interest rates that will apply only prospectively to new transactions). These commenters indicated that transaction-based fees, which are based on account usage, and the assessment of additional interest charges or fees based on changes in terms that do not affect an existing balance, are in the control of the consumer and should not be afforded a lengthy prior notice period. Notwithstanding these comments, the final rule requires 45 days' advance notice of a change in terms, even if that change is a prospective change to fees, or otherwise does not affect an existing balance. The Board believes that a consumer still may want to seek an alternative form of financing in anticipation of a change in terms, even if that change only affects fees or does not affect existing balances. Accordingly, the final rule is designed to give a consumer enough notice so that the consumer has the opportunity to avoid incurring additional interest charges or fees as a result of that change in terms. For example, an increase in the annual fee applicable to a consumer's account does not affect existing balances; however, a consumer may wish to transfer his or her balance to a different card in order to avoid incurring an increased annual fee on his or her account.

Changes initially disclosed. The final rule contains several revisions to comment 9(c)(2)–1, which was modeled after current comment 9(c)–1 and was included in the June 2007 Proposal. The comment sets forth guidance on when change-in-terms notices are not required if a change has been initially disclosed. Proposed comment 9(c)(2)–1, consistent with current comment 9(c)–1, included examples of terms deemed to be initially disclosed. Among these examples were a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. The final rule deletes these two examples from the comment.

The Board believes that an increase in rate due to the termination of a consumer's employment with a particular company or due to the consumer's account balance falling below a certain level is a type of rate increase as a penalty that must be disclosed in advance under § 226.9(g), even if the circumstances under which the change may occur are set forth in the account agreement. Accordingly, the Board believes that retaining these examples in comment 9(c)(2)–1 could be inconsistent with the rules for penalty rate increases set forth in § 226.9(g). A creditor may, by contract, designate many types of consumer behavior, or changes in a consumer's circumstances, as events upon the occurrence of which the consumer's rate may increase as a penalty. Some of these events, such as the termination of an employment contract, may not be typically considered events of delinquency or default; nonetheless, in each case the creditor reserves the contractual right to increase the rate applicable to the consumer's account, and that rate increase is triggered by certain actions by, or changes in the circumstances of, the consumer. The Board believes that the changes to comment 9(c)(2)–1 are consistent with the requirements of § 226.9(g) As a result, and for the reasons stated in the section-by-section analysis to § 226.9(g) below, the final rule provides that a consumer must receive advance notice prior to the imposition of such rate increases so that a consumer may seek alternative financing or otherwise respond to the change.

In addition, as noted below in the section-by-section analysis to § 226.9(g), one commenter on the proposal asked for clarification regarding the difference between a consumer's ''default or delinquency'' and a ''penalty.'' The Board believes that the revisions to proposed comment 9(c)(2)–1 will help to eliminate ambiguity as to when a rate is increased as a ''penalty.''

Format and content. Section 226.9 currently contains no restrictions or requirements for how change-in-terms notices are presented or formatted. For open-end (not home-secured) plans, the Board's June 2007 Proposal would have required that creditors provide a summary table of a limited number of key terms on the front of the first page of the change-in-terms notice, or segregated on a separate sheet of paper. Creditors would have been required to utilize the same headings as in the account-opening tables in proposed model forms contained in Appendix G to part 226. If the change-in-terms notice were included with a periodic statement, the summary table would have been required to appear on the front of the first page of the periodic statement, preceding the list of transactions for the period. Based on consumer testing conducted for the Board prior to the June 2007 Proposal, when a summary of key terms was included on change-in-terms notices tested, consumers tended to read the notice and appeared to understand better what key terms were being changed than when a summary was not included.

The June 2007 Proposal would have required that creditors provide specific information in the change-in-terms notice, namely (1) a statement that changes are being made to the account; (2) a statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt out right provided in the notice, if applicable; (3) the date the changes described in the summary table will become effective; (4) if applicable, an indication that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice; and (5) if the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice does not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate. The June 2007 Proposal specified that this information must be placed directly above the summary of key changes described above. The minimum font size requirements in proposed comment 5(a)(1)–3 also would have applied to any tabular disclosure required to be given pursuant to proposed § 226.9(c)(2)(iii)(B).

In May 2008, the Board proposed to add an additional disclosure requirement to the summary table described above. For consistency with the substantive restrictions regarding the application of increased APRs to preexisting balances proposed by the Board and other federal banking agencies in May 2008, the Board would have required the change-in-terms notice to disclose the balances to which the increased rate will be applied. If the rate increase will not apply to all balances, the creditor would have been required to identify the balances to which the current rate will continue to apply.

In response to the June 2007 Proposal, consumers and consumer groups suggested a number of new formatting requirements, as well as additional content for the summary box. For example, some consumers requested that changes in terms be specifically highlighted, such as by printing the original contract term in black and the new term in red. Other consumers requested that change-in-terms notices always include a complete, updated account agreement. Some comments focused on the mode of delivery of the notice, with one commenter requesting that change-in-terms notices always be mailed as a first-class letter and others urging that notices of changes in terms should be delivered both by regular mail and electronic mail. The Board has not incorporated any of these formatting suggestions as requirements in the final rule. The Board believes that some of these suggestions, such as sending a complete, updated account agreement with each change in terms or highlighting the changed term in a different color than the original text, would impose operational burdens and/or significant costs on creditors that would not be outweighed by a benefit to consumers. Consumer testing conducted on behalf of the Board has indicated that including a summary table either on the first page of the periodic statement or the first page of the change-in-terms notice (if the notice is sent separately from the statement) is an effective way to enhance consumer attention regarding, and comprehension of, change-in-terms notices, which is the approach proposed by the Board and adopted in the final rule.

Several consumers who commented on the June 2007 Proposal said that the change-in-terms notice should state the reasons for the change in terms and should state what, if anything, the consumer can do to reverse the increase to the penalty rate and have the standard rate reinstated. For several reasons, the final rule does not include a requirement that a change in terms notice state the reasons for the change. In some circumstances, the reasons may have nothing to do with consumer behavior, and there may be no mechanism for the consumer to reverse the increase. For example, if a creditor raises interest rates generally due to a change in market conditions, such action is independent of the consumer's behavior on the account and the consumer can only mitigate the cost of the increase by reducing use of the card, transferring a balance, or paying off the balance. Under these circumstances, the Board believes the burden for issuers to customize the notice to refer to the reason for the increase may exceed the potential benefit of such a disclosure to consumers. In addition, if the increase in rate is due to the imposition of a penalty rate, the consumer will receive a disclosure indicating that the penalty rate has been triggered, and the circumstances, if any, under which the delinquency or default rate or penalty rate will cease to apply to the consumer's account, as discussed below with regard to § 226.9(g).

Consumer group commenters on the May 2008 Proposal stated that a change-in-terms notice given in connection with a rate increase should be required to state the current rate so that consumers will have an indication of the magnitude of the change in terms. The final rule does not require a creditor to disclose the current rate. The main purpose of the change-in-terms notice is to inform consumers of the new rates that will apply to their accounts. If several rates are being changed and are being disclosed in a single change-in-terms notice, the Board is concerned that disclosure of each of the current rates in the change-in-terms notice could contribute to information overload.

Finally, several consumer commenters urged that issuers be required to disclose the effect or magnitude of a change in terms in dollar terms. The Board has not included this disclosure in the final rule, because it would be difficult and likely misleading to try to estimate in advance how a changed term will affect the cost of credit for any individual consumer. For some types of changes in terms, such as a change in a transaction fee or penalty fee, whether or not the fee will be assessed with respect to a particular consumer's account depends to some extent on that consumer's behavior on the account. For example, if the change in terms being disclosed is an increase in the late fee, it will never be assessed if a consumer does not make a late payment. However, for a consumer who makes multiple late payments, the fee could be assessed multiple times. Therefore, it is difficult to predict in advance the dollar cost of the change for any given consumer. Similarly, the dollar cost of an increased interest rate depends on the extent to which the consumer engages in transactions to which that increased interest rate applies, as well as whether the consumer is able to take advantage of a grace period and avoid interest on those transactions.

In response to the June 2007 Proposal, many industry commenters asked for more flexibility in the formatting requirements for the summary table regarding a change in terms. Some commenters stated that an issuer should be able to include a clear and conspicuous change-in-terms notice on or with a periodic statement without a requirement to summarize it in a box on the front of the statement. Other commenters asked the Board to allow issuers to include with the periodic statement a separate change-in-terms notice as a statement stuffer or insert, rather than including the tabular disclosure on the front of the first page of the statement. These commenters stated that the requirement to include a tabular disclosure on the front of the first page of a periodic statement would substantially increase the cost of providing change-in-terms notices. Other commenters stated that if the final rule contained an alert on the front of the statement, it should at most be a simplified cross reference stating that the statement includes important information regarding a change in terms and referring the consumer to the end of the statement. One commenter asked that the strict front-of-the-first page location requirement be replaced by a more general requirement that the change-in-terms disclosure appear before the transaction details. Finally, one credit union asked that the Board permit institutions to provide the tabular disclosure of changed terms on a newsletter mailed with the periodic statement.

One credit union trade association that commented on the May 2008 Proposal stated that it supported the tabular requirement for disclosure of changes in terms. This commenter noted that while the requirement would impose a burden on credit unions, a consumer's need for clarity outweighs this inconvenience or expense.

The final rule requires that the tabular summary appear on the front of the periodic statement, consistent with the proposal. Consumer testing conducted on behalf of the Board suggests that consumers tend to set aside change-in-terms notices when they are presented as a separate pamphlet inserted in the periodic statement. In addition, testing prior to the June 2007 Proposal also revealed that consumers are more likely to correctly identify the changes to their account if the changes in terms are summarized in a tabular format. Quantitative consumer testing conducted in the fall of 2008 demonstrated that disclosing a change in terms in a tabular summary on the statement led to a small improvement in the percentage of consumers who were able to correctly identify the new rate that would apply to the account following the change, versus a disclosure on the statement indicating that changes were being made to the account and referring to a separate change-in-terms insert. The Board believes that as consumers become more familiar with the new format for the change-in-terms summary, which was new to all testing participants, they may become better able to recognize and understand the information presented. It is the Board's understanding, which was supported by observations in consumer testing prior to the June 2007 Proposal, that consumers are familiar with the tabular formatting for the disclosures given with applications and solicitations under § 226.5a and that they find this consistent formatting to be useful. Presentation of key information regarding changes in terms in a tabular format also is consistent with the Board's approach to disclosure of terms applicable to open-end (not home-secured) accounts, where important information is provided to consumers throughout the life of an account in a consistent tabular format.

The Board also believes that as consumers become more familiar generally with all new disclosures and formatting changes to the periodic statement required by the final rule, consumers will become better able to distinguish between information presented in a change-in-terms summary table and other terms regularly disclosed on each statement. The Board's consumer testing in the fall of 2008 indicated that when a change-in-terms summary disclosing a change in an APR is included on the periodic statement, it can contribute to ''information overload'' and, for some consumers, may make it more difficult to locate other APRs set forth on the periodic statement. However, the Board believes that this finding likely reflected the fact that consumers were unaccustomed to the periodic statement form that they saw during the testing, which may have been formatted differently and included different content than the periodic statements that testing participants currently receive. The Board believes that as consumers become more familiar with all new Regulation Z disclosures on their periodic statements, they will become less likely to mistake any new APR set forth in a change-in-terms summary for another rate applicable to their account.

The Board recognizes that there will be operational costs associated with printing the change-in-terms summary on the front of the periodic statement, but believes that the location requirements are warranted to facilitate consumer attention to, and understanding of, the disclosures. As discussed above, under the final rule the minimum font size requirements of 10-point font set forth in comment 5(a)(1)–3 also apply to any tabular disclosure given under § 226.9(c)(2)(iii)(B).

The Board has not, however, adopted the requirement that a change-in-terms summary appear on the first page of the periodic statement. Quantitative consumer testing conducted for the Board in the fall of 2008 indicated that consumers were as likely to notice a change-in-terms summary or reference if it was presented on the second page of the statement as they were to notice it on the first page. Given that many industry commenters noted that there would be substantial cost and burden associated with reformatting the statement to include the summary on the first page, and consumer testing did not show that locating the notice on the first page of the statement improved its noticeability, the Board believes that such a formatting requirement is not warranted.

One industry commenter on the June 2007 Proposal asked for clarification whether it would be permissible to move the table disclosing the changes in terms to the top right corner of the periodic statement instead of the center, as it is presented in Model Form G–18(F) (proposed as Form G–18(G)). The Board believes that this would have been permissible pursuant to the proposed rules, and that it also is permissible under the final rule, particularly given that creditors are not required to include the change-in-terms summary on the first page of the statement. Form G–18(F) as adopted in the final rule presents the change-in-terms summary on the front of the first page of the periodic statement prior to the transactions list, consistent with the proposal. However, there is no requirement that a creditor's periodic statement must be ''substantially similar'' to Form G–18(F), and provided that the periodic statement complies with other applicable formatting requirements, relocating the change-in-terms tabular disclosure to other locations on the front of the statement would be permissible.

One industry commenter on the June 2007 Proposal stated that the change-in-terms formatting requirements would force creditors to send statements to consumers even if there is a zero balance, when terms are changed on their accounts. The final rule, like the June 2007 Proposal, does not require a creditor to send a change-in-terms notice with the periodic statement. Therefore, for a consumer with a zero or a positive balance, it is permissible to send a standalone change-in-terms notice that meets the requirements of § 226.9(c)(2)(iii)(B)(*3*) rather than a periodic statement including a change-in-terms notice.

For creditors that choose to send change-in-terms notices separately from the periodic statement, consistent with the proposal the final rule requires that the change-in-terms summary appear on the front of the first page of the notice. The Board believes that locating the summary on the first page of such a standalone notice does not impose the same level of burden and cost as would formatting changes to the periodic statement. The results of the Board's quantitative consumer testing do not directly bear on the formatting of separate notices, but the Board believes based on testing conducted prior to the June 2007 Proposal that including the tabular summary on the first page of a standalone notice is important to improve consumer understanding of, and attention to, the disclosure. Participants indicated in focus groups and interviews conducted for the Board prior to June 2007 that they often do not carefully read change-in-terms notices that they receive from their bank in the mail, in part because the text is dense prose and they have difficulty identifying the information in the document that they consider important. The Board believes that including a tabular summary of key changes on the first page of a standalone notice may make consumers more likely to read the notice and to understand what terms are being changed.

Several industry commenters remarked that change-in-terms notices required pursuant to § 226.9(c) would be confusing to consumers in light of the complexity of the interaction between the requirements of § 226.9(c) and additional substantive requirements regarding rate increases proposed by the Board and other federal banking agencies in May 2008. *See* 73 FR 28904, May 19, 2008. One industry commenter specifically stated that proposed § 226.9(c)(2)(iii)(A)(*7*), which would require a change-in-terms notice to disclose the balances to which any increased rate will be applied, is a material change to the 45 day change-in-terms notice proposed in the June 2007 Proposal, and would result in a notice that is confusing to consumers. One commenter stated that the rule forces the use of disclosures that provide specific dates within billing cycles to describe when current or increased APRs apply and which account transactions and balances are affected and that it would be simpler and more understandable if transactions and balances affected by a change in rates applied for the entire billing cycle or billing statement in which they appear, rather than in reference to a specific date.

The Board acknowledges that the substantive restrictions on rate increases set forth in final rules adopted by the Board and other federal banking agencies published elsewhere in this **Federal Register** introduce additional complexity into disclosure of changes in terms, because rate increases may apply only to certain balances on a consumer's account and not to others. In two rounds of consumer testing conducted for the Board after the May 2008 Proposal, participants were shown change-in-terms notices that disclosed an impending change to the interest rate on purchases applicable to the account. These notices formatted the information in two different ways, but both forms disclosed the effective date of the change and disclosed that the rate applicable to outstanding balances as of a specified date earlier than the effective date would remain at the current rate. The notices also indicated that, if the penalty APR was currently being applied to the account, the change would not go into effect at the present time.

In the first of these two rounds, about half of participants understood that the new rate on purchases would apply only to transactions made after the specified date shown. In addition, about half of participants also understood that if the penalty rate was already applicable to the account, the new rate on purchases would not immediately apply. However, none of the participants could correctly identify the date when the changes would begin to apply.

Based on the results of this consumer testing, changes were made to the form which were tested in a subsequent round of testing. These formatting changes generally improved consumer understanding of the impending changes. In this second round, all but one participant understood that the new APR on purchases would only apply to transactions made after the date specified, and that the current APR would continue to apply to transactions made before that date. In addition, all but one participant also understood that if the penalty rate was in effect, the new APR on purchases would not immediately apply. Consumers still had the most difficulty identifying the effective date of the changes. Approximately half of participants correctly identified the effective date of the changes, while the other participants mistakenly thought that the changes would apply as of the earliest date disclosed in the notice, which was the cut-off date for determining which transactions would be impacted by the changes disclosed.

Form G–18(F) (proposed as Form G–18(G)) and Sample G–20 have accordingly been revised to reflect the formatting changes introduced in this second round of testing, because they improved consumer comprehension of the notice.

The Board also proposed in May 2008 a clarification to comment 9(c)(2)(ii)–1 (which applies to changes in fees not required to be disclosed in the summary table) to clarify that electronic notice may be provided without regard to the notice and consent requirements of the E-Sign Act when a consumer requests a service in electronic form (for example, requests the service on-line via the creditor's Web site). The Board received no comments addressing the changes to comment 9(c)(2)(ii)–1, which are adopted as proposed.

Reduction in credit limit. The June 2007 Proposal included a new § 226.9(c)(2)(v), for open-end (not home-secured) plans, providing that if a creditor decreases the credit limit on an account, advance notice of the decrease would be required to be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Under the proposal, notice would have been required to be provided in writing or orally at least 45 days prior to imposing an over-the-limit fee or penalty rate and to state that the credit limit on the account has been or will be decreased. The June 2007 Proposal stated that this requirement would apply only when the over-the-limit fee or penalty rate is imposed solely as a result of a reduction in the credit limit; if the over-the-limit fee or penalty rate would have been charged notwithstanding the reduction in a credit limit, no advance notice would have been required. Under the June 2007 Proposal, the reduction in the credit limit could have taken effect immediately, but 45 days' notice would have been required before an over-the-limit fee or penalty rate could be applied based solely on exceeding the newly decreased credit limit.

The final rule adopts § 226.9(c)(2)(v) as proposed. One industry commenter on the June 2007 Proposal asked the Board to clarify whether an adverse action letter under Regulation B would constitute sufficient notice to the consumer, or whether the reduced credit limit appearing on the periodic statement would be sufficient notice. The new § 226.9(c)(2)(v) does not contain any format requirements for the notice informing the consumer that his or her credit limit has or will be decreased. Any written or oral notification that contains the content specified in § 226.9(c)(2)(v) would be permissible. A creditor could combine a notice required pursuant to § 226.9(c)(2)(v) with an adverse action notice under Regulation B provided that the requirements of both rules are met. Simply showing a reduced credit limit on the periodic statement, however, without a statement that the credit limit has been or will be decreased, would not meet the requirements of § 226.9(c)(2)(v).

The same commenter asked the Board to consider permitting written notice on one statement and permitting the imposition of over-the-limit fees after the next account cycle. The final rule, consistent with the proposal, continues to require 45 days advance notice. The Board believes that 45 days is the appropriate length of time, for the same reasons discussed above in connection with change-in-terms notices more generally. Sending the notice 45 days in advance gives a consumer, in most cases, at least one month to bring his or her balance under the new, reduced credit limit, either by paying down the balance or by transferring all or a portion of it to another card.

In addition, as discussed in the supplementary information to § 226.9(g)(4)(ii), the Board is adopting additional guidance to clarify how to comply with § 226.9(g) when a creditor also is providing a notice pursuant to § 226.9(c)(2)(v).

Rules affecting home-equity plans. The final rule retains in § 226.9(c)(1), without intended substantive change, the current provisions regarding the circumstances, timing, and content of change-in-terms notices for HELOCs. These provisions will be reviewed when the Board reviews the provisions of Regulation Z addressing open-end (home-secured) credit.

The Board proposed in June 2007 to make several deletions in proposed § 226.9(c)(1) and the related commentary with respect to HELOCs in order to promote consistency between § 226.9(c)(1) and the substantive restrictions imposed by § 226.5b. The Board solicited comment on whether there were any remaining references in § 226.9(c)(1) and the related commentary to changes in terms that would be impermissible for open-end (home-secured) credit pursuant to § 226.5b. The Board received no comment on the proposed deletions or on any additional references that should be deleted; accordingly, the changes to § 226.9(c)(1) are adopted as proposed.

Substantive restrictions on changes in terms. Several consumer and consumer group commenters urged the Board to adopt substantive restrictions on changes in terms in connection with credit card accounts in addition to the disclosure-related requirements described above. For example, some commenters stated that credit agreements should remain in force, without any changed terms, for the life of the credit account, until the expiration of the card, or for a fixed period such as 24 months. Other comments suggested that the Board should ban ''any time, any reason'' repricing or universal default clauses. Finally, other commenters advocated the creation of a federal opt-out right for certain increases in interest rates applicable to a consumer's account. The Board has not included any such substantive restrictions in § 226.9(c) or (g) of the final rule. With regard to changes in terms, Regulation Z and TILA primarily address how and when those changes should be disclosed to consumers. The final rule issued by the Board and federal banking agencies and published elsewhere in today's **Federal Register** addresses substantive restrictions on certain types of changes in credit card terms.

Technical correction. One commenter noted that a cross reference in § 226.9(c)(2)(iii)(B)(*2*) referred to the wrong paragraph. That technical error has been corrected in the final rule.

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

TILA Section 127(d), which is implemented in § 226.9(e), requires card issuers that assess an annual or other periodic fee, including a fee based on activity or inactivity, on a credit card account of the type subject to § 226.5a to provide a renewal notice before the fee is imposed. 15 U.S.C. 1637(d). The creditor must provide disclosures required for credit card applications and solicitations (although not in a tabular format) and must inform the consumer that the renewal fee can be avoided by terminating the account by a certain date. The notice must generally be provided at least 30 days or one billing cycle, whichever is less, before the renewal fee is assessed on the account. However, there is an alternative delayed notice procedure where the fee can be assessed provided the fee is reversed if the consumer is given notice and chooses to terminate the account.

Creditors are given considerable flexibility in the placement of the disclosures required under § 226.9(e). For example, the notice can be preprinted on the periodic statement, such as on the back of the statement. *See* § 226.9(e)(3) and comment 9(e)(3)–2. However, creditors that place any of the disclosures on the back of the periodic statement must include on the front of the statement a reference to those disclosures. *See* § 226.9(e)(3). In June 2007, the Board proposed a model clause that creditors could, but would not have been required to, use to comply with the delayed notice method. *See* comment 9(e)(3)–1. The final rule adopts this model clause as proposed.

The Board also proposed in June 2007 comment 9(e)–4, which addresses accuracy standards for disclosing rates on variable rate plans. The comment provides that if the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose the rate in effect at the time of mailing or delivery of the renewal notice or may use the rate as of a specified date within the last 30 days before the disclosure is provided. The final rule adopts this comment as proposed, for the same reasons and consistent with the accuracy standard for account-opening disclosures. *See* section-by-section analysis to § 226.6(b)(4)(ii)(G). Other minor changes to § 226.9(e), with no intended substantive change, are adopted as proposed. For example, footnote 20a, dealing with format, is deleted as unnecessary, while comment 9(e)–2, which generally repeats the substance of footnote 20a, is retained.

Comment 9(e)(3)–1 contains guidance that if a single disclosure is used to comply with both §§ 226.9(e) and 226.7, the periodic statement must comply with the rules in §§ 226.5a and 226.7. One example listed in the comment is the current requirement to use the words ''grace period.'' That guidance is revised in the final rule to conform to the Board's new terminology requirements with respect to any grace period (or lack of grace period) in connection with disclosures required under § 226.5a.

9(f) Change in Credit Card Account Insurance Provider

Section 226.9(f) requires card issuers to provide notices if the issuer changes the provider of insurance (such as credit life insurance) for a credit card account. The June 2007 Proposal did not include any changes to § 226.9(f). A commenter suggested that the Board provide, by amending either the regulation or the commentary to § 226.9(f), that a conversion of credit insurance coverage to debt cancellation coverage or debt suspension coverage may be treated the same as a change from one credit insurance provider to another. The result would be that the card issuer would not be required to comply with § 226.4(d)(3) (in particular, the requirement that the consumer sign or initial an affirmative written request for the debt cancellation or debt suspension coverage), provided the issuer notified the consumer of the conversion following the procedures set forth in § 226.9(f). The commenter stated that credit insurance and debt cancellation coverage are essentially functionally equivalent from the consumer's perspective, and that if an affirmative written request from the consumer were required, many consumers might unintentionally lose coverage because they might neglect to sign and return the request form.

The final rule does not include any amendments to § 226.9(f) (other than minor technical changes to correct grammatical errors). The Board believes that the current rule provides better consumer protection than would be afforded under the approach suggested by the commenter, in that consumers are given an opportunity to decide whether they wish to have credit insurance converted to debt cancellation or debt suspension coverage, rather than having the conversion occur automatically unless the consumer takes affirmative action to reject it. In addition, under the new provision in § 226.4(d)(4) permitting telephone sales of credit insurance and debt cancellation or debt suspension coverage, creditors would not have to obtain an affirmative written request from the consumer for debt cancellation or suspension coverage to replace credit insurance, but could instead obtain an affirmative oral request by telephone. (*See* the section-by-section analysis to § 226.4(d)(4) for a discussion of the telephone sales rule with respect to credit insurance and debt cancellation or debt suspension coverage.)

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

In the June 2007 Proposal, the Board proposed that disclosures be provided prior to the imposition of penalty pricing on a consumer's account balances. With respect to open-end (not home-secured) plans, the Board proposed a new § 226.9(g)(1) to require creditors to provide 45 days' advance notice when a rate is increased due to a consumer's delinquency or default, or if a rate is increased as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit. This notice would be required even if, as is currently the case, the creditor specifies the penalty rate and the specific events that may trigger the penalty rate in the account-opening disclosures.

In the supplementary information to its June 2007 Proposal, the Board expressed concern that the imposition of penalty pricing may come as a costly surprise to consumers who are not aware of, or do not understand, what behavior constitutes a ''default'' under their agreement. One way in which the June 2007 Proposal addressed penalty pricing was through improved disclosures regarding the conditions under which penalty pricing may be imposed. The Board proposed, in connection with the disclosures given with credit card applications and solicitations and at account opening, to enhance disclosures about penalty pricing and revise terminology to address consumer confusion regarding the meaning of ''default.'' In addition, in light of the fact that rates may be increased for relatively minor contractual breaches, such as a payment late by one day, the Board also proposed to require advance notice of such rate increases, which consumers otherwise may not expect. The Board proposed that the notice be provided at least 45 days before the increase takes effect.

In response to the June 2007 Proposal, some credit card issuers advocated a shorter notice period, such as 30 or 15 days. These commenters noted that, unlike other changes in terms, an increase in a consumer's rate to the penalty rate is driven by the consumer's failure to meet the account terms. In addition, the comments noted that a consumer will have received prior notice in the account-opening disclosures that such a rate increase could occur. Another commenter stated that the notice period prior to the imposition of a penalty rate should vary from 15 to 45 days depending on the length of grace period offered by the issuer. Commenters also stated that 45 days' advance notice might confuse consumers, because it would come so far in advance that consumers will not be able to relate their behavior to the increase in rate, when that increase eventually takes effect.

Industry commenters, however, opposed more generally any additional prior notice before imposition of a penalty rate, when the penalty APR has already been disclosed to the consumer at account-opening and constitutes part of the consumer's account terms. These commenters indicated that consumers will not forget about the penalty APR and the circumstances under which the penalty rate might be imposed, because they will be reminded of it each month by the new late payment warning required to be included on the periodic statement pursuant to § 226.7(b)(11). In addition, these comments noted that the penalty APR will be disclosed in the revised application and solicitation table and new account-opening table more clearly than it is currently. Other comments indicated that the proposed advance notice was effectively a price control that goes beyond TILA's main purpose of assuring meaningful disclosure of credit terms.

Some commenters suggested that a requirement to give advance notice before raising a consumer's rate to the penalty rate would cause issuers to change their pricing practices in ways that might be detrimental to consumers. First, the commenters indicated that creditors will have an incentive to remove penalty APRs from advertising, account-opening disclosures, and billing statement disclosures, because they will in effect be required to treat the imposition of penalty pricing as a change in terms anyway. Second, commenters indicated that if creditors are prevented from promptly imposing penalty pricing, they may be forced to consider other means to price for risk such as setting a higher penalty APR, reducing credit limits, charging higher fees, closing accounts, imposing tighter underwriting standards, or raising non-penalty APRs for lower-risk customers to compensate for the delay in changing rates for higher-risk customers.

Some commenters distinguished between ''on us'' defaults, where the consumer's act of default under the contract pertains directly to the account being repriced (*e.g.*, a late payment on the credit card for which the interest rate is being increased) and ''off us'' defaults, where the consumer's act of default pertains to an account with a different creditor. These commenters noted that consumers will be well aware of the circumstances that may cause an account to be repriced based on ''on us'' behaviors, because, as discussed above, those triggers will be disclosed in the application and solicitation disclosures, the account-opening disclosures, and in the case of late payments as a trigger, on the periodic statement itself. The comments indicated that consumers may have different expectations between ''on us'' and ''off us'' repricing, with the latter having more potential for surprise and a sense of perceived unfairness. Industry commenters differed as to whether an act of default pertaining to a different account held by the same issuer constituted an ''on us'' or ''off us'' default.

Several commenters suggested that the Board introduce a disclosure on each periodic statement reminding the consumer of the circumstances in which penalty pricing may be applied, rather than requiring 45 days' advance notice of a rate increase. One issuer suggested an exception for issuers with penalty APRs and triggers that meet five conditions, namely: (1) Triggers are limited to actions on the specific credit card account; (2) triggers are within the consumer's knowledge and control; (3) triggers are specifically disclosed in the application and solicitation and account-opening disclosure tables; (4) triggers are clearly and conspicuously disclosed on each periodic statement; and (5) the penalty APR is specifically disclosed, along with the index and margin used to calculate the penalty APR. This issuer stated that this exception will avoid costly surprise to consumers arising from the imposition of penalty APRs by encouraging issuers to use sharply-defined, ''on us'' penalty rate triggers. The commenter also indicated that the monthly disclosure would be more effective in enhancing awareness of penalty APRs and their triggers than the proposed after-the-fact penalty APR notice.

Consumers and consumer groups were supportive of the proposal's requirement to give 45 days' advance notice of the imposition of a penalty rate, noting that the proposal represented a substantial improvement over the current rule. Some, however, urged the Board to increase the notice period to 60 days or 90 days. The Board also received comments from individual consumers, consumer groups, another federal banking agency, and a member of Congress stating that notice alone was not sufficient to protect consumers from the expense caused by rate increases.

The final rule adopts § 226.9(g)(1) generally as proposed, although as discussed below the Board has created several exceptions to the notice requirement in § 226.9(g) to address concerns raised by commenters and to clarify the relationship between § 226.9(g) and final rules adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**.

The final rule generally requires creditors to provide 45 days' advance notice before rate increases due to the consumer's delinquency or default or as a penalty, as proposed. Notwithstanding the fact that final rules adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register** will prohibit, in most cases, the application of penalty rates to existing balances, the Board believes that allowing creditors to apply the penalty rate, even if only to new transactions, immediately upon the consumer triggering the rate would nonetheless lead to undue surprise and insufficient time for the consumer to consider alternative options regarding use of the card.

The final rule elsewhere enhances the disclosure of the circumstances under which the penalty rate may apply in the solicitation and application table as well as at account opening. Such improved up-front disclosure of the circumstances in which penalty pricing may be imposed on a consumer's account may enable some consumers to avoid engaging in certain behavior that would give rise to penalty pricing. However, the Board believes generally that consumers will be the most likely to notice and be motivated to act if they receive a specific notice alerting them of an imminent rate increase, rather than a general disclosure stating the circumstances when a rate might increase.

In focus groups conducted for the Board prior to the June 2007 Proposal, consumers were asked to identify the terms that they looked for when shopping for a credit card or at account-opening. The terms most often identified by consumers were the interest rate on purchases, interest rate on balance transfers, credit limit, fees, and incentives or rewards such as frequent flier miles or cash back.

Consumers did not frequently mention the penalty rate or penalty rate triggers. It is possible that some consumers do not find this information relevant when shopping for or opening an account because they do not anticipate that they will trigger penalty pricing. Because many consumers are looking for terms other than the penalty rate and penalty triggers, they may not recall this information later, after they have begun using the account, and may be surprised when penalty pricing is subsequently imposed.

For similar reasons, the Board also believes that a notice appearing on each monthly statement informing a consumer of the ''on us'' behaviors that can trigger a penalty rate would not be as effective as a more specific notice provided after a rate increase has been triggered but before it has been imposed. Consumers already will receive a notice under new § 226.7(b)(11) on the periodic statement generally informing them that they may be subject to a late fee and/or penalty rate if they make a late payment. This will alert consumers generally that making a late payment may have adverse consequences, but that Board does not believe that a general notice about the circumstances in which penalty pricing may be applied is as effective as a more specific notice that a penalty rate is in fact about to be imposed.

In addition, the Board believes that the notice required by § 226.9(g) is the most effective time to inform consumers of the circumstances under which penalty rates can be applied to their existing balances consistent with final rules adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. Pursuant to those rules, under limited circumstances a penalty rate can be applied to all of a consumer's balances, specifically if the consumer fails to make a required minimum periodic payment within 30 days after the due date for the payment.

As discussed elsewhere in the section-by-section analysis to § 226.5a, due to concerns about ''information overload,'' the final rule does not require a creditor to distinguish, in the disclosures given with an application or solicitation or at account-opening, between those penalty rate triggers that apply to existing balances and more general contractual penalty triggers that may apply only to new balances. While the Board anticipates that creditors will disclose in the account agreement for contractual reasons the distinction between triggers applicable to existing balances and new balances, those disclosures will not be highlighted in a tabular format. The notice given under § 226.9(g) will, therefore, be for many consumers, the best opportunity for disclosure that penalty pricing may apply only to new balances and that, if the consumer pays late once by more than 30 days, the penalty rate may be applied to all of his or her balances.

Disclosure content and format. With respect to open-end (not home-secured) plans, under the Board's June 2007 Proposal, which was amended by the May 2008 Proposal for consistency with proposal by the Board and other federal banking agencies published in May 2008 (*See* 73 FR 28904, May 19, 2008), if a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor would have been required to provide a notice with the following information: (1) A statement that the delinquency or default rate or penalty rate has been triggered, as applicable; (2) the date as of which the delinquency or default rate or penalty rate will be applied to the account, as applicable; (3) the circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period; and (4) a statement indicating to which balances on the account the delinquency or default rate or penalty rate will be applied, including, if applicable, the balances that would be affected if a consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment; and (5) if applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment.

If the notice regarding increases in rates due to delinquency, default or penalty pricing were included on or with a periodic statement, the June 2007 Proposal would have required the notice to be in a tabular format. Under the proposal, the notice also would have been required to appear on the front of the first page of the periodic statement, directly above the list of transactions for the period. If the notice were not included on or with a periodic statement, the information described above would have been required to be disclosed on the front of the first page of the notice. As discussed above, the minimum font size requirements of 10-point font set forth in proposed comment 5(a)(1)–3 also would have applied to any tabular disclosure given under § 226.9(g)(3).

One consumer group commenter on the May 2008 Proposal supported the requirements in proposed § 226.9(g)(3)(i)(D) and (g)(3)(i)(E), which were added for consistency with the proposal by the Board and other federal banking agencies published in May 2008 (*see* 73 FR 28904, May 19, 2008), to disclose the balances to which a delinquency or default rate or penalty rate would be applied and to describe, if applicable, any balances to which the current rate would continue to apply as of the effective date of the rate increase (unless the consumer's account becomes more than 30 days late). This commenter believes that disclosure does not alter the unfairness of applying penalty, delinquency, or default rates to existing balances, but that the additional information would be useful to consumers.

Commenters on the content and formatting of penalty rate notices generally raised the same or similar issues as commenters on the content and formatting of change-in-terms notices required under § 226.9(c). *See* section-by-section analysis to § 226.9(c) for a discussion of these comments. For the reasons described in the section-by-section analysis to § 226.9(c), the content and formatting requirements for notices of penalty rate increases in § 226.9(g)(3) are adopted generally as proposed, except that if the notice is included with a periodic statement, the summary table is required to appear on the front of the periodic statement, but is not required to appear on the first page. In addition, a technical change has been made to § 226.9(g)(3)(i)(D) to delete a substantively duplicative requirement included in both proposed § 226.9(g)(3)(i)(D) and (E).

The final rule also contains a technical amendment to clarify that a notice given under § 226.9(g)(1) may be combined with a notice given pursuant to new § 226.9(g)(4)(ii), described below.

Form G–18(G) (proposed as Form G–18(H)) and Sample G–21 have been revised to reflect formatting changes designed to make these notices more understandable to consumers. Similar to the testing conducted for change-in-terms notices described above in the section-by-section analysis to § 226.9(c), the Board also conducted two rounds of consumer testing of notices of penalty rate increases. Consumers generally understood the key dates disclosed in these notices. Specifically, of participants who saw statements that indicated that the penalty rate would be applied to the account, all participants in both rounds of testing understood that the penalty rate would only apply to transactions made after the specified date shown. All participants also understood that if they became 30 days late on their account the penalty rate would apply to earlier transactions as well.

Sample G–21 also has been revised to conform with substantive restrictions on rate increases applicable to promotional rate balances included in final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. As proposed in May 2008, Sample G–21 would have contained a disclosure indicating that the consumer's promotional rate balances would be subject to the standard rate on the effective date of the penalty rate increase. The final rules published elsewhere in today's **Federal Register** regarding the applicability of rate increases to outstanding balances prohibit a creditor from repricing a consumer's outstanding balances from a promotional rate to a higher rate, unless the consumer's account is more than 30 days late. Accordingly, the disclosure regarding loss of a promotional rate has been deleted from final Sample G–21. The dates used in the example in Sample G–21 also have been amended for consistency with the definition of ''outstanding balance'' in the final rules published elsewhere in today's **Federal Register**. In addition, a technical correction also has been made to final Sample G–21 to clarify that a consumer must make a payment that is more than 30 days late in order for the penalty rate to apply to outstanding balances; as proposed, Sample G–21 referred to a payment that is 30 days late. These changes to Sample G–21 also are reflected in final Model Form G–18(G).

Examples. In order to facilitate compliance with the advance notice requirements set forth in § 226.9(g), the Board's May 2008 Proposal included a new comment 9(g)–1.ii that set forth several illustrations of how the advance notice requirement would have applied in light of the substantive rules regarding rate increases proposed by the Board and other federal banking agencies published in May 2008 (*See* 73 FR 28904, May 19, 2008). Several industry commenters remarked on these illustrations, particularly on proposed comment 9(g)–1.ii.D. Proposed comment 9(g)–1.ii.D indicated that an issuer would be required, in some circumstances, to give a second advance notice, after the consumer's account became more than 30 days late, 45 days prior to imposing a penalty rate to outstanding balances as permitted under the Board's and agencies' proposed substantive rule. Many of these industry commenters stated that the creditor should not be required to provide an additional 45 days' notice to the consumer if: (i) A creditor has already provided 45 days' advance notice regarding the imposition of a penalty rate that applies only to new balances; and (ii) that notice states that such rate will apply to outstanding balances if the consumer becomes more than 30 days delinquent while the increased rate is in effect. Other commenters stated that an additional 45 days' notice should not be required if the consumer has already received within the last 12 months a notice regarding the consequences of making a payment more than 30 days late. One commenter indicated that if the Board retains the requirement to send a second notice in these circumstances, proposed comment 9(g)–1, in particular, 9(g)–1.ii.D should be revised to clarify that if a second trigger event occurs after the initial penalty rate notice is provided, the creditor should not be required to wait until the consumer is more than 30 days delinquent to provide the second penalty APR notice.

The Board has adopted a set of revised examples in comment 9(g)–1 that have been modified to conform with the final rules adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. These examples, among other things, clarify that a creditor is not required to provide a consumer with a second notice when the creditor has already sent a notice pursuant to § 226.9(g) and during the period between when that notice is sent and the effective date of the change, the consumer pays more than 30 days late. A second notice would, however, be required if the consumer were to pay more than 30 days late, if such a subsequent default by the consumer occurred after the effective date of the first notice sent by the creditor pursuant to § 226.9(g). The Board believes that a second notice is appropriate in these circumstances because the subsequent late payment or payments may occur months or years after the first notice pursuant to § 226.9(g) has been sent. At such a later date, the consumer may not recall the events that will cause the penalty rate to be applied to his or her existing balances; because such repricing may come as a surprise to the consumer, the Board believes that the consumer should receive advance notice in order to have an opportunity to seek alternative financing or to pay off his or her balances.

In addition to amending the examples, the Board also has clarified in new § 226.9(g)(4)(iii), discussed below, that a creditor need not send a second notice pursuant to § 226.9(g) prior to increasing the rate applicable to outstanding balances, in the limited circumstances where the creditor has already sent a notice disclosing a rate increase applicable to new transactions and during the period between when that notice is sent and the effective date of the change, if the consumer pays more than 30 days late. This exception is consistent with the examples described above.

Multiple triggers for penalty rate. In response to the June 2007 Proposal, several industry commenters requested a limited exception to the 45-day notice requirement for increases to penalty or default rates that are clearly disclosed in the account-opening disclosures and that involve behavior by the consumer that must occur in two or more billing cycles before the default rate is triggered. Under these circumstances, these commenters suggested that issuers should be permitted to provide the required notice after the first of the multiple triggering events has occurred, rather than waiting until the final trigger event. For example, if a creditor were to impose penalty pricing but only upon two late payments, the comments suggest that the creditor should be permitted to send the notice upon the consumer's first late payment. The creditor would then be free to impose the penalty rate immediately upon the consumer's second late payment, provided that 45 days has elapsed since the notice was provided. The commenters suggest that, under these circumstances, the consumer will have 45 days of advance notice to avoid the second triggering event.

Some commenters also suggested that creditors should be permitted to include on each periodic statement after the first triggering event a notice informing the consumer of the circumstances under which penalty pricing will be imposed. If the consumer engages in the behavior disclosed on the periodic statement, these creditors suggested that a creditor should be permitted to impose penalty pricing immediately, without additional advance notice given to the consumer.

For penalty pricing with multiple triggering events, the final rule continues to require 45 days' notice after the occurrence of the final triggering event. The Board believes that a notice of an impending rate increase may have the most utility to a consumer immediately prior to when the rate is increased. Depending on the particular triggers used by a creditor, the period of time between the first triggering event and the final triggering event could be quite long, and a consumer may have forgotten about the notice he or she received many months earlier. For example, if a creditor imposed penalty pricing based on the consumer exceeding his or her credit limit twice in a twelve-month period, a consumer might exceed the credit limit in January, and pursuant to the exception requested by commenters, would receive a notice of the possible imposition of penalty pricing shortly thereafter. If the consumer subsequently exceeded the credit limit again in December, that consumer's account could immediately be subject to penalty pricing with no additional advance notice given specifically informing that the consumer that he or she has, in fact, triggered the penalty rate. The Board believes that many consumers may not retain or recall the specific details set forth on a notice delivered in January, when penalty pricing is eventually imposed in December, particularly because different creditors' practices can vary. In addition, a notice given in January could in many cases state only that the consumer's account may be repriced upon the occurrence of subsequent events. The Board believes that a notice that states clearly that the interest rate applicable to a consumer's account is in fact being increased is important in order to avoid costly surprise in these circumstances.

The Board also believes that a notice included on each periodic statement after the first triggering event informing the consumer of the circumstances under which penalty pricing will be imposed would not be as effective as a notice informing the consumer of a specific impending rate increase. An institution may choose to provide a statement on each periodic informing the consumer of the circumstances under which penalty pricing will be imposed, but the institution still would be required to provide a notice prior to actually imposing the penalty rate pursuant to § 226.9(g).

Promotional rate increased as a penalty. In response to both the June 2007 and May 2008 Proposals, a number of industry commenters advocated an exception to the 45-day advance notice requirement when the rate is being changed from a promotional rate to a higher rate, such as a standard rate, as a penalty triggered by an event such as a late payment. These commenters suggested that a standard rate is not a true penalty rate and that consumers are aware that a promotional rate is temporary in nature. The comment letters also questioned whether creditors would continue to make promotional rates available if they were required to give notice 45 days in advance of repricing a consumer's account. Commenters also noted that the proposed rules regarding rate increases issued by the Board and other federal banking agencies in May 2008 contained an exception for repricing from a promotional rate to a standard rate. *See* 73 FR 28904, May 19, 2008.

The final rule does not contain an exception to the 45-day advance notice requirement for repricing from a promotional rate to any higher rate upon an event of default by the consumer. The Board believes that the rationales discussed above for the 45-day advance notice apply equally when a consumer's account is repriced from a promotional rate to a higher rate, prior to the end of the term for which the promotional rate was offered. The loss of a promotional rate before the end of a promotional period can be a costly surprise to the consumer, and in some cases even more costly than other types of interest rate increases. A consumer may have an expectation that a zero percent or other promotional rate will apply to transactions made for a certain fixed period, for example one year, and may purchase large ticket items or transfer a significant balance to that account during the period in reliance on the promotional rate. Under these circumstances, the Board believes that the consumer should have the opportunity to seek alternative sources of financing before the account is repriced to the higher rate. This outcome is consistent with final rules issued by the Board and other federal banking agencies and published elsewhere in this **Federal Register**, which do not contain an exception for repricing from a promotional rate to a standard rate prior to the expiration of the promotional period.

There is no obligation to provide a notice under § 226.9(g) if the increase from a promotional rate to the standard rate occurs at the end of the term for which the promotional rate was offered, not based on any event of default by the consumer. One industry commenter asked for guidance as to what a creditor must do under § 226.9(g) when the promotional rate is set to expire in less than 45 days and the consumer triggers penalty pricing. Under those circumstances, the Board anticipates that a creditor would not send a notice under § 226.9(g), but rather would let the promotional rate expire under its original terms. At the end of the promotional period, the rate would revert to the standard rate and no notice need be given to the consumer because a rate increase from the promotional rate to the standard rate upon the expiration of the period set forth in the original agreement would not constitute a change in terms or penalty repricing.

Raise in rate due to violation of terms of a workout plan. Industry commenters on the June 2007 Proposal also requested an exception for the situation where a rate is increased due to a violation of the terms of a special collection plan or workout plan. Some creditors may offer payment relief or a temporary reduction in a consumer's interest rate for a consumer who is having difficulty making payments, with the understanding that the consumer will return to standard contract terms if he or she does not make timely payments. For example, a consumer might be having difficulty making payments on an account to which a penalty rate of 30 percent applies. Under the terms of a workout arrangement, a creditor might reduce the rate to 20 percent, provided that if the consumer fails to make timely minimum payments, the 30 percent rate will be reimposed. One commenter noted that workout arrangements are generally offered to consumers who are so delinquent on their accounts that other or better financing options may not be available to them. Commenters also noted that the availability of workout programs was likely to be limited or reduced if a creditor were required to give 45 days' advance notice prior to reinstating a consumer's pre-existing contract terms if that consumer fails to abide by the terms of the workout arrangement.

The final rule contains a new § 226.9(g)(4)(i), which generally provides that a creditor is not required to give advance notice pursuant to § 226.9(g)(1) if a rate applicable to a consumer's account is increased as a result of the consumer's default, delinquency, or as a penalty, in each case for failure to comply with the terms of a workout arrangement between the creditor and the consumer. The exception is only applicable if the new rate being applied to the category of transactions does not exceed the rate that applied to that category of transactions prior to commencement of the workout arrangement, or is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout arrangement. The Board believes that workout arrangements provide a clear benefit to consumers who are otherwise having difficulty making payments and that the rule should not limit the continued availability of such arrangements. A consumer who is otherwise in default on his or her account and is offered a reduced interest rate for a period of time in order to facilitate the making of payments, and who has recently been in contact with his or her creditor regarding the terms of the workout arrangement, generally should not be surprised by the revocation of the reduced rate if he or she defaults under that workout arrangement.

Decrease in credit limit. The final rule contains a new exception in § 226.9(g)(4)(ii) that clarifies the relationship between the notice requirements in §§ 226.9(c)(2)(v) and 226.9(g)(1)(ii) when the creditor decreases a consumer's credit limit and under the terms of the credit agreement a penalty rate may be imposed for extensions of credit that exceed that newly decreased limit.

As discussed above, § 226.9(c)(2)(v) requires that a creditor give advance notice of a decrease in a consumer's credit limit in writing or orally at least 45 days before an over-the-limit fee or penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. The purpose of this provision is to give the consumer an opportunity to reduce outstanding balances to below the newly-decreased credit limit before penalty fees or rates can be imposed. In addition, § 226.9(g)(1)(ii) requires a creditor to give 45 days' advance written notice prior to increasing a rate as a penalty for one or more events specified in the account agreement, including for obtaining an extension of credit that exceeds the credit limit.

Without clarification, the Board is concerned that § 226.9(c)(2)(v) and (g)(1)(ii) could be read together to require 90 days' notice prior to imposing a penalty rate for a consumer exceeding a newly-decreased credit limit (*i.e.*, that the 45-day cure period contemplated in § 226.9(c)(2)(v) would need to elapse before a consumer could be deemed to have triggered a penalty rate, only after which point the notice under § 226.9(g)(1)(ii) could be given). It was not the Board's intent for § 226.9(c)(2)(v) to extend the notice period prior to imposing a penalty rate for a consumer's having exceeded the credit limit to 90 days, but rather only to ensure that a consumer had a reasonable opportunity to avoid penalties for exceeding a newly decreased credit limit.

In order to clarify the relationship between § 226.9(c)(2)(v) and (g)(1)(ii), the final rule contains new § 226.9(g)(4)(ii), which permits a creditor to send, at the time that the creditor decreases the consumer's credit limit, a single notice (in writing) that would satisfy both the requirements of §§ 226.9(c)(2)(v) and (g)(1). The combined notice would be required to be sent at least 45 days in advance of imposing the penalty rate and would be required to contain the content set forth in § 226.9(c)(2)(v), as well as additional content that generally tracks the requirements in § 226.9(g)(3)(i). The content of the notice would differ from the requirements in § 226.9(g)(3)(i) in order to accurately reflect the fact that a consumer may avoid imposition of the penalty rate by reducing his or her balance below the newly decreased credit limit by the date specified in the notice.

Consistent with the intent of § 226.9(c)(2)(v), new § 226.9(g)(4)(ii) provides that a creditor is not permitted to impose the penalty rate if the consumer's balance does not exceed the newly decreased credit limit on the date set forth in the notice for the imposition of the penalty rate (which date must be at least 45 days from when the notice is sent). However, if the consumer's balance does exceed the credit limit on the date specified in the notice, the creditor would be permitted to impose the penalty rate on that date, with no additional advance notice required. For example, assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to § 226.9(g)(4)(ii) on January 1, stating among other things that the penalty rate would apply if the consumer's balance exceeded the new credit limit as of February 16. If the consumer's balance exceeded the credit limit on February 16, the creditor could impose the penalty rate on that date. However, a creditor could not apply the penalty rate if the consumer's balance did not exceed the new credit limit on February 16, even if the consumer's balance had exceeded the new credit limit on several dates between January 1 and February 15. If the consumer's balance did not exceed the new credit limit on February 16 but the consumer conducted a transaction on February 17 that caused the balance to exceed the new credit limit, the general rule in § 226.9(g)(1)(ii) would apply and the creditor would be required to give an additional 45 days' notice prior to imposition of the penalty rate (but under these circumstances the consumer would have no ability to cure the over-the-limit balance in order to avoid penalty pricing).

New § 226.9(g)(4)(ii)(C) sets forth the formatting requirements for notices given pursuant to § 226.9(g)(4)(ii), which conform with the formatting requirements for notices provided under § 226.9(g)(1).

Certain rate increases applicable to outstanding balances. The final rule contains a new exception in § 226.9(g)(4)(iii) intended to clarify the relationship between the notice requirements under § 226.9(g) and rules regarding the application of rate increases to outstanding balances issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. Under the exception, a creditor is not required, under certain conditions, to provide an additional notice pursuant to paragraph § 226.9(g) prior to increasing the rate applicable to an outstanding balance, if the creditor previously provided a notice under § 226.9(g) disclosing that the rate applicable to new transactions was going to be increased. The exception only applies if, after the § 226.9(g) notice disclosing the rate increase for new transactions is provided but prior to the effective date of the rate increase or rate increases disclosed in the notice pursuant, the consumer pays more than 30 days late. Under those circumstances, a creditor may increase the rate applicable to both new and outstanding balances on the effective date set forth in the notice that was previously provided to the consumer.

This exception is meant to conform the requirements of the rule to the examples set forth in comment 9(g)–1, which clarify the interaction between the notice requirements of § 226.9(g) and rules regarding the application of rate increases to outstanding balances issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. The Board believes that a limited exception to the notice requirements of § 226.9(g) is appropriate in these circumstances because the consumer will have received a notice disclosing the rate increase applicable to new transactions, which also will disclose the circumstances under which the rate increase will apply to outstanding balances if the consumer fails to make timely payments prior to the effective date of the change.

Terminology. One commenter commented that the use of the terms ''delinquency or default rate,'' and ''penalty rate'' is confusing and not necessarily consistent with industry usage. The commenter asked for clarification regarding the meaning of ''delinquency or default rate'' versus ''penalty rate.'' The Board included both terms in the proposed rules, and has retained both terms in the final rule, in order to capture any situation in which a consumer's rate is increased in response to a violation or breach by the consumer of any term set forth in the contract. The term ''delinquency or default rate'' has historically appeared in Regulation Z, and the Board has added ''penalty rate'' in recognition that there may be contractual provisions that permit an increase in the rate applicable to a consumer's account for behavior that falls short of being a delinquency or default.

Section 226.10 Prompt Crediting of Payments

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

10(b) Specific Requirements for Payments

Reasonable requirements for cut-off times. In the June 2007 Proposal, the Board sought to address concerns that cut-off times may effectively result in a due date that is one day earlier in practice than the due date disclosed. The Board did not propose in June 2007 to require a minimum cut-off time. Rather, the Board proposed a disclosure-based approach, which would have created a new § 226.7(b)(11) to require that for open-end (not home-secured) plans, creditors must disclose the earliest of their cut-off times for payments in close proximity to the due date on the front page of the periodic statement, if that earliest cut-off time is before 5 p.m. on the due date. In recognition of the fact that creditors may have different cut-off times depending on the type of payment (e.g., mail, Internet, or telephone), the Board's proposal would have required that creditors disclose only the earliest cut-off time, if earlier than 5 p.m. on the due date.

Although some consumer commenters on the June 2007 Proposal supported the proposed cut-off time disclosure, other consumers and consumer groups thought that the proposed disclosure would provide only a minimal benefit to consumers. These commenters recommended that the Board consider other approaches to more effectively address cut-off times. Consumer groups recommended that the Board adopt a postmark rule, under which the timeliness of a consumer's payment would be evaluated based on the date on which the payment was postmarked. Some consumers commented that cut-off times are unfair and should be abolished, while other consumers suggested that the Board establish minimum cut-off times.

Industry commenters expressed concern that the proposed disclosure would be confusing to consumers. They noted that many creditors vary their cut-off times by payment channel and that disclosure of only the earliest cut-off hour would be inaccurate and misleading. They suggested that, if the Board were to adopt this requirement, a creditor should be permitted to identify to which payment method the cut-off time relates, disclose the cut-off hours for all payment channels, or disclose the cut-off hour for the payment method used by the consumer, if known. Industry commenters also asked that the Board relax the location requirement for the cut-off time disclosure on the periodic statement.

Both consumer groups and industry commenters urged the Board to clarify which time zone should be considered when determining if the cut-off time is prior to 5 p.m.

In light of comments received on the June 2007 Proposal, the Board proposed in May 2008 to address cut-off times for mailed payments by providing guidance as to the types of requirements that would be reasonable for creditors to impose for payments received by mail. In part, the Board proposed to move guidance currently contained in the commentary to the regulation. Current comment 10(b)–1 provides examples of specific payment requirements creditors may impose and current comment 10(b)–2 states that payment requirements must be reasonable, in particular that it should not be difficult for most consumers to make conforming payments. The Board proposed in May 2008 to move the substance of comments 10(b)–1 and 10(b)–2 to § 226.10(b)(1) and (b)(2) of the regulation. Under the May 2008 Proposal, § 226.10(b)(1) would have stated the general rule, namely that a creditor may specify reasonable requirements that enable most consumers to make conforming payments. The Board would have expanded upon the example in comment 10(b)–1.i.B as proposed in June 2007 in new proposed § 226.10(b)(2)(ii), which would have stated that it would not be reasonable for a creditor to set a cut-off time for payments by mail that is earlier than 5:00 p.m. at the location specified by the creditor for receipt of such payments.

The language in current comment 10(b)–2 stating that it should not be difficult for most consumers to make conforming payments would not have been included in the regulatory text under the May 2008 Proposal. As noted in the May 2008 Proposal, the Board believes that this language is in substance duplicative of the requirement that any payment requirements be reasonable and enable most consumers to make conforming payments.

The Board did not propose a postmark rule as suggested by consumer group commenters on the June 2007 Proposal. In part, this is because the Board and other federal banking agencies proposed in May 2008 a rule that would have required a creditor to provide consumers with a reasonable time to make payments. As discussed in the May 2008 Proposal, the Board also believes that it would be difficult for consumers to retain proof of when their payments were postmarked, in order to challenge the prompt crediting of payments under such a rule. In addition, a mailed payment may not have a legible postmark date when it reaches the creditor or creditor's service provider. Finally, the Board believes there would be significant operational costs and burdens associated with capturing and recording the postmark dates for payments.

Consumer groups, one state treasurer, one federal banking agency, several industry commenters and several industry trade associations supported the proposal that it would not be reasonable to set a cut-off time for payments received by mail prior to 5 p.m. on the due date at the location specified by the creditor for the receipt of mailed payments. Several consumer groups, credit unions, and two members of Congress suggested that the Board expand the proposed rule to apply to all forms of payment, including payments made by telephone and on-line. Several consumer groups urged that the rule should be dependent on the local time of the consumer's billing address, not the local time of the issuer's payment facility. Several consumer groups suggested that the Board establish a uniform rule establishing a cut-off time of either 5 p.m. or the close of business, if it is later than 5 p.m. One of these commenters noted that a uniform, minimum 5 p.m. cut-off time would not require creditors to process and post the payments on the same day, or to change their systems, but would only require that creditors not treat payments received before 5 p.m. as late.

One industry commenter that supported the 5 p.m. rule stated that it should only apply to mailed payments. This commenter stated that a consumer who makes payments on-line, by telephone, or at a bank branch controls and is aware of the exact time a payment is made. An industry trade association noted that its support of the 5 p.m. cut-off time was conditioned on the understanding that there would be no requirement for creditors to process payments within certain time frames. This commenter indicated its understanding that the May 2008 Proposal would only prohibit assessing a late fee, or otherwise considering the payment late, if it is received on or before the due date, and would not dictate when the payment actually needed to be processed.

The majority of industry commenters opposed the proposed rule that would have provided that cut-off times prior to 5 p.m. for mailed payments are not reasonable. Many of these commenters raised operational issues with the proposed rule. One industry trade association stated that banks need sufficient time after retrieving mail to update accounts and produce accurate periodic statements. This commenter indicated that remittance processing requires time to confirm transactions and detect and remedy errors. This commenter noted that if a bank is unable to complete any necessary updates prior to generation of the consumer's statement, the payment may be subsequently revised and backdated, but the payment will not be reflected in the statement sent to the consumer, which would make the statement inaccurate. Other industry commenters noted that they use a lockbox to process payments. These commenters indicated that currently their lockbox personnel cannot open, process, and credit payments on the date received unless they are received by a time certain that may be in the morning, or at the latest, midday.

Several industry commenters stated that the proposed 5 p.m. cut-off time rule in effect would impose a requirement for all open-end creditors to adopt a 5 p.m. post office run or to do a ''last mail call'' at 4:59 p.m. One commenter noted that 5 p.m. is rush hour, which could lead to significant delays in delivering the payments in metropolitan areas. Several industry commenters further noted that some post offices may officially close prior to 5 p.m. but continue to process mail and insert mail into mail boxes.

One trade association for credit unions noted that some smaller credit unions may only be open several days a week and may have limited business hours, for example, a faith-based credit union chartered to serve the members of a church congregation that is only open on Sundays or weekends for several hours. This commenter indicated that for such a creditor, it should be reasonable to impose a cut-off time that is consistent with that particular institution's closing time.

One large bank and one industry trade association suggested that a deadline of 2 p.m. for mailed payments should be considered reasonable, due to operational and logistical challenges that make a 5 p.m. cut-off time too early. Several industry commenters noted that Regulation CC (Availability of Funds and Collections of Checks) permits earlier cut-offs for access to deposits of 2 p.m. or later, or 12 p.m. or later if the deposit is received at an ATM. 12 CFR 229.19(a)(5)(ii) Several other industry commenters stated that the Board had not articulated its reasons for selecting a 5 p.m. cut-off time, and that there is no evidence that consumers expect a 5 p.m. deadline.

Other industry commenters stated that it is consistent with consumer expectations that a customer needs to provide the bank with a reasonable time to process a transaction. These commenters noted that it is especially important that open-end creditors have a reasonable time to process payments received by mail in light of the fact that such creditors are required to credit a borrower's account as of the day the payment is received, even if the creditor does not receive funds after depositing the check for one or more days.

Finally, two industry commenters expressed concern about the proposal's classification of cut-off times prior to 5 p.m. as ''unreasonable.'' These commenters indicated that the characterization of certain cut-off times as ''unreasonable'' might give rise to litigation risk for creditors that used earlier cut-off times prior to this rule that were permissible under the Regulation Z requirements at that time.

In light of comments received, the Board is adopting in the final rule a modified version of proposed § 226.10(b)(2)(ii), which describes a 5 p.m. cut-off time for mailed payments as an example of a reasonable requirement for payments, but does not state that earlier cut-off times would be unreasonable in all circumstances. The Board believes that the establishment of a safe harbor for a 5 p.m. cut-off time for mailed payments, rather than declaring earlier cut-off times to be *per se* unreasonable, should help to alleviate commenters' concerns about litigation risk while helping to ensure that consumers receive a reasonable period of time to pay on the due date. The Board intends for this rule to apply only prospectively, and believes that providing a safe harbor rather than defining certain cut-off times as unreasonable reinforces the fact that the rule does not apply to past practices.

The Board notes that if a creditor adopts a 5 p.m. cut-off time for payments received by mail, neither the current rule nor the revised rule would mandate that the creditor pick up its mail at 5 p.m. on the payment due date. Section 10(a) addresses only the date as of which a creditor is required to credit a payment to a consumer's account, but does not impose any requirements as to when the creditor actually must process or post the payment. It would be permissible under the final rule for a creditor that has a 5 p.m. cut-off time on the due date for payments by mail to, for example, backdate and credit payments received in its first pick-up of the following morning as of the due date, assuming that its previous pick-up was not made at or after 5 p.m. on the due date. The Board understands that backdating of payments is relatively common and that some servicers have platforms that provide for automated backdating. A creditor that prefers not to backdate its payments for operational reasons could, however, arrange for a 5 p.m. mail pick-up.

The final rule adopts the 5 p.m. safe harbor only for mailed payments and does not address other payment channels. Payments made by other methods, such as electronic payments or payments by telephone, are however subject to the general rule that requirements for payments must be reasonable. The Board will continue to monitor cut-off times for non-mailed payments in the future in order to determine whether a safe harbor or similar guidance for such payments is necessary. The Board believes that a safe harbor for payments by mail is important because it is the payment mechanism over which consumers have the least direct control. A consumer is more aware of, and better able to control, the time at which he or she makes an electronic, telephone, or in-person payment, but is not able to control or monitor the exact time at which mail is received by a creditor.

The safe harbor, consistent with the proposal, refers to the time zone of the location specified by the creditor for the receipt of payments. The Board believes that this clarification is necessary to provide creditors with certainty regarding compliance with the safe harbor, and that a rule requiring a creditor to process payments differently based on the time zone at the consumer's billing address could impose significant operational burdens on creditors. The safe harbor also refers to 5 p.m., consistent with the proposal. The Board believes that many consumers expect that payments received by the creditor by 5 p.m., which corresponds to the end of a standard business day, will be credited on that day. This also is consistent with the results of consumer testing conducted prior to the June 2007 Proposal, which showed that most consumers assume payment is due by midnight or by the close of business on the due date.

Under the June 2007 Proposal, § 226.10(b) contained a cross reference to § 226.7(b)(11), regarding the disclosure of cut-off hours on periodic statements. In the May 2008 Proposal, the Board solicited comment on whether disclosure of cut-off hours near the due date for payment methods other than mail (e.g., telephone or Internet) should be retained. As discussed in the section-by-section analysis to § 226.7(b)(11), the final rule does not adopt the formatting requirements for disclosing the cut-off time on the periodic statement that were proposed in the June 2007 Proposal. A creditor must, however, continue to specify on or with the periodic statement any applicable cut-off times pursuant to § 226.10(b)(3) (formerly § 226.10(b)), as renumbered in the final rule.

Receipt of electronic payments made through a creditor's Web site. The Board also proposed in the June 2007 Proposal to add an example to comment 10(a)–2 that states that for payments made through a creditor's Web site, the date of receipt is the date as of which the consumer authorizes the creditor to debit that consumer's account electronically. The proposed comment would have referred to the date on which the consumer authorizes the creditor to effect the electronic payment, not the date on which the consumer gives the instruction. The consumer may give an advance instruction to make a payment and some days may elapse before the payment is actually made; accordingly, the Board's proposed comment 10(a)–2 would have referred to the date on which the creditor is authorized to debit the consumer's account. If the consumer authorized an immediate payment, but provided the instruction after a creditor's cut-off time, the relevant date would have been the following business day. For example, a consumer may go on-line on a Sunday evening and instruct that a payment be made; however, the creditor might not transmit the request for the debit to the consumer's account until the next day, Monday. Under proposed comment 10(a)–2 the date on which the creditor was authorized to effect the electronic payment would have been deemed to be Monday, not Sunday. Proposed comment 10(b)–1.i.B would have clarified that the creditor may, as with other means of payment, specify a cut-off time for an electronic payment to be received on the due date in order to be credited on that date. As discussed in the June 2007 Proposal, the Board's proposed clarification of comment 10(a)–2 is limited to electronic payments made through the creditor's own Web site, over which the creditor has control.

Two industry commenters supported the proposed changes to comments 10(a)–2 and 10(b)–1.i.B regarding electronic payments made via the creditor's Web site. One of these commenters noted that the proposed changes were consistent with consumer expectations, and stated that it was appropriate that the changes were limited to electronic payments made at the creditor's own Web site, over which the creditor has control, rather than being expanded to include all types of electronic payments. Several individual consumers also commented that electronic payments should be credited on the day on which they are authorized. Comment 10(a)–2 is adopted as proposed. The clarification to comment 10(b)–1.i.B proposed in June 2007 has been adopted in § 226.10(b)(2)(ii).

Promotion of payment via the creditor's Web site. In the June 2007 Proposal, the Board proposed to update the commentary to clarify that if a creditor promotes electronic payments via its Web site, then payments made through the creditor's Web site would be considered conforming payments for purposes of § 226.10(b). Many creditors now permit consumers to make payments via their Web site. Payment on the creditor's Web site may not be specified on or with the periodic statement as conforming payments, but it may be promoted in other ways, such as in the account-opening agreement, via e-mail, in promotional material, or on the Web site itself. As discussed in the June 2007 Proposal, the Board believes it would be reasonable for a consumer who receives materials from the creditor promoting payment on the creditor's Web site to believe that it would be a conforming payment and credited on the date of receipt. For these reasons, the Board also proposed in June 2007 to amend comment 10(b)–2 to clarify that if a creditor promotes that it accepts payments via its Web site (such as disclosing on the Web site itself or on the periodic statement that payments can be made via the Web site), such a payment is considered a conforming payment for purposes of § 226.10(b).

One industry commenter noted that there could be operational issues associated with treating payments made via the creditor's Web site as conforming, because most banks use third-party processors to process their electronic payments. This commenter stated that an issuer may not be in control of its processing system and may not be able to credit its payments on the same day they are authorized. This commenter further stated that a creditor may have one Web site that offers several different means of making payments, for example a portal solely for making credit card payments as well as a portal for making bill payments through a third-party bill payment processor, and that payments could be sent either way by the consumer. This commenter noted that there may be additional delay in processing the payment depending on which electronic payment mechanism the consumer uses.

The Board believes that consumer expectation is that a payment made via the creditor's Web site is a conforming payment, and that a creditor that promotes and accepts payment via its Web site should treat such payment as conforming. As noted above, individual consumers who commented on the June 2007 Proposal stated that electronic payments should receive same-day crediting. The Board notes that creditors may use third-party processors not just for electronic payments, but also for mailed payments that are treated as conforming. Thus, the use of a third-party processor may give rise to delays in processing payments regardless of the payment mechanism used. The Board notes that a creditor need not post a payment made via its Web site on the same day for which the consumer authorized payment, but need only credit the payment as of that date. Comment 10(b)–2 is adopted as proposed.

10(d) Crediting of Payments When Creditor Does Not Receive or Accept Payments on Due Date

Holiday and weekend due dates. The Board's June 2007 Proposal did not address the practice of setting due dates on dates on which a creditor does not accept payments, such as weekends or holidays. A weekend or holiday due date might occur, for example, if a creditor sets its payment due date on the same day (the 25th, for example) of each month. While in most months the 25th would fall on a business day, in other months the 25th might be a weekend day or holiday, due to fluctuations in the calendar. The Board received a number of comments in response to the June 2007 Proposal from consumer groups, individual consumers, and a member of Congress criticizing weekend or holiday due dates. The comment letters expressed concern that a consumer whose due date falls on a date on which the creditor does not accept payments must pay one or several days early in order to avoid the imposition of fees or other penalties that are associated with a late payment. Comment letters from consumers indicated that, for many consumers, weekend and holiday due dates are a common occurrence. Some of these commenters suggested that the Board mandate an automatic grace period until the next business day for any such weekend or holiday due dates. Other commenters recommended that the Board prohibit weekend or holiday due dates.

In response to these comments, the Board proposed in May 2008 a new § 226.10(d) that would have required a creditor to treat a payment received by mail the next business day as timely, if the due date for the payment is a day on which the creditor does not receive or accept payment by mail, such as a day on which the U.S. Postal Service does not deliver mail. Thus, if a due date falls on a Sunday on which a creditor does not receive or accept payment by mail, the payment could not have been subjected to late payment fees or increases in the interest rate applicable to the account due to late payment if the payment were received by mail on the next day that the creditor does receive or accept payment by mail. The Board proposed this rule using its authority to regulate the prompt posting of payments under TILA Section 164, which states that ''[p]ayments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board.'' 15 U.S.C. 1666c.

The proposed rule in § 226.10(d) was limited to payments made by mail. The Board noted its particular concern about payments by mail because the consumer's time to pay, as a practical matter, is the most limited for those payments, since a consumer paying by mail must account for the time that it takes the payment to reach the creditor. The Board solicited comment in the May 2008 Proposal as to whether this rule also should address payments made by other means, such as telephone payments or payments made via the Internet.

Consumer groups, several industry commenters, one industry trade group, a state treasurer, several credit union trade associations, and several state consumer protection agencies supported the Board's proposed rule regarding weekend or holiday due dates. Several industry commenters indicated that they were already in compliance with the proposed rule. Consumer groups stated that the proposed rule should be expanded to all forms of payment, including payments made electronically, by personal delivery, and by telephone.

Several other industry trade groups and industry commenters objected to the proposed rule regarding weekend or holiday due dates, stating that it would impose operational challenges and costs for banks, including additional systems processing. These commenters questioned the necessity of the proposed rule, in light of the proposal by the Board and other federal banking agencies in May 2008, which would have prohibited institutions from treating a payment as late for any purpose unless the consumer has been provided a reasonable amount of time to make payment. *See* 73 FR 28904, May 19, 2008. One industry commenter supported prohibiting creditors from charging a late payment fee if the due date falls on a weekend or holiday and the payment is received on the next business day, but indicated that creditors should not be required to backdate interest associated with the payment. One industry commenter that opposed the proposal stated that the Board should require a creditor to disclose in the account-opening table the dates that are considered business days for purposes of payments.

Several commenters commented on the example offered by the Board, ''for example if the U.S. Postal Service does not deliver mail on that date,'' to describe a day on which the creditor does not receive or accept payments by mail. One industry commenter indicated that it accepts and receives mail from the U.S. Postal Service every hour, 365 days a year, and indicated that the example may be misleading in light of its actual practices. Another industry commenter commented more generally that issuers who receive and process mail on Sundays and holidays should be permitted to rely on payment due dates that fall on those days.

The final rule adopts § 226.10(d) as proposed, with one minor clarification discussed below. The Board believes that it is important for consumers to have adequate time to make payment on their accounts, and that it is reasonable for consumers to expect that their mailed payments actually can be received and processed on the due date. Consumers should not be required to account for the fact that the due date for a mailed payment in practice is in effect one day earlier than the due date disclosed due to a weekend or holiday. While the rule may impose operational burden on some issuers, the Board believes that this burden is outweighed by the benefit to consumers of having their payments posted in accordance with their expectations that payments need not be delivered prior to the due date in order to be timely. The Board also notes that several industry commenters indicated that they were already in compliance with the rule and that it would impose no additional operational burden on those institutions.

The example in proposed § 226.10(d) regarding a date on which the U.S. Postal Service does not deliver mail has been moved to a new comment 10(d)–1, to emphasize that it is an example only. A creditor that accepts and receives mail on weekends and holidays may rely on payment due dates that fall on those days.

The final rule adopts the rule regarding weekend or holiday due dates only for mailed payments and does not address other payment mechanisms. The Board will continue to monitor due dates for non-mailed payments in the future in order to determine whether a similar rule for such payments is necessary.

One commenter stated that § 226.10(d) should refer to dates on which a creditor does not ''receive or process'' payments rather than dates on which a creditor does not ''receive or accept'' payments. The creditor stated that receipt or acceptance, absent actual processing, could create the appearance of prompt crediting of payments where there is none. The final rule does not adopt this change. The rules in § 226.10 do not address when a creditor must process payments, only the date as of which a creditor must credit the payment to a consumer's account.

Crediting a payment to a consumer's account as of the date of receipt does not require that the creditor actually process the payment on that date; a creditor that does not process and post the payment on the date of receipt could comply with § 226.10(a) by backdating the payment and computing all charges applicable to the consumer's account accordingly.

The Board believes that its final rule under Regulation Z regarding weekend or holiday due dates will complement the final rule issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** to require banks to provide a consumer with a reasonable amount of time to make payments.

Section 226.11 Treatment of Credit Balances; Account Termination

11(a) Credit Balances

TILA Section 165, implemented in § 226.11, sets forth specific steps that a creditor must take to return any credit balance in excess of $1 on a credit account, including refunding any remaining credit balance within seven business days after receiving a written request from the consumer or making a good faith effort to refund any credit balance that remains in the consumer's account for more than six months. 15 U.S.C. 1666d. Although the substance of these provisions remains unchanged, the final rule implements a number of amendments proposed in June 2007.

In June 2007, the Board proposed moving the provisions in § 226.11 regarding credit balances to a new paragraph (a) and renumbering the commentary accordingly. The Board also proposed adding a new paragraph (b) implementing the prohibition in Section 1306 of the Bankruptcy Act on terminating accounts under certain circumstances (further discussed below). *See* TILA Section 127(h); 15 U.S.C. 1637(h). Furthermore, the Board proposed amending the section title to reflect the new subject matter. Finally, the Board proposed revising the commentary to provide that a creditor may comply with § 226.11(a) by refunding any credit balance upon receipt of a consumer's oral or electronic request. *See* proposed comment 11(a)–1.

In response to proposed comment 11(a)–1, some consumer groups requested that creditors be required to inform consumers that, unlike compliance with a written refund request under § 226.11(a)(2), compliance with an oral or electronic refund request is not mandatory. The Board believes that this disclosure is not necessary. A creditor that requires requests for refund of a credit balance to be in writing is unlikely to accept an oral or electronic request for such a refund of a credit balance and then refuse to comply without notifying the consumer that a written request is required. Furthermore, § 226.11(a)(3) requires creditors to refund credit balances in excess of $1 after six months even if no request is made.

The Board is amending the credit balance provisions in § 226.11 as proposed in June 2007, with minor technical and clarifying revisions.

11(b) Account Termination

TILA Section 127(h), added by the Bankruptcy Act, prohibits creditors that offer open-end consumer credit plans from terminating an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. 15 U.S.C. 1637(h). A creditor is not, however, prohibited from terminating an account for inactivity in three or more consecutive months.

In June 2007, the Board proposed to implement TILA Section 127(h) in the new § 226.11(b). The general prohibition in TILA Section 127(h) was stated in proposed § 226.11(b)(1). The proposed commentary to § 226.11(b)(1) would have clarified that the underlying credit agreement, not the credit card, determines if there is a stated expiration (maturity) date. Thus, creditors offering accounts without a stated expiration date would not be permitted to terminate those accounts solely because the consumer uses the account and does not incur a finance charge. *See* proposed comment 11(b)(1)–1.

Proposed § 226.11(b)(2) provided that, consistent with TILA Section 127(h), the prohibition in proposed § 226.11(b)(1) would not have prevented creditors from terminating an account that is inactive for three consecutive months. Under proposed § 226.11(b)(2), an account would have been inactive if there had been no extension of credit (such as by purchase, cash advance, or balance transfer) and if the account had no outstanding balance.

One comment on proposed comment 11(b)(1)–1 requested that the phrase ''uses the account'' be removed because it does not appear in TILA Section 127(h) or proposed § 226.11(b). The June 2007 Proposal included this phrase because, under proposed § 226.11(b)(2), a creditor would be permitted to terminate an account for inactivity. To clarify this point, the Board has revised comment 226.11(b)(1)–1 to reference § 226.11(b)(2) explicitly. Otherwise, § 226.11(b) is adopted as proposed in June 2007, with minor technical and clarifying revisions.

Section 226.12 Special Credit Card Provisions

Section 226.12 contains special rules applicable to credit cards and credit card accounts, including conditions under which a credit card may be issued, liability of cardholders for unauthorized use, and cardholder rights to assert merchant claims and defenses against the card issuer.

12(a) Issuance of Credit Card

TILA Section 132, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. 15 U.S.C. 1642. While the June 2007 Proposal did not propose changes to the current renewal and substitution rules, the May 2008 Proposal set forth certain limitations on a card issuer's ability to issue a new card as a substitute for an accepted card for card accounts that have been inactive for a significant period of time. Specifically, a card issuer would not have been permitted to substitute a new card for a previously accepted card if the merchant base would be changed (for example, from a card that is honored by a single merchant to a general purpose card) and if the account has been inactive for a 24-month period preceding the issuance of the substitute card. *See* proposed comment 12(a)(2)–2.v.

Consumer groups supported the proposal but urged the Board to expand the scope of the proposed revision, to prohibit any replacement of a retail card by a general-purpose credit card if the substitution was not specifically requested by the consumer. In contrast, the majority of industry commenters commenting on the issue stated that the proposed revision would inappropriately restrict an issuer's ability to upgrade cards for consumers who want a product that provides greater merchant acceptance than their existing retail card. These commenters also generally believed that any potential concerns about cardholder security or identity theft are already adequately addressed through market practices designed to prevent fraud (such as card activation requirements) and other regulatory requirements (for example, change-in-terms notice requirements under Regulation Z and identity theft ''Red Flag'' requirements under the FCRA). *See e.g.* 12 CFR part 222. One industry commenter urged the Board to consider adding exceptions where the general-purpose credit card carries similar branding as the retail card (for example, where ''Department store X retail card'' is replaced with ''Department store X general-purpose card''), or where the retailer goes out of business.

Industry commenters also urged the Board to extend the time period for inactivity from 24 to 36 months after which a general purpose credit card could no longer be substituted for a retail card on an unsolicited basis. These industry commenters stated that private label credit cards, particularly those used to make major purchases, tend to have long life-cycles and sporadic usage patterns. One industry commenter also noted that 36 months aligned with current card expiration and renewal time frames. Consumer groups in contrast believed that 24 months was excessive, because a consumer may no longer remember having the particular retail card, or may have moved during that time period. Instead, consumer groups urged the Board to adopt a time frame of 180 days. Alternatively, consumer groups suggested that the Board could permit substitutions only if the creditor has sent a periodic statement within the prior three-month period.

The final rule adopts the revisions to comment 12(a)(2)–2.v, as proposed. While some consumers may benefit from receiving a card that could be used at a wider number of merchants compared to their current retail card, other consumers may have only signed up for the retail card to receive a benefit unique to that retailer or group of retailers, such as an initial purchase discount, and may not want a card with greater merchant acceptance. Although consumers in some cases can elect not to activate the substitute card and to destroy the unwanted device, others may have moved in the interim period, leading to potential card fraud and identity theft concerns as the cards will be sent to an invalid address. Some consumers may not remember having opened the retail card account in the first place, leading to possible consumer confusion when the new card arrives in the mail.

Accordingly, the Board believes that the revised comment as adopted, including the 24-month period, strikes a reasonable balance between the potential benefits to consumers of using an accepted card at a wider number of merchants and consumer concerns arising from an unsolicited card being sent for an account that has been inactive for a significant period of time, particularly when the card is issued by a creditor with whom the consumer may have no prior relationship. The final comment also deletes as unnecessary the reference to situations where ''the consumer has not obtained credit with the existing merchant base within 24 months prior to the issuance of the new card'' because, as noted by one commenter, this concept is already incorporated into the definition of ''inactive account'' in the comment.

In light of the revised comment's narrow scope, the Board also believes it is unnecessary to add any exceptions to the provision as adopted. The final rule does not affect creditors' ability to send a general-purpose card to replace a retail card that has been inactive for more than 24 months if the consumer specifically requests or applies for the general-purpose card.

12(b) Liability of Cardholder for Unauthorized Use

TILA and Regulation Z provide protections to consumers against losses due to unauthorized transactions on an open-end plan. *See* TILA Section 133(a); 15 U.S.C. 1643, § 226.12(b); TILA Section 161(b)(1); 15 U.S.C. 1666(b)(1), § 226.13(a)(1). Significantly, under § 226.12(b), a cardholder's liability for an unauthorized use of a credit card is limited to no more than $50 for transactions that occur prior to notification of the card issuer that an unauthorized use has occurred or may occur as the result of loss, theft or otherwise. 15 U.S.C. 1643. Before a card issuer may impose liability for an unauthorized use of a credit card, it must satisfy certain conditions: (1) The card must be an accepted credit card; (2) the issuer must have provided adequate notice of the cardholder's maximum liability and of the means by which the issuer may be notified in the event of loss or theft of the card; and (3) the issuer must have provided a means to identify the cardholder on the account or the authorized user of the card. The June 2007 and May 2008 Proposals set forth a number of revisions that would have clarified the scope of § 226.12(b) and updated the regulation to address current business practices. In addition, the Board proposed to move the guidance that is currently set forth in footnotes to the regulation or commentary, as appropriate.

Scope. As proposed in the June 2007 Proposal, the definition of ''unauthorized use'' currently found in footnote 22 is moved to the regulation. *See* § 226.12(b)(1)(i). This definition provides that unauthorized use is use of a credit card by a person who lacks ''actual, implied, or apparent authority'' to use the credit card. In the June 2007 Proposal, the Board proposed two new commentary provisions, comments 12(b)(1)(ii)–3 and –4, to parallel existing commentary provisions under Regulation E (Electronic Fund Transfers) regarding unauthorized electronic fund transfers.

Comment 12(b)(1)(ii)–3, as proposed, would have clarified that if a cardholder furnishes a credit card to another person and that person exceeds the authority given, the cardholder is liable for that credit transaction unless the cardholder has notified the creditor (in writing, orally, or otherwise) that use of the credit card by that person is no longer authorized. *See also* comment 205.2(m)–2 of the Official Staff Commentary to Regulation E. Two industry commenters, one card issuer and one trade association, supported the proposed comment, stating that it provided helpful guidance on an issue that frequently arises in disputes between card issuers and cardholders. Consumer groups, however, asserted that the scope of the proposed comment should be limited to misuse by persons that a cardholder has added as an authorized user on the account.

The Board adopts the comment as proposed. The Board believes that limiting the comment to authorized users would be too narrow as it would potentially allow cardholders to avoid liability for certain transactions simply because the cardholder did not undertake the procedural steps necessary to add an authorized user. In addition, as noted by one commenter in support of the proposed comment, the cardholder is in the best position to control the persons to whom they have provided a card for use. Lastly, the Board believes that to the extent feasible, it is appropriate to have consistent rules under Regulation Z and Regulation E, particularly where the underlying statutory requirements are similar.

The June 2007 Proposal also would have added comment 12(b)(1)(ii)–4 to provide that unauthorized use includes circumstances where a person has obtained a credit card, or otherwise has initiated a credit card transaction, through robbery or fraud (for example, if the person holds the consumer at gunpoint and forces the consumer to initiate a transaction). *See also* comments 205.2(m)–3 and –4 of the Official Staff Commentary to Regulation E. Because ''unauthorized use'' under Regulation Z includes the use of a credit card by a person other than the cardholder who does not have ''actual, implied, or apparent authority,''[24] some commenters agreed with the Board's observation in the supplementary information to the June 2007 Proposal that cases of robbery or fraud were likely to be adequately addressed under the existing regulation. Nonetheless, these commenters welcomed the additional guidance as it provided certainty to the issue. Consumer groups expressed concern that the proposed comment was too narrow and could leave consumers vulnerable to liability for unauthorized use in other similar circumstances, such as theft, burglary and identity theft. Consequently, these groups urged the Board to expand the scope of the proposed comment to cover additional circumstances. The Board adopts comment 12(b)(1)(ii)–4 generally as proposed, with a minor revision to clarify that unauthorized use is not limited to instances of robbery or fraud.

As discussed previously under § 226.2(a)(15), the term ''credit card'' does not include a check that accesses a credit card account. Thus, in June 2007, the Board proposed to add comment 12(b)–4 to provide that the liability limits established in § 226.12(b) do not apply to unauthorized transactions involving the use of these checks. Consumer groups in response asserted that even if the Board declined to expand the definition of ''credit card'' to include access checks, it should not necessarily follow that any unauthorized transactions involving the use of these checks should be exempt from the protections afforded by § 226.12(b). In particular, consumer groups observed that this outcome would lead to the anomalous result that the consumer's use of the credit card number alone would receive the protections of § 226.12(b), but the consumer's use of an access check would not, even though in both cases, the transaction is ultimately charged to the consumer's credit card account.

The Board adopts comment 12(b)–4 as proposed, and thus does not extend application of § 226.12(b) to access checks in light of the statutory language in TILA Section 133 requiring that the unauthorized use involve the use of a credit card. Nonetheless, as noted in the June 2007 Proposal, the consumer may still assert the billing error protections under § 226.13 with respect to any unauthorized transaction using an access check. Comment 12(b)–4 in the final rule contains this clarification as proposed.

Some industry commenters urged the Board to adopt a time period within which consumers must make claims for unauthorized transactions made through use of a credit card. The Board declines to adopt such a time period. As noted in the June 2007 Proposal, in contrast to TILA Section 161 which requires consumers to assert a billing error claim within 60 days after a periodic statement reflecting the error has been sent, TILA Section 133 does not prescribe a time frame for asserting an unauthorized use claim. *See* 15 U.S.C. 1643.

Conditions for imposing liability. Before a card issuer may impose any liability for an unauthorized use of a credit card, § 226.12(b) requires, among other things, that the card issuer first provide a means to identify the cardholder on the account or the authorized user of the card, such as a signature, photograph, or fingerprint on the card. As proposed in the June 2007 Proposal, comment 12(b)(2)(iii)–1 would have updated the examples of the means that a card issuer may provide for identifying the cardholder on the account or the authorized user of the card to include additional biometric means of identification. *See* § 226.12(b)(2). No commenters opposed this proposed comment, and it is adopted as proposed.

In addition, the June 2007 Proposal would have revised comment 12(b)(2)(iii)–3 to clarify that a card issuer may not impose liability for an unauthorized use when merchandise is ordered by telephone or Internet if the person using the card without the cardholder's authority provides the credit card number by itself or with other information that appears on the card. For example, in many instances, a credit card will bear a separate 3- or 4-digit number, which is typically printed on the back of the card on the signature block or in some cases on the front of the card above the card number. Other information on the card that may be provided is the card expiration date. While the provision of such information may suggest that the person providing the number is in possession of the card, it does not enable the issuer to determine that the person providing the number is in fact the cardholder or the authorized user. Consumer groups supported this proposal, and no commenter opposed the proposed revision. Accordingly, comment 12(b)(2)(iii)–3 is adopted as proposed.

As noted above, a creditor must provide adequate notice of the consumer's maximum liability before it may impose liability for an unauthorized use of a credit card. In the June 2007 Proposal, the Board proposed Model Clause G–2(A), which can be used to explain the consumer's liability for unauthorized use. No commenters addressed the proposed model clause. The final rule revises the language of Model Clause G–2(A) to incorporate optional language that an issuer may provide in the event it allows a consumer to provide notice of the unauthorized use electronically. For HELOCs subject to § 226.5b, at the creditor's option, the creditor may use either Model Clause G–2 or G–2(A).

Reasonable investigation. Comment 12(b)–3 provides that a card issuer may not automatically deny an unauthorized use claim based solely on the consumer's failure or refusal to comply with a particular request. In the May 2008 Proposal, the Board proposed to amend the comment to specifically provide that the issuer may not require the cardholder to submit an affidavit or to file a police report as a condition of investigating an unauthorized use claim. The proposed addition reflected the Board's concerns that such card issuer requests could cause a chilling effect on a cardholder's ability to assert his or her right to avoid liability for an unauthorized transaction. The proposed addition also would have codified in the commentary guidance that had previously only been stated in the supplementary information accompanying prior Board rulemakings. *See* 59 FR 64351, 64352, December 14, 1994; 60 FR 16771, 16774, April 3, 1995.

While a few industry commenters supported the proposal, most industry commenters asserted that card issuer requirements for affidavits or police reports served a useful purpose in deterring false or fraudulent assertions of unauthorized use. In addition, industry commenters also noted that such documentation may be necessary to help validate and appropriately resolve a dispute, as well as to convince local authorities to prosecute the person responsible for the unauthorized transaction. At a minimum, industry commenters asked the Board to permit card issuers to require cardholders to provide a signed statement regarding the unauthorized use.

Consumer groups strongly supported the proposed provision, stating that paperwork requirements and notary fees could deter consumers from filing legitimate unauthorized use claims. In addition, consumer groups noted that

[24] By contrast, ''unauthorized electronic fund transfer'' under Regulation E is defined as an electronic fund transfer from a consumer's account initiated by a person other than a consumer ''without actual authority'' to initiate the transfer and from which the consumer receives no benefit, but excludes a transfer initiated by a person who was furnished the access device by the consumer. *See* 12 CFR 205.2(m).

some consumers continue to have difficulty obtaining police reports in connection with identity theft claims, making it impossible to comply with creditor requirements for police reports. In such cases, consumer groups asserted that a creditor should not be permitted to impose liability on a victim of fraud or identity theft because of the police's reluctance to take the report.

The final rule adopts the comment, generally as proposed. As stated in prior rulemakings and in the May 2008 Proposal, the Board is concerned that certain card issuer requests could cause a chilling effect on a cardholder's ability to assert his or her right to avoid liability for an unauthorized transaction. However, the Board recognizes that in some cases, a card issuer may need to provide some form of certification indicating that the cardholder's claim is legitimate, for example, to obtain documentation from a merchant relevant to the claim or to pursue chargeback rights. Accordingly, the Board is revising the final comment to clarify that a card issuer may require the cardholder to provide a signed statement supporting the asserted claim, provided that the act of providing the signed statement would not subject the cardholder to potential criminal penalty. For example, the card issuer may include a signature line on the billing error rights form that the cardholder may send in to provide notice of the claim, so long as the signature is not accompanied by a statement that the cardholder is providing the notice under penalty of perjury (or the equivalent). *See* comment 12(b)–3.vi. The Board further notes that notwithstanding the prohibition on requiring an affidavit or the filing of a police report as a condition of investigating a claim of unauthorized use, if the cardholder otherwise does not provide sufficient information to allow a card issuer to investigate the matter, the card issuer may reasonably terminate the investigation as a result of the lack of information.

Business use of credit cards. Section 226.12(b)(5) generally provides that a card issuer and a business may agree to liability for unauthorized use beyond the limits established by the regulation if 10 or more credit cards are issued for use by the employees of that business. Liability on an individual cardholder, however, may only be imposed subject to the $50 limitation established by TILA and the regulation. The Board did not propose guidance on this issue in either the June 2007 or the May 2008 Proposal.

One commenter in response to the June 2007 Proposal urged the Board to clarify the meaning of the term ''employee'' to include temporary employees, independent contractors, and any other individuals permitted by an organization to participate in its corporate card program, in addition to traditional employees. The final rule leaves § 226.12(b)(5) unchanged. The Board notes that to the extent such persons meet the definition of ''employee'' under state law, they could be permissibly included in determining whether an organization meets the 10 or more employee threshold for imposing additional liability.

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

Under TILA Section 170, as implemented in § 226.12(c) of Regulation Z, a cardholder may assert against the card issuer a claim or defense for defective goods or services purchased with a credit card. The claim or defense applies only as to unpaid balances for the goods or services, and if the merchant honoring the card fails to resolve the dispute. The right is further limited to disputes exceeding $50 for purchases made in the consumer's home state or within 100 miles of the cardholder's address. *See* 15 U.S.C. 1666i.[25] In the June 2007 Proposal, the Board proposed to update the regulation to address current business practices and move guidance currently in the footnotes to the regulation or commentary as appropriate.

In order to assert a claim under § 226.12(c), a cardholder must have used a credit card to purchase the goods or services associated with the dispute. In the June 2007 Proposal, the Board proposed to update the examples in comment 12(c)(1)–1 of circumstances that are covered by § 226.12(c) to include Internet transactions charged to the credit card account. No commenters opposed this revision, which is adopted as proposed.

Comment 12(c)(1)–1 also provides examples of circumstances for which the protections under § 226.12(c) do not apply. In the June 2007 Proposal, the Board proposed to delete the reference to ''paper-based debit cards'' in comment 12(c)(1)–1.iv. However, the final rule retains this example of a type of transaction excluded from § 226.12(c) to address circumstances in which a debit card transaction is submitted by paper-based means, such as when a merchant takes an imprint of a debit card and submits the sales slip in paper to obtain payment.

Currently, footnote 24 and comment 12(c)(1)–1 provide that purchases effected by a debit card when used to draw upon an overdraft credit line are exempt from coverage under § 226.12(c). In the June 2007 Proposal, the Board proposed to move the substance of footnote 24 to comment 12(c)–3 and to make a technical revision to comment 12(c)(1)–1. Consumer groups opposed the substance of these provisions, asserting that any debit card transaction that accesses some form of credit should be accorded the protections under Regulation Z, whether the debit card transaction accesses a traditional overdraft line of credit covered by Regulation Z or an overdraft service covered instead by Regulation DD (Truth in Savings). In their view, the protections under Regulation Z are stronger than those provided under Regulation E (Electronic Funds Transfer), which generally governs rights and responsibilities for debit card transactions. *See* 12 CFR parts 230 and 205. The Board continues to believe that given potential operational difficulties in applying the merchant claims and defense provisions under § 226.12(c) to what are predominantly electronic fund transfers covered by Regulation E and the Electronic Fund Transfer Act, an exemption for such transactions from Regulation Z coverage remains appropriate. *See* 46 FR 20848, 20865 (Apr. 7, 1981). Accordingly, the language previously contained in footnote 24 is moved to comments 12(c)–3 and 12(c)(1)–1, as proposed.

As stated above, a disputed transaction must meet certain requirements before the consumer may assert a claim or defense under § 226.12(c), including that the cardholder first make a good faith attempt to seek resolution with the person honoring the credit card, and that the transaction has occurred in the same state as the cardholder's current designated address, or, if different, within 100 miles from that address. *See* § 226.12(c)(3); TILA Section 170. The Board proposed in June 2007 to redesignate these conditions to § 226.12(c)(3)(i)(A) and (c)(3)(i)(B). No comments were received on the proposed change, and it is adopted as proposed. Section 226.12(c)(3)(ii), which sets forth the provision previously contained in footnote 26 regarding the applicability of some of the conditions, is also adopted as proposed in the June 2007 Proposal.

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

Because many telephone and Internet transactions may involve merchants that are based far from a cardholder's residence, consumer groups urged the Board to amend the regulation to explicitly provide that telephone and Internet transactions are deemed to have been made in the consumer's home state for purposes of the 100-mile geographic limitation. The Board believes, however, that the location where a telephone or Internet transaction takes place remains a matter best left to state law. Moreover, the Board is not aware of widespread incidences in which a merchant claim asserted under § 226.12(c) has been denied due to the merchant's location. Thus, if applicable state law provides that a mail, telephone, or Internet transaction occurs at the cardholder's address, such transactions would be covered under § 226.12(c), even if the merchant is physically located more than 100 miles from the cardholder's address.

Guidance regarding how to calculate the amount of the claim or defense that may be asserted by the cardholder under § 226.12(c), formerly found in footnote 25, is moved to the commentary in comment 12(c)–4 as proposed in the June 2007 Proposal.

12(d) Offsets by Card Issuer Prohibited

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

In the June 2007 Proposal, the Board requested comment on whether additional guidance was needed and, if so, the specific issues the guidance should address. Several consumer groups commented that any guidance should explicitly require strong measures to manifest a consumer's consent to grant a security interest, specifically a separate written document that must be independently signed by the consumer and that references a specific account. These commenters also suggested that issuers should be required to show that they are not routinely taking security interests in deposit accounts as the functional equivalent of an offset, for example, by either falling under a numerical threshold (only a small percentage of accounts have a security interest) or by establishing a special program for accounts with a security interest.

The Board is not aware of evidence that would suggest that creditors are routinely taking security interests in deposit accounts as the functional equivalent of offsets, and therefore believes that it is unnecessary to require measures such as numerical thresholds or special programs. However, comment 12(d)(2)–1 is amended to state that indicia of the consumer's intent to grant a security interest in a deposit account include at least one of the procedures listed in the comment (*i.e.*, separate signature or initials to authorize the security interest, placement of the security agreement on a separate page, and reference to a specific amount of funds or to a specific account number), or a procedure that is substantially similar in evidencing the consumer's intent. As stated in the June 2007 Proposal, questions have been raised with the Board whether creditors must follow all of the procedures specified in the comment; while the Board believes it is unnecessary to require creditors to use all of these procedures to ensure the consumer's awareness of and intent to create a security interest, it is reasonable to expect creditors to follow at least one of them.

No other changes to § 226.12(d) and associated commentary were proposed, and no other comments were received. Therefore, other than the change to comment 12(d)(2)–1 discussed above, § 226.12(d) and the associated commentary remain unchanged in the final rule.

12(e) Through 12(g)

Sections § 226.12(e), (f), and (g) address, respectively: The prompt notification of returns and crediting of refunds; discounts and tie-in arrangements; and guidance on the applicable regulation (Regulation Z or Regulation E) in instances involving both credit and electronic fund transfer aspects. The Board did not propose any changes to these provisions or the associated commentary, and no comments were received on them. These provisions and the associated commentary remain unchanged in the final rule.

Section 226.13 Billing Error Resolution

TILA Section 161, as implemented in § 226.13 of the regulation, sets forth error resolution procedures for billing errors, and requires a consumer to provide written notice of an error within 60 days after the first periodic statement reflecting the alleged error is sent. 15 U.S.C. 1666. The written notice triggers a creditor's duty to investigate the claim within prescribed time limits. In contrast to the consumer protections in § 226.12 of the regulation, which are limited to transactions involving the use of a credit card, the billing error procedures apply to *any* extension of credit that is made in connection with an open-end account.

13(a) Definition of Billing Error

Section 226.13(a) defines a ''billing error'' for purposes of the error resolution procedures. Under § 226.13(a)(3), the term ''billing error'' includes disputes about property or services that are not delivered to the consumer as agreed. *See* § 226.13(a)(3). As originally proposed in June 2007, comment 13(a)(3)–2 would have provided that a consumer may assert a billing error under § 226.13(a)(3) with respect to property or services obtained through any extension of credit made in connection with a consumer's use of a third-party payment service.

In some cases, a consumer might pay for merchandise purchased through an Internet site using an Internet payment service, with the funds being provided through an extension of credit from the consumer's credit card or other open-end account. For example, the consumer may purchase an item from an Internet auction site and use the payment service to fund the transaction, designating the consumer's credit card account as the funding source. As in the case of purchases made using a check that accesses a consumer's credit card account, there may not be a direct relationship between the merchant selling the merchandise and the card issuer when an Internet payment service is used. Because a consumer has billing error rights with respect to purchases made with access checks, the June 2007 Proposal would have provided that the billing error provisions would similarly apply when a consumer makes a purchase using a third-party payment intermediary funded using the same credit card account.

Consumer groups strongly supported the Board's proposal, stating that it would help to resolve a number of problems involving transactions processed by third-party intermediary payment services in which goods are not received. Industry commenters largely opposed the proposed comment, however, urging the Board to treat extensions of credit involving third-party payment intermediaries similarly to transactions in which a consumer uses an access check or credit card to obtain a cash advance, and then uses that cash to pay for a good or service. Under such circumstances, a consumer would be able to assert a billing error if the wrong amount was funded, but not if the good purchased with the funds was not delivered as agreed.

Industry commenters also stated that the proposed comment inappropriately puts the burden of investigating billing errors involving third-party payment services on the card issuer, rather than on the third-party payment intermediary itself, even though the intermediary will have more direct access to information about the transaction. Industry commenters were particularly concerned about the lack of privity between the card issuer and the end merchant because in many cases the merchant in a third-party intermediary arrangement will not have agreed to meet the requirements of participating in the credit card network. Thus, a card issuer would be unable to contact the merchant or to charge back a transaction in the event the consumer asserts a billing error, thereby exposing the issuer to considerably more risk for the transaction. In this regard, some industry commenters drew a contrast between the use of third-party payment services and the use of access checks, noting that creditors are able to control for risks for access check transactions by either pricing those transactions differently or by restricting the checks that may be issued to the cardholder.

Industry commenters also raised a number of operational considerations. For example, commenters stated that some consumers may use their credit cards to fund their third-party intermediary accounts, but then not use those funds for some time. In those circumstances, issuers would be unable to trace a disputed transaction back to the purchased good or service because the issuer would not receive any information about that subsequent transaction. Consequently, while they opposed the proposed comment in principle, a few industry commenters suggested that the proposed comment might be workable only if it were limited to circumstances in which the credit card account is used specifically for a particular purchase that can be identified (for example, where funds from the card are used contemporaneously, the amount of the purchase and "funding" are the same, and they can be traced and tracked). Another industry commenter asked for guidance on how the proposed comment would apply where the purchase of a good or service results from the commingling of funds, only a portion of which can be attributed to an extension of credit from a credit card account.

The Board continues to believe that it is appropriate to apply the billing error provisions to transactions made through a third-party intermediary using a credit card account [26] just as they would apply to purchases made with checks that access the same credit card account. However, in light of certain operational issues raised by commenters, the final rule limits the applicability of comment 13(a)(3)–2 to extensions of credit that (1) are obtained at the time the consumer purchases the good or service through the third-party payment intermediary; and (2) match the amount of the purchase transaction for the good or service including any ancillary taxes and fees (such as shipping and handling costs and/or taxes).

From the consumer's perspective, there is likely to be little difference between his or her use of a credit card to make a payment directly to the merchant on a merchant's Internet Web site or to make a payment to the merchant through a third-party intermediary. Indeed, in some cases, the merchant may not otherwise accept credit cards, making the use of the third-party intermediary service the consumer's most viable option of paying for the good or service. In other cases, the consumer may not want to provide his or her credit card number or other information to the merchant for security reasons. Nonetheless, the consumer may reasonably expect that transactions made using his or her credit card account would be afforded the billing error protections just as if the consumer used an access check to purchase the good or service. To the extent that such transactions may pose additional risk to the creditor due to the lack of privity between the creditor and the merchant, nothing in the rule would prohibit the creditor from pricing the transaction differently, just as access check transactions are often priced differently from other purchases made using a credit card.

As noted above, comment 13(a)(3)–2 is limited to extensions of credit that are obtained in connection with the consumer's purchase of a good or service using the third-party payment intermediary and where the purchase amount of the transaction including any ancillary taxes and fees (such as shipping and handling costs and/or taxes) matches the amount of the extension of credit. In those circumstances, the Board understands that credit card network rules generally require that specific information about the extension of credit, including the name of the merchant from whom the consumer has purchased the good or service and the purchase amount, be passed through to the creditor, which would allow the creditor to identify the particular purchase. The final rule does not extend billing error rights to extensions of credit that are made to fund an account held by a third-party payment intermediary if the consumer does not contemporaneously use those funds to purchase a good or service at that time. For example, a consumer may use his or her credit card to fund the consumer's account held at a third-party payment intermediary for $100, but then some time later purchase a good or service using some or all of the $100 in funds in that account. Under those circumstances, the creditor would not have any information about subsequent transactions made using the funds from the $100 extension of credit to enable the creditor to investigate the claim. The Board considers the $100 extension of credit in that scenario to be equivalent to a cash advance, which would allow the consumer to assert a billing error if the wrong amount is funded, but any problems with the delivery of that good or service would not be considered a billing error for purposes of § 226.13(a)(3).

The revised comment also does not cover extensions of credit that are made to fund only a portion of the purchase amount, where the consumer may use

[26] Although the billing error provisions apply to extensions of credit made through open-end credit plans more generally, the Board is not aware of any circumstances in which a transaction made to fund a third-party intermediary transaction is initiated with any open-end credit plan other than a credit card.

another source of funds to fund the remaining amount. For example, the consumer may make a $50 purchase using a third-party payment intermediary service, but have $20 in his or her account held by the payment intermediary. The consumer may in this case use a credit card account to cover the remaining $30 of the purchase. In this ''split tender'' example where the purchase is funded by a commingling of multiple payment sources, including a credit card account, the Board believes that the operational challenges in resolving any disputes arising from the purchased good or service, including how to credit the purchase amount back to the consumer, outweigh any resulting benefits to the consumer in treating any disputes regarding the delivery of the good purchased as a billing error under § 225.13(a)(3).

The Board's adoption of a final rule providing consumers error resolution rights when they use their credit card account in connection with third-party payment intermediary services in some circumstances does not preclude a future possible change to the regulation extending these rights to additional circumstances in which purchases made through a third-party payment intermediary service are funded in whole or in part using a credit card account. The Board intends to continue to study this issue, and other issues related to third-party payment intermediaries more generally, and may consider in the future whether additional protections under Regulation Z and other consumer financial services regulations are necessary with respect to consumer usage of these services.

The June 2007 Proposal also proposed a new comment 13(a)(3)–3 to clarify that prior notice to the merchant is not required before the consumer can assert a billing error that the good or service was not accepted or delivered as agreed. One industry commenter urged the Board to reconsider the proposed comment, stating that in many cases, such as in the event of non-delivery, a dispute might be more efficiently resolved if the consumer contacted the merchant first before asserting a billing error claim with the creditor. Consumer groups supported the proposed comment. In adopting the comment as proposed, the Board notes that in contrast to claims or defenses asserted under TILA Section 170 and § 226.12(c) of the regulation, which require that the cardholder first make a good faith attempt to resolve a disagreement or problem with the person honoring the credit card, the billing error provisions under TILA do not require the consumer to first notify and attempt to resolve the dispute with the person honoring the credit card before asserting a billing error directly with the creditor. *See* 15 U.S.C. 1666i.

13(b) Billing Error Notice

To assert a billing error, a consumer must provide a written notice of the error to the creditor no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged error. *See* § 226.13(b). The June 2007 Proposal would have revised comment 13(b)–1 to incorporate guidance currently in footnote 28 stating that a creditor need not comply with the requirements of § 226.13(c) through (g) if the consumer voluntarily withdraws the billing error notice. In addition, the June 2007 Proposal would have added new comment 13(b)–2 to incorporate guidance currently in footnote 29 stating that the creditor may require that the written billing error notice not be made on the payment coupon or other material accompanying the periodic statement if the creditor so states in the billing rights statement on the account-opening disclosure and annual billing rights statement. Proposed comment 13(b)–2 further would have provided that billing error notices submitted electronically would be deemed to satisfy the requirement that billing error notices be provided in writing, provided that the creditor has stated in its billing rights statement that it will accept notices submitted electronically, including how the consumer can submit billing error notices in this manner.

No commenters opposed the proposed revisions to the commentary under § 226.13(b), and these comments are adopted as proposed. In addition, the Board is revising Model Forms G–2, G–2(A), G–3, G–3(A), G–4 and G–4(A) to add optional language creditors can use if they elect to accept billing error notices (or notices of loss or theft of credit cards) electronically.

13(c) Time for Resolution; General Procedures

Section 226.13(c) generally requires a creditor to mail or deliver written acknowledgement to the consumer within 30 days of receiving a billing error notice, and to complete the billing error investigation procedures within two billing cycles (but no later than 90 days) after receiving a billing error notice. To ensure that creditors complete their investigations in the time period set forth under TILA, in June 2007 the Board proposed to add new comment 13(c)(2)–2 which would have provided that a creditor must complete its investigation and conclusively determine whether an error occurred within the error resolution timeframes. Once this period has expired, the proposed comment further provided that the creditor may not reverse any corrections it has made related to the asserted billing error, including any previously credited amounts, even if the creditor subsequently obtains evidence indicating that the billing error did not occur as asserted.

In response to the June 2007 Proposal, consumer groups urged the Board to adopt the comment to prevent unwelcome consumer surprise when a creditor reverses an error finding months later. Industry commenters in contrast asserted that the proposed comment unreasonably prevented creditors from considering evidence that is presented after the error timeframes. Industry commenters noted, moreover, that disputes today are much more numerous and complex to investigate and resolve, thus supporting the case for a longer, rather than shorter, timeframe. In this regard, industry commenters urged the Board, at a minimum, to provide exceptions for instances of consumer fraud or bad faith in asserting a billing error.

Industry commenters also stated that the proposed comment would effectively nullify the statutory forfeiture penalty provision under TILA Section 161(e) which, they stated, caps the amount that may be forfeited by a creditor for failure to comply with the billing error provisions at $50. 15 U.S.C. 1666(e). In their view, TILA Section 161(e) reflects the intent of Congress to balance the need for timely investigations against potential unjust enrichment to consumers. Thus, commenters stated that if a creditor receives information about a disputed transaction after the two-billing-cycle investigation period which indicates that an error did not occur as alleged, TILA Section 161(e) would permit the creditor to reverse the credit, minus the statutory $50 penalty.

Comment 13(c)(2)–2 as adopted states that the creditor must comply with the error resolution procedures and complete its error investigation within the time period under § 226.13(c)(2). For example, if the creditor determines that an error did not occur as asserted after the error resolution time frame has expired, it generally may not reverse funds that were previously credited to the consumer's account. Similarly, if a creditor fails to comply with a billing error requirement, such as mailing or delivering a written explanation stating why an error did not occur as asserted, within the billing error period, the creditor generally must credit the consumer's account in the amount of the disputed error as well as related finance or other charges, as applicable. Like the proposal, the final comment does not reflect the statutory forfeiture provision in TILA § 161(c).

The purpose of the billing error resolution time frame set forth in TILA Section 161 is to enable consumers to have their error claims investigated and resolved promptly. In short, TILA Section 161, as implemented by § 226.13, is intended to bring finality to the billing error resolution process, and avoid the potential of undue surprise for consumers caused by the reversal of previously credited funds when a creditor fails to complete their investigation in a timely manner. Thus, the Board does not interpret the statutory forfeiture penalty under TILA Section 161(e) as being intended to override Section 161's overall protections. In this regard, the Board notes that TILA's administrative and civil liability provisions in TILA Sections 108 and 130, respectively, support this reading of Section 161. That is, if a creditor does not comply with the substantive requirements of TILA Section 161 and complete their investigation in the established timeframe (i.e., two complete billing cycles), the creditor also may be subject to administrative or civil penalties. These provisions serve to facilitate finality in the billing error process by ensuring that the investigation is closed within the time period set forth in the statute.

The final comment is also revised to clarify that creditors have two *complete* billing cycles to investigate after receiving a consumer's notice of a billing error. Thus, if a creditor receives a billing error notice mid-cycle, it would have the remainder of that cycle *plus* the next two full billing cycles to resolve the error. *See* comment 13(c)(2)–1. Comment 13(e)–3, which cross references comment 13(c)(2)–2, is also adopted as proposed in the June 2007 Proposal.

13(d) Rules Pending Resolution

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

Currently, § 226.13(d) prohibits a card issuer from deducting through an automated payment plan, any part of the disputed amount or related charges from a cardholder's deposit account if the deposit account is also held by the card issuer, provided that the cardholder has provided a billing error notice at least three business days before the scheduled payment date. To reflect current payment processing practices, the Board proposed in June 2007 to extend the prohibition to all automatic deductions from *any* consumer deposit account where the deduction is pursuant to the consumer's enrollment in a card issuer's automatic payment plan. *See* proposed § 226.13(d)(1) and comment 13(d)(1)–4. The intent of the proposal was to ensure that a cardholder whose payments are automatically debited (via the card issuer's automatic payment service) from a deposit account maintained at a different financial institution would have the same protections afforded to a cardholder whose deposit account is maintained by the card issuer. For example, if the cardholder has agreed to pay a predetermined amount each month and subsequently disputes one or more transactions that appear on a statement, the card issuer must ensure that it does not debit the consumer's deposit account for any part of the amount in dispute, provided that the card issuer has received sufficient notice.

In response to the June 2007 Proposal, some industry commenters stated that the proposal reflected a reasonable balance. Other industry commenters stated that the proposal introduced operational challenges which could result in significant inconvenience for the customer and the creditor. For example, once a dispute related to a transaction is received, a creditor would have to recalculate the required payment amount to exclude the disputed charges and cause the next automatic debit of the customer's deposit account to include only that recalculated payment amount. Industry commenters stated that the process of analyzing the dispute and communicating this information to the area which manages payments could delay the receipt of the payment to the detriment of the consumer. Consumer groups supported the proposal, stating that the change would ensure that all consumers who use automatic payment plans offered by their card issuer to pay their credit card bills have a meaningful ability to invoke their billing error rights.

The revisions to § 226.13(d)(1) are adopted, as proposed. Although a few industry commenters raised certain operational issues, these concerns would also appear to apply to automatic debits from accounts held by the card issuer itself. Accordingly, the Board is not persuaded there is a need to distinguish automatic payment plans that debit a cardholder's deposit account held at the card issuer from plans that debit a cardholder's deposit account held at a different financial institution. Cardholders should not have different billing error rights as a consequence of enrolling in an automated payment plan offered by the card issuer based on where their deposit accounts are held. Section 226.13(d)(1) as revised applies whether the card issuer operates the automatic payment plan itself or outsources the service to a third-party service provider, but would not apply where the cardholder has enrolled in a third-party bill payment service that is not offered by the card issuer. Thus, for example, the revised rule does not apply where the consumer uses his or her deposit account-holding institution's bill-payment service to pay his or her credit card bill (unless the deposit account-holding institution has also issued the credit card). Comment 13(d)(1)–4 is also revised to reflect the adopted change as proposed.

Section 226.13(d)(3) is adopted as proposed in the June 2007 Proposal to incorporate the text of footnote 27 prohibiting a creditor from accelerating a consumer's debt or restricting or closing the account because the consumer has exercised billing error rights. In addition, the Board is retaining portions of comment 13–1, which it had proposed to delete, to retain the reference to the statutory forfeiture penalty under TILA Section 161(e) in the event a creditor fails to comply with any of the billing error requirements under § 226.13. Accordingly, comment 13–2, which was proposed to be redesignated as comment 13–1, is retained in place in the commentary. No comments were received on these provisions.

13(f) Procedures if Different Billing Error or not Billing Error Occurred

Section 226.13(f) sets forth procedures for resolving billing error claims if the creditor determines that no error or a different error occurred. A creditor must first conduct a reasonable investigation before a creditor may deny a consumer's claim or conclude that the billing error occurred differently than as asserted by the consumer. *See* TILA Section 161(a)(3)(B)(ii); 15 U.S.C.

1666(a)(3)(B)(ii). Footnote 31 currently provides that to resolve allegations of nondelivery of property or services, creditors must determine whether property or services were actually delivered, mailed, or sent as agreed. To resolve allegations of incorrect information on a periodic statement due to an incorrect report, creditors must determine that the information was correct.

The June 2007 Proposal proposed to delete footnote 31 as unnecessary in light of the general creditor obligation under § 226.13(f) to conduct a reasonable investigation. Consumer advocates, however, urged the Board to retain the substance of the footnote, noting that it requires issuers to take concrete steps for resolving claims of non-delivery such as obtaining delivery records or contacting merchants. Without this guidance, advocates expressed concern that issuers would conduct more perfunctory investigations, which, in their view, has been the case with respect to some creditors applying the same ''reasonable investigation'' standard in investigations into allegations of errors on credit reports under the FCRA. 15 U.S.C. 1681 *et seq.*

In light of these concerns, the Board proposed in May 2008 to add comment 13(f)–3 which would have contained the substance of footnote 31. The proposed comment also would have included guidance on conducting a reasonable investigation of a claim of an unauthorized transaction to harmonize the standards under both § 226.12(b) and § 226.13(a)(1). Specifically, the Board proposed to include applicable guidance currently provided for unauthorized transaction claims under § 226.12(b) in proposed comment 13(f)–3. *See* comment 12(b)–3. The proposed comment also would have paralleled proposed guidance under comment 12(b)–3 to provide that a creditor may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request, including a requirement that the consumer submit an affidavit or file a police report. Lastly, the proposed comment included illustrations on the procedures that may be followed in investigating different types of alleged billing errors.

Both industry and consumer group commenters generally supported the proposed comment. Consumer groups stated that retaining the text of footnote 31 in the proposed comment would help to ensure that creditors conduct substantive investigations of billing disputes, and urged the Board to provide guidance for all types of billing error disputes, including specified steps that a creditor should take to conduct a reasonable investigation. One trade association urged the Board to revise the commentary language requiring creditors to confirm that services or property were actually delivered when there is a claim of non-performance because the merchant, and not the creditor, is in the best place to make this determination. This commenter also urged the Board to provide additional guidance to outline the parameters of what constitutes a ''reasonable investigation'' to avoid potential disputes between issuers, consumers, and examiners.

Industry commenters opposing the proposed comment primarily raised the same concerns they had previously raised with respect to the proposed commentary revisions to § 226.12(b) which explicitly stated that a card issuer could not require a consumer to provide an affidavit or file a police report as a condition of investigating a claim of unauthorized use.

The final rule adopts comment 13(f)–3 generally as proposed, with revisions to conform to the parallel comment adopted under § 226.12(b) with respect to unauthorized use, which would prohibit a card issuer from requiring an affidavit or the filing of a police report. *See* comment 12(b)–3, discussed above. The Board believes that incorporating all of the prior guidance pertaining to the investigation of billing errors in a single place would facilitate compliance for creditors. In addition, as stated in the supplementary information accompanying the May 2008 Proposal, adoption of the guidance currently set forth under § 226.12(b) with respect to unauthorized transactions under § 226.13 would harmonize the standards under the two provisions. However, because what might constitute a ''reasonable investigation'' is necessarily a case-by-case determination, the Board declines to prescribe a specific series of steps or measures that a creditor *must* undertake in investigating a particular billing error claim.

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

Section 226.13(g) specifies the creditor's rights and duties once it has determined, after a reasonable investigation under § 226.13(f), that a consumer owes all or a portion of the disputed amount and related finance or other charges. In the June 2007 Proposal, the Board proposed guidance to clarify the length of time the consumer would have to repay the amount determined still to be owed without incurring additional finance charges (*i.e.*, the grace period) that would apply under these circumstances. Specifically, the Board proposed to revise comment 13(g)(2)–1 to provide that before a creditor may collect any amounts owed related to a disputed charge that is determined to be proper, the creditor must provide the consumer a period of time equivalent to any grace period disclosed under proposed §§ 226.6 or 226.7, as applicable, to pay the disputed amount as well as related finance or other charges (assuming that the consumer was entitled to a grace period at the time the consumer asserted the alleged error). As explained in the supplementary information to the June 2007 Proposal, this interpretation was necessary to ensure that consumers are not discouraged from asserting their statutory billing rights by putting the consumer in the same position (that is, with the same grace period) as if the consumer had not disputed the transaction in the first place. No comments were received on the proposed change, and comment 13(g)(2)–1 is adopted as proposed.

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

Section 226.13(i) is designed to facilitate compliance when financial institutions extend credit incident to electronic fund transfers that are subject to the Board's Regulation E, for example, when the credit card account is used to advance funds to prevent a consumer's deposit account from becoming overdrawn or to maintain a specified minimum balance in the consumer's account. *See* 12 CFR part 205. The provision provides that under these circumstances, the creditor should comply with the error resolution procedures of Regulation E, rather than those in Regulation Z (except that the creditor must still comply with § 226.13(d) and (g)). In the June 2007 Proposal, the Board proposed to revise the examples in comment 13(i)–2 of incidental credit that is governed solely by the error resolution procedures in Regulation E to specifically refer to overdraft protection services that are not subject to the Board's Regulation Z when there is no agreement between the creditor and the consumer to extend credit when the consumer's account is overdrawn.

No industry commenters addressed this provision. However, consumer groups asserted that the Board should reconsider its prior determination not to cover overdraft loan products under Regulation Z and remove the example entirely. The Board has determined that it remains appropriate to exclude overdraft services under Regulation Z, and instead address concerns about this product under Regulations DD and E. Consistent with this determination, the Board is adopting comment 13(i)–2 generally as proposed, with a minor revision to amend the example to refer to overdraft services, instead of overdraft protection plans.

In the June 2007 Proposal, the Board also solicited comment as to whether it should include any additional examples of incidental credit that should be addressed under the error resolution procedures of Regulation E, rather than those of Regulation Z. *See* comment 13(i)–2. Consumer groups opposed the addition of new examples, asserting that Regulation E provides less protection than Regulation Z with respect to error resolution. No other commenters provided any additional examples, and the provision is unchanged.

Technical revisions. In addition to moving the substance of footnotes 27 and 31 as discussed above, the Board is also adopting technical revisions which move the substance of footnotes 28–30 in the current rule to the regulation or commentary, as appropriate. (*See* redesignation table below.) References to ''free-ride period'' in the regulation and commentary are replaced with ''grace period,'' without any intended substantive change, for the reasons set forth in the section-by-section analysis to § 226.6(b)(3).

Section 226.14 Determination of Annual Percentage Rate

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

As also discussed in the section-by-section analysis to § 226.7, the June 2007 Proposal contained two alternative approaches regarding the computation and disclosure of the effective APR. Under the first alternative, the Board proposed to retain the requirement that the effective APR be disclosed on periodic statements, with modifications to the rules for computing and disclosing the effective APR to reflect an approach tested with consumers. *See* proposed §§ 226.7(b)(7) and 226.14(d). For home-equity plans subject to § 226.5b, the Board proposed to allow a creditor to comply with the current rules applicable to the effective APR; thus, creditors offering home-equity plans would not be required to make changes in their periodic statement systems for such plans at this time. *See* proposed §§ 226.7(a)(7) and 226.14(c). Alternatively, the Board proposed that at the creditor's option, it could instead calculate and disclose an effective APR for its home-equity plans under any revised rules adopted for disclosure of the effective APR for open-end (not home-secured) credit.

The second alternative proposed by the Board was to eliminate the requirement to disclose the effective APR on the periodic statement. Under the second alternative, for a home-equity plan subject to § 226.5b, the Board proposed that a creditor would have the option to disclose the effective APR according to current rules or not to disclose an effective APR. The Board's proposed alternative versions of § 226.14 reflected these two proposed alternatives.

Under either alternative, the Board did not propose to revise substantively the current provisions in § 226.14(a) (dealing with APR tolerances) and (b) (guidance on calculating the APR for certain disclosures other than the periodic statement), but minor technical changes were proposed to reflect changes in terminology and to eliminate footnotes, moving their substance into the text of the regulation. No comments were received on these changes, and they are adopted in the final rule as proposed.

For the reasons discussed in the section-by-section analysis to § 226.7, the Board is eliminating the requirement to disclose the effective APR on periodic statements. Consistent with the proposal, for a home-equity plan subject to § 226.5b, a creditor has the option to disclose an effective APR (according to the current rules in Regulation Z for computing and disclosing the effective APR, set forth in § 226.14(c)), or not to disclose an effective APR. The option to continue to disclose the effective APR allows creditors offering home-equity plans to avoid making changes in their periodic statement systems at this time. As discussed earlier, the Board is undertaking a review of home-secured credit, including HELOCs; the rules for computing and disclosing the APR for HELOCs could be the subject of comment during the review of rules affecting HELOCs.

As stated in the June 2007 Proposal, no guidance is given for disclosing the effective APR on open-end (not home-secured) plans, since the requirement to provide the effective APR on such plans is eliminated. Proposed §§ 226.14(d) and (e), which would have set forth the revised rules for calculating an effective APR for open-end (not home-secured) credit, are withdrawn. Section 226.14(d) is retained in its current form, rather than being redesignated as § 226.14(c)(5) as proposed. Minor technical changes are made to § 226.14(c) and the accompanying commentary as proposed, including redesignation of comments to assist users in locating comments relevant to the applicable regulatory provisions.

Section 226.16 Advertising

TILA Section 143, implemented by the Board in § 226.16, governs advertisements of open-end credit plans. 15 U.S.C. 1663. The statutory provisions apply to the advertisement itself, and therefore, the statutory and regulatory requirements apply to any person advertising an open-end credit plan, whether or not such person meets the definition of creditor. *See* comment 2(a)(2)–2. The Board proposed several changes to the advertising rules in § 226.16 in the June 2007 Proposal. Changes were proposed in order to ensure meaningful disclosure of advertised credit terms, alleviate compliance burden for certain advertisements, and implement provisions of the Bankruptcy Act. The Board's proposals related to trigger term disclosures generally and additional disclosures for minimum monthly payment advertising, introductory rates, alternative disclosures for television and radio advertisements, and guidance on use of the word ''fixed'' in connection with an APR. Based in part on comments to the June 2007 Proposal, the Board proposed additional changes to the advertising rules in the May 2008 Proposal related to promotional rates (referred to as introductory rates in the June 2007 Proposal) and deferred interest offers.

Deferred interest offers. Many creditors offer deferred interest plans where consumers may avoid paying interest on purchases if the outstanding balance is paid in full by the end of the deferred interest period. If the outstanding balance is not paid in full when the deferred interest period ends, these deferred interest plans often require the consumer to pay interest that has accrued during the deferred interest period. Moreover, these plans typically also require the consumer to pay interest accrued from the date of purchase if the consumer defaults on the credit agreement. Some deferred interest plans define default under the card agreement to include failure to make a minimum payment during the deferred interest period while other plans do not. Advertisements often prominently disclose the possibility of financing the purchase of goods or services at no interest.

In May 2008, the Board proposed to use its authority under TILA Section 143(3) to add a new § 226.16(h) to address the Board's concern that the disclosures currently required under Regulation Z may not adequately inform consumers of the terms of deferred interest offers. 15 U.S.C. 1663(3). Specifically, the Board proposed to require that the deferred interest period be disclosed in immediate proximity to each statement regarding interest or payments during the deferred interest period. The Board also proposed that certain information about the terms of the deferred interest offer be disclosed in close proximity to the first statement regarding interest or payments during the deferred interest period.

The final rules adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register** do not permit issuers subject to those rules to establish deferred interest plans in which creditors can retroactively charge interest on prior transactions. Accordingly, the Board is withdrawing proposed § 226.16(h).

Clear and conspicuous standard. In June 2007, the Board proposed to implement Section 1309 of the Bankruptcy Act, which requires the Board to provide guidance on the meaning of ''clear and conspicuous'' as it applies to certain disclosures required by Section 1303(a) of the Bankruptcy Act. Under Section 1303(a) of the Bankruptcy Act, when an introductory rate is stated in a direct mail application or solicitation for credit cards or accompanying promotional materials, the time period in which the introductory period will end and the rate that will apply after the end of the introductory period must be stated ''in a clear and conspicuous manner'' in a prominent location closely proximate to the first listing of the introductory rate. The statute requires these disclosures to be ''reasonably understandable and designed to call attention to the nature and significance of the information in the notice.''

The Board proposed in the June 2007 Proposal that creditors clearly and conspicuously disclose when the introductory period will end and the rate that will apply after the end of the introductory period if the information is equally prominent to the first listing of the introductory rate to which it relates. The Board also proposed in comment 16–2 that if these disclosures are the same type size as the first listing of the introductory rate, they will be deemed to be equally prominent.

As discussed more fully below in the section-by-section analysis to § 226.16(g), the Board amended proposed comment 16–2 in the May 2008 Proposal to apply the standard to ''promotional rates.'' Furthermore, in the May 2008 Proposal, the Board proposed additional requirements for deferred interest offers. As part of these requirements, the Board proposed to apply the same clear and conspicuous standard for certain disclosures related to deferred interest offers as the Board proposed to require for promotional rate advertisements.

The Board received a few comments on the June 2007 proposed comment 16–2. In addition, the Board consulted with the other federal banking agencies, the NCUA, and the FTC, consistent with Section 1309 of the Bankruptcy Act. Consumer group commenters and one of the federal banking agencies the Board consulted suggested that the safe harbor for complying with the ''equally prominent'' requirement be amended to require terms to have the same ''highlighting.'' The consumer group commenters further suggested that the equal prominence safe harbor be a requirement that applied to all advertising terms and not just promotional rate information. Presumably, the commenters believed that the equal prominence standard should be applied to all requirements in § 226.16 where a term triggers some additional disclosures; that is, the additional disclosures would be required to be equally prominent to the term that triggered such disclosures.

The Board is adopting proposed comment 16–2, renumbered as comment 16–2.ii., as proposed in May 2008, except references to provisions related to deferred interest offers have been deleted due to the Board's decision to withdraw the advertising disclosure requirements related to deferred interest plans. As discussed in the June 2007 Proposal, the Board believes that requiring equal prominence for certain information calls attention to the nature and significance of such information by ensuring that the information is at least as significant as the terms to which it relates. In the June 2007 Proposal, the Board noted that an equally prominent standard currently applies to advertisements for HELOCs under § 226.16(d)(2) with respect to certain information related to an initial APR. Consequently, the Board believes this is the appropriate standard for information related to promotional rates and deferred interest offers as well. In terms of the safe harbor, the Board believes that type size provides a bright line standard to determine whether terms are equally prominent. To require similar ''highlighting'' would be an ambiguous standard. Furthermore, requiring the text of the terms to be identical may be overly prescriptive and may not provide sufficient flexibility to advertisers. For example, if an advertiser presented a promotional rate in 16-point font in green text and disclosed a promotional period in 16-point font in blue text closely proximate to the rate, the terms would not be identical, but the promotional period may be equally prominent to the promotional rate.

Furthermore, comment 16–2.ii. (proposed as comment 16–2 in the May 2008 Proposal) clarifies that the equally prominent standard will apply only to written and electronic advertisements. As discussed in more detail in the section-by-section analysis to § 226.16(g)(1) below, the Board is expanding the types of advertisements to which the requirements of § 226.16(g) would apply to include non-written, non-electronic advertisements, such as telephone marketing, radio and television advertisements. However, because equal prominence is a difficult standard to measure outside the context of written and electronic advertisements, the Board believes that the guidance on clear and conspicuous disclosures, as set forth in comment 16–2.ii. (proposed as comment 16–2 in the May 2008 Proposal), should apply solely to written and electronic advertisements. Disclosures required under § 226.16(g)(4) for non-written, non-electronic advertisements, while not required to meet the clear and conspicuous standard in comment 16–2.ii. (proposed as comment 16–2 in the May 2008 Proposal), are required to meet the general clear and conspicuous standard as set forth in comment 16–1.

Other Technical Changes. Comment 16–2, as adopted in the July 2008 Final HOEPA Rule, has been renumbered as comment 16–2.i. Moreover, technical changes proposed to comment 16–1 are adopted as proposed in the May 2008 Proposal. Comments 16–3 through 16–7, as adopted in the July 2008 Final HOEPA Rule, remain unchanged. 73 FR 44522, 44605, July 30, 2008.

16(b) Advertisement of Terms That Require Additional Disclosures

Under § 226.16(b), certain terms stated in an advertisement require additional disclosures. In the June 2007 Proposal, the Board proposed to move the substance currently in § 226.16(b) to § 226.16(b)(1), with some amendments, and proposed a new requirement for additional disclosures when a minimum monthly payment is stated in an advertisement.

Paragraph 16(b)(1)

Negative terms as triggering terms. Triggering terms are specific terms that, if disclosed in an advertisement, ''trigger'' the disclosure under § 226.16(b) (which is renumbered as § 226.16(b)(1) in the final rule for organizational purposes) of (1) any minimum, fixed, transaction, activity or similar charge that could be imposed; (2) any periodic rate that may be applied expressed as an APR; and (3) any membership or participation fee that could be imposed. The June 2007 Proposal would have made triggering terms consistent for all open-end credit advertisements by expanding § 226.16(b) to include terms stated negatively (for example, ''no interest'') for advertisements of open-end (not home-secured) plans. Under TILA Section 147(a) (15 U.S.C. 1665b(a)), triggering terms for advertisements of HELOCs include both positive and negative terms while under current comment 16(b)–2, triggering terms for advertisements of open-end (not home-secured) plans only include terms that are expressed as a positive number.

The Board received few comments on the proposal. Consumer groups supported the Board's proposal. One industry commenter opposed the proposal stating that advertisements of ''no annual fee'' should not trigger additional disclosures. As discussed in the June 2007 Proposal, the Board believes that including negative terms as triggering terms for open-end (not home-secured) plans is necessary in order to provide consumers with a more accurate picture of possible costs that may apply to plans that advertise negative terms, such as ''no interest'' or ''no annual fee.'' In addition, the requirement ensures similar treatment of advertisements of all open-end plans. For these reasons and pursuant to its authority under TILA Section 143(3), the Board adopts proposed comment 16(b)–1 as proposed, and renumbers the comment as comment 16(b)(1)–1. As proposed, current comment 16(b)–7 is consolidated in the new comment for organizational purposes and for clarity, without substantive change.

Membership fees. Membership and participation fees that could be imposed are among the additional information that must be disclosed if a creditor states a triggering term in an advertisement. For consistency, new comment 16(b)(1)–6 is added to provide that for open-end (not home-secured) plans, ''membership fee'' shall have the same meaning as in § 226.5a(b)(2).

Other changes to § 226.16(b)(1). In the June 2007 Proposal, the Board proposed certain technical amendments to § 226.16(b) and associated commentary. These changes are adopted largely as proposed in the June 2007 Proposal. Specifically, § 226.16(b) (renumbered as § 226.16(b)(1)) is revised to reflect the new cost disclosure rules for open-end (not home-secured) plans while preserving existing cost disclosure rules for HELOCs. Footnote 36d (stating that disclosures given in accordance with § 226.5a do not constitute advertising terms) is deleted as unnecessary since ''advertisements'' do not include notices required under federal law, including disclosures required under § 226.5a. *See* comment 2(a)(2)–1.ii. Guidance in current comments 16(b)–1 and 16(b)–8 has been moved to § 226.16(b)(1), with some revisions. Current comment 16(b)–6 is eliminated as duplicative of the requirements under § 226.16(g), as discussed below.

Paragraph 16(b)(2)

The Board proposed in June 2007 to require additional disclosures for advertisements that state a minimum monthly payment for an open-end credit plan that would be established to finance the purchase of goods or services. Under the Board's proposal, if a minimum monthly payment is advertised, the advertisement would be required to state, in equal prominence to the minimum payment, the time period required to pay the balance and the total dollar amount of payments assuming only minimum payments are made.

Consumer group and consumer commenters, a state regulatory association commenter, and a member of Congress were supportive of the proposal. Several industry commenters opposed the Board's proposal regarding minimum payment advertising and suggested that the Board not adopt the provision. Industry commenters indicated that the disclosure is inherently speculative because determining how long it would take a consumer to pay off the balance and the total dollar amount of payments would depend on a particular consumer's other purchases and use of the account in general as well as other external factors that may affect the account. To illustrate their point, some industry commenters gave examples of promotional programs in which a minimum payment amount advertised relates to a promotional rate that is in effect for a certain period of time (*e.g.*, ''$49 for 2 years''). If paying the minimum payment amount advertised does not fully amortize the purchase price over the period of time in which the promotional rate is in effect, the balance is then transferred to the general account and combined with other non-promotional balances. Depending on other promotional and non-promotional balances the consumer may have on the account, calculating the total of payments and time period to repay could prove difficult. Another commenter noted that any APR changes could affect the balance and hence alter the total of payments and time period to repay.

Other industry commenters offered suggestions to address these concerns with minimum payment advertising. One industry commenter suggested that a table be disclosed with sample payments and repayment periods. That commenter also suggested an alternative of providing a telephone number for consumers to call to obtain that information. A few other industry commenters suggested that the Board specify a set of assumptions that advertisers may make in providing the disclosure. One of these industry commenters also suggested that the Board provide model language to include in the advertisement to disclose these assumptions to consumers.

As the Board stated in the June 2007 Proposal, the Board believes that for advertisements stating a minimum monthly payment, requiring the advertisement to disclose the total dollar amount of payments the consumer would make and the amount of time needed to pay the balance if only the minimum payments are made will provide consumers with a clearer picture of the costs of financing the purchase of a good or service than if only the minimum monthly payment amount is advertised. While the Board acknowledges that a disclosure of the total of payments and time period to repay the purchase cannot be calculated with certainty without knowing how a particular consumer may use the account in the future or what other changes may affect the account, the Board believes the additional information would be helpful to consumers. Even if the disclosure may not reflect the actual total costs and time period to repay for a particular consumer, the disclosure provides useful information to the consumer in evaluating the offer. This will help ensure that consumers are not surprised later by the amount of time it may take to pay the debt and how much the credit could cost them over that time period by only making the payments advertised.

Therefore, the Board is adopting § 226.16(b)(2) as proposed with minor modifications, as discussed below. In response to industry concerns, the Board is also adopting comment

16(b)(2)–1 to provide a list of assumptions advertisers may make in providing these disclosures. Advertisers may assume that: (i) Payments are made timely so as not to be considered late by the creditor; (ii) payments are made each period, and no debt cancellation or suspension agreement, or skip payment feature applies to the account; (iii) no interest rate changes will affect the account; (iv) no other balances are currently carried or will be carried on the account; (v) no taxes or ancillary charges are or will be added to the obligation; (vi) goods or services are delivered on a single date; and (vii) the consumer is not currently and will not become delinquent on the account. The Board, however, declines to adopt model language concerning these assumptions. The Board believes advertisers should have flexibility to determine if, and how, they may want to convey these assumptions to consumers. In addition, advertisers may make further assumptions in making the disclosures required by § 226.16(b)(2) beyond those specified in comment 16(b)(2)–1. If the Board were to provide model language, such assumptions may not be sufficiently captured by that language.

Industry commenters also pointed out that the minimum monthly payment advertised may not always be the same as the minimum payment amount on a consumer's billing statement. Furthermore, a consumer group commenter stated that the word ''minimum'' should be deleted so that any time a payment amount is advertised, the disclosure should be provided. In response to these concerns, the Board is replacing the term ''minimum monthly payment'' with ''periodic payment amount.'' Therefore, an advertisement that states any periodic payment amount (*e.g.*, $45 per month, $20 per week) would be required to provide the disclosures in § 226.16(b)(2). Furthermore, using the term ''periodic payment amount'' instead of ''minimum monthly payment'' disassociates the term from the concept of ''minimum payment,'' and makes clear that the amount advertised need not be the same amount as the minimum payment on a consumer's billing statement to trigger the disclosures.

Several industry commenters also suggested that advertisements of ''no payment'' for a specified period of time should be excluded from the requirements of § 226.16(b)(2). The Board agrees, assuming there is no other periodic payment amount advertised. Because advertisers would not know the periodic payment amount a consumer would pay after the ''no payment'' period passes (and are not otherwise suggesting a specific periodic payment amount by advertising one), they would be unable to determine the total of payments and time period to repay the obligation. To address this concern, the final rule adds comment 16(b)(2)–2 to provide that a periodic payment amount must be a positive number to trigger the disclosure requirements under § 226.16(b)(2).

16(c) Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements

Technical amendments to § 226.16(c) and comments 16(c)(1)–1 and 16(c)(1)–2 were previously adopted in the November 2007 Final Electronic Disclosure Rule, and are republished as a part of this final rule. 72 FR 63462, Nov. 9, 2007; 72 FR 71058, Dec. 14, 2007.

16(d) Additional Requirements for Home-equity Plans

Revisions to the advertising rules under § 226.16(d) were adopted in the July 2008 Final HOEPA Rule, and are republished as a part of this final rule. 73 FR 44522, 44599, July 30, 2008. Technical amendments to comments 16(d)–1 and 16(d)–8 to conform citations and other descriptions to revisions being adopted today have been made, without intended substantive change.

16(e) Alternative Disclosures—Television or Radio Advertisements

For radio and television advertisements, the June 2007 Proposal would have allowed alternative disclosures to those required by § 226.16(b) if a triggering term is stated in the advertisement. Radio and television advertisements would still have been required to disclose any APR applicable to the plan; however, instead of requiring creditors also to describe minimum or fixed payments, and annual or membership fees, an advertisement would have been able to provide a toll-free telephone number that the consumer may call to receive more information.

Industry commenters were supportive of this proposal. Consumer groups opposed the proposal arguing that consumers tend to miss cross references and that creditors may use the toll-free number to engage in ''hard-sell'' marketing tactics. As the Board discussed in the June 2007 Proposal, given the space and time constraints on radio and television advertisements, disclosing information such as minimum or fixed payments may go unnoticed by consumers or be difficult for them to retain and would therefore not provide a meaningful benefit to consumers. In the Board's view, given the nature of television and radio media, an alternative means of disclosure may be more effective in many cases than requiring all the information currently required to be included in the advertisement. As noted in the June 2007 Proposal, this approach is consistent with the approach taken in the advertising rules for Regulation M. *See* 12 CFR § 213.7(f). Furthermore, a consumer who is interested in the credit product advertised in a radio or television advertisement would likely call for information regardless of whether additional required disclosures (minimum or fixed payments, and annual or membership fees) appear or are stated in the advertisement. Therefore ''hard sell'' marketing tactics could arguably be present whether or not the alternative disclosures are used and may be addressed in some cases by the FTC Telemarketing Sales Rule. 16 CFR part 310.

A similar rule to the one proposed by the Board in the June 2007 Proposal to provide alternative disclosures for television and radio advertisements was adopted in the July 2008 Final HOEPA Rule for home-equity plans as § 226.16(e). 73 FR 44522, July 30, 2008. Therefore, the Board amends § 226.16(e), as adopted under the July 2008 HOEPA Rule, to apply to all other open-end plans. Comments 16(e)–1 and 16(e)–2, as adopted in the July 2008 Final HOEPA Rule, have remained unchanged.

16(f) Misleading Terms

In order to avoid consumer confusion and the uninformed use of credit, the Board proposed § 226.16(g) in June 2007 to restrict use of the term ''fixed'' in advertisements to instances where the rate will not change for any reason. 15 U.S.C. 1601(a), 1604(a). Under the proposal, advertisements would have been prohibited from using the term ''fixed'' or any similar term to describe an APR unless that rate will remain in effect unconditionally until the expiration of any advertised time period. If no time period was advertised, then the term ''fixed'' or any similar term would not have been able to be used unless the rate would remain in effect unconditionally until the plan is closed.

Consumer and consumer group commenters overwhelmingly supported the Board's proposal. Industry commenters that addressed the issue opposed the Board's proposal stating that using the word ''fixed'' when a rate could change is not misleading if all the conditions of the APR are clearly disclosed.

The Board has found through consumer testing conducted prior to the June 2007 Proposal that consumers generally believe a ''fixed'' rate does not change, such as with ''fixed-rate'' mortgage loans. Numerous consumer commenters have also supported this finding. In the consumer testing conducted for the Board prior to the June 2007 Proposal, a significant number of participants did not appear to understand that creditors often reserve the right to increase a ''fixed'' rate upon the occurrence of certain events (such as when a consumer pays late or goes over the credit limit) or for other reasons. Therefore, although creditors often use the term ''fixed'' to describe an APR that is not tied to an index, consumers do not understand the term in this manner. For these reasons, the Board adopts the provision as proposed; however, for organizational purposes, the provision is adopted as § 226.16(f).

One retail industry commenter requested that the restriction on the term ''fixed'' under § 226.16(f) not apply to oral disclosures. The commenter indicated that in a retail environment, a sales associate could, in response to a consumer inquiry about whether a rate is variable, respond that a rate is ''fixed,'' despite the retailer's efforts to train the sales associate not to use the word. The Board declines to provide an exception for oral disclosures to the restriction on the use of the term ''fixed.'' The Board notes, however, that in the situation described by the retail industry commenter above, the sales associate's conversation with the consumer is likely not considered an ''advertisement'' subject to the provisions of § 226.16. Under existing comment 2(a)(2)–1.ii.A., the term ''advertisement'' does not include ''direct personal contacts, * * * or oral or written communication relating to the negotiation of a specific transaction.''

16(g) Promotional Rates

In the June 2007 Proposal, the Board proposed to implement TILA Sections 127(c)(6) and 127(c)(7), as added by Sections 1303(a) and 1304(a) of the Bankruptcy Act, respectively, in § 226.16(e) (which the Board is moving to § 226.16(g) in the final rule for organizational purposes). TILA Section 127(c)(6) requires that if a credit card issuer states an introductory rate in a direct mail credit card application, solicitation, or any of the accompanying promotional materials, the issuer must use the term ''introductory'' clearly and conspicuously in immediate proximity to each mention of the introductory rate. 15 U.S.C. 1637(c)(6). In addition, TILA Section 127(c)(6) requires credit card issuers to disclose, in a prominent location closely proximate to the first mention of the introductory rate, other than the listing of the rate in the table required for credit card applications and solicitations, the time period when the introductory rate expires and the rate that will apply after the introductory rate expires. TILA Section 127(c)(7) further applies these requirements to ''any solicitation to open a credit card account for any person under an open-end consumer credit plan using the Internet or other interactive computer service.'' 15 U.S.C. 1637(c)(7). The Board proposed in the June 2007 Proposal to expand the types of disclosures to which these rules would apply. Among other things, the Board proposed to extend these requirements for the presentation of introductory rates to other written or electronic advertisements for open-end credit plans that may not accompany an application or solicitation (other than advertisements of home-equity plans subject to § 226.5b, which were addressed in the Board's July 2008 Final HOEPA Rule; *see* § 226.16(d)(6)).

In response to concerns from industry commenters that the Board's proposed use of the term ''introductory rate'' and required use of the word ''introductory'' or ''intro'' was overly broad in some cases, the Board proposed in the May 2008 Proposal to revise § 226.16(e)(2) to define ''promotional'' and ''introductory'' rates separately. Conforming revisions to § 226.16(e)(4) and to commentary provisions to § 226.16(e) were also proposed in the May 2008 Proposal. The Board adopts proposed § 226.16(e), with revisions discussed below, and renumbers this paragraph as § 226.16(g) for organizational purposes.

16(g)(1) Scope

The Bankruptcy Act amendments regarding ''introductory'' rates apply to direct mail credit card applications and solicitations, and accompanying promotional materials. 15 U.S.C. 1637(c)(6). The Board proposed to expand these requirements to applications or solicitations to open a credit card account, and all accompanying promotional materials, that are publicly available (''take-ones''). 15 U.S.C. 1601(a); 15 U.S.C. 1604(a); 15 U.S.C. 1637(c)(3)(A). In the June 2007 Proposal, the Board proposed to expand the requirements to electronic applications even though the Bankruptcy Act amendments applied these requirements only to electronic solicitations. 15 U.S.C. 1637(c)(7). Pursuant to its authority under TILA Section 143, the Board also proposed in the June 2007 Proposal to extend some of the introductory rate requirements in Section 1303 of the Bankruptcy Act to other written advertisements for open-end credit plans that may not accompany an application or solicitation, other than advertisements of home-equity plans subject to § 226.5b, in order to promote the informed use of credit. Therefore, the Board proposed that the requirements under § 226.16(g) (proposed as § 226.16(e)) apply to all written or electronic advertisements.

The Board received few comments on expanding the scope of the rules regarding promotional rates in the manner proposed in the June 2007 Proposal, and the comments received supported the proposal. As discussed in the June 2007 Proposal, the Board believes consumers will benefit from these enhanced disclosures and advertisers will benefit from the consistent application of promotional rate requirements for all written and electronic open-end advertisements.

In the May 2008 Proposal, the Board solicited comment on whether all or any of the information required under § 226.16(g) (proposed as § 226.16(e)) to be provided with the disclosure of a promotional rate would be helpful in a non-written, non-electronic context, such as telephone marketing, or radio or television advertisements. The guidance originally proposed in June 2007 on complying with § 226.16(g) (proposed as § 226.16(e)) had addressed written and electronic advertisements.

Consumer group commenters urged the Board to apply the requirements under § 226.16(g) (proposed as § 226.16(e)) to non-written, non-electronic advertisements. Many industry commenters opposed expanding the requirements to non-written, non-electronic advertisements citing the space and time constraints of such media and concern that there would be information overload. Nevertheless, several industry commenters suggested that if the Board did decide to expand the requirements to non-written, non-electronic advertisements, the Board should provide flexibility in how the required disclosures may be made. Some industry commenters recommended that the alternative method of disclosure available to television and radio advertisements for disclosing triggered terms under § 226.16(b)(1), as would be permitted under § 226.16(e), should be available for promotional rate disclosures.

Current comment 16(b)–6, which the Board had proposed to delete in the June 2007 Proposal as duplicative of the requirements under § 226.16(g) (proposed as § 226.16(e)), requires advertisements that state a ''discounted variable rate'' to include ''the initial rate (with the statement of how long it will remain in effect) and the current indexed rate (with the statement that this second rate may vary).'' The requirement applies to all advertisements, regardless of media. Because current comment 16(b)–6 imposes requirements similar, though not identical, to those required in § 226.16(g) (proposed as § 226.16(e)) to non-written, non-electronic advertisements, the Board believes that the requirements of § 226.16(g) (proposed as § 226.16(e)) should also apply to such advertisements. Therefore, § 226.16(g)(1) has been amended to apply to any advertisement, and current comment 16(b)–6 has been deleted as proposed. However, as further discussed in the section-by-section analysis to comment 16–2.ii above and § 226.16(g)(4) below, the Board is providing flexibility in how the required information may be presented in a non-written, non-electronic context.

Finally, one industry commenter noted that the term ''consumer credit card account,'' as used in § 226.16(g), is not defined. The commenter suggested that the Board either define ''consumer credit card account'' specifically to exclude home equity lines of credit subject to § 226.5b or replace the term with the phrase ''open-end plan not subject to § 226.5b.'' To address this concern, the Board is clarifying in § 226.16(g)(1) that the requirements of § 226.16(g) apply to any ''open-end (not home-secured) plan,'' as proposed in June 2007. A similar change has been made to the definition of ''promotional rate'' in § 226.16(g)(2). As discussed in the June 2007 Proposal, the Board did not intend to cover advertisements of open-end, home-secured plans subject to § 226.5b, but did intend to cover advertisements of all open-end plans that are not home-secured under these requirements.

16(g)(2) Definitions

In the June 2007 Proposal, the Board proposed to define the term ''introductory rate'' as any rate of interest applicable to an open-end plan for an introductory period if that rate is less than the advertised APR that will apply at the end of the introductory period. In addition, the Board defined an ''introductory period'' as ''the maximum time period for which the introductory rate may be applicable.'' In response to the June 2007 Proposal, several industry commenters were critical of the use of these terms as applied to special rates offered to consumers with an existing account. Commenters noted that the phrase ''introductory rate'' commonly refers to promotional rates offered in connection with the opening of a new account only. Commenters also noted the use of the term ''advertised'' in the definition of ''introductory rate'' might imply that the APR in effect after the introductory period would have to be ''advertised'' before the requirements under § 226.16(e)(3) and (e)(4) in the June 2007 Proposal would apply.

Since the Board's June 2007 proposed definition for ''introductory rate'' would have encompassed special rates that may be offered to consumers with existing accounts, the Board proposed in May 2008 to refer to these rates more broadly as ''promotional rates.'' The May 2008 Proposal would have defined the term ''promotional rates'' to include any APR applicable to one or more balances or transactions on a consumer credit card account for a specified period of time that is lower than the APR that will be in effect at the end of that period. In addition, consistent with definitions proposed by the Board and other federal banking agencies in May 2008, the proposed definition under § 226.16(g) (proposed as § 226.16(e)) also would have included any rate of interest applicable to one or more transactions on a consumer credit card account that is lower than the APR that applies to other transactions of the same type. This definition was meant to capture ''life of balance'' offers where a special rate is offered on a particular balance for as long as any portion of that balance exists. Proposed comment 16(e)–2 would have provided an illustrative example of a ''life of balance'' offer similar to a comment proposed by the Board and other federal banking agencies in May 2008. 73 FR 28904, May 19, 2008.

Furthermore, the definition proposed in May 2008 would have removed the term ''advertised'' from the definition, as commenters asserted this would imply that the APR in effect after the introductory period had to have been ''advertised'' before the requirements under § 226.16(g)(3) and (g)(4) (proposed as § 226.16(e)(3) and (e)(4)) would have applied. This was not the Board's intention. The use of the term ''advertised'' in the June 2007 proposed definition was intended to refer to the advertising requirements regarding variable rates and the accuracy requirements for such rates. The May 2008 Proposal would have addressed these requirements in a new comment 16(e)–1.

Comment 16(e)–1, as proposed in May 2008, provided that if a variable rate will apply at the end of the promotional period, the post-promotional rate is the rate that would have applied at the time the promotional rate was advertised if the promotional rate had not been offered. In direct mail credit card applications and solicitations (and accompanying promotional materials), this rate is one that must have been in effect within 60 days before the date of mailing, as required under proposed § 226.5a(c)(2)(i) (and currently under § 226.5a(b)(1)(ii)). For variable-rate disclosures provided by electronic communication, this rate is one that was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address, or within the last 30 days of making it available at another location such as a card issuer's Web site, as required under proposed § 226.5a(c)(2)(ii) (and currently under § 226.5a(b)(1)(iii)).

The Board also proposed a new definition for ''introductory rate'' to conform more closely to how the term is most commonly used. Section 226.16(e)(2)(ii) in the May 2008 Proposal defined ''introductory rate'' as a promotional rate that is offered in connection with the opening of an account. As a result of the proposal, only ''introductory rates'' (and not other promotional rates) would have been subject to the requirement in § 226.16(e)(3) to state the term ''introductory'' in immediate proximity to the rate.

Commenters were generally supportive of providing separate definitions for ''promotional'' rates as distinguished from ''introductory'' rates. Several industry commenters, however, suggested that the Board's definition for ''promotional rate'' may be overbroad and cause certain rates that are not traditionally categorized as ''promotional rates'' to be considered ''promotional rates.'' These commenters provided similar comments to rules proposed by the Board and other federal banking agencies in May 2008, in which a similar definition was proposed for ''promotional rate.'' Some of these commenters also suggested specific language changes to the Board's proposed definition.

Based on these comments, the Board is adopting the definition of ''introductory rate'' as proposed in the May 2008 Proposal, renumbered as § 226.16(g)(2)(ii), and amending the definition of ''promotional rate,'' which has been renumbered as § 226.16(g)(2)(i). Specifically, the Board is inserting in the definition of ''promotional rate'' the phrase ''on such balances or transactions,'' to address commenters' concerns about the breadth of the definition by clarifying to which balances and transactions the rate that will be in effect after the end of the promotional period applies. In addition, the Board is replacing the phrase ''consumer credit card account'' in the definition with ''open-end (not home-secured) plan'' to be consistent with the scope of the requirements as set forth in § 226.16(g)(1) and as discussed in the supplementary information to § 226.16(g)(1). The Board is also adopting comment 16(e)–1, as proposed, renumbered as comment 16(g)–2.

In addition, the Board is deleting the provision in the definition of ''promotional rate'' that was meant to capture life-of-balance offers, as well as proposed comment 16(e)–2 from the May 2008 Proposal, which would have provided an illustrative example of a life-of-balance offer. The Board had included the provision in the May 2008 Proposal in order to be consistent with the definition of ''promotional rate'' in rules proposed by the Board and other federal banking agencies in May 2008. Since the advertising disclosure requirements the Board had proposed relating to promotional rates would generally not apply for life-of-balance offers, the Board had proposed in May 2008 to exempt life-of-balance offers from many of these requirements. See proposed § 226.16(e)(2)(i)(B) and (e)(4) in the May 2008 Proposal. As a result, the only requirement under the advertising rules for promotional rates to which life-of-balance offers were subject under the proposal was the requirement to state the term ''introductory'' within immediate proximity of the rate. The Board believes this requirement would not be especially helpful to consumers for offers where the rate would not change for the life of the balance except on default. Since the minimal benefit to consumers does not seem to warrant the burden on advertisers of distinguishing what types of offers fit the definition, the Board has decided instead to eliminate life-of-balance offers from the definition of ''promotional rate'' for ease of compliance.

Moreover, the Board believes that further amendments suggested by commenters to the definition of ''promotional rate'' are unnecessary. In particular, some industry commenters recommended adding the concept of a ''standard'' rate in the definition. The Board believes that inserting this concept in the definition may generate further confusion instead of providing clarity since there may not be consensus on what would be considered a ''standard'' rate among all issuers. Furthermore, with respect to some of the examples commenters provided to illustrate why they thought the May 2008 proposed definition was overbroad, the definition of ''promotional rate'' as proposed would likely not cover these examples. For example, one industry commenter stated that a standard rate could be considered a ''promotional rate'' when the rate that will be ''in effect'' is a penalty rate. Pursuant to the definition of ''promotional rate,'' that standard rate would have to be in effect for a specified period of time before the penalty rate applies in order to be considered a ''promotional rate.'' Typically, penalty rates are applied upon the occurrence of a specific event or action by the consumer rather than the passage of a specified time period. As a result, this type of standard rate would not have been considered a ''promotional rate'' under the proposal, and similarly is not a ''promotional rate'' under the final rule.

The Board also proposed to define ''promotional period'' in § 226.16(e)(2)(iii) in the May 2008 Proposal. The definition proposed in May 2008 was similar to one previously proposed for ''introductory period'' in the June 2007 Proposal, consistent with the definition in TILA Section 127(c)(6)(D)(ii). No comments were received on this definition, and § 226.16(e)(2)(iii) is adopted as proposed and renumbered as § 226.16(g)(2)(iii).

16(g)(3) Stating the Term ''Introductory''

The Board proposed in the June 2007 Proposal to implement TILA Section 127(c)(6)(A), as added by section 1303(a) of the Bankruptcy Act, in § 226.16(e)(3) (which the Board moves to § 226.16(g)(3) for organizational purposes). TILA Section 127(c)(6)(A) requires the term ''introductory'' to be used in immediate proximity to each listing of the temporary APR in the application, solicitation, or promotional materials accompanying such application or solicitation. 15 U.S.C. 1637(c)(6)(A).

Requirement. As discussed above, industry commenters expressed concern about requiring use of the word ''introductory'' to describe special rates offered to consumers with an existing account. However, with the revised definition of ''introductory rate'' under § 226.16(g)(2) (proposed as § 226.16(e)(2)), as discussed above, only promotional rates offered in connection with the opening of an account would be covered under § 226.16(g)(3), which the Board believes addresses commenters' concerns.

Some industry commenters also requested that the Board clarify that the term ''introductory'' be used only in relation to rates that are available *exclusively* to new customers. These commenters believe that advertisements that state a rate that is offered to both new and existing customers should not be required to be labeled as ''introductory.'' Alternatively, one industry commenter suggested that the Board allow advertisers to choose whether to label a rate as ''introductory'' or ''promotional'' if an advertisement applies to both new and existing accounts. The Board notes that there is no requirement to use the term ''promotional'' with respect to a promotional rate stated in an advertisement. The Board believes that there are several terms that may be used to convey the concept of a promotional rate to existing customers, and flexibility should be provided to advertisers. Consistent with the requirements of TILA Section 127(c)(6)(A), however, the Board believes that as long as the rate offered in an advertisement could be considered an ''introductory rate,'' the term ''introductory'' must be used. Therefore, the Board declines to amend § 226.16(g)(3) (proposed as § 226.16(e)(3)) to apply only to rates advertised exclusively to new customers or to permit advertisers to choose whether to label a rate as ''introductory'' if an advertisement applies to both new and existing accounts.

Abbreviation. The Board proposed in the June 2007 Proposal to allow advertisers to use the word ''intro'' as an alternative to the requirement to use the term ''introductory.'' Commenters supported the Board's proposal, and the final rule adopts § 226.16(g)(3) (proposed as § 226.16(e)(3)) as proposed consistent with the Board's authority under TILA Section 105(a) to facilitate compliance with TILA, with minor technical amendments.

Immediate proximity. In the June 2007 Proposal, the Board proposed to provide a safe harbor for creditors that place the word ''introductory'' or ''intro'' within the same phrase as each listing of the introductory rate. One consumer group commenter suggested that the word ''introductory'' be adjacent to or immediately before or after the introductory rate. However, as discussed in the June 2007 Proposal, the Board believes that interpreting ''immediate proximity'' to mean adjacent to the rate may be too restrictive and would effectively ban phrases such as ''introductory balance transfer rate X percent.'' Therefore, the guidance in comment 16(g)–2 (proposed as comment 16(e)–2 in the June 2007 Proposal and comment 16(e)–3 in the May 2008 Proposal) is adopted as proposed, with minor technical amendments.

16(g)(4) Stating the Promotional Period and Post-Promotional Rate

The Board proposed § 226.16(e)(4) in the June 2007 Proposal to implement TILA Section 127(c)(6)(A), as added by Section 1303(a) of the Bankruptcy Act. TILA Section 127(c)(6)(A) requires that the time period in which the introductory period will end and the APR that will apply after the end of the introductory period be listed in a clear and conspicuous manner in a ''prominent location closely proximate to the first listing'' of the introductory APR (excluding disclosures in the application and solicitation table). 15 U.S.C. 1637(c)(6)(A).

Prominent location closely proximate. In the June 2007 Proposal, the Board proposed that placing the time period in which the promotional period will end and the APR that will apply after the end of the promotional period in the same paragraph as the first listing of the promotional rate would be deemed to be in a ''prominent location closely proximate'' to the listing. As discussed in the June 2007 Proposal, the Board proposed a safe harbor in interpreting ''prominent location closely proximate.'' In addition, the Board proposed that placing this information in footnotes would not be a prominent location closely proximate to the listing.

The Board received few comments on this proposal. Consumer groups strongly opposed the Board's safe harbor. Instead, the commenters suggested that if the Board used a safe harbor approach, the safe harbor should be either ''side-by-side with or immediately under or above the rate.'' One industry commenter suggested that it would be sufficient to disclose the promotional period and the post-promotional rate in the text of the offer.

As the Board reasoned in the June 2007 Proposal, Congress's use of the term ''closely proximate'' may be distinguished from its use of the term ''immediate proximity.'' Therefore, the Board believes that guidance on the meaning of ''prominent location closely proximate'' should be more flexible than the guidance given for the meaning of ''immediate proximity'' in comment 16(g)–2 (proposed as comment 16(e)–2 in the June 2007 Proposal and comment 16(e)–3 in the May 2008 Proposal) discussed above. In the Board's view, ''side-by-side with or immediately under or above the rate'' is little different from the guidance the Board has in place for ''immediate proximity.'' Requiring terms to be in the same paragraph, on the other hand, gives advertisers flexibility but ensures that the terms are fairly close to the promotional rate. The Board believes that concerns that paragraphs will be so long as to bury the information may be misplaced. Above all, advertisements are intended to capture consumers' interest in the advertised product or service, and long, dense paragraphs are often eschewed in the advertising context. As a result, the Board adopts the safe harbor in comment 16(g)–3 (proposed as comment 16(e)–3 in the June 2007 Proposal and comment 16(e)–4 in the May 2008 Proposal), as proposed, with minor technical amendments.

First listing. In the June 2007 Proposal, the Board provided guidance on determining which listing of a promotional rate should be considered the ''first listing'' other than the rate provided in the table required on or with credit card applications or solicitations. The Board proposed in June 2007 that for a multi-page mailing or application or solicitation package, the first listing is the most prominent listing on the front of the first page of the ''principal promotional document'' in the package. The ''principal promotional document'' is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. This definition is consistent with the FTC's definition of the term in its regulations related to the FCRA. 16 CFR § 642.2(b). If the introductory rate does not appear in the principal promotional document but appears in another document in the package or there is no principal promotional document, then the requirements would have applied to each separate document that lists the promotional rate. In determining which listing is the ''most prominent,'' the Board proposed a safe harbor for the listing with the largest type size.

The Board received few comments on the proposal. Consumer group commenters supported the Board's proposal but suggested that the requirements should apply to each document in a mailing regardless of whether or not the promotional rate appears on the principal promotional document. As the Board noted in the June 2007 Proposal, the Board's consumer testing efforts suggest that consumers are most likely to read the principal promotional document. The Board believes that applying the requirement to each document in a mailing/package would be overly burdensome and unnecessary if the consumer will already have seen the promotional rate in the principal promotional document. As provided in the comment, however, if the promotional rate does not appear in the principal promotional document or there is no principal promotional document, the requirements apply to the first listing of the promotional rate in each document in the package containing the promotional rate as it is not clear which document the consumer will read first in such circumstances.

One industry commenter also suggested that there may be times when a promotional rate is not listed on the front of the first page of a document. In those cases, the Board believes that the first listing should be the most prominent listing in the subsequent pages of the document. Therefore, the Board adopts comment 16(g)–4 (previously proposed as comment 16(e)–4 in the June 2007 Proposal and comment 16(e)–5 in the May 2008 Proposal), largely as proposed with modifications to account for instances when a promotional rate may not appear on the front of the first page of a principal promotional document or other document. Technical changes are also made to clarify that the comment applies solely to written or electronic advertisements.

Post-promotional rate. In the June 2007 Proposal, the Board proposed that a range of rates may be listed as the rate that will apply after the promotional period if the specific rate for which the consumer will qualify will depend on later determinations of a consumer's creditworthiness. This approach is consistent with the guidance the Board proposed for listing the APR in the table required for credit card applications and solicitations under § 226.5a(b)(1)(v). In addition, the Board solicited comment on whether advertisers alternatively should be able to list only the highest rate that may apply instead of a range of rates. For example, if there are three rates that may apply (9.99 percent, 12.99 percent or 17.99 percent), instead of disclosing three rates (9.99 percent, 12.99 percent or 17.99 percent) or a range of rates (9.99 percent to 17.99 percent), the Board asked whether card issuers should be permitted to provide only the highest rate (up to 17.99 percent).

Most of the comments the Board received regarding the permissibility of disclosing a range of rates were focused on the proposed rule under § 226.5a(b)(1)(v) rather than the corresponding proposed provision under the advertising rules. As discussed in the section-by-section analysis to § 226.5a(b)(1)(v), the Board declines to allow creditors to list only the highest rate that may apply instead of a range of rates for all applicable rates other than the penalty rate. For the reasons set forth in the supplementary information to § 226.5a(b)(1)(v), the Board also declines to allow advertisers to list only the highest rate that may apply instead of a range of rates, and comment 16(g)–5 (proposed as comment 16(e)–5 in the June 2007 Proposal and 16(e)–6 in the May 2008 Proposal) is adopted as proposed. In addition, the Board received one industry comment suggesting that when a range is given, the advertisement must state that the rates are based on creditworthiness as required for applications and solicitations under § 226.5a(b)(1)(v). The final rule does not adopt this suggestion as the Board believes that consumers will see this statement in an application or solicitation, so it is not necessary to include it in an advertisement.

Life-of-balance offers. In May 2008, the Board proposed to exempt life-of-balance promotional offers from the requirement to state when the promotional rate will end and the APR that will apply thereafter. *See* proposed § 226.16(e)(2)(i)(B) and (e)(4). The Board recognized that requiring disclosure of when the promotional rate will end and the post-promotional rate that will apply after the end of the promotional period would not be appropriate for these types of offers since the rate in effect for such offers lasts as long as the balance is in existence. Since the final rule excludes life-of-balance offers from the definition of ''promotional rate,'' as discussed in the supplementary information to § 226.16(g)(2) above, the exception is no longer necessary, and § 226.16(g)(4) (proposed as § 226.16(e)(4) in the May 2008 Proposal) has been revised, as appropriate.

Non-written, non-electronic advertisements. As discussed above in the section-by-section analysis to § 226.16(g)(1), the Board is expanding the requirements of § 226.16(g) (proposed as § 226.16(e)) to non-written, non-electronic advertisements. The Board, however, recognizes that for non-written, non-electronic advertisements, such as telephone marketing, radio and television advertisements, there are unique challenges in presenting information to consumers because of the space and time constraints of such media. Therefore, the final rule amends § 226.16(g)(4) to provide flexibility in how the required information may be presented in non-written, non-electronic advertisements. Specifically, for non-written, non-electronic advertisements, § 226.16(g)(4) does not impose any specific proximity or formatting requirements other than the general requirement that information be clear and conspicuous, as contemplated under comment 16–1.

16(g)(5) Envelope Excluded

TILA Section 127(c)(6)(B), as added by Section 1303(a) of the Bankruptcy Act, specifically excludes envelopes or other enclosures in which an application or solicitation to open a credit card account is mailed from the requirements of TILA Section 127(c)(6)(A)(ii) and (iii). 15 U.S.C. 1637(c)(6)(B). In the June 2007 Proposal, the Board set forth this provision in proposed § 226.16(e)(5). Furthermore, the Board proposed also to exclude banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation.

Consumer group commenters disagreed with the Board's proposal to extend the exception to banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation. As discussed in the June 2007 Proposal, the Board extended the exception because of the similarity of these approaches to envelopes or other enclosures in the direct mail context. One industry commenter agreed with the Board's proposal to exclude banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation, but also suggested that the Board provide flexibility for other marketing channels where an initial summary advertisement is used to alert customers to an offer or prompt further inquiry about the details of an offer, such as transportation and terminal posters, roadside and merchant billboards or signs, and take-one application display stands. The Board declines to extend the exception in the manner suggested. Unlike envelopes and banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation, these other approaches are stand-alone in nature and are not connected to an advertising piece that contains detailed information on the promotional rate. As a result, the Board adopts § 226.16(g)(5) (proposed as § 226.16(e)(5)) as proposed.

Appendix E—Rules for Card Issuers That Bill on a Transaction-by-Transaction Basis

Appendix E to part 226 applies to card programs in which the card issuer and the seller are the same or related persons; no finance charge is imposed; cardholders are billed in full for each use of the card on a transaction-by-transaction basis; and no cumulative account is maintained reflecting transactions during a period of time such as a month. At the time the provisions now constituting Appendix E to part 226 were added to the regulation, they were intended to address card programs offered by automobile rental companies.

Appendix E to part 226 specifies the provisions of Regulation Z that apply to credit card programs covered by the Appendix. For example, for the account-opening disclosures under § 226.6, the required disclosures are limited to penalty charges such as late charges, and to a disclosure of billing error rights and of any security interest. For the periodic statement disclosures under § 226.7, the required disclosures are limited to identification of transactions and an address for notifying the card issuer of billing errors. Further, since under Appendix E to part 226 card issuers do not issue periodic statements of account activity, Appendix E to part 226 provides that these disclosures may be made on the invoice or statement sent to the consumer for each transaction. In general, the disclosures that this category of card issuers need not provide are those that are clearly inapplicable, either because the disclosures relate to finance charges, are based on a system in which periodic statements are generated, or apply to three-party credit cards (such as bank-issued credit cards).

In the June 2007 Proposal, the Board proposed to revise Appendix E to part 226 by inserting material explaining what is meant by ''related persons.'' In addition, technical changes were proposed, including numbering the paragraphs within the Appendix and changing cross references to conform to the renumbering of other provisions of Regulation Z.

The Board solicited comment on whether Appendix E to part 226 should be revised to specify that the disclosures required under § 226.5a apply to card programs covered by the Appendix, as well as on whether any other provisions of Regulation Z not currently specified in Appendix E to part 226 as applicable to transaction-by-transaction card issuers should be specified as being applicable. Comment was also requested on whether any provisions currently specified as being applicable should be deleted.

No comments were received on Appendix E to part 226. Therefore, the proposed changes are adopted in the final rule (with further technical changes, such as to conform cross references to other sections).

Appendix F—Optional Annual Percentage Rate Computations for Creditors Offering Open-End Plans Subject to the Requirements of § 226.5b

Appendix F to part 226 provides guidance regarding the computation of the effective APR in situations where the finance charge imposed during a billing cycle includes a transaction charge, such as a balance transfer fee or a cash advance fee. In the June 2007 Proposal, the Board did not propose changes to Appendix F to part 226 except to move the substance of footnote 1 to Appendix F to the text of the Appendix. In addition, a cross reference to proposed comment 14(d)(3)–3 would have been added to the staff commentary to Appendix F to part 226. The guidance in Appendix F to part 226 would have continued to apply to either proposed § 226.14(c)(3) (covering HELOCs) or proposed § 226.14(d)(3) (covering open-end (not home-secured) credit). As discussed above, since the Board has eliminated the requirement to disclose the effective APR, proposed § 226.14(d)(3) is not being adopted, and compliance with § 226.14(c)(3) is optional for HELOC creditors, under the final rule. The guidance in Appendix F to part 226 therefore applies to HELOC creditors that choose to calculate and disclose an effective APR under § 226.14(c)(3). The Appendix is retitled to reflect more accurately its scope.

No comments were received on Appendix F to part 226. The changes to Appendix F to part 226 are adopted as proposed, except the cross references in the Appendix F commentary are revised to conform to the final changes to § 226.14.

Appendix G—Open-End Model Forms and Clauses; Appendix H—Closed-End Model Forms and Clauses

Appendices G and H to part 226 set forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z. Appendix G to part 226 contains model forms, model clauses and sample forms applicable to open-end plans. Appendix H to part 226 contains model forms, model clauses and sample forms applicable to closed-end loans. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. As discussed above, the Board proposed in June 2007 and May 2008 to add or revise several model and sample forms to Appendix G to part 226. The new or revised model and samples forms are discussed above in the section-by-section analysis applicable to the regulatory provisions to which the forms relate. See section-by-section analysis to §§ 226.4(d)(3), 226.5a(b), 226.6(a)(5) and (b)(7), 226.6(b)(1), (b)(2) and (b)(5), 226.7(b), 226.9(a), 226.9(b), 226.9(c), 226.9(g), and 226.12(b). In addition, the Board proposed to add a new model clause and sample form relating to debt suspension coverage in Appendix H to part 226. These forms are discussed above in the section-by-section analysis to § 226.4(d)(3).

In Appendix G to part 226, all the existing forms applicable to HELOCs have been retained without revision, with three exceptions, discussed below. These changes are permissive and do not require HELOC creditors to revise any existing form. The Board anticipates considering revisions to HELOC forms when it reviews the home-equity disclosure requirements in Regulation Z.

The Board revises or adds commentary to the model and sample forms in Appendix G to part 226, as discussed below. Furthermore, as discussed in the general discussion on the effective APR in the section-by-section analysis to § 226.7(b), the Board is not adopting proposed Sample G–18(B). Therefore, several forms and samples sequentially following proposed Sample G–18(B) have been renumbered accordingly.

Permissible changes to the model and sample forms. The commentary to Appendices G and H to part 226 currently states that creditors may make certain changes in the format and content of the model forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. *See* comment app. G and H–1. As discussed above, the Board has adopted format requirements with respect to certain disclosures applicable to open-end (not home-secured) plans, such as a tabular requirement for certain account-opening disclosures and certain change-in-terms disclosures. *See* § 226.5(a)(3). In addition, the Board is revising certain model forms to improve their readability. *See* G–2(A), G–3(A) and G–4(A). Thus, the Board amends comment app. G and H–1, as proposed in June 2007, to indicate that formatting changes may not be made to certain model and sample forms in Appendix G to part 226.

In a technical revision, the Board deletes comment app. G and H–1.vii. as obsolete, as proposed in June 2007. This comment allows a creditor to substitute appropriate references, such as ''bank,'' ''we'' or a specific name, for ''creditor'' in the account-opening disclosures, but none of the model or sample forms applicable to the account-opening disclosures uses the term ''creditor.'' Current comment app. G and H–1.viii. has been renumbered as comment app. G and H–1.vii.

Model clauses for balance computation methods. Currently and under the June 2007 Proposal, creditors are required to explain the method used to determine the balance to which rates are applied. See current § 226.6(a) and proposed § 226.6(a)(1)(iii) and (b)(2)(i)(D). Model Clauses that explain commonly used methods, such as the average daily balance method, are at Appendix G–1 to part 226.

The Model Clauses at Appendix G–1 to part 226 were republished without change in the June 2007 Proposal. The Board requested comment on whether model clauses for methods such as the ''previous balance'' or ''adjusted balance'' method should be eliminated because they are no longer used. Few commenters addressed the issue. Those that did recommended retaining the existing clauses, and two commenters asked the Board to add a model clause explaining the daily balance method.

In May 2008, the Board proposed to add a new paragraph (f) to describe a daily balance method in Appendix G–1 to part 226. In addition, a new Appendix G–1(A) to part 226 was proposed for open-end (not home-secured) plans. The clauses in Appendix G–1(A) to part 226 refer to ''interest charges'' rather than ''finance charges'' to explain balance computation methods. The consumer testing conducted for the Board prior to the June 2007 Proposal indicated that consumers generally had a better understanding of ''interest charge'' than ''finance charge,'' which is reflected in the Board's use of ''interest'' (rather than ''finance charge'') in account-opening samples and to describe costs other than fees on periodic statement samples and forms under the June 2007 Proposal. *See* proposed Samples G–17(B) and G–17(C), Sample G–18(A), and Forms G–18(G) and G–18(H). Comment app. G–1 was proposed to be revised in May 2008 to clarify that for HELOCs subject to § 226.5b, creditors may properly use the model clauses in either Appendix G–1 or G–1(A). The Board is adopting a new paragraph (f) to describe a daily balance method in Model Clauses G–1, a new Model Clauses G–1(A), and accompanying commentary, as proposed in May 2008.

Model clauses for notice of liability for unauthorized use and billing-error *rights*. Currently, Appendix G contains Model Clause G–2 which provides a model clause for the notice of liability for unauthorized use of a credit card. In June 2007, the Board proposed to revise Model Clause G–2 to improve its readability, proposed as Model Clause G–2(A) for open-end (not home-secured) plans. In addition, Appendix G currently includes Model Forms G–3 and G–4, which contain models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing-error rights statement (for use with each periodic statement), respectively. Like with Model Clause G–2, the Board proposed to revise Model Forms G–3 and G–4 to improve readability, proposed as Model Form G–3(A) and G–4(A) for open-end (not home-secured) plans. The Board adopts Model Clause G–2(A) and Model Forms G–3(A) and G–4(A), as proposed, with revisions noted below. For HELOCs subject to § 226.5b, at the creditor's option, a creditor either may use the current forms (G–2, G–3, and G–4) or the revised forms (G–2(A), 3(A) and 4(A)). For open-end (not home-secured) plans, creditors may use G–2(A), 3(A) and 4(A). *See* comments app. G–2 and –3.

As stated above, Model Clause G–2 and Model Forms G–3 and G–4 are adopted without revision, except for optional language creditors may use when instructing consumers on how to contact the creditor by electronic communication, such as via the Internet. The same instructions are contained in Model Clause G–2(A) and Model Forms G–3(A) and G–4(A). Technical changes have also been made for clarity without intended substantive change, in response to comments received. *See* section-by-section analysis to § 226.9(a).

Model and sample forms applicable to disclosures for credit card applications and solicitations and account-opening disclosures. Currently, Appendix G contains several model forms related to the credit card application and solicitation disclosures required by § 226.5a. Current Model Form G–10(A) illustrates, in the tabular format, the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Current Sample G–10(B) is a sample disclosure illustrating an account with a lower introductory rate and a penalty rate. The June 2007 Proposal would have substantially revised Model Form G–10(A) and Sample G–10(B) to reflect the proposed changes to § 226.5a, as discussed in the section-by-section analysis to § 226.5a. In addition, Sample G–10(C) would have been added to provide another example of how certain disclosures required by § 226.5a may be given. Current Model Form G–10(C) illustrating the tabular format disclosures for charge card applications and solicitations would have been moved to G–10(D) and revised. The Board proposed to add Sample G–10(E) to provide an example of how certain disclosures in § 226.5a applicable to charge card applications and solicitations may be given.

In addition, the June 2007 Proposal would have added a model form and two sample forms to illustrate, in the tabular format, the disclosures required under § 226.6(b)(2) for account-opening disclosures. *See* proposed Model G–17(A) and Samples G–17(B) and G–17(C). In the May 2008 Proposal, the Board proposed to add Sample G–17(D) to illustrate, in the tabular format, the disclosures required for account-opening disclosures for open-end plans such as a line of credit or an overdraft plan.

In the June 2007 Proposal, the Board also proposed to revise the existing commentary that provides guidance to creditors on how to use Model Forms and Samples G–10(A)–(E) and G–17(A)–(C). Currently, the commentary indicates that the disclosures required by § 226.5a may be arranged horizontally (where headings are at the top of the page) or vertically (where headings run down the page, as is shown in the Model Forms G–10(A), G–10(D) and G–17(A)) and need not be highlighted aside from being included in the table. The Board proposed to delete this guidance and instead require that the table for credit card application and solicitation disclosures and account-opening disclosures be presented in the format shown in proposed Model Forms G–10(A), G–10(D) and G–17(A), where a vertical format is used. In addition, the Board proposed to delete the provision that disclosures in the tables need not be highlighted aside from being included in the table, as inconsistent with the proposed requirement that creditors must include certain rates and fees in the tables in bold text. *See* proposed §§ 226.5a(a)(2)(iv) and 226.6(b)(4)(i)(C) in the June 2007 Proposal.

In response to the June 2007 Proposal, several industry commenters requested that the Board continue to allow the horizontal format (where headings are at the top of the page) to allow issuers flexibility in how to design the format of the table. The final rule requires that the table for credit card application and solicitation disclosures and account-opening disclosures be presented in the format shown in proposed Model Forms G–10(A), G–10(D) and G–17(A), where a vertical format is used. The Board continues to believe that horizontal formats would be difficult for consumers to read, given the information that is required to be disclosed in the table.

In addition, Model Form G–10(A), applicable to credit card applications and solicitations, currently uses the heading ''Minimum Finance Charge'' for disclosing a minimum finance charge under § 226.5a(b)(3). In the June 2007 Proposal, the Board proposed to amend Model Form G–10(A) to provide two alternative headings (''Minimum Interest Charge'' and ''Minimum Charge'') for disclosing a minimum finance charge under § 226.5a(b)(3). The same two headings were proposed for Model Form G–17(A), the model form for the account-opening table. In the consumer testing conducted for the Board prior to the June 2007 Proposal, many participants did not understand the term ''finance charge'' in this context. The term ''interest'' was more familiar to many participants. Under the June 2007 Proposal, if a creditor imposes a minimum finance charge in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor would have been required to disclose this charge under the heading ''Minimum Interest Charge.'' The final rule adopts this guidance as proposed. Under the final rules, other minimum and fixed finance charges are required to be disclosed under the heading ''Minimum Charge.''

Also, under the June 2007 Proposal, Model Forms G–10(A), G–10(D) and G–17(A) would have contained two alternative headings (''Annual Fees'' and ''Set-up and Maintenance Fees'') for disclosing fees for issuance or availability of credit under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A). The Board proposed to provide guidance on when a creditor would have been required to use each heading. Under the proposal, if the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) is an annual fee, a creditor would have been required to use the heading ''Annual Fee'' to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) other than, or in addition to, an annual fee, the creditor would have been required to use the heading ''Set-up and Maintenance Fees'' to disclose fees for issuance or availability of credit, including the annual fee. The final rule adopts this guidance as proposed, although the reference to the account-opening disclosure requirement has been renumbered as § 226.6(b)(2)(ii).

In the June 2007 Proposal, the Board also proposed to revise the commentary to provide details about proposed Sample Forms G–10(B), G–10(C), G–17(B) and G–17(C) for credit card application and solicitation disclosures and account-opening disclosures. (The guidance also would apply to Sample Form G–17(D), proposed in May 2008 for open-end (not home-secured) plans not accessed by credit cards.) For example, the proposed commentary indicated that Samples G–10(B), G–10(C), G–17(B) and G–17(C) were designed to be printed on an 8x14 inch sheet of paper. In addition, the following formatting techniques were used in presenting the information in the table to ensure that the information was readable:

1. A readable font style and font size (10-point Arial font style, except for the purchase APR which is shown in 16-point type).
2. Sufficient spacing between lines of the text. That is, words were not compressed to appear smaller than 10-point type.
3. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. For example, in the samples, in the row of the tables with the heading ''APR for Balance Transfers,'' the forms disclose three components: (a) the applicable balance transfer rate, (b) a cross reference to the balance transfer fee, and (c) a notice about payment allocation. The samples show these three components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late payment fee, the form discloses two components: (a) the late-payment fee, and (b) the cross reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the table.
4. Standard spacing between words and characters.
5. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.
6. Sufficient contrast between the text and the background. Black text was used on white paper.

The proposed guidance stated that while the Board is not requiring issuers to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font size), the Board encouraged issuers to consider these techniques when disclosing information in the table, to ensure that the information is presented in a readable format.

In response to the June 2007 Proposal, several industry commenters suggested that the Board explicitly state that the table is not required to be presented on a particular size of paper, such as an 8½ x 14 inch legal-size paper. In addition, one industry commenter suggested that the Board explicitly allow the table to appear on more than one page as long as the information appears consecutively without any other information interspersed and if it takes more than one page, that there is a reference to where the remainder of the table can be found.

In quantitative consumer testing conducted for the Board in the fall of 2008, some participants were shown forms of the table required pursuant to § 226.5a on which all required content was presented on one side of a single page; other participants were shown a form in which the table appeared on two pages, specifically where a portion of the row for penalty fees was disclosed on a second page. The testing showed that participants were less able to locate a fee when it was disclosed on the second page than when it was disclosed on the first page. Based on this testing result, the Board considered whether to require creditors to disclose the table on 8½ x 14 inch paper if the table would not fit in its entirety on one side of a sheet of 8½ x 11 inch paper. However, the Board is not requiring use of 8½ x 14 inch paper. The Board recognizes that even if the use of 8½ x 14 inch paper were mandatory for tables that will not fit on one side of one sheet of 8½ by 11 inch paper, it would still not guarantee that the table would always fit on one side of one sheet of paper. However, the Board encourages creditors, when possible, to present all information in the table on one side of one sheet of paper.

Comment app. G–5.v has been revised to expressly state that if the disclosures required under §§ 226.5a and 226.6 are not provided on a single side of a sheet of paper, the creditor must include a reference or references, such as ''SEE BACK OF PAGE for more important information about your account.'' to indicate that the table continues onto an additional page or pages. The comment further states that a creditor that splits the table onto two or more pages must disclose the table on consecutive pages and may not include any intervening information between portions of the table.

In addition, in response to the June 2007 Proposal, several industry commenters suggested that the Board allow issuers to disclose the APRs for purchases, cash advances and balance transfers in the same row in the table, if the issuer charges the same APR for each of these types of transactions. Under the proposed rule, issuers would be required to disclose the APR for purchases, cash advances, and balance transfers in three separate rows, even if the APRs for all three of these types of transactions were the same.

In quantitative testing conducted for the Board after May 2008, the effectiveness of combining rows where the APR for two types of transactions are the same was tested. Some participants were shown tables in which the APRs for cash advances and balance transfers were shown in separate rows. Other participants were shown tables in which the APR for both cash advances and balance transfers, which was the same, was disclosed in one row. In each case, participants were then asked to identify the APR for balance transfers. The testing results suggest that there was no statistically significant difference in the ability of participants to identify the APR for balance transfers whether there were separate rows for the APRs for cash advances and balance transfers or one row reflecting the APR for both cash advances and balance transfers. Based on these results, the Board is providing flexibility by permitting issuers to disclose the APRs for purchases, cash advances, and/or balance transfers in the same row in the table, if the issuer charges the same APR for such transactions. The Board has amended final comment app. G–5.ii accordingly.

Also, in response to the June 2007 Proposal, several commenters had suggestions on how transaction and penalty fees should be disclosed in the table. One commenter urged the Board to allow issuers to disclose fees of the same amount on the same row, without a carriage return after each fee. (Proposed Sample Forms G–10(B) and (C) showed the fees listed separately on their own lines.) In addition, proposed Sample Forms G–10(B) and (C) and Sample Forms G–17(B) and (C) (and Sample Form G–17(D) proposed in May 2008) use the headings ''Transaction Fees'' and ''Penalty Fees.'' One commenter urged the Board to delete these headings as unnecessary.

As discussed above, based on testing conducted for the Board after May 2008, the Board is permitting issuers to disclose the APRs for purchases, cash advances, and/or balance transfers in the same row in the table if the issuer charges the same APR for such transactions. The effect of combining fee rows was also tested in quantitative testing conducted in fall 2008. Some participants were shown tables in which two penalty fees, the returned payment fee and the over-the-limit fee, were disclosed in separate rows. Other participants were shown tables in which these two fees were combined in a single row. The testing indicated that combining rows did not make it more difficult for consumers to locate fees. For the same reasons, the Board is also amending final comment app. G–5.ii to permit issuers to disclose fees of the same amount on the same row, if the fees are in the same category of fees (e.g., if both fees are transaction fees or both fees are penalty fees). Therefore, transaction fees of the same amount may be combined in the same row. Similarly, penalty fees of the same amount may be combined in the same row. The Board is, however, preserving separate headings for ''Transaction Fees'' and ''Penalty Fees'' as the Board believes it is important to distinguish these separate categories for consumers. Thus, if the amount of a transaction fee is the same as the amount of a penalty fee, the fees must still be disclosed separately under separate headings.

The final Sample Forms G–10(B) and (C) and Sample Forms G–17(B)–(D) continue to use the headings ''Transaction Fees'' and ''Penalty Fees.'' The Board believes that these headings are useful to consumers in understanding the types of fees that may be charged on the account. In addition, to describe a grace period (or the lack of a grace period), as applicable, the heading ''How to Avoid Paying Interest for Purchases'' or ''Paying Interest'' must be used for Sample Forms G–10(B) and (C). The headings ''How to Avoid Paying Interest'' or ''Paying Interest'' must be used for Sample Forms G–17(B)–(D). *See* §§ 226.5a(b)(5) and 226.6(b)(2)(v).

In response to the June 2007 Proposal, one industry commenter suggested that the Board explicitly state that the use of color, shading and similar graphic techniques are permitted with respect to the table. Comment app. G–5.vii adds guidance to clarify that the use of color, shading and similar graphic techniques are permitted with respect to the table, so long as the table remains substantially similar to the model and sample forms in Appendix G to part 226.

In addition, one commenter noted that the proposed model and sample forms in Appendix G–10 to part 226 segregated the fee disclosures from the interest rate and interest charge disclosures using two separate tables. This commenter suggested that the Board clarify that using separate tables for the fee disclosures and the interest and interest charges disclosure is required. The Board believes that in order for a table to be substantially similar to the applicable table in Appendix G to part 226, a table for credit card application and solicitation disclosures and account-opening disclosures must contain separate tables for the fee disclosures and the interest and interest charge disclosures, and therefore, additional clarification is not needed.

Model and sample forms for periodic statements. In June 2007, the Board proposed to add several model forms for periodic statement disclosures that creditors may use to comply with the requirements in proposed § 226.7(b) applicable to open-end (not home-secured) plans. As discussed above in the section-by-section analysis of § 226.7(a), for HELOCs subject to § 226.5b, at the creditor's option, a creditor either may comply with the current rules applicable to periodic statement disclosures in § 226.7(a) or comply with the new rules applicable to periodic statement disclosures in § 226.7(b). Comment app. G–8 is added, as proposed, to provide that for HELOCs subject to § 226.5b, if a creditor chooses to comply with the new periodic statement requirements in § 226.7(b), the creditor may use Samples G–18(A)–(E) to comply with the requirements in § 226.7(b).

New comment app. G–9 is added in response to requests for guidance relating to the late payment and minimum payment disclosures. Samples G–18(D) and G–18(E) (proposed as Samples G–18(E) and G–18(F)) illustrate how creditors may comply with proximity requirements for payment information. The comment clarifies that creditors offering card accounts with a charge card feature and a revolving feature may change the disclosure to make clear the feature to which the disclosures apply.

New comment app. G–10 is added to the final rule in response to commenters' requests, to provide guidance on creditors' use of Sample Forms G–18(F) and G–18(G) (proposed as Forms G–18(G) and G–18(H)). The comment clarifies that creditors are not required to print periodic statements on an 8 x 14 inch sheet of paper, although the samples were designed to be printed on that size paper. The comment clarifies that although the payment information disclosures appear in the upper right-hand corner on Sample Forms G–18(F) and G–18(G), the disclosures may be located elsewhere, as long as they appear on the front of the first page of the periodic statement.

The comment also clarifies that the sample forms are published as a compliance aid, and that some information and some formats are not required by the regulation. For example, certain information such as the summary of account activity is not a required disclosure, although some information presented in the summary is required (*e.g.*, the previous balance and new balance). The comment also provides that subject to the general requirement to provide disclosures in a clear and conspicuous manner, additional information may appear on the periodic statement.

Model and sample form relating to debt suspension coverage. As discussed above in the section-by-section analysis for § 226.4(d)(3), the Board proposed in June 2007 to add a disclosure for debt suspension programs, to be provided as applicable, that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. Model Clauses and Samples were proposed at Appendix G–16(A) and G–16(B) (for open-end credit) and Appendix H–17(A) and H–17(B) (for closed-end credit) to part 226. One commenter noted that the model language in Model Clause H–17(A) and Sample H–17(B) regarding cost of coverage is more appropriate for open-end credit. Model Clause H–17(A) and Sample H–17(B) have been revised in the final rule to include language that is appropriate for closed-end credit.

Appendix M1—Generic Repayment Estimates

As discussed in the section-by-section analysis to § 226.7(b)(12), Section 1301(a) of the Bankruptcy Act requires creditors, the FTC and the Board to establish and maintain toll-free telephone numbers in certain instances in order to provide consumers with an estimate of the time it will take to repay the consumer's outstanding balance, assuming the consumer makes only minimum payments on the account and the consumer does not make any more draws on the account. 15 U.S.C. 1637(b)(11)(F). The Act requires creditors, the FTC and the Board to provide estimates that are based on tables created by the Board that estimate repayment periods for different minimum monthly payment amounts, interest rates, and outstanding balances. In the June 2007 Proposal, the Board proposed that instead of issuing a table, it would issue guidance in Appendix M1 to part 226 to card issuers and the FTC for how to calculate this generic repayment estimate. The Board would use the same guidance to calculate the generic repayment estimates given through its toll-free telephone number. The final rule adopts this approach. The Board expects that this guidance will be more useful than a table, because the guidance will facilitate the use of automated systems to provide the required disclosures, although the guidance also can be used to generate a table.

Under Section 1301(a) of the Bankruptcy Act, a creditor may use a toll-free telephone number to provide the actual number of months that it will take consumers to repay their outstanding balance instead of providing an estimate based on the Board-created table. 15 U.S.C. 1637(b)(11)(I)–(K). In the June 2007 Proposal, the Board proposed new Appendix M2 to part 226 to provide guidance to issuers on how to calculate the actual repayment disclosure.

Calculating generic repayment estimates. Proposed Appendix M1 would have provided guidance on how to calculate the generic repayment estimates. Under the June 2007 Proposal, the Board would have allowed credit card issuers and the FTC to use a ''consumer input'' system to collect information from the consumer to calculate the generic repayment estimate. The Board also would have used a ''consumer input'' system for its toll-free telephone number. For example, certain information is needed to calculate the generic repayment estimate, such as the outstanding balance on the account and the APR applicable to the account. The Board's proposed rule would have allowed issuers and the FTC to prompt the consumer to input this information so that the generic repayment estimate could be calculated. The final rule adopts this ''consumer input'' system approach. Although issuers may have the ability to program their systems to obtain consumers' account information from their account management systems, the Board is not requiring issuers to do so. Allowing issuers to use a ''consumer input'' system in calculating the generic repayment estimate preserves the distinction contemplated in the statute between estimates based on the Board table and actual repayment disclosures.

In proposed Appendix M1 to part 226, the Board set forth guidance for credit card issuers and the FTC in determining the minimum payment formula, the APR, and the outstanding balance to use in calculating the generic repayment estimates. With respect to other terms that could impact the calculation of the generic repayment estimate, the Board proposed to set forth assumptions about these terms that issuers and the FTC must use.

1. *Minimum payment formula.* In the June 2007 Proposal, the Board proposed to require a credit card issuer to use the minimum payment formula that applies to most of the issuer's accounts. The Board proposed different rules for general purpose credit cards and retail credit cards in selecting the ''most common'' minimum payment formula. The Board proposed to define retail credit cards as credit cards that are issued by a retailer for use only in transactions with the retailer or a group of retailers that are related by common ownership or control, or a credit card where a retailer arranges for a creditor to offer open-end credit under a plan that allows the consumer to use the credit only in transactions with the retailer or a group of retailers that are related by common ownership or control. General purpose credit cards would have been defined as credit cards that are not retail credit cards.

Under the June 2007 Proposal, when calculating the generic repayment estimate for general purpose credit cards, a card issuer would have been required to use the minimum payment formula that applies to most of its general purpose consumer credit card accounts. The issuer would have been required to use this ''most common'' formula to calculate the generic repayment estimate for all of its general purpose consumer credit card accounts, regardless of whether this formula applies to a particular account. Proposed Appendix M1 to part 226 would have contained additional guidance to issuers of general purpose credit cards in complying with the ''most common'' formula approach.

In addition, under the June 2007 Proposal, when calculating the generic repayment estimate for retail credit cards, a credit card issuer would have been required to use the minimum payment formula that most commonly applies to its retail consumer credit card accounts. If an issuer offers credit card accounts on behalf of more than one retailer, credit card issuers would have been required to group credit card accounts relating to each retailer separately and determine the minimum formula that is most common to each retailer. For example, if Issuer A issues separate cards for Retailer A and Retailer B, which are under common ownership or control, the proposal would have required Issuer A to determine the most common formula separately for each retailer (A and B). Under the proposal, the issuer would have been required to use the ''most common'' formula for each retailer to calculate the generic repayment estimate for the retail credit card accounts related to each retailer, regardless of whether this formula applies to a particular account. Proposed Appendix M1 to part 226 would have provided additional guidance to issuers of retail credit cards on how to comply with the ''most common'' formula approach. The Board solicited comment on whether Issuer A in the example above should be permitted to determine a single ''most common'' formula for all retailers under common ownership or control, and if so, what the standard of affiliation should be.

In response to the June 2007 Proposal, several consumer group commenters suggested that the Board should require credit card issuers to use the minimum payment formula(s) that applies specifically to a consumer's account to calculate the generic repayment estimate, instead of allowing issuer to use the ''most common'' minimum payment formula that applies to the issuer's accounts. They suggested that issuers could be required to disclose a code on the periodic statement that represents the minimum payment formula(s) used, and the consumer could be asked to enter that code when requesting the generic repayment estimate. In addition, some industry commenters suggested that the Board not require issuers to use the ''most common'' minimum payment formula, but instead allow issuers to use the same minimum payment assumptions as used by the Board for its toll-free telephone number. In the June 2007 Proposal, the Board indicated that it would use the following minimum payment formula to calculate the generic repayment estimates for its toll-free telephone number: either 2 percent of the outstanding balance, or $20, whichever is greater. This is the same minimum payment formula used to calculate the repayment estimate for the statutory example related to the $1,000 balance that must be disclosed on periodic statements. See § 226.7(b)(12).

The final rule adopts the ''most common'' approach as proposed, with several revisions. The Board believes that the ''most common'' approach properly balances the benefit to consumers of more accurate estimates with the burden to creditors of calculating the generic repayment estimate. It appears that, at least for general purpose credit cards, issuers typically use the same or similar minimum payment formula(s) for their entire credit card portfolio. Thus, for those types of credit cards, the ''most common'' minimum payment formula identified by an issuer often will match the actual formula used on a consumer's account. Accordingly, the ''most common'' minimum payment formula approach would provide more accurate estimates to consumers than allowing all issuers to use the 2 percent or $20 minimum payment formula described above.

The Board recognizes that in some cases the ''most common'' minimum payment formula will not match the actual formula used on a consumer's account, for example, where a consumer has opted out of a change in the minimum payment formula, and the consumer is paying off the balance under the old minimum payment formula. The Board also recognizes that allowing card issuers to use one minimum payment formula under the ''most common'' formula approach to calculate the generic repayment estimate even when multiple minimum payment formulas apply to the account yields a less accurate estimate than if the issuer were required to use actual minimum payment formulas applicable to a consumer's account.

Nonetheless, the Board is not requiring credit card issuers to use the actual minimum payment formula(s) that apply to a consumer's account to calculate the generic repayment estimate. The Board does not believe that the potential benefit of more accurate estimates outweighs the burden to issuers in identifying a code for each unique minimum payment formula that might apply to a consumer's account and disclosing that code on the periodic statement. While the ''code'' approach may provide more accurate estimates in cases where there is only one minimum payment that applies to the account, it is not clear that use of this code would lead to more accurate generic repayment estimates when multiple minimum payment formulas apply to an account. As described below, in those cases, the issuer would still need to assume that the minimum payment formula applicable to the general revolving feature that applies to new transactions would apply to the entire balance on the account, regardless of whether this formula applies to a particular balance on that account. In addition, consumers may be unfamiliar with a new code on their periodic statements and explaining the purpose of the code would lead to a longer and more complex minimum payment disclosure on periodic statements.

In addition, in response to the June 2007 Proposal, several industry commenters requested clarification on calculating the generic repayment estimate where there are multiple features on the account and a different minimum payment formula applies to each feature. The final rule amends Appendix M1 to part 226 to clarify that if more than one minimum payment formula applies to an account, when calculating the generic repayment estimate, the issuer must use the ''most common'' minimum payment formula applicable to the general revolving feature that applies to new transactions and apply it to the entire balance on the account, regardless of whether this formula applies to a particular balance on that account. For example, assume for all of its accounts, a creditor uses one minimum payment formula to calculate the minimum payment amount for balances existing before January 1, 2008, and uses a different minimum payment formula to calculate the minimum payment amount for balances incurred on or after January 1, 2008. To calculate the minimum payment amount, this creditor must use the minimum payment formula applicable to balances incurred on or after January 1, 2008, and apply that formula to the entire outstanding balance even if the account has not been used for transactions on or after January 1, 2008.

Also, in response to the June 2007 Proposal, one industry commenter suggested that the Board allow a retailer to use the most common formula for all of its retail cards, instead of evaluating each program separately. Although this commenter indicated that terms of retail accounts do not differ more than the terms of general purpose credit cards, the Board understands that with respect to some ''private label'' programs where a card issuer offers credit cards on behalf of more than one retailer, the minimum payment formula(s) applicable to the credit card accounts can vary substantially depending on the retailer on whose behalf the cards are issued. Thus, the final rule retains the proposed requirement that if an issuer offers credit card accounts on behalf of more than one retailer, credit card issuers must group credit card accounts relating to each retailer (or affiliated group of retailers) separately and determine the minimum formula that is most common to each retailer.

In the June 2007 Proposal, the Board proposed that a card issuer must re-evaluate which minimum payment formula is most common every 12 months. The final rule clarifies that at the issuer's option, the issuer may re-evaluate which minimum payment formula is most common more often than every 12 months.

The final rule also clarifies that in choosing which formula is the ''most common,'' an issuer may ignore differences among the formulas related to whether past due amounts or over-the-limit amounts are included in the formula for calculating the minimum payment. As described below, the final rule allows issuers to assume that the consumer's account is not past due and the account balance is not over the credit limit. The final rule also clarifies that a creditor may, when considering all of its consumer purpose credit card accounts for purposes of identifying the ''most common'' minimum payment formula, use a statistical sample of its consumer credit card accounts developed and validated using accepted statistical principles and methodology.

As discussed in the section-by-section analysis to § 226.7(b)(12), the Board is required to establish and maintain, for two years, a toll-free telephone number for use by customers of depository institutions having assets of $250 million or less to obtain generic repayment estimates. In the June 2007 Proposal, the Board proposed to use the following minimum payment formula to calculate the generic repayment estimates: Either 2 percent of the outstanding balance, or $20, whichever is greater. This is the same minimum payment formula used to calculate the repayment estimate for the statutory example related to the $1,000 balance that is required to be disclosed on periodic statements. The final rule adopts this approach. The Board is using the same formula as in the statutory example because the Board is not aware of any ''typical'' minimum payment formula that applies to general purpose credit cards issued by smaller depository institutions. For the same reasons, the final rule states that the FTC must use the 5 percent minimum payment formula used in the $300 example in the statute to calculate the generic repayment estimates given through the FTC's toll-free telephone number, as proposed in the June 2007 Proposal.

2. *Annual percentage rates.* In the June 2007 Proposal, the Board proposed to require that the generic repayment estimate be calculated using a single APR, even for accounts that have multiple APRs. In selecting the single APR to be used in calculating the generic repayment estimates, the Board proposed to require credit card issuers and the FTC to use the highest APR on which the consumer has an outstanding balance. As proposed, an issuer and the

FTC would have been allowed to use an automated system to prompt the consumer to enter in the highest APR on which the consumer has an outstanding balance, and calculate the generic repayment estimate based on the consumer's response. The Board would have followed the same approach in calculating the generic repayment estimates for its toll-free telephone number.

In response to the June 2007 Proposal, one industry commenter suggested that instead of issuers providing a worst case scenario estimate by using the highest APR on which a consumer has an outstanding balance, issuers should be allowed to provide two generic repayment estimates to the consumer, one estimate based on the purchase APR and another estimate based on the cash advance APR. This commenter believed that the two estimates would allow the consumer to determine which estimate best fits the composition of his or her account balance.

The final rule adopts the approach to require credit card issuers and the FTC to use the highest APR on which the consumer has an outstanding balance, as proposed. The Board does not believe that the statute contemplates that issuers be required to use their account management systems to disclose an estimate based on all of the APRs applicable to a consumer's account and the actual balances to which those rates apply. The Board believes that the complexity and effort required to accommodate multiple APRs using a ''consumer-input'' system would be unduly burdensome for consumers. The Board recognizes that using the highest APR on which a consumer has an outstanding balance will overestimate the repayment period when the consumer has outstanding balances at lower APRs as well. Nonetheless, allowing issuers to use the purchase APR on the account to calculate the repayment period would underestimate the repayment period, if a consumer also has balances subject to higher APRs, such as cash advance balances. The Board believes that an overestimate of the repayment period is a better approach for purposes of this disclosure than an underestimate of the repayment period because it gives consumers the worst-case estimate of how long it may take to pay off their balance. The Board believes that disclosing two estimates—one based on the purchase APR and one based on the cash advance APR—would be confusing to consumers.

3. *Outstanding balance.* Because consumers' outstanding account balances appear on their monthly statements, consumers can provide that amount when requesting an estimate of the repayment period. In the June 2007 Proposal, the Board proposed that when calculating the generic repayment estimate, credit card issuers and the FTC must use the outstanding balance on a consumer's account as of the closing date of the last billing cycle to calculate the generic repayment estimates. As proposed, an issuer and the FTC would have been allowed to use an automated system to prompt the consumer to enter in the outstanding balance included on the last periodic statement received, and calculate the generic repayment estimate based on the consumer's response. The Board would have followed the same approach in calculating the generic repayment estimates for its toll-free telephone number. The final rule adopts this approach with one revision. Appendix M1 allows issuers to round the outstanding balance to the nearest whole dollar to calculate the generic repayment estimate or to prompt the consumer to enter the balance rounded to the nearest whole dollar.

Other terms. In the June 2007 Proposal, the Board proposed assumptions about other terms that issuers and the FTC must use to calculate the generic repayment estimates. The final rule adopts this approach, except that issuers, at their option, are permitted to use the actual terms on the consumer's account instead of using the assumptions.

1. *Balance computation method.* In the June 2007 Proposal, the Board proposed to use the average daily balance method for purposes of calculating the generic repayment estimate. The average daily balance method is commonly used by issuers to compute the balance on credit card accounts. Nonetheless, requiring use of the average daily balance method makes other assumptions necessary, including the length of the billing cycle, and when payments are made. As a result, the Board proposed to assume that all months are the same length—*i.e.*, 30.41667 days. In addition, in the absence of data on when consumers typically make their payments each month, the Board proposed to assume that payments are credited on the last day of the month.

In response to the June 2007 Proposal, several consumer group commenters suggested that issuers not be allowed to use the average daily balance method, if the issuer uses a less favorable method such as two-cycle average daily balance. The final rule retains the rule that issuers may assume that the average daily balance calculation method applies, regardless of whether it matches consumers' actual account terms. As discussed below, because the Board is assuming that no grace period exists and the consumer will be ''revolving'' or carrying a balance each month, there is no difference between the interest charges calculated, and thus, the repayment period calculated, if the average daily balance method is used compared to the two-cycle average daily balance method. The Board also notes that in final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, most credit card issuers could not use the two-cycle average daily balance method.

In addition, one commenter suggested in response to the June 2007 Proposal that the Board permit issuers to use uniform months of 30 days rather than require the use of 30.41667 days. This commenter indicated that some systems do not easily recognize fractions of days. The final rule amends Appendix M1 to specify that an issuer or the FTC may assume a monthly or daily periodic rate applies to the account. If a daily periodic rate is used, the issuer or the FTC may either assume (1) a year is 365 days long, and all months are 30.41667 days long, or (2) a year is 360 days long, and all months are 30 days long. Both sets of assumptions about the length of the year and months would yield the same repayment estimates.

2. *Grace period.* In the June 2007 Proposal, the Board proposed to assume that no grace period exists. The final rule adopts this approach, as proposed. The required disclosures about the effect of making minimum payments are based on the assumption that the consumer will be ''revolving'' or carrying a balance. Thus, it seems reasonable to assume that the account is already in a revolving condition at the time the consumer calls to obtain the estimate, and that no grace period applies. This assumption about the grace period is also consistent with the final rule to exempt issuers from providing the minimum payment disclosures to consumers that have paid their balances in full for two consecutive months.

3. *Residual interest.* When the consumer's account balance at the end of a billing cycle is less than the required minimum payment, the statutory examples assume that no additional transactions occurred after the end of the billing cycle, that the account balance will be paid in full, and that no additional finance charges will be applied to the account between the date the statement was issued and the date of the final payment. In the June 2007 Proposal, the Board proposed to

make these same assumptions with respect to the calculation of the generic repayment estimates. The final rule adopts this approach, as proposed. These assumptions are necessary to have a finite solution to the repayment period calculation. Without these assumptions, the repayment period could be infinite.

4. *Minimum payments are made each month.* In response to the June 2007 Proposal, one commenter suggested that the Board clarify how debt cancellation, debt suspension and skip payment features should be handled. In those cases, a consumer may not be required to make a minimum payment on the account in a particular month. The final rule amends Appendix M1 to part 226 to provide that issuers or the FTC may assume that minimum payments are made each month and any debt cancellation or suspension agreements or skip payment features do not apply to a consumer's account.

5. *APR will not change.* In response to the June 2007 Proposal, one commenter suggested that issuers be able to assume that the APR on the account will not change. The final rule amends Appendix M1 to part 226 to provide that issuers or the FTC may assume that the APR on the account will not change, through either the operation of a variable rate or the change to a rate. For example, if a penalty APR currently applies to a consumer's account, an issuer or the FTC may assume that the penalty APR will apply to the consumer's account indefinitely, even if the consumer may potentially return to a non-penalty APR in the future under the account agreement.

6. *Account not past due and the account balance does not exceed the credit limit.* The final rule allows issuers or the FTC to assume that the consumer's account is not past due and the account balance is not over the credit limit.

7. *Rounding assumed payments, current balance and interest charges to the nearest cent.* The final rule allows issuers or the FTC, when calculating the generic repayment estimate, to round to the nearest cent the assumed payments, current balance and interest charges for each month, as shown in Appendix M3 to part 226.

Other technical edits have been made to the assumptions to conform them to the assumptions used in Appendix M2 to part 226 to calculate the actual repayment disclosure.

Tolerances. In response to the June 2007 Proposal, several commenters were concerned about liability for alleged incorrect estimates. Some commenters were concerned about state unfair or deceptive practices laws, under which an issuer might be sued for providing the generic repayment estimate or the actual repayment disclosure, if the actual time to repay a specific debt was different from the generic repayment estimate or actual repayment disclosure provided pursuant to TILA. Other issuers asked the Board to provide an express tolerance for error of at least two months (prior to rounding) in all of the proposed calculations. This commenter indicated that this error tolerance is needed because a variation as small as a penny can change amortization calculations and repayment period disclosures materially, when estimates are rounded to the nearest year. Take, for example, a minimum payment formula of the greater of 2 percent or $20 and two separate amortization calculations that, at the end of 28 months, arrived at remaining balances of $20 and $20.01 respectively. The $20 remaining balance would be paid off in the 29th month, resulting in the disclosure of a 2-year repayment period due to the Board's rounding rule. The $20.01 remaining balance would be paid off in the 30th month, resulting in the disclosure of a 3-year repayment period due to the Board's rounding rule. The final rule amends Appendix M1 to part 226 to provide that a generic repayment estimate shall be considered accurate if it is not more than 2 months above or below the generic repayment estimate determined in accordance with the guidance in Appendix M1 to part 226, prior to rounding. Thus, in the example above, an issuer or the FTC would be in compliance with the guidance in Appendix M1 to part 226 by disclosing 3 years, instead of 2 years, because the issuer's or FTC's estimate is within the 2 months' tolerance, prior to rounding. In addition, the final rule also provides that even if an issuer's or FTC's estimate is more than 2 months above or below the generic repayment estimate calculated using the guidance in this Appendix, so long as the issuer or FTC discloses the correct number of years to the consumer based on the rounding rule set forth in paragraph (b)(1)(i), the issuer or the FTC would be in compliance with the guidance in Appendix M1 to part 226. For example, assume the generic repayment estimate calculated using the guidance in Appendix M1 to part 226 is 32 months (2 years, 8 months), and the generic repayment estimate calculated by the issuer or the FTC is 38 months (3 years, 2 months). Under the rounding rule set forth in paragraph (b)(1)(i), both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer or the FTC disclosed 3 years to the consumer, the issuer or the FTC would be in compliance with the guidance in Appendix M1 to part 226 even through the generic repayment estimate calculated by the issuer or the FTC is outside the 2 months' tolerance amount.

The Board also recognizes that both the generic repayment estimates and the actual repayment disclosures, as calculated in Appendices M1 and M2 to part 226 respectively, are estimates. The Board would expect that issuers would not be liable under federal or state unfair or deceptive practices laws for providing inaccurate or misleading information, when issuers provide to consumers the generic repayment estimates or actual repayment disclosures calculated according to guidance provided in Appendices M1 and M2 to part 226 respectively, as required by TILA.

Disclosing the generic repayment estimates to consumers. In the June 2007 Proposal, the Board proposed in Appendix M1 to part 226 to provide guidance regarding how the generic repayment estimate must be disclosed to consumers. As proposed, credit card issuers and the FTC would have been required to provide certain specified disclosures to consumers in responding to a request through a toll-free telephone number for generic repayment estimates. In addition, issuers and the FTC would be permitted to provide certain other information to consumers, so long as that permitted information is disclosed after the required information. The Board proposed to follow the same approach in disclosing the generic repayment estimates through its toll-free telephone number.

1. *Required disclosures.* Under the June 2007 Proposal, credit card issuers and the FTC would have been required to provide the following information when responding to a request for generic repayment estimates through a toll-free telephone number: (1) The generic repayment estimate; (2) the beginning balance on which the generic repayment estimate is calculated; (3) the APR on which the generic repayment estimate is calculated; (4) the assumptions that only minimum payments are made and no other amounts are added to the balance; and (5) the fact that the repayment period is an estimate, and the actual time it make take to pay off the balance if only making minimum payment will differ based on the consumer's account terms and future account activity.

The final rule adopts this approach, as proposed, with two revisions. The final rule amends Appendix M1 to provide that at the issuer's or FTC's option, the issuer or the FTC may also disclose as part of the required disclosures a description of the minimum payment formula(s) or the minimum payment amounts used to calculate the generic repayment estimate, including a disclosure of the dollar amount of the minimum payment calculated for the first month. In addition, at an issuer's or FTC's option, the issuer or FTC also may disclose as part of the required disclosures the total amount of interest that a consumer would pay if the consumer makes minimum payments for the length of time disclosed in the generic repayment estimate.

Under the June 2007 Proposal, Appendix M1 to part 226 would have provided that if the generic repayment estimate calculated above is less than 2 years, credit card issuers and the FTC must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate would have been rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal to or greater than 0.5. In response to the June 2007 Proposal, one commenter suggested that the Board always require that the generic repayment estimate be disclosed in years, even for repayment periods that are less than 2 years. This commenter indicated that the different rules for disclosing the generic repayment estimate depending on whether the estimate is less than 2 years or not would add unnecessarily to regulatory burden and cause confusion. The final rule retains the rule to disclose the generic repayment estimate in months if the estimate is less than 2 years, and in years if the estimate is 2 years or more. The Board believes that this approach provides more useful information to consumers, and does not impose significant regulatory burden on issuers.

In the June 2007 Proposal, the Board proposed a model clause in Appendix M1 that credit card issuers and the FTC would be allowed to use to comply with the above disclosure requirements. The final rule adopts this model clause, with several stylistic changes. This model clause includes a brief statement identifying the repayment period as an estimate rather than including a list of assumptions used to calculate the estimate, because the Board believes the brief statement is more helpful to consumers. The many assumptions that are necessary to calculate a repayment period are complex and unlikely to be meaningful or useful to most consumers. Nonetheless, the final rule allows issuers and the FTC to disclose through the toll-free telephone number the assumptions used to calculate the generic repayment estimates, so long as this information is disclosed after the required information described above. The Board will follow the same approach in disclosing the generic repayment estimates through its toll-free telephone number.

2. *Zero or negative amortization.* Zero or negative amortization can occur if the required minimum payment is the same as or less than the total finance charges and other fees imposed during the billing cycle. Several major credit card issuers have established minimum payment requirements that prevent prolonged zero or negative amortization. But some creditors may use a minimum payment formula that allows zero or negative amortization (such as by requiring a payment of 2 percent of the outstanding balance, regardless of the finance charges or fees incurred). If zero or negative amortization occurs when calculating the repayment estimate, the Board proposed in June 2007 to require issuers and the FTC to disclose to the consumer that based on the assumptions used to calculate the repayment estimate, the consumer will not pay off the balance by making only the minimum payment. The final rule adopts this approach as proposed with several technical modifications. The Board will follow the same approach in disclosing through its toll-free telephone number that zero or negative amortization is occurring.

If issuers use a minimum payment formula that allows for zero or negative amortization, the Board believes that consumers should be told that zero or negative amortization is occurring. The Board recognizes that in some cases because of the assumptions used to calculate the generic repayment estimate, the estimate may indicate that zero or negative amortization is occurring, when in fact, if the estimate was based on the consumer's actual account terms, zero or negative amortization would not occur. The Board strongly encourages issuers to use the actual repayment disclosure provided in Appendix M2 to part 226 in these instances to avoid giving inaccurate information to consumers.

In the June 2007 Proposal, Appendix M1 to part 226 would have contained model language that issuers and the FTC may use to disclose to consumers that zero or negative amortization is occurring. In response to the June 2007 Proposal, several consumer group commenters suggested that the Board require issuers to use the model language to describe that zero or negative amortization is occurring. The final rule retains this language (with stylistic changes) as a model clause that issuers may use. Because the model language provides a safe harbor from liability, the Board expects that most issuers will use this model language to describe that zero or negative amortization is occurring.

3. *Permitted disclosures.* The June 2007 Proposal provided that credit card issuers and the FTC would be allowed to provide the following information when responding to a request for the generic repayment estimate through a toll-free telephone number, so long as this permitted information is given after the required disclosures: (1) A description of the assumptions used to calculate the generic repayment estimate; (2) an estimate of the length of time it would take to repay the outstanding balance if an additional amount was paid each month in addition to the minimum payment amount, allowing the consumer to select the additional amount; (3) an estimate of the length of time it would take to repay the outstanding balance if the consumer made a fixed payment amount each month, allowing the consumer to select the amount of the fixed payment; (4) the monthly payment amount that would be required to pay off the outstanding balance within a specific number of months or years, allowing the consumer to select the payoff period; (5) a reference to Web sites that contain minimum payment calculators; and (6) the total amount of interest that a consumer may pay if he or she makes minimum payments for the length of time disclosed in the generic repayment estimate. As proposed, the Board would have followed the same approach in disclosing permitted information through its toll-free telephone number.

The final rule retains these permissible disclosures, with two revisions. As discussed above, the final rule permits issuers to provide as part of the required disclosures the total amount of interest that a consumer may pay if he or she makes minimum payments for the length of time disclosed in the generic repayment estimate. In addition, the final rule adds to the list of permissible disclosures that issuers may disclose the total amount of interest that a consumer would pay under optional repayment periods permitted to be disclosed—such as how much interest the consumer would pay if he or she paid a fixed payment amount each month.

In response to the June 2007 Proposal, one commenter suggested that the Board issue model forms explaining the assumptions used in calculating the generic repayment estimate. The final rule does not include model forms explaining the assumptions used in calculating the generic repayment estimates. The assumptions are not required disclosures, so the Board does not believe that model forms are needed.

Appendix M2—Actual Repayment Disclosures

As indicated above, Section 1301(a) of the Bankruptcy Act allows creditors to forego using the toll-free telephone number to provide a generic repayment estimate if the creditor instead provides through the toll-free telephone number the ''actual number of months'' to repay the consumer's account. In the June 2007 Proposal, the Board proposed to provide in Appendix M2 to part 226 guidance to credit card issuers on how to calculate the actual repayment disclosure to encourage issuers to provide these estimates.

Calculating the actual repayment disclosures. In the June 2007 Proposal, the Board proposed that credit card issuers calculate the actual repayment disclosure for a consumer based on the minimum payment formula(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the actual repayment disclosure, the Board proposed to allow issuers to make certain assumption about these terms. The final rule retains this approach, as proposed.

1. *Minimum payment formulas.* When calculating actual repayment disclosures, the Board proposed that credit card issuers generally must use the minimum payment formula(s) that apply to a cardholder's account. In response to the June 2007 Proposal, several industry commenters requested clarification on calculating and providing the actual repayment disclosure where there are multiple features on the account and a different minimum payment formula applies to each feature. The final rule amends Appendix M2 to provide that in calculating the actual repayment disclosure, if more than one minimum payment formula applies to an account, the issuer must apply each minimum payment formula to the portion of the balance to which the formula applies. In providing the actual repayment disclosure, an issuer may either disclose the longest repayment period calculated, or the repayment period calculated for each minimum payment formula. For example, assume that an issuer uses one minimum payment formula to calculate the minimum payment amount for a general revolving feature, and another minimum payment formula to calculate the minimum payment amount for special purchases, such as a ''club plan purchase.'' Also, assume that based on a consumer's balances in these features, the repayment period calculated pursuant to Appendix M2 for the general revolving feature is 5 years, while the repayment period calculated for the special purchase feature is 3 years. This issuer may either disclose 5 years as the repayment period for the entire balance to the consumer, or disclose 5 years as the repayment period for the balance in the general revolving feature and 3 years as the repayment period for the balance in the special purchase feature.

In addition, in the June 2007 Proposal, the Board proposed to allow issuers to disregard promotional terms that may be applicable to a consumer's account when calculating the actual repayment disclosure. The term ''promotional terms'' was defined in the proposal as ''terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer.'' The Board noted that allowing issuers to disregard promotional terms on accounts where the promotional terms apply only for a limited amount of time eases compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers.

In response to the June 2007 Proposal, one industry commenter requested that the Board expand this definition of ''promotional terms'' to include any offer that involves a special payment arrangement or an APR that is below the contractual payment or APR. They noted that the proposed definition of ''promotional terms'' would not cover ''life of balance'' promotions, where an APR is offered on a balance (*e.g.*, balance transfers at account opening) that is lower than the rate that would otherwise apply to those types of balances and that lower APR will apply to that balance until the balance is paid in full. The final rule retains the definition of ''promotional terms'' as proposed. The Board believes that issuers should not be allowed to disregard ''life of balance'' promotions, because that rate will not expire after a limited amount of time, but will apply until the balance is paid in full.

2. *Annual percentage rates.* Generally, when calculating actual repayment disclosures, the June 2007 Proposal would have required credit card issuers to use each of the APRs that currently apply to a consumer's account, based on the portion of the balance to which that rate applies. For the reasons discussed above, the Board proposed to allow issuers to disregard promotional APRs that may apply to a consumer's account. Specifically, if any promotional terms related to APRs apply to a cardholder's account, such as introductory rates or deferred interest plans, credit card issuers would have been allowed to assume the promotional terms do not apply, and to use the APRs that would apply without regard to the promotional terms. The final rule adopts this approach, as proposed.

3. *Outstanding balance.* When calculating the actual repayment disclosures, the Board proposed that credit card issuers must use the outstanding balance on a consumer's account as of the closing date of the last billing cycle. Issuers would not have been required to take into account any transactions consumers may have made since the last billing cycle. The final rule adopts this approach. This rule makes it easier for issuers to place the estimate on the periodic statement, because the outstanding balance used to calculate the actual repayment disclosure would be the same as the outstanding balance shown on the periodic statement. The final rule revises Appendix M2 to part 226 to allow issuers to round the outstanding balance to the nearest whole dollar to calculate the actual repayment disclosure.

4. *Other terms.* As discussed above, the Board proposed in the June 2007 Proposal that issuers calculate the actual repayment disclosures for a consumer based on the minimum payment formulas(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the actual repayment disclosures, the Board proposed to allow issuers to make certain assumptions about these terms. For example, the Board would have allowed issuers to make the same assumptions about balance computation method, grace period, and residual interest as are allowed for the generic repayment estimates. In addition, the Board proposed to allow issuers to assume that payments are allocated to lower APR balances before higher APR balances when multiple APRs apply to an account.

The final rule retains this approach, as proposed, with several revisions. As described above with respect to generic repayment estimates, the final rule adds several assumptions related to minimum payments being made each month, APRs not changing on the account, the length of each month, and the account not being past due or account balances not exceeding the credit limit. The Board would still allow issuers to assume that payments are allocated to lower APR balances before higher APR balances when multiple APRs apply to an account. Under final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, most issuers are permitted to allocated minimum payment amounts as they choose; however, most issuers would be restricted in how they may allocate payments above the minimum payment amount. The Board assumes that issuers are likely to allocate the minimum payment amount to lower APR balances before higher APR balances, and issuers may assume that is the case in making the repayment estimate.

Consistent with the guidance in Appendix M1 to part 226 for generic repayment estimates, the final rule also would amend Appendix M2 to part 226 to provide that an actual repayment disclosure shall be considered accurate if it is not more than 2 months above or below the actual repayment disclosure determined in accordance with the guidance in Appendix M2 to part 226, prior to rounding.

Disclosing the actual repayment disclosures to consumers through the toll-free telephone number or on the periodic statement. In the June 2007 Proposal, the Board proposed in Appendix M2 to part 226 to provide guidance regarding how the actual repayment disclosure must be disclosed to consumers if a toll-free telephone number is used or if the actual repayment disclosure is placed on the periodic statement. The Board proposed similar rules with respect to disclosing the actual repayment disclosures as were proposed with respect to the generic repayment estimate. Specifically, the Board proposed to require credit card issuers to disclose certain information when providing the actual repayment disclosure, and permits the issuers to disclose other related information, so long as that permitted information is disclosed after the required information. *See* proposed Appendix M2 to part 226. No comments were received on this aspect of the proposal. The final rule adopts this approach, as proposed.

Appendix M3—Sample Calculations of Generic Repayment Estimates and Actual Repayment Disclosures

In the June 2007 Proposal, the Board proposed Appendix M3 to part 226 to provide sample calculations for the generic repayment estimate and the actual repayment disclosures discussed in Appendices M1 and M2 to part 226. The final rule adopts these sample calculations with several technical modifications.

Conforming Citations and Descriptions

The final rule includes a number of technical changes to various commentary provisions that were not the subject of the Board's review of open-end (not home-secured) plans. These changes conform citations and other descriptions to revisions being adopted today, without intended substantive changes, as identified below.

Subpart B. Comments 5b(a)(1)–1; 5b(f)(3)(vi)–4.

Subpart D. Comment 26(a)–1; Comment 27–1; Comment 28(a)–6; Comment 30–8.

In § 226.30, footnote 50 and accompanying comment 30–13, providing for a transitional compliance rule that has now expired, are deleted as obsolete rather than retained with a conformed citation.

VII. Mandatory Compliance Date

Under TILA Section 105(d), regulatory amendments that require disclosures that differ from the previous requirements are to have an effective date of that October 1 which follows by at least six months the date of promulgation. 15 U.S.C. 1604(d). However, the Board may, at its discretion, lengthen the implementation period for creditors to adjust their forms to accommodate new requirements, or shorten the period where the Board finds that such action is necessary to prevent unfair or deceptive disclosure practices.

In the June 2007 Proposal, the Board requested comment on an appropriate implementation period that would provide creditors sufficient time to implement any revisions that may be adopted. In response to the June 2007 and May 2008 Proposals, industry commenters representing creditors, card issuers, and service providers, suggested implementation periods ranging from at least 12 months to at least 24 months. These commenters stated that the size and complexity of the Board's June 2007 and May 2008 Regulation Z Proposals if adopted, present a significant implementation task. They noted that creditors and service providers affected by the final rule must analyze all aspects of the rule, develop compliance programs, and revise written policies and procedures. They also identified the need to make systems changes to design new forms and to develop, test and implement new software programs, which may require coordination among third-party data processors and creditors' compliance or technical staff. One commenter reported that a vendor reported it would need almost a year to implement changes after the client delivered the business requirements to the vendor. Industry commenters also noted that employees' tasks to implement the new rules would be in addition to employees' ongoing duties to provide day-to-day service to customers. Thus, in industry commenters' views, a significant period of time is necessary to implement the required changes in an orderly manner.

A few commenters suggested staggered mandatory compliance dates. For example, one commenter suggested an 18-month implementation period for application and solicitation disclosures, account-opening disclosures and agreements, and billing error notices; with a 24-month period for periodic statement disclosures, including change-in-terms notices that are provided with statements. Most others requested a single implementation date.

Many industry commenters stated that they contemplated implementing the final rule in stages, and asked the Board to provide a safe harbor for compliance with the regulation's requirement to use consistent terminology if some disclosures are modified earlier than others. For example, a creditor may revise some disclosures to use the term ''interest charges'' as required by the final rule while other disclosures that comply with existing rules continue to use the term ''finance charges'' because they have not yet been revised.

Commenters representing credit unions, while opposing the Board's June 2007 Proposal to amend the definition of open-end credit, requested that the Board delay the mandatory compliance date for rules affecting the definition of open-end credit until the Board completes its review of rules affecting closed-end disclosures, so systems would be revised only once.

The Board adopts a mandatory compliance date of July 1, 2010. The mandatory compliance date for this final rule is consistent with the mandatory compliance date for the final rules addressing credit card practices adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. This date affords creditors and others affected by this final rule approximately 18 months to implement the required changes. In adopting this mandatory compliance date, the Board is cognizant that due to the breadth of changes required a significant period of time is needed to implement both this final rule and the other final rules adopted by the Board and other federal banking agencies. In addition, the Board believes that a single implementation date provides greater flexibility to creditors and others affected by the final rules to determine the most efficient way to implement the required changes, rather than adopting staggered compliance dates that determine the stages in which the changes must be instituted.

Prospective application of new rules. The final rule is prospective in application. The following paragraphs set forth additional guidance and examples as to how a creditor must comply with the final rule on the effective date.

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

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

Periodic statements. Periodic statements mailed or delivered on or after July 1, 2010 must comply with the final rule. For example, if a creditor mails a periodic statement to the consumer on June 30, 2010, that statement is not required to comply with the final rule, even if the consumer does not receive the statement until July 7, 2010.

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

The Board recognizes that a creditor may wish to comply with certain provisions of the final rule for periodic statements that are mailed prior to July 1, 2010. A creditor may phase in disclosures required on the periodic statement under the final rule that are not currently required prior to July 1, 2010. A creditor also may generally omit from the periodic statement any disclosures that are not required under the final rule prior to July 1, 2010. However, a creditor must continue to disclose an effective APR unless and until that creditor provides disclosures of fees and interest that comply with § 226.7(b)(6) of the final rule. Similarly, as provided in § 226.7(a), in connection with a HELOC, a creditor must continue to disclose an effective APR unless and until that creditor provides fee and interest disclosures under § 226.7(b)(6).

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

Change-in-terms notices and notices of application of a penalty rate. A creditor must provide change-in-terms notices or penalty rate notices in accordance with the requirements of § 226.9(c) or (g) of the final rule, as applicable, for any changes in terms or increases in rates that will first take effect on or after July 1, 2010. For example, if a card issuer increases the interest rate applicable to purchases (other than due to the consumer's default or delinquency or as a penalty) effective as of June 30, 2010, the card issuer may comply with current § 226.9(c)(1) and mail or deliver a change-in-terms notice to the consumer 15 days in advance, on or before June 15, 2010. If, however, a card issuer increases the interest rate applicable to purchases (other than due to the consumer's default or delinquency or as a penalty) effective as of July 1, 2010, the creditor must comply with § 226.9(c)(2) of the final rule and mail or deliver notice of the change at least 45 days in advance, on or before May 17, 2010. Similarly, if a creditor increases the interest rate applicable to a consumer's account to a penalty APR and the change is effective prior to June 30, 2010, the creditor is not required to comply with § 226.9(g) of the final rule. If, however, a creditor increases the interest rate applicable to a consumer's account to a penalty APR, with the new rate becoming effective on July 1, 2010, the creditor must comply with § 226.9(g) of the final rule and provide 45 days' advance notice of the change, on or before May 17, 2010. A creditor must comply with § 226.9(g) of the final rule for any increase to a penalty APR taking effect on or after July 1, 2010, even if the event triggering that change occurs prior to July 1, 2010.

In addition, a card issuer increasing an interest rate on or after July 1, 2010 may do so only to the extent permitted by final rules issued by the Board and other federal banking agencies addressing credit card practices published elsewhere in today's **Federal Register**.

Advertising rules. Advertisements occurring on or after July 1, 2010, such as an advertisement broadcast on the radio or published in a newspaper on July 1, 2010 or later, must comply with the new final rule, including rules regarding the use of the word ''fixed.'' Similarly, an advertisement mailed on or after July 1, 2010 must comply with the final rule. Thus, an advertisement mailed on June 30, 2010 is not required to comply with the final rule even if that advertisement is received by the consumer on July 7, 2010.

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

Definition of open-end credit. As discussed in the section-by-section analysis to § 226.2(a)(20), all creditors must provide closed-end or open-end disclosures, as appropriate in light of revised § 226.2(a)(20) and the associated commentary, as of the mandatory compliance date of this final rule.

Implementation in stages. As noted above, commenters indicated creditors will likely implement the final rule in stages. As a result, some disclosures may contain existing terminology required currently under Regulation Z while other disclosures may contain new terminology required in this final rule. For example, the final rule requires creditors to use the term ''penalty rate'' when referring to a rate that can be increased due to a consumer's delinquency or default or as a penalty. In addition, creditors are required under the final rule to use a phrase other than the term ''grace period'' in describing whether a grace period is offered for purchases or other transactions. The final rule also requires in some circumstances that a creditor use a term other than ''finance charge,'' such as ''interest charge.'' As discussed in the section-by-section analysis to § 226.5(a)(2), during the implementation period, terminology need not be consistent across all disclosures. For example, if a creditor uses terminology required by the final rule in the disclosures given with applications or solicitations, that creditor may continue to use existing terminology in the disclosures it provides at account-opening or on periodic statements until July 1, 2010. Similarly, a creditor may use one of the new terms or phrases required by the final rule in a certain disclosure but is not required to use other terminology required by the final rule in that disclosure prior to the mandatory compliance date. For example, the creditor may use new terminology to describe the grace period, consistent with the final rule, in the disclosures it provides at account-opening, but may continue to use other terminology currently permitted under the rules to describe a penalty rate in the same account-opening disclosure. By the mandatory compliance date of this rule, however, all disclosures must have consistent terminology.

VIII. Final Regulatory Flexibility Act Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the Board is publishing a final regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities. An entity is considered ''small'' if it has $175 million or less in assets for banks and other depository institutions.[27]

The Board stated in the June 2007 and May 2008 Proposals its belief that the proposals would have a significant economic impact on a substantial number of small entities. Based on comments received, the Board's own analysis, and for the reasons stated below, the Board believes that the final rule will have a significant economic impact on a substantial number of small entities.

1. *Statement of need for, and objectives of, the final rule*. The purpose of the Truth in Lending Act is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. In this regard, the goal of this final rule is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end account through amendments to Regulation Z. Accordingly, the final rule changes format, timing, and content requirements for the five main types of disclosures governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) subsequent notices such as change-in-terms notices; and (5) advertising provisions.

The following sections of the **SUPPLEMENTARY INFORMATION** above describe in detail the reasons, objectives, and legal basis for each component of the final rule:

- A high-level summary of the major changes adopted in this final rule is in II. Summary of Major Changes, and a more detailed discussion is in V. Discussion of Major Revisions and VI. Section-by-Section Analysis.
- The Board's major sources of rulemaking authority pursuant to TILA are summarized in IV. The Board's Rulemaking Authority. More detailed information regarding the source of rulemaking authority for each change, as well as the rulemaking authority for certain changes mandated by the Bankruptcy Act, are discussed in VI.

Section-by-Section Analysis.

2. *Summary of issues raised by comments in response to the initial regulatory flexibility analysis*. In accordance with section 3(a) of the RFA, 5 U.S.C 603(a), the Board published in each of the June 2007 and May 2008 Proposals an initial regulatory flexibility analysis (IRFA) in connection with the proposals, and acknowledged that the projected reporting, recordkeeping, and other compliance requirements of the proposed rule would have a significant economic impact on a substantial number of small entities. In addition, the Board recognized that the precise compliance costs would be difficult to ascertain because they would depend on a number of unknown factors, including, among other things, the specifications of the current systems used by small entities to prepare and provide disclosures and/or advertisements and to administer and maintain accounts, the complexity of the terms of credit products that they offer, and the range of such product offerings. The Board sought information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rules to small entities. The Board recognizes that businesses often pass compliance costs on to consumers and that a less costly rule could benefit both small business and consumers.

The Board reviewed comments submitted by various entities in order to ascertain the economic impact of the proposals on small entities. Many industry commenters expressed general concern about the compliance burden of the proposed amendments on all creditors offering open-end (not home-secured) plans, including small entities. They expressed concerns that the proposals, if adopted, would be costly to implement, would not provide sufficient flexibility, and could result in

[27] U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*.

creditors offering fewer products, or less credit or higher-priced credit to consumers. Many of the issues raised by commenters do not apply uniquely to small entities and are addressed in VI. Section-by-Section Analysis regarding specific provisions. Comments that expressed specific concerns about the effect of the proposals on small entities are discussed below.

Commenters representing credit unions and credit union trade associations specifically addressed the Board's request for comment on the number of small entities that might be affected. As discussed in VI. Section-by-Section Analysis, many credit union commenters focused their commenters on proposed changes to the definition of open-end credit in § 226.2(a)(20). One commenter contended that the proposal would negatively and adversely affect the viability of small credit unions. This commenter cited data for year-end 2001 to 2006 from the National Credit Union Administration that the number of federally-insured credit unions decreased from 9,688 to 8,326, and stated that anecdotal evidence suggests that regulatory burden and compliance costs contribute significantly to the decision to merge or cease operations. This commenter urged the Board to withdraw all aspects of the June 2007 Proposal not mandated by the Bankruptcy Act. Another commenter that provides insurance and related financial services to credit unions reported that based on internal records, over 1900 credit unions with assets under $50 million and that offer multifeatured plans would incur an average cost of $100,000 per credit union to switch to closed-end disclosures if clarifications in the June 2007 Proposal related to the definition of open-end credit were adopted as proposed. The commenter noted that those conversion costs were in addition to costs associated with conforming the credit unions open-end disclosures to the final rule.

One industry trade group also specifically addressed the costs to small entities of requiring the changes in the periodic statement disclosures for open-end (not home-secured) credit that is not a credit card, such as an overdraft line of credit. According to the trade group, the costs and complications of amending the periodic statements for non-credit card open-end products would discourage small and midsize banks from offering these products. Another bank commenter noted that the costs associated with the periodic statement changes would be substantial and therefore more difficult for smaller institutions to absorb.

3. *Description of small entities affected by the final rule.* The final rule affects all creditors that offer open-end (not home-secured) credit plans. In addition, the final rule affects persons advertising open-end (not home-secured) credit, whether or not they are creditors. The Board acknowledged in its IRFA the total number of small entities likely to be affected by the proposal is unknown, because the open-end credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that extend even small amounts of consumer credit. *See* § 226.1(c)(1).[28] Based on June 30, 2008 call report data, there are approximately 709 banks, 3,397 insured credit unions, and 27 thrift institutions with credit card assets (or securitizations), and total assets of $175 million or less. The number of small non-depository institutions that are subject to Regulation Z's open-end credit provisions cannot be determined from information in call reports, but recent congressional testimony by an industry trade group indicated that 200 retailers, 40 oil companies, and 40 third-party private label credit card issuers of various sizes also issue credit cards.[29] There is no comprehensive listing of small consumer finance companies that may be affected by the proposed rules or of small merchants that offer their own credit plans for the purchase of goods or services. Furthermore, it is unknown how many of these small entities offer open-end credit plans as opposed to closed-end credit products, which would not be affected by the final rule.

4. *Reporting, recordkeeping and compliance requirements.* The compliance requirements of this final rule are described above in VI. Section-by-Section Analysis.

The effect of the revisions to Regulation Z on small entities is unknown. Small entities are required to, among other things, conform their open-end credit disclosures, including those in credit card applications or solicitations, account opening materials, periodic statements, change-in-terms notices, and advertisements to the revised rules. The Board has sought to reduce the burden on small entities, where possible, by adopting model forms that can be used to ease compliance with the final rules. Small entities also are required to update their systems to comply with new rules regarding reasonable cut-off times for payments and weekend or holiday payment due dates.

In the May 2008 Proposal, the Board noted that the precise costs to small entities of updating their systems are difficult to predict. These costs will depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer open-end accounts, the complexity of the terms of the open-end credit products that they offer, and the range of such product offerings. The Board requested information and comment on the effects of the proposed rules on small entities and received few comments regarding the cost impact on small entities specifically. These comments are discussed above in the ''Summary of issues raised by comments in response to the initial regulatory flexibility analysis'' section.

5. *Steps taken to minimize the economic impact on small entities.* As previously noted, the June 2007 and May 2008 Proposals implement the Board's mandate to prescribe regulations that carry out the purposes of TILA. In addition, portions of the June 2007 Proposal implement certain provisions of the Bankruptcy Act that require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements. The Board seeks in this final rule to balance the benefits to consumers arising out of more effective TILA disclosures against the additional burdens on creditors and other entities subject to TILA. To that end, and as discussed above in VI. Section-by-Section Analysis, consumer testing was conducted for the Board in order to assess the effectiveness of the proposed revisions to Regulation Z. In this manner, the Board has sought to avoid imposing additional regulatory requirements without evidence that these proposed revisions may be beneficial to consumer understanding of open-end credit products.

The steps the Board has taken to minimize the economic impact and compliance burden on small entities, including the factual, policy, and legal reasons for selecting the alternatives adopted and why each one of the other

[28] Regulation Z generally applies to ''each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly; (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes.'' § 226.1(c)(1).

[29] Testimony of Edward L. Yingling for the American Bankers' Association before the Subcommittee on Financial Institutions and Consumer Credit, Financial Services Committee, United States House of Representatives, April 26, 2007, fn. 1, p 3.

significant alternatives was not accepted, are described above in VI. Section-by-Section Analysis. The final rule's modifications from the proposed rule that minimize economic impact on small entities are summarized below.

In response to the results of consumer testing, the Board's final rule provides a number of modifications designed to increase flexibility and thus reduce costs to creditors. Under the final rule, for the summary tables accompanying applications or solicitations and the summary tables provided at account opening, creditors will be permitted to combine rows for different transaction types when the APR for each transaction type is the same. In addition, the final rule removes the requirement that creditors provide certain cross references in the summary tables. Both these changes allow for shorter disclosures, which in turn, could reduce the amount of paper creditors must use and the mailing costs of the disclosures.

The final rule also provides flexibility in the periodic statement disclosure by removing the requirement that the grouping of certain payment information on periodic statements be substantially similar to the model forms provided by the Board. This change provides flexibility to creditors to determine how to fit certain new periodic statement disclosure requirements under the final rule within the format of creditors' current forms instead of requiring creditors to potentially redesign their forms to be substantially similar to the Board's model forms. In addition, under the final rule, creditors are no longer required to provide the effective APR on the periodic statement.

The Board has also amended the rule on setting reasonable cut-off hours for mailed payments to be received on the due date and be considered timely. The May 2008 Proposal stated that it would not be reasonable for a creditor to set a cut-off time for payments by mail that is earlier than 5 p.m. In response to industry commenters, including a comment from a small credit union with limited hours of operation, the Board has relaxed this standard and amended the final rule to describe a 5 p.m. cut-off time for mailed payment as an example of a reasonable requirement for payments while not stating that earlier cut-off times would be unreasonable in all circumstances.

Furthermore, as proposed in June 2007 and consistent with the Bankruptcy Act, small depository institutions with assets of $250 million or less are not required to maintain their own toll-free telephone number to provide the minimum repayment estimates required under § 226.7(b)(12) for a period of two years after the effective date of the rule. The Board must establish and maintain a toll-free telephone number for use by customers of these institutions.

Also, the Board is providing an implementation period that responds to commenters' concerns about the time needed to comply with the final rule. The Board believes the effective date will decrease costs for small entities by providing them with sufficient time to come into compliance with the final rule's requirements. The implementation date is discussed above in VII. Mandatory Compliance Date.

The Board believes that these changes minimize the significant economic impact on small entities while still meeting the stated objectives of TILA.

6. *Other federal rules*. With the following exception, the Board believes no Federal rules duplicate, overlap, or conflict with this final rule. In the June 2007 Proposal, the Board noted in the section-by-section analysis to § 226.13(i) a potential conflict between Regulation Z and Regulation E with respect to error resolution procedures when a transaction involves both an extension of credit and an electronic fund transfer. This can occur when a financial institution extends credit incident to electronic fund transfers subject to Regulation E, for example, when the credit card account is used to advance funds to prevent a consumer's deposit account from becoming overdrawn or to maintain a specified minimum balance in the consumer's account. Current § 226.13(i), which has not been amended in the final rule, resolves this conflict by stating that under these circumstances, the creditor should comply with the error resolution procedures of Regulation E, rather than those in Regulation Z (except that the creditor must still comply with §§ 226.13(d) and (g)).

In the May 2008 Regulation Z Proposal, the Board also requested comment regarding any duplication, overlap, or conflict between the proposed revisions to Regulation Z in this May 2008 Proposal and the proposal to address certain credit card practices issued by the Board, as well as other federal banking agencies, in May 2008. 73 FR 28904, May 19, 2008. Several commenters raised potential conflicts between the two proposals. As discussed above in VI. Section-by-Section Analysis and in the supplementary information to the final rule adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, the Board has addressed these comments and believes the final rule avoids any conflict, duplication, or overlap with the final rule adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**.

IX. Paperwork Reduction Act

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

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions and small businesses. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, in the event the Board were to retain records during the course of an examination, the information may be protected from disclosure under the exemptions set forth in (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)).

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

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

As mentioned in III. The Board's Review of Open-end Credit Rules above, two notices of proposed rulemaking were published in the **Federal Register:** the June 2007 Proposal, 72 FR 32948 (June 14, 2007) and the May 2008 Proposal, 73 FR 28866 (May 19, 2008). The comment period for these notices expired October 12, 2007 and July 18, 2008, respectively. No comments specifically addressing the burden estimates in those two proposals were received. However, since publication of the May 2008 Proposal, the one-time increase and continuing total annual burden hours have been revised. The revisions include: (1) Incorporating provisions of Regulation Z requirements affecting mortgage lending, published in the **Federal Register** on July 30, 2008 (73 FR 44522) and (2) updating the total number of Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA from 1,172 to 1,138.

Based on these adjustments to the estimates published in the May 2008 Proposal, the final rule will impose a one-time increase in the total annual burden by 74,640 hours. The final rule, on a continuing basis, will impose an increase in the total annual burden by 35,120 hours due to the adjustments discussed above, as well as (1) revisions to the rules governing change-in-terms notices in this final rule, which would increase the frequency with which such notices are required and (2) inclusion of the disclosure requirement to cosigners under 12 CFR 227.14(b) (Regulation AA). The title of the Regulation Z information collection will be updated to account for these sections of Regulation AA. In total the final rule will increase the annual burden by 109,760 hours from 578,847 to 688,607 hours. This burden increase will be imposed on all Federal Reserve-regulated institutions that are deemed to be respondents for purposes of the PRA.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total current estimated annual burden for all financial institutions subject to Regulation Z, including Federal Reserve-supervised institutions, would be approximately 11,671,017 hours. In total the final rule will impose an increase to the estimated annual burden for all institutions subject to Regulation Z of 1,926,373 hours to 13,597,390 hours. On a continuing basis, the proposed revisions to the change-in-terms notices would increase the estimated annual frequency, thus increasing the total annual burden from 12,324,037 to 13,230,534 hours. The estimates above represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including card issuers, retailers, and depository institutions (of which there are approximately 17,200) potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

The Board has a continuing interest in the public's opinion of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

X. Redesignation Table

The Board has adopted organizational revisions that are designed to make the regulation easier to use. The following table indicates the redesignations.

Current	Redesignation
Comment I–4	Comment I–3
Comment I–5	Comment I–4
Footnote 3	§ 226.2(a)(17)(v)
Comment 2(a)(20)–6	Comment 2(a)(20)–7
Footnote 4	Comment 3–1
Comment 3(a)–2	Comment 3(a)–3
Comment 3(a)–3	Comment 3(a)–4
Comment 3(a)–4	Comment 3(a)–5
Comment 3(a)–5	Comment 3(a)–6
Comment 3(a)–6	Comment 3(a)–8
Comment 3(a)–7	Comment 3(a)–9
Comment 3(a)–8	Comment 3(a)–10
Footnote 5	§ 226.4(d)(2)
Footnote 6	§ 226.4(d)(2)(i)
§ 226.4(d)(3)(i)	§ 226.4(d)(3)
§ 226.4(d)(3)(i)(A)	§ 226.4(d)(3)(i)
§ 226.4(d)(3)(i)(B)	§ 226.4(d)(3)(ii)
§ 226.4(d)(3)(i)(C)	§ 226.4(d)(3)(iv)
§ 226.4(d)(3)(ii)	Comment 4(d)(3)–3
Comment 4(a)–4	Comment 4(a)–4.i.
Footnote 7	§ 226.5(a)(1)(ii)(A)
Footnote 8	§ 226.5(a)(1)(ii)(B)
§ 226.5(a)(2)	§ 226.5(a)(2)(ii)

Current	Redesignation
Footnote 9	§ 226.5(a)(2)(ii)
§ 226.5(a)(3)	§ 226.5(a)(3)(i)
§ 226.5(a)(4)	§ 226.5(a)(3)(ii)
§ 226.5(b)(1)	§ 226.5(b)(1)(i)
Footnote 10	§ 226.5(b)(2)(iii)
Comment 5(a)(1)–1	Comments 5(a)(1)–1 and 5(a)(1)–2
Comment 5(a)(1)–2	Comment 5(a)(1)–4
Comment 5(b)(1)–1	§ 226.5(b)(1)(iv); Comments 5(b)(1)(i)–1, 5(b)(1)(iv)–2, and 5(b)(1)(iv)–4
Comment 5(b)(1)–2	Comment 5(b)(1)(i)–2
Comment 5(b)(1)–3	Comment 5(b)(1)(i)–3
Comment 5(b)(1)–4	Comment 5(b)(1)(i)–4
Comment 5(b)(1)–5	Comment 5(b)(1)(i)–5
Comment 5(b)(2)(ii)–2	Comment 5(b)(1)(iii)–1
Comment 5(b)(2)(ii)–3	Comment 5(b)(1)(iii)–2
§ 226.5a(a)(2)(i) (prominent location)	§ 226.5a(a)(2)(vi)
§ 226.5a(a)(2)(iii)	§ 226.5(a)(2)(iii)
§ 226.5a(a)(2)(iv)	§ 226.5(a)(2)(i)
§ 226.5a(a)(3)	§ 226.5a(a)(5)
§ 226.5a(a)(4)	§ 226.5a(a)(3)
§ 226.5a(a)(5)	§ 226.5a(a)(4)
§ 226.5a(b)(1)(ii); Comment 5a(c)–1	§ 226.5a(2)(i); § 226.5a(e)(4)
§ 226.5a(b)(1)(iii)	§ 226.5a(2)(ii)
§ 226.5a	§ 226.5a(1)
§ 226.5a(d)(2)	§ 226.5a(d)(2)(i) and (ii)
§ 226.5a(d)(2)(i)	§ 226.5a(d)(2)(ii)(A)
§ 226.5a(d)(2)(ii)	§ 226.5a(d)(2)(ii)(B)
§ 226.5a(e)(3)	§ 226.5a(e)(2)
§ 226.5a(e)(4)	§ 226.5a(e)(3)
Comment 5a(a)(2)–1	Comment 5a(a)–3
Comment 5a(a)(2)–2	Comment 5a(a)(2)–1
Comment 5a(a)(2)–3	Comment 5a(a)(2)–2
Comment 5a(a)(2)–4	§ 226.5a(a)(2)(ii)
Comment 5a(a)(2)–7	Comment 5a(a)(2)–4
Comments 5a(a)(3)–1; –3	§ 226.5a(a)(5)
Comment 5a(a)(3)–2	§ 226.5a(a)(5); Comment 5a(a)(5)–1
Comment 5a(a)(5)–1	Comment 5a(a)(4)–1
Comment 5a(b)(1)–2	Comment 5a(b)(1)–1
Comment 5a(b)(1)–3	§ 226.5a(d)(3)
Comment 5a(b)(1)–4	§ 226.5a(b)(1)(i); Comment 5a(b)(1)–2
Comment 5a(b)(1)–5	§ 226.5a(b)(1)(ii)
Comment 5a(b)(1)–6	§ 226.5a(b)(1)(iii)
Comment 5a(b)(1)–7	§ 226.5a(b)(1)(iv); Comment 5a(b)(1)–4
Comment 5a(c)–2	Comment 5a(c)–1
Comment 5a(e)(3)–1	Comment 5a(e)(2)–1
Comment 5a(e)(4)–1	Comment 5a(e)(3)–1
Comment 5a(e)(4)–2	Comment 5a(e)(3)–2
Comment 5a(e)(4)–3	Comment 5a(e)(3)–3
§ 226.6(a)	§ 226.6(a)(1); § 226.6(b)(3) and (4)
Footnote 11	§ 226.6(a)(1)(ii); § 226.6(b)(4)(i)(B)
Footnote 12	§ 226.6(a)(1)(ii); § 226.6(b)(4)(ii)
Footnote 13	Comments 6(a)(1)(iv)–1 and 6(b)(3)–3
§ 226.6(b)	§ 226.6(a)(2); § 226.6(b)(3)
§ 226.6(c)	§ 226.6(a)(4); § 226.6(b)(5)(ii)
§ 226.6(d)	§ 226.6(a)(5); § 226.6(b)(5)(iii)
§ 226.6(e)	§ 226.6(a)(3)
§ 226.6(e)(1)	§ 226.6(a)(3)(i)
§ 226.6(e)(2)	§ 226.6(a)(3)(ii)
§ 226.6(e)(3)	§ 226.6(a)(3)(iii)
§ 226.6(e)(4)	§ 226.6(a)(3)(iv)
§ 226.6(e)(5)	§ 226.6(a)(3)(v)
§ 226.6(e)(6)	§ 226.6(a)(3)(vi)
§ 226.6(e)(7)	§ 226.6(a)(3)(vii)
Comment 6(a)(1)–1	Comments 6(a)(1)(i)–1 and 6(b)(3)–1
Comment 6(a)(1)–2	Comments 6(a)(1)(i)–2 and 6(b)(3)–2
Comment 6(a)(2)–1	Comments 6(a)(1)(ii)–1 and 6(b)(4)(i)(B)–1
Comment 6(a)(2)–2	Comments 6(a)(1)(ii)–2 and 6(b)(4)(ii)–1
Comment 6(a)(2)–3	Comment 6(a)(1)(ii)–3
Comment 6(a)(2)–4	Comment 6(a)(1)(ii)–4
Comment 6(a)(2)–5	Comment 6(a)(1)(ii)–5
Comment 6(a)(2)–6	Comments 6(a)(1)(ii)–6 and 6(b)(4)(ii)–2
Comment 6(a)(2)–7	Comments 6(a)(1)(ii)–7 and 6(b)(4)(ii)–3
Comment 6(a)(2)–8	Comments 6(a)(1)(ii)–8 and 6(b)(4)(ii)–4
Comment 6(a)(2)–9	Comment 6(a)(1)(ii)–9
Comment 6(a)(2)–10	Comments 6(a)(1)(ii)–10 and 6(b)(4)(ii)–5

Current	Redesignation
Comment 6(a)(2)–11	Comment 6(a)(1)(ii)–11
Comment 6(a)(3)–1	Comments 6(a)(1)(iii)–1 and 6(b)(4)(i)(D)–1
Comment 6(a)(3)–2	Comments 6(a)(1)(iii)–2 and 6(b)(4)(i)(D)–2
Comment 6(a)(4)–1	Comment 6(a)(1)(iv)–1
Comment 6(b)–1	Comment 6(a)(2)–1
Comment 6(b)–2	Comment 6(a)(2)–2
Comment 6(c)–1	Comments 6(a)(4)–1 and 6(b)(5)(ii)–1
Comment 6(c)–2	Comments 6(a)(4)–2 and 6(b)(5)(ii)–2
Comment 6(c)–3	Comments 6(a)(4)–3 and 6(b)(5)(ii)–3
Comment 6(c)–4	Comments 6(a)(4)–4 and 6(b)(5)(ii)–4
Comment 6(c)–5	Comments 6(a)(4)–5 and 6(b)(5)(ii)–5
Comment 6(d)	Comments 6(a)(5)–1 and 6(b)(5)(iii)–1
Comment 6(e)–1	Comment 6(a)(3)–1
Comment 6(e)–2	Comment 6(a)(3)–2
Comment 6(e)–3	Comment 6(a)(3)–3
Comment 6(e)–4	Comment 6(a)(3)–4
§ 226.7(a)	§ 226.7(a)(1); § 226.7(b)(1)
§ 226.7(b)	§ 226.7(a)(2); § 226.7(b)(2)
§ 226.7(c)	§ 226.7(a)(3); § 226.7(b)(3)
§ 226.7(d)	§ 226.7(a)(4); § 226.7(b)(4)
Footnote 15	§ 226.7(a)(4); § 226.7(b)(4)
§ 226.7(e)	§ 226.7(a)(5); § 226.7(b)(5)
§ 226.7(f)	§ 226.7(a)(6)(i); § 226.7(b)(6)
§ 226.7(g)	§ 226.7(a)(7)
§ 226.7(h)	§ 226.7(a)(6)(ii); § 226.7(b)(6)
§ 226.7(i)	§ 226.7(a)(10); § 226.7(b)(10)
§ 226.7(j)	§ 226.7(a)(8); § 226.7(b)(8)
§ 226.7(k)	§ 226.7(a)(9); § 226.7(b)(9)
Comment 7–3	Comment 7(b)–1
Comment 7(a)–1	Comments 7(a)(1)–1 and 7(b)(1)–1
Comment 7(a)–2	Comments 7(a)(1)–2 and 7(b)(1)–2
Comment 7(a)–3	Comments 7(a)(1)–3 and 7(b)(1)–3
Comment 7(b)–1	Comments 7(a)(2)–1 and 7(b)(2)–1
Comment 7(b)–2	Comments 7(a)(2)–2 and 7(b)(2)–2
Comment 7(c)–1	Comments 7(a)(3)–1 and 7(b)(3)–1
Comment 7(c)–2	Comment 7(a)(3)–2
Comment 7(c)–3	Comments 7(a)(3)–3 and 7(b)(3)–2
Comment 7(c)–4	Comments 7(a)(3)–4 and 7(b)(3)–3
Comment 7(d)–1	Comments 7(a)(4)–1 and 7(b)(4)–1
Comment 7(d)–2	Comments 7(a)(4)–2 and 7(b)(4)–2
Comment 7(d)–3	Comments 7(a)(4)–3 and 7(b)(4)–3
Comment 7(d)–4	Comment 7(a)(4)–4
Comment 7(d)–5	Comment 7(a)(4)–5
Comment 7(d)–6	Comments 7(a)(4)–6 and 7(b)(4)–5
Comment 7(d)–7	Comment 7(b)(4)–6
Comment 7(e)–1	Comment 7(a)(5)–1
Comment 7(e)–2	Comments 7(a)(5)–2 and 7(b)(5)–1
Comment 7(e)–3	Comments 7(a)(5)–3 and 7(b)(5)–2
Comment 7(e)–4	Comments 7(a)(5)–4 and 7(b)(5)–3
Comment 7(e)–5	Comments 7(a)(5)–5 and 7(b)(5)–4
Comment 7(e)–6	Comment 7(a)(5)–6
Comment 7(e)–7	Comments 7(a)(5)–7 and 7(b)(5)–5
Comment 7(e)–8	Comments 7(a)(5)–8 and 7(b)(5)–6
Comment 7(e)–9	Comments 7(a)(5)–9 and 7(b)(5)–7
Comment 7(e)–10	Comment 7(b)(5)–8
Comments 7(f)–1	Comment 7(a)(6)(i)–1
Comment 7(f)–2	Comment 7(a)(6)(i)–2
Comment 7(f)–3	Comment 7(a)(6)(i)–3
Comment 7(f)–4	Comment 7(a)(6)(i)–4
Comment 7(f)–5	Comment 7(a)(6)(i)–5
Comment 7(f)–6	Comment 7(a)(6)(i)–6
Comment 7(f)–7	Comment 7(a)(6)(i)–7
Comment 7(f)–8	Comment 7(a)(6)(i)–8
Comment 7(g)–1	Comments 7(a)(7)–1
Comment 7(g)–2	Comments 7(a)(7)–2
Comment 7(h)–1	Comment 7(a)(6)(ii)–1
Comment 7(h)–2	Comment 7(a)(6)(ii)–2
Comment 7(h)–3	Comment 7(a)(6)(ii)–3
Comment 7(h)–4	Comment 7(a)(6)(ii)–4
Comment 7(i)–1	Comments 7(a)(10)–1 and 7(b)(10)–1
Comment 7(i)–2	Comments 7(a)(10)–2 and 7(b)(10)–2
Comment 7(i)–3	Comments 7(a)(10)–3 and 7(b)(10)–3
Comment 7(j)–1	Comments 7(a)(8)–1 and 7(b)(8)–1
Comment 7(j)–2	Comment 7(b)(8)–2

Current	Redesignation
Comment 7(k)–1	Comments 7(a)(9)–1 and 7(b)(9)–1
Comment 7(k)–2	Comments 7(a)(9)–2 and 7(b)(9)–2
Footnote 16	§ 226.8(c)(1)
Footnote 17	§ 226.8(c)(2)
Footnote 19	§ 226.8(a)(1)(ii)
Comment 8–2	Comment 8(a)–1
Comment 8–3	Comment 8(b)–1
Comment 8–5	Comment 8(a)–5
Comment 8(a)–1	Comment 8(a)–4.i.
Comment 8(a)–2	Comment 8(a)–4.ii.
Comment 8(a)–4	Comment 8(a)–2
Comment 8(a)(2)–1	Comment 8(a)–6.i. and ii.
Comment 8(a)(2)–2	Comment 8(a)–6.iii.
Comment 8(a)(2)–5	Comment 8(a)–3.iv.
Comment 8(a)(3)–1	Comment 8(a)–7
Comment 8(a)(3)–2	Comment 8(a)–8.i.
Comment 8(a)(3)–3	Comment 8(a)–8.ii.
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List of Subjects in 12 CFR Part 226

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

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

PART 226—TRUTH IN LENDING (REGULATION Z)

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

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart A—General

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

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

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

(b) *Purpose*. The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.

(c) *Coverage*. (1) In general, this regulation applies to each individual or business that offers or extends credit when four conditions are met: the credit is offered or extended to consumers; the offering or extension of credit is done regularly;[1] the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and the credit is primarily for personal, family, or household purposes.

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

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

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

(1) Subpart A contains general information. It sets forth: the authority, purpose, coverage, and organization of the regulation; the definitions of basic terms; the transactions that are exempt from coverage; and the method of determining the finance charge.

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

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

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

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

[1] [Reserved]

(6) Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the act and the regulation. Section 1204 (c) of title XII of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

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

§ 226.2 Definitions and rules of construction.

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

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

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

(3) [Reserved] [2]

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

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

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

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

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

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

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

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

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

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

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

(15) *Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit. *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge.

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

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

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

(17) *Creditor* means:

(i) A person:

(A) Who regularly extends consumer credit [3] that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and

(B) To whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

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

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

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

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

(18) *Downpayment* means an amount, including the value of property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A

[2] [Reserved]

[3] [Reserved]

deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

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

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

(i) The creditor reasonably contemplates repeated transactions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 226.3 Exempt transactions.

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

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

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

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

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

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

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

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

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

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

§ 226.4 Finance charge.

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

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

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

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

(2) *Special rule; closing agent charges.* Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor—

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

(ii) Requires the imposition of the charge; or

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

[4] [Reserved]

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

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

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

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

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

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

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

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

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

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) Charges or premiums paid for debt cancellation or debt suspension coverage written in connection with a credit transaction, whether or not the coverage is insurance under applicable law.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) *Real-estate related fees.* The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit-report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the act.

(d) *Insurance and debt cancellation and debt suspension coverage. (1) Voluntary credit insurance premiums.* Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(2) *Property insurance premiums.* Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, including single interest insurance if the insurer waives all right of subrogation against the consumer,[5] may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice,[6] and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation or debt suspension fees.* Charges or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(i) The debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

(ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

[5] [Reserved]

[6] [Reserved]

(iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(4) *Telephone purchases.* If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end (not home-secured) plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and

(ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

Subpart B—Open-End Credit

■ 6. Section 226.5 is revised to read as follows:

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) *General.* (i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing,[7] in a form that the consumer may keep,[8] except that:

(A) The following disclosures need not be written: Disclosures under § 226.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under § 226.6(b)(2) and related disclosures under § 226.9(c)(2)(ii)(B) of charges; disclosures under § 226.9(c)(2)(v); and disclosures under § 226.9(d) when a finance charge is imposed at the time of the transaction.

(B) The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section; disclosures for credit and charge card applications and solicitations under § 226.5a; home-equity disclosures under § 226.5b(d); the alternative summary billing-rights statement under § 226.9(a)(2); the credit and charge card renewal disclosures required under § 226.9(e); and the payment requirements under § 226.10(b), except as provided in § 226.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

(2) *Terminology.* (i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) For home-equity plans subject to § 226.5b, the terms *finance charge* and *annual percentage rate*, when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.[9] The terms need not be more conspicuous when used for periodic statement disclosures under § 226.7(a)(4) and for advertisements under § 226.16.

[7] [Reserved]

[8] [Reserved]

[9] [Reserved]

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term *penalty APR* shall be used, as applicable. The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed*, or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(3) *Specific formats.* (i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of § 226.5a(a)(2).

(ii) Certain disclosures for home-equity plans must precede other disclosures and must be given in accordance with the requirements of § 226.5b(a).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of § 226.6(b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of § 226.7(b)(6) and (b)(13).

(v) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of § 226.9(b)(3).

(vi) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of § 226.9(c)(2)(iii)(B).

(vii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of § 226.9(g)(3)(ii).

(b) *Time of disclosures.* (1) *Account-opening disclosures.* (i) *General rule.* The creditor shall furnish account-opening disclosures required by § 226.6 before the first transaction is made under the plan.

(ii) *Charges imposed as part of an open-end (not home-secured) plan.* Charges that are imposed as part of an open-end (not home-secured) plan and are not required to be disclosed under § 226.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them. This provision does not apply to charges imposed as part of a home-equity plan subject to the requirements of § 226.5b.

(iii) *Telephone purchases.* Disclosures required by § 226.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 226.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) *Membership fees.* (A) *General.* In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance charge under § 226.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay these fees (including application fees) or any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in § 226.5a(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section.

(v) *Application fees.* A creditor may collect an application fee excludable from the finance charge under § 226.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. See § 226.5(b)(1)(iv).

(2) *Periodic statements.* (i) The creditor shall mail or deliver a periodic statement as required by § 226.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, if delinquency collection proceedings have been instituted, if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, or if furnishing the statement would violate federal law.

(ii) The creditor shall mail or deliver the periodic statement at least 14 days prior to any date or the end of any time period required to be disclosed under § 226.7(a)(8) or (b)(8), as applicable, for the consumer to avoid an additional finance or other charge.[10] A creditor that fails to meet this requirement shall not collect any finance or other charge imposed as a result of such failure.

(iii) The timing requirement under this paragraph (b)(2) does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.

(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of § 226.5a.

(4) *Home-equity plans.* Disclosures for home-equity plans shall be made in accordance with the timing requirements of § 226.5b(b).

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 226.15 is applicable, however, the disclosures required by §§ 226.6 and 226.15(b) shall be made to each consumer having the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this regulation, although new disclosures may be required under § 226.9(c).

■ 7. Section 226.5a is revised to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) *General rules.* The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) *Definition of solicitation.* For purposes of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. A ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of this section.

(2) *Form of disclosures; tabular format.* (i) The disclosures in paragraphs (b)(1) through (5) (except for (b)(1)(iv)(B)) and (b)(7) through (15) of this section made pursuant to paragraph (c), (d)(2), (e)(1) or (f) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G–10 in Appendix G to this part.

(ii) The table described in paragraph (a)(2)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented on or with an application or solicitation, provided such information appears outside the required table.

[10] [Reserved]

(iii) Disclosures required by paragraphs (b)(1)(iv)(B) and (b)(6) of this section must be placed directly beneath the table.

(iv) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section, any introductory rate permitted to be disclosed pursuant to paragraph (b)(1)(ii) or required to be disclosed under paragraph (b)(1)(vii) of this section, any rate that will apply after a premium initial rate expires permitted to be disclosed under paragraph (b)(1)(iii) or required to be disclosed under paragraph (b)(1)(vii), and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13) of this section must be disclosed in bold text. However, bold text shall not be used for: Any maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state; the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

(vi)(A) Except as provided in paragraph (a)(2)(vi)(B) of this section, the table described in paragraph (a)(2)(i) of this section must be provided in a prominent location on or with an application or a solicitation.

(B) If the table described in paragraph (a)(2)(i) of this section is provided electronically, it must be provided in close proximity to the application or solicitation.

(3) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(4) *Fees that vary by state.* Card issuers that impose fees referred to in paragraphs (b)(8) through (12) of this section that vary by state may, at the issuer's option, disclose in the table the specific fee applicable to the consumer's account, or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to a disclosure provided with the table where the amount of the fee applicable to the consumer's account is disclosed. A card issuer may not list fees for multiple states in the table.

(5) *Exceptions.* This section does not apply to:

(i) Home-equity plans accessible by a credit or charge card that are subject to the requirements of § 226.5b;

(ii) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(iii) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(iv) Lines of credit accessed solely by account numbers;

(v) Additions of a credit or charge card to an existing open-end plan;

(vi) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or

(vii) Consumer-initiated requests for applications.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1) or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

(i) *Variable rate information.* If a rate disclosed under paragraph (b)(1) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(ii) *Discounted initial rate.* If the initial rate is an introductory rate, as that term is defined in § 226.16(g)(2)(ii), the card issuer must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(1) of this section. Where the rate is not tied to an index or formula, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraphs (c), (d), or (e) of this section, as applicable. Except as provided in paragraph (b)(1)(vii) of this section, the issuer 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 card issuer 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.

(iii) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the card issuer must disclose the premium initial rate pursuant to paragraph (b)(1) of this section. Except as provided in paragraph (b)(1)(vii) of this section, the issuer is not required to, but may disclose in the table the rate that will apply after the premium initial rate expires if the issuer also discloses the time period during which the premium initial rate will remain in effect. Consistent with paragraph (b)(1) of this section, the premium initial rate for purchases must be in at least 16-point type. If the issuer also discloses in the table the rate that will apply after the premium initial rate for purchases expires, that rate also must be in at least 16-point type.

(iv) *Penalty rates.* (A) *In general.* Except as provided in paragraph (b)(1)(iv)(B), if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to paragraph (b)(1) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect.

(B) *Introductory rates.* If the issuer discloses an introductory rate, as that term is defined in § 226.16(g)(2)(ii), in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to paragraph (c) or (e) of this section, the issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked.

(v) *Rates that depend on consumer's creditworthiness*. If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, the card issuer must disclose the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in paragraph (b)(1)(iv) of this section, the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(vi) *APRs that vary by state*. Issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table the specific annual percentage rate applicable to the consumer's account, or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. A card issuer may not list annual percentage rates for multiple states in the table.

(vii) *Issuers subject to 12 CFR 227.24 or similar law*. Notwithstanding paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, issuers that are subject to 12 CFR § 227.24 or similar law must disclose in the table any introductory rate applicable to the account, consistent with the requirements of paragraph (b)(1)(ii) of this section, and any rate applicable upon the expiration of a premium initial rate, consistent with the requirements of paragraph (b)(1)(iii) of this section.

(2) *Fees for issuance or availability*. (i) Any annual or other periodic fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(ii) Any non-periodic fee that relates to opening an account. A card issuer must disclose that the fee is a one-time fee.

(3) *Fixed finance charge; minimum interest charge*. Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The Board shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on the June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. The issuer may, at its option, disclose in the table minimum interest charges below this threshold.

(4) *Transaction charges*. Any transaction charge imposed by the card issuer for the use of the card for purchases.

(5) *Grace period*. The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all types of purchases, the phrase ''How to Avoid Paying Interest on Purchases'' shall be used as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, the phrase ''Paying Interest'' shall be used as the heading for the row describing this fact.

(6) *Balance computation method*. The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) *Statement on charge card payments*. A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) *Cash advance fee*. Any fee imposed for an extension of credit in the form of cash or its equivalent.

(9) *Late-payment fee*. Any fee imposed for a late payment.

(10) *Over-the-limit fee*. Any fee imposed for exceeding a credit limit.

(11) *Balance transfer fee*. Any fee imposed to transfer an outstanding balance.

(12) *Returned-payment fee*. Any fee imposed by the card issuer for a returned payment.

(13) *Required insurance, debt cancellation or debt suspension coverage*. (i) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross reference to any additional information provided about the insurance or coverage accompanying the application or solicitation, as applicable.

(14) *Available credit*. If a card issuer requires fees for the issuance or availability of credit described in paragraph (b)(2) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the card, a card issuer must disclose the available credit remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 15 percent threshold test is met, the issuer must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the issuer in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(15) *Web site reference*. A reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.

(c) *Direct mail and electronic applications and solicitations.* (1) *General.* The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided to consumers in electronic form.

(2) *Accuracy.* (i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time they are sent, in the case of disclosures sent to a consumer's e-mail address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's e-mail address, or viewed by the public, as applicable.

(d) *Telephone applications and solicitations.* (1) *Oral disclosure.* The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) and (b)(14) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) *Alternative disclosure.* The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either:

(i)(A) Does not impose a fee described in paragraph (b)(2) of this section; or

(B) Imposes such a fee but provides the consumer with a right to reject the plan consistent with § 226.5(b)(1)(iv); and

(ii) The card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(A) The applicable information in paragraph (b) of this section; and

(B) As applicable, the fact that the consumer has the right to reject the plan and not be obligated to pay fees described in paragraph (b)(2) or any other fees or charges until the consumer has used the account or made a payment on the account after receiving a billing statement.

(3) *Accuracy.* (i) The oral disclosures under paragraph (d)(1) of this section must be accurate as of the time they are given.

(ii) The alternative disclosures under paragraph (d)(2) of this section generally must be accurate as of the time they are mailed or delivered. A variable annual percentage rate is one that is accurate if it was:

(A) In effect at the time the disclosures are mailed or delivered; or

(B) In effect as of a specified date (which rate is then updated from time to time, but no less frequently than each calendar month).

(e) *Applications and solicitations made available to general public.* The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (e)(1) or (e)(2) of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on the application or solicitation the following:

(i) The applicable information in paragraph (b) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(3) *Prompt response to requests for information.* Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(4) *Accuracy.* The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. A variable annual percentage rate is accurate if it was in effect within 30 days before printing.

(f) *In-person applications and solicitations.* A card issuer shall disclose the information in paragraph (b) of this section, to the extent applicable, on or with an application or solicitation that is initiated by the card issuer and given to the consumer in person. A card issuer complies with the requirements of this paragraph if the issuer provides disclosures in accordance with paragraph (c)(1) or (e)(1) of this section.

(g) *Balance computation methods defined.* The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late-payment fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

(1)(i) *Average daily balance (including new purchases).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(ii) *Average daily balance (excluding new purchases).* This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2)(i) *Two-cycle average daily balance (including new purchases).* This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(ii) *Two-cycle average daily balance (excluding new purchases).* This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(3) *Adjusted balance.* This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(4) *Previous balance.* This balance is the outstanding balance at the beginning of the billing cycle.

(5) *Daily balance.* For each day in the billing cycle, this balance is figured by taking the beginning balance each day,

adding any new purchases, and subtracting any payment and credits.

■ 8. Section 226.6 is revised to read as follows:

§ 226.6 Account-opening disclosures.

(a) *Rules affecting home-equity plans*. The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of § 226.5b. A creditor shall disclose the items in this section, to the extent applicable:

(1) *Finance charge*. The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows.

(i) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(ii) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[11] and the corresponding annual percentage rate.[12] If a creditor offers a variable-rate plan, the creditor shall also disclose: the circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(iii) An explanation of the method used to determine the balance on which the finance charge may be computed.

(iv) An explanation of how the amount of any finance charge will be determined,[13] including a description of how any finance charge other than the periodic rate will be determined.

(2) *Other charges*. The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

(3) *Home-equity plan information*. The following disclosures described in § 226.5b(d), as applicable:

(i) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(ii) The payment information described in § 226.5b(d)(5)(i) and (ii) for both the draw period and any repayment period.

(iii) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(iv) A statement of any transaction requirements as described in § 226.5b(d)(10).

(v) A statement regarding the tax implications as described in § 226.5b(d)(11).

(vi) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in § 226.5b(d)(6) and (d)(12)(ii).

(vii) The variable-rate disclosures described in § 226.5b(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

(4) *Security interests*. The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(5) *Statement of billing rights*. A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Model Form G–3 or, at the creditor's option G–3(A), in Appendix G to this part.

(b) *Rules affecting open-end (not home-secured) plans*. The requirements of paragraph (b) of this section apply to plans other than home-equity plans subject to the requirements of § 226.5b.

(1) *Form of disclosures; tabular format for open-end (not home-secured) plans*. Creditors must provide the account-opening disclosures specified in paragraph (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (b)(2)(xiv) of this section) in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G–17 in Appendix G to this part.

(i) *Highlighting*. In the table, any annual percentage rate required to be disclosed pursuant to paragraph (b)(2)(i) of this section; any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section, any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F), and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii) of this section must be disclosed in bold text. However, bold text shall not be used for: Any maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state; the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(ii) *Location*. Only the information required or permitted by paragraphs (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (b)(2)(xiv) of this section) shall be in the table. Disclosures required by paragraphs (b)(2)(i)(D)(*2*), (b)(2)(vi) and (b)(2)(xv) of this section shall be placed directly below the table. Disclosures required by paragraphs (b)(3) through (b)(5) of this section that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

(iii) *Fees that vary by state*. Creditors that impose fees referred to in paragraphs (b)(2)(vii) through (b)(2)(xi) of this section that vary by state and that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose in the account-opening table the specific fee applicable to the consumer's account, or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. A creditor may not list fees for multiple states in the account-opening summary table.

(iv) *Fees based on a percentage*. If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(2) *Required disclosures for account-opening table for open-end (not home-*

[11] [Reserved]

[12] [Reserved]

[13] [Reserved]

secured) plans. A creditor shall disclose the items in this section, to the extent applicable:

(i) *Annual percentage rate*. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: A penalty rate that may apply upon the occurrence of one or more specific events.

(A) *Variable-rate information*. If a rate disclosed under paragraph (b)(2)(i) of this section is a variable rate, the creditor shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the creditor must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(B) *Discounted initial rates*. If the initial rate is an introductory rate, as that term is defined in § 226.16(g)(2)(ii), the creditor must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(2)(i) of this section. Where the rate is not tied to an index or formula, the creditor must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements of paragraph (b)(4)(ii)(G) of this section. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if the creditor also discloses the time period during which the introductory rate will remain in effect, and uses the term ''introductory'' or ''intro'' in immediate proximity to the introductory rate.

(C) *Premium initial rate*. If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the creditor must disclose the premium initial rate pursuant to paragraph (b)(2)(i) of this section. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the rate that will apply after the premium initial rate expires if the issuer also discloses the time period during which the premium initial rate will remain in effect. Consistent with paragraph (b)(2)(i) of this section, the premium initial rate for purchases must be in at least 16-point type. If the creditor also discloses in the table the rate that will apply after the premium initial rate for purchases expires, that rate also must be in at least 16-point type.

(D) *Penalty rates*. (*1*) *In general*. Except as provided in paragraph (b)(2)(i)(D)(*2*) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(2)(i) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If more than one penalty rate may apply, the creditor at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(*2*) *Introductory rates*. If the creditor discloses in the table an introductory rate, as that term is defined in § 226.16(g)(2)(ii), creditors must briefly disclose directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked.

(E) *Point of sale where APRs vary by state*. Creditors imposing annual percentage rates that vary by state and providing the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose pursuant to paragraph (b)(2)(i) of this section in the account-opening table the specific annual percentage rate applicable to the consumer's account, or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the annual percentage rate applicable to the consumer's account is disclosed. A creditor may not list annual percentage rates for multiple states in the account-opening table.

(F) *Creditors subject to 12 CFR 227.24 or similar law*. Notwithstanding paragraphs (b)(2)(i)(B) and (b)(2)(i)(C) of this section, issuers that are subject to 12 CFR 227.24 or similar law must disclose in the table any introductory rate that would apply to the account, consistent with the requirements of paragraph (b)(2)(i)(B) of this section, and any rate that would apply upon the expiration of a premium initial rate, consistent with the requirements of paragraph (b)(2)(i)(C) of this section.

(ii) *Fees for issuance or availability*. (A) Any annual or other periodic fee that may be imposed for the issuance or availability of an open-end plan, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(B) Any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee.

(iii) *Fixed finance charge; minimum interest charge*. Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The Board shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on the June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. The creditor may, at its option, disclose in the table minimum interest charges below this threshold.

(iv) *Transaction charges*. Any transaction charge imposed by the creditor for use of the open-end plan for purchases.

(v) *Grace period*. The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase ''How to Avoid Paying Interest'' shall be used as the heading for the row describing the grace period.

If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase ''Paying Interest'' shall be used as the heading for the row describing this fact.

(vi) *Balance computation method.* The name of the balance computation method listed in § 226.5a(g) that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by paragraph (b)(4)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the creditor shall assume that credit extended will not be repaid within any grace period, if any.

(vii) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(viii) *Late payment fee.* Any fee imposed for a late payment.

(ix) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(x) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(xi) *Returned-payment fee.* Any fee imposed by the creditor for a returned payment.

(xii) *Required insurance, debt cancellation or debt suspension coverage.* (A) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance, or debt cancellation or suspension coverage is required as part of the plan; and

(B) A cross reference to any additional information provided about the insurance or coverage, as applicable.

(xiii) *Available credit.* If a creditor requires fees for the issuance or availability of credit described in paragraph (b)(2)(ii) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the plan, a creditor must disclose the available credit remaining after these fees or security deposit are debited to the account. The determination whether the 15 percent threshold is met must be based on the minimum credit limit for the plan. However, the disclosure provided under this paragraph must be based on the actual initial credit limit provided on the account. In determining whether the 15 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the creditor in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. The creditor shall also disclose that the consumer has the right to reject the plan and not be obligated to pay those fees or any other fee or charges until the consumer has used the account or made a payment on the account after receiving a periodic statement. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(xiv) *Web site reference.* For issuers of credit cards that are not charge cards, a reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.

(xv) *Billing error rights reference.* A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.

(3) *Disclosure of charges imposed as part of open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) For charges imposed as part of an open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined. For finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the charge. If such a time period is provided, a creditor may, at its option and without disclosure, elect not to impose a finance charge when payment is received after the time period expires.

(ii) Charges imposed as part of the plan are:

(A) Finance charges identified under § 226.4(a) and § 226.4(b).

(B) Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law.

(C) Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.

(D) Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.

(E) Charges imposed for terminating a plan.

(F) Charges for voluntary credit insurance, debt cancellation or debt suspension.

(iii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

(B) A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature.

(C) Charges under § 226.4(e) disclosed as specified.

(4) *Disclosure of rates for open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) For each periodic rate that may be used to calculate interest:

(A) *Rates.* The rate, expressed as a periodic rate and a corresponding annual percentage rate.

(B) *Range of balances.* The range of balances to which the rate is applicable; however, a creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(C) *Type of transaction.* The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) *Balance computation method.* An explanation of the method used to determine the balance to which the rate is applied.

(ii) *Variable-rate accounts.* For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) specifically set forth in the account agreement:

(A) The fact that the annual percentage rate may increase.

(B) How the rate is determined, including the margin.

(C) The circumstances under which the rate may increase.

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) A rate is accurate if it is a rate as of a specified date within the last 30 days before the disclosures are provided.

(iii) *Rate changes not due to index or formula*. For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula:

(A) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate) required under paragraph (b)(4)(i)(A) of this section.

(B) How long the initial rate will remain in effect and the specific events that cause the initial rate to change.

(C) The rate (expressed as a periodic rate and a corresponding annual percentage rate) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

(D) The balances to which the new rate will apply.

(E) The balances to which the current rate at the time of the change will apply.

(5) *Additional disclosures for open-end (not home-secured) plans*. A creditor shall disclose, to the extent applicable:

(i) *Voluntary credit insurance, debt cancellation or debt suspension*. The disclosures in § 226.4(d)(1)(i) and (d)(1)(ii) and (d)(3)(i) through (d)(3)(iii) if the creditor offers optional credit insurance or debt cancellation or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10).

(ii) *Security interests*. The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(iii) *Statement of billing rights*. A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Model Form G–3(A) in Appendix G to this part.

9. Section 226.7 is amended by republishing the introductory text, revising paragraphs (a) and (b), removing paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k), and removing and reserving footnotes 14 and 15 to read as follows:

§ 226.7 Periodic statement.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Rules affecting home-equity plans*. The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of § 226.5b. Alternatively, a creditor subject to this paragraph may, at its option, comply with any of the requirements of paragraph (b) of this section; however, any creditor that chooses not to provide a disclosure under paragraph (a)(7) of this section must comply with paragraph (b)(6) of this section.

(1) *Previous balance*. The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions*. An identification of each credit transaction in accordance with § 226.8.

(3) *Credits*. Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge.

(4) *Periodic rates*. (i) Except as provided in paragraph (a)(4)(ii) of this section, each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[14] and the corresponding annual percentage rate.[15] If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary.

(ii) *Exception*. An annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed*. The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed.

(6) *Amount of finance charge and other charges*. Creditors may comply with paragraphs (a)(6) of this section, or with paragraph (b)(6) of this section, at their option.

(i) *Finance charges*. The amount of any finance charge debited or added to the account during the billing cycle, using the term finance charge. The components of the *finance charge* shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(ii) *Other charges*. The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(7) *Annual percentage rate*. At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14(c) using the term *annual percentage rate*.

(8) *Grace period*. The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) *Address for notice of billing errors*. The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

(10) *Closing date of billing cycle; new balance*. The closing date of the billing cycle and the account balance outstanding on that date.

(b) *Rules affecting open-end (not home-secured) plans*. The requirements of paragraph (b) of this section apply only to plans other than home-equity plans subject to the requirements of § 226.5b.

(1) *Previous balance*. The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions*. An identification of each credit transaction in accordance with § 226.8.

(3) *Credits*. Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.

(4) *Periodic rates*. (i) Except as provided in paragraph (b)(4)(ii) of this section, each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term, *Annual Percentage Rate*, along with the range of balances to which it is applicable. If no interest charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be

[14] [Reserved]

[15] [Reserved]

disclosed. For variable-rate plans, the fact that the annual percentage rate may vary.

(ii) *Exception*. A promotional rate, as that term is defined in § 226.16(g)(2)(i) is required to be disclosed only in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed*. The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate*. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in § 226.5a(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in § 226.5a(g), the creditor shall provide a brief explanation of the method used.

(6) *Charges imposed*. (i) The amounts of any charges imposed as part of a plan as stated in § 226.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G–18(A) in Appendix G to this part.

(ii) *Interest*. Finance charges attributable to periodic interest rates, using the term *Interest Charge*, must be grouped together under the heading *Interest Charged*, itemized and totaled by type of transaction, and a total of finance charges attributable to periodic interest rates, using the term *Total Interest*, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A) in Appendix G to this part.

(iii) *Fees*. Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading *Fees*, identified consistent with the feature or type, and itemized, and a total of charges, using the term *Fees*, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A) in Appendix G.

(7) *Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans*. Creditors that provide a change-in-terms notice required by § 226.9(c), or a rate increase notice required by § 226.9(g), on or with the periodic statement, must disclose the information in § 226.9(c)(2)(iii)(A) or § 226.9(g)(3)(i) on the periodic statement in accordance with the format requirements in § 226.9(c)(2)(iii)(B), and § 226.9(g)(3)(ii). See Forms G–18(F) and G–18(G) in Appendix G to this part.

(8) *Grace period*. The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) *Address for notice of billing errors*. The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

(10) *Closing date of billing cycle; new balance*. The closing date of the billing cycle and the account balance outstanding on that date. The new balance must be disclosed in accordance with the format requirements of paragraph (b)(13) of this section.

(11) *Due date; late payment costs*. (i) Except as provided in paragraph (b)(11)(ii) of this section and in accordance with the format requirements in paragraph (b)(13) of this section:

(A) The due date for a payment, if a late-payment fee or penalty rate may be imposed.

(B) The amount of the late-payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late-payment fees may be assessed, the creditor may state the range of fees, or the highest fee and at the creditor's option with the highest fee an indication that the fee imposed could be lower. If the rate may be increased for more than one feature or balance, the creditor may state the range of rates or the highest rate that could apply and at the creditor's option an indication that the rate imposed could be lower.

(ii) *Exception*. The requirements of paragraph (b)(11) of this section do not apply to periodic statements provided solely for charge card accounts.

(12) *Minimum payment*. (i) *General disclosure requirements*. Except as provided in paragraph (b)(12)(v) of this section, a card issuer, at its option, shall comply with any of paragraphs (b)(12)(ii), (b)(12)(iii) or (b)(12)(iv) of this section.

(ii) *Generic repayment example and establishment of a toll-free telephone number*. A card issuer that chooses this option to comply with the requirements of paragraph (b)(12) of this section must comply with paragraph (b)(12)(ii)(A) or (b)(12)(ii)(B) as applicable.

(A) *Credit card issuers not regulated by the FTC*. This paragraph applies to card issuers that are not subject to the Federal Trade Commission's authority to enforce the act and this regulation as to the card issuer.

(*1*) *General rule*. Except as provided in paragraph (b)(12)(ii)(A)(*2*) or (b)(12)(ii)(A)(*3*) of this section, the card issuer must provide the following statement with a bold heading on each periodic statement, in accordance with the format requirements of paragraph (b)(13) of this section: ''Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call: [toll-free telephone number].'' The card issuer may, at its option, substitute an example that uses an annual percentage rate that is greater than 17 percent. The issuer must establish and maintain a toll-free telephone number for the purpose of providing its customers with generic repayment estimates, as described in Appendix M1 to this part, and disclose this toll-free telephone number as part of the statement above. In responding to a request for a generic repayment estimate, as described in Appendix M1 to this part, through the toll-free telephone number, the card issuer may not provide any repayment information other than the repayment information required or permitted by Appendix M1 to this part.

(*2*) *Alternative disclosure where minimum payment exceeds 4%*. If the required minimum periodic payment exceeds 4% of the balance upon which finance charges accrue, the card issuer may comply with this paragraph in lieu of paragraph (b)(12)(ii)(A)(*1*) of this section. Such card issuer may provide the following statement with a bold heading on each periodic statement, in accordance with the format requirements of paragraph (b)(13) of this section: ''Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $300 at an interest rate of 17% and always paid only the minimum required, it would take about 2 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call: [toll-free telephone number].'' The card issuer may, at its option, substitute an example that uses an annual percentage rate that is greater than 17 percent. The card issuer must establish and maintain a toll-free telephone number for the purpose of providing its customers with generic repayment estimates, as described in Appendix M1 to this part, and disclose this toll-free telephone number as part of the statement above. In responding to a request for a generic repayment estimate, as described in Appendix M1 to this part, through the toll-free telephone number, the card issuer may not provide any repayment information other than the repayment information required or permitted by Appendix M1 to this part.

(*3*) *Small depository institution issuers.* After June 30, 2012 a small depository institution issuer is required to establish and maintain a toll-free telephone number for the purpose of providing its customers with generic repayment estimates, as described in Appendix M1 to this part. Before June 30, 2012, small depository institution issuers, when making a disclosure under paragraph (b)(12)(ii)(A)(*1*) or (*2*) of this section, may provide the toll-free telephone numbers and the Web site operated by or on behalf of the Federal Reserve Board. A small depository institution issuer must use the following language to disclose the Federal Reserve Board's toll-free telephone numbers: ''For an estimate of the time it would take to repay your actual balance making only minimum payments, call the Federal Reserve Board at this toll-free telephone number: 1–888–445–4801 or visit the Board's Web site at *http://www.federalreserve.gov/creditcardcalculator*. (TTY toll-free telephone number: 1–888–319–4802.)'' Small depository institution issuers are card issuers that are depository institutions (as defined by section 3 of the Federal Deposit Insurance Act), including federal credit unions or state chartered credit unions (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250 million, as of December 31, 2009.

(B) *FTC-regulated credit card issuers.* This paragraph applies to card issuers that are subject to the Federal Trade Commission's authority under the Truth in Lending Act to enforce the act and this regulation as to a card issuer. The card issuer must disclose the following statement with a bold heading on each periodic statement, in accordance with the format requirements of paragraph (b)(13) of this section: ''Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $300 at an interest rate of 17% and always paid only the minimum required, it would take about 2 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call the Federal Trade Commission at this toll-free telephone number: [toll-free telephone number established by the FTC] or visit the FTC's Web site at [Web site established by the FTC]. (TTY toll-free telephone number: [TTY toll-free telephone number established by the FTC].)'' The card issuer may, at its option, substitute an example that uses an annual percentage rate that is greater than 17 percent. The card issuer must disclose the toll-free telephone numbers and Web site established by or on behalf of the Federal Trade Commission.

(iii) *Actual repayment disclosure through a toll-free telephone number.* A card issuer that chooses this option for complying with the requirements of paragraph (b)(12) of this section must disclose the following statement with a bold heading on each periodic statement in accordance with the format requirements of paragraph (b)(13) of this section: ''Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For an estimate of how long it will take you to repay your balance making only minimum payments, call this toll-free telephone number:____.'' The card issuer must establish and maintain a toll-free telephone number for the purpose of providing its customers with actual repayment disclosures, as described in Appendix M2 to this part, and disclose this toll-free telephone number as part of the statement above. In responding to a request for an actual repayment disclosure, as described in Appendix M2 to this part, through the toll-free telephone number, the card issuer may not provide any repayment information other than the repayment information required or permitted by Appendix M2 to this part.

(iv) *Actual repayment disclosure on the periodic statement.* A card issuer that chooses this option for complying with the requirements of paragraph (b)(12) of this section must provide on each periodic statement, in accordance with the format requirements of paragraph (b)(13) of this section, a disclosure of the actual repayment information as described in Appendix M2 to this part, in a form substantially similar to Sample G–18(C) in Appendix G to this part.

(v) *Exemptions.* Paragraph (b)(12) of this section does not apply to:

(A) Home-equity plans subject to the requirements of § 226.5b;

(B) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(C) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(D) Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

(E) Credit card accounts where a fixed repayment period for the account is disclosed in the account agreement and the required minimum payments will amortize the outstanding balance within the fixed repayment period;

(F) A billing cycle where the entire outstanding balance is subject to a fixed repayment period specified in the account agreement and the required minimum payments applicable to that balance will amortize the outstanding balance within the fixed repayment period;

(G) A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and

(H) A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

(13) *Format requirements.* The due date required by paragraph (b)(11) of this section shall be disclosed on the front of the first page of the periodic statement. The amount of the late-payment fee and the annual percentage rate(s) required by paragraph (b)(11) of this section shall be stated in close proximity to the due date. The ending balance required by paragraph (b)(10) of this section and the minimum payment disclosure required by paragraph (b)(12) of this section shall be disclosed closely proximate to the minimum payment due. The due date, late-payment fee and annual percentage rate, ending balance, minimum payment due, and minimum payment disclosure shall be grouped together. Samples G–18(D) or G–18(E) in Appendix G to this part set forth examples of how these terms may be grouped.

■ 10. Section 226.8 is revised to read as follows:

§ 226.8 Identifying transactions on periodic statements.

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable.[16]

(a) *Sale credit.* (1) Except as provided in paragraph (a)(2) of this section, for each credit transaction involving the sale of property or services, the creditor must disclose the amount and date of the transaction, and either:

(i) A brief identification [17] of the property or services purchased, for creditors and sellers that are the same or related; [18] or

(ii) The seller's name; and the city and state or foreign country where the transaction took place.[19] The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in the consumer's home; or was a mail, Internet, or telephone order.

(2) Creditors need not comply with paragraph (a)(1) of this section if an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, and the amount of the transaction and either the date of the transaction to the consumer's account or the date of debiting the transaction are disclosed on the copy or on the periodic statement.

(b) *Nonsale credit.* For each credit transaction not involving the sale of property or services, the creditor must disclose a brief identification of the transaction; [20] the amount of the transaction; and at least one of the following dates: The date of the transaction, the date the transaction was debited to the consumer's account, or, if the consumer signed the credit document, the date appearing on the document. If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted.

(c) *Alternative creditor procedures; consumer inquiries for clarification or documentation.* The following procedures apply to creditors that treat an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e):

(1) Failure to disclose the information required by paragraphs (a) and (b) of this section is not a failure to comply with the regulation, provided that the creditor also maintains procedures reasonably designed to obtain and provide the information. This applies to transactions that take place outside a state, as defined in § 226.2(a)(26), whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

(2) As an alternative to the brief identification for sale or nonsale credit, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor.

■ 11. Section 226.9 is revised to read as follows:

§ 226.9 Subsequent disclosure requirements.

(a) *Furnishing statement of billing rights.* (1) *Annual statement.* The creditor shall mail or deliver the billing rights statement required by § 226.6(a)(5) and (b)(5)(iii) at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under § 226.5(b)(2) for any one billing cycle.

(2) *Alternative summary statement.* As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G–4 or Model Form G–4(A) in Appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of § 226.5b may use either Model Form, at their option.

(b) *Disclosures for supplemental credit access devices and additional features.* (1) If a creditor, within 30 days after mailing or delivering the account-opening disclosures under § 226.6(a)(1) or (b)(3)(ii)(A), as applicable, adds a credit feature to the consumer's account or mails or delivers to the consumer a credit access device, including but not limited to checks that access a credit card account, for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. Except as provided in paragraph (b)(3) of this section, after 30 days, if the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) Except as provided in paragraph (b)(3) of this section, whenever a credit feature is added or a credit access device is mailed or delivered, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by § 226.6(a)(1) or (b)(3)(ii)(A), as applicable, that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(3) *Checks that access a credit card account.*

(i) *Disclosures.* For open-end plans not subject to the requirements of § 226.5b, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under § 226.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from the finance charge terms previously disclosed, the creditor shall disclose on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in Appendix G to this part:

(A) If a promotional rate, as that term is defined in § 226.16(g)(2)(i) applies to the checks:

(*1*) The promotional rate and the time period during which the promotional rate will remain in effect;

(*2*) The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section; and

(*3*) The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date.

(B) If no promotional rate applies to the checks:

(*1*) The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in

[16] [Reserved]

[17] [Reserved]

[18] [Reserved]

[19] [Reserved]

[20] [Reserved]

accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section.

(C) Any transaction fees applicable to the checks disclosed under § 226.6(b)(2)(iv), (b)(2)(vii), or (b)(2)(x); and

(D) Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase ''How to Avoid Paying Interest on Check Transactions'' shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase ''Paying Interest'' shall be used as the row heading.

(ii) *Accuracy.* The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are mailed or delivered. A variable annual percentage rate is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered.

(c) *Change in terms.* (1) *Rules affecting home-equity plans.* (i) *Written notice required.* For home-equity plans subject to the requirements of § 226.5b, whenever any term required to be disclosed under § 226.6(a) is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer; the notice shall be given, however, before the effective date of the change.

(ii) *Notice not required.* For home-equity plans subject to the requirements of § 226.5b, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding.

(iii) *Notice to restrict credit.* For home-equity plans subject to the requirements of § 226.5b, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 226.5b(f)(3)(i) or (f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

(2) *Rules affecting open-end (not home-secured) plans.* (i) *Changes where written advance notice is required.* For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(2)(ii) and (c)(2)(iv) of this section, when a term required to be disclosed under § 226.6(b)(3), (b)(4) or (b)(5) is changed or the required minimum periodic payment is increased, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

(ii) *Charges not covered by § 226.6(b)(1) and (b)(2).* Except as provided in paragraph (c)(2)(iv) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(3) that is not required to be disclosed under § 226.6(b)(1) and (b)(2), a creditor may either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iii) *Disclosure requirements.* (A) *Changes to terms described in account-opening table.* If a creditor changes a term required to be disclosed pursuant to § 226.6(b)(1) and (b)(2), the creditor must provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section:

(*1*) A summary of the changes made to terms required by § 226.6(b)(1) and (b)(2);

(*2*) A statement that changes are being made to the account;

(*3*) A statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(*4*) The date the changes will become effective;

(*5*) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice;

(*6*) If the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate; and

(*7*) If the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied. If applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms.

(B) *Format requirements.* (*1*) *Tabular format.* The summary of changes described in paragraph (c)(2)(iii)(A)(*1*) of this section must be in a tabular format, with headings and format substantially similar to any of the account-opening tables found in G–17 in Appendix G to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 226.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under § 226.6(b)(2).

(*2*) *Notice included with periodic statement.* If a notice required by paragraph (c)(2)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(2)(iii)(A)(*1*) of this section must be disclosed on the front of any page of the statement. The summary of changes described in paragraph (c)(1)(iii)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(2)(iii)(A)(*2*) through (c)(2)(iii)(A)(*7*) of this section, and be substantially similar to the format shown in Sample G–20 in Appendix G to this part.

(*3*) *Notice provided separately from periodic statement.* If a notice required by paragraph (c)(2)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(2)(iii)(A)(*1*) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(2)(iii)(A)(*1*) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(2)(iii)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(*2*) through (c)(1)(iii)(A)(*7*) of this section, substantially similar to the format shown in Sample G–20 in Appendix G to this part.

(iv) *Notice not required.* For open-end plans (other than home equity plans subject to the requirements of § 226.5b) a creditor is not required to provide notice under this section when the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in paragraph (c)(2)(v) of this section) or termination of an account or plan; or when the change results from an agreement involving a court proceeding.

(v) *Reduction of the credit limit.* For open-end plans that are not subject to the requirements of § 226.5b, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.

(d) *Finance charge imposed at time of transaction.* (1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.

(2) The card issuer, other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for the purposes of §§ 226.5a, 226.6 and 226.7.

(e) *Disclosures upon renewal of credit or charge card.* (1) *Notice prior to renewal.* Except as provided in paragraph (e)(2) of this section, a card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to § 226.5a, including any fee based on account activity or inactivity, shall mail or deliver written notice of the renewal to the cardholder. The notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which the renewal fee is initially charged to the account. The notice shall contain the following information:

(i) The disclosures contained in § 226.5a(b)(1) through (b)(7) that would apply if the account were renewed; [20a] and

(ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee.

(2) *Delayed notice.* Alternatively, the disclosures required by paragraph (e)(1) of this section may be provided later than the time in paragraph (e)(1) of this section, but no later than the mailing or the delivery of the periodic statement on which the renewal fee is initially charged to the account, if the card issuer also discloses at that time that:

(i) The cardholder has 30 days from the time the periodic statement is mailed or delivered to avoid paying the fee or to have the fee recredited if the cardholder terminates credit availability under the account; and

(ii) The cardholder may use the card during the interim period without having to pay the fee.

(3) *Notification on periodic statements.* The disclosures required by this paragraph may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer shall include a reference to those disclosures on the front of the statement.

(f) *Change in credit card account insurance provider.* (1) *Notice prior to change.* If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account of the type subject to § 226.5a, the card issuer shall mail or deliver to the cardholder written notice of the change not less than 30 days before the change in provider occurs. The notice shall also include the following items, to the extent applicable:

(i) Any increase in the rate that will result from the change;

(ii) Any substantial decrease in coverage that will result from the change; and

(iii) A statement that the cardholder may discontinue the insurance.

(2) *Notice when change in provider occurs.* If a change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items, to the extent applicable:

(i) The name and address of the new insurance provider;

(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and

(iii) A statement that the cardholder may discontinue the insurance.

(3) *Substantial decrease in coverage.* For purposes of this paragraph, a substantial decrease in coverage is a decrease in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance. Significant terms of coverage include, for example, the following:

(i) Type of coverage provided;

(ii) Age at which coverage terminates or becomes more restrictive;

(iii) Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;

(iv) Eligibility requirements and number and identity of persons covered;

(v) Definition of a key term of coverage such as disability;

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

(4) *Combined notification.* The notices required by paragraph (f)(1) and (2) of this section may be combined provided the timing requirement of paragraph (f)(1) of this section is met. The notices may be provided on or with a periodic statement.

(g) *Increase in rates due to delinquency or default or as a penalty.* (1) *Increases subject to this section.* For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraph (g)(4) of this section, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default; or

(ii) A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

(2) *Timing of written notice.* Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, the creditor shall provide written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase.

[20a] [Reserved]

(3)(i) *Disclosure requirements for rate increases.* If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

(A) A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

(B) The date on which the delinquency or default rate or penalty rate will apply;

(C) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

(D) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied; and

(E) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 30 days from the due date for that payment.

(ii) *Format requirements.* (A) If a notice required by paragraph (g)(1) of this section is included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iii)(A) of this section if that notice is provided on the same statement.

(B) If a notice required by paragraph (g)(1) of this section is not included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iii)(A) or (g)(4)(ii) of this section.

(4) *Exceptions.* (i) *Workout arrangements.* A creditor is not required to provide a notice pursuant to paragraph (g)(1) of this section if a rate applicable to a category of transactions is increased as a result of the consumer's default, delinquency or as a penalty, in each case for failure to comply with the terms of a workout arrangement between the creditor and the consumer, provided that:

(A) The rate following any such increase does not exceed the rate that applied to the category of transactions prior to commencement of the workout arrangement; or

(B) If the rate that applied to a category of transactions prior to the commencement of the workout arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout arrangement.

(ii) *Decrease in credit limit.* A creditor is not required to provide, prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, a notice pursuant to paragraph (g)(1) of this section, provided that:

(A) The creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes:

(*1*) A statement that the credit limit on the account has been or will be decreased.

(*2*) A statement indicating the date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

(*3*) A statement that the penalty rate will not be imposed on the date specified in paragraph (g)(4)(ii)(A)(*2*) of this section, if the outstanding balance does not exceed the credit limit as of that date;

(*4*) The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite time period;

(*5*) A statement indicating to which balances the penalty rate may be applied; and

(*6*) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 30 days from the due date for that payment; and

(B) The creditor does not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice and described in paragraph 9(g)(4)(ii)(A)(*2*) of this section.

(C)(*1*) If a notice provided pursuant to paragraph (g)(4)(ii)(A) of this section is included on or with a periodic statement, the information described in paragraph (g)(4)(ii)(A) of this section must be in the form of a table and provided on the front of any page of the periodic statement; or

(*2*) If a notice required by paragraph (g)(4)(ii)(A) of this section is not included on or with a periodic statement, the information described in paragraph (g)(4)(ii)(A) of this section must be disclosed on the front of the first page of the notice. Only information related to the reduction in credit limit may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iii)(A) or (g)(1) of this section.

(iii) *Certain rate increases applicable to outstanding balances.* A creditor is not required to provide a notice pursuant to paragraph (g)(1) of this section prior to increasing the rate applicable to an outstanding balance as defined in 12 CFR § 227.24(a)(2), if:

(A) The creditor previously provided a notice pursuant to paragraph (g)(1) of this section containing the content specified in paragraph (g)(3) of this section;

(B) After that notice is provided but prior to the effective date of the rate increase or rate increases disclosed in the notice pursuant to paragraph (g)(3)(i)(B) of this section, the consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment; and

(C) The rate increase applicable to outstanding balances takes effect on the effective date set forth in the notice.

■ 12. Section 226.10 is revised to read as follows:

§ 226.10 Prompt crediting of payments.

(a) *General rule.* A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

(b) *Specific requirements for payments.* (1) *General rule.* A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.

(2) *Examples of reasonable requirements for payments.* Reasonable requirements for making payment may include:

(i) Requiring that payments be accompanied by the account number or payment stub;

(ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person. For example, it would be reasonable for a creditor to set a cut-off time for payments by mail of 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;

(iii) Specifying that only checks or money orders should be sent by mail;

(iv) Specifying that payment is to be made in U.S. dollars; or

(v) Specifying one particular address for receiving payments, such as a post office box.

(3) *Nonconforming payments.* If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

(c) *Adjustment of account.* If a creditor fails to credit a payment, as required by paragraphs (a) or (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

(d) *Crediting of payments when creditor does not receive or accept payments on due date.* If the due date for payments is a day on which the creditor does not receive or accept payments by mail, the creditor may not treat a payment received by mail the next business day as late for any purpose.

■ 13. Section 226.11 is revised to read as follows:

§ 226.11 Treatment of credit balances; account termination.

(a) *Credit balances.* When a credit balance in excess of $1 is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of the consumer), the creditor shall—

(1) Credit the amount of the credit balance to the consumer's account;

(2) Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;

(3) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

(b) *Account termination.* (1) A creditor shall not terminate an account prior to its expiration date solely because the consumer does not incur a finance charge.

(2) Nothing in paragraph (b)(1) of this section prohibits a creditor from terminating an account that is inactive for three or more consecutive months. An account is inactive for purposes of this paragraph if no credit has been extended (such as by purchase, cash advance or balance transfer) and if the account has no outstanding balance.

■ 14. Section 226.12 is revised to read as follows:

§ 226.12 Special credit card provisions.

(a) *Issuance of credit cards.* Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except—

(1) In response to an oral or written request or application for the card; or

(2) As a renewal of, or substitute for, an accepted credit card.[21]

(b) *Liability of cardholder for unauthorized use.* (1)(i) *Definition of unauthorized use.* For purposes of this section, the term ''unauthorized use'' means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

(ii) *Limitation on amount.* The liability of a cardholder for unauthorized use [22] of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) *Conditions of liability.* A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice [23] of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) *Notification to card issuer.* Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) *Effect of other applicable law or agreement.* If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) *Business use of credit cards.* If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

(c) *Right of cardholder to assert claims or defenses against card issuer.* [24] (1) *General rule.* When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.[25]

(2) *Adverse credit reports prohibited.* If, in accordance with paragraph (c)(1) of this section, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(3) *Limitations.* (i) *General.* The rights stated in paragraphs (c)(1) and (c)(2) of this section apply only if:

(A) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

(B) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50, and the disputed transaction occurred

[21] [Reserved]

[22] [Reserved]

[23] [Reserved]

[24] [Reserved]

[25] [Reserved]

in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.[26]

(ii) *Exclusion.* The limitations stated in paragraph (c)(3)(i)(B) of this section shall not apply when the person honoring the credit card:

(A) Is the same person as the card issuer;

(B) Is controlled by the card issuer directly or indirectly;

(C) Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;

(D) Controls the card issuer directly or indirectly;

(E) Is a franchised dealer in the card issuer's products or services; or

(F) Has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.

(d) *Offsets by card issuer prohibited.* (1) A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) This paragraph does not alter or affect the right of a card issuer acting under state or federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) This paragraph does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 226.13(d)(1)).

(e) *Prompt notification of returns and crediting of refunds.* (1) When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within 7 business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within 3 business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. This section does not require refunds for returns nor does it prohibit refunds in kind.

(f) *Discounts; tie-in arrangements.* No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z (12 CFR part 226) or Regulation E (12 CFR part 205) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 205.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

■ 15. Section 226.13 is revised to read as follows:

§ 226.13 Billing error resolution.[27]

(a) *Definition of billing error.* For purposes of this section, the term billing error means:

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§ 226.7(a)(2) or (b)(2), as applicable, and 226.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(b) *Billing error notice.*[28] A billing error notice is a written notice[29] from a consumer that:

(1) Is received by a creditor at the address disclosed under § 226.7(a)(9) or (b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.* (1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

[26] [Reserved]

[27] [Reserved]

[28] [Reserved]

[29] [Reserved]

(1) *Consumer's right to withhold disputed amount; collection action prohibited.* The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges).[30] If the cardholder has enrolled in an automatic payment plan offered by the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) *Adverse credit reports prohibited.* The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(3) *Acceleration of debt and restriction of account prohibited.* A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under section 161(e) of the act for failure to comply with any of the requirements of this section.

(4) *Permitted creditor actions.* A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

(e) *Procedures if billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) *Procedures if different billing error or no billing error occurred.* If, after conducting a reasonable investigation,[31] a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(2) Shall allow any time period disclosed under § 226.6(a)(1) or (b)(3), as applicable, and § 226.7(a)(8) or (b)(8), as applicable, during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;

(3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under § 226.6(a)(1) or (b)(3), as applicable, and § 226.7(a)(8) or (b)(8), as applicable or 10 days (whichever is longer) during which the consumer can pay the amount; but

(4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:

(i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(h) *Reassertion of billing error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (g)(4) of this section) if a consumer reasserts substantially the same billing error.

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 CFR 205.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

■ 16. Section 226.14 is revised to read as follows:

§ 226.14 Determination of annual percentage rate.

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than 1/8th of 1 percentage point above or below the annual percentage rate determined in accordance with this section.[31a] An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if:

(1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(2) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.

(b) *Annual percentage rate—in general.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§ 226.5a, 226.5b, 226.6, 226.7(a)(4) or (b)(4), 226.9, 226.15, 226.16, and 226.26 shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) *Optional effective annual percentage rate for periodic statements for creditors offering open-end plans*

[30] [Reserved]

[31] [Reserved]

[31a] [Reserved]

subject to the requirements of § 226.5b. A creditor offering an open-end plan subject to the requirements of § 226.5b need not disclose an effective annual percentage rate. Such a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to § 226.7(a)(7) and compute the effective annual percentage rate as follows:

(1) *Solely periodic rates imposed.* If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

(i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) *Minimum or fixed charge, but not transaction charge, imposed.* If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable[32] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.[33] If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

(3) *Transaction charge imposed.* If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,[34] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.[35] Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate. See Appendix F to this part regarding determination of the denominator of the fraction under this paragraph.

(4) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) and (c)(3) of this section.

(d) *Calculations where daily periodic rate applied.* If the provisions of paragraph (c)(1)(ii) or (c)(2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

(1) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(2) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

■ 17. Section 226.16 is revised to read as follows:

§ 226.16 Advertising.

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) *Advertisement of terms that require additional disclosures.* (1) Any term required to be disclosed under § 226.6(b)(3) set forth affirmatively or negatively in an advertisement for an open-end (not home-secured) credit plan triggers additional disclosures under this section. Any term required to be disclosed under § 226.6(a)(1) or (a)(2) set forth affirmatively or negatively in an advertisement for a home-equity plan subject to the requirements of § 226.5b triggers additional disclosures under this section. If any of the terms that trigger additional disclosures under this paragraph is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:[36d]

(i) Any minimum, fixed, transaction, activity or similar charge that is a finance charge under § 226.4 that could be imposed.

(ii) Any periodic rate that may be applied expressed as an annual percentage rate as determined under § 226.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

(iii) Any membership or participation fee that could be imposed.

(2) If an advertisement for credit to finance the purchase of goods or services specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.

(c) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(d) *Additional requirements for home-equity plans.* (1) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under § 226.6(a)(1) or (a)(2) or the payment terms of the plan are set forth,

[32] [Reserved]

[33] [Reserved]

[34] [Reserved]

[35] [Reserved]

[36d] [Reserved]

affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of § 226.5b, the advertisement also shall clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under § 226.14(b).

(iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) *Discounted and premium rates.* If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state with equal prominence and in close proximity to the initial rate:

(i) The period of time such initial rate will be in effect; and

(ii) A reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) *Balloon payment.* If an advertisement contains a statement of any minimum periodic payment and a balloon payment may result if only the minimum periodic payments are made, even if such a payment is uncertain or unlikely, the advertisement also shall state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result, if applicable.[36e] A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer is required to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum periodic payment statement:

(i) That a balloon payment will result; and

(ii) The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.

(4) *Tax implications.* An advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a home-equity plan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(i) The interest on the portion of the Credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(ii) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(5) *Misleading terms.* An advertisement may not refer to a home-equity plan as ''free money'' or contain a similarly misleading term.

(6) *Promotional rates and payments.* (i) *Definitions.* The following definitions apply for purposes of paragraph (d)(6) of this section:

(A) *Promotional rate.* The term ''promotional rate'' means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

(B) *Promotional payment.* The term ''promotional payment'' means:

(*1*) For a variable-rate plan, any minimum payment applicable for a promotional period that:

(*i*) Is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and

(*ii*) Is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(*2*) For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

(C) *Promotional period.* A ''promotional period'' means a period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

(ii) *Stating the promotional period and post-promotional rate or payments.* If any annual percentage rate that may be applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than television or radio advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

(A) The period of time during which the promotional rate or promotional payment will apply;

(B) In the case of a promotional rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in §§ 226.5b or 226.16(b)(1)(ii) as applicable; and

(C) In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

(iii) *Envelope excluded.* The requirements in paragraph (d)(6)(ii) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(e) *Alternative disclosures—television or radio advertisements.* An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraphs (b)(1) or (d)(1) of this section may alternatively comply with paragraphs (b)(1) or (d)(1) of this section by stating the information required by paragraphs (b)(1)(ii) or (d)(1)(ii) of this section, as applicable, and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain the additional cost information.

(f) *Misleading terms.* An advertisement may not refer to an annual percentage rate as ''fixed,'' or use a similar term, unless the advertisement also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(g) *Promotional Rates.* (1) *Scope.* The requirements of this paragraph (g) apply to any advertisement of an open-end (not home-secured) plan, including promotional materials accompanying

[36e] [Reserved]

applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions*. (i) *Promotional rate* means any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions.

(ii) *Introductory rate* means a promotional rate offered in connection with the opening of an account.

(iii) *Promotional period* means the maximum time period for which the promotional rate may be applicable.

(3) *Stating the term ''introductory''*. If any annual percentage rate that may be applied to the account is an introductory rate, the term *introductory* or *intro* must be in immediate proximity to each listing of the introductory rate in a written or electronic advertisement.

(4) *Stating the promotional period and post-promotional rate*. If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (g)(2)(i) of this section, the information in paragraphs (g)(4)(i) and (g)(4)(ii) of this section must be stated in a clear and conspicuous manner in the advertisement. If the rate is stated in a written or electronic advertisement, the information in paragraphs (g)(4)(i) and (g)(4)(ii) of this section must also be stated in a prominent location closely proximate to the first listing of the promotional rate.

(i) When the promotional rate will end; and

(ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.5a(c)(2), 226.5a(d)(3), 226.5a(e)(4), or 226.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply.

(5) *Envelope excluded*. The requirements in paragraph (g)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.

■ 18. Section 226.30 is revised to read as follows:

§ 226.30 Limitation on rates.

A creditor shall include in any consumer credit contract secured by a dwelling and subject to the act and this regulation the maximum interest rate that may be imposed during the term of the obligation [50] when:

(a) In the case of closed-end credit, the annual percentage rate may increase after consummation, or

(b) In the case of open-end credit, the annual percentage rate may increase during the plan.

■ 19. Appendix E to part 226 is revised to read as follows.

Appendix E to Part 226—Rules for Card Issuers That Bill on a Transaction-by-Transaction Basis

The following provisions of Subpart B apply if credit cards are issued and the card issuer and the seller are the same or related persons; no finance charge is imposed; consumers are billed in full for each use of the card on a transaction-by-transaction basis, by means of an invoice or other statement reflecting each use of the card; and no cumulative account is maintained which reflects the transactions by each consumer during a period of time, such as a month. The term ''related person'' refers to, for example, a franchised or licensed seller of a creditor's product or service or a seller who assigns or sells sales accounts to a creditor or arranges for credit under a plan that allows the consumer to use the credit only in transactions with that seller. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

1. *Section 226.6(a)(5) or § 226.6(b)(5)(iii).*

2. *Section 226.6(a)(2) or § 226.6(b)(3)(ii)(B), as applicable.* The disclosure required by § 226.6(a)(2) or § 226.6(b)(3)(ii)(B) shall be limited to those charges that are or may be imposed as a result of the deferral of payment by use of the card, such as late payment or delinquency charges. A tabular format is not required.

3. *Section 226.6(a)(4) or § 226.6(b)(5)(ii).*

4. *Section 226.7(a)(2) or § 226.7(b)(2), as applicable; § 226.7(a)(9)* or *§ 226.7(b)(9), as applicable.* Creditors may comply by placing the required disclosures on the invoice or statement sent to the consumer for each transaction.

5. *Section 226.9(a).* Creditors may comply by mailing or delivering the statement required by § 226.6(a)(5) or § 226.6(b)(5)(iii) (see Appendix G–3 and G–3(A) to this part) to each consumer receiving a transaction invoice during a one-month period chosen by the card issuer or by sending either the statement prescribed by § 226.6(a)(5) or § 226.6(b)(5)(iii), or an alternative billing error rights statement substantially similar to that in Appendix G–4 and G–4(A) to this part, with each invoice sent to a consumer.

6. *Section 226.9(c).* A tabular format is not required.

7. *Section 226.10.*

8. *Section 226.11(a).* This section applies when a card issuer receives a payment or other credit that exceeds by more than $1 the amount due, as shown on the transaction invoice. The requirement to credit amounts to an account may be complied with by other reasonable means, such as by a credit memorandum. Since no periodic statement is provided, a notice of the credit balance shall be sent to the consumer within a reasonable period of time following its occurrence unless a refund of the credit balance is mailed or delivered to the consumer within seven business days of its receipt by the card issuer.

9. *Section 226.12 including § 226.12(c) and (d), as applicable.* Section 226.12(e) is inapplicable.

10. *Section 226.13, as applicable.* All references to ''periodic statement'' shall be read to indicate the invoice or other statement for the relevant transaction. All actions with regard to correcting and adjusting a consumer's account may be taken by issuing a refund or a new invoice, or by other appropriate means consistent with the purposes of the section.

11. *Section 226.15, as applicable.*

■ 20. Appendix F to Part 226 is revised to read as follows:

Appendix F to Part 226—Optional Annual Percentage Rate Computations for Creditors Offering Open-End Plans Subject to the Requirements of § 226.5b

In determining the denominator of the fraction under § 226.14(c)(3), no amount will be used more than once when adding the sum of the balances [1] subject to periodic rates to the sum of the amounts subject to specific transaction charges. (Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase ''sum of the balances'' shall also mean the ''average of daily balances.'') In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance-none.

A specific transaction of $100 occurs on the first day of the billing cycle. The average daily balance is $100. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 1½ percent applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½ percent) multiplied by 12 (the number of months in a year), i.e., 54 percent.

2. Previous balance—$100.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average

[50] [Reserved]

[1] [Reserved]

daily balance is $150. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 1½ percent applicable to the average daily balance. The numerator is the amount of the finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transaction (such excess in this case is $50), totaling $150. As explained in example 1, the annual percentage rate is 3½ percent × 12 = 42 percent.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance subject only to the periodic rate, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼ percent × 12 = 27 percent.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the consumer made a payment of $50 at the midpoint of the billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100, plus the balance subject to the periodic rate, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½ percent × 12 = 30 percent.

5. Previous balance—$100.

A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½ percent applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1⅔ percent × 12 = 20 percent.

6. Previous balance—none.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3 percent of the transaction amount or $3.00. The periodic rate is 1½ percent per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the transaction ($0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number ($50 − $100 = −$50). The denominator, in this case, is $100. As explained in example 1, the annual percentage rate is 3¾ percent × 12 = 45 percent.

■ 21. Appendix G to Part 226 is amended by:

■ A. Revising the table of contents at the beginning of the Appendix;

■ B. Revising Forms G–1, G–2, G–3, G–4, G–10(A), G–10(B), G–10(C), G–11, and G–13(A) and (B);

■ C. Adding new Forms G–1(A), G–2(A), G–3(A), G–4(A), G–10(D) and (E), G–16(A) and (B), G–17(A) through (D), G–18(A) through (G), G–19, G–20, and G–21 in numerical order; and

■ D. Removing and reserving Form G–12.

Appendix G to Part 226—Open-End Model Forms and Clauses

G–1—Balance Computation Methods Model Clauses (Home-equity Plans)

(a) Adjusted balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ‘‘adjusted balance’’ of your account. We get the ‘‘adjusted balance’’ by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle [minus any unpaid finance charges]. We do not subtract any payments or credits received during the billing cycle. [The amount of payments and credits to your account this billing cycle was $____.]

(c) Average daily balance method (excluding current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ‘‘average daily balance’’ of your account (excluding current transactions). To get the ‘‘average daily balance’’ we take the beginning balance of your account each day and subtract any payments or credits [and any unpaid finance charges]. We do not add in any new [purchases/advances/loans]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the ‘‘average daily balance.’’

(d) Average daily balance method (including current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ‘‘average daily balance’’ of your account (including current transactions). To get the ‘‘average daily balance’’ we take the beginning balance of your account each day, add any new [purchases/advances/loans], and subtract any payments or credits, [and unpaid finance charges]. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(e) Ending balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new purchases and deducting payments and credits made during the billing cycle).

(f) Daily balance method (including current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ''daily balance'' of your account for each day in the billing cycle. To get the ''daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid finance charges and] any payments or credits. This gives us the daily balance.

G–1(A)—Balance Computation Methods Model Clauses (Plans Other Than Home-equity Plans)

(a) Adjusted balance method

We figure the interest charge on your account by applying the periodic rate to the ''adjusted balance'' of your account. We get the ''adjusted balance'' by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid interest or other finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle. We do not subtract any payments or credits received during the billing cycle.

(c) Average daily balance method (excluding current transactions)

We figure the interest charge on your account by applying the periodic rate to the ''average daily balance'' of your account. To get the ''average daily balance'' we take the beginning balance of your account each day and subtract [any unpaid interest or other finance charges and] any payments or credits. We do not add in any new [purchases/advances/fees]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(d) Average daily balance method (including current transactions)

We figure the interest charge on your account by applying the periodic rate to the ''average daily balance'' of your account. To get the ''average daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(e) Ending balance method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new [purchases/advances/fees] and deducting payments and credits made during the billing cycle).

(f) Daily balance method (including current transactions)

We figure the interest charge on your account by applying the periodic rate to the ''daily balance'' of your account for each day in the billing cycle. To get the ''daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance.

G–2–Liability for Unauthorized Use Model Clause (Home-equity Plans)

You may be liable for the unauthorized use of your credit card [or other term that describes the credit card]. You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address], orally or in writing, of the loss, theft, or possible unauthorized use. [You may also contact us on the Web: [Creditor Web or e-mail address]] In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

G–2(A)–Liability for Unauthorized Use Model Clause (Plans Other Than Home-equity Plans)

If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at:

[address] [address listed on your bill],

or call us at [telephone number].

[You may also contact us on the Web: [Creditor Web or e-mail address]]

You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

G–3–Long-Form Billing-Error Rights Model Form (Home-equity Plans)

YOUR BILLING RIGHTS

KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address listed on your bill]. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. [You may also contact us on the Web: [Creditor Web or e-mail address]] You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services.

There are two limitations on this right:

(a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and

(b) The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

G–3(A)—Long-Form Billing-Error Rights Model Form (Plans Other Than Home-equity Plans)

Your Billing Rights: Keep this Document for Future Use

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

What To Do If You Find a Mistake on Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]
[Creditor Address]

[You may also contact us on the Web: [Creditor Web or e-mail address]]

In your letter, give us the following information:

- *Account information:* Your name and account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive Your Letter

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.
- *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within *10 days* telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first $50 of the amount you question even if your bill is correct.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* [or electronically] at:

[Creditor Name]
[Creditor Address]
[Creditor Web or e-mail address]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

G–4—Alternative Billing-Error Rights Model Form (Home-equity Plans)

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address shown on your bill] as soon as possible. [You may also contact us on the Web: [Creditor Web or e-mail address]] We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

Special Rule for Credit Card Purchases

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than $50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

G–4(A)—Alternative Billing-Error Rights Model Form (Plans Other Than Home-equity Plans)

What To Do If You Think You Find A Mistake On Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]
[Creditor Address]

[You may also contact us on the Web: [Creditor Web or e-mail address]]

In your letter, give us the following information:

- *Account information:* Your name and account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of Problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* [or electronically] at:

[Creditor Name]

[Creditor Address]

[Creditor Web address]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

* * * * *

BILLING CODE 6210–01–P

G-10(A) Applications and Solicitations Model Form (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	[Purchase rate] [Description that rate varies and how it is determined, if applicable]
APR for Balance Transfers	[Balance transfer rate] [Description that rate varies and how it is determined, if applicable]
APR for Cash Advances	[Cash advance rate] [Description that rate varies and how it is determined, if applicable]
Penalty APR and When it Applies	[Penalty rate] [Description of events that may result in the penalty rate] [Description of how long penalty rate may apply]
[Minimum Interest Charge]/[Minimum Charge]	[Description of minimum interest charge or minimum charge]
For Credit Card Tips from the Federal Reserve Board	[Reference to Board's website]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees	
• Balance Transfer	[Description of balance transfer fee]
• Cash Advance	[Description of cash advance fee]
• Foreign Transaction	[Description of foreign transaction fee]
Penalty Fees	
• Late Payment	[Description of late payment fee]
• Over-the-Credit Limit	[Description of over-the-credit limit fee]
• Returned Payment	[Description of returned payment fee]
Other Fees	
• Required [insert name of required insurance, or debt cancellation or suspension coverage]	[Description of cost of insurance, or debt cancellation or suspension plans] [Cross reference to additional information, if applicable]

<u>How We Will Calculate Your Balance</u>: [Description of balance computation method]

<u>Loss of Introductory APR</u>: [Circumstances in which introductory rate may be revoked and rate that applies if introductory rate is revoked, if applicable]

[Description that rate that applies after introductory rate is revoked varies and how it is determined, if applicable]

G-10(B) Applications and Solicitations Sample (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** to **19.99%** when you open your account, based on your creditworthiness. After that, your APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit twice in a six-month period, 3) Make a payment that is returned, or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due and do not exceed your credit limit during that time period.
How to Avoid Paying Interest on Purchases	Your due date is at least 25 days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance by the due date each month.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100)
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000
• Over-the-Credit Limit	**$29**
• Returned Payment	**$35**
Other Fees	
• Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See back for details

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)."

G-10(C) Applications and Solicitations (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%, 10.99%, or 12.99%** introductory APR for one year, based on your creditworthiness After that, your APR will be **14.99%** This APR will vary with the market based on the Prime Rate
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you 1) Make a late payment, 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, we may keep them at this higher level indefinitely
How to Avoid Paying Interest on Purchases	Your due date is at least 25 days after the close of each billing cycle We will not charge you interest on purchases if you pay your entire balance by the due date each month.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Set-up and Maintenance Fees	NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available For example, if you are assigned the minimum credit limit of $250, your initial available credit will be only about $187 (or about $172 if you choose to have an additional card)
• Annual Fee	**$30**
• Account Set-up Fee	**$30** (one-time fee)
• Participation Fee	**$30** annually ($2 50 per month)
• Additional Card Fee	**$15** annually (if applicable)
• Account Maintenance Fee on Closed Accounts	**$30** annually ($2.50 per month on closed accounts with an outstanding balance of $30 or more)
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee. $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater
• Foreign Transaction	**2%** of each transaction in U S. dollars
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000, **$35** if balance is more than $1,000
• Over-the-Credit Limit	**$29**
• Returned Payment	**$35**

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)"

Loss of Introductory APR: We may end your introductory APR and apply the Penalty APR if you make a late payment.

G-10(D) Applications and Solicitations Model Form (Charge Cards)

Payment Information
[A statement that charges incurred through use of the charge card are due when the periodic statement is received]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees • Balance Transfer • Cash Advance • Foreign Transaction	 [Description of balance transfer fee] [Description of cash advance fee] [Description of foreign transaction fee]
Penalty Fees • Late Payment • Over-the-Credit Limit • Returned Payment	 [Description of late payment fee] [Description of over-the-credit limit fee] [Description of returned payment fee]

G-10(E) Applications and Solicitations Sample (Charge Cards)

Payment Information
All charges made on this charge card are due and payable when you receive your periodic statement

Fees	
Annual Fee	**$50**
Transaction Fees • Balance Transfer • Cash Advance	 Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100). Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
Penalty Fees • Late Payment • Over-the-Credit Limit • Returned Payment	 **$31** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000 **$30** **$30**

BILLING CODE 6210–01–C

G–11—Applications and Solicitations Made Available to the General Public Model Clauses

(a) Disclosure of Required Credit Information

The information about the costs of the card described in this [application]/[solicitation] is accurate as of (*month/year*). This information may have changed after that date. To find out what may have changed, [call us at (*telephone number*)] [write to us at (*address*)].

(b) No Disclosure of Credit Information

There are costs associated with the use of this card. To obtain information about these costs, call us at (*telephone number*) or write to us at (*address*).

G–12 [Reserved]

G–13(A)—Change in Insurance Provider Model Form (Combined Notice)

The credit card account you have with us is insured. This is to notify you that we plan to replace your current coverage with insurance coverage from a different insurer. If we obtain insurance for your account from a different insurer, you may cancel the insurance.

[Your premium rate will increase to $__ per __.]

[Your coverage will be affected by the following:

[ ] The elimination of a type of coverage previously provided to you. [(explanation)] [See __ of the attached policy for details.]

[ ] A lowering of the age at which your coverage will terminate or will become more restrictive. [(explanation)] [See __ of the attached policy or certificate for details.]

[ ] A decrease in your maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or any other decrease in the dollar amount of your coverage or benefits. [(explanation)] [See __ of the attached policy or certificate for details.]

[ ] A restriction on the eligibility for benefits for you or others. [(explanation)] [See __ of the attached policy or certificate for details.]

[ ] A restriction in the definition of ''disability'' or other key term of coverage.

[(explanation)] [See __ of the attached policy or certificate for details.]

[ ] The addition of exclusions or limitations that are broader or other than those under the current coverage. [(explanation)] [See __ of the attached policy or certificate for details.]

[ ] An increase in the elimination (waiting) period or a change to nonretroactive coverage. [(explanation)] [See __ of the attached policy or certificate for details).]

[The name and mailing address of the new insurer providing the coverage for your account is (name and address).]

G–13(B)—Change in Insurance Provider Model Form

We have changed the insurer providing the coverage for your account. The new insurer's name and address are (name and address). A copy of the new policy or certificate is attached.

You may cancel the insurance for your account.

* * * * *

G–16(A) Debt Suspension Model Clause

Please enroll me in the optional [insert name of program], and bill my account the fee of [how cost is determined]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X________

G–16(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of $.83 per $100 of my month-end account balance. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X________

BILLING CODE 6210–01–P

G-17(A) Account-Opening Model Form

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	[Purchase rate] [Description that rate varies and how it is determined, if applicable]
APR for Balance Transfers	[Balance transfer rate] [Description that rate varies and how it is determined, if applicable]
APR for Cash Advances	[Cash advance rate] [Description that rate varies and how it is determined, if applicable]
Penalty APR and When it Applies	[Penalty rate] [Description of events that may result in the penalty rate] [Description of how long penalty rate may apply]
[How to Avoid Paying Interest]/[Paying Interest]	[Description of grace period for purchases, cash advances, balance transfers, or any other credit extended or statement that no grace period applies]
[Minimum Interest Charge]/[Minimum Charge]	[Description of minimum interest charge or minimum charge, if applicable]
For Credit Card Tips from the Federal Reserve Board	[Reference to Board's website]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Notice of right to reject plan, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee if applicable]
Transaction Fees • Balance Transfer • Cash Advance • Foreign Transaction	 [Description of balance transfer fee] [Description of cash advance fee] [Description of foreign transaction fee]
Penalty Fees • Late Payment • Over-the-Credit Limit • Returned Payment	 [Description of late payment fee] [Description of over-the-credit limit fee] [Description of returned payment fee]
Other Fees • Required [insert name of required insurance, or debt cancellation or suspension coverage]	 [Description of cost of insurance, or debt cancellation or suspension plans] [Cross reference to additional information, if applicable]

How We Will Calculate Your Balance. [Description of balance computation method]

Loss of Introductory APR [Circumstances in which introductory rate may be revoked and rate that applies if introductory rate is revoked, if applicable]

[Description that rate that applies after introductory rate is revoked varies and how it is determined, if applicable]

Billing Rights [Reference to account agreement for details on billing-error rights]

G-17(B) Account-Opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** This APR will vary with the market based on the Prime Rate
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment, 2) Go over your credit limit twice in a six-month period 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due and do not exceed your credit limit during that time period.
Paying Interest	Your due date is at least 25 days after the close of each billing cycle We will not charge you interest on purchases if you pay your entire balance by the due date each month We will begin charging interest on cash advances and balance transfers on the transaction date.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1 50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U S. dollars.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000
• Over-the-Credit Limit	**$29**
• Returned Payment	**$35**
Other Fees	
• Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period See back for details

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)" See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G-17(C) Account-Opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** introductory APR for one year After that, your APR will be **14.99%** This APR will vary with the market based on the Prime Rate
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment. 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, we may keep them at this higher level indefinitely
Paying Interest	Your due date is at least 25 days after the close of each billing cycle We will not charge you interest on purchases if you pay your entire balance by the due date each month We will begin charging interest on cash advances and balance transfers on the transaction date
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1 50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**

Fees	
Set-up and Maintenance Fees	NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available Based on your initial credit limit of $250, your initial available credit will be only about $187 (or about $172 if you choose to have an additional card) You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement If you do reject the plan, you are not responsible for any fees or charges
• Annual Fee	**$30**
• Account Set-up Fee	**$30** (one-time fee)
• Participation Fee	**$30** annually ($2.50 per month)
• Additional Card Fee	**$15** annually (if applicable)
• Account Maintenance Fee on Closed Accounts	**$30** annually ($2 50 per month on closed accounts with an outstanding balance of $30 or more)
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee $100)
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater
• Foreign Transaction	**2%** of each transaction in U.S dollars
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000. **$35** if balance is more than $1 000
• Over-the-Credit Limit	**$29**
• Returned Payment	**$35**

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details

Loss of Introductory APR: We may end your introductory APR and apply the Penalty APR if you make a late payment.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement

G-17(D) Account-Opening Sample (Line of Credit)

Interest Rate and Interest Charges	
APR for Cash Advances	**18.00%.**
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
Paying Interest	You will be charged interest from the transaction date.

Fees	
Annual Fee	**$20**
Penalty Fees	
• Late Payment	**$10**
• Over-the-Credit Limit	**$29**

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G-18(A) Periodic Statement Transactions; Interest Charges; Fees Sample

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$12.11
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$450.00–
55541860705RDYD0X	2/25	2/26	Store #3	$4.63
554328608008W90M0	2/25	2/26	Store #4	$114.95
054830709LYMRPT4L	2/25	2/26	Store #5	$7.35
564891561545KOSHD	2/25	2/26	Store #6	$14.35
841517877845AKOJIO	2/25	2/26	Store #7	$40.35
895848561561894KOH	2/26	2/27	Store #8	$27.68
1871556189456SAMKL	2/26	2/27	Store #9	$124.76
1542202074TWWZV48	2/26	2/26	Cash Advance	$121.50
2564894185189LKDFID	2/27	2/28	Store #10	$32.87
4545754784KOHUIOS	2/27	3/1	Balance Transfer	$785.00
2564561023184102315	2/28	3/1	Store #11	$14.76
14547847586KDDL564	2/28	2/28	Cash Advance	$196.50
55542818705RASD0X	3/1	3/2	Store #12	$3.76
289189194ASDS8744	3/1	3/3	Store #13	$13.45
178105417841045784	3/2	3/4	Store #14	$2.35
045148714518979874	3/4	3/5	Store #13	$13.45–
8456152156181SDSA	3/5	3/6	Store #15	$25.00
31289105205648AWD	3/11	3/12	Store #16	$7.34
04518478415615ASD	3/11	3/16	Store #17	$10.56
0547810544898718AF	3/15	3/17	Store #18	$24.50
0564894132168480P	3/16	3/17	Store #19	$8.76
054894561564ASDW	3/17	3/18	Store #20	$14.23
5648974891AD98156	3/19	3/20	Store #21	$23.76
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
564156156470JSNDS	2/26	2/26	Cash Advance Fee	$5.00
84151564SADS8745H	2/27	2/27	Balance Transfer Fee	$23.55
256489156189451516L	2/28	2/28	Cash Advance Fee	$5.90
			TOTAL FEES FOR THIS PERIOD	**$69.45**
			Interest Charged	
			Interest Charge on Purchases	$6.31
			Interest Charge on Cash Advances	$4.58
			TOTAL INTEREST FOR THIS PERIOD	**$10.89**

2012 Totals Year-to-Date	
Total fees charged in 2012	$90.14
Total interest charged in 2012	$18.27

G–18(B) Late Payment Fee Sample

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

G–18(C) Actual Repayment Period Sample Disclosure on Periodic Statement

(a) When Zero or Negative Amortization Does Not Occur

Minimum Payment Warning: If you make only the minimum payment on time each month and no other amounts are added to the balance, we estimate that it will take you approximately 13 months to pay off the balance shown on this statement.

(b) When Zero or Negative Amortization Occurs

Minimum Payment Warning: You will never pay off the outstanding balance shown on this statement if you only pay the minimum payment.

G-18(D) Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit Cards)

Payment Information	
New Balance	$1,784.53
Minimum Payment Due	$48.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call 1-800-XXX-XXXX.

G-18(E) Periodic Statement New Balance, Due Date and Late Payment Sample (Open-End Plans (Non-credit-card Accounts))

Payment Information	
New Balance	$1,784.53
Minimum Payment Due	$48.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

G-18(F) Periodic Statement Form

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Summary of Account Activity

Previous Balance	$535.07
Payments	-$450.00
Other Credits	-$13.45
Purchases	+$529.57
Balance Transfers	+$785.00
Cash Advances	+$318.00
Past Due Amount	+$0.00
Fees Charged	**+$69.45**
Interest Charged	**+$10.89**
New Balance	$1,784.53
Credit limit	$2,000.00
Available credit	$215.47
Statement closing date	3/22/2012
Days in billing cycle	30

QUESTIONS?
Call Customer Service 1-XXX-XXX-XXXX
Lost or Stolen Credit Card 1-XXX-XXX-XXXX

Payment Information

New Balance	$1,784.53
Minimum Payment Due	$48.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call 1-800-XXX-XXXX.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/2/12: As of 5/10/12, any changes to APRs described below will apply to these transactions.

Transactions made before 4/2/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, any changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

Revised Terms, as of 5/10/12	
APR for Purchases	16.99%
Late Payment Fee	$32 if your balance is less than or equal to $1,000; $39 if your balance is more than $1,000

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$12.11
55541860705RDYD0X	2/24	2/25	Store #3	$4.63
554328608008W90M0	2/24	2/25	Store #4	$114.95
054830709LYMRPT4L	2/24	2/25	Store #5	$7.35
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$450.00–

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

Account Number:	**XXXX XXXX XXXX XXXX**
New Balance	**$1,784.53**
Minimum Payment Due	**$48.00**
Payment Due Date	**4/20/12**

AMOUNT ENCLOSED: $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
564891561545KOSHD	2/25	2/26	Store #6	$14.35
841517877845AKOJIO	2/25	2/26	Store #7	$40.35
895848561561894KOH	2/26	2/27	Store #8	$27.68
1871556189456SAMKL	2/26	2/27	Store #9	$124.76
1542202074TWWZV48	2/26	2/26	Cash Advance	$121.50
2564894185189LKDFID	2/27	2/28	Store #10	$32.87
4545754784KOHUIOS	2/27	3/1	Balance Transfer	$785.00
14547847586KDDL564	2/28	2/28	Cash Advance	$196.50
2564561023184102315	2/28	3/1	Store #11	$14.76
55542818705RASD0X	3/1	3/2	Store #12	$3.76
289189194ASDS8744	3/1	3/3	Store #13	$13.45
178105417841045784	3/2	3/6	Store #14	$2.35
045148714518979874	3/4	3/5	Store #13	$13.45–
8456152156181SDSA	3/5	3/12	Store #15	$25.00
31289105205648AWD	3/11	3/12	Store #16	$7.34
04518478415615ASD	3/11	3/16	Store #17	$10.56
0547810544898718AF	3/15	3/17	Store #18	$24.50
056489413216848OP	3/16	3/17	Store #19	$8.76
054894561564ASDW	3/17	3/18	Store #20	$14.23
5648974891AD98156	3/19	3/20	Store #21	$23.76
Fees				
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	2/26	2/26	Cash Advance Fee	$5.00
84151564SADS8745H	2/27	2/27	Balance Transfer Fee	$23.55
256489156189451516L	2/28	2/28	Cash Advance Fee	$5.90
			TOTAL FEES FOR THIS PERIOD	**$69.45**
Interest Charged				
			Interest Charge on Purchases	$6.31
			Interest Charge on Cash Advances	$4.58
			TOTAL INTEREST FOR THIS PERIOD	**$10.89**

2012 Totals Year-to-Date	
Total fees charged in 2012	$90.14
Total interest charged in 2012	$18.27

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	14.99% (v)	$512.14	$6.31
Cash Advances	21.99% (v)	$253.50	$4.58
Balance Transfers	0.00%	$637.50	$0.00

(v) = Variable Rate

G-18(G) Periodic Statement Form

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Summary of Account Activity	
Previous Balance	$80.52
Payments	-$50.00
Other Credits	+$0.00
Purchases	+$52.13
Balance Transfers	+$0.00
Cash Advances	+$0.00
Past Due Amount	+$0.00
Fees Charged	**+$37.00**
Interest Charged	**+$0.00**
New Balance	$119.65
Credit limit	$2,000.00
Available credit	$1,880.35
Statement closing date	3/22/2012
Days in billing cycle	30

QUESTIONS?
Call Customer Service 1-XXX-XXX-XXXX
Lost or Stolen Credit Card 1-XXX-XXX-XXXX

Payment Information	
New Balance	$119.65
Minimum Payment Due	$10.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

Minimum Payment Warning: If you make only the minimum payment each month, it will take you about 13 months to repay the balance shown on this statement.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99%. This change will impact your account as follows:

Transactions made on or after 4/2/12: As of 5/10/12, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Transactions made before 4/2/12: Current rates will continue to apply to these transactions. However, if you become more than 30 days late on your account, the Penalty APR will apply to those transactions as well.

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Payments and Other Credits	
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$50.00–
			Purchases	
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$2.11
55541860705RDYD0X	2/24	2/25	Store #3	$4.63
554328608008W90M0	2/24	2/25	Store #4	$4.95
054830709LYMRPT4L	2/24	2/25	Store #5	$7.35
564891561545KOSHD	2/25	2/26	Store #6	$4.35
841517877845AKOJIO	2/25	2/26	Store #7	$2.35
895848561561894KOH	2/26	2/27	Store #8	$7.68
1871556189456SAMKL	2/26	2/27	Store #9	$4.76
2564894185189LKDFID	2/27	2/28	Store #10	$2.87
55542818705RASD0X	3/1	3/2	Store #11	$3.76
178105417841045784	3/2	3/6	Store #12	$2.35
8456152156181SDSA	3/5	3/12	Store #13	$2.92

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

Account Number:	**XXXX XXXX XXXX XXXX**
New Balance	**$119.65**
Minimum Payment Due	**$10.00**
Payment Due Date	**4/20/12**

AMOUNT ENCLOSED: $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

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Transactions (cont.)				
Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
564156156470JSNDS	3/22	3/22	Minimum Charge	$2.00
			TOTAL FEES FOR THIS PERIOD	**$37.00**
			Interest Charged	
			Interest Charge on Purchases	$0.00
			Interest Charge on Cash Advances	$0.00
			TOTAL INTEREST FOR THIS PERIOD	**$0.00**

2012 Totals Year-to-Date	
Total fees charged in 2012	$90.14
Total interest charged in 2012	$18.27

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	14.99% (v)	$113.80	$0.00
Cash Advances	21.99% (v)	$0.00	$0.00
Balance Transfers	0.00%	$0.00	$0.00

(v) = Variable Rate

G-19 Checks Accessing a Credit Card Sample

Interest and Fee Information	
APR for Check Transactions	1 7% (Promotional APR through your November 2012 billing cycle) After November 2012, you will be charged the APR for Cash Advances, currently 21 99%.
Use by Date	You must use the check by 4/1/12 for the promotional APR to apply If you use the check after that date, we may still honor the check but you will not receive the promotional APR Instead, the standard APR for Cash Advances will apply
Fee	Either $5 or 3% of the amount of each transaction, whichever is greater
Paying Interest	We will begin charging interest on these checks on the transaction date.

G-20 Change-in-Terms Sample

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/2/12: As of 5/10/12, any changes to APRs described below will apply to these transactions.

Transactions made before 4/2/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, any changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

Revised Terms, as of 5/10/12	
APR for Purchases	16.99%
Late Payment Fee	$32 if your balance is less than or equal to $1,000; $39 if your balance is more than $1,000

G-21 Penalty Rate Increase Sample

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99%. This change will impact your account as follows:

Transactions made on or after 4/2/12. As of 5/10/12, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Transactions made before 4/2/12: Current rates will continue to apply to these transactions. However, if you become more than 30 days late on your account, the Penalty APR will apply to those transactions as well.

BILLING CODE 6210–01–C

■ 22. Appendix H to part 226 is amended by revising the table of contents, and adding new forms H–17(A) and H–17(B) to read as follows:

Appendix H to Part 226—Closed-End Model Forms and Clauses

* * * * *

H–17(A) Debt Suspension Model Clause

Please enroll me in the optional [insert name of program], and bill my account the fee of [insert charge for the initial term of coverage]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X_________

H–17(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of $200.00. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X_________

■ 23. New Appendix M1, Appendix M2, and Appendix M3 to part 226 are added to read as follows:

Appendix M1 to Part 226—Generic Repayment Estimates

(a) *Calculating generic repayment estimates.*

(1) *Definitions.* (i) ''Retail credit card'' means a credit card that is issued by a retailer that can be used only in transactions with the retailer or a group of retailers that are related by common ownership or control, or a credit card where a retailer arranges for a creditor to offer open-end credit under a plan that allows the consumer to use the credit only in transactions with the retailer or a group of retailers that are related by common ownership or control.

(ii) ''General purpose credit card'' means a credit card other than a retail credit card.

(2) *Minimum payment formula.*

(i) *Issuer-operated toll-free telephone number.*

(A) *General purpose credit cards.* (*1*) When calculating the generic repayment estimate for general purpose credit cards, a card issuer must use the minimum payment formula that applies to most of its general purpose consumer credit card accounts. The issuer must use this ''most common'' formula to calculate the generic repayment estimate for all of its general purpose credit card accounts, regardless of whether this formula applies to a particular account. To calculate which minimum payment formula is most common, card issuers must choose a day in the last six months, consider all general purpose consumer credit card accounts held by the issuer on that day, and determine which formula applies to the most accounts. In considering all general purpose credit card accounts, a creditor may use a statistical sample of its general purpose consumer credit card accounts developed and validated using accepted statistical principles and methodology. In choosing which formula is the ''most common,'' the issuer may ignore differences among the formulas related to whether past due amounts or over-the-credit-limit amounts are included in the formula for calculating the minimum payment.

(*2*) If more than one minimum payment formula applies to an account, the card issuer must use the formula applicable to the general-revolving feature that applies to new transactions to determine which formula is most common. In addition, if more than one minimum payment formula applies to an account, when calculating the generic repayment estimate, the issuer must use the ''most common'' minimum payment formula applicable to the general revolving feature identified above and apply it to the entire balance on the account as described in paragraph (a)(4) of this Appendix, regardless of whether this formula applies to a particular balance on that account. For example, assume for all of its accounts, an issuer uses one minimum payment formula to calculate the minimum payment amount for balances existing before January 1, 2009, and uses a different minimum payment formula to calculate the minimum payment amount for balances incurred on or after January 1, 2009. To calculate the minimum payment amount, this creditor must use the minimum payment formula applicable to balances incurred on or after January 1, 2009, and apply that formula to the entire outstanding balance.

(*3*) Card issuers must re-evaluate which minimum payment formula is most common at least every 12 months. For example, assume a card issuer is required to comply with the requirements in § 226.7(b)(12) and this Appendix by July 5 of a particular year. The issuer may choose any day between January 5 and July 4 of that year to use in deciding the minimum payment formula that is most common. For the following and each subsequent year, the issuer must again choose a day between January 5 and July 4 to determine the minimum payment formula that is most common, but the day that is chosen need not be the same day chosen the previous year. At the issuer's option, the issuer may re-evaluate which minimum payment formula is most common more often than every 12 months. In the example above, if the issuer changed the minimum formula that applies to most of its credit card accounts on October 1 of a particular year, the issuer could change the minimum payment formula used to calculate the generic repayment estimates on October 1. For the following and each subsequent year, the issuer may either continue to evaluate which minimum payment formula is the most common during the January 5 to July 4 timeframe, or may switch to choosing any day in the six months prior to October 1 of a particular year to evaluate which minimum payment formula is most common.

(B) *Retail credit cards.* (*1*) When calculating the generic repayment estimate for retail credit cards, card issuers must use the minimum payment formula that applies to most of their retail consumer credit card accounts. If an issuer offers credit card accounts on behalf of more than one retailer, the card issuer must group credit card accounts for each retailer separately, and determine the minimum payment formula that is most common to each retailer. The issuer must use the ''most common'' formula for each retailer, regardless of whether this formula applies to a particular account for that retailer. To calculate which minimum payment formula is most common, card issuers must choose a day in the last six months, consider all retail consumer credit card accounts for each retailer held by the issuer on that day, and determine which formula applies to the most accounts for that retailer. In considering all retail purpose credit card accounts, a creditor may use a statistical sample of its retail purpose consumer credit card accounts developed and validated using accepted statistical principles and methodology in determining which formula is the ''most common,'' the issuer may ignore differences among the formulas related to whether past due amounts or over-the-credit-limit amounts are included in the formula for calculating the minimum payment.

(*2*) If more than one minimum payment formula applies to an account, the card issuer must use the formula applicable to the general revolving feature that applies to new transactions to determine which formula is most common for each retailer. In addition, if more than one minimum payment formula applies to an account, when calculating the generic repayment estimate, the issuer must use the ''most common'' minimum payment formula applicable to the general revolving feature identified above for each retailer and apply it to the entire balance on the account as described in paragraph (a)(4) of this Appendix, regardless of whether this formula applies to a particular balance on that account. For example, assume for all of its accounts, a creditor uses the following minimum payment formulas: A minimum payment formula applicable to a general revolving feature that applies to balances existing before January 1, 2009; a minimum payment formula applicable to a general revolving feature that applies to balances incurred on or after January 1, 2009; and a minimum payment formula applicable to special purchases, such as ''club plan purchases.'' To calculate the minimum payment amount, this creditor must use the minimum payment formula applicable to the general revolving feature that applies to balances incurred on or after January 1, 2009, and apply that formula to the entire outstanding balance.

(*3*) Card issuers must re-evaluate which minimum payment formula is most common for retail credit card accounts with respect to each retailer at least every 12 months. For example, assume a card issuer is required to comply with the requirements in § 226.7(b)(12) and this Appendix by July 5 of a particular year. The issuer may choose any day between January 5 and July 4 of that year to determine the minimum payment formula that is most common. For the following year, the issuer must again choose a day between January 5 and July 4 to determine the minimum payment formula that is most common, but the day that is chosen need not be the same day chosen the previous year. At the issuer's option, the issuer may re-evaluate which minimum payment formula is most common more often than every 12 months. In the example above, if the issuer changed the minimum formula that applies to most of its credit card accounts on October 1 of a particular year, the issuer could change the minimum payment formula used to calculate the generic repayment estimates on October 1. For the following and each subsequent year, the issuer may either continue to evaluate which minimum payment formula is the most common during the January 5 to July 4 timeframe, or may switch to choosing any day in the six months prior to October 1 of a particular year to evaluate which minimum payment formula is most common.

(ii) *FTC-operated toll-free telephone number.* When calculating the generic repayment estimate, the FTC must use the following minimum payment formula: 5 percent of the outstanding balance, or $15, whichever is greater.

(3) *Annual percentage rate.* When calculating the generic repayment estimate, credit card issuers and the FTC must use the highest annual percentage rate on which the consumer has outstanding balances. An issuer and the FTC may use an automated system to prompt the consumer to enter the highest annual percentage rate on which the consumer has an outstanding balance, and calculate the generic repayment estimate based on the consumer's response.

(4) *Beginning balance.* When calculating the generic repayment estimate, credit card issuers and the FTC must use as the beginning balance the outstanding balance on a consumer's account as of the closing date of the last billing cycle. An issuer and the FTC may use an automated system to prompt the consumer to enter the outstanding balance included on the last periodic statement received by the consumer, and calculate the generic repayment estimate based on the consumer's response. When calculating the generic repayment estimate, credit card issuers and the FTC may round the beginning balance as described above to the nearest whole dollar or prompt the consumer to enter that balance rounded to the nearest whole dollar.

(5) *Assumptions.* When calculating the generic repayment estimate, credit card issuers for each of the terms below, may either make the following assumption about that term, or use the account term that applies to a consumer's account.

(i) Only minimum monthly payments are made each month. In addition, minimum monthly payments are made each month—for example, a debt cancellation or suspension agreement, or skip payment feature does not apply to the account.

(ii) No additional extensions of credit are obtained, such as new purchases, transactions, fees, charges or other activity. No refunds or rebates are given.

(iii) The annual percentage rate described in paragraph (a)(3) of this Appendix will not change, through either the operation of a variable rate or the change to a rate. For example, if a penalty annual percentage rate currently applies to a consumer's account, an issuer may assume that the penalty annual percentage rate will apply to the consumer's account indefinitely, even if the consumer may potentially return to a non-penalty annual percentage rate in the future under the account agreement.

(iv) There is no grace period.

(v) The final payment pays the account in full (*i.e.*, there is no residual interest after the final month in a series of payments).

(vi) The average daily balance method is used to calculate the balance.

(vii) All months are the same length and leap year is ignored. A monthly or daily periodic rate may be assumed. If a daily periodic rate is assumed, the issuer may either assume a year is 365 days long, and all months are 30.41667 days long, or a year is 360 days long, and all months are 30 days long.

(viii) Payments are credited on the last day of the month.

(ix) The account is not past due and the account balance does not exceed the credit limit.

(x) When calculating the generic repayment estimate, the assumed payments, current balance and interest charges for each month may be rounded to the nearest cent, as shown in Appendix M3 to this part.

(6) *Tolerance.* A generic repayment estimate shall be considered accurate if it is not more than 2 months above or below the generic repayment estimate determined in accordance with the guidance in this Appendix (prior to rounding described in paragraph (b)(1)(i) of this Appendix). For example, assume the generic repayment estimate calculated using the guidance in this Appendix is 28 months (2 years, 4 months), and the generic repayment estimate calculated by the issuer or the FTC is 30 months (2 years, 6 months). The generic repayment estimate should be disclosed as 2 years, due to the rounding rule set forth in paragraph (b)(1)(i) of this Appendix. Nonetheless, based on the 30 month estimate, the issuer or FTC disclosed 3 years, based on that rounding rule. The issuer and the FTC would be in compliance with this guidance by disclosing 3 years, instead of 2 years, because the issuer's or FTC's estimate is within the 2 months' tolerance, prior to rounding. In addition, even if an issuer's or FTC's estimate is more than 2 months above or below the generic repayment estimate calculated using the guidance in this Appendix, so long as the issuer or FTC discloses the correct number of years to the consumer based on the rounding rule set forth in paragraph (b)(1)(i) of this Appendix, the issuer or the FTC would be in compliance with this guidance. For example, assume the generic repayment estimate calculated using the guidance in this Appendix is 32 months (2 years, 8 months), and the generic repayment estimate calculated by the issuer or the FTC is 38 months (3 years, 2 months). Under the rounding rule set forth in paragraph (b)(1)(i) of this Appendix, both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer or the FTC disclosed 3 years to the consumer, the issuer or the FTC would be in compliance with this guidance even though the generic repayment estimate calculated by the issuer or the FTC is outside the 2 months' tolerance amount.

(b) *Disclosing the generic repayment estimate to consumers.*

(1) *Required disclosures.* Except as provided in paragraph (b)(3) of this Appendix, when responding to a request for generic repayment estimates through a toll-free telephone number, credit card issuers and the FTC must make the following disclosures:

(i) The generic repayment estimate. If the generic repayment estimate calculated above is less than 2 years, credit card issuers and the FTC must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate must be rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal to or greater than 0.5.

(ii) The beginning balance on which the generic repayment estimate is calculated.

(iii) The annual percentage rate on which the generic repayment estimate is calculated.

(iv) The assumption that only minimum payments are made and no other amounts are added to the balance.

(v) The fact that the repayment period is an estimate, and the actual time it may take to pay off the balance by only making minimum payments will differ based on the consumer's account terms and future account activity.

(vi) At the issuer's or the FTC's option, a description of the minimum payment formula(s) or the minimum payment amounts used to calculate the generic repayment estimate, including a disclosure of the dollar amount of the minimum payment calculated for the first month.

(vii) At the issuer's or the FTC's option, the total amount of interest that a consumer would pay if the consumer makes minimum payments for the length of time disclosed in the generic repayment estimate.

(2) *Model language.* Credit card issuers and the FTC may use the following disclosure to meet the requirements set forth in paragraph (b)(1) of this Appendix as applicable:

It will take approximately___[months/years] to pay off a balance of $___ with an APR of ___%, if you make only the minimum payment on time each month and no other amounts are added to the balance. This estimate is based on the information you provided and assumptions about your account. The actual time it may take you to pay off this balance by only making minimum payments will differ based on the terms of your account and future account activity.

(3) *Zero or negative amortization.* If zero or negative amortization occurs when calculating the generic repayment estimate, credit card issuers and the FTC must disclose to the consumer that based on the information provided by the consumer and assumptions used to calculate the generic repayment estimate, the issuer or FTC estimates that consumer will never pay off the balance by paying only the minimum payment. Card issuers and the FTC may use the following disclosure to meet the requirements set forth in this paragraph, as applicable: ''Based on the information you provided and assumptions that we used to calculate the time to repay your balance, we estimate that you will never pay off your credit card balance if you only make the minimum payment because your payment is less than the interest charged each month.''

(4) *Permissible disclosures.* Credit card issuers and the FTC may provide the following information when responding to a request for the generic repayment estimate through a toll-free telephone number, so long as the following information is provided after the disclosures in paragraph (b)(1) of this Appendix are given:

(i) A description of the assumptions used to calculate the generic repayment estimate as described in paragraph (a)(5) of this Appendix.

(ii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this Appendix if an additional amount was paid each month in addition to the minimum payment amount, allowing the consumer to select the additional amount. In calculating this estimate, card issuers and the FTC must use the same terms described in paragraph (a) of this Appendix, except they must assume the additional amount was paid each month in addition to the minimum payment amount.

(iii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this Appendix if the consumer made a fixed payment amount each month, allowing the consumer to select the amount of the fixed payment. For example, an issuer or the FTC could prompt the consumer to enter in a payment amount in whole dollars (*e.g.*, $50) and disclose to the consumer how long it would take to repay the beginning balance if the consumer made that payment each month. In calculating this estimate, card issuers and the FTC must use the same terms described in paragraph (a) of this Appendix, except they must assume the consumer made a fixed payment amount each month.

(iv) The monthly payment amount that would be required to pay off the beginning balance described in paragraph (b)(1)(ii) of this Appendix within a specific number of months or years, allowing the consumer to select the payoff period. For example, an issuer or the FTC could prompt the consumer to enter in the number of years to repay the beginning balance, and disclose to the consumer the monthly payment amount that the consumer would need to pay each month in order to repay the balance in that number of years. In calculating the monthly payment amount, card issuers and the FTC must use the same terms described in paragraph (a) of this Appendix, as appropriate.

(v) Reference to Web-based calculation tools that permit consumers to obtain additional estimates of repayment periods.

(vi) The total amount of interest that a consumer may pay under repayment options described in paragraphs (b)(4)(ii), (iii) or (iv) of this Appendix.

Appendix M2 to Part 226—Actual Repayment Disclosures

(a) *Calculating actual repayment disclosures.*

(1) *Definitions.* (i) ''Retail credit card'' means a credit card that is issued by a retailer that can be used only in transactions with the retailer or a group of retailers that are related by common ownership or control, or a credit card where a retailer arranges for a creditor to offer open-end credit under a plan that allows the consumer to use the credit only in transactions with the retailer or a group of retailers that are related by common ownership or control.

(ii) ''General purpose credit card'' means a credit card other than a retail credit card.

(iii) ''Promotional terms'' means terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer.

(2) *Minimum payment formulas.* When calculating the actual repayment disclosure, credit card issuers must use the minimum payment formula(s) that apply to a cardholder's account. If more than one minimum payment formula applies to an account, the issuer must apply each minimum payment formula to the portion of the balance to which the formula applies. If any promotional terms related to payments apply to a cardholder's account, such as a deferred billing plan where minimum payments are not required for 12 months, credit card issuers may assume no promotional terms apply to the account.

(3) *Annual percentage rate.* When calculating the actual repayment disclosure, a credit card issuer must use the annual percentage rates that apply to a cardholder's account, based on the portion of the balance to which the rate applies. If any promotional terms related to annual percentage rates apply to a cardholder's account, such as introductory rates or deferred interest plans, credit card issuers may assume no promotional terms apply to the account.

(4) *Beginning balance.* When calculating the actual repayment disclosure, credit card issuers must use as the beginning balance the outstanding balance on a consumer's account as of the closing date of the last billing cycle. When calculating the actual repayment disclosure, credit card issuers may round the beginning balance as described above to the nearest whole dollar.

(5) *Assumptions*. When calculating the actual repayment disclosure, credit card issuers and the FTC for each of the terms below, may either make the following assumption about that term, or use the account term that applies to a consumer's account.

(i) Only minimum monthly payments are made each month. In addition, minimum monthly payments are made each month—for example, a debt cancellation or suspension agreement, or skip payment feature does not apply to the account.

(ii) No additional extensions of credit are obtained, such as new purchases, transactions, fees, charges or other activity. No refunds or rebates are given.

(iii) The annual percentage rate or rates that apply to a cardholder's account will not change, through either the operation of a variable rate or the change to a rate. For example, if a penalty annual percentage rate currently applies to a consumer's account, an issuer may assume that the penalty annual percentage rate will apply to the consumer's account indefinitely, even if the consumer may potentially return to a non-penalty annual percentage rate in the future under the account agreement.

(iv) There is no grace period.

(v) The final payment pays the account in full (*i.e.*, there is no residual interest after the final month in a series of payments).

(vi) The average daily balance method is used to calculate the balance.

(vii) All months are the same length and leap year is ignored. A monthly or daily periodic rate may be assumed. If a daily periodic rate is assumed, the issuer may either assume a year is 365 days long, and all months are 30.41667 days long, or a year is 360 days long, and all months are 30 days long.

(viii) Payments are credited on the last day of the month.

(ix) Payments are allocated to lower annual percentage rate balances before higher annual percentage rate balances.

(x) The account is not past due and the account balance does not exceed the credit limit.

(xi) When calculating the generic repayment estimate, the assumed payments, current balance and interest charges for each month may be rounded to the nearest cent, as shown in Appendix M3 to this part.

(6) *Tolerance.* An actual repayment disclosure shall be considered accurate if it is not more than 2 months above or below the actual repayment disclosure determined in accordance with the guidance in this Appendix (prior to rounding described in paragraph (b)(1)(i) of this Appendix). For example, assume the actual repayment estimate calculated using the guidance in this Appendix is 28 months (2 years, 4 months), and the actual repayment estimate calculated by the issuer is 30 months (2 years, 6 months). The actual repayment estimate should be disclosed as 2 years, due to the rounding rule set forth in paragraph (b)(1)(i) of this Appendix. Nonetheless, based on the 30 month estimate, the issuer disclosed 3 years, based on that rounding rule. The issuer would be in compliance with this guidance by disclosing 3 years, instead of 2 years, because the issuer's estimate is within the 2 months' tolerance, prior to rounding. In addition, even if an issuer's estimate is more than 2 months above or below the actual repayment estimate calculated using the guidance in this Appendix, so long as the issuer discloses the correct number of years to the consumer based on the rounding rule set forth in paragraph (b)(1)(i) of this Appendix, the issuer would be in compliance with this guidance. For example, assume the actual repayment estimate calculated using the guidance in this Appendix is 32 months (2 years, 8 months), and the actual repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in paragraph (b)(1)(i) of this Appendix, both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer disclosed 3 years to the consumer, the issuer would be in compliance with this guidance even though the actual repayment estimate calculated by the issuer is outside the 2 months' tolerance amount.

(b) *Disclosing the actual repayment disclosure to consumers through a toll-free telephone number*.

(1) *Required disclosures*. Except as provided in paragraph (b)(3) of this Appendix, when responding to a request for actual repayment disclosures through a toll-free telephone number, credit card issuers and the FTC must make the following disclosures:

(i) The actual repayment disclosure. If the actual repayment disclosure is less than 2 years, credit card issuers must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate must be rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal or greater than 0.5. If more than one minimum payment formula applies to an account, when calculating the actual repayment period, the issuer must apply each minimum payment formula to the portion of the balance to which the formula applies. The issuer may either disclose the longest repayment period calculated, or the repayment period calculated for each minimum payment formula. For example, assume that an issuer uses one minimum payment formula to calculate the minimum payment amount for a general revolving feature, and another minimum payment formula to calculate the minimum payment amount for special purchases, such as a ''club plan purchase.'' Also, assume that based on a consumer's balances in these features and the annual percentage rates that apply to such features, that the repayment period calculated pursuant to this Appendix for the general revolving feature is 5 years, while the repayment period calculated for the special purchase feature is 3 years. This issuer may either disclose 5 years as the repayment period for the entire balance to the consumer, or disclose 5 years as the repayment period for the balance in the general revolving feature and 3 years as the repayment period for the balance in the special purchase feature.

(ii) The beginning balance on which the actual repayment disclosure is calculated.

(iii) The assumption that only minimum payments are made and no other amounts are added to the balance.

(iv) The fact that the repayment period is an estimate, and is based on several assumptions about the consumer's account terms and future activity.

(v) At the issuer's option, a description of the minimum payment formula(s) or the minimum payment amounts used to calculate the actual repayment disclosure, including a disclosure of the dollar amount of the minimum payment calculated for the first month.

(vi) At the issuer's option, the total amount of interest that a consumer would pay if the consumer makes minimum payments for the length of time disclosed in the actual repayment disclosure.

(2) *Model language*. Credit card issuers may use the following disclosure to meet the requirements set forth in paragraph (b)(1) of this Appendix:

Your outstanding balance as of the last billing statement was $____. If you make only the minimum payment on time each month and no other amounts are added to your balance, we estimate that it would take approximately ____ [months/years] to pay off this balance. This estimate is based on several assumptions about the terms of your account and future account activity.

(3) *Zero or negative amortization*. If zero or negative amortization occurs when calculating the repayment estimate, credit card issuers must disclose to the consumer that based on the current terms applicable to the consumer's account and on assumptions used to calculate the repayment estimate, the issuer estimates that the consumer will never pay off the balance by paying only the minimum payment. Card issuers may use the following disclosure to meet the requirements set forth in this paragraph, as applicable: ''Your outstanding balance as of the last billing statement was $____. Based on the current terms applicable to your account and on assumptions that we used to calculate the time to repay your balance, we estimate that you will never pay off your credit card balance if you only make the minimum payment because your payment is less than the interest charged each month.''

(4) *Permissible disclosures*. Credit card issuers may provide the following information when responding to a request for the actual repayment disclosure through a toll-free telephone number, so long as the following information is provided after the disclosures in paragraph (b)(1) of this Appendix are given:

(i) A description of the assumptions used to calculate the actual repayment disclosure as described in paragraph (a)(5) of this Appendix.

(ii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this Appendix if an additional amount was paid each month in addition to the minimum payment amount, allowing the consumer to select the additional amount. In calculating this estimate, credit card issuers must use the same terms described in paragraph (a) of this Appendix used to calculate the actual repayment disclosure, except they must assume the additional amount was paid each month in addition to the minimum payment amount.

(iii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this Appendix if the consumer made a fixed payment amount each month, allowing the consumer to select the amount of the fixed payment. For example, an issuer could prompt the consumer to enter in a payment amount in whole dollars (*e.g.*, $50) and disclose to the consumer how long it would take to repay the beginning balance if the consumer made that payment each month. In calculating this estimate, card issuers must use the same terms described in paragraph (a) of this Appendix to calculate the actual repayment disclosure, except they must assume the consumer made a fixed payment amount each month.

(iv) The monthly payment amount that would be required to pay off the beginning balance described in paragraph (b)(1)(ii) of this Appendix within a specific number of months or years, allowing the consumer to select the payoff period. For example, an issuer could prompt the consumer to enter in the number of years to repay the beginning balance, and disclose to the consumer the monthly payment amount that the consumer would need to pay each month in order to repay the balance in that number of years. In calculating the monthly payment amount, card issuers must use the same terms described in paragraph (a) of this Appendix, as appropriate.

(v) Reference to Web-based calculation tools that permit consumers to obtain additional estimates of repayment periods.

(vi) The total amount of interest that a consumer may pay under repayment options described in paragraph (b)(4)(ii), (iii) or (iv) of this Appendix.

(c) *Disclosing the actual repayment disclosures on periodic statements*.

(1) *Required disclosures*. Except as provided in paragraph (c)(3) of this Appendix, when providing the actual repayment disclosure on the periodic statement, credit card issuers must make the following disclosures:

(i) The actual repayment disclosure. If the actual repayment disclosure is less than 2 years, credit card issuers must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate must be rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal to or greater than 0.5.

(ii) The fact that the repayment period is based on the current outstanding balance shown on the periodic statement.

(iii) The assumption that only minimum payments are made and no other amounts are added to the balance.

(iv) At the issuer's option, a description of the minimum payment formula(s) or the minimum payment amounts used to calculate the generic repayment estimate, including a disclosure of the dollar amount of the minimum payment calculated for the first month.

(v) At the issuer's option, the total amount of interest that a consumer would pay if the consumer makes minimum payments for the length of time disclosed in the actual repayment disclosure.

(2) *Model form*. Credit card issuers may use the disclosure in Sample G–18(C) in Appendix G to this part to meet the requirements set forth in paragraph (c)(1) of this Appendix.

(3) *Zero or negative amortization*. If zero or negative amortization occurs when calculating the actual repayment disclosure, credit card issuers must disclose to the consumer that the issuer estimates that the consumer will never pay off the balance by making only the minimum payment. Card issuers may use the disclosure in Sample G–18(C) in Appendix G to this part to meet the requirements set forth in this paragraph.

(4) *Permissible disclosures*. Card issuers may provide the following information on the periodic statement, so long as the following information is provided after the disclosures in paragraph (c)(1) of this Appendix are given:

(i) The fact that the repayment period is an estimate, and is based on several assumptions about the consumer's account terms and future activity.

(ii) A reference to another location on the statement where the consumer may find additional information about the actual repayment disclosure.

(iii) A description of the assumptions used to calculate the actual repayment disclosure as described in paragraph (a)(5) of this Appendix.

(iv) The length of time it would take to repay the outstanding balance shown on the statement if an additional amount was paid each month in addition to the minimum payment amount. Card issuers may choose the additional amount. In calculating this estimate, card issuers must use the same terms described in paragraph (a) of this Appendix used to calculate the actual repayment disclosure, except they must assume the additional amount was paid each month in addition to the minimum payment amount.

(v) The length of time it would take to repay the outstanding balance shown on the statement if the consumer made a fixed payment amount each month. Card issuers may choose the amount of the fixed payment. In calculating this estimate, card issuers must use the same terms described in paragraph (a) of this Appendix used to calculate the actual repayment disclosure, except they must assume the consumer made a fixed payment amount each month.

(vi) The monthly payment amount that would be required to pay off the outstanding balance shown on the statement within a specific number of months or years. Card issuers may choose the specific number of months or years used in the calculation. In calculating the monthly payment amount, card issuers must use the same terms described in paragraph (a) of this Appendix, as appropriate.

(vii) Reference to Web-based calculation tools that permit consumers to obtain additional estimates of repayment periods.

(viii) The total amount of interest that a consumer may pay under repayment options described in paragraphs (c)(4)(iv), (v) or (vi) of this Appendix.

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Appendix M3 to Part 226—Sample Calculations of Generic Repayment Estimates and Actual Repayment Disclosures

(a) Generic repayment estimates. The following is an example of how to calculate the generic repayment estimates using the guidance in appendix M1 to this part where the annual percentage rate is 17 percent, the outstanding balance is $1,000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. The following calculation is written in SAS code.

```
data one;

* inputs;

* annual percentage rate;  apr=0.17;

perrate=(apr/12);  * calculate monthly periodic rate;
*perrate = ((1+(apr/365))**30.41667)-1;    *this formula would be used if a daily
periodic rate is assumed, and a 365 day year is used with 30.41667 days per month;

* outstanding balance;     cbal=1000;
* dollar minimum payment;  dmin=20;
* percent minimum payment; pmin=0.02;


* initialize counter for months;
month=0;


eins:
month=month+1;            * increment month counter;
pmt=round(pmin*cbal,0.01); * calculate payment as percentage of balance;

if pmt lt dmin then pmt=dmin; * set dollar minimum payment;
xxxbal=round(cbal*(1+perrate),0.01);
if pmt gt xxxbal then
            pmt=xxxbal; * set final payment amount;

fc=round(cbal*perrate,0.01); * calculate interest charge;
prpmt=pmt-fc;    * calculate principal payment;

* print month, balance, payment amount, interest charge, and principal payment;
```

```
put month= cbal= pmt= fc= prpmt= ;


cbal=round(cbal-prpmt,0.01);  * deduct principal payment from balance;

if cbal gt 0 then go to eins; * go to next month if balance is greater than zero;

* print number of months to repay debt, final balance (zero),
  periodic rate;
put title='  ';
put title='number of months to repay debt, final balance, periodic rate';
put month= cbal= perrate=;
put title='  ';
run;
```

(b) Actual Repayment Disclosures. The following is an example of how to calculate the actual repayment disclosures using the guidance in appendix M2 to this part where three annual percentage rates apply, the total outstanding balance is $1000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. The following calculation is written in SAS code.

```
data one;

*initialize numbers of APRs, periodic rates, balance and periodic interest charges;

array apr(3);
array perrate(3);
array cbal(3);
array fc(3);

* inputs;

*initialize APRs, and balances, placing rates from lowest to highest;

*annual percentage rates from lowest to highest;
apr1=0.019;
apr2=0.17;
apr3=0.21;

cbal1=500;  * outstanding balance associated with apr1;
cbal2=250;  * outstanding balance associated with apr2;
```

```
cbal3=250;   * outstanding balance associated with apr3;

dmin=20;      * dollar minimum payment;
pmin=0.02;   * percent minimum payment;

* initialize counter for months and total balance;
month=0;
tbal = 0;

*calculate periodic rates and initial total balance;

do I=1 to 3;
perrate(I)=(apr(I)/12);  * calculate monthly periodic rate;

*the following formula would be used if a daily periodic rate is assumed, and a 365 day
year is used with 30.41667 days per month;
*perrate = ((1+(apr(I)/365))**30.41667)-1;

tbal= tbal+cbal(I);
end;

*calculate months to pay off for lowest rate balance;

do while (cbal(1) gt 0);
   month = month+1;
   pmt= round(pmin*tbal,.01); *calculate payment as percentage of balance;
  if pmt lt dmin then pmt=dmin; * set dollar minimum payment;

   do I=1 to 3;
   fc(I)= round (cbal(I)*perrate(I), 0.01); *calculate interest charges;
   end;

   do I=1 to 3;
   cbal(I)=cbal(I)+fc(I); tbal=tbal+fc(I); *add interest charges to balances;
   end;

  cbal(1)=cbal(1)-pmt; *applying payment to lowest APR balance;
   tbal = tbal-pmt;

end;

*calculate months to pay off for next lowest rate balance, if any, carrying over number
from lower rate balance;

cbal(2)=cbal(2)+cbal(1);
```

```
do while (cbal(2) gt 0);
   month=month+1;
   pmt=round (pmin*tbal, 0.01); *calculate payment as percentage of balance;
   if pmt lt dmin then pmt=dmin; * set dollar minimum payment;

   do I=2 TO 3;
   fc(I)=round (cbal(I)*perrate(I), 0.01); *calculate interest charges;
   end;

   do I=2 TO 3;
   cbal(I)=cbal(I)+fc(I); tbal=tbal+fc(I); *add interest charges to the balances;
   end;

   cbal(2)=cbal(2)-pmt; *applying payment to second lowest APR;
   tbal=tbal-pmt;

end;

*calculate months to pay off for next lowest rate balance, if any, carrying over number
from lower rate balances;

cbal(3)=cbal(3)+cbal(2);

do while (cbal(3) gt 0);
   month= month+1;
   pmt=round (pmin*tbal, 0.01); *calculate payment as percentage of balance;
  if pmt lt dmin then pmt=dmin; * set dollar minimum payment;

   fc(3)=round (cbal(3)*perrate(3), 0.01); *calculate interest charge;

   cbal(3)=cbal(3)+fc(3); *add interest charges to balance;

   tbal= tbal+fc(3);

   cbal(3)=cbal(3)-pmt; *applying payment to remaining balance;

   tbal = tbal-pmt;

end;

* print number of months to repay debt, final balance (zero),
periodic rate;
put title='   ';
put title='number of months to repay debt, final balance';
put month= tbal=;
put title='   ';                              run;
```

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■ 24. In Supplement I to Part 226:
■ A. Revise the Introduction.
■ B. Revise subpart A.
■ C. In Subpart B, revise sections 226.5 and 226.5a and sections 226.6 through 226.14 and section 226.16.
■ D. Under *Section 226.5b—Requirements for Home-equity Plans*, under *5b(a) Form of Disclosures*, under 5b(a)(1) *General*, paragraph 1. is revised.
■ E. Under *Section 226.5b—Requirements for Home-equity Plans*, under *5b(f) Limitations on Home-equity Plans*, under *Paragraph 5b(f)(3)(vi)*, paragraph 4. is revised.
■ F. Under *Section 226.26—Use of Annual Percentage Rate in Oral Disclosures*, under *26(a) Open-end credit.*, paragraph 1. is revised.
■ G. Under *Section 226.27—Language of Disclosures*, paragraph 1. is revised.
■ H. Under *Section 226.28—Effect on State Laws, under 28(a) Inconsistent disclosure requirements.*, paragraph 6. is revised.
■ I. Under *Section 226.30—Limitation on Rates*, paragraph 8. is revised and paragraph 13. is removed.
■ J. Revise Appendix F and appendices G and H.
■ K. Amend Appendix G by revising paragraphs 1. through 3. and 5. through 6., republishing paragraph 7., and adding paragraphs 8. through 11.
■ L. Remove the References paragraph at the end of sections 226.1, 226.2, 226.3, 226.4, 226.5, 226.6, 226.7, 226.8, 226.9, 226.10, 226.11, 226.12, 226.13, 226.14, 226.16, and Appendix F.

Supplement I to Part 226—Official Staff Interpretations

Introduction

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation Z. Good faith compliance with this commentary affords protection from liability under 130(f) of the Truth in Lending Act. Section 130(f) (15 U.S.C. 1640) protects creditors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedure for requesting interpretations.* Under Appendix C of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the **Federal Register**. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as ''including, but not limited to,'' ''among other things,'' ''for example,'' or ''such as.''

(b) Throughout the commentary, reference to ''this section'' or ''this paragraph'' means the section or paragraph in the regulation that is the subject of the comment.

4. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph which it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 226.18(b) are further divided by subparagraph, such as comment 18(b)(1)–1 and comment 18(b)(2)–1. In other cases, comments have more general application and are designated, for example, as comment 18–1 or comment 18(b)–1. This introduction may be cited as comments I–1 through I–4. Comments to the appendices may be cited, for example, as comment app. A–1.

Subpart A—General

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

1(c) Coverage.

1. *Foreign applicability.* Regulation Z applies to all persons (including branches of foreign banks and sellers located in the United States) that extend consumer credit to residents (including resident aliens) of any state as defined in § 226.2. If an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation. This will be the case whether or not a particular advance or purchase on the account takes place in the United States and whether or not the extender of credit is chartered or based in the United States or a foreign country. For example, if a U.S. resident has a credit card account located in the consumer's state issued by a bank (whether U.S. or foreign-based), the account is covered by the regulation, including extensions of credit under the account that occur outside the United States. In contrast, if a U.S. resident residing or visiting abroad, or a foreign national abroad, opens a credit card account issued by a foreign branch of a U.S. bank, the account is not covered by the regulation.

1(d) Organization.

Paragraph (1)(d)(5).

1. *Effective dates.* The Board's revisions to Regulation Z published on July 30, 2008 (the ''final rules''), apply to covered loans (including refinance loans and assumptions considered new transactions under § 226.20), for which the creditor receives an application on or after October 1, 2009, except for the final rules on advertising, escrows, and loan servicing. The final rules on escrows in § 226.35(b)(3) are effective for covered loans, (including refinancings and assumptions in § 226.20) for which the creditor receives an application on or after April 1, 2010; but for such loans secured by manufactured housing on or after October 1, 2010. The final rules applicable to servicers in § 226.36(c) apply to all covered loans serviced on or after October 1, 2009. The final rules on advertising apply to advertisements occurring on or after October 1, 2009. For example, a radio ad occurs on the date it is first broadcast; a solicitation occurs on the date it is mailed to the consumer. The following examples illustrate the application of the effective dates for the final rules.

i. *General.* A refinancing or assumption as defined in § 226.20(a) or (b) is a new transaction and is covered by a provision of the final rules if the creditor receives an application for the transaction on or after that provision's effective date. For example, if a creditor receives an application for a refinance loan covered by § 226.35(a) on or after October 1, 2009, and the refinance loan is consummated on October 15, 2009, the provision restricting prepayment penalties in § 226.35(b)(2) applies. However, if the transaction were a modification of an existing obligation's terms that does not constitute a refinance loan under § 226.20(a), the final rules, including for example the restriction on prepayment penalties would not apply.

ii. *Escrows.* Assume a consumer applies for a refinance loan to be secured by a dwelling (that is not a manufactured home) on March 15, 2010, and the loan is consummated on April 2, 2010, the escrow rule in § 226.35(b)(3) does not apply.

iii. *Servicing.* Assume that a consumer applies for a new loan on August 1, 2009. The loan is consummated on September 1, 2009. The servicing rules in § 226.36(c) apply to the servicing of that loan as of October 1, 2009.

Section 226.2—Definitions and Rules of Construction

2(a)(2) Advertisement.

1. *Coverage.* Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are covered by Regulation Z (12 CFR part 226).

i. Examples include:

A. Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.

B. Announcements on radio, television, or public address system.

C. Electronic advertisements, such as on the Internet.

D. Direct mail literature or other printed material on any exterior or interior sign.

E. Point-of-sale displays.

F. Telephone solicitations.

G. Price tags that contain credit information.

H. Letters sent to customers or potential customers as part of an organized solicitation of business.

I. Messages on checking account statements offering auto loans at a stated annual percentage rate.

J. Communications promoting a new open-end plan or closed-end transaction.

ii. The term does not include:

A. Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.

B. Informational material, for example, interest-rate and loan-term memos, distributed only to business entities.

C. Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

D. News articles the use of which is controlled by the news medium.

E. Market-research or educational materials that do not solicit business.

F. Communications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account.)

2. *Persons covered.* All *persons* must comply with the advertising provisions in §§ 226.16 and 226.24, not just those that meet the definition of creditor in § 226.2(a)(17). Thus, home builders, merchants, and others who are not themselves creditors must comply with the advertising provisions of the regulation if they advertise consumer credit transactions. However, under section 145 of the act, the owner and the personnel of the medium in which an advertisement appears, or through which it is disseminated, are not subject to civil liability for violations.

2(a)(3) [Reserved]

2(a)(4) Billing cycle or cycle.

1. *Intervals.* In open-end credit plans, the billing cycle determines the intervals for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).

2. *Creditors that do not bill.* The term *cycle* is interchangeable with *billing cycle* for definitional purposes, since some creditors' cycles do not involve the sending of bills in the traditional sense but only statements of account activity. This is commonly the case with financial institutions when periodic payments are made through payroll deduction or through automatic debit of the consumer's asset account.

3. *Equal cycles.* Although cycles must be equal, there is a permissible variance to account for weekends, holidays, and differences in the number of days in months. If the actual date of each statement does not vary by more than four days from a fixed "day" (for example, the third Thursday of each month) or "date" (for example, the 15th of each month) that the creditor regularly uses, the intervals between statements are considered equal. The requirement that cycles be equal applies even if the creditor applies a daily periodic rate to determine the finance charge. The requirement that intervals be equal does not apply to the first billing cycle on an open-end account (i.e., the time period between account opening and the generation of the first periodic statement) or to a transitional billing cycle that can occur if the creditor occasionally changes its billing cycles so as to establish a new statement day or date. (See comments 9(c)(1)–3 and 9(c)(2)–3.)

4. *Payment reminder.* The sending of a regular payment reminder (rather than a late payment notice) establishes a cycle for which the creditor must send periodic statements.

2(a)(6) Business day.

1. *Business function test.* Activities that indicate that the creditor is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries. Activities that indicate that the creditor is not open for substantially all of its business functions include a retailer's merely accepting credit cards for purchases or a bank's having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

2. *Rescission rule.* A more precise rule for what is a business day (all calendar days except Sundays and the federal legal holidays listed in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain mortgage transactions under § 226.19(a)(1)(ii), or mortgages subject to § 226.32 are involved. (See also comment 31(c)(1)–1.) Four federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, federal offices and other entities might observe the holiday on the preceding Friday (July 3). The observed holiday (in the example, July 3) is a business day for purposes of rescission, the receipt of disclosures for certain mortgage transactions under § 226.19(a)(1)(ii), or the delivery of disclosures for certain high-cost mortgages covered by § 226.32.

2(a)(7) Card issuer.

1. *Agent.* An agent of a card issuer is considered a card issuer. Because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

2(a)(8) Cardholder.

1. *General rule.* A cardholder is a natural person at whose request a card is issued for consumer credit purposes or who is a co-obligor or guarantor for such a card issued to another. The second category does not include an employee who is a co-obligor or guarantor on a card issued to the employer for business purposes, nor does it include a person who is merely the authorized user of a card issued to another.

2. *Limited application of regulation.* For the limited purposes of the rules on issuance of credit cards and liability for unauthorized use, a cardholder includes *any* person, including an organization, to whom a card is issued for *any* purpose—including a business, agricultural, or commercial purpose.

3. *Issuance.* See the commentary to § 226.12(a).

4. *Dual-purpose cards and dual-card systems.* Some card issuers offer dual-purpose cards that are for business as well as consumer purposes. If a card is issued to an individual for consumer purposes, the fact that an organization has guaranteed to pay the debt does not make it business credit. On the other hand, if a card is issued for business purposes, the fact that an individual sometimes uses it for consumer purchases does not subject the card issuer to the provisions on periodic statements, billing-error resolution, and other protections afforded to consumer credit. Some card issuers offer dual-card systems—that is, they issue two cards to the same individual, one intended for business use, the other for consumer or personal use. With such a system, the same person may be a cardholder for general purposes when using the card issued for consumer use, and a cardholder only for the limited purposes of the restrictions on issuance and liability when using the card issued for business purposes.

2(a)(9) Cash price.

1. *Components.* This amount is a starting point in computing the amount financed and the total sale price under § 226.18 for credit sales. Any charges imposed equally in cash and credit transactions may be included in the cash price, or they may be treated as other amounts financed under § 226.18(b)(2).

2. *Service contracts.* Service contracts include contracts for the repair or the servicing of goods, such as mechanical breakdown coverage, even if such a contract is characterized as insurance under state law.

3. *Rebates.* The creditor has complete flexibility in the way it treats rebates for purposes of disclosure and calculation. (See the commentary to § 226.18(b).)

2(a)(10) Closed-end credit.

1. *General.* The coverage of this term is defined by exclusion. That is, it includes any credit arrangement that does not fall within the definition of open-end credit. Subpart C contains the disclosure rules for closed-end credit when the obligation is subject to a finance charge or is payable by written agreement in more than four installments.

2(a)(11) Consumer.

1. *Scope.* Guarantors, endorsers, and sureties are not generally consumers for purposes of the regulation, but they may be entitled to rescind under certain circumstances and they may have certain rights if they are obligated on credit card plans.

2. *Rescission rules.* For purposes of rescission under §§ 226.15 and 226.23, a consumer includes any natural person whose ownership interest in his or her principal dwelling is subject to the risk of loss. Thus, if a security interest is taken in A's ownership interest in a house and that house is A's principal dwelling, A is a consumer for purposes of rescission, even if A is not liable, either primarily or secondarily, on the underlying consumer credit transaction. An ownership interest does not include, for example, leaseholds or inchoate rights, such as dower.

3. *Land trusts.* Credit extended to land trusts, as described in the commentary to § 226.3(a), is considered to be extended to a natural person for purposes of the definition of consumer.

2(a)(12) Consumer credit.

1. *Primary purpose.* There is no precise test for what constitutes credit offered or extended for personal, family, or household purposes, nor for what constitutes the primary purpose. (See, however, the discussion of business purposes in the commentary to § 226.3(a).)

2(a)(13) Consummation.

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit v. sale.* Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. For example, when a consumer pays a nonrefundable deposit to purchase an automobile, a purchase contract may be created, but consummation for purposes of the regulation does not occur unless the consumer also contracts for financing at that time.

2(a)(14) Credit.

1. *Exclusions.* The following situations are not considered credit for purposes of the regulation:

i. Layaway plans, unless the consumer is contractually obligated to continue making payments. Whether the consumer is so obligated is a matter to be determined under applicable law. The fact that the consumer is not entitled to a refund of any amounts paid towards the cash price of the merchandise does not bring layaways within the definition of credit.

ii. Tax liens, tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off a tax lien) is credit for purposes of the regulation.

iii. Insurance premium plans that involve payment in installments with each installment representing the payment for insurance coverage for a certain future period of time, unless the consumer is contractually obligated to continue making payments.

iv. Home improvement transactions that involve progress payments, if the consumer pays, as the work progresses, only for work completed and has no contractual obligation to continue making payments.

v. Borrowing against the accrued cash value of an insurance policy or a pension account, if there is no independent obligation to repay.

vi. Letters of credit.

vii. The execution of option contracts. However, there may be an extension of credit when the option is exercised, if there is an agreement at that time to defer payment of a debt.

viii. Investment plans in which the party extending capital to the consumer risks the loss of the capital advanced. This includes, for example, an arrangement with a home purchaser in which the investor pays a portion of the downpayment and of the periodic mortgage payments in return for an ownership interest in the property, and shares in any gain or loss of property value.

ix. Mortgage assistance plans administered by a government agency in which a portion of the consumer's monthly payment amount is paid by the agency. No finance charge is imposed on the subsidy amount, and that amount is due in a lump-sum payment on a set date or upon the occurrence of certain events. (If payment is not made when due, a new note imposing a finance charge may be written, which may then be subject to the regulation.)

2. *Payday loans; deferred presentment.* Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a ''payday loan'' or ''payday advance'' or ''deferred-presentment loan.'' A fee charged in connection with such a transaction may be a finance charge for purposes of § 226.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under § 226.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. (See § 226.2(a)(17).)

2(a)(15) Credit card.

1. *Usable from time to time.* A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

2. *Examples.* i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A card that accesses both a credit and an asset account (that is, a debit-credit card).

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

E. A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.

ii. In contrast, credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

3. *Charge card.* Generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. Under the regulation, a reference to credit cards generally includes charge cards. The term *charge card* is, however, distinguished from *credit card* in §§ 226.5a, 226.7(b)(11), 226.7(b)(12), 226.9(e), 226.9(f) and 226.28(d), and appendices G–10 through G–13. When the term *credit card* is used in those provisions, it refers to credit cards other than charge cards.

2(a)(16) Credit sale.

1. *Special disclosure.* If the seller is a creditor in the transaction, the transaction is a credit sale and the special credit sale disclosures (that is, the disclosures under § 226.18(j)) must be given. This applies even if there is more than one creditor in the transaction and the creditor making the disclosures is not the seller. (See the commentary to § 226.17(d).)

2. *Sellers who arrange credit.* If the seller of the property or services involved arranged for financing but is not a creditor as to that sale, the transaction is not a credit sale. Thus, if a seller assists the consumer in obtaining a direct loan from a financial institution and the consumer's note is payable to the financial institution, the transaction is a loan and only the financial institution is a creditor.

3. *Refinancings.* Generally, when a credit sale is refinanced within the meaning of § 226.20(a), loan disclosures should be made. However, if a new sale of goods or services is also involved, the transaction is a credit sale.

4. *Incidental sales.* Some lenders *sell* a product or service—such as credit, property, or health insurance—as part of a loan transaction. Section 226.4 contains the rules on whether the cost of credit life, disability or property insurance is part of the finance charge. If the insurance is financed, it may be disclosed as a separate credit-sale transaction or disclosed as part of the primary transaction; if the latter approach is taken, either loan or credit-sale disclosures may be made. (See the commentary to § 226.17(c)(1) for further discussion of this point.)

5. *Credit extensions for educational purposes.* A credit extension for educational purposes in which an educational institution is the creditor may be treated as either a credit sale or a loan, regardless of whether the funds are given directly to the student, credited to the student's account, or disbursed to other persons on the student's behalf. The disclosure of the total sale price need not be given if the transaction is treated as a loan.

2(a)(17) Creditor.

1. *General.* The definition contains four independent tests. If any one of the tests is met, the person is a creditor for purposes of that particular test.

Paragraph 2(a)(17)(i).

1. *Prerequisites.* This test is composed of two requirements, both of which must be met in order for a particular credit extension to be subject to the regulation and for the credit extension to count towards satisfaction of the numerical tests mentioned in § 226.2(a)(17)(v).

i. *First*, there must be either or both of the following:

A. A written (rather than oral) agreement to pay in more than four installments. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of the definition.

B. A finance charge imposed for the credit. The obligation to pay the finance charge need not be in writing.

ii. *Second*, the obligation must be payable to the person in order for that person to be considered a creditor. If an obligation is made payable to *bearer*, the creditor is the one who initially accepts the obligation.

2. *Assignees.* If an obligation is initially payable to one person, that person is the creditor even if the obligation by its terms is simultaneously assigned to another person. For example:

i. An auto dealer and a bank have a business relationship in which the bank supplies the dealer with credit sale contracts that are initially made payable to the dealer and provide for the immediate assignment of the obligation to the bank. The dealer and purchaser execute the contract only after the bank approves the creditworthiness of the purchaser. Because the obligation is initially payable on its face to the dealer, the dealer is the only creditor in the transaction.

3. *Numerical tests.* The examples below illustrate how the numerical tests of § 226.2(a)(17)(v) are applied. The examples assume that consumer credit with a finance charge or written agreement for more than 4 installments was extended in the years in question and that the person did not extend such credit in 2006.

4. *Counting transactions.* For purposes of closed-end credit, the creditor counts each credit transaction. For open-end credit, *transactions* means accounts, so that outstanding accounts are counted instead of individual credit extensions. Normally the number of transactions is measured by the preceding calendar year; if the requisite number is met, then the person is a creditor for all transactions in the current year. However, if the person did not meet the test in the preceding year, the number of transactions is measured by the current calendar year. For example, if the person extends consumer credit 26 times in 2007, it is a creditor for purposes of the regulation for the last extension of credit in 2007 and for all extensions of consumer credit in 2008. On the other hand, if a business begins in 2007 and extends consumer credit 20 times, it is not a creditor for purposes of the regulation in 2007. If it extends consumer credit 75 times in 2008, however, it becomes a creditor for purposes of the regulation (and must begin making disclosures) after the 25th extension of credit in that year and is a creditor for all extensions of consumer credit in 2009.

5. *Relationship between consumer credit in general and credit secured by a dwelling.* Extensions of credit secured by a dwelling are counted towards the 25-extensions test. For example, if in 2007 a person extends unsecured consumer credit 23 times and consumer credit secured by a dwelling twice, it becomes a creditor for the succeeding extensions of credit, whether or not they are secured by a dwelling. On the other hand, extensions of consumer credit not secured by a dwelling are not counted towards the number of credit extensions secured by a dwelling. For example, if in 2007 a person extends credit not secured by a dwelling 8 times and credit secured by a dwelling 3 times, it is not a creditor.

6. *Effect of satisfying one test.* Once one of the numerical tests is satisfied, the person is also a creditor for the other type of credit. For example, in 2007 a person extends consumer credit secured by a dwelling 5 times. That person is a creditor for all succeeding credit extensions, whether they involve credit secured by a dwelling or not.

7. *Trusts.* In the case of credit extended by trusts, each individual trust is considered a separate entity for purposes of applying the criteria. For example:

i. A bank is the trustee for three trusts. Trust A makes 15 extensions of consumer credit annually; Trust B makes 10 extensions of consumer credit annually; and Trust C makes 30 extensions of consumer credit annually. Only Trust C is a creditor for purposes of the regulation.

Paragraph 2(a)(17)(ii). [Reserved]

Paragraph 2(a)(17)(iii).

1. *Card issuers subject to Subpart B.* Section 226.2(a)(17)(iii) makes certain card issuers creditors for purposes of the open-end credit provisions of the regulation. This includes, for example, the issuers of so-called travel and entertainment cards that expect repayment at the first billing and do not impose a finance charge. Since all disclosures are to be made only as applicable, such card issuers would omit finance charge disclosures. Other provisions of the regulation regarding such areas as scope, definitions, determination of which charges are finance charges, Spanish language disclosures, record retention, and use of model forms, also apply to such card issuers.

Paragraph 2(a)(17)(iv).

1. *Card issuers subject to Subparts B and C.* Section 226.2(a)(17)(iv) includes as creditors card issuers extending closed-end credit in which there is a finance charge or an agreement to pay in more than four installments. These card issuers are subject to the appropriate provisions of Subparts B and C, as well as to the general provisions.

2(a)(18) Downpayment.

1. *Allocation.* If a consumer makes a lump-sum payment, partially to reduce the cash price and partially to pay prepaid finance charges, only the portion attributable to reducing the cash price is part of the downpayment. (See the commentary to § 226.2(a)(23).)

2. *Pick-up payments.* i. Creditors may treat the deferred portion of the downpayment, often referred to as *pick-up payments*, in a number of ways. If the pick-up payment is treated as part of the downpayment:

A. It is subtracted in arriving at the amount financed under § 226.18(b).

B. It may, but need not, be reflected in the payment schedule under § 226.18(g).

ii. If the pick-up payment does not meet the definition (for example, if it is payable after the second regularly scheduled payment) or if the creditor chooses not to treat it as part of the downpayment:

A. It must be included in the amount financed.

B. It must be shown in the payment schedule.

iii. Whichever way the pick-up payment is treated, the total of payments under § 226.18(h) must equal the sum of the payments disclosed under § 226.18(g).

3. *Effect of existing liens.*

i. *No cash payment.* In a credit sale, the ''downpayment'' may only be used to reduce the cash price. For example, when a trade-in is used as the downpayment and the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not -$2,000.

ii. *Cash payment.* If the consumer makes a cash payment, creditors may, at their option, disclose the entire cash payment as the downpayment, or apply the cash payment first to any excess lien amount and disclose any remaining cash as the downpayment. In the above example:

A. If the downpayment disclosed is equal to the cash payment, the $2,000 deficit must be reflected as an additional amount financed under § 226.18(b)(2).

B. If the consumer provides $1,500 in cash (which does not extinguish the $2,000 deficit), the creditor may disclose a downpayment of $1,500 or of $0.

C. If the consumer provides $3,000 in cash, the creditor may disclose a downpayment of $3,000 or of $1,000.

2(a)(19) Dwelling.

1. *Scope.* A dwelling need not be the consumer's *principal* residence to fit the definition, and thus a vacation or second home could be a dwelling. However, for purposes of the definition of residential mortgage transaction and the right to rescind, a dwelling must be the principal residence of the consumer. (See the commentary to §§ 226.2(a)(24), 226.15, and 226.23.)

2. *Use as a residence.* Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.

3. *Relation to exemptions.* Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in § 226.3(b) for credit extensions over $25,000.

2(a)(20) Open-end credit.

1. *General.* This definition describes the characteristics of open-end credit (for which the applicable disclosure and other rules are contained in Subpart B), as distinct from closed-end credit. Open-end credit is

consumer credit that is extended under a plan and meets *all 3* criteria set forth in the definition.

2. *Existence of a plan.* The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multifeatured plan.

3. *Repeated transactions.* Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with consumers under the credit plan as a whole and need not believe a consumer will reuse a particular feature of the plan. The determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Information that much of the creditor's customer base with accounts under the plan make repeated transactions over some period of time is relevant to the determination, particularly when the plan is opened primarily for the financing of infrequently purchased products or services. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that particular consumers do not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with its customers. For example, it would be more reasonable for a bank or depository institution to contemplate repeated transactions with a customer than for a seller of aluminum siding to make the same assumption about its customers.

4. *Finance charge on an outstanding balance.* The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

5. *Reusable line.* The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may occasionally or routinely verify credit information such as the consumer's continued income and employment status or information for security purposes but, to meet the definition of open-end credit, such verification of credit information may not be done as a condition of granting a consumer's request for a particular advance under the plan. In general, a credit line is self-replenishing if the consumer can take further advances as outstanding balances are repaid without being required to separately apply for those additional advances. A credit card account where the plan as a whole replenishes meets the self-replenishing criterion, notwithstanding the fact that a credit card issuer may verify credit information from time to time in connection with specific transactions. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment. For example:

i. Under a closed-end commitment, the creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt. (*See* § 226.2(a)(17)(iv) for disclosure requirements when a credit card is used to obtain the advances.)

ii. This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the creditor's financial condition or the consumer's creditworthiness. (The rules in § 226.5b(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.) While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any preset credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.

6. *Verifications of collateral value.* Creditors that otherwise meet the requirements of § 226.2(a)(20) extend open-end credit notwithstanding the fact that the creditor must verify collateral values to comply with federal, state, or other applicable law or verifies the value of collateral in connection with a particular advance under the plan.

7. *Open-end real estate mortgages.* Some credit plans call for negotiated advances under so-called open-end real estate mortgages. Each such plan must be independently measured against the definition of open-end credit, regardless of the terminology used in the industry to describe the plan. The fact that a particular plan is called an open-end real estate mortgage, for example, does not, by itself, mean that it is open-end credit under the regulation.

2(a)(21) Periodic rate.

1. *Basis.* The periodic rate may be stated as a percentage (for example, .1½% per month) or as a decimal equivalent (for example .015 monthly). It may be based on any portion of a year the creditor chooses. Some creditors use 1/360 of an annual rate as their periodic rate. These creditors:

i. May disclose a 1/360 rate as a *daily* periodic rate, without further explanation, if it is in fact only applied 360 days per year. But if the creditor applies that rate for 365 days, the creditor must note that fact and, of course, disclose the true annual percentage rate.

ii. Would have to apply the rate to the balance to disclose the annual percentage rate with the degree of accuracy required in the regulation (that is, within 1/8 of 1 percentage point of the rate based on the actual 365 days in the year).

2. *Transaction charges. Periodic rate* does not include initial one-time transaction charges, even if the charge is computed as a percentage of the transaction amount.

2(a)(22) Person.

1. *Joint ventures.* A joint venture is an organization and is therefore a person.

2. *Attorneys.* An attorney and his or her client are considered to be the same person for purposes of this regulation when the attorney is acting within the scope of the attorney-client relationship with regard to a particular transaction.

3. *Trusts.* A trust and its trustee are considered to be the same person for purposes of this regulation.

2(a)(23) Prepaid finance charge.

1. *General.* Prepaid finance charges must be taken into account under § 226.18(b) in computing the disclosed amount financed, and must be disclosed if the creditor provides an itemization of the amount financed under § 226.18(c).

2. *Examples.* i. Common examples of prepaid finance charges include:

A. Buyer's points.
B. Service fees.
C. Loan fees.
D. Finder's fees.
E. Loan-guarantee insurance.
F. Credit-investigation fees.

ii. However, in order for these or any other finance charges to be considered prepaid, they must be either paid separately in cash or check or withheld from the proceeds. Prepaid finance charges include any portion of the finance charge paid prior to or at closing or settlement.

3. *Exclusions. Add-on* and *discount* finance charges are not prepaid finance charges for purposes of this regulation. Finance charges are not *prepaid* merely because they are precomputed, whether or not a portion of the charge will be rebated to the consumer upon prepayment. (See the commentary to § 226.18(b).)

4. *Allocation of lump-sum payments.* In a credit sale transaction involving a lump-sum payment by the consumer and a discount or other item that is a finance charge under § 226.4, the discount or other item is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a seller sells property to a consumer for $10,000, requires the consumer to pay $3,000 at the time of the purchase, and finances the remainder as a closed-end credit transaction. The cash price of the property is $9,000. The seller is the creditor in the transaction and therefore the $1,000 difference between the credit and cash prices (the discount) is a finance charge. (See the commentary to § 226.4(b)(9) and (c)(5).) If the creditor applies the entire $3,000 to the cash price and adds the $1,000 finance charge to the interest on the $6,000 to arrive at the total finance charge, all of the $3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies $2,000 of the lump-sum payment to the cash price, then $2,000 of the $3,000 is a downpayment and the $1,000 discount is a prepaid finance charge.

2(a)(24) Residential mortgage transaction.

1. *Relation to other sections.* This term is important in five provisions in the regulation:

i. Section 226.4(c)(7)—exclusions from the finance charge.

ii. Section 226.15(f)—exemption from the right of rescission.

iii. Section 226.18(q)—whether or not the obligation is assumable.

iv. Section 226.20(b)—disclosure requirements for assumptions.

v. Section 226.23(f)—exemption from the right of rescission.

2. *Lien status.* The definition is not limited to first lien transactions. For example, a consumer might assume a paid-down first mortgage (or borrow part of the purchase price) and borrow the balance of the purchase price from a creditor who takes a second mortgage. The second mortgage transaction is a *residential mortgage transaction* if the dwelling purchased is the consumer's principal residence.

3. *Principal dwelling.* A consumer can have only *one* principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of applying this definition to a particular transaction. (See the commentary to §§ 226.15(a) and 226.23(a).)

4. *Construction financing.* If a transaction meets the definition of a residential mortgage transaction and the creditor chooses to disclose it as several transactions under § 226.17(c)(6), each one is considered to be a residential mortgage transaction, even if different creditors are involved. For example:

i. The creditor makes a construction loan to finance the initial construction of the consumer's principal dwelling, and the loan will be disbursed in five advances. The creditor gives six sets of disclosures (five for the construction phase and one for the permanent phase). Each one is a residential mortgage transaction.

ii. One creditor finances the initial construction of the consumer's principal dwelling and another creditor makes a loan to satisfy the construction loan and provide permanent financing. Both transactions are residential mortgage transactions.

5. *Acquisition.* i. A residential mortgage transaction finances the acquisition of a consumer's principal dwelling. The term does not include a transaction involving a consumer's principal dwelling if the consumer had previously purchased and acquired some interest to the dwelling, even though the consumer had not acquired full legal title.

ii. Examples of new transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. In these instances, disclosures are not required under § 226.18(q) (assumability policies). However, the rescission rules of §§ 226.15 and 226.23 do apply to these new transactions.

iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage, allowing the buyer to assume the mortgage, if the buyer had previously purchased the property and agreed with the seller to make the mortgage payments, § 226.20(b) does not apply (assumptions involving residential mortgages).

6. *Multiple purpose transactions.* A transaction meets the definition of this section if any part of the loan proceeds will be used to finance the acquisition or initial construction of the consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residential mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchase of the land on which the dwelling will be built.

7. *Construction on previously acquired vacant land.* A residential mortgage transaction includes a loan to finance the construction of a consumer's principal dwelling on a vacant lot previously acquired by the consumer.

2(a)(25) Security interest.

1. *Threshold test.* The threshold test is whether a particular interest in property is recognized as a security interest under applicable law. The regulation does not determine whether a particular interest is a security interest under applicable law. If the creditor is unsure whether a particular interest is a security interest under applicable law (for example, if statutes and case law are either silent or inconclusive on the issue), the creditor may at its option consider such interests as security interests for Truth in Lending purposes. However, the regulation and the commentary do exclude specific interests, such as after-acquired property and accessories, from the scope of the definition regardless of their categorization under applicable law, and these named exclusions may not be disclosed as security interests under the regulation. (But see the discussion of exclusions elsewhere in the commentary to § 226.2(a)(25).)

2. *Exclusions.* The general definition of security interest excludes three groups of interests: incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under § 226.18, but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for Truth in Lending purposes.

3. *Incidental interests.* i. Incidental interests in property that are not security interests include, among other things:

A. Assignment of rents.

B. Right to condemnation proceeds.

C. Interests in accessories and replacements.

D. Interests in escrow accounts, such as for taxes and insurance.

E. Waiver of homestead or personal property rights.

ii. The notion of an *incidental interest* does not encompass an explicit security interest in an insurance policy if that policy is the primary collateral for the transaction—for example, in an insurance premium financing transaction.

4. *Operation of law.* Interests that arise solely by operation of law are excluded from the general definition. Also excluded are interests arising by operation of law that are merely repeated or referred to in the contract. However, if the creditor has an interest that arises by operation of law, such as a vendor's lien, and takes an independent security interest in the same property, such as a UCC security interest, the latter interest is a disclosable security interest unless otherwise provided.

5. *Rescission rules.* Security interests that arise solely by operation of law are security interests for purposes of rescission. Examples of such interests are mechanics' and materialmen's liens.

6. *Specificity of disclosure.* A creditor need not separately disclose multiple security interests that it may hold in the same collateral. The creditor need only disclose that the transaction is secured by the collateral, even when security interests from prior transactions remain of record and a new security interest is taken in connection with the transaction. In disclosing the fact that the transaction is secured by the collateral, the creditor also need not disclose how the security interest arose. For example, in a closed-end credit transaction, a rescission

notice need not specifically state that a new security interest is ''acquired'' or an existing security interest is ''retained'' in the transaction. The acquisition or retention of a security interest in the consumer's principal dwelling instead may be disclosed in a rescission notice with a general statement such as the following: ''Your home is the security for the new transaction.''

2(b) Rules of construction.

1. *Footnotes.* Footnotes are used extensively in the regulation to provide special exceptions and more detailed explanations and examples. Material that appears in a footnote has the same legal weight as material in the body of the regulation.

2. *Amount.* The numerical amount must be a dollar amount unless otherwise indicated. For example, in a closed-end transaction (Subpart C), the amount financed and the amount of any payment must be expressed as a dollar amount. In some cases, an amount should be expressed as a percentage. For example, in disclosures provided before the first transaction under an open-end plan (Subpart B), creditors are permitted to explain how the amount of any finance charge will be determined; where a cash-advance fee (which is a finance charge) is a percentage of each cash advance, the amount of the finance charge for that fee is expressed as a percentage.

Section 226.3—Exempt Transactions

1. *Relationship to § 226.12.* The provisions in § 226.12(a) and (b) governing the issuance of credit cards and the limitations on liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.

3(a) Business, commercial, agricultural, or organizational credit.

1. *Primary purposes.* A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt. (See comment 3(a)–2, however, with respect to credit cards.)

2. *Business purpose purchases.*

i. *Business-purpose credit cards—extensions of credit for consumer purposes.* If a business-purpose credit card is issued to a person, the provisions of the regulation do not apply, other than as provided in §§ 226.12(a) and 226.12(b), even if extensions of credit for consumer purposes are occasionally made using that business-purpose credit card. For example, the billing error provisions set forth in § 226.13 do not apply to consumer-purpose extensions of credit using a business-purpose credit card.

ii. *Consumer-purpose credit cards—extensions of credit for business purposes.* If a consumer-purpose credit card is issued to a person, the provisions of the regulation apply, even to occasional extensions of credit for business purposes made using that consumer-purpose credit card. For example, a consumer may assert a billing error with respect to any extension of credit using a consumer-purpose credit card, even if the specific extension of credit on such credit card or open-end credit plan that is the subject of the dispute was made for business purposes.

3. *Factors.* In determining whether credit to finance an acquisition—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:

i. *General.*

A. The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.

B. The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.

C. The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.

D. The size of the transaction. The larger the transaction, the more likely it is to be business purpose.

E. The borrower's statement of purpose for the loan.

ii. *Business-purpose examples.* Examples of business-purpose credit include:

A. A loan to expand a business, even if it is secured by the borrower's residence or personal property.

B. A loan to improve a principal residence by putting in a business office.

C. A business account used occasionally for consumer purposes.

iii. *Consumer-purpose examples.* Examples of consumer-purpose credit include:

A. Credit extensions by a company to its employees or agents if the loans are used for personal purposes.

B. A loan secured by a mechanic's tools to pay a child's tuition.

C. A personal account used occasionally for business purposes.

4. *Non-owner-occupied rental property.* Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule. (See comment 3(a)–5, however, for rules relating to owner-occupied rental property.)

5. *Owner-occupied rental property.* If credit is extended to acquire, improve, or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:

i. Credit extended to acquire the rental property is deemed to be for business purposes if it contains more than 2 housing units.

ii. Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than 4 housing units. Since the amended statute defines dwelling to include 1 to 4 housing units, this rule preserves the right of rescission for credit extended for purposes other than acquisition. Neither of these rules means that an extension of credit for property containing fewer than the requisite number of units is necessarily consumer credit. In such cases, the determination of whether it is business or consumer credit should be made by considering the factors listed in comment 3(a)–3.

6. *Business credit later refinanced.* Business-purpose credit that is exempt from the regulation may later be rewritten for consumer purposes. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor.

7. *Credit card renewal.* A consumer-purpose credit card that is subject to the regulation may be converted into a business-purpose credit card at the time of its renewal, and the resulting business-purpose credit card would be exempt from the regulation. Conversely, a business-purpose credit card that is exempt from the regulation may be converted into a consumer-purpose credit card at the time of its renewal, and the resulting consumer-purpose credit card would be subject to the regulation.

8. *Agricultural purpose.* An agricultural purpose includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. The exemption also applies to a transaction involving real property that includes a dwelling (for example, the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes.

9. *Organizational credit.* The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit.

10. *Land trusts.* Credit extended for consumer purposes to a land trust is considered to be credit extended to a natural person rather than credit extended to an organization. In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial

institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are for personal, family, or household purposes, these transactions are subject to the regulation since in substance (if not form) consumer credit is being extended.

3(b) Credit over $25,000 not secured by real property or a dwelling.

1. *Coverage.* Since a mobile home can be a dwelling under § 226.2(a)(19), this exemption does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer, even if the credit exceeds $25,000. A loan commitment for closed-end credit in excess of $25,000 is exempt even though the amounts actually drawn never actually reach $25,000.

2. *Open-end credit.* i. An open-end credit plan is exempt under § 226.3(b) (unless secured by real property or personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes a firm commitment to lend over $25,000 with no requirement of additional credit information for any advances (except as permitted from time to time pursuant to § 226.2(a)(20)).

B. The initial extension of credit on the line exceeds $25,000.

ii. If a security interest is taken at a later time in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, the plan would no longer be exempt. The creditor must comply with all of the requirements of the regulation including, for example, providing the consumer with an initial disclosure statement. If the security interest being added is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest. (See the commentary to § 226.15 concerning the right of rescission.)

3. *Closed-end credit-subsequent changes.* A closed-end loan for over $25,000 may later be rewritten for $25,000 or less, or a security interest in real property or in personal property used or expected to be used as the consumer's principal dwelling may be added to an extension of credit for over $25,000. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor. (See the commentary to § 226.23(a)(1) regarding the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction.)

3(c) Public utility credit.

1. *Examples.* Examples of public utility services include:

i. *General.*

A. Gas, water, or electrical services.

B. Cable television services.

C. Installation of new sewer lines, water lines, conduits, telephone poles, or metering equipment in an area not already serviced by the utility.

ii. *Extensions of credit not covered.* The exemption does not apply to extensions of credit, for example:

A. To purchase appliances such as gas or electric ranges, grills, or telephones.

B. To finance home improvements such as new heating or air conditioning systems.

3(d) Securities or commodities accounts.

1. *Coverage.* This exemption does not apply to a transaction with a broker registered solely with the state, or to a separate credit extension in which the proceeds are used to purchase securities.

3(e) Home fuel budget plans.

1. *Definition.* Under a typical home fuel budget plan, the fuel dealer estimates the total cost of fuel for the season, bills the customer for an average monthly payment, and makes an adjustment in the final payment for any difference between the estimated and the actual cost of the fuel. Fuel is delivered as needed, no finance charge is assessed, and the customer may withdraw from the plan at any time. Under these circumstances, the arrangement is exempt from the regulation, even if a charge to cover the billing costs is imposed.

3(f) Student loan programs.

1. *Coverage.* This exemption applies to the Guaranteed Student Loan program (administered by the Federal government, State, and private non-profit agencies), the Auxiliary Loans to Assist Students (also known as PLUS) program, and the National Direct Student Loan program.

Section 226.4—Finance Charge

4(a) Definition.

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

i. For example, the following items are not finance charges:

A. Taxes, license fees, or registration fees paid by both cash and credit customers.

B. Discounts that are available to cash and credit customers, such as quantity discounts.

C. Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.

D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

ii. In contrast, the following items are finance charges:

A. Inspection and handling fees for the staged disbursement of construction-loan proceeds.

B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).

C. Charges for a required maintenance or service contract imposed only in a credit transaction.

iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

2. *Costs of doing business.* Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition. For example:

i. A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer. (See § 226.4(b)(6).)

ii. A tax imposed by a state or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to § 226.4(a).)

3. *Forfeitures of interest.* If the creditor reduces the interest rate it pays or stops paying interest on the consumer's deposit account or any portion of it for the term of a credit transaction (including, for example, an overdraft on a checking account or a loan secured by a certificate of deposit), the interest lost is a finance charge. (See the commentary to § 226.4(c)(6).) For example:

i. A consumer borrows $5,000 for 90 days and secures it with a $10,000 certificate of deposit paying 15% interest. The creditor charges the consumer an interest rate of 6% on the loan and stops paying interest on $5,000 of the $10,000 certificate for the term of the loan. The interest lost is a finance charge and must be reflected in the annual percentage rate on the loan.

ii. However, the consumer must be entitled to the interest that is not paid in order for the lost interest to be a finance charge. For example:

A. A consumer wishes to buy from a financial institution a $10,000 certificate of deposit paying 15% interest but has only $4,000. The financial institution offers to lend the consumer $6,000 at an interest rate of 6% but will pay the 15% interest only on the amount of the consumer's deposit, $4,000. The creditor's failure to pay interest on the $6,000 does not result in an additional finance charge on the extension of credit, provided the consumer is entitled by the deposit agreement with the financial institution to interest only on the amount of the consumer's deposit.

B. A consumer enters into a combined time deposit/credit agreement with a financial institution that establishes a time deposit account and an open-end line of credit. The line of credit may be used to borrow against the funds in the time deposit. The agreement provides for an interest rate on any credit extension of, for example, 1%. In addition, the agreement states that the creditor will pay 0% interest on the amount of the time deposit that corresponds to the amount of the credit extension(s). The interest that is not paid on the time deposit by the financial institution is not a finance charge (and therefore does not affect the annual percentage rate computation).

4. *Treatment of transaction fees on credit card plans.* Any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example:

i. Any charge imposed on a credit cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account.

ii. Any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States, with a foreign merchant, or in a foreign currency is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. The following principles apply in determining what is a foreign transaction fee and the amount of the fee:

A. Included are fees imposed when transactions are made in a foreign currency and converted to U.S. dollars; fees imposed when transactions are made in U.S. dollars outside the U.S.; and fees imposed when transactions are made (whether in a foreign currency or in U.S. dollars) with a foreign merchant, such as via a merchant's Web site. For example, a consumer may use a credit card to make a purchase in Bermuda, in U.S. dollars, and the card issuer may impose a fee because the transaction took place outside the United States.

B. Included are fees imposed by the card issuer and fees imposed by a third party that performs the conversion, such as a credit card network or the card issuer's corporate parent. (For example, in a transaction processed through a credit card network, the network may impose a 1 percent charge and the card-issuing bank may impose an additional 2 percent charge, for a total of a 3 percentage point foreign transaction fee being imposed on the consumer.)

C. Fees imposed by a third party are included only if they are directly passed on to the consumer. For example, if a credit card network imposes a 1 percent fee on the card issuer, but the card issuer absorbs the fee as a cost of doing business (and only passes it on to consumers in the general sense that the interest and fees are imposed on all its customers to recover its costs), then the fee is not a foreign transaction fee and need not be disclosed. In another example, if the credit card network imposes a 1 percent fee for a foreign transaction on the card issuer, and the card issuer imposes this same fee on the consumer who engaged in the foreign transaction, then the fee is a foreign transaction fee and a finance charge.

D. A card issuer is not required to disclose a fee imposed by a merchant. For example, if the merchant itself performs the currency conversion and adds a fee, this fee need not be disclosed by the card issuer. Under § 226.9(d), a card issuer is not obligated to disclose finance charges imposed by a party honoring a credit card, such as a merchant, although the merchant is required to disclose such a finance charge if the merchant is subject to the Truth in Lending Act and Regulation Z.

E. The foreign transaction fee is determined by first calculating the dollar amount of the transaction by using a currency conversion rate outside the card issuer's and third party's control. Any amount in excess of that dollar amount is a foreign transaction fee. Conversion rates outside the card issuer's and third party's control include, for example, a rate selected from the range of rates available in the wholesale currency exchange markets, an average of the highest and lowest rates available in such markets, or a government-mandated or government-managed exchange rate (or a rate selected from a range of such rates).

F. The rate used for a particular transaction need not be the same rate that the card issuer (or third party) itself obtains in its currency conversion operations. In addition, the rate used for a particular transaction need not be the rate in effect on the date of the transaction (purchase or cash advance).

5. *Taxes.*

i. Generally, a tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.

ii. In contrast, a tax is not a finance charge (even if it is collected by the creditor) if applicable law imposes the tax:

A. Solely on the consumer;

B. On the creditor and the consumer jointly;

C. On the credit transaction, without indicating which party is liable for the tax; or

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

iii. For example, a stamp tax, property tax, intangible tax, or any other state or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.

iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by another provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).

4(a)(1) Charges by third parties.

1. *Choosing the provider of a required service.* An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. *Annuities associated with reverse mortgages.* Some creditors offer annuities in connection with a reverse-mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.

4(a)(2) Special rule; closing agent charges.

1. *General.* This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.

2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a). A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum fee excluded under § 226.4(c)(7).

4(a)(3) Special rule; mortgage broker fees.

1. *General.* A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under § 226.4(c)(1), a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. *Coverage.* This rule applies to charges paid by consumers to a mortgage broker in connection with a consumer credit transaction secured by real property or a dwelling.

3. *Compensation by lender.* The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).

4(b) Examples of finance charges.

1. *Relationship to other provisions.* Charges or fees shown as examples of finance charges in § 226.4(b) may be excludable under § 226.4(c), (d), or (e). For example:

i. Premiums for credit life insurance, shown as an example of a finance charge under § 226.4(b)(7), may be excluded if the requirements of § 226.4(d)(1) are met.

ii. Appraisal fees mentioned in § 226.4(b)(4) are excluded for real property or residential mortgage transactions under § 226.4(c)(7).

Paragraph 4(b)(2).

1. *Checking account charges.* A checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 226.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 226.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 226.4(c)(4).)

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $5 charge is not a finance charge.

Paragraph 4(b)(3).

1. *Assumption fees.* The assumption fees mentioned in § 226.4(b)(3) are finance charges only when the assumption occurs and the fee is imposed on the new buyer. The assumption fee is a finance charge in the new buyer's transaction.

Paragraph 4(b)(5).

1. *Credit loss insurance.* Common examples of the insurance against credit loss mentioned in § 226.4(b)(5) are mortgage guaranty insurance, holder in due course insurance, and repossession insurance. Such premiums must be included in the finance charge only for the period that the creditor requires the insurance to be maintained.

2. *Residual value insurance.* Where a creditor requires a consumer to maintain residual value insurance or where the creditor is a beneficiary of a residual value insurance policy written in connection with an extension of credit (as is the case in some forms of automobile balloon-payment financing, for example), the premiums for the insurance must be included in the finance charge for the period that the insurance is to be maintained. If a creditor pays for residual-value insurance and absorbs the payment as a cost of doing business, such costs are not considered finance charges. (See comment 4(a)–2.)

Paragraphs 4(b)(7) and (b)(8).

1. *Pre-existing insurance policy.* The insurance discussed in § 226.4(b)(7) and (b)(8) does not include an insurance policy (such as a life or an automobile collision insurance policy) that is already owned by the consumer, even if the policy is assigned to or otherwise made payable to the creditor to satisfy an insurance requirement. Such a policy is not ''written in connection with'' the transaction, as long as the insurance was not purchased for use in that credit extension, since it was previously owned by the consumer.

2. *Insurance written in connection with a transaction.* Credit insurance sold before or after an open-end (not home-secured) plan is opened is considered ''written in connection with a credit transaction.'' Insurance sold after consummation in closed-end credit transactions or after the opening of a home-equity plan subject to the requirements of § 226.5b is not considered ''written in connection with'' the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a home-equity plan subject to the requirements of § 226.5b (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed).

3. *Substitution of life insurance.* The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of the cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor). If the creditor does not offer the required insurance, the premium to be included in the finance charge is the cost of a policy of insurance of the type, amount, and term required by the creditor.

4. *Other insurance.* Fees for required insurance not of the types described in § 226.4(b)(7) and (b)(8) are finance charges and are not excludable. For example:

i. The premium for a hospitalization insurance policy, if it is required to be purchased only in a credit transaction, is a finance charge.

Paragraph 4(b)(9).

1. *Discounts for payment by other than credit.* The discounts to induce payment by other than credit mentioned in § 226.4(b)(9) include, for example, the following situation:

i. The seller of land offers individual tracts for $10,000 each. If the purchaser pays cash, the price is $9,000, but if the purchaser finances the tract with the seller the price is $10,000. The $1,000 difference is a finance charge for those who buy the tracts on credit.

2. *Exception for cash discounts.*

i. Creditors may exclude from the finance charge discounts offered to consumers for using cash or another means of payment instead of using a credit card or an open-end plan. The discount may be in whatever amount the seller desires, either as a percentage of the regular price (as defined in section 103(z) of the act, as amended) or a dollar amount. Pursuant to section 167(b) of the act, this provision applies only to transactions involving an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card). The merchant must offer the discount to prospective buyers whether or not they are cardholders or members of the open-end credit plan. The merchant may, however, make other distinctions. For example:

A. The merchant may limit the discount to payment by cash and not offer it for payment by check or by use of a debit card.

B. The merchant may establish a discount plan that allows a 15% discount for payment by cash, a 10% discount for payment by check, and a 5% discount for payment by a particular credit card. None of these discounts is a finance charge.

ii. Pursuant to section 171(c) of the act, discounts excluded from the finance charge under this paragraph are also excluded from treatment as a finance charge or other charge for credit under any state usury or disclosure laws.

3. *Determination of the regular price.*

i. The *regular price* is critical in determining whether the difference between the price charged to cash customers and credit customers is a *discount* or a *surcharge*, as these terms are defined in amended section 103 of the act. The *regular price* is defined in section 103 of the act as ''* * * the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted * * *.''

ii. For example, in the sale of motor vehicle fuel, the tagged or posted price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. Service station operators may designate separate pumps or separate islands as being for either cash or credit purchases and display only the appropriate prices at the various pumps. If a pump is capable of displaying on its meter either a cash or a credit price depending upon the consumer's means of payment, both the cash price and the credit price must be displayed at the pump. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases.

4(b)(10) Debt cancellation and debt suspension fees.

1. *Definition.* Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term ''debt cancellation coverage'' includes guaranteed automobile protection, or ''GAP,'' agreements, which pay or satisfy the remaining debt after property insurance benefits are exhausted. Debt suspension coverage provides for suspension of the obligation to make one or more payments on the date(s) otherwise required by the credit agreement, when a specified event occurs. The term ''debt suspension'' does not include loan payment deferral arrangements in which the triggering event is the bank's unilateral decision to allow a deferral of payment and the borrower's unilateral election to do so, such as by skipping or reducing one or more payments (''skip payments'').

2. *Coverage written in connection with a transaction.* Coverage sold after

consummation in closed-end credit transactions or after the opening of a home-equity plan subject to the requirements of § 226.5b is not ''written in connection with'' the credit transaction if the coverage is written because the consumer requests coverage after consummation or the opening of a home-equity plan subject to the requirements of § 226.5b (although credit-sale disclosures may be required for the coverage sold after consummation if it is financed). Coverage sold before or after an open-end (not home-secured) plan is opened is considered ''written in connection with a credit transaction.''

4(c) Charges excluded from the finance charge.

Paragraph 4(c)(1).

1. *Application fees.* An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as mortgage loans. However, if the fee is to be excluded from the finance charge under § 226.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

Paragraph 4(c)(2).

1. *Late-payment charges.*

i. Late-payment charges can be excluded from the finance charge under § 226.4(c)(2) whether or not the person imposing the charge continues to extend credit on the account or continues to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment on a 30-day account, for example, factors to be considered include:

A. The terms of the account. For example, is the consumer required by the account terms to pay the account balance in full each month? If not, the charge may be a finance charge.

B. The practices of the creditor in handling the accounts. For example, regardless of the terms of the account, does the creditor allow consumers to pay the accounts over a period of time without demanding payment in full or taking other action to collect? If no effort is made to collect the full amount due, the charge may be a finance charge.

ii. Section 226.4(c)(2) applies to late-payment charges imposed for failure to make payments as agreed, as well as failure to pay an account in full when due.

2. *Other excluded charges.* Charges for ''delinquency, default, or a similar occurrence'' include, for example, charges for reinstatement of credit privileges or for submitting as payment a check that is later returned unpaid.

Paragraph 4(c)(3).

1. *Assessing interest on an overdraft balance.* A charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

Paragraph 4(c)(4).

1. *Participation fees—periodic basis.* The participation fees described in § 226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

2. *Participation fees—exclusions.* Minimum monthly charges, charges for non-use of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by § 226.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to § 226.4(b)(2). Also, see comment 14(c)–2 for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.)

Paragraph 4(c)(5).

1. *Seller's points.* The seller's points mentioned in § 226.4(c)(5) include any charges imposed by the creditor upon the noncreditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by governmental agencies. A *commitment fee* paid by a noncreditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. *Other seller-paid amounts.* Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

Paragraph 4(c)(6).

1. *Lost interest.* Certain federal and state laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations, because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under § 226.4(c)(6), such ''lost interest'' need not be included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to § 226.4(a).)

Paragraph 4(c)(7).

1. *Real estate or residential mortgage transaction charges.* The list of charges in § 226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

2. *Lump-sum charges.* If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.

3. *Charges assessed during the loan term.* Real estate or residential mortgage transaction charges excluded under § 226.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

4(d) Insurance and debt cancellation and debt suspension coverage.

1. *General.* Section 226.4(d) permits insurance premiums and charges and debt cancellation and debt suspension charges to be excluded from the finance charge. The required disclosures must be made in writing, except as provided in § 226.4(d)(4). The rules on location of insurance and debt cancellation and debt suspension disclosures for closed-end transactions are in § 226.17(a). For purposes of § 226.4(d), all references to insurance also include debt cancellation and debt suspension coverage unless the context indicates otherwise.

2. *Timing of disclosures*. If disclosures are given early, for example under § 226.17(f) or § 226.19(a), the creditor need not redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums from the finance charge.

3. *Premium rate increases*. The creditor should disclose the premium amount based on the rates currently in effect and need not designate it as an estimate even if the premium rates may increase. An increase in insurance rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium from treatment as a finance charge.

4. *Unit-cost disclosures*.

i. *Open-end credit*. The premium or fee for insurance or debt cancellation or debt suspension for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)–12 is available.

ii. *Closed-end credit*. One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $8,000 is covered by a plan of credit life insurance coverage with a maximum of $10,000. The consumer requests an additional $4,000 loan to be covered by the same insurance plan. Since the $4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance-cost disclosures on the $4,000 loan on a unit-cost basis.

5. *Required credit life insurance; debt cancellation or suspension coverage*. Credit life, accident, health, or loss-of-income insurance, and debt cancellation and suspension coverage described in § 226.4(b)(10), must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance or coverage is in fact required or optional is a factual question. If the insurance or coverage is required, the premiums must be included in the finance charge, whether the insurance or coverage is purchased from the creditor or from a third party. If the consumer is required to elect one of several options—such as to purchase credit life insurance, or to assign an existing life insurance policy, or to pledge security such as a certificate of deposit—and the consumer purchases the credit life insurance policy, the premium must be included in the finance charge. (If the consumer assigns a preexisting policy or pledges security instead, no premium is included in the finance charge. The security interest would be disclosed under § 226.6(a)(4), § 226.6(b)(5)(ii), or § 226.18(m). See the commentary to § 226.4(b)(7) and (b)(8).)

6. *Other types of voluntary insurance*. Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If the premium for such insurance is not imposed by the creditor as an incident to or a condition of credit, it is not covered by § 226.4.

7. *Signatures*. If the creditor offers a number of insurance options under § 226.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The insurance authorization may be signed or initialed by any consumer, as defined in § 226.2(a)(11), or by an authorized user on a credit card account.

8. *Property insurance*. To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation.

9. *Single-interest insurance*. Blanket and specific single-interest coverage are treated the same for purposes of the regulation. A charge for either type of single-interest insurance may be excluded from the finance charge if:

i. The insurer waives any right of subrogation.

ii. The other requirements of § 226.4(d)(2) are met. This includes, of course, giving the consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. *Single-interest insurance defined*. The term *single-interest insurance* as used in the regulation refers only to the types of coverage traditionally included in the term *vendor's single-interest insurance* (or *VSI*), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under § 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is $1.00 or less (or $5.00 or less in the case of a multiyear policy).

11. *Initial term*.

i. The initial term of insurance or debt cancellation or debt suspension coverage determines the period for which a premium amount must be disclosed, unless one of the options discussed under comment 4(d)–12 is available. For purposes of § 226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. *Initial term; alternative*.

i. *General*. A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation or debt suspension coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. *Open-end plans*. For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples*. To illustrate:

A. A credit life insurance policy providing coverage for a 30-year mortgage loan has an initial term of 30 years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

13. *Loss-of-income insurance*. The loss-of-income insurance mentioned in § 226.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer's payments will be made if the consumer becomes unemployed involuntarily.

4(d)(3) Voluntary debt cancellation or debt suspension fees.

1. *General*. Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection (''GAP'') agreements must be disclosed according to § 226.4(d)(3) rather than according to § 226.4(d)(2) for property insurance.

2. *Disclosures*. Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the

model credit insurance disclosures only if the debt cancellation or debt suspension coverage constitutes insurance under state law. (See Model Clauses and Samples at G–16 and H–17 in Appendix G and Appendix H to part 226 for guidance on how to provide the disclosure required by § 226.4(d)(3)(iii) for debt suspension products.)

3. *Multiple events.* If debt cancellation or debt suspension coverage for two or more events is provided at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss of life, health, or income and the conditions specified in § 226.4(d)(3) or, as applicable, § 226.4(d)(4), are satisfied.

4. *Disclosures in programs combining debt cancellation and debt suspension features.* If the consumer's debt can be cancelled under certain circumstances, the disclosure may be modified to reflect that fact. The disclosure could, for example, state (in addition to the language required by § 226.4(d)(3)(iii)) that ''In some circumstances, my debt may be cancelled.'' However, the disclosure would not be permitted to list the specific events that would result in debt cancellation.

4(d)(4) Telephone purchases.

1. *Affirmative request.* A creditor would not satisfy the requirement to obtain a consumer's affirmative request if the ''request'' was a response to a script that uses leading questions or negative consent. A question asking whether the consumer wishes to enroll in the credit insurance or debt cancellation or suspension plan and seeking a yes-or-no response (such as ''Do you want to enroll in this optional debt cancellation plan?'') would not be considered leading.

4(e) Certain security interest charges.

1. *Examples.*

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e)(1) and (e)(3). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security agreement). (See comment 4(a)–5 regarding the treatment of taxes, generally.)

ii. *Charges not excludable.* If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.

2. *Itemization.* The various charges described in § 226.4(e)(1) and (e)(3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.

3. *Notary fees.* In order for a notary fee to be excluded under § 226.4(e)(1), all of the following conditions must be met:

i. The document to be notarized is one used to perfect, release, or continue a security interest.

ii. The document is required by law to be notarized.

iii. A notary is considered a public official under applicable law.

iv. The amount of the fee is set or authorized by law.

4. *Nonfiling insurance.* The exclusion in § 226.4(e)(2) is available only if nonfiling insurance is purchased. If the creditor collects and simply retains a fee as a sort of ''self-insurance'' against nonfiling, it may not be excluded from the finance charge. If the nonfiling insurance premium exceeds the amount of the fees excludable from the finance charge under § 226.4(e)(1), only the excess is a finance charge. For example:

i. The fee for perfecting a security interest is $5.00 and the fee for releasing the security interest is $3.00. The creditor charges $10.00 for nonfiling insurance. Only $8.00 of the $10.00 is excludable from the finance charge.

4(f) Prohibited offsets.

1. *Earnings on deposits or investments.* The rule that the creditor shall not deduct any earnings by the consumer on deposits or investments applies whether or not the creditor has a security interest in the property.

Subpart B—Open–End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of disclosures.

5(a)(1) General.

1. *Clear and conspicuous standard.* The ''clear and conspicuous'' standard generally requires that disclosures be in a reasonably understandable form. Disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(1), highlighted disclosure on checks that access a credit card under § 226.9(b)(3); highlighted change-in-terms disclosures under § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or for a penalty under § 226.9(g)(3)(ii) must also be readily noticeable to the consumer.

2. *Clear and conspicuous—reasonably understandable form.* Except where otherwise provided, the reasonably understandable form standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. For disclosures that are given orally, the standard requires that they be given at a speed and volume sufficient for a consumer to hear and comprehend them. (See comment 5(b)(1)(ii)–1.) Except where otherwise provided, the standard does not prohibit:

i. Pluralizing required terminology (''finance charge'' and ''annual percentage rate'').

ii. Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.

iii. Sending promotional material with the required disclosures.

iv. Using commonly accepted or readily understandable abbreviations (such as ''mo.'' for ''month'' or ''Tx.'' for ''Texas'') in making any required disclosures.

v. Using codes or symbols such as ''APR'' (for annual percentage rate), ''FC'' (for finance charge), or ''Cr'' (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.

3. *Clear and conspicuous—readily noticeable standard.* To meet the readily noticeable standard, disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(1), highlighted disclosures on checks that access a credit card account under § 226.9(b)(3), highlighted change-in-terms disclosures under § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or penalty pricing under § 226.9(g)(3)(ii) must be given in a minimum of 10-point font. (See special rule for font size requirements for the annual percentage rate for purchases under §§ 226.5a(b)(1) and 226.6(b)(2)(i).)

4. *Integrated document.* The creditor may make both the account-opening disclosures (§ 226.6) and the periodic-statement disclosures (§ 226.7) on more than one page, and use both the front and the reverse sides, except where otherwise indicated, so long as the pages constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:

i. Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labeled to show that they relate to one another; or

ii. A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features

5. *Disclosures covered.* Disclosures that must meet the ''clear and conspicuous'' standard include all required communications under this subpart. Therefore, disclosures made by a person other than the card issuer, such as disclosures of finance charges imposed at the time of honoring a consumer's credit card under § 226.9(d), and notices, such as the correction notice required to be sent to the consumer under § 226.13(e), must also be clear and conspicuous.

Paragraph 5(a)(1)(ii)(A).

1. *Electronic disclosures.* Disclosures that need not be provided in writing under § 226.5(a)(1)(ii)(A) may be provided in writing, orally, or in electronic form. If the consumer requests the service in electronic form, such as on the creditor's Web site, the specified disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. 7001 *et seq.*).

Paragraph 5(a)(1)(iii).

1. *Disclosures not subject to E–Sign Act.* See the commentary to § 226.5(a)(1)(ii)(A) regarding disclosures (in addition to those specified under § 226.5(a)(1)(iii)) that may be provided in electronic form without regard to the consumer consent or other provisions of the E–Sign Act.

5(a)(2) Terminology.

1. *When disclosures must be more conspicuous.* For home-equity plans subject to § 226.5b, the terms *finance charge* and *annual percentage rate*, when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in § 226.5(a)(2)(ii). At the creditor's option, *finance charge* and *annual percentage rate* may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

i. In disclosing the annual percentage rate as required by § 226.6(a)(1)(ii), the term *annual percentage rate* is subject to the *more conspicuous* rule.

ii. In disclosing the amount of the finance charge, required by § 226.7(a)(6)(i), the term *finance charge* is subject to the *more conspicuous* rule.

iii. Although neither *finance charge* nor *annual percentage rate* need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under § 226.6(a)(1)(iii) and (a)(1)(iv), they may be equally conspicuous as the disclosures required under §§ 226.6(a)(1)(ii) and 226.7(a)(7).

2. *Making disclosures more conspicuous.* In disclosing the terms *finance charge* and *annual percentage rate* more conspicuously for home-equity plans subject to § 226.5b, only the words *finance charge* and *annual percentage rate* should be accentuated. For example, if the term *total finance charge* is used, only *finance charge* should be emphasized. The disclosures may be made more conspicuous by, for example:

i. Capitalizing the words when other disclosures are printed in lower case.

ii. Putting them in bold print or a contrasting color.

iii. Underlining them.

iv. Setting them off with asterisks.

v. Printing them in larger type.

3. *Disclosure of figures—exception to more conspicuous rule.* For home-equity plans subject to § 226.5b, the terms *annual percentage rate* and *finance charge* need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

4. *Consistent terminology.* Language used in disclosures required in this subpart must be close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical.

5(b) Time of disclosures.

5(b)(1) Account-opening disclosures.

5(b)(1)(i) General rule.

1. *Disclosure before the first transaction.* When disclosures must be furnished ''before the first transaction,'' account-opening disclosures must be delivered before the consumer becomes obligated on the plan. Examples include:

i. *Purchases.* The consumer makes the first purchase, such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store, except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously (see commentary to § 226.5(b)(1)(iii) below).

ii. *Advances.* The consumer receives the first advance. If the consumer receives a cash advance check at the same time the account-opening disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

2. *Reactivation of suspended account.* If an account is temporarily suspended (for example, because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new account-opening disclosures are required.

3. *Reopening closed account.* If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new account-opening disclosures are required. No new account-opening disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the ''new'' account then continues on the same terms.

4. *Converting closed-end to open-end credit.* If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, account-opening disclosures under § 226.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to § 226.17 on converting open-end credit to closed-end credit.)

5. *Balance transfers.* A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must furnish the disclosures required by § 226.6 so that the consumer has an opportunity, after receiving the disclosures, to contact the creditor before the balance is transferred and decline the transfer. For example, assume a consumer responds to a card issuer's solicitation for a credit card account subject to § 226.5a that offers a range of balance transfer annual percentage rates, based on the consumer's creditworthiness. If the creditor opens an account for the consumer, the creditor would comply with the timing rules of this section by providing the consumer with the annual percentage rate (along with the fees and other required disclosures) that would apply to the balance transfer in time for the consumer to contact the creditor and withdraw the request. A creditor that permits consumers to withdraw the request by telephone has met this timing standard if the creditor does not effect the balance transfer until 10 days after the creditor has sent account-opening disclosures to the consumer, assuming the consumer has not contacted the creditor to withdraw the request. Card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both §§ 226.5a and 226.6 in a single disclosure statement.

5(b)(1)(ii) Charges imposed as part of an open-end (not home-secured) plan.

1. *Disclosing charges before the fee is imposed.* Creditors may disclose charges imposed as part of an open-end (not home-secured) plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under § 226.6(b)(2). (Charges imposed as part of an open-end (not home-secured plan) that are not specified under § 226.6(b)(2) may alternatively be disclosed in electronic form; see the commentary to § 226.5(a)(1)(ii)(A).) Creditors must provide such disclosures at a time and in a manner that a consumer would be likely to notice them. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call orally to the consumer. Similarly, a creditor providing marketing materials in writing to a consumer about a particular service would meet the standard if the creditor provided a clear and conspicuous written disclosure of the fee for that service in those same materials. A creditor that provides written materials to a consumer about a particular service but provides a fee disclosure for another service not promoted in such materials would not meet the standard. For example, if a creditor provided marketing materials promoting payment by Internet, but included the fee for a replacement card on such materials with no explanation, the creditor would not be disclosing the fee at a time and in a manner that the consumer would be likely to notice the fee.

5(b)(1)(iii) Telephone purchases.

1. *Return policies.* In order for creditors to provide disclosures in accordance with the timing requirements of this paragraph, consumers must be permitted to return merchandise purchased at the time the plan was established without paying mailing or return-shipment costs. Creditors may impose costs to return subsequent purchases of merchandise under the plan, or to return merchandise purchased by other means such as a credit card issued by another creditor. A reasonable return policy would be of sufficient duration that the consumer is likely to have received the disclosures and had sufficient time to make a decision about the financing plan before his or her right to return the goods expires. Return policies need not provide a right to return goods if the consumer consumes or damages the goods, or for installed appliances or fixtures, provided there is a reasonable repair or replacement policy to cover defective goods or installations. If the consumer chooses to reject the financing plan, creditors comply with the requirements of this paragraph by permitting the consumer to pay for the goods with another reasonable form of payment acceptable to the merchant and keep the goods although the creditor cannot require the consumer to do so.

5(b)(1)(iv) Membership fees.

1. *Membership fees.* See § 226.5a(b)(2) and related commentary for guidance on fees for issuance or availability of a credit or charge card.

2. *Rejecting the plan.* If a consumer has paid or promised to pay a membership fee including an application fee excludable from the finance charge under § 226.4(c)(1) before receiving account-opening disclosures, the consumer may, after receiving the disclosures, reject the plan and not be obligated for the membership fee, application fee, or any other fee or charge. A consumer who has received the disclosures and uses the account, or makes a payment on the account after receiving a billing statement, is deemed not to have rejected the plan.

3. *Using the account.* A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not ''use'' the account by activating the account. A consumer also does not ''use'' the account when the creditor assesses fees on the account (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures). For example, the consumer does not ''use'' the account when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances. A consumer also does not ''use'' the account by paying an application fee excludable from the finance charge under § 226.4(c)(1) prior to receiving the account-opening disclosures.

4. *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b are subject to the requirements of § 226.5b(h) regarding the collection of fees.

5(b)(2) Periodic statements.

Paragraph 5(b)(2)(i).

1. *Periodic statements not required.* Periodic statements need not be sent in the following cases:

i. If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1—so long as no finance charge has been imposed on the account for that cycle.

ii. If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (See § 226.13(a)(7).)

2. *Termination of draw privileges.* When a consumer's ability to draw on an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under § 226.5(b)(2)(i), for example, when the draw period of an open-end credit plan ends and consumers are paying off outstanding balances according to the account agreement or under the terms of a workout agreement that is not converted to a closed-end transaction. In addition, creditors must continue to follow all of the other open-end credit requirements and procedures in subpart B.

3. *Uncollectible accounts.* An account is deemed uncollectible for purposes of § 226.5(b)(2)(i) when a creditor has ceased collection efforts, either directly or through a third party.

4. *Instituting collection proceedings.* Creditors institute a delinquency collection proceeding by filing a court action or initiating an adjudicatory process with a third party. Assigning a debt to a debt collector or other third party would not constitute instituting a collection proceeding.

Paragraph 5(b)(2)(ii).

1. *14-day rule.* The 14-day rule for mailing or delivering periodic statements does not apply if charges (for example, transaction or activity charges) are imposed regardless of the timing of a periodic statement. The 14-day rule does apply, for example:

i. If current debits retroactively become subject to finance charges when the balance is not paid in full by a specified date.

ii. For open-end plans not subject to 12 CFR part 227, subpart C; 12 CFR part 535, subpart C; or 12 CFR part 706, subpart C, if charges other than finance charges will accrue when the consumer does not make timely payments (for example, late payment charges or charges for exceeding a credit limit). (For consumer credit card accounts subject to 12 CFR part 227, subpart C; 12 CFR part 535, subpart C; or 12 CFR part 706, subpart C, see 12 CFR 227.22, 12 CFR 535.22, or 12 CFR 706.22, as applicable.)

2. *Deferred interest transactions.* See comment 7(b)–1.iv.

Paragraph 5(b)(2)(iii).

1. *Computer malfunction.* The exceptions identified in § 226.5(b)(2)(iii) of this section do not extend to the failure to provide a periodic statement because of computer malfunction.

2. *Calling for periodic statements.* When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a grace period, the statement must be made available in accordance with the 14-day rule.

5(c) Basis of disclosures and use of estimates.

1. *Legal obligation.* The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

i. The legal obligation is determined by applicable state or other law.

ii. The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

iii. The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

2. *Estimates—obtaining information.* Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time disclosures are made. The reasonably available standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.

3. *Estimates—redisclosure.* If the creditor makes estimated disclosures, redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.

5(d) Multiple creditors; multiple consumers.

1. *Multiple creditors.* Under § 226.5(d):

i. Creditors must choose which of them will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

2. *Multiple consumers.* Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.15.

3. *Card issuer and person extending credit not the same person.* Section 127(c)(4)(D) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(D)) contains rules pertaining to charge card issuers with plans that allow access to an open-end credit plan that is maintained by a person other than the charge card issuer. These rules are not implemented in Regulation Z (although they were formerly implemented in § 226.5a(f)). However, the statutory provisions remain in effect and may be used by charge card issuers with plans meeting the specified criteria.

5(e) Effect of subsequent events.

1. *Events causing inaccuracies.* Inaccuracies in disclosures are not violations if attributable to events occurring after disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the

consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to provide a new disclosure(s) under § 226.9(c).

2. *Use of inserts.* When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:

i. Should clearly refer to the disclosure provision it replaces.

ii. Need not be physically attached or affixed to the basic disclosure statement.

iii. May be used only until the supply of outdated forms is exhausted.

Section 226.5a—Credit and Charge Card Applications and Solicitations

1. *General.* Section 226.5a generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. (*See* § 226.5a(a)(5)and (e)(2) for exceptions; see § 226.5a(a)(1) and accompanying commentary for the definition of solicitation; see also § 226.2(a)(15) and accompanying commentary for the definition of charge card.)

2. *Substitution of account-opening summary table for the disclosures required by § 226.5a.* In complying with § 226.5a(c), (e)(1) or (f), a card issuer may provide the account-opening summary table described in § 226.6(b)(1) in lieu of the disclosures required by § 226.5a, if the issuer provides the disclosures required by § 226.6 on or with the application or solicitation.

3. *Clear and conspicuous standard. See* comment 5(a)(1)–1 for the clear and conspicuous standard applicable to § 226.5a disclosures.

5a(a) General rules.

5a(a)(1) Definition of solicitation.

1. *Invitations to apply.* A card issuer may contact a consumer who has not been preapproved for a card account about opening an account (whether by direct mail, telephone, or other means) and invite the consumer to complete an application. Such a contact does not meet the definition of *solicitation*, nor is it covered by this section, unless the contact itself includes an application form in a direct mailing, electronic communication or ''take-one''; an oral application in a telephone contact initiated by the card issuer; or an application in an in-person contact initiated by the card issuer.

5a(a)(2) Form of disclosures; tabular format.

1. *Location of table.* i. *General.* Except for disclosures given electronically, disclosures in § 226.5a(b) that are required to be provided in a table must be prominently located on or with the application or solicitation. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.

ii. *Electronic disclosures.* If the table is provided electronically, the table must be provided in close proximity to the application or solicitation. Card issuers have flexibility in satisfying this requirement. Methods card issuers could use to satisfy the requirement include, but are not limited to, the following examples:

A. The disclosures could automatically appear on the screen when the application or reply form appears;

B. The disclosures could be located on the same Web page as the application or reply form (whether or not they appear on the initial screen), if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

C. Card issuers could provide a link to the electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

D. The disclosures could be located on the same Web page as the application or reply form without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application or reply.

Whatever method is used, a card issuer need not confirm that the consumer has read the disclosures.

2. *Multiple accounts.* If a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account.

3. *Information permitted in the table. See* the commentary to § 226.5a(b), (d)(2)(ii) and (e)(1) for guidance on additional information permitted in the table.

4. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, omit inapplicable headings and their corresponding boxes in the table. For example, if no foreign transaction fee is imposed on the account, the heading *Foreign transaction* and disclosure may be deleted from the table or the disclosure form may contain the heading *Foreign transaction* and a disclosure showing *none.* There is an exception for the grace period disclosure; even if no grace period exists, that fact must be stated.

5. *Highlighting of annual percentage rates and fee amounts.* i. *In general. See* Samples G–10(B) and G–10(C) for guidance on providing the disclosures described in § 226.5a(a)(2)(iv) in bold text. Other annual percentage rates or fee amounts disclosed in the table may not be in bold text. Samples G–10(B) and G–10(C) also provide guidance to issuers on how to disclose the rates and fees described in § 226.5a(a)(2)(iv) in a clear and conspicuous manner, by including these rates and fees generally as the first text in the applicable rows of the table so that the highlighted rates and fees generally are aligned vertically in the table.

ii. *Maximum limits on fees.* Section 226.5a(a)(2)(iv) provides that any maximum limits on fee amounts unrelated to fees that vary by state may not be disclosed in bold text. For example, assume an issuer will charge a cash advance fee of $5 or 3 percent of the cash advance transaction amount, whichever is greater, but the fee will not exceed $100. The maximum limit of $100 for the cash advance fee must not be highlighted in bold. Nonetheless, assume that the amount of the late fee varies by state, and the range of amount of late fees disclosed is $15—$25. In this case, the maximum limit of $25 on the late fee amounts must be highlighted in bold. In both cases, the minimum fee amount (e.g. $5 or $15) must be disclosed in bold text.

iii. *Periodic fees.* Section 226.5a(a)(2)(iv) provides that any periodic fee disclosed pursuant to § 226.5a(b)(2) that is not an annualized amount must not be disclosed in bold. For example, if an issuer imposes a $10 monthly maintenance fee for a card account, the issuer must disclose in the table that there is a $10 monthly maintenance fee, and that the fee is $120 on an annual basis. In this example, the $10 fee disclosure would not be disclosed in bold, but the $120 annualized amount must be disclosed in bold. In addition, if an issuer must disclose any annual fee in the table, the amount of the annual fee must be disclosed in bold.

6. *Form of disclosures.* Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a credit card application or solicitation electronically (other than as described under ii. below), such as on-line at a home computer, the card issuer must provide the disclosures in electronic form (such as with the application or solicitation on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application or solicitation. If the issuer instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the card issuer's office, and accesses a credit card application or solicitation electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the card issuer to provide applications or solicitations to consumers), the issuer may provide disclosures in either electronic or paper form, provided the issuer complies with the timing and delivery (''on or with'') requirements of the regulation.

7. *Terminology.* Section 226.5a(a)(2)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in Appendix G–10 to part 226; but *see* § 226.5(a)(2) for terminology requirements applicable to § 226.5a disclosures.

5a(a)(4) Fees that vary by state.

1. *Manner of disclosing range.* If the card issuer discloses a range of fees instead of disclosing the amount of the specific fee applicable to the consumer's account, the range may be stated as the lowest authorized fee (zero, if there are one or more states where no fee applies) to the highest authorized fee.

5a(a)(5) Exceptions.

1. *Noncoverage of consumer-initiated requests.* Applications provided to a consumer upon request are not covered by § 226.5a, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application, the application sent in response to the consumer's request need not contain the disclosures required under § 226.5a. Similarly, if the card issuer invites consumers to call and make an oral application on the telephone, § 226.5a does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to § 226.5a, specifically § 226.5a(d). Likewise, if the card issuer initiates an in-person discussion with a consumer about opening a card account and contemporaneously takes an application, such applications are subject to § 226.5a, specifically § 226.5a(f).

5a(b) Required disclosures.

1. *Tabular format.* Provisions in § 226.5a(b) and its commentary provide that certain information must appear or is permitted to appear in a table. The tabular format is required for § 226.5a(b) disclosures given pursuant to § 226.5a(c), (d)(2), (e)(1) and (f). The tabular format does not apply to oral disclosures given pursuant to § 226.5a(d)(1). (*See* § 226.5a(a)(2).)

2. *Accuracy.* Rules concerning accuracy of the disclosures required by § 226.5a(b), including variable rate disclosures, are stated in § 226.5a(c), (d), and (e), as applicable.

5a(b)(1) Annual percentage rate.

1. *Variable-rate accounts—definition.* For purposes of § 226.5a(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to § 226.6(b)(4)(ii) for examples of variable-rate plans.)

2. *Variable-rate accounts—fact that rate varies and how the rate will be determined.* In describing how the applicable rate will be determined, the card issuer must identify in the table the type of index or formula used, such as the prime rate. In describing the index, the issuer may not include in the table details about the index. For example, if the issuer uses a prime rate, the issuer must disclose the rate as a ''prime rate'' and may not disclose in the table other details about the prime rate, such as the fact that it is the highest prime rate published in the Wall Street Journal two business days before the closing date of the statement for each billing period. The issuer may not disclose in the table the current value of the index (such as that the prime rate is currently 7.5 percent) or the amount of the margin or spread added to the index or formula in setting the applicable rate. A card issuer may not disclose any applicable limitations on rate increases or decreases in the table, such as describing that the rate will not go below a certain rate or higher than a certain rate. (*See* Samples G–10(B) and G–10(C) for guidance on how to disclose the fact that the applicable rate varies and how it is determined.)

3. *Discounted initial rates.* i. *Immediate proximity.* If the term ''introductory'' is in the same phrase as the introductory rate, as that term is defined in § 226.16(g)(2)(ii), it will be deemed to be in immediate proximity of the listing. For example, an issuer that uses the phrase ''introductory balance transfer APR X percent'' has used the word ''introductory'' within the same phrase as the rate. (*See* Sample G–10(C) for guidance on how to disclose clearly and conspicuously the expiration date of the introductory rate and the rate that will apply after the introductory rate expires, if an introductory rate is disclosed in the table.)

ii. *Subsequent changes in terms.* The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of § 226.9(c), does not, by itself, make that rate an introductory rate. For example, assume an issuer discloses an annual percentage rate for purchases of 12.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently increases the annual percentage rate for purchases to 15.99%, pursuant to a change-in-terms notice provided under § 226.9(c), the 12.99% is not an introductory rate. (However, issuers subject to 12 CFR 227.24 or similar law are subject to certain limitations on such rate increases.)

iii. *More than one introductory rate.* If more than one introductory rate may apply to a particular balance in succeeding periods, the term ''introductory'' need only be used to describe the first introductory rate. For example, if an issuer offers a rate of 8.99% on purchases for six months, 10.99% on purchases for the following six months, and 14.99% on purchases after the first year, the term ''introductory'' need only be used to describe the 8.99% rate.

4. *Premium initial rates—subsequent changes in terms.* The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of § 226.9(c) (as applicable), does not, by itself, make that rate a premium initial rate. For example, assume an issuer discloses an annual percentage rate for purchases of 18.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently reduces the annual percentage rate for purchases to 15.99%, the 18.99% is not a premium initial rate. If the rate decrease is the result of a change from a non-variable rate to a variable rate or from a variable rate to a non-variable rate, see comments 9(c)(2)(iv)–3 and 9(c)(2)(iv)–4 for guidance on the notice requirements under § 226.9(c). (In addition, issuers subject to 12 CFR 227.24 or similar law may be subject to certain limitations on such rate decreases.)

5. *Increased penalty rates.* i. *In general.* For rates that are not introductory rates, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose the increased rate that would apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. The description of the specific event or events that may result in an increased rate should be brief. For example, if an issuer may increase a rate to the penalty rate because the consumer does not make the minimum payment by 5 p.m., Eastern Time, on its payment due date, the issuer should describe this circumstance in the table as ''make a late payment.'' Similarly, if an issuer may increase a rate that applies to a particular balance because the account is more than 30 days late, the issuer should describe this circumstance in the table as ''make a late payment.'' An issuer may not distinguish between the events that may result in an increased rate for existing balances and the events that may result in an increased rate for new transactions. (*See* Samples G–10(B) and G–10(C) (in the row labeled ''Penalty APR and When it Applies'') for additional guidance on the level of detail in which the specific event or events should be described.) The description of how long the increased rate will remain in effect also should be brief. If a card issuer reserves the right to apply the increased rate indefinitely, that fact should be stated. (*See* Samples G–10(B) and G–10(C) (in the row labeled ''Penalty APR and When it Applies'') for additional guidance on the level of detail which the issuer should use to describe how long the increased rate will remain in effect.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(A) if the issuer uses the format shown in Samples G–10(B) and G–10(C) (in the row labeled ''Penalty APR and When it Applies'') to disclose this information.

ii. *Introductory rates—general.* An issuer is only 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, if the issuer discloses the introductory rate in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to § 226.5a(c) or (e). 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) or (e). 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 30 days late, the issuer should describe this circumstance in the table as ''make a late payment.'' In addition, if the circumstances in which an introductory rate could be revoked are already listed elsewhere in the table, the issuer is not required to repeat the circumstances again, but may refer to those circumstances in a clear and conspicuous manner. For example, if the circumstances in which an introductory rate could be revoked are the same as the event or events that may trigger a ''penalty rate'' as described in § 226.5a(b)(1)(iv)(A), the issuer may refer to the actions listed in the Penalty APR row, in describing the circumstances in which the introductory rate could be revoked. (*See* Sample G–10(C) in the disclosure labeled ''Loss of Introductory APR'' directly beneath the table for additional guidance on the level of detail in which to describe the circumstances in which an introductory rate could be revoked.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(B) if the issuer uses the format shown in Sample G–10(C) to disclose this information.

iii. *Introductory rates—issuers subject to 12 CFR 227.24 or similar law.* Issuers that are disclosing an introductory rate subject to 12 CFR 227.24 or similar law are prohibited from increasing or revoking the introductory rate before it expires unless the consumer fails to make a required minimum periodic payment within 30 days after the due date for the payment. In making the required disclosure pursuant to § 226.5a(b)(1)(iv)(B), any issuers subject to 12 CFR 227.24 or similar law should describe this circumstance directly beneath the table as ''make a late payment.''

6. *Rates that depend on consumer's creditworthiness.* i. *In general.* The card issuer, at its option, may disclose the possible rates that may apply as either specific rates, or a range of rates. For example, if there are three possible rates that may apply (9.99, 12.99 or 17.99 percent), an issuer may disclose specific rates (9.99, 12.99 or 17.99 percent) or a range of rates (9.99 to 17.99 percent). The card issuer may not disclose only the lowest, highest or median rate that could apply. (*See* Samples G–10(B) and G–10(C) for guidance on how to disclose a range of rates.)

ii. *Penalty rates.* If the rate is a penalty rate, as described in § 226.5a(b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply. For example, if the penalty rate could be up to 28.99 percent, but the issuer may impose a penalty rate that is less than that rate depending on factors at the time the penalty rate is imposed, the issuer may disclose the penalty rate as ''up to'' 28.99 percent. The issuer also must include a statement that the penalty rate for which the consumer may qualify will depend on the consumer's creditworthiness, and other factors if applicable.

iii. *Other factors.* Section 226.5a(b)(1)(v) applies even if other factors are used in combination with a consumer's creditworthiness to determine the rate for which a consumer may qualify at account opening. For example, § 226.5a(b)(1)(v) would apply if the issuer considers the type of purchase the consumer is making at the time the consumer opens the account, in combination with the consumer's creditworthiness, to determine the rate for which the consumer may qualify at account opening. If other factors are considered, the issuer should amend the statement about creditworthiness, to indicate that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness and other factors. Nonetheless, § 226.5a(b)(1)(v) does not apply if a consumer's creditworthiness is not one of the factors that will determine the rate for which the consumer may qualify at account opening (for example, if the rate is based solely on the type of purchase that the consumer is making at the time the consumer opens the account, or is based solely on whether the consumer has other banking relationships with the card issuer).

7. *Rate based on another rate on the account.* In some cases, one rate may be based on another rate on the account. For example, assume that a penalty rate as described in § 226.5a(b)(1)(iv)(A) is determined by adding 5 percentage points to the current purchase rate, which is 10 percent. In this example, the card issuer in disclosing the penalty rate must disclose 15 percent as the current penalty rate. If the purchase rate is a variable rate, then the penalty rate also is a variable rate. In that case, the card issuer also must disclose the fact that the penalty rate may vary and how the rate is determined, such as ''This APR may vary with the market based on the Prime Rate.'' In describing the penalty rate, the issuer shall not disclose in the table the amount of the margin or spread added to the current purchase rate to determine the penalty rate, such as describing that the penalty rate is determined by adding 5 percentage points to the purchase rate. (*See* § 226.5a(b)(1)(i) and comment 5a(b)(1)–2 for further guidance on describing a variable rate.)

8. *Rates.* The only rates that shall be disclosed in the table are annual percentage rates determined under § 226.14(b). Periodic rates shall not be disclosed in the table.

5a(b)(2) Fees for issuance or availability.

1. *Membership fees.* Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card as a privilege of membership must be disclosed only if the card is issued automatically upon membership. Such a fee shall not be disclosed in the table if membership results merely in eligibility to apply for an account.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) shall not be disclosed in the table if the basic account may be opened without paying such fees. Issuing a card to each primary cardholder (not authorized users) is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, must be disclosed as a fee for issuance or availability. Thus, a fee to obtain an additional card on the account beyond the first card (so that each cardholder would have his or her own card) must be disclosed in the table as a fee for issuance or availability under § 226.5a(b)(2). This fee must be disclosed even if the fee is optional; that is, if the fee is charged only if the cardholder requests one or more additional cards. (See the available credit disclosure in § 226.5a(b)(14).)

3. *One-time fees.* Disclosure of non-periodic fees is limited to fees related to opening the account, such as one-time membership or participation fees, or an application fee that is excludable from the finance charge under § 226.4(c)(1). The following are examples of fees that shall not be disclosed in the table:

i. Fees for reissuing a lost or stolen card.

ii. Statement reproduction fees.

4. *Waived or reduced fees.* If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect.

5. *Periodic fees and one-time fees.* A card issuer disclosing a periodic fee must disclose the amount of the fee, how frequently it will be imposed, and the annualized amount of the fee. A card issuer disclosing a non-periodic fee must disclose that the fee is a one-time fee. (*See* Sample G–10(C) for guidance on how to meet these requirements.)

5a(b)(3) Fixed finance charge; minimum interest charge.

1. *Example of brief statement. See* Samples G–10(B) and G–10(C) for guidance on how to provide a brief description of a minimum interest charge.

2. *Adjustment of $1.00 threshold amount.* Consistent with § 226.5a(b)(3), the Board will publish adjustments to the $1.00 threshold amount, as appropriate.

5a(b)(4) Transaction charges.

1. *Charges imposed by person other than card issuer.* Charges imposed by a third party, such as a seller of goods, shall not be disclosed in the table under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).

2. *Foreign transaction fees.* A transaction charge imposed by the card issuer for the use of the card for purchases includes any fee imposed by the issuer for purchases in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency, or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G–10(B) and G–10(C). Otherwise, the issuer must revise the

foreign transaction fee language shown in Samples G–10(B) and G–10(C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.

5a(b)(5) Grace period.

1. *How grace period disclosure is made.* The card issuer must state any conditions on the applicability of the grace period. An issuer that offers a grace period on all purchases and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: ''Your due date is [at least] ____ days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance by the due date each month.''

2. *No grace period.* The issuer may use the following language to describe that no grace period on any purchases is offered, as applicable: ''We will begin charging interest on purchases on the transaction date.''

3. *Grace period on some purchases.* If the issuer provides a grace period on some types of purchases but no grace period on others, the issuer may combine and revise the language in comments 5a(b)(5)–1 and –2 as appropriate to describe to which types of purchases a grace period applies and to which types of purchases no grace period is offered.

5a(b)(6) Balance computation method.

1. *Form of disclosure.* In cases where the card issuer uses a balance computation method that is identified by name in the regulation, the card issuer must disclose below the table only the name of the method. In cases where the card issuer uses a balance computation method that is not identified by name in the regulation, the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(b)(4)(i)(D). (See the commentary to § 226.5a(g) for guidance on particular methods.)

2. *Determining the method.* In determining which balance computation method to disclose for purchases, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases or cover two billing cycles only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method that includes new purchases or covers two billing cycles, respectively. The card issuer must not assume the existence of a purchase balance, however, in making other disclosures under § 226.5a(b).

5a(b)(7) Statement on charge card payments.

1. *Applicability and content.* The disclosure that charges are payable upon receipt of the periodic statement is applicable only to charge card accounts. In making this disclosure, the card issuer may make such modifications as are necessary to more accurately reflect the circumstances of repayment under the account. For example, the disclosure might read, ''Charges are due and payable upon receipt of the periodic statement and must be paid no later than 15 days after receipt of such statement.''

5a(b)(8) Cash advance fee.

1. *Content. See* Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the cash advance fee.

2. *Foreign cash advances.* Cash advance fees required to be disclosed under § 226.5a(b)(8) include any charge imposed by the card issuer for cash advances in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G–10(B) and (C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G–10(B) and (C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.

3. *ATM fees.* An issuer is not required to disclose pursuant to § 226.5a(b)(8) any charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

5a(b)(9) Late-payment fee.

1. *Applicability.* The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to § 226.4(c)(2) for additional guidance on late-payment fees. See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the late-payment fee.)

5a(b)(10) Over-the-limit fee.

1. *Applicability.* The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. (See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the over-the-limit fee.)

5a(b)(13) Required insurance, debt cancellation, or debt suspension coverage.

1. *Content. See* Sample G–10(B) for guidance on how to comply with the requirements in § 226.5a(b)(13).

5a(b)(14) Available credit.

1. *Calculating available credit.* If the 15 percent threshold test is met, the issuer must disclose the available credit excluding optional fees, and the available credit including optional fees. In calculating the available credit to disclose in the table, the issuer must consider all fees for the issuance or availability of credit described in § 226.5a(b)(2), and any security deposit, that will be imposed and charged to the account when the account is opened, such as one-time issuance and set-up fees. For example, in calculating the available credit, issuers must consider the first year's annual fee and the first month's maintenance fee (as applicable) if they are charged to the account on the first billing statement. In calculating the amount of the available credit including optional fees, if optional fees could be charged multiple times, the issuer shall assume that the optional fee is only imposed once. For example, if an issuer charges a fee for each additional card issued on the account, the issuer in calculating the amount of the available credit including optional fees may assume that the cardholder requests only one additional card. In disclosing the available credit, the issuer shall round down the available credit amount to the nearest whole dollar.

2. *Content.* See Sample G–10(C) for guidance on how to provide the disclosure required by § 226.5a(b)(14) clearly and conspicuously.

5a(b)(15) Web site reference.

1. *Content.* See Samples G–10(B) and G–10(C) for guidance on disclosing a reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit card accounts.

5a(c) Direct mail and electronic applications and solicitations.

1. *Mailed publications.* Applications or solicitations contained in generally available publications mailed to consumers (such as subscription magazines) are subject to the requirements applicable to *take-ones* in § 226.5a(e), rather than the direct mail requirements of § 226.5a(c). However, if a primary purpose of a card issuer's mailing is to offer credit or charge card accounts—for example, where a card issuer ''prescreens'' a list of potential cardholders using credit criteria, and then mails to the targeted group its catalog containing an application or a solicitation for a card account—the direct mail rules apply. In addition, a card issuer may use a single application form as a *take-one* (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of § 226.5a(c) even when the form is used as a *take-one*—that is, by presenting the required § 226.5a disclosures in a tabular format. When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the § 226.5a(e)(1)(ii) and (e)(1)(iii) disclosures are included; when used in a *take-one*, the disclosures must be accurate for as long as the *take-one* forms remain available to the public if the § 226.5a(e)(1)(ii) and (e)(1)(iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date.)

5a(d) Telephone applications and solicitations.

1. *Coverage.* i. This paragraph applies if:

A. A telephone conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a *prescreened* telephone solicitation).

B. The card issuer initiates the contact and at the same time takes application information over the telephone.

ii. This paragraph does not apply to:

A. Telephone applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card.

2. *Right to reject the plan.* The right to reject the plan referenced in this paragraph is the same as the right to reject the plan described in § 226.5(b)(1)(iv). If an issuer substitutes the account-opening summary table described in § 226.6(b)(1) in lieu of the disclosures specified in § 226.5a(d)(2)(ii), the disclosure specified in § 226.5a(d)(2)(ii)(B) must appear in the table, if the issuer is required to do so pursuant to § 226.6(b)(2)(xiii). Otherwise, the disclosure specified in § 226.5a(d)(2)(ii)(B) may appear either in or outside the table containing the required credit disclosures.

3. *Substituting account-opening table for alternative written disclosures.* An issuer may substitute the account-opening summary table described in § 226.6(b)(1) in lieu of the disclosures specified in § 226.5a(d)(2)(ii).

5a(e) Applications and solicitations made available to general public.

1. *Coverage.* Applications and solicitations made available to the general public include what are commonly referred to as *take-one* applications typically found at counters in banks and retail establishments, as well as applications contained in catalogs, magazines and other generally available publications. In the case of credit unions, this paragraph applies to applications and solicitations to open card accounts made available to those in the general field of membership.

2. *In-person applications and solicitations.* In-person applications and solicitations initiated by a card issuer are subject to § 226.5a(f), not § 226.5a(e). (See § 226.5a(f) and accompanying commentary for rules relating to in-person applications and solicitations.)

3. *Toll-free telephone number.* If a card issuer, in complying with any of the disclosure options of § 226.5a(e), provides a telephone number for consumers to call to obtain credit information, the number must be toll-free for nonlocal calls made from an area code other than the one used in the card issuer's dialing area. Alternatively, a card issuer may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

5a(e)(1) Disclosure of required credit information.

1. *Date of printing.* Disclosure of the month and year fulfills the requirement to disclose the date an application was printed.

2. *Form of disclosures.* The disclosures specified in § 226.5a(e)(1)(ii) and (e)(1)(iii) may appear either in or outside the table containing the required credit disclosures.

5a(e)(2) No disclosure of credit information.

1. *When disclosure option available.* A card issuer may use this option only if the issuer does not include on or with the application or solicitation any statement that refers to the credit disclosures required by § 226.5a(b). Statements such as *no annual fee, low interest rate, favorable rates,* and *low costs* are deemed to refer to the required credit disclosures and, therefore, may not be included on or with the solicitation or application, if the card issuer chooses to use this option.

5a(e)(3) Prompt response to requests for information.

1. *Prompt disclosure.* Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card.

2. *Information disclosed.* When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with § 226.5a(e)(1) and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the issuer need only provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information about particular items, the card issuer need only provide the requested information. If, however, the card issuer has made disclosures in accordance with the option in § 226.5a(e)(2) and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information must be given.

3. *Manner of response.* A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the issuer. Furthermore, the card issuer must provide the information listed in § 226.5a(e)(1). Information provided in writing need not be in a tabular format.

5a(f) In-person applications and solicitations.

1. *Coverage.* i. This paragraph applies if:

A. An in-person conversation between a card issuer and a consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a *preapproved* in-person solicitation).

B. The card issuer initiates the contact and at the same time takes application information in person. For example, the following are covered:

1. A consumer applies in person for a car loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation and submits an application.

2. An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for the retailer's credit or charge card; the customer responds affirmatively and submits an application.

ii. This paragraph does not apply to:

A. In-person applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides during the in-person conversation not to issue the card.

5a(g) Balance computation methods defined.

1. *Two-cycle average daily balance methods.*

i. *In general.* The *two-cycle average daily balance* methods described in § 226.5a(g)(2)(i) and (g)(2)(ii) include those methods in which the average daily balances for two billing cycles may be added together to compute the finance charge. Such methods also include those in which a periodic rate is applied separately to the balance in each cycle, and the resulting finance charges are added together. The method is a *two-cycle average daily balance* even if the finance charge is based on both the current and prior cycle balances only under certain circumstances, such as when purchases during a prior cycle were carried over into the current cycle and no finance charge was assessed during the prior cycle. Furthermore, the method is a *two-cycle average daily balance method* if the balances for both the current and prior cycles are average daily balances, even if those balances are figured differently. For example, the name *two-cycle average daily balance (excluding new purchases)* should be used to describe a method in which the finance charge for the current cycle, figured on an average daily balance excluding new purchases, will be added to the finance charge for the prior cycle, figured on an average daily balance of only new purchases during that prior cycle.

ii. *Restrictions.* Some issuers may be prohibited from using the two-cycle average daily balance methods described in § 226.5a(g)(2)(i) and (ii). See 12 CFR parts 227, 535, and 706.

Section 226.5b Requirements for Home-equity Plans

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5b(a) Form of Disclosure

5b(a)(1) General

1. *Written disclosures.* The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. (See the commentary to § 226.6(a)(3) for special rules when disclosures required under § 226.5b(d) are given in a retainable form.)

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5b(f) Limitations on Home-equity Plans

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Paragraph 5b(f)(3)(vi).

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4. *Reinstatement of credit privileges.* Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist. One way a creditor can meet this responsibility is to monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting

the freeze continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to such monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges by providing a notice in accordance with § 226.9(c)(1)(iii). A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under § 226.9(c)(1)(iii). Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.

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Section 226.6 Account-opening Disclosures

6(a) Rules affecting home-equity plans.

6(a)(1) Finance charge.

Paragraph 6(a)(1)(i).

1. *When finance charges accrue.* Creditors are not required to disclose a specific date when finance charges will begin to accrue. Creditors may provide a general explanation such as that the consumer has 30 days from the closing date to pay the new balance before finance charges will accrue on the account.

2. *Grace periods.* In disclosing whether or not a grace period exists, the creditor need not use ''free period,'' ''free-ride period,'' ''grace period'' or any other particular descriptive phrase or term. For example, a statement that ''the finance charge begins on the date the transaction is posted to your account'' adequately discloses that no grace period exists. In the same fashion, a statement that ''finance charges will be imposed on any new purchases only if they are not paid in full within 25 days after the close of the billing cycle'' indicates that a grace period exists in the interim.

Paragraph 6(a)(1)(ii).

1. *Range of balances.* The range of balances disclosure is inapplicable:

i. If only one periodic rate may be applied to the entire account balance.

ii. If only one periodic rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic rate on purchase balances of $0–$500, and a 1% monthly periodic rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

2. *Variable-rate disclosures—coverage.*

i. *Examples.* This section covers open-end credit plans under which rate changes are specifically set forth in the account agreement and are tied to an index or formula. A creditor would use variable-rate disclosures for plans involving rate changes such as the following:

A. Rate changes that are tied to the rate the creditor pays on its six-month certificates of deposit.

B. Rate changes that are tied to Treasury bill rates.

C. Rate changes that are tied to changes in the creditor's commercial lending rate.

ii. An open-end credit plan in which the employee receives a lower rate contingent upon employment (that is, with the rate to be increased upon termination of employment) is not a variable-rate plan.

3. *Variable-rate plan—rate(s) in effect.* In disclosing the rate(s) in effect at the time of the account-opening disclosures (as is required by § 226.6(a)(1)(ii)), the creditor may use an insert showing the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under § 226.5(c).

4. *Variable-rate plan—additional disclosures required.* In addition to disclosing the rates in effect at the time of the account-opening disclosures, the disclosures under § 226.6(a)(1)(ii) also must be made.

5. *Variable-rate plan—index.* The index to be used must be clearly identified; the creditor need not give, however, an explanation of how the index is determined or provide instructions for obtaining it.

6. *Variable-rate plan—circumstances for increase.*

i. Circumstances under which the rate(s) may increase include, for example:

A. An increase in the Treasury bill rate.

B. An increase in the Federal Reserve discount rate.

ii. The creditor must disclose when the increase will take effect; for example:

A. ''An increase will take effect on the day that the Treasury bill rate increases,'' or

B. ''An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle.''

7. *Variable-rate plan—limitations on increase.* In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. (A maximum interest rate must be included in dwelling-secured open-end credit plans under which the interest rate may be changed. *See* § 226.30 and the commentary to that section.) Legal limits such as usury or rate ceilings under state or federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. ''The rate on the plan will not exceed 25% annual percentage rate.''

ii. ''Not more than ½% increase in the annual percentage rate per year will occur.''

8. *Variable-rate plan—effects of increase.* Examples of effects of rate increases that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

9. *Variable-rate plan—change-in-terms notice not required.* No notice of a change in terms is required for a rate increase under a variable-rate plan as defined in comment 6(a)(1)(ii)–2.

10. *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the account-opening disclosure statement should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required in § 226.6(a)(1)(ii).

iii. In disclosing the current periodic and annual percentage rates that would be applied using the index or formula, the creditor may use any of the disclosure options described in comment 6(a)(1)(ii)–3.

11. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must disclose the index and the margin. The creditor must also disclose the specific event or events that may result in the increased rate, such as ''22% APR, if 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the creditor must provide an explanation of the specific event or events that may result in the increased rate. At the creditor's option, the creditor may disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

Paragraph 6(a)(1)(iii).

1. *Explanation of balance computation method.* A shorthand phrase such as ''previous balance method'' does not suffice in explaining the balance computation method. (See Model Clauses G–1 and G–1(A) to part 226.)

2. *Allocation of payments.* Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances. For example, the creditor need not disclose that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance; or in a multifeatured plan, that payments are applied first to finance charges, then to purchases, and then to cash advances. (*See* comment 7–1 for definition of multifeatured plan.)

Paragraph 6(a)(1)(iv).

1. *Finance charges.* In addition to disclosing the periodic rate(s) under § 226.6(a)(1)(ii), creditors must disclose any other type of finance charge that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; or appraisal or credit report fees (unless excluded from the finance charge under § 226.4(c)(7)). Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.

6(a)(2) Other charges.

1. *General; examples of other charges.* Under § 226.6(a)(2), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

i. Late-payment and over-the-credit-limit charges.

ii. Fees for providing documentary evidence of transactions requested under § 226.13 (billing error resolution).

iii. Charges imposed in connection with residential mortgage transactions or real estate transactions such as title, appraisal, and credit-report fees (see § 226.4(c)(7)).

iv. A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances (See the commentary to § 226.4(a)).

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an ''other charge,'' even if membership is required to apply for credit. For example, if the primary benefit of membership in an organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature, the membership fee would be disclosed as an ''other charge.''

vi. Charges imposed for the termination of an open-end credit plan.

2. *Exclusions.* The following are examples of charges that are not ''other charges''

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under § 226.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (See commentary to § 226.4(c)(2)).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (See also comment 7(a)(2)–2.)

viii. Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

ix. A fee to expedite delivery of a credit card, either at account opening or during the life of the account, provided delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee for delivery.

x. A fee charged for arranging a single payment on the credit account, upon the consumer's request (regardless of how frequently the consumer requests the service), if the credit plan provides that the consumer may make payments on the account by another reasonable means, such as by standard mail service, without paying a fee to the creditor.

6(a)(3) Home-equity plan information.

1. *Additional disclosures required.* For home-equity plans, creditors must provide several of the disclosures set forth in § 226.5b(d) along with the disclosures required under § 226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (See comment 5b(d)(4)(iii)–1.)

2. *Form of disclosures.* The home-equity disclosures provided under this section must be in a form the consumer can keep, and are governed by § 226.5(a)(1). The segregation standard set forth in § 226.5b(a) does not apply to home-equity disclosures provided under § 226.6.

3. *Disclosure of payment and variable-rate examples.*

i. The payment-example disclosure in § 226.5b(d)(5)(iii) and the variable-rate information in § 226.5b(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii) need not be provided with the disclosures under § 226.6 if the disclosures under § 226.5b(d) were provided in a form the consumer could keep; and the disclosures of the payment example under § 226.5b(d)(5)(iii), the maximum-payment example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen.

ii. For example, if a creditor offers three payment options (one for each of the categories described in the commentary to § 226.5b(d)(5)), describes all three options in its early disclosures, and provides all of the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or (d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case with a separate disclosure form rather than a combined form, as discussed under § 226.5b(a)), the disclosures under § 226.5b(d)(5)(iii), (d)(12)(viii), (d)(12)(x), (d)(12)(xi) and (d)(12)(xii) must be given to any consumer who chooses one of the other two options. If the § 226.5b(d)(5)(iii) and (d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

4. *Disclosures for the repayment period.* The creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under § 226.6. Specifically, the creditor must make the disclosures in § 226.6(a)(3), state the corresponding annual percentage rate, and provide the variable-rate information required in § 226.6(a)(1)(ii) for the repayment phase. To the extent the corresponding annual percentage rate, the information in § 226.6(a)(1)(ii), and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

6(a)(4) Security interests.

1. *General.* Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.

2. *Identification of property.* Creditors sufficiently identify collateral by type by stating, for example, *motor vehicle* or *household appliances.* (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number.)

3. *Spreader clause.* If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as ''spreader'' or ''dragnet'' clauses, or as ''cross-collateralization'' clauses.) The creditor need not specifically identify the collateral; a reminder such as ''collateral securing other loans with us may also secure this loan'' is sufficient. At the creditor's option, a more specific description of the property involved may be given.

4. *Additional collateral.* If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under § 226.9(c) at the time the security is taken. (See comment 6(a)(4)–2.)

5. *Collateral from third party.* Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.

6(a)(5) Statement of billing rights.

1. *See* the commentary to Model Forms G–3, G–3(A), G–4, and G–4(A).

6(b) Rules affecting open-end (not home-secured) plans.

6(b)(1) Form of disclosures; tabular format for open-end (not home-secured) plans.

1. *Relation to tabular summary for applications and solicitations. See*

commentary to § 226.5a(a), (b), and (c) regarding format and content requirements, except for the following:

i. Creditors must use the accuracy standard for annual percentage rates in § 226.6(b)(4)(ii)(G).

ii. Generally, creditors must disclose the specific rate for each feature that applies to the account. If the rates on an open-end (not home-secured) plan vary by State and the creditor is providing the account-opening table in person at the time the plan is established in connection with financing the purchase of goods or services the creditor may, at its option, disclose in the account-opening table the rate applicable to the consumer's account, or the range of rates, if the disclosure includes a statement that the rate varies by State and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the rate applicable to the consumer's account is disclosed.

iii. Creditors must explain whether or not a grace period exists for all features on the account. The row heading ''Paying Interest'' must be used if any one feature on the account does not have a grace period.

iv. Creditors must name the balance computation method used for each feature of the account and state that an explanation of the balance computation method(s) is provided in the account-opening disclosures.

v. Creditors must state that consumers' billing rights are provided in the account-opening disclosures.

vi. If fees on an open-end (not home-secured) plan vary by State and the creditor is providing the account-opening table in person at the time the plan is established in connection with financing the purchase of goods or services the creditor may, at its option, disclose in the account-opening table the specific fee applicable to the consumer's account, or the range of fees, if the disclosure includes a statement that the amount of the fee varies by State and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the fee applicable to the consumer's account is disclosed.

vii. Creditors that must disclose the amount of available credit must state the initial credit limit provided on the account.

viii. Creditors must disclose directly beneath the table the circumstances under which an introductory rate may be revoked and the rate that will apply after the introductory rate is revoked only if the introductory rate is disclosed pursuant to § 226.6(b)(2)(i)(B) in the account-opening table. Creditors subject to 12 CFR 227.24 or similar law are subject to limitations on the circumstances under which an introductory rate may be revoked. (See comment 5a(b)(1)–4 for guidance on how a creditor subject to 12 CFR 227.24 or similar law may disclose the circumstances under which an introductory rate may be revoked.)

ix. The applicable forms providing safe harbors for account-opening tables are under Appendix G–17 to part 226.

2. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to § 226.6 disclosures.

3. *Terminology.* Section 226.6(b)(1) generally requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the tables in Appendix G to part 226; but see § 226.5(a)(2) for terminology requirements applicable to § 226.6(b).

6(b)(2) Required disclosures for account-opening table for open-end (not home-secured) plans.

6(b)(2)(iii) Fixed finance charge; minimum interest charge.

1. *Example of brief statement.* See Samples G–17(B), G–17(C), and G–17(D) for guidance on how to provide a brief description of a minimum interest charge.

6(b)(2)(v) Grace period.

1. *Grace period.* Creditors must state any conditions on the applicability of the grace period. A creditor that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: ''Your due date is [at least] ____days after the close of each billing cycle. We will not charge you interest on your account if you pay your entire balance by the due date each month.''

2. *No grace period.* Creditors may use the following language to describe that no grace period is offered, as applicable: ''We will begin charging interest on [applicable transactions] on the transaction date.''

3. *Grace period on some features. See* Samples G–17(B) and G–17(C) for guidance on complying with § 226.6(b)(2)(v) when a creditor offers a grace period for purchases but no grace period on balance transfers and cash advances.

6(b)(2)(vi) Balance computation method.

1. *Content.* See Samples G–17(B) and G–17(C) for guidance on how to disclose the balance computation method where the same method is used for all features on the account.

6(b)(2)(xiii) Available credit.

1. *Right to reject the plan.* Creditors may use the following language to describe consumers' right to reject a plan after receiving account-opening disclosures: ''You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges.''

6(b)(3) Disclosure of charges imposed as part of open-end (not home-secured) plans.

1. *When finance charges accrue.* Creditors are not required to disclose a specific date when a cost that is a finance charge under § 226.4 will begin to accrue.

2. *Grace periods.* In disclosing in the account agreement or disclosure statement whether or not a grace period exists, the creditor need not use any particular descriptive phrase or term. However, the descriptive phrase or term must be sufficiently similar to the disclosures provided pursuant to §§ 226.5a(b)(5) and 226.6(b)(2)(v) to satisfy a creditor's duty to provide consistent terminology under § 226.5(a)(2).

3. *No finance charge imposed below certain balance.* Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.

Paragraph 6(b)(3)(ii).

1. *Failure to use the plan as agreed.* Late-payment fees, over-the-limit fees, and fees for payments returned unpaid are examples of charges resulting from consumers' failure to use the plan as agreed.

2. *Examples of fees that affect the plan.* Examples of charges the payment, or nonpayment, of which affects the consumer's account are:

i. *Access to the plan.* Fees for using the card at the creditor's ATM to obtain a cash advance, fees to obtain additional cards including replacements for lost or stolen cards, fees to expedite delivery of cards or other credit devices, application and membership fees, and annual or other participation fees identified in § 226.4(c)(4).

ii. *Amount of credit extended.* Fees for increasing the credit limit on the account, whether at the consumer's request or unilaterally by the creditor.

iii. *Timing or method of billing or payment.* Fees to pay by telephone or via the Internet.

3. *Threshold test.* If the creditor is unsure whether a particular charge is a cost imposed as part of the plan, the creditor may at its option consider such charges as a cost imposed as part of the plan for purposes of the Truth in Lending Act.

Paragraph 6(b)(3)(iii)(B).

1. *Fees for package of services.* A fee to join a credit union is an example of a fee for a package of services that is not imposed as part of the plan, even if the consumer must join the credit union to apply for credit. In contrast, a membership fee is an example of a fee for a package of services that is considered to be imposed as part of a plan where the primary benefit of membership in the organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature.

6(b)(4) Disclosure of rates for open-end (not home-secured) plans.

Paragraph 6(b)(4)(i)(B).

1. *Range of balances.* Creditors are not required to disclose the range of balances:

i. If only one periodic interest rate may be applied to the entire account balance.

ii. If only one periodic interest rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic interest rate on purchase balances of $0—$500, and a 1% periodic interest rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

Paragraph 6(b)(4)(i)(D).

1. *Explanation of balance computation method.* Creditors do not provide a sufficient explanation of a balance computation method by using a shorthand phrase such as

''previous balance method'' or the name of a balance computation method listed in § 226.5a(g). (See Model Clauses G–1(A) in Appendix G to part 226. See § 226.6(b)(2)(vi) regarding balance computation descriptions in the account-opening summary.)

2. *Allocation of payments.* Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances.

6(b)(4)(ii) Variable-rate accounts.

1. *Variable-rate disclosures—coverage.*

i. *Examples.* Examples of open-end plans that permit the rate to change and are considered variable-rate plans include:

A. Rate changes that are tied to the rate the creditor pays on its six-month certificates of deposit.

B. Rate changes that are tied to Treasury bill rates.

C. Rate changes that are tied to changes in the creditor's commercial lending rate.

ii. Examples of open-end plans that permit the rate to change and are not considered variable-rate include:

A. Rate changes that are invoked under a creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates).

B. Rate changes that are triggered by a specific event such as an open-end credit plan in which the employee receives a lower rate contingent upon employment, and the rate increases upon termination of employment.

2. *Variable-rate plan—circumstances for increase.*

i. The following are examples that comply with the requirement to disclose circumstances under which the rate(s) may increase:

A. ''The Treasury bill rate increases.''

B. ''The Federal Reserve discount rate increases.''

ii. Disclosing the frequency with which the rate may increase includes disclosing when the increase will take effect; for example:

A. ''An increase will take effect on the day that the Treasury bill rate increases.''

B. ''An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle.''

3. *Variable-rate plan—limitations on increase.* In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. Legal limits such as usury or rate ceilings under State or Federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. ''The rate on the plan will not exceed 25% annual percentage rate.''

ii. ''Not more than ½ of 1% increase in the annual percentage rate per year will occur.''

4. *Variable-rate plan—effects of increase.* Examples of effects of rate increases that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

5. *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors disclose in the account-opening disclosures an initial rate that is not calculated using the index or formula for later rate adjustments, the disclosure should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required by § 226.6(b)(4)(ii).

6(b)(4)(iii) Rate changes not due to index or formula.

1. *Events that cause the initial rate to change.*

i. *Changes based on expiration of time period.* If the initial rate will change at the expiration of a time period, creditors that disclose the initial rate in the account-opening disclosure must identify the expiration date and the fact that the initial rate will end at that time.

ii. *Changes based on specified contract terms.* If the account agreement provides that the creditor may change the initial rate upon the occurrence of specified event or events, the creditor must identify the event or events. Examples include the consumer not making the required minimum payment when due, or the termination of an employee preferred rate when the employment relationship is terminated.

2. *Rate that will apply after initial rate changes.*

i. *Increased margins.* If the initial rate is based on an index and the rate may increase due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.

ii. *Risk-based pricing.* In some plans, the amount of the rate change depends on how the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. Creditors must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or by stating only the highest rate that could be assessed. The creditor must disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments,'' or if there is no limitation, the fact that the increased rate may remain indefinitely.

3. *Effect of rate change on balances.* Creditors must disclose information to consumers about the balance to which the new rate will apply and the balance to which the current rate at the time of the change will apply. Creditors that are subject to 12 CFR § 227.24 or similar law may be subject to certain restrictions on the application of increased rates to certain balances.

6(b)(5) Additional disclosures for open-end (not home-secured) plans.

(6)(b)(5)(i) Voluntary credit insurance, debt cancellation or debt suspension.

1. *Timing.* Under § 226.4(d), disclosures required to exclude the cost of voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge must be provided before the consumer agrees to the purchase of the insurance or coverage. Creditors comply with § 226.6(b)(5)(i) if they provide those disclosures in accordance with § 226.4(d). For example, if the disclosures required by § 226.4(d) are provided at application, creditors need not repeat those disclosures at account opening.

6(b)(5)(ii) Security interests.

1. *General.* Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.

2. *Identification of property.* Creditors sufficiently identify collateral by type by stating, for example, *motor vehicle* or *household appliances.* (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number.)

3. *Spreader clause.* If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as ''spreader'' or ''dragnet'' clauses, or as ''cross-collateralization'' clauses.) The creditor need not specifically identify the collateral; a reminder such as ''collateral securing other loans with us may also secure this loan'' is sufficient. At the creditor's option, a more specific description of the property involved may be given.

4. *Additional collateral.* If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under § 226.9(c) at the time the security is taken. (See comment 6(b)(5)(ii)–2.)

5. *Collateral from third party.* Security interests taken in connection with the plan

must be disclosed, whether the collateral is owned by the consumer or a third party.

6(b)(5)(iii) Statement of billing rights.

1. See the commentary to Model Forms G–3(A) and G–4(A).

Section 226.7—Periodic Statement

1. *Multifeatured plans.* Some plans involve a number of different features, such as purchases, cash advances, or overdraft checking. Groups of transactions subject to different finance charge terms because of the dates on which the transactions took place are treated like different features for purposes of disclosures on the periodic statements. The commentary includes additional guidance for multifeatured plans.

7(a) Rules affecting home-equity plans.

7(a)(1) Previous balance.

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

7(a)(2) Identification of transactions.

1. *Multifeatured plans.* In identifying transactions under § 226.7(a)(2) for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

7(a)(3) Credits.

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—''credit'' would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to § 226.13(e) and (f).)

2. *Format.* A creditor may list credits relating to credit extensions (payments, rebates, etc.) together with other types of credits (such as deposits to a checking account), as long as the entries are identified so as to inform the consumer which type of credit each entry represents.

3. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

4. *Totals.* A total of amounts credited during the billing cycle is not required.

7(a)(4) Periodic rates.

1. *Disclosure of periodic rates—whether or not actually applied.* Except as provided in § 226.7(a)(4)(ii), any periodic rate that may be used to compute finance charges (and its corresponding annual percentage rate) must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the rate varies (such as when it is tied to a particular index), the creditor must disclose each rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic rates required only if imposition possible.* With regard to the periodic rate disclosure (and its corresponding annual percentage rate), only rates that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing rates effective during the next billing cycle (because of a variable-rate plan), the rates required to be disclosed under § 226.7(a)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the monthly rate applied during May was 1.5%, but the creditor will increase the rate to 1.8% effective June 1, 1.5% (and its corresponding annual percentage rate) is the only required disclosure under § 226.7(a)(4) for the periodic statement reflecting the May account activity.

ii. If rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the same balance for the *same* type of transaction (for example, if the finance charge consists of a monthly periodic rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), the creditor may do either of the following:

i. Disclose each periodic rate, the range of balances to which it is applicable, and the corresponding annual percentage rate for each. (For example, 1.5% monthly, 18% annual percentage rate; 0.1% monthly, 1.2% annual percentage rate.)

ii. Disclose one composite periodic rate (that is, 1.6% per month) along with the applicable range of balances and the corresponding annual percentage rate.

4. *Corresponding annual percentage rate.* In disclosing the annual percentage rate that corresponds to each periodic rate, the creditor may use ''corresponding annual percentage rate,'' ''nominal annual percentage rate,'' ''corresponding nominal annual percentage rate,'' or similar phrases.

5. *Rate same as actual annual percentage rate.* When the corresponding rate is the same as the annual percentage rate disclosed under § 226.7(a)(7), the creditor need disclose only one annual percentage rate, but must use the phrase ''annual percentage rate.''

6. *Range of balances.* See comment 6(a)(1)(ii)–1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

7(a)(5) Balance on which finance charge computed.

1. *Limitation to periodic rates.* Section 226.7(a)(5) only requires disclosure of the balance(s) to which a periodic rate was applied and does not apply to balances on which other kinds of finance charges (such as transaction charges) were imposed. For example, if a consumer obtains a $1,500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor need only disclose the balance subject to the monthly rate (which might include portions of earlier cash advances not paid off in previous cycles).

2. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the finance charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(a)(5)–5.)

3. *Monthly rate on average daily balance.* Creditors may apply a monthly periodic rate to an average daily balance.

4. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comment 7(a)(5)–5.)

5. *Daily rate on daily balances.* i. If the finance charge is computed on the balance each day by application of one or more daily periodic rates, the balance on which the finance charge was computed may be disclosed in any of the following ways for each feature:

ii. If a single daily periodic rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor shall explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.

iii. If two or more daily periodic rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic rates imposed for the time that those rates were in effect, as long as the creditor explains that the finance charge is or may be determined by (*1*) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (*2*) multiplying each of the results by the applicable daily periodic rate, and (*3*) adding these products together.

6. *Explanation of balance computation method.* See the commentary to 6(a)(1)(iii).

7. *Information to compute balance.* In connection with disclosing the finance charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

8. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§ 226.7(a)(3)) and indicating which credits will not be deducted in determining the balance (for example, ''credits after the 15th of the month are not deducted in computing the finance charge.'').

9. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(a)(5)–2. In these cases, one explanation of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

7(a)(6) Amount of finance charge and other charges.

Paragraph 7(a)(6)(i).

1. *Total.* A total finance charge amount for the plan is not required.

2. *Itemization—types of finance charges.* Each type of finance charge (such as periodic rates, transaction charges, and minimum charges) imposed during the cycle must be separately itemized; for example, disclosure of only a combined finance charge attributable to both a minimum charge and transaction charges would not be permissible. Finance charges of the same type may be disclosed, however, individually or as a total. For example, five transaction charges of $1 may be listed separately or as $5.

3. *Itemization—different periodic rates.* Whether different periodic rates are applicable to different types of transactions or to different balance ranges, the creditor may give the finance charge attributable to each rate or may give a total finance charge amount. For example, if a creditor charges 1.5% per month on the first $500 of a balance and 1% per month on amounts over $500, the creditor may itemize the two components ($7.50 and $1.00) of the $8.50 charge, or may disclose $8.50.

4. *Multifeatured plans.* In a multifeatured plan, in disclosing the amount of the finance charge attributable to the application of periodic rates no total periodic rate disclosure for the entire plan need be given.

5. *Finance charges not added to account.* A finance charge that is not included in the new balance because it is payable to a third party (such as required life insurance) must still be shown on the periodic statement as a finance charge.

6. *Finance charges other than periodic rates.* See comment 6(a)(1)(iv)–1 for examples.

7. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, no disclosure is required of finance charges that have accrued since the last payment.

8. *Start-up fees.* Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement. However, they need not be factored into the annual percentage rate. (See § 226.14(c)(3).)

Paragraph 7(a)(6)(ii).

1. *Identification.* In identifying any *other charges* actually imposed during the billing cycle, the type is adequately described as *late charge* or *membership fee,* for example. Similarly, *closing costs* or *settlement costs,* for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under § 226.4(c)(7), if the same term (such as *closing costs*) was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. Even though the taxes and filing or notary fees excluded from the finance charge under § 226.4(e) are not required to be disclosed as *other charges* under § 226.6(a)(2), these charges may be included in the amount shown as *closing costs* or *settlement costs* on the periodic statement, if the charges were itemized and disclosed as part of the *closing costs* or *settlement costs* on the initial disclosure statement. (See comment 6(a)(2)–1 for examples of *other charges*.)

2. *Date.* The date of imposing or debiting other charges need not be disclosed.

3. *Total.* Disclosure of the total amount of other charges is optional.

4. *Itemization—types of other charges.* Each type of *other charge* (such as late-payment charges, over-the-credit-limit charges, and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of *other charges* attributable to both an over-the-credit-limit charge and a late-payment charge would not be permissible. *Other charges* of the same type may be disclosed, however, individually or as a total. For example, three fees of $3 for providing copies related to the resolution of a billing error could be listed separately or as $9.

7(a)(7) Annual percentage rate.

1. *Plans subject to the requirements of § 226.5b.* For home-equity plans subject to the requirements of § 226.5b, creditors are not required to disclose an effective annual percentage rate. Creditors that state an annualized rate in addition to the corresponding annual percentage rate required by § 226.7(a)(4) must calculate that rate in accordance with § 226.14(c).

2. *Labels.* Creditors that choose to disclose an annual percentage rate calculated under § 226.14(c) and label the figure as ''annual percentage rate'' must label the periodic rate expressed as an annualized rate as the ''corresponding APR,'' ''nominal APR,'' or a similar phrase as provided in comment 7(a)(4)–4. Creditors also comply with the label requirement if the rate calculated under § 226.14(c) is described as the ''effective APR'' or something similar. For those creditors, the periodic rate expressed as an annualized rate could be labeled ''annual percentage rate,'' consistent with the requirement under § 226.7(b)(4). If the two rates represent different values, creditors must label the rates differently to meet the clear and conspicuous standard under § 226.5(a)(1).

7(a)(8) Grace period.

1. *Terminology.* Although the creditor is required to indicate any time period the consumer may have to pay the balance

outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the account-opening disclosure statement. For example, ''To avoid additional finance charges, pay the new balance before ______'' would suffice.

7(a)(9) Address for notice of billing errors.

1. *Terminology.* The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. *Telephone number.* A telephone number, e-mail address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

7(a)(10) Closing date of billing cycle; new balance.

1. *Credit balances.* See comment 7(a)(1)–1.

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

7(b) Rules affecting open-end (not home-secured) plans.

1. *Deferred interest transactions.* Creditors offer a variety of payment plans for purchases that permit consumers to avoid interest charges if the purchase balance is paid in full by a certain date. The following provides guidance for a deferred interest plan where, for example, no interest charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31. The following guidance does not apply to card issuers that are subject to 12 CFR § 227.24 or similar law which does not permit the assessment of deferred interest.

i. *Annual percentage rates.* Under § 226.7(b)(4), creditors must disclose each annual percentage rate that may be used to compute the interest charge. Under some plans with a deferred interest feature, if the deferred interest balance is not paid by a certain date, March 31 in this example, interest charges applicable to the billing cycles between the date of purchase in January and March 31 may be imposed. Annual percentage rates that may apply to the deferred interest balance ($500 in this example) if the balance is not paid in full by March 31 must appear on periodic statements for the billing cycles between the date of purchase and March 31. However, if the consumer does not pay the deferred interest balance by March 31, the creditor is not required to identify, on the periodic statement disclosing the interest charge for the deferred interest balance, annual percentage rates that have been disclosed in previous billing cycles between the date of purchase and March 31.

ii. *Balances subject to periodic rates.* Under § 226.7(b)(5), creditors must disclose the balances subject to interest during a billing cycle. The deferred interest balance ($500 in this example) is not subject to interest for billing cycles between the date of purchase and March 31 in this example. Periodic statements sent for those billing cycles should not include the deferred interest balance in the balance disclosed under § 226.7(b)(5). At the creditor's option, this amount may be separately disclosed on periodic statements provided it is identified by a term other than the term used to identify the balance disclosed under § 226.7(b)(5) (such as ''deferred interest balance''). During any billing cycle in which an interest charge on the deferred interest balance is debited to the account, the balance disclosed under § 226.7(b)(5) should include the deferred interest balance for that billing cycle.

iii. *Amount of interest charge.* Under § 226.7(b)(6)(ii), creditors must disclose interest charges imposed during a billing cycle. For some deferred interest purchases, the creditor may impose interest from the date of purchase if the deferred interest balance ($500 in this example) is not paid in full by March 31 in this example, but otherwise will not impose interest for billing cycles between the date of purchase and March 31. Periodic statements for billing cycles preceding March 31 in this example should not include in the interest charge disclosed under § 226.7(b)(6)(ii) the amounts a consumer may owe if the deferred interest balance is not paid in full by March 31. In this example, the February periodic statement should not identify as interest charges interest attributable to the $500 January purchase. At the creditor's option, this amount may be separately disclosed on periodic statements provided it is identified by a term other than ''interest charge'' (such as ''contingent interest charge'' or ''deferred interest charge''). The interest charge on a deferred interest balance should be reflected on the periodic statement under § 226.7(b)(6)(ii) for the billing cycle in which the interest charge is debited to the account.

iv. *Grace period.* Assuming monthly billing cycles ending at month-end and a grace period ending on the 25th of the following month, the following are four examples illustrating how a creditor may comply with the requirement to disclose the grace period applicable to a deferred interest balance ($500 in this example) and with the 14-day rule for mailing or delivering periodic statements before imposing finance charges (see § 226.5):

A. The creditor could include the $500 purchase on the periodic statement reflecting account activity for February and sent on March 1 and identify March 31 as the payment-due date for the $500 purchase. (The creditor could also identify March 31 as the payment-due date for any other amounts that would normally be due on March 25.)

B. The creditor could include the $500 purchase on the periodic statement reflecting activity for March and sent on April 1 and identify April 25 as the payment-due date for the $500 purchase, permitting the consumer to avoid finance charges if the $500 is paid in full by April 25.

C. The creditor could include the $500 purchase and its due date on each periodic statement sent during the deferred interest period (January, February, and March in this example).

D. If the due date for the deferred interest balance is March 7 (instead of March 31), the creditor could include the $500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1, the most recent statement sent at least 14 days prior to the due date.

7(b)(1) Previous balance.

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

7(b)(2) Identification of transactions.

1. *Multifeatured plans.* Creditors may, but are not required to, arrange transactions by feature (such as disclosing purchase transactions separately from cash advance transactions). Pursuant to § 226.7(b)(6), however, creditors must group all fees and all interest separately from transactions and may not disclose any fees or interest charges with transactions.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

7(b)(3) Credits.

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—''credit'' would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to § 226.13(e) and (f).) Credits may be distinguished from transactions in any way

that is clear and conspicuous, for example, by use of debit and credit columns or by use of plus signs and/or minus signs.

2. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

3. *Totals.* A total of amounts credited during the billing cycle is not required.

7(b)(4) Periodic rates.

1. *Disclosure of periodic interest rates—whether or not actually applied.* Except as provided in § 226.7(b)(4)(ii), any periodic interest rate that may be used to compute finance charges, expressed as and labeled ''Annual Percentage Rate,'' must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the annual percentage rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the annual percentage rate varies (such as when it is tied to a particular index), the creditor must disclose each annual percentage rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic interest rates required only if imposition possible.* With regard to the periodic interest rate disclosure (and its corresponding annual percentage rate), only rates that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing annual percentage rates effective during the next billing cycle (either because it is changing terms or because of a variable-rate plan), the annual percentage rates required to be disclosed under § 226.7(b)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the annual percentage rate applied during May was 18%, but the creditor will increase the rate to 21% effective June 1, 18% is the only required disclosure under § 226.7(b)(4) for the periodic statement reflecting the May account activity.

ii. If the consumer has an overdraft line that might later be expanded upon the consumer's request to include secured advances, the rates for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature.

iii. If annual percentage rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the same balance for the same type of transaction (for example, if the interest charge consists of a monthly periodic interest rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), creditors must disclose the interest periodic rate, expressed as an 18% annual percentage rate and the range of balances to which it is applicable. Costs attributable to the credit life insurance component must be disclosed as a fee under § 226.7(b)(6)(iii).

4. *Fees.* Creditors that identify fees in accordance with § 226.7(b)(6)(iii) need not identify the periodic rate at which a fee would accrue if the fee remains unpaid. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.

5. *Ranges of balances.* See comment 6(b)(4)(i)(B)–1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

6. *Deferred interest transactions.* See comment 7(b)–1.

7(b)(5) Balance on which finance charge computed.

1. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the interest charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(b)(5)–4.)

2. *Monthly rate on average daily balance.* Creditors may apply a monthly periodic rate to an average daily balance.

3. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comments 7(b)(5)–4 and 7(b)(4)–5.)

4. *Daily rate on daily balance.* i. If a finance charge is computed on the balance each day by application of one or more daily periodic interest rates, the balance on which the interest charge was computed may be disclosed in any of the following ways for each feature:

ii. If a single daily periodic interest rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor may, at its option, explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

iii. If two or more daily periodic interest rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic interest rates imposed for the time that those rates were in effect. The creditor may, at its option, explain that interest is or may be determined by multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), multiplying each of the results by the applicable daily periodic rate, and adding these products together.

5. *Information to compute balance.* In connection with disclosing the interest charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

6. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§ 226.7(b)(3)) and indicating which credits will not be deducted in determining the balance (for example, ''credits after the 15th of the month are not deducted in computing the interest charge.'').

7. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(b)(5)–1. In these cases, one explanation or a single identification of the

name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

8. *Deferred interest transactions*. See comment 7(b)–1.

7(b)(6) Charges imposed.

1. *Examples of charges*. See commentary to § 226.6(b)(3).

2. *Fees*. Costs attributable to periodic rates other than interest charges shall be disclosed as a fee. For example, if a consumer obtains credit life insurance that is calculated at 0.1% per month on an outstanding balance and a monthly interest rate of 1.5% applies to the same balance, the creditor must disclose the dollar cost attributable to interest as an ''interest charge'' and the credit insurance cost as a ''fee.''

3. *Total fees for calendar year to date*.

i. *Monthly statements*. Some creditors send monthly statements but the statement periods do not coincide with the calendar month. For creditors sending monthly statements, the following comply with the requirement to provide calendar year-to-date totals.

A. A creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2011 through January 9, 2012, may disclose the year-to-date total for fees imposed from January 10, 2011, through January 9, 2012. Alternatively, the creditor could provide a statement for the cycle ending January 9, 2012, showing the year-to-date total for fees imposed January 1, 2011, through December 31, 2011.

B. A creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during December and finishing with the period that begins during November. For example, if statement periods begin on the 10th day of each month, the statement covering November 10, 2011 through December 9, 2011, may disclose the year-to-date total for fees imposed from December 10, 2010, through December 9, 2011.

ii. *Quarterly statements*. Creditors issuing quarterly statements may apply the guidance set forth for monthly statements to comply with the requirement to provide calendar year-to-date totals on quarterly statements.

4. *Minimum charge in lieu of interest*. A minimum charge imposed if a charge would otherwise have been determined by applying a periodic rate to a balance except for the fact that such charge is smaller than the minimum must be disclosed as a fee. For example, assume a creditor imposes a minimum charge of $1.50 in lieu of interest if the calculated interest for a billing period is less than that minimum charge. If the interest calculated on a consumer's account for a particular billing period is 50 cents, the minimum charge of $1.50 would apply. In this case, the entire $1.50 would be disclosed as a fee; the periodic statement would reflect the $1.50 as a fee, and $0 in interest.

5. *Adjustments to year-to-date totals*. In some cases, a creditor may provide a statement for the current period reflecting that fees or interest charges imposed during a previous period were waived or reversed and credited to the account. Creditors may, but are not required to, reflect the adjustment in the year-to-date totals, nor, if an adjustment is made, to provide an explanation about the reason for the adjustment. Such adjustments should not affect the total fees or interest charges imposed for the current statement period.

7(b)(7) Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.

1. *Location of summary tables*. If a change-in-terms notice required by § 226.9(c)(2) is provided on or with a periodic statement, a tabular summary of key changes must appear on the front of the statement. Similarly, if a notice of a rate increase due to delinquency or default or as a penalty required by § 226.9(g)(1) is provided on or with a periodic statement, information required to be provided about the increase, presented in a table, must appear on the front of the statement.

7(b)(8) Grace period.

1. *Terminology*. In describing the grace period, the language used must be consistent with that used on the account-opening disclosure statement. (See § 226.5(a)(2)(i).)

2. *Deferred interest transactions*. See comment 7(b)–1.

7(b)(9) Address for notice of billing errors.

1. *Terminology*. The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. *Telephone number*. A telephone number, e-mail address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

7(b)(10) Closing date of billing cycle; new balance.

1. *Credit balances*. See comment 7(b)(1)–1.

2. *Multifeatured plans*. In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments*. Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

7(b)(11) Due date; late payment costs.

1. *Informal periods affecting late payments*. Although the terms of the account agreement may provide that a creditor may assess a late-payment fee if a payment is not received by a certain date, creditors sometimes have an informal policy or practice that delays the assessment of the late-payment fee for payments received a brief period of time after the date upon which a creditor has the contractual right to impose the fee. Creditors must disclose the due date according to the legal obligation between the parties, and need not consider the end of an informal ''courtesy period'' as the due date under § 226.7(b)(11).

2. *Laws affecting assessment of late-payment fees*. Some state or other laws require that a certain number of days must elapse following a due date before a late-payment fee may be imposed. For example, assume a payment is due on March 10 and state law provides that a late-payment fee cannot be assessed before March 21. Creditors must disclose the due date under the terms of the legal obligation (March 10 in this example), and not a date different than the due date, such as when creditors are required by state or other law to delay for a specified period imposing a late-payment fee when a payment is received after the specified period following the due date (March 21 in this example). Consumers' rights under the state law to avoid the imposition of late-payment fees during a specified period following a due date are unaffected by the disclosure requirement. In this example, the creditor would disclose March 10 as the due date for purposes of § 226.7(b)(11), but could not, under state law, assess a late-payment fee before March 21.

3. *Fee or rate triggered by multiple events*. If a late-payment fee or penalty rate is triggered after multiple events, such as two late payments in six months, the creditor may, but is not required to, disclose the late payment and penalty rate disclosure each month. The disclosures must be included on any periodic statement for which a late payment could trigger the late-payment fee or penalty rate, such as after the consumer made one late payment in this example. For example, if a cardholder has already made one late payment, the disclosure must be on each statement for the following five billing cycles.

4. *Range of late fees or penalty rates*. Creditors that impose a range of late-payment fees or rates on an open-end (not home-secured) plan may state the highest fee or rate along with an indication lower fees or rates could be imposed. For example, a phrase indicating the late-payment fee could be ''up to $29'' complies with this requirement.

5. *Penalty rate in effect*. If the highest penalty rate has previously been triggered on an account, the creditor may, but is not required to, delete the amount of the penalty rate and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the creditor may, but is not required to, modify the language to indicate that the penalty rate has been increased due to previous late payments (if applicable).

7(b)(12) Minimum payment.

1. *Third parties*. At their option, card issuers and the Federal Trade Commission (FTC) may use a third party to establish and maintain a toll-free telephone number for use

by the issuer or the FTC to provide the generic repayment estimates or actual repayment disclosures, as applicable.

2. *Automated response systems or devices.* At their option, card issuers and the FTC may use toll-free telephone numbers that connect consumers to automated systems, such as an interactive voice response system, through which consumers may obtain the generic repayment estimates or actual repayment disclosures described in Appendix M1 or M2 to part 226, as applicable, by inputting information using a touch-tone telephone or similar device. However, consumers whose telephones are not equipped to use such automated devices must be provided the opportunity to be connected to an individual from whom the information may be obtained.

3. *Toll-free telephone number.* An issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to select to receive the generic repayment estimate or actual repayment disclosure, as applicable, through that toll-free telephone number is prominently disclosed to the consumer. For automated systems, the option to select to receive the generic repayment estimate or actual repayment disclosure is prominently disclosed to the consumer if it is listed as one of the options in the first menu of options given to the consumer, such as ''Press or say '3' if you would like an estimate of how long it will take you to repay your balance if you make only the minimum payment each month.'' If the automated system permits callers to select the language in which the call is conducted and in which information is provided, the menu to select the language may precede the menu with the option to receive the generic repayment estimate or actual repayment disclosure.

4. *Web site address.* When making the minimum payment disclosure on the periodic statement pursuant to § 226.7(b)(12)(ii) or (b)(12)(iii), an issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain generic repayment estimates or actual repayment disclosures, so long as the information provided on the Web site complies with § 226.7(b)(12), and Appendix M1 or M2 to part 226 as applicable. The Web site link disclosed must take consumers directly to the Web page where generic repayment estimates or actual repayment disclosures may be obtained.

5. *Advertising or marketing information.* If a consumer requests the generic repayment estimate or the actual repayment disclosure, as applicable, the card issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required or permitted by Appendix M1 or M2 to part 226, as applicable. Educational materials that do not solicit business are not considered advertisements or marketing materials for this purpose. Examples:

i. *Toll-free telephone number.* As described in comment 7(b)(12)–3, an issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to select to receive the generic repayment estimate or actual repayment disclosure, as applicable, through that toll-free telephone number is prominently disclosed to the consumer. Once the consumer selects the option to receive the generic repayment estimate or the actual repayment disclosure, the issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required or permitted by Appendix M1 or M2 to part 226, as applicable.

ii. *Web page.* If the issuer discloses a link to a Web site as part of the minimum payment disclosure pursuant to comment 7(b)(12)–4, the issuer may not provide advertisements or marketing materials (except for providing the name of the issuer) on the Web page accessed by the link, including pop-up marketing materials or banner marketing materials, prior to providing the information required or permitted by Appendix M1 or M2 to part 226, as applicable.

7(b)(12)(ii)(A)(3) Small depository institution issuers.

1. *Small depository institution issuers regulated by the Federal Trade Commission.* Small depository institution issuers, as defined in § 226.7(b)(12)(ii)(A)(*3*), that are subject to the Federal Trade Commission's authority to enforce the act and this regulation must comply with § 226.7(b)(12)(ii)(B), instead of § 226.7(b)(12)(ii)(A)(*3*).

7(b)(12)(v) Exemptions.

1. *Exemption for credit card accounts with a fixed repayment period.* The exemption in § 226.7(b)(12)(v)(E) applies only if the account agreement specifies a fixed repayment period for the entire account, such as requiring a minimum payment that will pay off the entire balance on the account in one year. This exemption would apply, for example, to accounts that have been closed due to delinquency and where the required monthly payment has been reduced or the balance decreased to accommodate a fixed payment for a fixed period of time designed to pay off the outstanding balance. This exemption would not apply where a feature of a credit card may have a fixed repayment period, but the account as a whole does not. For example, assume a retail credit card has several features. One feature is a general revolving feature, where the required minimum payment for this feature does not pay off the balance in a fixed period of time. Another feature allows consumers to make specific types of purchases (such as furniture purchases, or other large purchases), with a required minimum payment that will pay off the purchase within a fixed period of time, such as one year. This exemption would not apply because the retail card account as a whole does not have a fixed repayment period. Nonetheless, these types of retail cards may qualify for the exemption in § 226.7(b)(12)(v)(F).

2. *Exemption for certain credit card accounts with fixed repayment period feature.* The exemption in § 226.7(b)(12)(v)(F) applies if the entire outstanding balance for a particular billing cycle falls within a feature with a fixed repayment period that is specified in the account agreement, such as requiring a minimum payment that will pay off the entire balance on that feature in one year. For example, assume a retail card has several features. One feature is a general revolving feature, where the required minimum payment for this feature does not pay off the balance in a fixed period of time. Another feature allows consumers to make specific types of purchases (such as furniture purchases, or other large purchases), with a required minimum payment that will pay off the purchase within a fixed period of time, such as one year. This exemption applies if the entire outstanding balance for a particular billing cycle relates to the feature with the fixed repayment period. In that case, the issuer would not need to provide the minimum payment disclosures for that billing cycle. If the consumer used a general revolving feature during a billing period, this exemption would not apply.

7(b)(13) Format requirements.

1. *Combined deposit account and credit account statements.* Some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. For purposes of providing disclosures on the front of the first page of the periodic statement pursuant to § 226.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear.

Section 226.8—Identifying Transactions on Periodic Statements

8(a) Sale credit.

1. *Sale credit.* The term ''sale credit'' refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see comment 8(b)–1 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer or creditor. ''Sale credit'' includes:

i. The purchase of funds-transfer services (such as a wire transfer) from an intermediary.

ii. The purchase of services from the card issuer or creditor. For the purchase of services that are costs imposed as part of the plan under § 226.6(b)(3), card issuers and creditors comply with the requirements for identifying transactions under this section by disclosing the fees in accordance with the requirements of § 226.7(b)(6). For the purchases of services that are not costs imposed as part of the plan, card issuers and creditors may, at their option, identify transactions under this section or in accordance with the requirements of § 226.7(b)(6).

2. *Amount—transactions not billed in full.* If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; or the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements

should reflect each installment due, together with either any other identifying information required by § 226.8(a) (such as the seller's name and address in a three-party situation) or other appropriate identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.

3. *Date—when a transaction takes place.*

i. If the consumer conducts the transaction in person, the date of the transaction is the calendar date on which the consumer made the purchase or order, or secured the advance.

ii. For transactions billed to the account on an ongoing basis (other than installments to pay a precomputed amount), the date of the transaction is the date on which the amount is debited to the account. This might include, for example, monthly insurance premiums.

iii. For mail, Internet, or telephone orders, a creditor may disclose as the transaction date either the invoice date, the debiting date, or the date the order was placed by telephone or via the Internet.

iv. In a foreign transaction, the debiting date may be considered the transaction date.

4. *Date—sufficiency of description.*

i. If the creditor discloses only the date of the transaction, the creditor need not identify it as the ''transaction date.'' If the creditor discloses more than one date (for example, the transaction date and the posting date), the creditor must identify each.

ii. The month and day sufficiently identify the transaction date, unless the posting of the transaction is delayed so long that the year is needed for a clear disclosure to the consumer.

5. *Same or related persons.* i. For purposes of identifying transactions, the term *same or related persons* refers to, for example:

A. Franchised or licensed sellers of a creditor's product or service.

B. Sellers who assign or sell open-end sales accounts to a creditor or arrange for such credit under a plan that allows the consumer to use the credit only in transactions with that seller.

ii. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

6. *Brief identification-sufficiency of description.* The ''brief identification'' provision in § 226.8(a)(1)(i) requires a designation that will enable the consumer to reconcile the periodic statement with the consumer's own records. In determining the sufficiency of the description, the following rules apply:

i. While item-by-item descriptions are not necessary, reasonable precision is required. For example, ''merchandise,'' ''miscellaneous,'' ''second-hand goods,'' or ''promotional items'' would not suffice.

ii. A reference to a department in a sales establishment that accurately conveys the identification of the types of property or services available in the department is sufficient-for example, ''jewelry,'' or ''sporting goods.''

iii. A number or symbol that is related to an identification list printed elsewhere on the statement that reasonably identifies the transaction with the creditor is sufficient.

7. *Seller's name—sufficiency of description.* The requirement contemplates that the seller's name will appear on the periodic statement in essentially the same form as it appears on transaction documents provided to the consumer at the time of the sale. The seller's name may also be disclosed as, for example:

i. A more complete spelling of the name that was alphabetically abbreviated on the receipt or other credit document.

ii. An alphabetical abbreviation of the name on the periodic statement even if the name appears in a more complete spelling on the receipt or other credit document. Terms that merely indicate the form of a business entity, such as ''Inc.,'' ''Co.,'' or ''Ltd.,'' may always be omitted.

8. *Location of transaction.*

i. If the seller has multiple stores or branches within a city, the creditor need not identify the specific branch at which the sale occurred.

ii. When no meaningful address is available because the consumer did not make the purchase at any fixed location of the seller, the creditor may omit the address, or may provide some other identifying designation, such as ''aboard plane,'' ''ABC Airways Flight,'' ''customer's home,'' ''telephone order,'' ''Internet order'' or ''mail order.''

8(b) Nonsale credit.

1. *Nonsale credit.* The term ''nonsale credit'' refers to any form of loan credit including, for example:

i. A cash advance.

ii. An advance on a credit plan that is accessed by overdrafts on a checking account.

iii. The use of a ''supplemental credit device'' in the form of a check or draft or the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services.

iv. Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

2. *Amount—overdraft credit plans.* If credit is extended under an overdraft credit plan tied to a checking account or by means of a debit card tied to an overdraft credit plan:

i. The amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

ii. The creditor may disclose the amount of the credit extensions on a cumulative daily basis, rather than the amount attributable to each check or each use of the debit card that accesses the credit plan.

3. *Date of transaction.* See comment 8(a)–4.

4. *Nonsale transaction—sufficiency of identification.* The creditor sufficiently identifies a nonsale transaction by describing the type of advance it represents, such as cash advance, loan, overdraft loan, or any readily understandable trade name for the credit program.

Section 226.9—Subsequent Disclosure Requirements

9(a) Furnishing statement of billing rights.

9(a)(1) Annual statement.

1. *General.* The creditor may provide the annual billing rights statement:

i. By sending it in one billing period per year to each consumer that gets a periodic statement for that period; or

ii. By sending a copy to all of its accountholders sometime during the calendar year but not necessarily all in one billing period (for example, sending the annual notice in connection with renewal cards or when imposing annual membership fees).

2. *Substantially similar.* See the commentary to Model Forms G–3 and G–3(A) in Appendix G to part 226.

9(a)(2) Alternative summary statement.

1. *Changing from long-form to short form statement and vice versa.* If the creditor has been sending the long-form annual statement, and subsequently decides to use the alternative summary statement, the first summary statement must be sent no later than 12 months after the last long-form statement was sent. Conversely, if the creditor wants to switch to the long-form, the first long-form statement must be sent no later than 12 months after the last summary statement.

2. *Substantially similar.* See the commentary to Model Forms G–4 and G–4(A) in Appendix G to part 226.

9(b) Disclosures for supplemental credit access devices and additional features.

1. *Credit access device—examples. Credit access device* includes, for example, a blank check, payee-designated check, blank draft or order, or authorization form for issuance of a check; it does not include a check issued payable to a consumer representing loan proceeds or the disbursement of a cash advance.

2. *Credit account feature—examples.* A new credit account *feature* would include, for example:

i. The addition of overdraft checking to an existing account (although the regular checks that could trigger the overdraft feature are not themselves ''devices'').

ii. The option to use an existing credit card to secure cash advances, when previously the card could only be used for purchases.

Paragraph 9(b)(2).

1. *Different finance charge terms.* Except as provided in § 226.9(b)(3) for checks that access a credit card account, if the finance charge terms are different from those previously disclosed, the creditor may satisfy the requirement to give the finance charge terms either by giving a complete set of new account-opening disclosures reflecting the terms of the added device or feature or by giving only the finance charge disclosures for the added device or feature.

9(b)(3) Checks that access a credit card account.

9(b)(3)(i) Disclosures.

1. *Front of the page containing the checks.* The following would comply with the requirement that the tabular disclosures provided pursuant to § 226.9(b)(3) appear on the front of the page containing the checks:

i. Providing the tabular disclosure on the front of the first page on which checks appear, for an offer where checks are provided on multiple pages;

ii. Providing the tabular disclosure on the front of a mini-book or accordion booklet containing the checks; or

iii. Providing the tabular disclosure on the front of the solicitation letter, when the checks are printed on the front of the same page as the solicitation letter even if the checks can be separated by the consumer from the solicitation letter using perforations.

Paragraph 9(b)(3)(i)(D).

1. *Grace period.* Creditors may use the following language to describe a grace period on check transactions: ''Your due date is [at least]____days after the close of each billing cycle. We will not charge you interest on check transactions if you pay your entire balance by the due date each month.'' Creditors may use the following language to describe that no grace period on check transactions is offered, as applicable: ''We will begin charging interest on these checks on the transaction date.''

9(c) Change in terms.

9(c)(1) Rules affecting home-equity plans.

1. *Changes initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. The rules in § 226.5b(f) relating to home-equity plans limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by § 226.9(c) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (But see § 226.5b(f))

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under § 226.6(a) or increases the minimum payment, unless an exception under § 226.9(c)(1)(ii) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the consumer will have fewer days during the billing cycle change.

9(c)(1)(i) Written notice required.

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 15 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 15 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:

i. If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.

ii. If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not ''agreements'' between the consumer and the creditor for purposes of § 226.9(c)(1)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Form of change-in-terms notice.* A complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(1)(i) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Changes to home-equity plans entered into on or after November 7, 1989.* Section 226.9(c)(1) applies when, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home-equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

i. If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by § 226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by § 226.5b(d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.

ii. If the minimum payment requirement is changed, the creditor must include the disclosures required by § 226.5b(d)(5)(iii) (and, in variable-rate plans, the disclosures required by § 226.5b(d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. (See the commentary to § 226.5b(d)(5)(iii), (d)(12)(x) and (d)(12)(xi) for a discussion of representative examples.)

iii. When the terms are changed pursuant to a written agreement as described in § 226.5b(f)(3)(iii), the advance-notice requirement does not apply.

9(c)(1)(ii) Notice not required.

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges. (But see § 226.5b(f).)

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as ''You may skip your October payment,'' or ''We will waive your finance charges for January,'' may serve as the change-in-terms notice.

9(c)(1)(iii) Notice to restrict credit.

1. *Written request for reinstatement.* If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under § 226.9(c)(1)(iii) must state that fact.

2. *Notice not required.* A creditor need not provide a notice under this paragraph if, pursuant to the commentary to § 226.5b(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.

9(c)(2) Rules affecting open-end (not home-secured) plans.

1. *Changes initially disclosed.* Except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially, such as a rate increases under a properly disclosed variable-rate plan. In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion.

2. *State law issues.* Some issues are not addressed by § 226.9(c)(2) because they are

controlled by state or other applicable law, such as 12 CFR 227.24. These issues include:

i. The types of changes a creditor may make.

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms described in § 226.9(c)(2)(i), unless an exception under § 226.9(c)(2)(ii) or (c)(2)(iv) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 28-day grace period on purchases and the consumer will have fewer days during the billing cycle change.

9(c)(2)(i) Changes where written advance notice is required.

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 45 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 45 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change if the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not ''agreements'' between the consumer and the creditor for purposes of § 226.9(c)(2)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Form of change-in-terms notice.* Except if § 226.9(c)(2)(iii) applies, a complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(2)(i) if the change is highlighted on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term being changed.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Examples.* See comment 9(g)–1 for examples of how an issuer that is subject to 12 CFR 227.24 or similar law may comply with the timing requirements for notices required by § 226.9(c)(2)(i).

9(c)(2)(ii) Charges not covered by § 226.6(b)(1) and (b)(2).

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(1) and (b)(2), the creditor may either, at its option 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 provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (See the commentary under § 226.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(1) and (b)(2). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (See comment 5(b)(1)(ii)–1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)

9(c)(2)(iii) Disclosure requirements.

9(c)(2)(iii)(A) Changes to terms described in account-opening table.

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 226.9(c)(2)(iii), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and the how the rate is determined, as explained in § 226.6(b)(2)(i)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing from a variable rate to a non-variable rate, the creditor must disclose the amount of the new rate (that is, the non-variable rate) in the table.

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing from a non-variable rate to a variable rate, the creditor must disclose the amount of the new rate (the variable rate using the index and margin), and indicate that the rate varies with the market based on the index used, such as the prime rate or the LIBOR.

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under § 226.6(b)(1) and (b)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of ''Either $5 or 3% of the transaction amount, whichever is greater. (Max: $100),'' and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: ''Either $10 or 3% of the transaction amount, whichever is greater. (Max: $100).''

7. *Combining a notice described in § 226.9(c)(2)(iii) with a notice described in § 226.9(g)(3).* If a creditor is required to provide a notice described in § 226.9(c)(2)(iii) and a notice described in § 226.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. *Content.* Sample G–20 contains an example of how to comply with the requirements in § 226.9(c)(2)(iii) when the following terms are being changed: (i) a variable rate is being changed to a non-variable rate; and (ii) the late payment fee is

being increased in accordance with a formula that depends on the outstanding balance on the account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply.

9. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(2)(iii)(A)(1).

10. *Terminology.* See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(c)(2)(iii)(A)(1).

9(c)(2)(iv) Notice not required.

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit except as otherwise required by § 226.9(c)(2)(v).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume or by indicating the duration of the skip option. Language such as ''You may skip your October payment,'' or ''We will waive your interest charges for January'' may serve as the change-in-terms notice.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. (See comment 9(c)(2)(iii)(A)–3.)

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. (See comment 9(c)(2)(iii)(A)–4.)

9(d) Finance charge imposed at time of transaction.

1. *Disclosure prior to imposition.* A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.

9(e) Disclosures upon renewal of credit or charge card.

1. *Coverage.* This paragraph applies to credit and charge card accounts of the type subject to § 226.5a. (See § 226.5a(a)(5) and the accompanying commentary for discussion of the types of accounts subject to § 226.5a.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in § 226.5a.

2. *Form.* The disclosures under this paragraph must be clear and conspicuous, but need not appear in a tabular format or in a prominent location. The disclosures need not be in a form the cardholder can retain.

3. *Terms at renewal.* Renewal notices must reflect the terms actually in effect at the time of renewal. For example, a card issuer that offers a preferential annual percentage rate to employees during their employment must send a renewal notice to employees disclosing the lower rate actually charged to employees (although the card issuer also may show the rate charged to the general public).

4. *Variable rate.* If the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose the rate in effect at the time of mailing or delivery of the renewal notice. Alternatively, the card issuer may use the rate as of a specified date within the last 30 days before the disclosure is provided.

5. *Renewals more frequent than annual.* If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card issuer may provide the notice no less than once every 12 months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also discloses the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal-notice period has expired. For example, if a $2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is $2, the annualized fee is $24, and $2 will be billed to the account each month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose the fact.

6. *Terminating credit availability.* Card issuers have some flexibility in determining the procedures for how and when an account may be terminated. However, the card issuer must clearly disclose the time by which the cardholder must act to terminate the account to avoid paying a renewal fee. State and other applicable law govern whether the card issuer may impose requirements such as specifying that the cardholder's response be in writing or that the outstanding balance be repaid in full upon termination.

7. *Timing of termination by cardholder.* When a card issuer provides notice under § 226.9(e)(1), a cardholder must be given at least 30 days or one billing cycle, whichever is less, from the date the notice is mailed or delivered to make a decision whether to terminate an account. When notice is given under § 226.9(e)(2), a cardholder has 30 days from mailing or delivery to decide to terminate an account.

8. *Timing of notices.* A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.

9. *Prompt reversal of renewal fee upon termination.* In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account, the card issuer must reverse or otherwise withdraw the fee promptly. Once a cardholder has terminated an account, no additional action by the cardholder may be required.

9(e)(3) Notification on periodic statements.

1. *Combined disclosures.* If a single disclosure is used to comply with both §§ 226.9(e) and 226.7, the periodic statement must comply with the rules in §§ 226.5a and 226.7. For example, a description substantially similar to the heading describing the grace period required by § 226.5a(b)(5) must be used and the name of the balance-calculation method must be identified (if listed in § 226.5a(g)) to comply with the requirements of § 226.5a. A card issuer may include some of the renewal disclosures on a periodic statement and others on a separate document so long as there is some reference indicating that the disclosures relate to one another. An example of a sufficient reference for creditors using the delayed notice method is: ''Your annual fee of [$ amount] is billed on this statement. Please see [other side/inserts] for important information about the terms that apply to the renewal of your account and how to close your account to avoid paying the annual fee.'' All renewal disclosures must be provided to a cardholder at the same time.

2. *Preprinted notices on periodic statements.* A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, using the advance-notice option

under § 226.9(e)(1), must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.

9(f) Change in credit card account insurance provider.

1. *Coverage.* This paragraph applies to credit card accounts of the type subject to § 226.5a if credit insurance (typically life, disability, and unemployment insurance) is offered on the outstanding balance of such an account. (Credit card accounts subject to § 226.9(f) are the same as those subject to § 226.9(e); see comment 9(e)–1.) Charge card accounts are not covered by this paragraph. In addition, the disclosure requirements of this paragraph apply only where the card issuer initiates the change in insurance provider. For example, if the card issuer's current insurance provider is merged into or acquired by another company, these disclosures would not be required. Disclosures also need not be given in cases where card issuers pay for credit insurance themselves and do not separately charge the cardholder.

2. *No increase in rate or decrease in coverage.* The requirement to provide the disclosure arises when the card issuer changes the provider of insurance, even if there will be no increase in the premium rate charged to the consumer and no decrease in coverage under the insurance policy.

3. *Form of notice.* If a substantial decrease in coverage will result from the change in provider, the card issuer either must explain the decrease or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. (See the commentary to Appendix G–13 to part 226.)

4. *Discontinuation of insurance.* In addition to stating that the cardholder may cancel the insurance, the card issuer may explain the effect the cancellation would have on the consumer's credit card plan.

5. *Mailing by third party.* Although the card issuer is responsible for the disclosures, the insurance provider or another third party may furnish the disclosures on the card issuer's behalf.

9(f)(3) Substantial decrease in coverage.

1. *Determination.* Whether a substantial decrease in coverage will result from the change in provider is determined by the two-part test in § 226.9(f)(3): First, whether the decrease is in a significant term of coverage; and second, whether the decrease might reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice.

9(g) Increase in rates due to delinquency or default or as a penalty.

1. *Relationship between Regulation Z, 12 CFR 226.9(c) and (g), and Regulation AA, 12 CFR 227.24 or similar law—examples.* Issuers subject to 12 CFR 227.24 or similar law are prohibited from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in those rules. The following examples illustrate the relationship between the notice requirements of § 226.9(c) and (g) and 12 CFR 227.24 or similar law:

i. Assume that, at account opening on January 1 of year one, an issuer discloses, in accordance with the applicable notice requirements of § 226.6, that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The issuer also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the issuer's control. Finally, the issuer discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

A. On January 15, the consumer uses the account to make a $2,000 purchase and a $500 cash advance. No other transactions are made on the account. At the start of each quarter, the issuer adjusts the variable rate that applies to the $500 cash advance consistent with changes in the index, as permitted under 12 CFR 227.24 or similar law. All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the issuer on May 28. The issuer is prohibited by 12 CFR 227.24 or similar law from increasing the rates that apply to the $2,000 purchase, the $500 cash advance, or future purchases and cash advances. Six months after account opening (July 1), the issuer begins accruing interest on the $2,000 purchase at the previously-disclosed variable rate determined using an 8-point margin as permitted by 12 CFR 227.24 or similar law. Because no other increases in rate were disclosed at account opening, the issuer may not under 12 CFR 227.24 or similar law subsequently increase the variable rate that applies to the $2,000 purchase and the $500 cash advance (except due to increases in the index). On November 16, the issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated by using the same index and an increased margin of 12 percentage points). On January 1 of year two, the issuer increases the margin used to determine the variable rate that applies to new purchases to 12 percentage points, as permitted by 12 CFR 227.24 or similar law. On January 15 of year two, the consumer makes a $300 purchase. The issuer applies the variable rate determined using the 12-point margin to the $300 purchase but not the outstanding $2,000 balance for purchases.

B. Same facts as above except that the required minimum periodic payment due on May 25 of year one is not received by the issuer until June 30 of year one. Because the issuer received the required minimum periodic payment more than 30 days after the payment due date, 12 CFR 227.24 or similar law permits the issuer to increase the annual percentage rate applicable to the $2,000 purchase, the $500 cash advance, and future purchases and cash advances. However, the issuer must first comply with the notice requirements in § 226.9(g). Thus, if the issuer provided a notice pursuant to § 226.9(g) on June 25 stating that all rates on the account would be increased to a non-variable penalty rate of 30%, the issuer could apply that 30% rate beginning on August 9 to all outstanding balances and future transactions.

ii. Assume that, at account opening on January 1 of year one, a issuer discloses in accordance with the applicable notice requirements of § 226.6 that the annual percentage rate for purchases will increase as follows: A non-variable rate of 5% for six months; a non-variable rate of 10% for the following six months; and thereafter a variable rate that is currently 15% that will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index not under the issuer's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15, the consumer uses the account to make a $1,500 purchase. Six months after account opening (July 1), the issuer begins accruing interest on the $1,500 purchase at the previously-disclosed 10% non-variable rate (as permitted under 12 CFR 227.24 or similar law). On September 15, the consumer uses the account to make a $700 purchase. On November 16, the issuer provides a notice pursuant to § 226.9(c) disclosing a new variable rate that will apply on January 1 of year two (calculated by using the same index and an increased margin of 8 percentage points). One year after account opening (January 1 of year two), pursuant to 12 CFR 227.24 or similar law the issuer begins accruing interest on the $2,200 purchase balance at the previously-disclosed variable rate determined using a 5-point margin. Because the variable rate determined using the 8-point margin was not disclosed at account opening, the issuer may not under 12 CFR 227.24 or similar law apply that rate to the $2,200 purchase balance. Furthermore, because no other increases in rate were disclosed at account opening, the issuer may not under 12 CFR 227.24 or similar law subsequently increase the variable rate that applies to the $2,200 purchase balance (except due to increases in the index). The issuer may, however, under 12 CFR 227.24 or similar law apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two.

iii. Assume that, at account opening on January 1 of year one, an issuer discloses in accordance with the applicable notice requirements in § 226.6 that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly-available index outside of the issuer's control. The issuer also discloses that a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has an outstanding purchase balance of $1,000. On May 31, the creditor provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply effective July 16 for all purchases made on or after June 8 (calculated by using the same index and an increased margin of 8 percentage points). On June 7, the consumer makes a $500 purchase. On June 8, the consumer makes a $200 purchase. On June 25, the issuer has not received the payment due on June 15 and provides the consumer with a notice pursuant to § 226.9(g) stating that the penalty rate of 28% will apply as of August 9 to all transactions made on or after July 3 that includes the content required by § 226.9(g)(3)(i). On July 4, the consumer makes a $300 purchase.

A. The payment due on June 15 of year two is received on June 26. On July 16, 12 CFR 227.24 or similar law permits the issuer to apply the variable rate determined using the 8-point margin to the $200 purchase made on June 8 but does not permit the issuer to apply this rate to the $1,500 purchase balance. On August 9, 12 CFR 227.24 or similar law permits the issuer to apply the 28% penalty rate to the $300 purchase made on July 4 but does not permit the issuer to apply this rate to the $1,500 purchase balance (which remains at the variable rate determined using the 6-point margin) or the $200 purchase (which remains at the variable rate determined using the 8-point margin).

B. Same facts as above except the payment due on September 15 of year two is received on October 20. The issuer is permitted under 12 CFR 227.24 or similar law to apply the 28% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. However, in order to apply the 28% penalty rate to the entire $2,000 purchase balance, the issuer must provide an additional notice pursuant to § 226.9(g). This notice must be sent no earlier than October 16, which is the first day the account became more than 30 days delinquent.

C. Same facts as paragraph A. above except the payment due on June 15 of year two is received on July 20. The issuer is permitted under 12 CFR 227.24 or similar law to apply the 28% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. Because the issuer provided a notice pursuant to § 226.9(g) on June 24 disclosing the 28% penalty rate, the issuer may apply the 28% penalty rate to all balances on the account as well as any future transactions on August 9 without providing an additional notice pursuant to § 226.9(g).

2. *Affected consumers.* If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

3. *Combining a notice described in § 226.9(g)(3) with a notice described in § 226.9(c)(2)(iii).* If a creditor is required to provide notices pursuant to both § 226.9(c)(2)(iii) and (g)(3) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

4. *Content.* Model Clause G–21 contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate on a consumer's account is being increased to a penalty rate as described in § 226.9(g)(1)(ii).

5. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(g).

6. *Terminology.* See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(g).

9(g)(4) Exceptions.

9(g)(4)(ii) Decrease in credit limit.

The following illustrates the requirements of § 226.9(g)(4)(ii). Assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to § 226.9(g)(4)(ii) on January 1, stating among other things that the penalty rate would apply if the consumer's balance exceeded the new credit limit as of February 16. If the consumer's balance exceeded the credit limit on February 16, the creditor could impose the penalty rate on that date. However, a creditor could not apply the penalty rate if the consumer's balance did not exceed the new credit limit on February 16, even if the consumer's balance had exceeded the new credit limit on several dates between January 1 and February 15. If the consumer's balance did not exceed the new credit limit on February 16 but the consumer conducted a transaction on February 17 that caused the balance to exceed the new credit limit, the general rule in § 226.9(g)(1)(ii) would apply and the creditor would be required to give an additional 45 days' notice prior to imposition of the penalty rate (but under these circumstances the consumer would have no ability to cure the over-the-limit balance in order to avoid penalty pricing).

Section 226.10—Prompt Crediting of Payments

10(a) General rule.

1. *Crediting date.* Section 226.10(a) does not require the creditor to post the payment to the consumer's account on a particular date; the creditor is only required to credit the payment *as of* the date of receipt.

2. *Date of receipt.* The ''date of receipt'' is the date that the payment instrument or other means of completing the payment reaches the creditor. For example:

i. Payment by check is received when the creditor gets it, not when the funds are collected.

ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

iii. If the consumer elects to have payment made by a third party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under § 226.10(b).

iv. Payment made via the creditor's Web site is received on the date on which the consumer authorizes the creditor to effect the payment, even if the consumer gives the instruction authorizing that payment in advance of the date on which the creditor is authorized to effect the payment. If the consumer authorizes the creditor to effect the payment immediately, but the consumer's instruction is received after any cut-off time specified by the creditor, the date on which the consumer authorizes the creditor to effect the payment is deemed to be the next business day.

10(b) Specific requirements for payments.

1. *Payment by electronic fund transfer.* A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act.)

2. *Payment via creditor's Web site.* If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site would generally be conforming payments for purposes of § 226.10(b).

3. *Acceptance of nonconforming payments.* If the creditor accepts a nonconforming payment (for example, payment at a branch office, when it had specified that payment be sent to headquarters), finance charges may accrue for the period between receipt and crediting of payments.

4. *Implied guidelines for payments.* In the absence of specified requirements for making payments (*See* § 226.10(b)):

i. Payments may be made at any location where the creditor conducts business.

ii. Payments may be made any time during the creditor's normal business hours.

iii. Payment may be by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the creditor and consumer have so agreed.

10(d) Crediting of payments when creditor does not receive or accept payments on due date.

1. *Example.* A day on which the creditor does not receive or accept payments by mail may occur, for example, if the U.S. Postal Service does not deliver mail on that date.

Section 226.11—Treatment of Credit Balances; Account Termination

11(a) Credit balances.

1. *Timing of refund.* The creditor may also fulfill its obligations under § 226.11 by:

i. Refunding any credit balance to the consumer immediately.

ii. Refunding any credit balance prior to receiving a written request (under § 226.11(a)(2)) from the consumer.

iii. Refunding any credit balance upon the consumer's oral or electronic request.

iv. Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

2. *Amount of refund.* The phrases *any part of the remaining credit balance* in § 226.11(a)(2) and *any part of the credit balance remaining in the account* in § 226.11(a)(3) mean the amount of the credit balance at the time the creditor is required to make the refund. The creditor may take into consideration intervening purchases or other debits to the consumer's account (including those that have not yet been reflected on a periodic statement) that decrease or eliminate the credit balance.

Paragraph 11(a)(2).

1. *Written requests—standing orders.* The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.

Paragraph 11(a)(3).

1. *Good faith effort to refund.* The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.

2. *Good faith effort unsuccessful.* Section 226.11 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.

11(b) Account termination.

Paragraph 11(b)(1).

1. *Expiration date.* The credit agreement determines whether or not an open-end plan has a stated expiration (maturity) date. Creditors that offer accounts with no stated expiration date are prohibited from terminating those accounts solely because a consumer does not incur a finance charge, even if credit cards or other access devices associated with the account expire after a stated period. Creditors may still terminate such accounts for inactivity consistent with § 226.11(b)(2).

Section 226.12—Special Credit Card Provisions

1. *Scope.* Sections 226.12(a) and (b) deal with the issuance and liability rules for credit cards, whether the card is intended for consumer, business, or any other purposes. Sections 226.12(a) and (b) are exceptions to the general rule that the regulation applies only to consumer credit. (*See* §§ 226.1 and 226.3.)

2. *Definition of ''accepted credit card''.* For purposes of this section, ''accepted credit card'' means any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with § 226.12(a) becomes an accepted credit card when received by the cardholder.

12(a) Issuance of credit cards.

Paragraph 12(a)(1).

1. *Explicit request.* A request or application for a card must be explicit. For example, a request for an overdraft plan tied to a checking account does not constitute an application for a credit card with overdraft checking features.

2. *Addition of credit features.* If the consumer has a non-credit card, the addition of credit features to the card (for example, the granting of overdraft privileges on a checking account when the consumer already has a check guarantee card) constitutes issuance of a credit card.

3. *Variance of card from request.* The request or application need not correspond exactly to the card that is issued. For example:

i. The name of the card requested may be different when issued.

ii. The card may have features in addition to those reflected in the request or application.

4. *Permissible form of request.* The request or application may be oral (in response to a telephone solicitation by a card issuer, for example) or written.

5. *Time of issuance.* A credit card may be issued in response to a request made before any cards are ready for issuance (for example, if a new program is established), even if there is some delay in issuance.

6. *Persons to whom cards may be issued.* A card issuer may issue a credit card to the person who requests it, and to anyone else for whom that person requests a card and who will be an authorized user on the requester's account. In other words, cards may be sent to consumer A on A's request, and also (on A's request) to consumers B and C, who will be authorized users on A's account. In these circumstances, the following rules apply:

i. The additional cards may be imprinted in either A's name or in the names of B and C.

ii. No liability for unauthorized use (by persons other than B and C), not even the $50, may be imposed on B or C since they are merely users and not cardholders as that term is defined in § 226.2 and used in § 226.12(b); of course, liability of up to $50 for unauthorized use of B's and C's cards may be imposed on A.

iii. Whether B and C may be held liable for their own use, or on the account generally, is a matter of state or other applicable law.

7. *Issuance of non-credit cards.*

i. *General.* Under § 226.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request.

ii. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 226.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

8. *Unsolicited issuance of PINs.* A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point-of-sale terminals that require PINs.

Paragraph 12(a)(2).

1. *Renewal.* Renewal generally contemplates the regular replacement of existing cards because of, for example, security reasons or new technology or systems. It also includes the re-issuance of cards that have been suspended temporarily, but does not include the opening of a new account after a previous account was closed.

2. *Substitution—examples.* Substitution encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:

i. Changed its name.

ii. Changed the name of the card.

iii. Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E (12 CFR part 205), then the Regulation E issuance rules would have to be followed.) The substitution of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

iv. Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.

v. Changed the merchant base, provided that the new card is honored by at least one of the persons that honored the original card. However, unless the change in the merchant base is the addition of an affiliate of the existing merchant base, the substitution of a new card for another on an unsolicited basis is not permissible where the account is inactive. A credit card cannot be issued in these circumstances without a request or application. For purposes of § 226.12(a), an account is inactive if no credit has been extended and if the account has no outstanding balance for the prior 24 months. (See § 226.11(b)(2).)

3. *Substitution—successor card issuer.* Substitution also occurs when a successor card issuer replaces the original card issuer (for example, when a new card issuer

purchases the accounts of the original issuer and issues its own card to replace the original one). A permissible substitution exists even if the original issuer retains the existing receivables and the new card issuer acquires the right only to future receivables, provided use of the original card is cut off when use of the new card becomes possible.

4. *Substitution—non-credit-card plan.* A credit card that replaces a retailer's open-end credit plan not involving a credit card is not considered a substitute for the retailer's plan—even if the consumer used the retailer's plan. A credit card cannot be issued in these circumstances without a request or application.

5. *One-for-one rule.* An accepted card may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances.

6. *One-for-one rule—exceptions.* The regulation does not prohibit the card issuer from:

i. Replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under § 226.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 226.9(c); and

C. Under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

7. *Methods of terminating replaced card.* The card issuer need not physically retrieve the original card, provided the old card is voided in some way, for example:

i. The issuer includes with the new card a notification that the existing card is no longer valid and should be destroyed immediately.

ii. The original card contained an expiration date.

iii. The card issuer, in order to preclude use of the card, reprograms computers or issues instructions to authorization centers.

8. *Incomplete replacement.* If a consumer has duplicate credit cards on the same account (Card A—one type of bank credit card, for example), the card issuer may not replace the duplicate cards with one Card A and one Card B (Card B—another type of bank credit card) unless the consumer requests Card B.

9. *Multiple entities.* Where multiple entities share responsibilities with respect to a credit card issued by one of them, the entity that issued the card may replace it on an unsolicited basis, if that entity terminates the original card by voiding it in some way, as described in comment 12(a)(2)–7. The other entity or entities may not issue a card on an unsolicited basis in these circumstances.

12(b) Liability of cardholder for unauthorized use.

1. *Meaning of cardholder.* For purposes of this provision, cardholder includes any person (including organizations) to whom a credit card is issued for any purpose, including business. When a corporation is the cardholder, required disclosures should be provided to the corporation (as opposed to an employee user).

2. *Imposing liability.* A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.

3. *Reasonable investigation.* If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

vi. Requesting a written, signed statement from the cardholder or authorized user. For example, the creditor may include a signature line on a billing rights form that the cardholder may send in to provide notice of the claim. However, a creditor may not require the cardholder to provide an affidavit or signed statement under penalty of perjury as part of a reasonable investigation.

vii. Requesting a copy of a police report, if one was filed.

viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

4. *Checks that access a credit card account.* The liability provisions for unauthorized use under § 226.12(b)(1) only apply to transactions involving the use of a credit card, and not if an unauthorized transaction is made using a check accessing the credit card account. However, the billing error provisions in § 226.13 apply to both of these types of transactions.

12(b)(1)(ii) Limitation on amount.

1. *Meaning of authority.* Section 226.12(b)(1)(i) defines unauthorized use in terms of whether the user has actual, implied, or apparent authority. Whether such authority exists must be determined under state or other applicable law.

2. *Liability limits—dollar amounts.* As a general rule, the cardholder's liability for a series of unauthorized uses cannot exceed either $50 or the value obtained through the unauthorized use before the card issuer is notified, whichever is less.

3. *Implied or apparent authority.* If a cardholder furnishes a credit card and grants authority to make credit transactions to a person (such as a family member or coworker) who exceeds the authority given, the cardholder is liable for the transaction(s) unless the cardholder has notified the creditor that use of the credit card by that person is no longer authorized.

4. *Credit card obtained through robbery or fraud.* An unauthorized use includes, but is not limited to, a transaction initiated by a person who has obtained the credit card from the consumer, or otherwise initiated the transaction, through fraud or robbery.

12(b)(2) Conditions of liability.

1. *Issuer's option not to comply.* A card issuer that chooses not to impose any liability on cardholders for unauthorized use need not comply with the disclosure and identification requirements discussed in § 226.12(b)(2).

Paragraph 12(b)(2)(ii).

1. *Disclosure of liability and means of notifying issuer.* The disclosures referred to in § 226.12(b)(2)(ii) may be given, for example, with the initial disclosures under § 226.6, on the credit card itself, or on periodic statements. They may be given at any time preceding the unauthorized use of the card.

2. *Meaning of ''adequate notice.''* For purposes of this provision, ''adequate notice'' means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.

Paragraph 12(b)(2)(iii).

1. *Means of identifying cardholder or user.* To fulfill the condition set forth in § 226.12(b)(2)(iii), the issuer must provide some method whereby the cardholder or the authorized user can be identified. This could include, for example, a signature, photograph, or fingerprint on the card or other biometric means, or electronic or mechanical confirmation.

2. *Identification by magnetic strip.* Unless a magnetic strip (or similar device not readable without physical aids) must be used in conjunction with a secret code or the like, it would not constitute sufficient means of identification. Sufficient identification also does not exist if a ''pool'' or group card, issued to a corporation and signed by a corporate agent who will not be a user of the card, is intended to be used by another employee for whom no means of identification is provided.

3. *Transactions not involving card.* The cardholder may not be held liable under § 226.12(b) when the card itself (or some other sufficient means of identification of the cardholder) is not presented. Since the issuer has not provided a means to identify the user under these circumstances, the issuer has not fulfilled one of the conditions for imposing liability. For example, when merchandise is ordered by telephone or the Internet by a person without authority to do so, using a credit card account number by itself or with other information that appears on the card (for example, the card expiration date and a 3- or 4-digit cardholder identification number), no liability may be imposed on the cardholder.

12(b)(3) Notification to card issuer.

1. *How notice must be provided.* Notice given in a normal business manner—for example, by mail, telephone, or personal visit—is effective even though it is not given to, or does not reach, some particular person within the issuer's organization. Notice also may be effective even though it is not given at the address or phone number disclosed by the card issuer under § 226.12(b)(2)(ii).

2. *Who must provide notice.* Notice of loss, theft, or possible unauthorized use need not be initiated by the cardholder. Notice is sufficient so long as it gives the ''pertinent information'' which would include the name or card number of the cardholder and an indication that unauthorized use has or may have occurred.

3. *Relationship to § 226.13.* The liability protections afforded to cardholders in § 226.12 do not depend upon the cardholder's following the error resolution procedures in § 226.13. For example, the written notification and time limit requirements of § 226.13 do not affect the § 226.12 protections. (See also comment 12(b)(1)–4.)

12(b)(5) Business use of credit cards.

1. *Agreement for higher liability for business use cards.* The card issuer may not rely on § 226.12(b)(5) if the business is clearly not in a position to provide 10 or more cards to employees (for example, if the business has only 3 employees). On the other hand, the issuer need not monitor the personnel practices of the business to make sure that it has at least 10 employees at all times.

2. *Unauthorized use by employee.* The protection afforded to an employee against liability for unauthorized use in excess of the limits set in § 226.12(b) applies only to unauthorized use by someone other than the employee. If the employee uses the card in an unauthorized manner, the regulation sets no restriction on the employee's potential liability for such use.

12(c) Right of cardholder to assert claims or defenses against card issuer.

1. *Relationship to § 226.13.* The § 226.12(c) credit card ''holder in due course'' provision deals with the consumer's right to assert against the card issuer a claim or defense concerning property or services purchased with a credit card, if the merchant has been unwilling to resolve the dispute. Even though certain merchandise disputes, such as non-delivery of goods, may also constitute ''billing errors'' under § 226.13, that section operates independently of § 226.12(c). The cardholder whose asserted billing error involves undelivered goods may institute the error resolution procedures of § 226.13; but whether or not the cardholder has done so, the cardholder may assert claims or defenses under § 226.12(c). Conversely, the consumer may pay a disputed balance and thus have no further right to assert claims and defenses, but still may assert a billing error if notice of that billing error is given in the proper time and manner. An assertion that a particular transaction resulted from unauthorized use of the card could also be both a ''defense'' and a billing error.

2. *Claims and defenses assertible.* Section 226.12(c) merely preserves the consumer's right to assert against the card issuer any claims or defenses that can be asserted against the merchant. It does not determine what claims or defenses are valid as to the merchant; this determination must be made under state or other applicable law.

3. *Transactions excluded.* Section 226.12(c) does not apply to the use of a check guarantee card or a debit card in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash-advance checks.

4. *Method of calculating the amount of credit outstanding.* The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. To determine the amount of credit outstanding for purposes of this section, payments and other credits shall be applied to: (i) Late charges in the order of entry to the account; then to (ii) finance charges in the order of entry to the account; and then to (iii) any other debits in the order of entry to the account. If more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

12(c)(1) General rule.

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are ''purchased with the credit card.'' This could include mail, the Internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

i. Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. Such a transaction would not involve ''property or services purchased with the credit card.''

ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to the credit extended on the overdraft line.)

iii. Purchases made by use of a check guarantee card in conjunction with a cash advance check (or by cash advance checks alone). (*See* comment 12(c)–3.) A cash advance check is a check that, when written, does not draw on an asset account; instead, it is charged entirely to an open-end credit account.

iv. Purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. (*See* comment 12(c)–3.) The debit card exemption applies whether the card accesses an asset account via point-of-sale terminals, automated teller machines, or in any other way, and whether the card qualifies as an ''access device'' under Regulation E or is only a paper based debit card. If a card serves both as an ordinary credit card and also as check guarantee or debit card, a transaction will be subject to this rule on asserting claims and defenses when used as an ordinary credit card, but not when used as a check guarantee or debit card.

12(c)(2) Adverse credit reports prohibited.

1. *Scope of prohibition.* Although an amount in dispute may not be reported as delinquent until the matter is resolved:

i. That amount may be reported as disputed.

ii. Nothing in this provision prohibits the card issuer from undertaking its normal collection activities for the delinquent and undisputed portion of the account.

2. *Settlement of dispute.* A card issuer may not consider a dispute settled and report an amount disputed as delinquent or begin collection of the disputed amount until it has completed a reasonable investigation of the cardholder's claim. A reasonable investigation requires an independent assessment of the cardholder's claim based on information obtained from both the cardholder and the merchant, if possible. In conducting an investigation, the card issuer may request the cardholder's reasonable cooperation. The card issuer may not automatically consider a dispute settled if the cardholder fails or refuses to comply with a particular request. However, if the card issuer otherwise has no means of obtaining information necessary to resolve the dispute, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation.

12(c)(3) Limitations.

Paragraph 12(c)(3)(i)(A).

1. *Resolution with merchant.* The consumer must have tried to resolve the dispute with the merchant. This does not require any special procedures or correspondence between them, and is a matter for factual determination in each case. The consumer is not required to seek satisfaction from the manufacturer of the goods involved. When the merchant is in bankruptcy proceedings, the consumer is not required to file a claim in those proceedings, and may instead file a claim for the property or service purchased with the credit card with the card issuer directly.

Paragraph 12(c)(3)(i)(B).

1. *Geographic limitation.* The question of where a transaction occurs (as in the case of mail, Internet, or telephone orders, for example) is to be determined under state or other applicable law.

Paragraph 12(c)(3)(ii).

1. *Merchant honoring card.* The exceptions (stated in § 226.12(c)(3)(ii)) to the amount

and geographic limitations in § 226.12(c)(3)(i)(B) do not apply if the merchant merely honors, or indicates through signs or advertising that it honors, a particular credit card.

12(d) Offsets by card issuer prohibited.

Paragraph 12(d)(1).

1. *Holds on accounts.* ''Freezing'' or placing a hold on funds in the cardholder's deposit account is the functional equivalent of an offset and would contravene the prohibition in § 226.12(d)(1), unless done in the context of one of the exceptions specified in § 226.12(d)(2). For example, if the terms of a security agreement permitted the card issuer to place a hold on the funds, the hold would not violate the offset prohibition. Similarly, if an order of a bankruptcy court required the card issuer to turn over deposit account funds to the trustee in bankruptcy, the issuer would not violate the regulation by placing a hold on the funds in order to comply with the court order.

2. *Funds intended as deposits.* If the consumer tenders funds as a deposit (to a checking account, for example), the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account.

3. *Types of indebtedness; overdraft accounts.* The offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. The prohibition also applies to balances arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses an overdraft line of credit, the resulting indebtedness is subject to the offset prohibition since it is incurred through a credit card plan, even though the consumer did not use an associated check guarantee or debit card.

4. *When prohibition applies in case of termination of account.* The offset prohibition applies even after the card issuer terminates the cardholder's credit card privileges, if the indebtedness was incurred prior to termination. If the indebtedness was incurred after termination, the prohibition does not apply.

Paragraph 12(d)(2).

1. *Security interest—limitations.* In order to qualify for the exception stated in § 226.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's account-opening disclosures under § 226.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in § 226.12(d)(2). For a security interest to qualify for the exception under § 226.12(d)(2) the following conditions must be met:

i. The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. Indicia of the consumer's awareness and intent include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent):

A. Separate signature or initials on the agreement indicating that a security interest is being given.

B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions.

C. Reference to a specific amount of deposited funds or to a specific deposit account number.

ii. The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 226.12(d)(2).

2. *Security interest—after-acquired property.* As used in § 226.12(d), the term ''security interest'' does not exclude (as it does for other Regulation Z purposes) interests in after-acquired property. Thus, a consensual security interest in deposit-account funds, including funds deposited after the granting of the security interest would constitute a permissible exception to the prohibition on offsets.

3. *Court order.* If the card issuer obtains a judgment against the cardholder, and if state and other applicable law and the terms of the judgment do not so prohibit, the card issuer may offset the indebtedness against the cardholder's deposit account.

Paragraph 12(d)(3).

1. *Automatic payment plans—scope of exception.* With regard to automatic debit plans under § 226.12(d)(3), the following rules apply:

i. The cardholder's authorization must be in writing and signed or initialed by the cardholder.

ii. The authorizing language need not appear directly above or next to the cardholder's signature or initials, provided it appears on the same document and that it clearly spells out the terms of the automatic debit plan.

iii. If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act), the fact that the option exists should be clearly indicated.

2. *Automatic payment plans—additional exceptions.* The following practices are not prohibited by § 226.12(d)(1):

i. Automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

ii. Debiting the cardholder's deposit account on the cardholder's specific request rather than on an automatic periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill).

12(e) Prompt notification of returns and crediting of refunds.

Paragraph 12(e)(1).

1. *Normal channels.* The term normal channels refers to any network or interchange system used for the processing of the original charge slips (or equivalent information concerning the transaction).

Paragraph 12(e)(2).

1. *Crediting account.* The card issuer need not actually post the refund to the consumer's account within three business days after receiving the credit statement, provided that it credits the account as of a date within that time period.

Section 226.13—Billing Error Resolution

1. *Creditor's failure to comply with billing error provisions.* Failure to comply with the error resolution procedures may result in the forfeiture of disputed amounts as prescribed in section 161(e) of the act. (Any failure to comply may also be a violation subject to the liability provisions of section 130 of the act.)

2. *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the creditor may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation) and must credit the consumer's account if such a charge was assessed pending resolution. Since the act grants the consumer error resolution rights, the creditor should avoid any chilling effect on the good faith assertion of errors that might result if charges are assessed when no billing error has occurred.

13(a) Definition of billing error.

Paragraph 13(a)(1).

1. *Actual, implied, or apparent authority.* Whether use of a credit card or open-end credit plan is authorized is determined by state or other applicable law. (See comment 12(b)(1)(ii)–1.)

Paragraph 13(a)(3).

1. *Coverage.* i. Section 226.13(a)(3) covers disputes about goods or services that are ''not accepted'' or ''not delivered * * * as agreed''; for example:

A. The appearance on a periodic statement of a purchase, when the consumer refused to take delivery of goods because they did not comply with the contract.

B. Delivery of property or services different from that agreed upon.

C. Delivery of the wrong quantity.

D. Late delivery.

E. Delivery to the wrong location.

ii. Section 226.13(a)(3) does not apply to a dispute relating to the quality of property or services that the consumer accepts. Whether acceptance occurred is determined by state or other applicable law.

2. *Application to purchases made using a third-party payment intermediary.* Section 226.13(a)(3) generally applies to disputes about goods and services that are purchased using a third-party payment intermediary, such as a person-to-person Internet payment service, funded through use of a consumer's open-end credit plan when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Under these circumstances, the property or service for which the extension of credit is made is

not the payment service, but rather the good or service that the consumer has purchased using the payment service. Thus, for example, § 226.13(a)(3) would not apply to purchases using a third-party payment intermediary that is funded through use of an open-end credit plan if:

i. The extension of credit is made to fund the third-party payment intermediary ''account,'' but the consumer does not contemporaneously use those funds to purchase a good or service at that time.

ii. The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.

3. *Notice to merchant not required.* A consumer is not required to first notify the merchant or other payee from whom he or she has purchased goods or services and attempt to resolve a dispute regarding the good or service before providing a billing-error notice to the creditor under § 226.13(a)(3) asserting that the goods or services were not accepted or delivered as agreed.

Paragraph 13(a)(5).

1. *Computational errors.* In periodic statements that are combined with other information, the error resolution procedures are triggered only if the consumer asserts a computational billing error in the credit-related portion of the periodic statement. For example, if a bank combines a periodic statement reflecting the consumer's credit card transactions with the consumer's monthly checking statement, a computational error in the checking account portion of the combined statement is not a billing error.

Paragraph 13(a)(6).

1. *Documentation requests.* A request for documentation such as receipts or sales slips, unaccompanied by an allegation of an error under § 226.13(a) or a request for additional clarification under § 226.13(a)(6), does not trigger the error resolution procedures. For example, a request for documentation merely for purposes such as tax preparation or recordkeeping does not trigger the error resolution procedures.

13(b) Billing error notice.

1. *Withdrawal of billing error notice by consumer.* The creditor need not comply with the requirements of § 226.13(c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice. The consumer's withdrawal of a billing error notice may be oral, electronic or written.

2. *Form of written notice.* The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by §§ 226.6(a)(5) or (b)(5)(iii), and 226.9(a). In addition, if the creditor stipulates in the billing rights statement that it accepts billing error notices submitted electronically, and states the means by which a consumer may electronically submit a billing error notice, a notice sent in such manner will be deemed to satisfy the written notice requirement for purposes of § 226.13(b).

Paragraph 13(b)(1).

1. *Failure to send periodic statement—timing.* If the creditor has failed to send a periodic statement, the 60-day period runs from the time the statement should have been sent. Once the statement is provided, the consumer has another 60 days to assert any billing errors reflected on it.

2. *Failure to reflect credit—timing.* If the periodic statement fails to reflect a credit to the account, the 60-day period runs from transmittal of the statement on which the credit should have appeared.

3. *Transmittal.* If a consumer has arranged for periodic statements to be held at the financial institution until called for, the statement is ''transmitted'' when it is first made available to the consumer.

Paragraph 13(b)(2).

1. *Identity of the consumer.* The billing error notice need not specify both the name and the account number if the information supplied enables the creditor to identify the consumer's name and account.

13(c) Time for resolution; general procedures.

1. *Temporary or provisional corrections.* A creditor may temporarily correct the consumer's account in response to a billing error notice, but is not excused from complying with the remaining error resolution procedures within the time limits for resolution.

2. *Correction without investigation.* A creditor may correct a billing error in the manner and amount asserted by the consumer without the investigation or the determination normally required. The creditor must comply, however, with all other applicable provisions. If a creditor follows this procedure, no presumption is created that a billing error occurred.

3. *Relationship with § 226.12.* The consumer's rights under the billing error provisions in § 226.13 are independent of the provisions set forth in § 226.12(b) and (c). (See comments 12(b)(1)–4, 12(b)(3)–3, and 12(c)–1.)

Paragraph 13(c)(2).

1. *Time for resolution.* The phrase two complete billing cycles means two actual billing cycles occurring after receipt of the billing error notice, not a measure of time equal to two billing cycles. For example, if a creditor on a monthly billing cycle receives a billing error notice mid-cycle, it has the remainder of that cycle plus the next two full billing cycles to resolve the error.

2. *Finality of error resolution procedure.* A creditor must comply with the error resolution procedures and complete its investigation to determine whether an error occurred within two complete billing cycles as set forth in paragraph (c)(2) of this section. Thus, for example, the creditor would be prohibited from reversing amounts previously credited for an alleged billing error even if the creditor obtains evidence after the error resolution time period has passed indicating that the billing error did not occur as asserted by the consumer. Similarly, if a creditor fails to mail or deliver a written explanation setting forth the reason why the billing error did not occur as asserted, or otherwise fails to comply with the error resolution procedures set forth in § 226.13(f), the creditor generally must credit the disputed amount and related finance or other charges, as applicable, to the consumer's account.

13(d) Rules pending resolution.

1. *Disputed amount.* Disputed amount is the dollar amount alleged by the consumer to be in error. When the allegation concerns the description or identification of the transaction (such as the date or the seller's name) rather than a dollar amount, the disputed amount is the amount of the transaction or charge that corresponds to the disputed transaction identification. If the consumer alleges a failure to send a periodic statement under § 226.13(a)(7), the disputed amount is the entire balance owing.

13(d)(1) Consumer's right to withhold disputed amount; collection action prohibited.

1. *Prohibited collection actions.* During the error resolution period, the creditor is prohibited from trying to collect the disputed amount from the consumer. Prohibited collection actions include, for example, instituting court action, taking a lien, or instituting attachment proceedings.

2. *Right to withhold payment.* If the creditor reflects any disputed amount or related finance or other charges on the periodic statement, and is therefore required to make the disclosure under § 226.13(d)(4), the creditor may comply with that disclosure requirement by indicating that payment of any disputed amount is not required pending resolution. Making a disclosure that only refers to the disputed amount would, of course, in no way affect the consumer's right under § 226.13(d)(1) to withhold related finance and other charges. The disclosure under § 226.13(d)(4) need not appear in any specific place on the periodic statement, need not state the specific amount that the consumer may withhold, and may be preprinted on the periodic statement.

3. *Imposition of additional charges on undisputed amounts.* The consumer's withholding of a disputed amount from the total bill cannot subject undisputed balances (including new purchases or cash advances made during the present or subsequent cycles) to the imposition of finance or other charges. For example, if on an account with a grace period (that is, an account in which paying the new balance in full allows the consumer to avoid the imposition of additional finance charges), a consumer disputes a $2 item out of a total bill of $300 and pays $298 within the grace period, the consumer would not lose the grace period as to any undisputed amounts, even if the creditor determines later that no billing error occurred. Furthermore, finance or other charges may not be imposed on any new purchases or advances that, absent the unpaid disputed balance, would not have finance or other charges imposed on them. Finance or other charges that would have been incurred even if the consumer had paid the disputed amount would not be affected.

4. *Automatic payment plans-coverage.* The coverage of this provision is limited to the card issuer's automatic payment plans, whether or not the consumer's asset account is held by the card issuer or by another financial institution. It does not apply to automatic or bill-payment plans offered by financial institutions other than the credit card issuer.

5. *Automatic payment plans—time of notice.* While the card issuer does not have

to restore or prevent the debiting of a disputed amount if the billing error notice arrives after the three business-day cut-off, the card issuer must, however, prevent the automatic debit of any part of the disputed amount that is still outstanding and unresolved at the time of the next scheduled debit date.

13(d)(2) Adverse credit reports prohibited.

1. *Report of dispute.* Although the creditor must not issue an adverse credit report because the consumer fails to pay the disputed amount or any related charges, the creditor may report that the amount or the account is in dispute. Also, the creditor may report the account as delinquent if undisputed amounts remain unpaid.

2. *Person.* During the error resolution period, the creditor is prohibited from making an adverse credit report about the disputed amount to any person—including employers, insurance companies, other creditors, and credit bureaus.

3. *Creditor's agent.* Whether an agency relationship exists between a creditor and an issuer of an adverse credit report is determined by State or other applicable law.

13(e) Procedures if billing error occurred as asserted.

1. *Correction of error.* The phrase as applicable means that the necessary corrections vary with the type of billing error that occurred. For example, a misidentified transaction (or a transaction that is identified by one of the alternative methods in § 226.8) is cured by properly identifying the transaction and crediting related finance and any other charges imposed. The creditor is not required to cancel the amount of the underlying obligation incurred by the consumer.

2. *Form of correction notice.* The written correction notice may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the periodic statement is used, the amount of the billing error must be specifically identified. If a separate billing error correction notice is provided, the accompanying or subsequent periodic statement reflecting the corrected amount may simply identify it as credit.

3. *Discovery of information after investigation period.* See comment 13(c)(2)–2.

13(f) Procedures if different billing error or no billing error occurred.

1. *Different billing error.* Examples of a different billing error include:

i. Differences in the amount of an error (for example, the customer asserts a $55.00 error but the error was only $53.00).

ii. Differences in other particulars asserted by the consumer (such as when a consumer asserts that a particular transaction never occurred, but the creditor determines that only the seller's name was disclosed incorrectly).

2. *Form of creditor's explanation.* The written explanation (which also may notify the consumer of corrections to the account) may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the creditor uses the periodic statement for the explanation and correction(s), the corrections must be specifically identified. If a separate explanation, including the correction notice, is provided, the enclosed or subsequent periodic statement reflecting the corrected amount may simply identify it as a credit. The explanation may be combined with the creditor's notice to the consumer of amounts still owing, which is required under § 226.13(g)(1), provided it is sent within the time limit for resolution. (*See* commentary to § 226.13(e).)

3. *Reasonable investigation.* A creditor must conduct a reasonable investigation before it determines that no billing error occurred or that a different billing error occurred from that asserted. In conducting its investigation of an allegation of a billing error, the creditor may reasonably request the consumer's cooperation. The creditor may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report. However, if the creditor otherwise has no knowledge of facts confirming the billing error, the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the creditor reasonably to terminate the investigation. The procedures involved in investigating alleged billing errors may differ depending on the billing error type.

i. *Unauthorized transaction.* In conducting an investigation of a notice of billing error alleging an unauthorized transaction under § 226.13(a)(1), actions such as the following represent steps that a creditor may take, as appropriate, in conducting a reasonable investigation:

A. Reviewing the types or amounts of purchases made in relation to the consumer's previous purchasing pattern.

B. Reviewing where the purchases were delivered in relation to the consumer's residence or place of business.

C. Reviewing where the purchases were made in relation to where the consumer resides or has normally shopped.

D. Comparing any signature on credit slips for the purchases to the signature of the consumer (or an authorized user in the case of a credit card account) in the creditor's records, including other credit slips.

E. Requesting documentation to assist in the verification of the claim.

F. Requesting a written, signed statement from the consumer (or authorized user, in the case of a credit card account). For example, the creditor may include a signature line on a billing rights form that the consumer may send in to provide notice of the claim. However, a creditor may not require the consumer to provide an affidavit or signed statement under penalty of perjury as a part of a reasonable investigation.

G. Requesting a copy of a police report, if one was filed.

H. Requesting information regarding the consumer's knowledge of the person who allegedly obtained an extension of credit on the account or of that person's authority to do so.

ii. *Nondelivery of property or services.* In conducting an investigation of a billing error notice alleging the nondelivery of property or services under § 226.13(a)(3), the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed.

iii. *Incorrect information.* In conducting an investigation of a billing error notice alleging that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card or otherwise accepting an access device for an open-end plan has made an incorrect report to the creditor, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the information was correct.

13(g) Creditor's rights and duties after resolution.

Paragraph 13(g)(1).

1. *Amounts owed by consumer.* Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. As explained in the commentary to § 226.13(d)(1), even if the creditor later determines that no billing error occurred, the creditor may not include finance or other charges that are imposed on undisputed balances solely as a result of a consumer's withholding payment of a disputed amount.

2. *Time of notice.* The creditor need not send the notice of amount owed within the time period for resolution, although it is under a duty to send the notice promptly after resolution of the alleged error. If the creditor combines the notice of the amount owed with the explanation required under § 226.13(f)(1), the combined notice must be provided within the time limit for resolution.

Paragraph 13(g)(2).

1. *Grace period if no error occurred.* If the creditor determines, after a reasonable investigation, that a billing error did not occur as asserted, and the consumer was entitled to a grace period at the time the consumer provided the billing error notice, the consumer must be given a period of time equal to the grace period disclosed under § 226.6(a)(1) or (b)(2) and § 226.7(a)(8) or (b)(8) to pay any disputed amounts due without incurring additional finance or other charges. However, the creditor need not allow a grace period disclosed under the above-mentioned sections to pay the amount due under § 226.13(g)(1) if no error occurred and the consumer was not entitled to a grace period at the time the consumer asserted the error. For example, assume that a creditor provides a consumer a grace period of 20 days to pay a new balance to avoid finance charges, and that the consumer did not carry an outstanding balance from the prior month. If the consumer subsequently asserts a billing error for the current statement period within the 20-day grace period, and the creditor determines that no billing error in fact occurred, the consumer must be given at least 20 days (i.e., the full disclosed grace period) to pay the amount due without incurring additional finance charges. Conversely, if the consumer was not entitled to a grace period at the time the consumer asserted the billing error, for example, if the consumer did not pay the previous monthly balance of

undisputed charges in full, the creditor may assess finance charges on the disputed balance for the entire period the item was in dispute.

Paragraph 13(g)(3).

1. *Time for payment.* The consumer has a minimum of 10 days to pay (measured from the time the consumer could reasonably be expected to have received notice of the amount owed) before the creditor may issue an adverse credit report; if an initially disclosed grace period allows the consumer a longer time in which to pay, the consumer has the benefit of that longer period.

Paragraph 13(g)(4).

1. *Credit reporting.* Under § 226.13(g)(4)(i) and (iii) the creditor's additional credit reporting responsibilities must be accomplished promptly. The creditor need not establish costly procedures to fulfill this requirement. For example, a creditor that reports to a credit bureau on scheduled updates need not transmit corrective information by an unscheduled computer or magnetic tape; it may provide the credit bureau with the correct information by letter or other commercially reasonable means when using the scheduled update would not be ''prompt.'' The creditor is not responsible for ensuring that the credit bureau corrects its information immediately.

2. *Adverse report to credit bureau.* If a creditor made an adverse report to a credit bureau that disseminated the information to other creditors, the creditor fulfills its § 226.13(g)(4)(ii) obligations by providing the consumer with the name and address of the credit bureau.

13(i) Relation to Electronic Fund Transfer Act and Regulation E.

1. *Coverage.* Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension.

2. *Incidental credit under agreement.* Credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution is governed by § 226.13(i), which provides that certain error resolution procedures in both this regulation and Regulation E apply. Incidental credit that is not extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. For example, credit inadvertently extended incident to an electronic fund transfer, such as under an overdraft service not subject to Regulation Z, is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. *Application to debit/credit transactions—examples.* If a consumer withdraws money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E provisions (such as timing and notice) for the entire transaction.

ii. The creditor need not provisionally credit the consumer's account, under § 205.11(c)(2)(i) of Regulation E, for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under § 205.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of §§ 226.13(d) and (g) apply only to the credit portion of the transaction.

Section 226.14—Determination of Annual Percentage Rate

14(a) General rule.

1. *Tolerance.* The tolerance of ⅛th of 1 percentage point above or below the annual percentage rate applies to any required disclosure of the annual percentage rate. The disclosure of the annual percentage rate is required in §§ 226.5a, 226.5b, 226.6, 226.7, 226.9, 226.15, 226.16, and 226.26.

2. *Rounding.* The regulation does not require that the annual percentage rate be calculated to any particular number of decimal places; rounding is permissible within the ⅛th of 1 percent tolerance. For example, an exact annual percentage rate of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14¼%; but it could not be stated as 14.2% or 14%, since each varies by more than the permitted tolerance.

3. *Periodic rates.* No explicit tolerance exists for any periodic rate as such; a disclosed periodic rate may vary from precise accuracy (for example, due to rounding) only to the extent that its annualized equivalent is within the tolerance permitted by § 226.14(a). Further, a periodic rate need not be calculated to any particular number of decimal places.

4. *Finance charges.* The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges; state or other applicable law may do so, however.

5. *Good faith reliance on faulty calculation tools.* The regulation relieves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the safe harbor from liability is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

14(b) Annual percentage rate—in general.

1. *Corresponding annual percentage rate computation.* For purposes of §§ 226.5a, 226.5b, 226.6, 226.7(a)(4) or (b)(4), 226.9, 226.15, 226.16, and 226.26, the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. This computation reflects the fact that, in such disclosures, the rate (known as the corresponding annual percentage rate) is prospective and does not involve any particular finance charge or periodic balance.

14(c) Optional effective annual percentage rate for periodic statements for creditors offering open-end plans subject to the requirements of § 226.5b.

1. *General rule.* The periodic statement may reflect (under § 226.7(a)(7)) the annualized equivalent of the rate actually applied during a particular cycle; this rate may differ from the corresponding annual percentage rate because of the inclusion of, for example, fixed, minimum, or transaction charges. Sections 226.14(c)(1) through (c)(4) state the computation rules for the effective rate.

2. *Charges related to opening, renewing, or continuing an account.* Sections 226.14(c)(2) and (c)(3) exclude from the calculation of the effective annual percentage rate finance charges that are imposed during the billing cycle such as a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account. The charges involved here do not relate to a specific transaction or to specific activity on the account, but relate solely to the opening, renewing, or continuing of the account. For example, an annual fee to renew an open-end credit account that is a percentage of the credit limit on the account, or that is charged only to consumers that have not used their credit card for a certain dollar amount in transactions during the preceding year, would not be included in the calculation of the annual percentage rate, even though the fee may not be excluded from the finance charge under § 226.4(c)(4). (See comment 4(c)(4)–2.) This rule applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

3. *Classification of charges.* If the finance charge includes a charge not due to the application of a periodic rate, the creditor must use the annual percentage rate computation method that corresponds to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3 percent of the amount of each transaction), then the method in § 226.14(c)(3) must be used. If a fixed or minimum charge is applied, that is, one not tied to any specific transaction, then the formula in § 226.14(c)(2) is appropriate.

4. *Small finance charges.* Section 226.14(c)(4) gives the creditor an alternative to § 226.14(c)(2) and (c)(3) if small finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in § 226.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1½ percent per month.

5. *Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are now being debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(c)–5.ii.B.

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

1. Calculate the annual percentage rate in accordance with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

14(c)(1) Solely periodic rates imposed.

1. *Periodic rates.* Section 226.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the annual percentage rate either:

i. By multiplying each periodic rate by the number of periods in the year; or

ii. By the ''quotient'' method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of 1½ percent on balances up to $500, and 1 percent on balances over $500. If, in a given cycle, the consumer has a balance of $800, the finance charge would consist of $7.50 ($500 \times .015$) plus $3.00 ($300 \times .01$), for a total finance charge of $10.50. The annual percentage rate for this period may be disclosed either as 18% on $500 and 12 percent on $300, or as 15.75 percent on a balance of $800 (the quotient of $10.50 divided by $800, multiplied by 12).

14(c)(2) Minimum or fixed charge, but not transaction charge, imposed.

1. *Certain charges not based on periodic rates.* Section 226.14(c)(2) specifies use of the quotient method to determine the annual percentage rate if the finance charge imposed includes a certain charge not due to the application of a periodic rate (other than a charge relating to a specific transaction). For example, if the creditor imposes a minimum $1 finance charge on all balances below $50, and the consumer's balance was $40 in a particular cycle, the creditor would disclose an annual percentage rate of 30 percent ($1/40 \times 12$).

2. *No balance.* If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under § 226.14(c)(2). This could occur not only when minimum charges are imposed on an account with no balance, but also when a periodic rate is applied to advances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.

14(c)(3) Transaction charge imposed.

1. *Transaction charges.* i. Section 226.14(c)(3) transaction charges include, for example:

A. A loan fee of $10 imposed on a particular advance.

B. A charge of 3 percent of the amount of each transaction.

ii. The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the ''other amounts on which a finance charge was imposed'' figure. In a multifeatured plan, creditors may consider each bona fide feature separately in the calculation of the denominator. A creditor has considerable flexibility in defining features for open-end plans, as long as the creditor has a reasonable basis for the distinctions. For further explanation and examples of how to determine the components of this formula, see Appendix F to part 226.

2. *Daily rate with specific transaction charge.* Section 226.14(c)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in Appendix F to part 226 in calculating the annual percentage rate, especially the provision in the introductory section of Appendix F which addresses the daily rate/transaction charge situation by providing that the ''average of daily balances'' shall be used instead of the ''sum of the balances.''

14(d) Calculations where daily periodic rate applied.

1. *Quotient method.* Section 226.14(d) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in § 226.14(c)(1)(ii) and (c)(2) cannot be used when a daily rate is being applied to a series of daily balances, § 226.14(d) provides two alternative ways to calculate the annual percentage rate—either of which satisfies the provisions of § 226.7(a)(7).

2. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)–2 for guidance on an appropriate calculation method.

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) or a promotional rate under § 226.16(g). Other than the disclosure of certain terms described in §§ 226.16(d)(6) or (g), the credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

2. *Clear and conspicuous standard—promotional rates or payments.*

i. For purposes of § 226.16(d)(6), a clear and conspicuous disclosure means that the required information in § 226.16(d)(6)(ii)(A)–(C) is disclosed with equal prominence and in close proximity to the promotional rate or payment to which it applies. If the information in § 226.16(d)(6)(ii)(A)–(C) is the same type size and is located immediately next to or directly above or below the promotional rate or payment to which it applies, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. Notwithstanding the above, for electronic advertisements that disclose promotional rates or payments, compliance with the requirements of § 226.16(c) is deemed to satisfy the clear and conspicuous standard.

ii. For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(g)(4)(i) and (g)(4)(ii) must be equally prominent to the promotional rate to which it applies. If the information in § 226.16(g)(4)(i) and (g)(4)(ii) is the same type size as the promotional rate to which it applies, the disclosures would be deemed to be equally prominent.

3. *Clear and conspicuous standard—Internet advertisements for home-equity plans.* For purposes of this section, a clear and conspicuous disclosure for visual text advertisements on the Internet for home-equity plans subject to the requirements of § 226.5b means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices and comply with all other requirements for clear and conspicuous disclosures under § 226.16(d). (See also comment 16(c)(1)–2.)

4. *Clear and conspicuous standard—televised advertisements for home-equity plans.* For purposes of this section, including alternative disclosures as provided for by § 226.16(e), a clear and conspicuous disclosure in the context of visual text advertisements on television for home-equity plans subject to the requirements of § 226.5b means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices, are displayed in a manner that allows for a consumer to read the information required to be disclosed, and comply with all other requirements for clear and conspicuous disclosures under § 226.16(d). For example, very fine print in a television advertisement would not meet the clear and conspicuous standard if consumers cannot see and read the information required to be disclosed.

5. *Clear and conspicuous standard—oral advertisements for home-equity plans.* For purposes of this section, including alternative disclosures as provided for by § 226.16(e), a clear and conspicuous disclosure in the context of an oral advertisement for home-equity plans subject to the requirements of § 226.5b, whether by radio, television, the Internet, or other medium, means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them. For example, information stated very rapidly at a low volume in a radio or television advertisement would not meet the clear and conspicuous standard if consumers cannot hear and comprehend the information required to be disclosed.

6. *Expressing the annual percentage rate in abbreviated form.* Whenever the annual percentage rate is used in an advertisement for open-end credit, it may be expressed using a readily understandable abbreviation such as APR.

7. *Effective date.* For guidance on the applicability of the Board's revisions to § 226.16 published on July 30, 2008, see comment 1(d)(5)–1.

16(a) Actually available terms.

1. *General rule.* To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. Section 226.16(a) is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

2. *Specific credit terms. Specific credit terms* is not limited to the disclosures required by the regulation but would include any specific components of a credit plan, such as the minimum periodic payment amount or seller's points in a plan secured by real estate.

16(b) Advertisement of terms that require additional disclosures.

Paragraph (b)(1).

1. *Triggering terms.* Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states *no interest* or *no annual membership fee* in an advertisement, additional information must be provided. Other examples of terms that trigger additional disclosures are:

i. *Small monthly service charge on the remaining balance*, which describes how the amount of a finance charge will be determined.

ii. *12 percent Annual Percentage Rate* or *A $15 annual membership fee buys you $2,000 in credit*, which describe required disclosures under § 226.6.

2. *Implicit terms.* Section 226.16(b) applies even if the triggering term is not stated explicitly, but may be readily determined from the advertisement.

3. *Membership fees.* A membership fee is not a triggering term nor need it be disclosed under § 226.16(b)(3) if it is required for participation in the plan whether or not an open-end credit feature is attached. (See comment 6(a)(2)–1 and § 226.6(b)(3)(iii)(B).)

4. *Deferred billing and deferred payment programs.* Statements such as ''Charge it—you won't be billed until May'' or ''You may skip your January payment'' are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under § 226.6. However, a statement such as ''No interest charges until May'' or any other statement regarding when interest or finance charges begin to accrue is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing or deferred payment program such as the examples above.

5. *Variable-rate plans.* In disclosing the annual percentage rate in an advertisement for a variable-rate plan, as required by § 226.16(b)(2), the creditor may use an insert showing the current rate; or may give the rate as of a specified recent date. The additional requirement in § 226.16(b)(1)(ii) to disclose the variable-rate feature may be satisfied by disclosing that the annual percentage rate may vary or a similar statement, but the advertisement need not include the information required by § 226.6(a)(1)(ii) or (b)(4)(ii).

6. *Membership fees for open-end (not home-secured) plans.* For purposes of § 226.16(b)(1)(iii), membership fees that may be imposed on open-end (not home-secured) plans shall have the same meaning as in § 226.5a(b)(2).

Paragraph (b)(2).

1. *Assumptions.* In stating the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amounts advertised, as required under § 226.16(b)(2), the following additional assumptions may be made:

i. Payments are made timely so as not to be considered late by the creditor;

ii. Payments are made each period, and no debt cancellation or suspension agreement, or skip payment feature applies to the account;

iii. No interest rate changes will affect the account;

iv. No other balances are currently carried or will be carried on the account;

v. No taxes or ancillary charges are or will be added to the obligation;

vi. Goods or services are delivered on a single date; and

vii. The consumer is not currently and will not become delinquent on the account.

2. *Positive periodic payment amounts.* Only positive periodic payment amounts trigger the additional disclosures under § 226.16(b)(2). Therefore, if the periodic payment amount advertised is not a positive amount (e.g., ''No payments''), the advertisement need not state the total of payments and the time period to repay the obligation.

16(c) Catalogs or other multiple-page advertisements; electronic advertisements.

1. *Definition.* The multiple-page advertisements to which § 226.16(c) refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of § 226.16(c).

Paragraph 16(c)(1).

1. *General.* Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site). The rule applies only if the advertisement contains one or more of the triggering terms from § 226.16(b).

2. *Electronic advertisement.* If an electronic advertisement (such as an advertisement appearing on an Internet Web site) contains the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

Paragraph 16(c)(2).

1. *Table or schedule if credit terms depend on outstanding balance.* If the credit terms of a plan vary depending on the amount of the balance outstanding, rather than the amount of any property purchased, a table or schedule complies with § 226.16(c)(2) if it includes the required disclosures for representative balances. For example, a creditor would disclose that a periodic rate of 1.5% is applied to balances of $500 or less, and a 1% rate is applied to balances greater than $500.

16(d) Additional requirements for home-equity plans.

1. *Trigger terms.* Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states *no annual fee, no points*, or *we waive closing costs* in an advertisement, additional information must be provided. (See comment 16(d)–4 regarding the use of a phrase such as *no closing costs.*) Inclusion of a statement such as *low fees*, however, would not trigger the need to state additional information. References to payment terms include references to the draw period or any repayment period, to the length of the plan, to how the minimum payments are determined and to the timing of such payments.

2. *Fees to open the plan.* Section 226.16(d)(1)(i) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. In providing the fee information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. Similarly, if property insurance is required to open the plan, a creditor either may estimate the cost of the insurance or provide a statement that such insurance is required. (*See* the commentary to § 226.5b(d)(7) and (d)(8).)

3. *Statements of tax deductibility.* An advertisement that refers to deductibility for tax purposes is not misleading if it includes a statement such as ''consult a tax advisor regarding the deductibility of interest.'' An advertisement distributed in paper form or through the Internet (rather than by radio or television) that states that the advertised extension of credit may exceed the fair market value of the consumer's dwelling is not misleading if it clearly and conspicuously states the required information in §§ 226.16(d)(4)(i) and (d)(4)(ii).

4. *Misleading terms prohibited.* Under § 226.16(d)(5), advertisements may not refer to home-equity plans as *free money* or use other misleading terms. For example, an advertisement could not state ''no closing costs'' or ''we waive closing costs'' if consumers may be required to pay any closing costs, such as recordation fees. In the case of property insurance, however, a creditor may state, for example, ''no closing costs'' even if property insurance may be required, as long as the creditor also provides a statement that such insurance may be required. (*See* the commentary to this section regarding fees to open a plan.)

5. *Promotional rates and payments in advertisements for home-equity plans.* Section 226.16(d)(6) requires additional disclosures for promotional rates or payments.

i. *Variable-rate plans.* In advertisements for variable-rate plans, if the advertised annual percentage rate is based on (or the advertised payment is derived from) the index and margin that will be used to make rate (or payment) adjustments over the term of the loan, then there is no promotional rate or promotional payment. If, however, the advertised annual percentage rate is not based on (or the advertised payment is not derived from) the index and margin that will be used to make rate (or payment) adjustments, and a reasonably current application of the index and margin would result in a higher annual percentage rate (or, given an assumed balance, a higher payment) then there is a promotional rate or promotional payment.

ii. *Equal prominence, close proximity.* Information required to be disclosed in § 226.16(d)(6)(ii) that is immediately next to or directly above or below the promotional rate or payment (but not in a footnote) is deemed to be closely proximate to the listing. Information required to be disclosed in § 226.16(d)(6)(ii) that is in the same type size as the promotional rate or payment is deemed to be equally prominent.

iii. *Amounts and time periods of payments.* Section 226.16(d)(6)(ii)(C) requires disclosure of the amount and time periods of any payments that will apply under the plan. This section may require disclosure of several payment amounts, including any balloon payment. For example, if an advertisement for a home-equity plan offers a $100,000 five-year line of credit and assumes that the entire line is drawn resulting in a minimum payment of $800 per month for the first six months, increasing to $1,000 per month after month six, followed by a $50,000 balloon payment after five years, the advertisement must disclose the amount and time period of each of the two monthly payment streams, as well as the amount and timing of the balloon payment, with equal prominence and in close proximity to the promotional payment. However, if the final payment could not be more than twice the amount of other minimum payments, the final payment need not be disclosed.

iv. *Plans other than variable-rate plans.* For a plan other than a variable-rate plan, if an advertised payment is calculated in the same way as other payments based on an assumed balance, the fact that the minimum payment could increase solely if the consumer made an additional draw does not make the payment a promotional payment. For example, if a payment of $500 results from an assumed $10,000 draw, and the payment would increase to $1,000 if the consumer made an additional $10,000 draw, the payment is not a promotional payment.

v. *Conversion option.* Some home-equity plans permit the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. The fixed-rate conversion option does not, by itself, make the rate or payment that would apply if the consumer exercised the fixed-rate conversion option a promotional rate or payment.

vi. *Preferred-rate provisions.* Some home-equity plans contain a preferred-rate provision, where the rate will increase upon the occurrence of some event, such as the consumer-employee leaving the creditor's employ, the consumer closing an existing deposit account with the creditor, or the consumer revoking an election to make automated payments. A preferred-rate provision does not, by itself, make the rate or payment under the preferred-rate provision a promotional rate or payment.

6. *Reasonably current index and margin.* For the purposes of this section, an index and margin is considered reasonably current if:

i. For direct mail advertisements, it was in effect within 60 days before mailing;

ii. For advertisements in electronic form it was in effect within 30 days before the advertisement is sent to a consumer's e-mail address, or in the case of an advertisement made on an Internet Web site, when viewed by the public; or

iii. For printed advertisements made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, it was in effect within 30 days before printing.

7. *Relation to other sections.* Advertisements for home-equity plans must comply with all provisions in § 226.16, not solely the rules in § 226.16(d). If an advertisement contains information (such as the payment terms) that triggers the duty under § 226.16(d) to state the annual percentage rate, the additional disclosures in § 226.16(b) must be provided in the advertisement. While § 226.16(d) does not require a statement of fees to use or maintain the plan (such as membership fees and transaction charges), such fees must be disclosed under § 226.16(b)(1)(i) and (b)(1)(iii).

8. *Inapplicability of closed-end rules.* Advertisements for home-equity plans are governed solely by the requirements in § 226.16, except § 226.16(g), and not by the closed-end advertising rules in § 226.24. Thus, if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16, but not under § 226.24.

9. *Balloon payment. See* comment 5b(d)(5)(ii)–3 for information not required to be stated in advertisements, and on situations in which the balloon payment requirement does not apply.

16(e) Alternative disclosures—television or radio advertisements.

1. *Multi-purpose telephone number.* When an advertised telephone number provides a recording, disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several options—such as providing directions to the advertiser's place of business—the option allowing the consumer to request disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

2. *Statement accompanying toll free number.* Language must accompany a telephone number indicating that disclosures are available by calling the telephone number, such as ''call 1–800–000–0000 for details about credit costs and terms.''

16(g) Promotional rates.

1. *Rate in effect at the end of the promotional period.* If the annual percentage rate that will be in effect at the end of the promotional period (i.e., the post-promotional rate) is a variable rate, the post-promotional rate for purposes of § 226.16(g)(2)(i) is the rate that would have applied at the time the promotional rate was advertised if the promotional rate was not offered, consistent with the accuracy requirements in § 226.5a(c)(2) and (e)(4), as applicable.

2. *Immediate proximity.* For written or electronic advertisements, including the term ''introductory'' or ''intro'' in the same phrase as the listing of the introductory rate is deemed to be in immediate proximity of the listing.

3. *Prominent location closely proximate.* For written or electronic advertisements, information required to be disclosed in § 226.16(g)(4)(i) and (g)(4)(ii) that is in the same paragraph as the first listing of the promotional rate is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the listing.

4. *First listing.* For purposes of § 226.16(g)(4) as it applies to written or

electronic advertisements, the first listing of the promotional rate is the most prominent listing of the rate on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the promotional rate does not appear on the front side of the first page of the principal promotional document, then the first listing of the promotional rate is the most prominent listing of the rate on the subsequent pages of the principal promotional document. If the promotional rate is not listed on the principal promotional document or there is no principal promotional document, the first listing is the most prominent listing of the rate on the front side of the first page of each document listing the promotional rate. If the promotional rate does not appear on the front side of the first page of a document, then the first listing of the promotional rate is the most prominent listing of the rate on the subsequent pages of the document. If the listing of the promotional rate with the largest type size on the front side of the first page (or subsequent pages if the promotional rate is not listed on the front side of the first page) of the principal promotional document (or each document listing the promotional rate if the promotional rate is not listed on the principal promotional document or there is no principal promotional document), is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)–1, a catalog or multiple-page advertisement is considered one document for purposes of § 226.16(g)(4).

5. *Post-promotional rate depends on consumer's creditworthiness.* For purposes of disclosing the rate that may apply after the end of the promotional rate period, at the advertiser's option, the advertisement may disclose the rates that may apply as either specific rates, or a range of rates. For example, if there are three rates that may apply (9.99%, 12.99% or 17.99%), an issuer may disclose these three rates as specific rates (9.99%, 12.99% or 17.99%) or as a range of rates (9.99%–17.99%).

* * * * *

Section 226.26—Use of Annual Percentage Rate in Oral Disclosures

* * * * *

26(a) Open-end credit.

1. *Information that may be given.* The creditor may state periodic rates in addition to the required annual percentage rate, but it need not do so. If the annual percentage rate is unknown because transaction charges, loan fees, or similar finance charges may be imposed, the creditor must give the corresponding annual percentage rate (that is, the periodic rate multiplied by the number of periods in a year, as described in §§ 226.6(a)(1)(ii) and (b)(4)(i)(A) and 226.7(a)(4) and (b)(4)). In such cases, the creditor may, but need not, also give the consumer information about other finance charges and other charges.

* * * * *

Section 226.27—Language of Disclosures

1. *Subsequent disclosures.* If a creditor provides account-opening disclosures in a language other than English, subsequent disclosures need not be in that other language. For example, if the creditor gave Spanish-language account-opening disclosures, periodic statements and change-in-terms notices may be made in English.

* * * * *

Section 226.28—Effect on State Laws

28(a) Inconsistent disclosure requirements.

* * * * *

6. *Rules for other fair credit billing provisions.* The second part of the criteria for fair credit billing relates to the other rules implementing chapter 4 of the act (addressed in §§ 226.4(c)(8), 226.5(b)(2)(ii), 226.6(a)(5) and (b)(5)(iii), 226.7(a)(9) and (b)(9), 226.9(a), 226.10, 226.11, 226.12(c) through (f), 226.13, and 226.21). Section 226.28(a)(2)(ii) provides that the test of inconsistency is whether the creditor can comply with state law without violating Federal law. For example:

i. A state law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since § 226.12(d) prohibits such action.

ii. A state law that requires periodic statements to be sent more than 14 days before the end of a free-ride period would not be preempted.

iii. A state law that permits consumers to assert claims and defenses against the card issuer without regard to the $50 and 100-mile limitations of § 226.12(c)(3)(ii) would not be preempted.

iv. In paragraphs ii. and iii. of this comment, compliance with state law would involve no violation of the Federal law.

* * * * *

Section 226.30—Limitation on Rates

* * * * *

8. *Manner of stating the maximum interest rate.* The maximum interest rate must be stated in the credit contract either as a specific amount or in any other manner that would allow the consumer to easily ascertain, at the time of entering into the obligation, what the rate ceiling will be over the term of the obligation.

i. For example, the following statements would be sufficiently specific:

A. The maximum interest rate will not exceed X%.

B. The interest rate will never be higher than X percentage points above the initial rate of Y%.

C. The interest rate will not exceed X%, or X percentage points above [a rate to be determined at some future point in time], whichever is less.

D. The maximum interest rate will not exceed X%, or the state usury ceiling, whichever is less.

ii. The following statements would not comply with this section:

A. The interest rate will never be higher than X percentage points over the prevailing market rate.

B. The interest rate will never be higher than X percentage points above [a rate to be determined at some future point in time].

C. The interest rate will not exceed the state usury ceiling which is currently X%.

iii. A creditor may state the maximum rate in terms of a maximum annual percentage rate that may be imposed. Under an open-end credit plan, this normally would be the corresponding annual percentage rate. (*See* generally § 226.6(a)(1)(ii) and (b)(4)(i)(A).)

Appendix F—Optional Annual Percentage Rate Computations for Creditors Offering Open-End Plans Subject to the Requirements of § 226.5B

1. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)–2 for guidance on an appropriate calculation method.

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19, G–20, and G–21. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using ''borrower'' and ''creditor'' instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state ''plain English'' requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

2. *Debt-cancellation coverage.* This regulation does not authorize creditors to characterize debt-cancellation fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

Appendix G—Open-End Model Forms and Clauses

1. *Models G–1 and G–1(A).* The model disclosures in G–1 and G–1(A) (different balance computation methods) may be used in both the account-opening disclosures under § 226.6 and the periodic disclosures under § 226.7. As is clear from the models given, ''shorthand'' descriptions of the balance computation methods are not sufficient, except where § 226.7(b)(5) applies. For creditors using model G–1, the phrase ''a portion of'' the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate. If unpaid interest or finance charges are subtracted in calculating the balance, that fact must be stated so that the disclosure of the computation method is accurate. Only model G–1(b) contains a final sentence appearing in brackets, which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in model G–1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in model G–1(b).) (See the commentary to § 226.7(a)(5) and (b)(5).) For open-end plans subject to the requirements of § 226.5b, creditors may, at their option, use the clauses in G–1 or G–1(A).

2. *Models G–2 and G–2(A).* These models contain the notice of liability for unauthorized use of a credit card. For home-equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G–2 or G–2(A). For open-end plans not subject to the requirements of § 226.5b, creditors properly use G–2(A).

3. *Models G–3, G–3(A), G–4 and G–4(A).*

i. These set out models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing-error rights statement (for use with each periodic statement), respectively. For home-equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G–3 or G–3(A), and for creditors that use the short form, G–4 or G–4(A). For open-end (not home-secured) plans that not subject to the requirements of § 226.5b, creditors properly use G–3(A) and G–4(A). Creditors must provide the billing-error rights statements in a form substantially similar to the models in order to comply with the regulation. The model billing-rights statements may be modified in any of the ways set forth in the first paragraph to the commentary on appendices G and H. The models may, furthermore, be modified by deleting inapplicable information, such as:

A. The paragraph concerning stopping a debit in relation to a disputed amount, if the creditor does not have the ability to debit automatically the consumer's savings or checking account for payment.

B. The rights stated in the special rule for credit card purchases and any limitations on those rights.

ii. The model billing rights statements also contain optional language that creditors may use. For example, the creditor may:

A. Include a statement to the effect that notice of a billing error must be submitted on something other than the payment ticket or other material accompanying the periodic disclosures.

B. Insert its address or refer to the address that appears elsewhere on the bill.

C. Include instructions for consumers, at the consumer's option, to communicate with the creditor electronically or in writing.

iii. Additional information may be included on the statements as long as it does not detract from the required disclosures. For instance, information concerning the reporting of errors in connection with a checking account may be included on a combined statement as long as the disclosures required by the regulation remain clear and conspicuous.

* * * * *

5. *Model G–10(A), samples G–10(B) and G–10(C), model G–10(D), sample G–10(E), model G–17(A), and samples G–17(B), 17(C) and 17(D).* i. Model G–10(A) and Samples G–10(B) and G–10(C) illustrate, in the tabular format, the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Model G–10(D) and Sample G–10(E) illustrate the tabular format disclosure for charge card applications and solicitations and reflect the disclosures in the table. Model G–17(A) and Samples G–17(B), G–17(C) and G–17(D) illustrate, in the tabular format, the disclosures required under § 226.6(b)(2) for account-opening disclosures.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to Models G–10(A), G–10(D) and G–17(A). While proper use of the model forms will be deemed in compliance with the regulation, card issuers and other creditors offering open-end (not home-secured) plans are permitted to disclose the annual percentage rates for purchases, cash advances, or balance transfers in the same row in the table for any transaction types for which the issuer or creditor charges the same annual percentage rate. Similarly, card issuer and other creditors offering open-end (not home-secured) plans are permitted to disclose fees of the same amount in the same row if the fees are in the same category. Fees in different categories may not be disclosed in the same row. For example, a transaction fee and a penalty fee that are of the same amount may not be disclosed in the same row. Card issuers and other creditors offering open-end (not home-secured) plans are also permitted to use headings other than those in the forms if they are clear and concise and are substantially similar to the headings contained in model forms, with the following exceptions. The heading ''penalty APR'' must be used when describing rates that may increase due to default or delinquency or as a penalty, and in relation to required insurance, or debt cancellation or suspension coverage, the term ''required'' and the name of the product must be used. (See also §§ 226.5a(b)(5) and 226.6(b)(2)(v) for guidance on headings that must be used to describe the grace period, or lack of grace period, in the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards, and the disclosures required under § 226.6(b)(2) for account-opening disclosures, respectively.)

iii. Models G–10(A) and G–17(A) contain two alternative headings (''Minimum Interest Charge'' and ''Minimum Charge'') for disclosing a minimum interest or fixed finance charge under §§ 226.5a(b)(3) and 226.6(b)(2)(iii). If a creditor imposes a minimum charge in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor should disclose this charge under the heading ''Minimum Interest Charge'' or a substantially similar heading. Other minimum or fixed finance charges should be disclosed under the heading ''Minimum Charge'' or a substantially similar heading.

iv. Models G–10(A), G–10(D) and G–17(A) contain two alternative headings (''Annual Fees'' and ''Set-up and Maintenance Fees'') for disclosing fees for issuance or availability of credit under § 226.5a(b)(2) or § 226.6(b)(2)(ii). If the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(2)(ii) is an annual fee, a creditor should use the heading ''Annual Fee'' or a substantially similar heading to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(2)(ii) other than, or in addition to, an annual fee, the creditor should use the heading ''Set-up and Maintenance Fees'' or a substantially similar heading to disclose fees for issuance or availability of credit, including the annual fee.

v. Although creditors are not required to use a certain paper size in disclosing the §§ 226.5a or 226.6(b)(1) and (2) disclosures, samples G–10(B), G–10(C), G–17(B), G–17(C) and G–17(D) are designed to be printed on an 8½ x 14 inch sheet of paper. A creditor may use a smaller sheet of paper, such as 8½ x 11 inch sheet of paper. If the table is not provided on a single side of a sheet of paper, the creditor must include a reference or references, such as ''SEE BACK OF PAGE for more important information about your account.'' at the bottom of each page indicating that the table continues onto an additional page or pages. A creditor that splits the table onto two or more pages must disclose the table on consecutive pages and may not include any intervening information between portions of the table. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style, except for the purchase annual percentage rate which is shown in 16-point type).

B. Sufficient spacing between lines of the text.

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. For example, in the samples in the row of the tables with the heading ''APR for Balance Transfers,'' the forms disclose two components: the applicable balance transfer rate and a cross reference to the balance transfer fee. The samples show these two components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late-payment fee, the forms disclose two components: the late-payment fee, and the cross reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the tables.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type.

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

vi. While the Board is not requiring issuers to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font requirement), the Board encourages issuers to consider these techniques when deciding how to disclose information in the table, to ensure that the information is presented in a readable format.

vii. Creditors are allowed to use color, shading and similar graphic techniques with respect to the table, so long as the table remains substantially similar to the model and sample forms in Appendix G.

6. *Model G–11.* Model G–11 contains clauses that illustrate the general disclosures required under § 226.5a(e) in applications and solicitations made available to the general public.

7. *Models G–13(A) and G–13(B).* These model forms illustrate the disclosures required under § 226.9(f) when the card issuer changes the entity providing insurance on a credit card account. Model G–13(A) contains the items set forth in § 226.9(f)(3) as examples of significant terms of coverage that may be affected by the change in insurance provider. The card issuer may either list all of these potential changes in coverage and place a check mark by the applicable changes, or list only the actual changes in coverage. Under either approach, the card issuer must either explain the changes or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. Model G–13(A) also illustrates the permissible combination of the two notices required by § 226.9(f)—the notice required for a planned change in provider and the notice required once a change has occurred. This form may be modified for use in providing only the disclosures required before the change if the card issuer chooses to send two separate notices. Thus, for example, the references to the attached policy or certificate would not be required in a separate notice prior to a change in the insurance provider since the policy or certificate need not be provided at that time.

Model G–13(B) illustrates the disclosures required under § 226.9(f)(2) when the insurance provider is changed.

8. *Samples G–18(A)–(E).* For home-equity plans subject to the requirements of § 226.5b, if a creditor chooses to comply with the requirements in § 226.7(b), the creditor may use Samples G–18(A) through G–18(E) to comply with these requirements, as applicable.

9. *Samples G–18(D) and (E).* Samples G–18(D) and G–18(E) illustrate how creditors may comply with proximity requirements for payment information on periodic statements. Creditors that offer card accounts with a charge card feature and a revolving feature may change the disclosure to make clear to which feature the disclosures apply.

10. *Forms G–18(F)–(G).* Forms G–18(F) and G–18(G) are intended as a compliance aid to illustrate front sides of a periodic statement, and how a periodic statement for open-end (not home-secured) plans might be designed to comply with the requirements of § 226.7. The samples contain information that is not required by Regulation Z. The samples also present information in additional formats that are not required by Regulation Z.

i. Creditors are not required to use a certain paper size in disclosing the § 226.7 disclosures. However, Forms G–18(F) and G–18(G) are designed to be printed on an 8 x 14 inch sheet of paper.

ii. The due date for a payment, if a late-payment fee or penalty rate may be imposed, must appear on the front of the first page of the statement. See Samples G–18(D) and G–18(E) that illustrate how a creditor may comply with proximity requirements for other disclosures. The payment information disclosures appear in the upper right-hand corner on Samples G–18(F) and G–18(G), but may be located elsewhere, as long as they appear on the front of the first page of the periodic statement. The summary of account activity presented on Samples G–18(F) and G–18(G) is not itself a required disclosure, although the previous balance and the new balance, presented in the summary, must be disclosed in a clear and conspicuous manner on periodic statements.

iii. Additional information not required by Regulation Z may be presented on the statement. The information need not be located in any particular place or be segregated from disclosures required by Regulation Z, although the effect of proximity requirements for required disclosures, such as the due date, may cause the additional information to be segregated from those disclosures required to be disclosed in close proximity to one another. Any additional information must be presented consistent with the creditor's obligation to provide required disclosures in a clear and conspicuous manner.

iv. Model Forms G–18(F) and G–18(G) demonstrate two examples of ways in which transactions could be presented on the periodic statement. Model Form G–18(G) presents transactions grouped by type and Model Form G–18(F) presents transactions in a list in chronological order. Neither of these approaches to presenting transactions is required; a creditor may present transactions differently, such as in a list grouped by authorized user or other means.

11. *Model Form G–19.* See § 226.9(b)(3) regarding the headings required to be disclosed when describing in the tabular disclosure a grace period (or lack of a grace period) offered on check transactions that access a credit card account.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 18, 2008.

Jennifer J. Johnson,

Secretary of the Board.

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FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Regulation AA; Docket No. R–1314]

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 535

[Docket ID. OTS–2008–0027]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 706

RIN 3133–AD47

Unfair or Deceptive Acts or Practices

AGENCIES: Board of Governors of the Federal Reserve System (Board); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The Board, OTS, and NCUA (collectively, the Agencies) are exercising their authority under section 5(a) of the Federal Trade Commission Act to prohibit unfair or deceptive acts or practices. The final rule prohibits institutions from engaging in certain acts or practices in connection with consumer credit card accounts. The final rule relates to other Board rules under the Truth in Lending Act, which are published elsewhere in today's **Federal Register**. Because the Board has proposed new rules regarding overdraft services for deposit accounts under the Electronic Fund Transfer Act elsewhere in today's **Federal Register**, the Agencies are not taking action on overdraft services at this time. A secondary basis for OTS's rule is the Home Owners' Loan Act.

DATES: *Effective Date:* The final rule is effective on July 1, 2010.

FOR FURTHER INFORMATION CONTACT:

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NCUA: Matthew J. Biliouris, Program Officer, Office of Examination and Insurance, (703) 518–6360; or Moisette I. Green or Ross P. Kendall, Staff Attorneys, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: The Federal Reserve Board (Board), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies) are adopting several new provisions intended to protect consumers against unfair acts or practices with respect to consumer credit card accounts. These rules are promulgated pursuant to section 18(f)(1) of the Federal Trade Commission Act (FTC Act), which makes the Agencies responsible for prescribing regulations that prevent unfair or deceptive acts or practices in or affecting commerce within the meaning of section 5(a) of the FTC Act. *See* 15 U.S.C. 57a(f)(1), 45(a). A secondary basis for OTS's rule is the Home Owners' Loan Act (HOLA), 12 U.S.C. 1461 *et seq.*

I. Background

A. The Board's June 2007 Regulation Z Proposal on Open-End (Non-Home Secured) Credit

On June 14, 2007, the Board requested public comment on proposed amendments to the open-end credit (not home-secured) provisions of Regulation Z, which implements the Truth in Lending Act (TILA), as well as proposed amendments to the corresponding staff commentary to Regulation Z. 72 FR 32948 (June 2007 Regulation Z Proposal). The purpose of TILA is to promote the informed use of consumer credit by providing disclosures about its costs and terms. *See* 15 U.S.C. 1601 *et seq.* TILA's disclosures differ depending on whether the consumer credit is an open-end (revolving) plan or a closed-end (installment) loan. The goal of the proposed amendments was to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account.

As part of this effort, the Board retained a research and consulting firm (Macro International) to assist the Board in conducting extensive consumer testing in order to develop improved disclosures that consumers would be more likely to pay attention to, understand, and use in their decisions, while at the same time not creating undue burdens for creditors. Although the testing assisted the Board in developing improved disclosures, the testing also identified the limitations of disclosure, in certain circumstances, as a means of enabling consumers to make decisions effectively. *See* 72 FR at 32948–32952.[1]

In response to the June 2007 Regulation Z Proposal, the Board received more than 2,500 comments, including approximately 2,100 comments from individual consumers. Comments from consumers, consumer groups, a member of Congress, other government agencies, and some creditors were generally supportive of the proposed revisions to Regulation Z. A number of commenters, however, urged the Board to take additional action with respect to a variety of credit card practices, including late fees and other penalties resulting from perceived reductions in the amount of time consumers are given to make timely payments, allocation of payments first to balances with the lowest annual percentage rate, application of increased annual percentage rates to pre-existing balances, and the so-called two-cycle method of computing interest.

[1] As discussed below, the Agencies have relied in part on the Board's consumer testing in determining that certain practices are unfair under the FTC Act. The results of this consumer testing are set forth in the reports prepared by the Board's testing consultant. The initial report was posted on the Board's public website along with the June 2007 Regulation Z Proposal. *See* Design and Testing of Effective Truth in Lending Disclosures (May 16, 2007) (available at *http://www.federalreserve.gov/dcca/regulationz/20070523/Execsummary.pdf*). Two supplemental reports have been posted on the Board's public website along with the final rules under Regulation Z, which are published elsewhere in today's **Federal Register**. *See* Design and Testing of Effective Truth in Lending Disclosures: Findings from Qualitative Consumer Research (Dec. 15, 2008); Design and Testing of Effective Truth in Lending Disclosures: Findings from Experimental Study (Dec. 15, 2008).

B. The OTS's August 2007 FTC Act Advance Notice of Proposed Rulemaking

On August 6, 2007, OTS issued an ANPR requesting comment on its rules under section 5 of the FTC Act. *See* 72 FR 43570 (OTS ANPR). The purpose of OTS's ANPR was to determine whether OTS should expand on its current prohibitions against unfair and deceptive acts or practices in its Credit Practices Rule (12 CFR part 535).

OTS's ANPR discussed a very broad array of issues including:

- The legal background on OTS's authority under the FTC Act and HOLA;
- OTS's existing Credit Practices Rule;
- Possible principles OTS could use to define unfair and deceptive acts or practices, including looking to standards the Federal Trade Commission (FTC) and states follow;
- Practices that OTS, individually or on an interagency basis, has addressed through guidance;
- Practices that other federal agencies have addressed through rulemaking;
- Practices that states have addressed statutorily;
- Acts or practices OTS might target involving products such as credit cards, residential mortgages, gift cards, and deposit accounts; and
- OTS's existing Advertising Rule (12 CFR 563.27).

OTS received 29 comment letters on its ANPR. These comments were summarized in the Agencies' May 2008 proposed rule. *See* 73 FR 28904, 28905–28906 (May 19, 2008) (May 2008 Proposal). In brief, financial industry commenters opposed OTS taking any further action beyond issuing guidance along those lines. They argued that OTS must not create an unlevel playing field for OTS-regulated institutions and that uniformity among the federal banking agencies and the NCUA is essential. They challenged the list of practices OTS had indicated it could consider targeting, arguing that the practices listed were neither unfair nor deceptive under the FTC standards.

In contrast, the consumer group commenters urged OTS to move ahead with a rule that would combine the FTC's principles-based standards with prohibitions on specific practices. They urged OTS to ban numerous practices, including several practices addressed in the final rule (such as ''universal default'' repricing, applying payments first to balances with the lowest interest rate, and credit cards marketed at subprime consumers that provide little available credit at account opening).

C. Related Action by the Agencies Preceding This Rulemaking

In addition to receiving information via comments, the Agencies have conducted outreach regarding credit card practices, including meetings and discussions with consumer group representatives, industry representatives, other federal and state banking agencies, and the FTC. On April 8, 2008, the Board hosted a forum on credit cards in which card issuers and payment network operators, consumer advocates, counseling agencies, and other regulatory agencies met to discuss relevant industry trends and identify areas that may warrant action or further study. In addition, the Agencies reviewed consumer complaints received by each of the federal banking agencies and several studies of the credit card industry.[2] The Agencies' understanding of credit card practices and consumer behavior was also informed by the results of consumer testing conducted on behalf of the Board in connection with its June 2007 Regulation Z Proposal.

Finally, the Agencies gathered information from a number of Congressional hearings on consumer protection issues regarding credit cards.[3] In these hearings, members of Congress heard testimony from individual consumers, representatives of consumer groups, representatives of financial and credit card industry groups, and others. Consumer and community group representatives generally testified that certain credit card practices (including those discussed above) unfairly increase the cost of credit after the consumer has committed to a particular transaction. These witnesses further testified that these practices should be prohibited because they lead consumers to underestimate the costs of using credit cards and that disclosure of these practices under Regulation Z is ineffective. Financial services and credit card industry representatives agreed that consumers need better disclosures of credit card terms but testified that substantive restrictions on specific terms would lead to higher interest rates for all borrowers as well as reduced access to credit for some.[4]

D. The Agencies' May 2008 Proposal

In May 2008, the Agencies proposed rules under the FTC Act addressing unfair or deceptive acts or practices in connection with consumer credit card accounts and overdraft services for deposit accounts. *See* 73 FR 28904 (May 2008 Proposal). These proposals were accompanied by complementary proposals by the Board under Regulation Z with respect to consumer credit card accounts and Regulation DD with respect to deposit accounts. *See* 73 FR 28866 (May 19, 2008) (May 2008 Regulation Z Proposal); 73 FR 28739 (May 19, 2008) (May 2008 Regulation DD Proposal).

In order to best ensure that all entities that offer consumer credit card accounts and overdraft services on deposit accounts are treated in a like manner, the Board, OTS, and NCUA joined together to issue the May 2008 Proposal. This interagency approach is consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994. *See* 12 U.S.C. 4803. Section 303(a)(3), 12 U.S.C. 4803(a)(3), directs the federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. Two federal banking agencies—the Board and OTS—are primarily implementing the same statutory provision, section 18(f) of the FTC Act, as is the NCUA (although HOLA serves as a secondary basis for OTS's rule). Accordingly, the Agencies endeavored to propose rules that are as uniform as possible. Prior to issuing the proposed rules, the Agencies also consulted with the two other federal banking agencies, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), as well as with the FTC.

In an effort to achieve a level playing field, the May 2008 Proposal focused on unfair and deceptive acts or practices involving credit cards and overdraft services, which are generally provided only by depository institutions such as banks, savings associations, and credit unions. The Agencies recognized that state-chartered credit unions and any entities providing consumer credit card accounts independent of a depository institution fall within the FTC's jurisdiction and therefore would not be subject to the proposed rules. The Agencies noted, however, that FTC-regulated entities appear to represent a small percentage of the market for consumer credit card accounts and overdraft services.[5] For OTS, addressing certain deceptive credit card practices in the May 2008 Proposal, rather than through an interpretation or expansion

[2] *See, e.g.*, Am. Bankers Assoc., *Likely Impact of Proposed Credit Card Legislation: Survey Results of Credit Card Issuers* (Spring 2008); Darryl E. Getter, Cong. Research Srvc., *The Credit Card Market: Recent Trends, Funding Cost Issues, and Repricing Practices* (Feb. 2008); Tim Westrich & Christian E. Weller, Ctr. for Am. Progress, *House of Cards: Consumers Turn to Credit Cards Amid the Mortgage Crisis, Delaying Inevitable Defaults* (Feb. 2008) (available at *http://www.americanprogress.org/issues/2008/02/pdf/house_of_cards.pdf*); Jose A. Garcia, Demos, *Borrowing to Make Ends Meet: The Rapid Growth of Credit Card Debt in America* (Nov. 2007) (available at *http://www.demos.org/pubs/stillborrowing.pdf*); Nat'l Consumer Law Ctr., *Fee-Harvesters: Low-Credit, High-Cost Cards Bleed Consumers* (Nov. 2007) (available at *http://www.consumerlaw.org/issues/credit_cards/content/FEE-HarvesterFinal.pdf*); Jonathan M. Orszag & Susan H. Manning, Am. Bankers Assoc., *An Economic Assessment of Regulating Credit Card Fees and Interest Rates* (Oct. 2007) (available at *http://www.aba.com/aba/documents/press/regulating_creditcard_fees_interest_rates92507.pdf*); Cindy Zeldin & Mark Rukavia, Demos, *Borrowing to Stay Healthy: How Credit Card Debt Is Related to Medical Expenses* (Jan. 2007) (available at *http://www.demos.org/pubs/healthy_web.pdf*); U.S. Gov't Accountability Office, *Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers* (Sept. 2006) (''GAO Credit Card Report'') (available at *http://www.gao.gov/new.items/d06929.pdf*); Board of Governors of the Federal Reserve System, Report to Congress on Practices of the Consumer Credit Industry in Soliciting and Extending Credit and their Effects on Consumer Debt and Insolvency (June 2006) (available at *http://www.federalreserve.gov/boarddocs/rptcongress/bankruptcy/bankruptcybillstudy200606.pdf*); Demos & Ctr. for Responsible Lending, *The Plastic Safety Net: The Reality Behind Debt in America* (Oct. 2005) (available at *http://www.demos.org/pubs/PSN_low.pdf*).

[3] *See, e.g.*, *The Credit Cardholders' Bill of Rights: Providing New Protections for Consumers: Hearing before the H. Subcomm. on Fin. Instits. & Consumer Credit,* 110th Cong. (2007); *Credit Card Practices: Unfair Interest Rate Increases: Hearing before the S. Permanent Subcomm. on Investigations,* 110th Cong. (2007); *Credit Card Practices: Current Consumer and Regulatory Issues: Hearing before H. Comm. on Fin. Servs.,* 110th Cong. (2007); *Credit Card Practices: Fees, Interest Rates, and Grace Periods: Hearing before the S. Permanent Subcomm. on Investigations,* 110th Cong. (2007).

[4] On September 23, 2008, the U.S. House of Representatives passed the Credit Cardholders' Bill of Rights Act of 2008 (H.R. 5244), which addresses consumer protection issues regarding credit cards. *See also* The Credit Card Accountability, Responsibility and Disclosure Act, S. 3252, 110th Cong. (July 10, 2008); The Credit Card Reform Act of 2008, S. 2753, 110th Cong. (Mar. 12, 2008); The Stop Unfair Practices in Credit Cards Act of 2007, H.R. 5280, 110th Cong. (Feb. 7, 2008); The Stop Unfair Practices in Credit Cards Act of 2007, S. 1395, 110th Cong. (May 15, 2007); The Universal Default Prohibition Act of 2007, H.R. 2146, 110th Cong. (May 3, 2007); The Credit Card Accountability Responsibility and Disclosure Act of 2007, H.R. 1461, 110th Cong. (Mar. 9, 2007).

[5] Some commenters on the May 2008 Proposal expressed concern that the proposed rules would place institutions subject to the final rule at a competitive disadvantage in relation to FTC-regulated entities. As discussed in detail below, the Board has published elsewhere in today's **Federal Register** a proposal regarding overdraft services using its authority under the Electronic Fund Transfer Act (EFTA) and Regulation E. These proposed rules would apply to state-chartered credit unions providing overdraft services. Furthermore, because FTC-regulated entities represent a small percentage of the market for consumer credit card accounts, the Agencies believe that any competitive disadvantage is unlikely to be significant. In addition, although the final rule does not apply to FTC-regulated entities, those entities are still subject to the FTC Act.

of its Advertising Rule, also fosters consistency because the other Agencies do not have comparable advertising regulations.

Credit Practices Rule

The Agencies proposed to make non-substantive, organizational changes to the Credit Practices Rule. Specifically, in order to avoid repetition, the Agencies proposed to move the statement of authority, purpose, and scope out of the Credit Practices Rule and revise it to apply not only to the Credit Practices Rule but also to the proposed rules regarding consumer credit card accounts and overdraft services. OTS and NCUA proposed additional, non-substantive changes to the organization of their versions of the Credit Practices Rule. OTS also solicited comment on whether to retain the state exemption provision in its Credit Practices Rule.

Consumer Credit Card Accounts

The Agencies proposed seven provisions under the FTC Act regarding consumer credit card accounts. These provisions were intended to ensure that consumers have the ability to make informed decisions about the use of credit card accounts without being subjected to unfair or deceptive acts or practices.

First, institutions would have been prohibited from treating a payment as late for any purpose unless consumers had been provided a reasonable amount of time to make that payment. The proposed rule would have created a safe harbor for institutions that adopt reasonable procedures designed to ensure that periodic statements (which provide payment information) are mailed or delivered at least 21 days before the payment due date.

Second, when different annual percentage rates apply to different balances, institutions would have been required to allocate amounts paid in excess of the minimum payment using one of three specified methods or a method that is no less beneficial to consumers. Furthermore, when an account has a discounted promotional rate balance or a balance on which interest is deferred, institutions would have been required to allocate amounts in excess of the minimum payment first to balances on which the rate is not discounted or interest is not deferred (except, in the case of a deferred interest plan, for the last two billing cycles during which interest is deferred). Institutions would also have been prohibited from denying consumers a grace period on purchases (if one is offered) solely because they have not paid off a balance at a promotional rate or a balance on which interest is deferred.

Third, institutions would have been prohibited from increasing the annual percentage rate on an outstanding balance. This prohibition would not have applied, however, where a variable rate increases due to the operation of an index, where a promotional rate expired or was lost (provided the rate was not increased to a penalty rate), or where the minimum payment was not received within 30 days after the due date.

Fourth, institutions would have been prohibited from assessing a fee if a consumer exceeds the credit limit on an account solely due to a hold placed on the available credit. If, however, the actual amount of the transaction would have exceeded the credit limit, then a fee could have been assessed.

Fifth, institutions would have been prohibited from imposing finance charges based on balances for days in billing cycles that precede the most recent billing cycle. The proposed rule would have prohibited institutions from reaching back to earlier billing cycles when calculating the amount of interest charged in the current cycle, a practice that is sometimes referred to as two- or double-cycle billing.

Sixth, institutions would have been prohibited from financing security deposits or fees for the issuance or availability of credit (such as account-opening fees or membership fees) if those deposits or fees utilized the majority of the available credit on the account. The proposal would also have required security deposits and fees exceeding 25 percent of the credit limit to be spread over the first year, rather than charged as a lump sum during the first billing cycle.

Seventh, institutions making firm offers of credit advertising multiple annual percentage rates or credit limits would have been required to disclose in the solicitation the factors that determine whether a consumer will qualify for the lowest annual percentage rate and highest credit limit advertised.

Overdraft Services

The Agencies also proposed two provisions prohibiting unfair acts or practices related to overdraft services in connection with consumer deposit accounts. The proposed provisions were intended to ensure that consumers understand the terms of overdraft services and have the choice to avoid the associated costs where such services do not meet their needs.

The first provision provided that it would be an unfair act or practice for an institution to assess a fee or charge on a consumer's account for paying an overdraft unless the institution provided the consumer with the right to opt out of the institution's payment of overdrafts and a reasonable opportunity to exercise the opt out, and the consumer did not opt out. The proposed opt-out right would have applied to all transactions that overdraw an account regardless of whether the transaction is, for example, a check, an ACH transaction, an ATM withdrawal, a recurring payment, or a debit card purchase at a point of sale.

The second proposal would have prohibited certain acts or practices associated with assessing overdraft fees in connection with debit holds. Specifically, the proposal would have prohibited an institution from assessing an overdraft fee if the overdraft was caused solely by a hold placed on funds that exceeded the actual purchase amount of the transaction, unless this purchase amount would have caused the overdraft.

Comments on the May 2008 Proposal

The comment period for this proposal closed on August 4, 2008. The Board received more than 60,000 comments on the May 2008 Proposal, more than for any other regulatory proposal in its history. OTS received approximately 5,200 comments. NCUA received approximately 1,000 comments. The overwhelming majority of these comments came from individual consumers. A substantial majority of individual consumers expressed support for the proposed rules, and many urged the Agencies to go further in protecting consumers. The remaining comments came from credit card issuers, banks, savings associations, credit unions, trade associations, consumer groups, members of Congress, other federal banking agencies, state and local governments, and others. These commenters expressed varying views on the May 2008 Proposal. In preparing this final rule, the Agencies considered the comments and the accompanying information. To the extent that commenters addressed specific aspects of the proposal, those comments are discussed below.

II. Statutory Authority Under the Federal Trade Commission Act To Address Unfair or Deceptive Acts or Practices

A. Rulemaking and Enforcement Authority Under the FTC Act

Section 18(f)(1) of the FTC Act provides that the Board (with respect to banks), OTS (with respect to savings associations), and the NCUA (with respect to federal credit unions) are responsible for prescribing ''regulations defining with specificity * * * unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices.'' 15 U.S.C. 57a(f)(1).[6]

The FTC Act allocates responsibility for enforcing compliance with regulations prescribed under section 18 with respect to banks, savings associations, and federal credit unions among the Board, OTS, and NCUA, as well as the OCC and the FDIC. *See* 15 U.S.C. 57a(f)(2)–(4). The FTC Act grants the FTC rulemaking and enforcement authority with respect to other persons and entities, subject to certain exceptions and limitations. *See* 15 U.S.C. 45(a)(2); 15 U.S.C. 57a(a). The FTC Act, however, sets forth specific rulemaking procedures for the FTC that do not apply to the Agencies. *See* 15 U.S.C. 57a(b)–(e), (g)–(j); 15 U.S.C. 57a–3.[7]

In response to the May 2008 Proposal, industry commenters and the OCC noted that the Board has stated in the past that enforcement of the FTC Act's prohibition on unfair and deceptive practices is best handled on a case-by-case basis because determinations of unfairness and deception depend heavily on individual facts and circumstances.[8] These commenters urged that the Agencies withdraw the proposed rules and that the Board instead use its authority under TILA, the Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, or other statutes to promulgate rules regarding consumer credit card accounts and overdraft services on deposit accounts, respectively. One commenter suggested that OTS instead use its authority under HOLA.

As discussed in greater detail below in section VI of this **SUPPLEMENTARY INFORMATION**, the Agencies agree that concerns about overdraft services can be appropriately addressed using the Board's authority under the EFTA. With respect to consumer credit card accounts, however, the Agencies believe that use of their FTC Act authority is appropriate. Although the Agencies continue to believe that case-by-case enforcement is often the most effective means of addressing unfair and deceptive practices, the practices addressed by the final rule are or have been engaged in by a substantial number of the institutions offering credit cards without significant material variation in the facts and circumstances. As a result, case-by-case enforcement by the banking agencies would not only be an inefficient means of addressing these practices but could also lead to inconsistent outcomes. Accordingly, the Agencies have determined that, in this instance, promulgating regulations under the FTC Act is the most effective way to address the practices at issue.[9]

B. Standards for Unfairness Under the FTC Act

Congress has codified standards developed by the FTC for its use in determining whether acts or practices are unfair under section 5(a) of the FTC Act.[10] Specifically, the FTC Act provides that the FTC has no authority to declare an act or practice unfair unless: (1) It causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers themselves; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition. In addition, the FTC may consider established public policy, but public policy may not serve as the primary basis for its determination that an act or practice is unfair. *See* 15 U.S.C. 45(n).

In proposing and finalizing rules under section 18(f)(1) of the FTC Act, the Agencies have applied the statutory elements consistent with the standards articulated by the FTC. The Board, FDIC, and OCC have previously issued guidance generally adopting these standards for purposes of enforcing the FTC Act's prohibition on unfair or deceptive acts or practices.[11] Although the OTS had not taken similar action in generally applicable guidance prior to the May 2008 Proposal,[12] the commenters on OTS's ANPR who addressed this issue overwhelmingly urged that any OTS action be consistent with the FTC's standards for unfairness.

According to the FTC, an unfair act or practice will almost always represent a market failure or imperfection that prevents the forces of supply and demand from maximizing benefits and minimizing costs.[13] Not all market failures or imperfections constitute unfair acts or practices, however. Instead, the central focus of the FTC's unfairness analysis is whether the act or practice causes substantial consumer injury.[14]

Substantial consumer injury. The FTC has stated that a substantial consumer injury generally consists of monetary, economic, or other tangible harm.[15] Trivial or speculative harms do not constitute substantial consumer injury.[16] Consumer injury may be

[6] The FTC Act refers to OTS's predecessor agency, the Federal Home Loan Bank Board (FHLBB), rather than to OTS. However, in section 3(e) of HOLA, Congress transferred this rulemaking power of the FHLBB, among others, to the Director of OTS. 12 U.S.C. 1462a(e). The FTC Act refers to ''savings and loan institutions'' in some provisions and ''savings associations'' in other provisions. Although ''savings associations'' is the term currently used in the HOLA, *see, e.g.*, 12 U.S.C. 1462(4), the terms ''savings and loan institutions'' and ''savings associations'' can be and are used interchangeably. OTS has determined that the outdated language does not affect OTS's rulemaking authority under the FTC Act.

[7] Some commenters suggested that the proposed rules were not supported by sufficient evidence and that the Agencies should follow the rulemaking procedures for the FTC under the FTC Act, which include the requirement to hold informal hearings at which interested parties may submit their positions and rebut the positions of others. 15 U.S.C. 57a(c). As the commenters acknowledge, this process applies only to the FTC. The Agencies believe that the comment process provides a robust opportunity for interested parties to express their views and provide relevant information. This is confirmed by the unprecedented number of comment letters received by the Agencies in response to the proposed rules. In many cases, the data and other information necessary to make informed judgments regarding the proposed rules is in the possession of the institutions to which the rules would apply. Although institutions generally consider this data proprietary, some have chosen to submit certain information to the Agencies for consideration as part of the public record. The Agencies have carefully considered all public information in issuing the final rule.

[8] *See, e.g.*, Testimony of Randall S. Kroszner, Governor, Board of Governors of the Federal Reserve System, before the H. Comm. on Financial Services (June 13, 2007); Testimony of Sandra F. Braunstein before the H. Subcomm. on Fin. Instits. & Consumer Credit (Mar. 27, 2007); Letter from Ben S. Bernanke, Chairman, Board of Governors of the Federal Reserve System, to the Hon. Barney Frank (Mar. 21, 2006); Letter from Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System, to the Hon. John J. LaFalce (May 30, 2002).

[9] Industry commenters and the OCC raised concerns that, because many of the practices prohibited by the proposed rules are widely used, determinations by the Agencies that those practices are unfair or deceptive under the FTC Act could lead to litigation under similar state laws. As discussed below in § VII of this **SUPPLEMENTARY INFORMATION**, the Agencies do not intend these rules to apply to acts or practices preceding the effective date and have determined that, prior to the effective date, the prohibited practices are not unfair under the FTC Act.

[10] *See* 15 U.S.C. 45(n); FTC Policy Statement on Unfairness, Letter from the FTC to the Hon. Wendell H. Ford and the Hon. John C. Danforth, S. Comm. on Commerce, Science & Transp. (Dec. 17, 1980) (FTC Policy Statement on Unfairness) (available at *http://www.ftc.gov/bcp/policystmt/ad-unfair.htm*).

[11] *See* Board and FDIC, Unfair or Deceptive Acts or Practices by State-Chartered Banks (Mar. 11, 2004) (available at *http://www.federalreserve.gov/boarddocs/press/bcreg/2004/20040311/attachment.pdf*); OCC Advisory Letter 2002–3, Guidance on Unfair or Deceptive Acts or Practices (Mar. 22, 2002) (available at *http://www.occ.treas.gov/ftp/advisory/2002–3.doc*).

[12] *See* OTS ANPR, 72 FR at 43573.

[13] Statement of Basis and Purpose and Regulatory Analysis for Federal Trade Commission Credit Practices Rule (Statement for FTC Credit Practices Rule), 49 FR 7740, 7744 (Mar. 1, 1984).

[14] *Id.* at 7743.

[15] *See id.*; FTC Policy Statement on Unfairness at 3.

[16] *See* Statement for FTC Credit Practices Rule, 49 FR at 7743 (''[E]xcept in aggravated cases where

substantial, however, if it imposes a small harm on a large number of consumers or if it raises a significant risk of concrete harm.[17]

In response to the May 2008 Proposal, several commenters expressed concern that the FTC's interpretation of substantial consumer injury is overbroad and requested that the Agencies introduce a variety of limitations. As noted above, the Agencies have adopted the FTC's standards for determining whether an act or practice is unfair. Accordingly, in the interest of uniform application of the FTC Act, the Agencies decline to read in such limitations where the FTC has not done so.[18] Furthermore, the Agencies emphasize that a finding of consumer injury does not, by itself, establish an unfair practice. Instead, as discussed below and with respect to each of the prohibited practices, the injury also must not be reasonably avoidable and must not be outweighed by countervailing benefits to consumers or to competition. Thus, while many practices that result in imposition of a fee or assessment of interest may cause a substantial consumer injury, few may satisfy the other elements of unfairness.

Injury is not reasonably avoidable. The FTC has stated that an injury is not reasonably avoidable when consumers are prevented from effectively making their own decisions about whether to incur that injury.[19] The marketplace is normally expected to be self-correcting because consumers are relied upon to survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory.[20] Accordingly, the test is not whether the consumer could have made a wiser decision but whether an act or practice unreasonably creates or takes advantage of an obstacle to the consumer's ability to make that decision freely.[21]

In response to the May 2008 Proposal, several industry commenters argued that an injury resulting from the operation of a contractual provision is always reasonably avoidable because the consumer could read the contract and decide not to enter into it. These commenters further argued that institutions could not be held responsible for consumers' failure to read or understand the contract or the disclosures provided by the institution. These arguments, however, are inconsistent with the FTC's application of the unfairness analysis in support of its Credit Practices Rule, where the FTC determined that consumers could not reasonably avoid injuries caused by otherwise valid contractual provisions.[22] Furthermore, as discussed below, many of the practices at issue either create the complexity that acts as an obstacle to consumers' ability to make free and informed decisions or take advantage of that complexity by assessing interest or fees when a consumer fails to understand the practice.[23]

Injury is not outweighed by countervailing benefits. The FTC has stated that the act or practice causing the injury must not also produce benefits to consumers or competition that outweigh the injury.[24] Generally, it is important to consider both the costs of imposing a remedy and any benefits that consumers enjoy as a result of the practice.[25] The FTC has stated that both consumers and competition benefit from prohibitions on unfair or deceptive acts or practices because prices may better reflect actual transaction costs and merchants who do not rely on unfair or deceptive acts or practices are no longer required to compete with those who do.[26]

Public policy. As noted above, the FTC may consider established public policy in making an unfairness determination, but public policy may not serve as the primary basis for such a determination.[27] For purposes of the unfairness analysis, public policy is generally embodied in a statute, regulation, or judicial decision.[28] As discussed below, the Agencies have considered various authorities cited by commenters as evidence of public policy.[29] At no point, however, have the Agencies used public policy as the primary basis for a determination that a practice was unfair.

Some commenters argued that section 18(f)(1) of the FTC Act prevents the Board from issuing final rules that would seriously conflict with the Board's essential monetary and payments systems policies. The language cited by the commenters, however, does not apply to this rulemaking. Instead, this language creates an exception to the general requirement that the Board promulgate

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tangible injury can be clearly demonstrated, subjective types of harm—embarrassment, emotional distress, etc.—will not be enough to warrant a finding of unfairness.''); FTC Unfairness Policy Statement at 3 (''Emotional impact and other more subjective types of harm * * * will not ordinarily make a practice unfair.'').

[17] *See* Statement for FTC Credit Practices Rule, 49 FR at 7743; FTC Policy Statement on Unfairness at 3 & n.12.

[18] *See Am. Fin. Servs. Assoc.* v. *FTC,* 767 F.2d 957, 978–83 (DC Cir. 1985) (''In essence, petitioners ask the court to limit the FTC's exercise of its unfairness authority to situations involving deception, coercion, or withholding of material information. * * * [D]espite considerable controversy over the bounds of the FTC's authority, neither Congress nor the FTC has seen fit to delineate the specific 'kinds' of practices which will be deemed unfair within the meaning of section 5.'').

[19] *See* FTC Policy Statement on Unfairness at 3.

[20] *See* Statement for FTC Credit Practices Rule, 49 FR at 7744 (''Normally, we can rely on consumer choice to govern the market.''); FTC Policy Statement on Unfairness at 3.

[21] *See* Statement for FTC Credit Practices Rule, 49 FR at 7744 (''In considering whether an act or practice is unfair, we look to whether free market decisions are unjustifiably hindered.''); FTC Policy Statement on Unfairness at 3 & n.19 (''In some senses any injury can be avoided—for example, by hiring independent experts to test all products in advance, or by private legal actions for damages—but these courses may be too expensive to be practicable for individual consumers to pursue.'').

[22] *See* Statement for FTC Credit Practices Rule, 49 FR 7740 *et seq.; see also Am. Fin. Servs. Assoc.,* 767 F.2d at 978–83 (upholding the FTC's analysis).

[23] One commenter stated that the following language from the FTC Policy Statement on Unfairness suggested that complexity alone is not sufficient to make injury unavoidable: ''A seller's failure to present complex technical data on his product may lessen a consumer's ability to choose * * * but may also reduce the initial price he must pay for the article.'' FTC Policy Statement on Unfairness at 3. The Agencies note that the FTC included this example in its discussion of whether injury is outweighed by countervailing benefits, not whether the injury is reasonably avoidable.

[24] *See* Statement for FTC Credit Practices Rule, 49 FR at 7744; FTC Policy Statement on Unfairness at 3; *see also* S. Rep. 103–130, at 13 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1776, 1788 (''In determining whether a substantial consumer injury is outweighed by the countervailing benefits of a practice, the Committee does not intend that the FTC quantify the detrimental and beneficial effects of the practice in every case. In many instances, such a numerical benefit-cost analysis would be unnecessary; in other cases, it may be impossible. This section would require, however, that the FTC carefully evaluate the benefits and costs of each exercise of its unfairness authority, gathering and considering reasonably available evidence.'').

[25] *See* FTC Public Comment on OTS–2007–0015, at 6 (Dec. 12, 2007) (available at *http://www.ots.treas.gov/docs/9/963034.pdf*).

[26] *See* FTC Public Comment on OTS–2007–0015, at 8 (citing Preservation of Consumers' Claims and Defenses, Statement of Basis and Purpose, 40 FR 53506, 53523 (Nov. 18, 1975) (codified at 16 CFR 433)); *see also* FTC Policy Statement on Deception, Letter from the FTC to the Hon. John H. Dingell, H. Comm. on Energy & Commerce (Oct. 14, 1983) (FTC Policy Statement on Deception) (available at *http://www.ftc.gov/bcp/policystmt/ad-decept.htm*) (''Deceptive practices injure both competitors and consumers because consumers who preferred the competitor's product are wrongly diverted.'').

[27] *See* 15 U.S.C. 45(n); Board and FDIC, Unfair or Deceptive Acts or Practices by State-Chartered Banks at 3–4 (''Public policy, as established by statute, regulation, or judicial decisions may be considered with all other evidence in determining whether an act or practice is unfair.'').

[28] *See, e.g.*, FTC Policy Statement on Unfairness at 5 (stating that public policy ''should be clear and well-established'' and ''should be declared or embodied in formal sources such as statutes, judicial decisions, or the Constitution as interpreted by the court * * *'').

[29] Several commenters urged the Agencies to consider the safety and soundness of financial institutions either under the countervailing benefits prong or as public policy. To the extent that these commenters raised specific safety and soundness concerns, those concerns are addressed below.

regulations substantially similar to those issued by the FTC if the Board ''finds that implementation of similar regulations with respect to banks, savings and loan institutions or Federal credit unions would seriously conflict with essential monetary and payments systems policies of such Board, and publishes any such finding, and the reasons therefore, in the **Federal Register**.'' [30] Nevertheless, to the extent a commenter has cited a specific monetary or payments systems policy that may conflict with one of these rules, the Agencies have considered that potential conflict below.

C. Standards for Deception Under the FTC Act

The FTC has also adopted standards for determining whether an act or practice is deceptive under the FTC Act.[31] Under the FTC's standards, an act or practice is deceptive where: (1) There is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (2) that information is material to consumers.[32] Although these standards have not been codified, they have been applied by numerous courts.[33] Accordingly, in proposing rules under section 18(f)(1) of the FTC Act, the Agencies applied the standards articulated by the FTC for determining whether an act or practice is deceptive.[34]

A representation or omission is deceptive if the overall net impression created is likely to mislead consumers.[35] The FTC conducts its own analysis to determine whether a representation or omission is likely to mislead consumers acting reasonably under the circumstances.[36] When evaluating the reasonableness of an interpretation, the FTC considers the sophistication and understanding of consumers in the group to whom the act or practice is targeted.[37] If a representation is susceptible to more than one reasonable interpretation, and if one such interpretation is misleading, then the representation is deceptive even if other, non-deceptive interpretations are possible.[38]

A representation or omission is material if it is likely to affect the consumer's conduct or decision regarding a product or service.[39] Certain types of claims are presumed to be material, including express claims and claims regarding the cost of a product or service.[40]

D. Choice of Remedy

The Agencies have wide latitude to determine what remedy is necessary to prevent an unfair or deceptive act or practice so long as that remedy has a reasonable relation to the act or practice.[41] The Agencies have carefully considered the potential remedies for addressing each practice and have adopted the remedy that, in the Agencies' judgment, is effective in preventing that practice while minimizing the burden on institutions.

III. Summary of Final Rule

Based on the comments and further analysis, the Agencies have revised the proposed rules substantially. As discussed in greater detail below, the Agencies are not taking action on some aspects of the proposed rule at this time. However, the Agencies note that this rule is not intended to identify all unfair or deceptive acts or practices, even with regard to consumer credit card accounts. Accordingly, the fact that a particular act or practice is not addressed by today's final rule does not limit the ability of any agency to make a determination that it is unfair or deceptive. As noted elsewhere, to the extent that specific practices raise concerns regarding unfairness or deception under the FTC Act, the Agencies plan to continue to address those practices on a case-by-case basis through supervisory and enforcement actions.

Credit Practices Rule

The Agencies proposed to make certain non-substantive, organizational changes to their respective versions of the Credit Practices Rule. These changes are adopted as proposed except for one additional nonsubstantive clarification to the scope paragraph of OTS's rule.

OTS also solicited comment on eliminating the section of its rule on state exemptions. 73 FR at 28911. OTS is eliminating that section as discussed in section IV of this **SUPPLEMENTARY INFORMATION**.

Consumer Credit Card Accounts

In May 2008, the Agencies proposed several provisions under the FTC Act related to consumer credit card accounts. As discussed below, based on the comments and further analysis, the Agencies have adopted five provisions designed to protect consumers who use credit cards from unfair acts or practices.

First, the Agencies have adopted the proposed rule prohibiting institutions from treating a payment as late for any purpose unless consumers have been provided a reasonable amount of time to make that payment. The Agencies have also adopted the proposed safe harbor providing that institutions may comply with this requirement by adopting reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days before the payment due date. Elsewhere in today's **Federal Register**, the Board has adopted two additional proposals under Regulation Z that further ensure that consumers receive a reasonable amount of time to make payment. Specifically, the Board has revised 12 CFR 226.10(b) to seek to ensure that creditors do not set cut-off times for mailed payments earlier than 5 p.m. at the location specified by the creditor for receipt of such payments. The Board has also adopted 12 CFR 226.10(d), which requires that, if the due date for payment is a day on which the U.S. Postal Service does not deliver mail or the creditor does not accept payment by mail, the creditor may not treat a payment received by mail the next business day as late for any purpose.

Second, the Agencies have adopted a revised version of the proposed rule regarding allocation of payments when different annual percentage rates apply to different balances on a consumer credit card account. The final rule requires institutions to allocate amounts paid in excess of the minimum payment either by applying the entire amount

[30] 15 U.S.C. 57a(f)(1) (third sentence).

[31] FTC Policy Statement on Deception.

[32] *Id.* at 1–2. The FTC views deception as a subset of unfairness but does not apply the full unfairness analysis because deception is very unlikely to benefit consumers or competition and consumers cannot reasonably avoid being harmed by deception. *Id.*

[33] *See, e.g., FTC* v. *Tashman,* 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC* v. *Gill,* 265 F.3d 944, 950 (9th Cir. 2001); *FTC* v. *QT, Inc.,* 448 F. Supp. 2d 908, 957 (N.D. Ill. 2006); *FTC* v. *Think Achievement,* 144 F. Supp. 2d 993, 1009 (N.D. Ind. 2000); *FTC* v. *Minuteman Press,* 53 F. Supp. 2d 248, 258 (E.D.N.Y. 1998).

[34] As noted above, the Board, FDIC, and OCC have issued guidance generally adopting these standards for purposes of enforcing the FTC Act's prohibition on unfair or deceptive acts or practices. As with the unfairness standard, comments on OTS's ANPR addressing this issue overwhelmingly urged the OTS to adopt the same deception standard as the FTC.

[35] *See, e.g., FTC* v. *Cyberspace.com,* 453 F.3d 1196, 1200 (9th Cir. 2006); *Gill,* 265 F.3d at 956; *Removatron Int'l Corp.* v. *FTC,* 884 F.2d 1489, 1497 (1st Cir. 1989).

[36] *See FTC* v. *Kraft, Inc.,* 970 F.2d 311, 319 (7th Cir. 1992); *QT, Inc.,* 448 F. Supp. 2d at 958.

[37] FTC Policy Statement on Deception at 3.

[38] *Id.*

[39] *Id.* at 2, 6–7.

[40] *See* FTC Public Comment on OTS–2007–0015, at 21; FTC Policy Statement on Deception at 6; *see also FTC* v. *Pantron I Corp.,* 33 F.3d 1088, 1095–96 (9th Cir. 1994); *In re Peacock Buick,* 86 F.T.C. 1532, 1562 (1975), *aff'd* 553 F.2d 97 (4th Cir. 1977).

[41] *See Am. Fin. Servs. Assoc.,* 767 F.2d at 988–89 (*citing Jacob Siegel Co.* v. *FTC,* 327 U.S. 608, 612–13 (1946)).

first to the balance with the highest annual percentage rate or by splitting the amount pro rata among the balances.

Third, the Agencies have revised the proposed rule regarding increases in annual percentage rates to require institutions to disclose at account opening the rates that will apply to the account and to prohibit institutions from increasing annual percentage rates unless expressly permitted. Institutions are permitted to increase a rate disclosed at account opening at the expiration of a specified period, provided that the increased rate was also disclosed at account opening. After the first year following opening of the account, institutions are also permitted to increase rates for new transactions so long as the institution complies with the 45-day advance notice requirement in Regulation Z (adopted by the Board elsewhere in today's **Federal Register**). In addition, institutions may increase a variable rate due to the operation of an index and increase a rate when the consumer is more than 30 days' delinquent.

Fourth, the Agencies have adopted the proposed rule prohibiting institutions from imposing finance charges based on balances for days in billing cycles that precede the most recent billing cycle as a result of the loss of a grace period. This rule generally prohibits institutions from reaching back to earlier billing cycles when calculating the amount of interest charged in the current cycle, a practice that is sometimes referred to as two- or double-cycle billing.

Fifth, the Agencies have adopted a revised version of the proposed rule regarding the financing of security deposits or fees for the issuance or availability of credit (such as account-opening fees or membership fees). The final rule prohibits institutions from financing security deposits or fees for the issuance or availability of credit if, during the first year after account opening, those deposits or fees consume the majority of the available credit on the account. In addition, the Agencies have adopted a requirement that security deposits and fees exceeding 25 percent of the credit limit to be spread over no less than the first six months, rather than charged as a lump sum during the first billing cycle. Furthermore, elsewhere in today's **Federal Register**, the Board has adopted revisions to Regulation Z requiring creditors that collect or obtain a consumer's agreement to pay a fee before providing account-opening disclosures to permit that consumer to reject the plan after receiving the disclosures and, if the consumer does so, to refund any fee collected or to take any other action necessary to ensure the consumer is not obligated to pay the fee.

Finally, the Agencies are not taking action at this time on the proposed rule addressing holds placed on available credit. As discussed below, the Board is proposing to address holds placed on available funds in a deposit account using its authority under Regulation E. In addition, the Agencies are not taking action at this time on the proposed rule regarding firm offers of credit advertising multiple annual percentage rates or credit limits. Concerns about this practice are addressed by amendments to Regulation Z adopted by the Board elsewhere in today's **Federal Register**. The Agencies plan to rely on case-by-case supervisory and enforcement actions in appropriate circumstances where practices regarding credit holds or firm offers of credit raise unfairness or deception concerns.

Overdraft Services

The Agencies are not taking action on overdraft services on deposit accounts or debit holds at this time. As discussed below, the Board has published a separate proposal addressing these issues under Regulation E elsewhere in today's **Federal Register**. The Agencies will review information obtained through that rulemaking to determine whether to take further action.

IV. Section-by-Section Analysis of the Credit Practices Subpart

On March 1, 1984, the FTC adopted its Credit Practices Rule pursuant to its authority under the FTC Act to promulgate rules that define and prevent unfair or deceptive acts or practices in or affecting commerce.[42] The FTC Act provides that, whenever the FTC promulgates a rule prohibiting specific unfair or deceptive practices, the Board, OTS (as the successor to the Federal Home Loan Bank Board), and NCUA must adopt substantially similar regulations imposing substantially similar requirements with respect to banks, savings associations, and federal credit unions within 60 days of the effective date of the FTC's rule unless the agency finds that such acts or practices by banks, savings associations, or federal credit unions are not unfair or deceptive or the Board finds that the adoption of similar regulations for banks, savings associations, or federal credit unions would seriously conflict with essential monetary and payment-systems policies of the Board. The Agencies have previously adopted rules substantially similar to the FTC's Credit Practices Rule.[43]

As part of this rulemaking, the Agencies proposed to reorganize aspects of their respective Credit Practices Rules. Although the Agencies have approached these revisions differently in some respects, the Agencies do not intend to create any substantive difference among their respective rules and believe that these rules remain substantially similar to the FTC's Credit Practices Rule. Except as otherwise stated below, the Agencies did not receive comments on this portion of the proposal.

Subpart A—General Provisions

Subpart A contains general provisions that apply to the entire part. As discussed below, there are some differences among the Agencies' proposals.

Section __.1 Authority, purpose, and scope[44]

The provisions in proposed § __.1 were largely drawn from the current authority, purpose, and scope provisions in the Agencies' respective Credit Practices Rules. As discussed below, § __.1 is generally adopted as proposed.

Section __.1(a) Authority

Proposed § __.1(a) provided that the Agencies issued this part under section 18(f) of the FTC Act. Section __.1(a) is adopted largely as proposed.

One commenter urged that OTS should use safety and soundness authority as the legal basis for this rule, including its authority under HOLA. While OTS disagrees with this commenter to the extent that it argued that OTS should use its safety and soundness authority instead of its FTC Act authority, OTS agrees that HOLA serves as an appropriate secondary basis for OTS's portion of the rule. Accordingly, OTS is inserting express references to HOLA in its rule (including § 535.1(a)) to reflect that HOLA serves as an independent secondary basis for OTS's final rule.

HOLA provides authority for both safety and soundness and consumer protection regulations. Consequently, HOLA serves as a secondary,

[42] *See* 42 FR 7740 (Mar. 1, 1984) (codified at 16 CFR part 444); *see also* 15 U.S.C. 57a(a)(1)(B), 45(a)(1).

[43] *See* 12 CFR part 227, subpart B (Board); 12 CFR 535 (OTS); 12 CFR 706 (NCUA).

[44] The Board, OTS, and NCUA have placed these rules in, respectively, parts 227, 535, and 706 of title 12 of the Code of Federal Regulations. For each reference, the discussion in this **SUPPLEMENTARY INFORMATION** uses the shared numerical suffix of each agency's rule. For example, § __.1 will be codified at 12 CFR 227.1 by the Board, 12 CFR 535.1 by OTS, and 12 CFR 706.1 by NCUA.

independent basis for OTS's rule. Using HOLA as a basis for this rulemaking was discussed in the **SUPPLEMENTARY INFORMATION** that accompanied the OTS's August 6, 2007 ANPR (72 FR at 43572–43573), was reflected in the preamble to the proposed rule and proposed rule text (73 FR at 28910 and 28948), and is also discussed further in the section-by-section analysis of § 535.26 in this **SUPPLEMENTARY INFORMATION.**

With regard to safety and soundness, HOLA section 4(a) (12 U.S.C. 1463(a)) authorizes the Director of OTS to issue regulations governing savings associations that the Director determines to be appropriate to carry out his responsibilities, including providing for the examination, safe and sound operation, and regulation of savings associations. The Director of OTS has used HOLA authority to issue regulations requiring savings associations to operate safely and soundly.[45] Existing OTS rules also allow the agency to impose limits on credit card lending, if a savings association's concentration in such lending presents a safety and soundness concern.[46] All of the practices addressed in the rule will advance the safety and soundness of consumer credit card lending by savings associations such as by reducing reputation risk, as well as the risk of litigation under state contract laws and, where applicable, state laws prohibiting unfair or deceptive acts or practices.

With regard to consumer protection, HOLA section 5(a) (12 U.S.C. 1464(a)) authorizes the Director of OTS to regulate federal savings associations giving primary consideration to the best practices of thrift institution in the United States. As courts have consistently and repeatedly recognized for decades, HOLA empowered OTS and its predecessor agency, the Federal Home Loan Bank Board (FHLBB), to adopt comprehensive rules and regulations governing the operations of federal savings associations.[47]

[45] *See, e.g.*, 12 CFR 563.161(a) (OTS management and financial policies rule).

[46] See 12 CFR 560.30 and Endnote 6.

[47] As stated in *Fid. Fed. Sav. & Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 144–45 (1982):

The [FHLBB], an independent federal regulatory agency, was formed in 1932 and thereafter was vested with plenary authority to administer [HOLA] * * *. Section 5(a) of the HOLA * * * empowers the Board, ''under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations.' '' Pursuant to this authorization, the [FHLBB] has promulgated regulations governing ''the powers and operations of every Federal savings and loan association from its cradle to its corporate grave.'' *People* v. *Coast Federal Savings and Loan Ass'n*, 98 F. Supp. 311, 316 (S.D. Cal. 1951).

Accord Conference of Federal Savings and Loan Associations v. *Stein*, 604 F.2d 1256, 1260 (9th Cir. 1979), *aff'd mem.*, 445 U.S. 921 (1980) (recognizing the ''pervasive'' and ''broad'' regulatory control of the FHLBB over federal savings associations granted by HOLA).

Consequently, OTS has a history of using HOLA as the legal basis for consumer protection regulations. Examples include the OTS Advertising Rule,[48] OTS rules that limit home loan late charges, prepayment penalties, and adjustments to the interest rate, payment, balance, or term to maturity,[49] as well as the portions of the OTS Nondiscrimination Rule that exceed Equal Credit Opportunity Act and Fair Housing Act requirements.[50] All of the practices addressed in the rule will help protect consumers.

Section __.1(b) Purpose

Proposed § __.1(b) provided that the purpose of the part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). It further provided that the part contains provisions that define and set forth requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices. In May 2008, the Agencies noted that these provisions define and prohibit specific unfair or deceptive acts or practices within a single provision, rather than setting forth the definitions and remedies separately. Finally, proposed § __.1(b) clarified that the prohibitions in subparts B, C, and D do not limit the Agencies' authority to enforce the FTC Act with respect to other unfair or deceptive acts or practices.

The Agencies have revised proposed § __.1(b) to reflect their decision not to take action on proposed subpart D at this time. Also, OTS has added an express reference to HOLA in § 535.1(b). Otherwise, this provision is adopted as proposed.

Section __.1(c) Scope

Proposed § __.1(c) described the scope of each agency's rules. The Agencies each tailored this paragraph to describe those entities to which their part applies.

The Board's proposed provision stated that the Board's rules would apply to banks and their subsidiaries, except savings associations as defined in 12 U.S.C. 1813(b). It further explained that enforcement of the Board's rules is allocated among the Board, the OCC, and the FDIC, depending on the type of institution. This provision was updated to reflect intervening changes in law. The Board also proposed to revise its Staff Guidelines to the Credit Practices Rule to remove questions 11(c)–1 and 11(c)–2, to update the substance of its answers to those questions, and to publish those answers as commentary to proposed § 227.1(c). *See* proposed Board comments 227.1(c)–1 and –2. As proposed, the remaining questions and answers in the Board's Staff Guidelines would remain in place. The Board has adopted these proposals without alteration.

[48] 12 CFR 563.27.

[49] 12 CFR 560.33, 12 CFR 560.34, and 12 CFR 560.35.

[50] 12 CFR part 528.

OTS's proposed provision stated that its rules apply to savings associations and subsidiaries owned in whole or in part by a savings association. OTS also enforces compliance with respect to these institutions. As proposed, the entire OTS part would have the same scope. In May 2008, OTS noted that this scope is somewhat different from the scope of its existing Credit Practices Rule. Prior to today's revisions, OTS's Credit Practices Rule applied to savings associations and service corporations that were wholly owned by one or more savings associations, which engaged in the business of providing credit to consumers. Since the proposed rules would cover more practices than consumer credit, the proposal deleted the reference to engaging in the business of providing credit to consumers. The proposal also updated the reference to wholly owned service corporations to refer instead to subsidiaries in order to reflect the current terminology used in OTS's Subordinate Organizations Rule.[51]

Only one commenter addressed the scope of OTS's proposed rule. It supported applying the rule to savings associations and subsidiaries as proposed. Another commenter requested clarification of which entities the rule refers to as ''you.'' OTS is finalizing the scope as proposed but clarifying through a parenthetical in § 535.1(c) that the term ''you'' refers to savings associations and subsidiaries owned in whole or in part by a savings association.

The NCUA's proposed provision stated that its rules would apply to federal credit unions. This provision is adopted as proposed.

Section 227.1(d) Definitions

Proposed § __.1(d) of the Board's rule would have clarified that, unless

[51] 12 CFR part 559. OTS has substantially revised this rule since promulgating its Credit Practices Rule. *See, e.g.*, Subsidiaries and Equity Investments: Final Rule, 61 FR 66561 (Dec. 18, 1996).

otherwise noted, terms used in the Board's proposed § __.1(c) that are not defined in the FTC Act or in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101). This provision is adopted as proposed.

OTS and NCUA did not have a need for a comparable subsection so none was included in their proposed rules.

Section 227.2 Consumer-Complaint Procedure

In order to accommodate the revisions discussed above, the Board proposed to consolidate the consumer complaint provisions previously located in 12 CFR 227.1 and 227.2 in proposed § 227.2. The Board has revised the proposal for clarity and to include an e-mail address and Web site where consumers can submit complaints. Otherwise, this provision is adopted as proposed.

OTS and NCUA do not have and did not propose to add comparable provisions.[52]

Subpart B—Credit Practices

Each agency has placed the substantive provisions of their Credit Practices Rule in Subpart B. In order to retain the current numbering in its Credit Practices Rule, the Board has reserved 12 CFR 227.11, which previously contained the Board's statement of authority, purpose, and scope. The other provisions of the Board's Credit Practices Rule (§§ 227.12 through 227.16) have not been revised.

As discussed below, OTS proposed several notable changes to its version of Subpart B. Except as otherwise stated, these sections have been adopted as proposed.

Section 535.11 Definitions (Previously § 535.1)

OTS received no comments on its proposed changes to this section and is finalizing it as proposed. OTS has deleted the definitions of ''Act,'' ''creditor,'' and ''savings association'' as unnecessary. It has substituted the term ''you'' for ''savings association'' or ''creditor'' in the definitions of ''consumer credit'' and ''obligation'' as applicable. For the convenience of the user, OTS has also incorporated the definition of ''consumer credit'' into this section, instead of using a cross-reference to a definition contained in a different part of OTS's rules. OTS has moved the definition of ''cosigner'' to the section on unfair or deceptive cosigner practices. OTS has also merged the definition of ''debt'' into the definition of ''collecting a debt'' contained in the section on late charges. Finally, OTS has moved the definition of ''household goods'' to the section on unfair credit contract provisions.

Section 535.12 Unfair Credit Contract Provisions (Previously § 535.2)

OTS received no comments on its proposed changes to this section and is finalizing it as proposed. OTS has revised the title of this section to reflect its focus on credit contract provisions. OTS has also deleted the obsolete reference to extensions of credit after January 1, 1986.

Section 535.13 Unfair or Deceptive Cosigner Practices (Previously § 535.3)

OTS received no comments on its proposed changes to this section and is finalizing it as proposed. OTS has deleted the obsolete reference to extensions of credit after January 1, 1986. OTS has substituted the term ''substantially similar'' for the term ''substantially equivalent'' in referencing a document that equates to the cosigner notice for consistency with the Board's rule and to avoid confusion with the term of art ''substantial equivalency'' used in the Board's section on state exemptions. OTS has also clarified that the date that may be stated on the cosigner notice is the date of the transaction. NCUA has made similar amendments to its rule in § 706.13 (previously § 706.3).

Section 535.14 Unfair Late Charges (Previously § 535.4)

OTS received no comments on its proposed changes to this section and is finalizing it as proposed. OTS has revised the title of this section to reflect its focus on unfair late charges. OTS has deleted the obsolete reference to extensions of credit after January 1, 1986. Similarly, NCUA has made similar revisions to § 706.14 (previously § 706.4).

Section 535.15 State Exemptions (Previously § 535.5)

OTS proposed to revise the subsection on delegated authority to update the current title of the OTS official with delegated authority to make determinations under this section. As discussed below, however, OTS has removed § 535.5 from codification and has not replaced it with proposed § 535.15.

The FTC's Credit Practices Rule included a provision allowing states to seek exemptions from the rule if state law affords a greater or substantially similar level of protection. *See* 16 CFR 444.5. The Agencies adopted similar provisions in their respective Credit Practices Rules. *See* 12 CFR 227.16; 12 CFR 535.5; 12 CFR 706.5. The May 2008 Proposal did not extend this provision to the proposed rules for consumer credit card accounts and overdraft services because there was no legal requirement to do so.[53] The Agencies noted that only three states have been granted exemptions under the Credit Practices Rule.[54] The Agencies stated that, because the exemption is available when state law is ''substantially equivalent'' to the federal rule, an exemption may provide little relief from regulatory burden while undermining the uniform application of federal standards. Accordingly, the Agencies requested comment on whether states should be permitted to seek exemption from the proposed rules on consumer credit card accounts and overdraft services if state law affords a greater or substantially similar level of protection. In addition, OTS requested comment on whether the state exemption provision in its Credit Practices Rule should be retained.

The Agencies received only a few comments on state exemptions. One consumer advocacy organization urged the Agencies to expand the opportunity for state exemptions to the final rule as a way to ensure a consumer private right of action under state law and to enable states to develop new protections. In contrast, several financial institutions opposed allowing states to seek exemption from practices addressed in the final rule. They argued that allowing such exemptions would provide no meaningful regulatory burden relief and would interfere with consistent implementation of the final rule.

The Agencies have decided not to extend the opportunity for state exemptions to the final rule. First, as noted above, the FTC Act does not require the Agencies to provide such an opportunity. Second, requiring all

[52] Longstanding OTS and NCUA complaint procedures are available to consumers and the public at *http://www.ots.treas.gov* and *http://www.ncua.gov.*

[53] The provision requiring consideration of requests for exemption from rules promulgated under the FTC Act applies only to the FTC. *See* 12 U.S.C. 57a(g).

[54] The Board and the FTC have granted exemptions to Wisconsin, New York, and California. 51 FR 24304 (July 3, 1986) (FTC exemption for Wisconsin); 51 FR 28238 (Aug. 7, 1986) (FTC exemption for New York); 51 FR 41763 (Nov. 19, 1986) (Board exemption for Wisconsin); 52 FR 2398 (Jan. 22, 1987) (Board exemption for New York); 53 FR 19893 (June 1, 1988) (FTC exemption for California); 53 FR 29233 (Aug. 3, 1988) (Board exemption for California). The Federal Home Loan Bank Board (''FHLBB''), OTS's predecessor agency, granted an exemption to Wisconsin. 51 FR 45879 (Dec. 23, 1986). The NCUA has not granted any exemptions.

institutions under the Agencies' jurisdiction to comply with the final rule will enhance consumer protections nationwide and facilitate uniformity in examinations.

OTS received a few comments on whether it should retain the existing state exemption provision in its Credit Practices Rule. The comments on this issue largely tracked those discussed above concerning whether to expand the availability of state exemptions to new practices addressed in the final rule. In addition, one organization representing state banking interests supported preserving state laws that afford more protection to consumers than the federal rule.

A few comments reflect confusion about how the availability or unavailability of state exemptions would affect federal savings associations. Eliminating the availability of exemptions under the OTS Credit Practices Rule will have no direct effect on federal savings associations. Apparently, the only state exemption granted by OTS or its predecessor is to the State of Wisconsin for substantially equivalent provisions of the Wisconsin Consumer Act. That exemption only applied to state-chartered savings associations; it specifically did not extend to federal savings associations.[55]

For the same reasons the Agencies are not extending the opportunity for state exemptions to apply to new practices addressed in the final rule, OTS is removing § 535.5 and eliminating the existing state exemption authority under its rule. Accordingly, the exemption granted to Wisconsin and any other exemptions which may have been granted by OTS or its predecessor with respect to its Credit Practices Rule will cease to be in effect as of this rule's effective date.

V. Section-by-Section Analysis of the Consumer Credit Card Practices Subpart

Pursuant to their authority under 15 U.S.C. 57a(f)(1), the Agencies adopt rules prohibiting specific unfair acts or practices with respect to consumer credit card accounts. A secondary basis for OTS's rule is HOLA. These rules are located in a new Subpart C to the Agencies' respective regulations under the FTC Act.

Section __.21—Definitions

Section __.21 defines certain terms used in Subpart C.

Section __.21(a) Annual Percentage Rate

Proposed § __.21(a) defined ''annual percentage rate'' as the product of multiplying each periodic rate for a balance or transaction on a consumer credit card account by the number of periods in a year. This definition corresponded to the definition of ''annual percentage rate'' in 12 CFR 226.14(b). As discussed in the Board's official staff commentary to 12 CFR 226.14(b), this computation does not reflect any particular finance charge or periodic balance. *See* 12 CFR 226.14 comment 226.14(b)–1. This definition also incorporated the definition of ''periodic rate'' from Regulation Z. *See* 12 CFR 226.2.

The Agencies did not receive any significant comments on this definition. Accordingly, it is adopted as proposed.

Section __.21(b) Consumer

Proposed § __.21(b) defined ''consumer'' as a natural person to whom credit is extended under a consumer credit card account or a natural person who is a co-obligor or guarantor of a consumer credit card account. The Agencies did not receive any significant comments on this definition. Accordingly, it is adopted as proposed.

Section __.21(c) Consumer Credit Card Account

Proposed § __.21(c) defined ''consumer credit card account'' as an account provided to a consumer primarily for personal, family, or household purposes under an open-end credit plan that is accessed by a credit or charge card. This definition incorporated the definitions of ''open-end credit,'' ''credit card,'' and ''charge card'' from Regulation Z. *See* 12 CFR 226.2. Under the proposed definition, a number of accounts would have been excluded consistent with exceptions to disclosure requirements for credit and charge card applications and solicitations. *See* 12 CFR 226.5a(a)(5). For example, home-equity plans accessible by a credit card and lines of credit accessible by a debit card are not covered by proposed § __.21(c).

One consumer group requested that this definition be expanded to cover debit cards with a linked credit card feature. The Agencies do not believe any change is necessary because, to the extent such cards meet the definition of ''credit card'' under 12 CFR 226.2, they are covered. Accordingly, this definition is adopted as proposed.

Proposed Section __.21(d) Promotional Rate

Proposed § __.21(d) defined ''promotional rate.'' This definition was similar to the definition of ''promotional rate'' proposed by the Board in 12 CFR 226.16(e)(2) in the May 2008 Regulation Z Proposal. *See* 73 FR at 28892. As discussed in greater detail below, the provisions in proposed §§ __.23 and __.24 utilizing this definition have been revised such that a definition of ''promotional rate'' is no longer necessary for purposes of this subpart. Accordingly, this definition and its accompanying commentary have not been included in the final rule.

Section __.22—Unfair Acts or Practices Regarding Time To Make Payment

Summary. In May 2008, the Agencies proposed § __.22(a), which would have prohibited institutions from treating payments on a consumer credit card account as late for any purpose unless the institution has provided a reasonable amount of time for consumers to make payment. *See* 73 FR at 28912–28914. The Agencies also proposed a safe harbor in § __.22(b) for institutions that adopt reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date. Finally, to avoid any potential conflict with section 163(a) of TILA (15 U.S.C. 1666b(a)), the Agencies expressly stated in proposed § __.22(c) that the rule would not apply to any time period provided by an institution within which the consumer may repay any portion of the credit extended without incurring an additional finance charge. As discussed below, based on the comments and further analysis, the Agencies have adopted § __.22 as proposed except that proposed § __.22(b) has been revised to clarify that institutions must be able to establish that they have complied with § __.22(a).

Background. Section 163(a) of TILA requires creditors to send periodic statements at least 14 days before expiration of any period during which consumers can avoid finance charges on purchases by paying the balance in full (in other words, the ''grace period''). 15 U.S.C. 1666b(a). TILA does not, however, mandate a grace period, and grace periods generally do not apply when consumers carry a balance from month to month. Regulation Z requires that creditors mail or deliver periodic

[55] *See* Prohibited Consumer Credit Practices; Request for Exemption by State of Wisconsin, 51 FR 45879 (Dec. 23, 1986) (''It is well established that the [FHLBB] has exclusive authority to regulate all aspects of the operations of federally chartered associations under section 5 of [HOLA]. *See, e.g.*, 12 CFR 545.2. Federally chartered associations will therefore continue to be subject to the rule rather than the Wisconsin Act, and the [FHLBB] will continue to examine them for compliance with the Rule.'').

statements 14 days before the date by which payment is due for purposes of avoiding additional finance charges or other charges, such as late fees. *See* 12 CFR 226.5(b)(2)(ii); 12 CFR 226.5 comment 5(b)(2)(ii)–1.

In its June 2007 Regulation Z Proposal, the Board noted anecdotal evidence of consumers receiving statements relatively close to the payment due date, with little time remaining to mail their payments in order to avoid having those payments treated as late. The Board observed that it may take several days for a consumer to receive a statement after the close of a billing cycle. The Board also observed that consumers who pay by mail may need to mail their payments several days before the due date to ensure that the payment is received on or before that date. Accordingly, the Board requested comment on whether it should recommend to Congress that the 14-day requirement in section 163(a) of TILA be increased. *See* 72 FR at 32973.

In response to the June 2007 Regulation Z Proposal, individual consumers, consumer groups, and a member of Congress stated that consumers were not being provided with a reasonable amount of time to pay their credit card bills. These commenters indicated that, because of the time required for periodic statements to reach consumers by mail and for consumers' payments to reach creditors by mail, consumers had little time in between to review their statements for accuracy before making payment. This situation can be exacerbated if the consumer is traveling unexpectedly or otherwise unable to give the statement immediate attention when it is delivered or if the consumer needs to compare the statement to receipts or other records. In addition, some commenters indicated that consumers are unable to accurately predict when their payment will be received by a creditor due to uncertainties about how quickly mail is delivered. Some commenters argued that, because of these difficulties, consumers' payments were received after the due date, leading to finance charges as a result of loss of the grace period, late fees, rate increases, and other adverse consequences.

Industry commenters, however, generally stated that consumers currently receive ample time to make payments, particularly in light of the increasing number of consumers who receive periodic statements electronically and make payments electronically or by telephone. These commenters also stated that providing additional time for consumers to make payments would be operationally difficult and would reduce interest revenue, which would have to be recovered by raising the cost of credit for all consumers.

Comments on the Agencies' May 2008 Proposal were generally consistent with those on the Board's June 2007 Regulation Z Proposal. Individual consumers, consumer groups, members of Congress, the FDIC, and state attorneys general largely supported the proposed rule. Some of these commenters stated that institutions have reduced the amount of time for consumers to make payment while increasing the late payment fees, penalty rates, and other costs imposed on consumers as a result of late payment.[56] In contrast, although some industry groups and credit card issuers supported the proposal, most industry commenters opposed the proposed rule, stating that consumers have more time to make payment than ever before because of alternative means for receiving statements and making payments. Some industry commenters also stated that complying with the proposed safe harbor would be impossible without making costly operational changes. To the extent that commenters addressed specific aspects of the proposal or its supporting legal analysis, those comments are discussed below.

Legal Analysis

The Agencies conclude that, based on the comments received and their own analysis, it is an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC to treat a payment on a consumer credit card account as late for any purpose (other than expiration of a grace period) unless the consumer has been provided a reasonable amount of time to make that payment.

Substantial consumer injury. In the May 2008 Proposal, the Agencies stated that an institution's failure to provide consumers a reasonable amount of time to make payment appeared to cause substantial monetary and other injury. The Agencies noted that, when a payment is received after the due date, institutions may impose late fees, increase the annual percentage rate on the account as a penalty, or report the consumer as delinquent to a credit reporting agency.

Several industry commenters stated that consumers are not harmed by the lack of a reasonable amount of time to pay because a significant majority of consumers pay on or before the due date, indicating that they currently receive sufficient time to make payment. Other commenters, however, noted that the GAO Report found that, in 2005, 35 percent of active accounts were assessed at least one late fee and that the average late fee assessment per active account was $30.92.[57] In addition, the Chairman of the Senate Permanent Subcommittee on Investigations cited case histories of consumers who received periodic statements shortly before the due date, making it difficult for them to avoid a late fee and, in some cases, a rate increase. This comment also cited instances in which consumers submitted payments 10 to 14 days in advance of the due date, only to have the payment treated as late. Individual consumers described similar experiences in their comments. Thus, the Agencies conclude that the failure to provide a reasonable amount of time to make payment causes or is likely to cause substantial monetary injury to a significant number of consumers.

Injury is not reasonably avoidable. The Agencies stated in the May 2008 Proposal that it appeared consumers could not reasonably avoid the injuries caused by late payment unless they were provided a reasonable amount of time to pay. The Agencies observed that it could be unreasonable to expect consumers to make a timely payment if they are not given a reasonable amount of time to do so after receiving a periodic statement, although what constitutes a reasonable amount of time may vary based on the circumstances. The Agencies noted that TILA and Regulation Z provide consumers with the right to dispute transactions or other items that appear on their periodic statements. Accordingly, the Agencies reasoned that, in order to exercise certain of these rights, consumers must have a reasonable opportunity to review their statements. *See* 15 U.S.C. 1666i; 12 CFR 226.12(c).

The Agencies further stated that, in some cases, travel or other circumstances may prevent the consumer from reviewing the statement immediately upon receipt. Finally, as discussed above, the Agencies recognized that, because consumers cannot control when a mailed payment will be received by the institution, a payment mailed well in advance of the due date may nevertheless arrive after that date.

Some industry commenters stated that consumers should know the due date

[56] *See* Testimony of Adam J. Levitin, Assoc. Prof. of Law, Georgetown Univ. Law Ctr. before the H. Subcomm. on Fin. Instits. & Consumer Credit at 13–14 (Mar. 13, 2008) (cited by several commenters).

[57] *See* GAO Report at 32–33.

and minimum payment before receiving a periodic statement and should therefore be prepared to make payment immediately. As an initial matter, however, the consumer's due date and minimum payment may vary from month to month depending on the institution's practices. For example, some institutions use a 30-day billing cycle, which results in due dates that vary with the length of the month. Similarly, a consumer would not necessarily know how much to pay without the periodic statement because the amount of the required minimum payment may vary depending on the percentage of the total balance included and whether interest charges and fees are included. Furthermore, a consumer who pays the balance in full each month may not know how much to pay until receiving a periodic statement stating the total amount owed.

Furthermore, this argument fails to recognize, as discussed above, that consumers must have a reasonable opportunity to review their statement in order to exercise their dispute rights under TILA and Regulation Z. Finally, travel or other circumstances may prevent the consumer from reviewing the statement immediately. Accordingly, the Agencies conclude the injuries caused by late payment are not reasonably avoidable unless the consumer is provided a reasonable amount of time to make payment.

Injury is not outweighed by countervailing benefits. The May 2008 Proposal stated that the injury does not appear to be outweighed by any countervailing benefits to consumers or competition. At the proposal stage, the Agencies were not aware of any direct benefit to consumers from receiving too little time to make their payments. The Agencies observed that, although a longer time to make payment could result in additional finance charges for consumers who do not receive a grace period, the consumer would have the choice whether to wait until the due date to make payment. The Agencies also acknowledged that, as a result of the proposed rule, some institutions could be required to incur costs to alter their systems and would, directly or indirectly, pass those costs on to consumers. The Agencies stated, however, that it did not appear that these costs would outweigh the benefits to consumers of receiving a reasonable amount of time to make payment.

Some industry commenters stated that, because their practices are already consistent with the proposed safe harbor in § __.22(b), the costs of complying with the proposed rule would be minimal. Other industry commenters indicated that complying with the proposed safe harbor would require significant changes to their processes for generating and delivering periodic statements. As discussed below, the Agencies have adopted the safe harbor as proposed. *See* § __.22(b)(2). Assuming that the cost of altering practices to comply with a 21-day safe harbor will be passed on to consumers, this cost will be spread among thousands or hundreds of thousands of consumers and will not outweigh the benefits to consumers of avoiding late fees and increased annual percentage rates. Thus, the Agencies conclude that the injury to consumers is not outweighed by any countervailing benefits to consumers or competition.

Public policy. Some industry commenters stated that the proposed 21-day safe harbor was contrary to public policy and the Board's established payment systems policy as set forth in section 163(a) of TILA and section 226.5(b)(2)(ii) of Regulation Z, which, as discussed above, provide that periodic statements must be mailed at least 14 days in advance of the expiration of the grace period. The Agencies, however, have expressly provided that § __.22 does not apply to the mailing or delivery of periodic statements with respect to the expiration of grace periods. *See* § __.22(c). In the May 2008 Proposal, the Agencies recognized that, in enacting section 163(a) of TILA, Congress set the minimum amount of time between sending the periodic statement and expiration of any grace period offered by the creditor at 14 days. Because most creditors currently offer grace periods and use a single due date for expiration of the grace period and the date after which a payment will be considered late for other purposes (such as the assessment of late fees), the Board requested comment in its June 2007 Regulation Z Proposal on whether it should request that Congress increase the mailing requirement with respect to grace periods.

Based on the comments received, the Agencies concluded in May 2008 that, because many consumers carry a balance from month to month and therefore do not receive a grace period, a separate rule might be needed to specifically address harms other than loss of the grace period when institutions do not provide a reasonable amount of time for consumers to make payment (such as late fees and rate increases as a penalty for late payment). However, in order to avoid any conflict with the statutory requirement regarding grace periods, proposed § __.22(c) specifically provided that the rule would not affect the requirements of section 163(a) of TILA. Accordingly, because § __.22(c) has been adopted as proposed, the Agencies conclude that § __.22 is not contrary to public policy generally or any established payment systems policy of the Board.

Final Rule

Section __.22(a) General Rule

Proposed § __.22(a) would have prohibited institutions from treating a payment as late for any purpose unless the consumer has been provided a reasonable amount of time to make that payment. For the reasons discussed above, the Agencies have adopted § __.22(a) as proposed.

Proposed comment 22(a)-1 clarified that treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within the amount of time provided under this section. One industry commenter stated that the failure to provide a reasonable amount of time to pay is unlikely to cause a consumer to be reported as delinquent to a credit reporting agency, citing the policy of credit reporting agencies to consider an account delinquent only when it is 30 days past due.[58] Although the Agencies agree that the failure to provide a reasonable amount of time to pay is unlikely to cause injury in the form of a delinquency notation on a credit report, allowing institutions that fail to provide a reasonable amount of time to pay to treat payments as late for purposes of credit reporting but not for other purposes would be anomalous. Accordingly, comment 22(a)–1 is adopted as proposed.

Proposed comment 22(a)–2 stated that whether an institution had provided a reasonable amount of time to pay would be evaluated from the perspective of the consumer, not the institution. Some industry commenters requested that the Agencies establish standards for determining whether a particular amount of time is reasonable. The Agencies, however, have adopted a flexible reasonableness analysis rather than a set of fixed standards because whether a particular amount of time is sufficient for consumers to make payment will depend on the facts and circumstances. In addition, in order to remove uncertainty and facilitate compliance, the Agencies have, as discussed below, provided a means for complying with § __.22(a) in § __.22(b)

[58] *See* Consumer Data Industry Ass'n, *Credit Reporting Resource Guide* 6–6 (2006).

and its accompanying commentary. Accordingly, comment 22(a)–2 is adopted as proposed.

Section __.22(b) Compliance With General Rule

As proposed, § __.22(b) provided a safe harbor for institutions that have adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date. As explained in the May 2008 Proposal, the 21-day safe harbor was intended to ensure that consumers received at least a week to review their statement and make payment. Compliance with this safe harbor would allow seven days for the periodic statement to reach the consumer by mail, seven days for the consumer to review the statement and make payment, and seven days for that payment to reach the institution by mail. The Agencies noted that, although increasing numbers of consumers are receiving periodic statements and making payments electronically, a significant number still utilize mail. The Agencies further noted that, while first class mail is often delivered within three business days, in some cases it can take significantly longer.[59] Furthermore, some large credit card issuers already recommend that consumers allow up to seven days for their payments to be received by the issuer via mail.

The Agencies requested comment on whether the proposed 21-day safe harbor provided a reasonable amount of time for consumers to review their periodic statements and make payment. Consumer groups and others stated that a longer period of 28 or 30 days was needed. Some industry commenters stated that they currently mail or deliver periodic statements 21 days in advance of the due date. Most industry commenters, however, raised the following objections to the proposed 21-day safe harbor.

First, many industry commenters stated that allowing seven days for receipt of mailed periodic statements was excessive because, in most cases, statements are generally delivered two to four days after mailing. These commenters, however, provided only the average delivery time or the delivery time for the great majority of consumers, not the outer range of delivery times. For example, as one consumer group noted, mailing times are often significantly longer for consumers in sparsely populated rural areas. Thus, while the Agencies agree that seven days may be more time than is needed for most consumers to receive a periodic statement by mail, a safe harbor based solely on average mailing times would not adequately protect the small but significant number of consumers whose delivery times are longer than average. Furthermore, because many institutions use practices that reduce delivery times for periodic statements (such as pre-sorting statements by ZIP code prior to delivery to the U.S. Postal Service), delivery times for periodic statements mailed by institutions to consumers likely are not representative of delivery times for payments mailed by consumers to institutions.

Second, several industry commenters stated that allowing seven days for mailing time was excessive for the additional reason that many consumers receive their statements electronically and make payment electronically or by telephone. These commenters, however, also confirmed that a significant number of consumers receive statements and make payments by mail. While many consumers at larger institutions have the ability to review statements online, it is unclear how many actually do so since most also receive statements by mail. Furthermore, the percentage of consumers paying by mail varied significantly by the type of institution. For example, some larger institutions reported that less than half of their consumers use mail to submit payments, while an industry group reported that 70 to 80 percent of community bank consumers mail their payments. In addition, one consumer group cited a study indicating that internet usage is not evenly distributed among the population.[60] Thus, a safe harbor based on the assumption that consumers use alternative means to receive statements or make payments would not protect a significant number of consumers.[61]

Third, many industry commenters stated that complying with the 21-day safe harbor would require significant and costly changes to institutions' practices for generating and mailing periodic statements. As discussed above, however, the Agencies have concluded that these costs are outweighed by the benefits to consumers of receiving a reasonable amount of time to pay.

Finally, some commenters stated that adjusting to the 21-day safe harbor could lead to consumer confusion because the institution would not have sufficient time to reflect timely payments on the subsequent periodic statement. This concern, however, depends on a number of variables, including the number of days in the month, whether the institution uses billing cycles that vary with the length of the month (as opposed to a fixed 30-day billing cycle), and whether the institution processes payments on weekends or holidays. Although it is possible that, in some narrow set of circumstances, an institution may not be able to reflect a timely payment on the periodic statement, the Agencies conclude that any resulting confusion does not warrant a reduction in the proposed safe harbor. Accordingly, the 21-day safe harbor is adopted as proposed except that, for the reasons discussed below, this provision has been retitled and, for reasons discussed below, moved to § __.22(b)(2).

In order to minimize burden and facilitate compliance, proposed comment 22(b)–1 clarified that an institution with reasonable procedures in place designed to ensure that statements are mailed or delivered within a certain number of days from the closing date of the billing cycle may utilize the safe harbor by adding that number to the 21-day safe harbor for purposes of determining the payment due date on the periodic statement. Proposed comment 22(b)–1 is adopted as proposed. Accordingly, if, for example, an institution had reasonable procedures in place designed to ensure that statements are mailed or delivered within three days of the closing date of the billing cycle, the institution could comply with the safe harbor by stating a payment due date on its periodic statements that is 24 days from the close of the billing cycle (in other words, 21 days plus three days). Similarly, if an institution's procedures reasonably ensured that payments would be sent within five days of the close of the billing cycle, the institution could comply with the safe harbor by setting the due date 26 days from the close of the billing cycle.

Proposed comment 22(b)–2 further clarified that the payment due date is

[59] *See, e.g.*, Testimony of Jody Berenblatt, Senior Vice President—Postal Strategy, Bank of America, before the S. Subcomm. on Fed. Fin. Mgmt., Gov't Info., Fed. Srvs., and Int'l Security (Aug. 2, 2007).

[60] *See* Public Policy Institute of Cal., *California's Digital Divide* (June 2008) (''Whites, blacks, and Asians currently have similarly high rates of computer and Internet use. Latinos have the lowest rates by far (computers 58%, Internet 48%).'') (available at *http://www.ppic.org/content/pubs/jtf/JTF_DigitalDivideJTF.pdf*).

[61] In addition, multiple safe harbors providing longer or shorter periods of time depending on how the consumer receives periodic statements or makes payments would not be operationally feasible because an institution will not know in advance what method a consumer will use. For example, a consumer might review their periodic statement online one month but wait for the statement to arrive by mail the next. Similarly, a consumer might pay electronically one month and by mail the next.

the date by which the institution requires the consumer to make payment in order to avoid being treated as late for any purpose (except with respect to expiration of a grace period). Comment 22(b)–2 is adopted as proposed.

The Agencies also received requests from industry for clarification that compliance with the safe harbor is not the only means of complying with the requirement that consumers be provided a reasonable amount of time to make the payment. Accordingly, the Agencies have restructured § .22(b) to provide additional clarity regarding compliance with § __.22(a). The Agencies have added a new § __.22(b)(1), which clarifies that institutions are responsible for establishing that they have complied with § __.22(a). The 21-day safe harbor, which the Agencies have moved to § __.22(b)(2), provides one method of compliance. Finally, the Agencies have added comment 22(b)–3, which provides an example of an alternative compliance method. In this example, because an institution only provides periodic statements and accepts payments electronically, the institution could deliver statements for those accounts less than 21 days before the payment due date and still satisfy the general rule in § __.22(a) because those consumers would need less time to receive their statements or make their payments by mail.

Section __.22(c) Exception for Grace Periods

In order to avoid any potential conflict with section 163(a) of TILA, proposed § __.22(c) provided that proposed § __.22(a) would not apply to any time period provided by the institution within which the consumer may repay the new balance or any portion of the new balance without incurring finance charges (in other words, a grace period).

Several industry commenters argued that, notwithstanding proposed § __.22(c), institutions would essentially be required to use a single date for the payment due date and for expiration of the grace period because consumers would be confused by different dates. Consumer groups also raised concerns about the potential for consumer confusion. One consumer group requested that the Board use its authority under section 1604(a) of TILA to require that the expiration of the grace period coincide with the payment due date. Because the mailing or delivery of periodic statements in relation to expiration of the grace period is specifically addressed by section 163(a) of TILA, the Agencies believe that deviating from the statutory requirement would be inappropriate and unnecessary in this case, particularly because Regulation Z would require an institution that elected to use separate dates to disclose both dates on the periodic statement. *See* 12 CFR 226.6(b), adopted elsewhere in today's **Federal Register**. An institution that chooses to use separate dates, however, must ensure that consumers understand the implications if payment is not received on or before each date.

Other Issues

Implementation. As discussed in section VII of this **SUPPLEMENTARY INFORMATION**, the effective date for § __.22 is July 1, 2010. As of that date, this provision applies to existing as well as new consumer credit card accounts. Thus, institutions must provide consumers with a reasonable amount of time to make any payment due on or after the effective date.

Alternatives to proposed rule. The Agencies requested comment on two potential alternatives to the proposed rule. First, the Agencies asked for comment on whether to adopt a rule that would prohibit institutions from treating a payment as late if received within a certain number of days after the due date and, if so, the number of days that would be appropriate. Consumer groups and some institutions that currently provide such a period of time were supportive, but most industry commenters stated that this requirement would be operationally burdensome. The Agencies have concluded that requiring institutions to provide a period of time after the due date during which payments must be treated as timely could create consumer confusion regarding when payment is actually due and undermine the Board's efforts elsewhere in today's **Federal Register** to ensure that consumers' due dates are meaningful.[62]

Second, the Agencies sought comment on whether to adopt a rule that would require institutions, upon the request of a consumer, to reverse a decision to treat a payment mailed before the due date as late and, if so, what evidence the institution could require the consumer to provide (for example, a receipt from the U.S. Postal Service or other common carrier) and what time frame would be appropriate (for example, payment mailed at least five days before the due date, payment received no more than two business days' late). Although some commenters supported such a requirement, the Agencies also received comments from both industry and a consumer group opposing the requirement on the grounds that it would be burdensome for consumers to obtain proof of mailing and for institutions to establish systems for accepting such proof. Furthermore, the Agencies note that some institutions stated that they will generally waive any late payment fee when a consumer produces proof that a payment was mailed sufficiently in advance of the due date.

Supplemental Legal Basis for This Section of the OTS Final Rule

As discussed above, HOLA provides authority for both safety and soundness and consumer protection regulations. Section 535.22 supports safety and soundness by reducing reputational risk that would result from providing consumers an unreasonably short period of time to make payment. Section 535.22 also protects consumers by providing sufficient time to make payment. It is somewhat akin to OTS's late charge provision for home loans, which prohibits federal savings associations from imposing a late charge as to any payment received within 15 days of the due date.[63] Section 535.22 is consistent with the best practices of thrift institutions nationwide. Most savings associations, including the ten largest, generally mail or deliver periodic statements to their customers at least 20 days before the due date. Consequently, HOLA serves as an independent basis for § 535.22.

Section __.23—Unfair Acts or Practices Regarding Allocation of Payments

Summary. In May 2008, the Agencies proposed § __.23 in response to concerns that institutions were applying consumers' payments in a manner that inappropriately maximized interest charges on consumer credit card accounts with balances at different annual percentage rates. Specifically, most institutions allocate consumers' payments first to the balance with the lowest annual percentage rate, resulting in the accrual of interest at higher rates on other balances (unless all balances are paid in full). *See* 73 FR at 28914–28917. Proposed § __.23(a) would have addressed this practice by requiring institutions to allocate payments in excess of the required minimum periodic payment (''excess payments'')

[62] *See* 12 CFR 226.10(b)(2)(ii) (providing that a reasonable cut-off time for payments received by mail would be 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments); 12 CFR 226.10(d) (providing that, if the due date for payments is a day on which the creditor does not receive or accept payments by mail, the creditor may not treat a payment received by mail the next business day as late for any purpose).

[63] 12 CFR 560.33.

using one of three permitted methods or a method equally beneficial to consumers. The permitted methods were allocating the excess payment first to the balance with the highest annual percentage rate, allocating equal portions of the excess payment to each balance, and allocating the excess payment pro rata among the balances.

In addition, because the Agencies were concerned that existing payment allocation practices were especially harmful when an account had a balance at a discounted promotional rate or a balance on which interest was deferred, proposed § __.23(b) would have placed more stringent requirements on those accounts. Proposed § __.23(b)(1)(i) would have prohibited institutions from allocating excess payments to promotional rate and deferred interest balances unless all other balances had been paid in full. Proposed § __.23(b)(1)(ii), however, created an exception for the existing practice by some institutions of allocating excess payments first to a deferred interest balance during the last two billing cycles of the deferred interest period so that consumers could pay off that balance and avoid assessment of deferred interest. Finally, proposed § __.23(b)(2) would have prohibited institutions from denying consumers a grace period solely because an account had a promotional rate or deferred interest balance.

Based on the comments received and further analysis, the Agencies have revised the general payment allocation rule in proposed § __.23(a) to require institutions either to apply excess payments first to the balance with the highest annual percentage rate or to allocate excess payments pro rata among the balances. The final version of § __.23 prohibits the current practice of applying payments to the lowest rate balance first while also responding to concerns raised by commenters that the number of allocation methods permitted by the proposed rule would have increased the complexity of payment allocation, making the practice and its effects on interest charges even less transparent for consumers.

In addition, the Agencies have not included proposed § __.23(b) in the final rule. First, because current practices regarding assessment of deferred interest are not permitted under the final version of § __.24, the provisions regarding deferred interest plans are no longer necessary. Second, due to concerns that proposed § __.23(b) could significantly reduce or eliminate promotional rate offers that provide substantial benefits to consumers, the Agencies have not included the provisions regarding promotional rate balances. Instead, the Agencies believe that applying the general allocation rule in § __.23 in all circumstances strikes the appropriate balance by preserving promotional rate offers that provide substantial benefits to consumers while prohibiting the most harmful payment allocation practices.

Background. In its June 2007 Regulation Z Proposal, the Board discussed the practice among some creditors of allocating payments first to balances that are subject to the lowest interest rate. 72 FR at 32982–32983. Because many creditors offer different rates for purchases, cash advances, and balance transfers, this practice can result in consumers who do not pay the balance in full each month incurring higher finance charges than they would under any other allocation method. The Agencies were also concerned that, when the consumer has responded to a promotional rate or deferred interest offer, the allocation of payments to balances with the lowest interest rate often prevents the consumer from receiving the full benefit of the promotional rate or deferred interest plan if the consumer uses the credit card account for other transactions.

For example, assume that a consumer credit card account charges annual percentage rates of 12% on purchases and 20% on cash advances. Assume also that, in the same billing cycle, the consumer uses the account for purchases totaling $3,000 and cash advances totaling $300. If the consumer makes an $800 excess payment, most creditors would apply the entire payment to the purchase balance and the consumer would incur interest charges on the more costly cash advance balance. Under these circumstances, the consumer is effectively prevented from paying off the balance with the higher interest rate (cash advances) unless the consumer pays the total balance (purchases and cash advances) in full.

This outcome is exacerbated if the consumer uses the card in reliance on a promotional rate or deferred interest offer. For example, assume the same facts as above but that, during the same billing cycle, the consumer also transfers to the account a balance of $3,000 in response to a promotional rate offer of 5% for six months. In this case, most creditors would apply the consumer's $800 excess payment to the promotional rate balance and the consumer would incur interest charges on the more costly purchase and cash advance balances. Under these circumstances, the consumer would effectively be denied the benefit of the 5% promotional rate for six months if the card is used for purchase or cash advance transactions because the consumer must pay off the entire transferred balance in order to avoid paying a higher rate on other transactions. Indeed, the only way for the consumer to receive the full benefit of the 5% promotional rate is not to use the card for purchases, which would effectively require the consumer to use an open-end credit account as a closed-end installment loan.

Deferred interest plans raise similar—but not identical—concerns. Currently, some creditors offer deferred interest plans under which interest accrues on purchases at a specified rate but is not charged to the account for a period of time. If the balance is paid in full by the end of the period, the consumer generally will not be charged any interest. If, however, the balance is not paid in full by the end of the period, all interest accrued during that period will be charged to the account. With respect to payment allocation, a consumer whose payments are applied to a deferred interest balance instead of balances on which interest is not deferred will incur additional finance charges during the deferred interest period.

In addition, creditors typically provide consumers who pay their balance in full each month a grace period for purchases but not for balance transfers or cash advances. Because payments generally will be allocated to the transferred balance first, a consumer typically cannot take advantage of both a promotional rate on balance transfers or cash advances and a grace period on purchases. Under these circumstances, the only way for a consumer to avoid paying interest on purchases would be to pay off the entire balance, including the transferred balance or cash advance balance subject to the promotional rate.

In preparing its June 2007 Regulation Z Proposal, the Board sought to address issues regarding payment allocation by developing disclosures explaining payment allocation methods on accounts with multiple balances at different annual percentage rates so that consumers could make informed decisions about card usage, particularly with regard to promotional rates. For example, if consumers knew that they would not receive the full benefit of a promotional rate on a particular credit card account if they used that account for purchases during the promotional period, they might use a different account for purchases and pay that second account in full every month to take advantage of the grace period. The Board conducted extensive consumer testing in an effort to develop disclosures that would enable consumers to understand typical payment allocation practices and make informed decisions regarding the use of credit cards for different types of transactions. In this testing, many participants did not understand that they could not take advantage of the grace period on purchases and the discounted rate on balance transfers at the same time. Model forms were tested that included a disclosure notice attempting to explain this to consumers. Testing, however, showed that a significant percentage of participants still did not fully understand how payment allocation can affect their interest charges, even after reading the model disclosures.

In the June 2007 Regulation Z Proposal, the Board acknowledged these results and stated that it would conduct further testing to determine whether the disclosure could be improved to communicate more effectively to consumers how payment allocation can affect their interest charges. The Board also solicited comment on a proposed amendment to Regulation Z that would have required creditors to explain payment allocation to consumers. Specifically, the Board proposed that creditors explain how payment allocation would affect consumers' interest charges if an initial discounted rate was offered on balance transfers or cash advances but not purchases. The Board proposed that creditors must disclose to consumers that: (1) The initial discounted rate applies only to balance transfers or cash advances, as applicable, and not to purchases; (2) that payments will be allocated to the balance transfer or cash advance balance, as applicable, before being allocated to any purchase balance during the time the initial discounted rate is in effect; and (3) that the consumer will incur interest on the purchase balance until the entire balance is paid, including the transferred balance or cash advance balance, as applicable. 72 FR at 33047–33050.

In response to the June 2007 Regulation Z Proposal, several commenters recommended that the Board test a simplified payment allocation disclosure that covered situations other than low rate balance transfers. One credit card issuer, however, stated that, even if an effective disclosure could be developed, consumers could not shop for a better payment allocation method because creditors almost uniformly apply payments to the balance with the lowest annual percentage rate. Furthermore, consumer and consumer group commenters urged the Board to go further and prohibit payment allocation methods that applied payments to the lowest rate balance before other balances.

In consumer testing conducted for the Board prior to the May 2008 Proposal, the Board tested a revised payment allocation disclosure. This disclosure was not effective in improving consumers' understanding. The majority of participants understood from earlier experience that creditors typically will apply payments to lower rate balances first and that this method causes them to incur higher interest charges. However, for those participants that did not know about payment allocation methods from earlier experience, the disclosure tested was not effective in communicating payment allocation methods.[64]

Accordingly, because the Board's testing indicated that disclosure was not effective in allowing consumers to avoid the common practice of allocating payments first to the balance with the lowest rate, the Agencies proposed in May 2008 to address concerns regarding payment allocation in proposed § __.23 by placing limitations on allocation of excess payments.[65] The Agencies also solicited comment on whether the exception regarding deferred interest balances was needed. 73 FR 28916.

The Agencies received comments in support of proposed § .__23 from individual consumers, consumer groups, members of Congress, the FDIC, state attorneys general, a state consumer protection agency, and others. Nevertheless, many of these commenters criticized the proposed rule as overly complex, arguing that—if consumers cannot understand the effects of the current low-to-high allocation method on interest charges—increasing the number and complexity of allocation methods would only make the cost of credit less transparent. These commenters urged the Agencies to revise the proposed rule to require that excess payments be applied first to the balance with the highest rate in all circumstances. Some consumer advocates urged the Agencies to ban deferred interest balances rather than create an exception for them.

In contrast, credit card issuers and industry groups strongly opposed the proposal, particularly the special requirements regarding accounts with promotional rate and deferred interest balances. These commenters generally argued that disclosure would enable consumers to avoid any harm caused by payment allocation, that the proposed restrictions regarding promotional rate and deferred interest balances would ultimately harm consumers by reducing or eliminating promotional rate and deferred interest offers, and that complying with the proposed rule would require burdensome systems changes.

To the extent that commenters addressed specific aspects of the proposal or its supporting legal analysis, those comments are discussed below.

Legal Analysis

When different annual percentage rates apply to different balances on a consumer credit card account, the Agencies conclude that, based on the comments received and their own analysis, it is an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC to allocate amounts paid by the consumer in excess of the required minimum periodic payment in a manner that does not apply a significant portion of the amount to the balance with the highest annual percentage rate.[66]

Substantial consumer injury. In the May 2008 Proposal, the Agencies stated that allocating excess payments first to the balance with the lowest rate appeared to cause substantial monetary injury to consumers in the form of higher interest charges than would be incurred if some or all of the excess payment were applied to balances with higher rates.

In response, the Agencies received an analysis of credit card data purporting to represent approximately 70 percent of outstanding consumer credit card balances (the Argus Analysis). Although the Agencies are not able to verify the accuracy of the Argus Analysis or the data supporting it, the Agencies note that this analysis estimated that consumers are charged an additional

[64] The Board also tested whether, given the opportunity, consumers could select how amounts paid in excess of the minimum would be allocated using a payment coupon. Most participants, however, were not able to understand the effects of payment allocation sufficiently to apply payments in a manner that minimized interest charges.

[65] After the May 2008 Proposal, the Board conducted additional testing of consumers' ability to understand payment allocation disclosures and select how excess payments would be allocated. This testing, however, produced similar results to those discussed above.

[66] In the May 2008 Proposal, the Agencies considered whether other practices specifically related to promotional rate and deferred interest balances were unfair. As discussed below, based on the comments and further analysis, § __.23 does not include the provisions specifically addressing those practices. To the extent that specific practices raise concerns regarding unfairness or deception under the FTC Act, the Agencies plan to address those practices on a case-by-case basis through supervisory and enforcement actions.

$930 million annually as a result of the practices addressed by proposed § __.23.[67] In addition, a state consumer protection agency stated that the practice of allocating payments first to the balance with the lowest rate is particularly harmful to low-income consumers, citing its own study finding that a quarter of low-income cardholders surveyed used a credit card for a cash advance (which generally accrues interest at a higher rate than other transactions) every few months.[68]

One industry commenter asserted that allocating payments first to the balance with the lowest interest rate could not cause an injury for purposes of the FTC Act merely because other, less costly allocation methods exist. It is well established, however, that monetary harm constitutes an injury under the FTC Act.[69] This comment did not provide any legal authority distinguishing interest charges assessed as a result of current payment allocation practices from other monetary harms, nor are the Agencies aware of any such authority.

Another industry commenter stated that assessing interest consistent with a contractual provision to which the consumer has agreed cannot constitute an injury under the FTC Act. This argument, however, is inconsistent with the FTC's application of the unfairness analysis in support of its Credit Practices Rule, where the FTC determined that otherwise valid contractual provisions injured consumers.[70]

Accordingly, the Agencies conclude that the failure to allocate a significant portion of an excess payment to the balance with the highest rate causes or is likely to cause substantial monetary injury to consumers.

Injury is not reasonably avoidable. In May 2008, the Agencies cited several factors that appeared to prevent consumers from reasonably avoiding the injury. First, consumers generally have no control over the institution's allocation of payments. Second, the Board's consumer testing indicated that disclosures do not enable consumers to understand sufficiently the effects of payment allocation. Furthermore, the Agencies stated that, even if disclosures were effective, it appeared consumers still could not avoid the injury by selecting a credit card account with more favorable terms because institutions almost uniformly apply payments first to the balance with the lowest rate.[71] Third, although a consumer could avoid the injury by paying the balance in full each month, this may not be a reasonable expectation as many consumers are unable to do so.

The Agencies conclude that these factors support a determination that the injury caused by the failure to allocate a significant portion of an excess payment to the highest rate balance is not reasonably avoidable. In particular, the Agencies note that additional consumer testing has further confirmed that disclosure is not an effective alternative to the proposed rule.[72]

Furthermore, although one industry commenter argued that consumers could reasonably avoid the injury by paying their balance in full each month, one of the intended purposes of a credit card (as opposed to a charge card) is to finance purchases over multiple billing cycles. Thus, it is unreasonable to expect consumers to avoid the harm caused by current payment allocation practices by paying their balances in full each month.

Injury is not outweighed by countervailing benefits. In the May 2008 Proposal, the Agencies stated that the prohibited practices did not appear to create benefits for consumers or competition that outweighed the injury. The Agencies noted that, if implemented, the proposal could reduce the revenue that institutions receive from interest charges, which could in turn lead institutions to increase rates generally. The Agencies stated, however, that this effect should be muted because the proposal prohibited only the practices that are most harmful to consumers and leaves institutions with considerable flexibility. Specifically, the proposed rule permitted institutions to choose between three specified allocation methods or any other method that was no less beneficial to the consumer. In addition, the proposed rule did not apply to the allocation of minimum payments.

Furthermore, the Agencies stated that the proposal would enhance transparency and enable consumers to better assess the costs associated with using their credit card accounts at the time they engage in transactions. The Agencies noted that, to the extent that upfront costs have been artificially reduced because many consumers cannot reasonably avoid paying higher interest charges later, the reduction does not represent a true benefit to consumers as a whole. Finally, the Agencies stated that it appeared the proposal would enhance rather than harm competition because institutions offering rates that reflect the institution's costs (including the cost to the institution of borrowing funds and operational expenses) would no longer be forced to compete with institutions offering rates that are artificially reduced based on the expectation that interest will accrue on higher rate balances until the promotional rate balance is paid in full.

Based on the comments and further analysis, the Agencies conclude that these rationales support a determination that the injury to consumers when institutions do not allocate a significant portion of the excess payment to the balance with the highest annual percentage rate outweighs any benefits of this practice for consumers and competition. Industry commenters generally argued that the restrictions in proposed § __.23 would reduce interest revenue and force institutions to compensate by increasing the interest rates or fees charged to consumers, decreasing the amount of available credit, or using some combination of the two. For example, the Argus Analysis stated that, as a result of proposed § __.23, institutions could lose 0.125 percent of their annual interest revenue on revolving credit card accounts (in other words, accounts where interest is charged because the balance is not paid in full each billing cycle).[73] Again, as noted above, the Agencies are unable to verify the accuracy of the conclusions reached by the Argus Analysis or its supporting data. Furthermore, the Argus Analysis did not estimate the potential

[67] *See* Exhibit 1, Table 1 to Comment from Oliver I. Ireland, Morrison Foerster LLP (Aug 7, 2008) (''Argus Analysis'') (presenting results of analysis by Argus Information & Advisory Services, LLC of historical data for consumer credit card accounts believed to represent approximately 70 percent of all outstanding consumer credit card balances).

[68] *See* N.Y. City Dept. of Consumer Affairs, *Neighborhood Financial Services Study: An Analysis of Supply and Demand in Two N.Y. City Neighborhoods* at 6 (June 2008) (available at *http://www.nyc.gov/html/ofe/downloads/pdf/NFS_ExecSumm.pdf*).

[69] *See* Statement for FTC Credit Practices Rule, 49 FR at 7743; FTC Policy Statement on Unfairness at 3.

[70] *See* Statement for FTC Credit Practices Rule, 49 FR at 7740 *et seq.; see also Am. Fin. Servs. Assoc.,* 767 F.2d at 978–83 (upholding the FTC analysis).

[71] *See* Statement for FTC Credit Practices Rule, 48 FR at 7746 (''If 80 percent of creditors include a certain clause in their contracts, for example, even the consumer who examines contract[s] from three different sellers has a less than even chance of finding a contract without the clause. In such circumstances relatively few consumers are likely to find the effort worthwhile, particularly given the difficulties of searching for contract terms * * *'' (footnotes omitted)).

[72] For this reason, the Board has removed the proposed disclosure regarding payment allocation under Regulation Z, as discussed elsewhere in today's **Federal Register**.

[73] *See* Exhibit 1, Table 1 to Argus Analysis (combining the predictions for ''Revolvers'' in the rows labeled ''Change in Payment Allocation'' and ''Grace Period Requirement for Retail Transactions'').

impact of proposed § __.23 on the cost and availability of credit.[74] Nevertheless, assuming for the sake of discussion that the data and assumptions underlying the Argus Analysis are accurate, it appears that institutions might respond by increasing interest rates approximately 0.15 percentage points or by decreasing credit limits approximately $155.[75] Accordingly, if, for example, an institution charges its consumers an interest rate of 15% on a credit line of $9,000, the Argus Analysis appears to indicate that the institution might respond to proposed § __.23 by increasing the rate to 15.15% or by decreasing the credit limit to $8,850.[76]

The Argus Analysis also stated that more than three quarters of revolving accounts do not carry multiple balances, meaning that the estimated $930 million in interest revenue is currently generated from only one quarter of all revolving accounts.[77] Thus, even if the Agencies were to accept the Argus Analysis and its underlying data at face value, it appears that the restrictions in proposed § __.23 will result in significantly reduced interest charges for one quarter of consumer credit card accounts, while potentially resulting in a smaller increase in interest charges for all other accounts or a small reduction in available credit for all accounts. Furthermore, the Argus Analysis was based on the proposed rule. Although the final rule permits only two allocation methods, the Agencies' decision to omit from the final rule the more restrictive rules for accounts with promotional rate balances in proposed § __.23(b) should significantly reduce the estimated impact.[78] The Agencies therefore conclude that, based on the available information, the injury to consumers as a result of the current practice of applying excess payments in a manner that maximizes interest charges outweighs the potential increase in interest rates or reduction in available credit as a result of prohibiting that practice. Even if the shifting of costs from one group of consumers to another, much larger group is viewed as neutral from a cost-benefit perspective, the less quantifiable benefits to consumers and competition of more transparent upfront pricing weigh in favor of the proposed rule.

Some industry commenters also argued that compliance with proposed § __.23 would require extensive changes to payment allocation systems, the cost of which would be passed on to consumers. One systems provider estimated the cost of developing systems to allocate payments among different balances at tens of thousands of dollars per institution. Another systems provider, however, stated that these systems currently exist. Again, because the Agencies have simplified the payment allocation rule by permitting only two payment allocation methods and by omitting the special allocation requirements for promotional rate balances, the burden associated with systems changes should be reduced. Furthermore, if the cost of altering practices to comply with § __.23 is passed on to consumers, that cost will be spread among thousands, hundreds of thousands, or millions of consumers and will not outweigh the benefits to consumers of avoiding additional interest charges and more transparent upfront pricing.[79]

Public policy. Some industry commenters argued that the proposed rule was contrary to public policy as set forth in statements by another federal banking agency. Specifically, these commenters pointed to statements in Congressional testimony and an advisory letter by the OCC suggesting that concerns regarding payment allocation should be addressed through disclosure rather than substantive regulation.[80]

While public policy may be considered as part of the unfairness analysis under the FTC Act, it is not a required element of that analysis and cannot serve as the primary basis for determining that an act or practice is unfair.[81] For purposes of the unfairness analysis, public policy is generally embodied in a statute, regulation, or judicial decision.[82] Nevertheless, to the extent that the OCC's statements constitute public policy, the Agencies find that those statements (which the Agencies have not adopted) do not preclude a determination that allocating excess payments in a manner that does not apply a significant portion to the balance with the highest rate is an unfair practice. The May 2008 Proposal explained that extensive consumer testing conducted by the Board indicated that disclosure was not effective in enabling consumers to avoid the harm caused by current payment allocation practices. The Agencies also note that the OCC statements cited by

[74] As discussed in greater detail below, the Argus Analysis assumes that institutions will adjust to the restrictions in the proposed rules by increasing interest rates, decreasing credit limits, eliminating credit for consumers with low credit scores, or some combination of the three. This analysis ignores other potential adjustments, such as increasing fee revenue (including the assessment of annual fees) and developing improved underwriting techniques that will reduce losses and the need to engage in repricing when a consumer violates the account terms.

[75] The Argus Analysis estimated that proposed § __.23 will reduce interest revenue by 0.125 percent. Accordingly, for purposes of this discussion, the Agencies assumed that, consistent with the Argus Analysis, the increase in interest rates attributable to proposed § __.23 would be 120 percent of the reduction in interest revenue (0.125 × 1.2 = 0.15). The Agencies also assumed that the reduction in credit limits attributable to proposed § __.23 would be proportionate to the overall reduction predicted by the Argus Analysis. Thus, because the estimated revenue loss attributable to proposed § __.23 (0.125) is 7.6% of the overall estimated revenue loss predicted by the Argus Analysis (1.637), the Agencies assumed that the reduction in credit limits attributable to proposed § __.23 would be 7.6% of the overall reduction of $2,029 predicted by the Argus Analysis ($2,029 × 0.076 = $155). The Agencies were not able to estimate the potential impact on credit availability for consumers with FICO scores below 620 but, given the limited estimated impact of proposed § __.23 on rates and credit limits, it appears this impact would not be substantial.

[76] As discussed in greater detail in section VII of this SUPPLEMENTARY INFORMATION, the Agencies anticipate that, prior to the effective date, some institutions may respond to the restrictions in § __.23 by, for example, adjusting interest rates on existing balances or reducing credit limits.

[77] *See* Exhibit 4a, Table 3b to Argus Analysis.

[78] As noted above, the Argus Analysis stated that, as a result of proposed § __.23, institutions could lose 0.125 percent of their annual interest revenue on revolving credit card accounts. *See* Exhibit 1, Table 1 to Argus Analysis. This figure appears to be based on the equal share method, which—according to the Argus Analysis—would have the least impact of any of the proposed methods on interest revenue. *See* Exhibit 1, Table 3a to Argus Analysis (column labeled ''New Payment Allocation Method,'' row labeled ''Equal''). Although the final rule does not permit use of the equal share method, the Argus Analysis estimates that the impact of the pro rata method (which is permitted) would only be two one-hundredths of a percent (0.002) higher. *See id.* (column labeled ''New Payment Allocation Method,'' row labeled ''Proportional''). Furthermore, the 0.125 figure also includes an estimated 0.014 loss in interest revenue attributable to proposed § __.23(b)(2), which the Agencies have not adopted. *See* Exhibit 1, Table 1 to Argus Analysis. Thus, assuming the Argus Analysis is accurate, the overall impact of the final rule on interest revenue should be less than the proposal.

[79] As discussed below, the Agencies have revised the proposed remedy for this unfair practice by allowing only two allocation methods for excess payments: high-to-low and pro rata allocation. Unlike the proposal, the final rule would not permit institutions to split excess payments equally among the balances or to allocate using a method that is no less beneficial to consumers than one of the listed methods because the Agencies have determined that these methods would not provide benefits to consumers that outweigh the injury addressed by this final rule.

[80] *See* Testimony of Julie L. Williams, Chief Counsel & First Senior Deputy Controller, OCC before H. Subcomm. on Fin. Instits. & Consumer Credit at 10–11 (Apr. 17, 2008) (available at *http://www.house.gov/apps/list/hearing/financialsvcs_dem/williams041708.pdf*); *see also* OCC Advisory Letter 2004–10 (Sept. 14, 2004) (available at *http://www.occ.treas.gov/ftp/advisory/2004-10.doc*).

[81] 15 U.S.C. 45(n).

[82] *See, e.g.*, FTC Policy Statement on Unfairness at 5 (stating that public policy ''should be clear and well-established'' and ''should be declared or embodied in formal sources such as statutes, judicial decisions, or the Constitution as interpreted by the court * * *'').

the commenters were made prior to the May 2008 Proposal and were not repeated in the OCC's comment on that proposal.

Final Rule

As proposed, § __.23(a) would have established a general rule governing payment allocation on accounts that have balances with different annual percentage rates but do not have a promotional rate or deferred interest balance. Proposed § __.23(b) would have established special rules for accounts with balances at different rates that do have a promotional rate or deferred interest balance. As discussed below, however, the final rule eliminates the special rules in proposed § __.23(b) and applies a revised version of the general rule in proposed § __.23(a) to all types of balances.

As an initial matter, industry commenters and a member of Congress criticized proposed § __.23 as overly complex. They stated that, rather than making payment allocation practices easier for consumers to understand, the proposed rule would make payment allocation harder to disclose and increase consumer confusion. The Agencies reemphasize that the Board's consumer testing indicates that, regardless of the complexity of the method, payment allocation methods cannot be effectively disclosed. The proposed restrictions on payment allocation were not intended to ease disclosure but instead to protect consumers from unfair practices that cannot be effectively addressed by disclosure. Nevertheless, as discussed below, the Agencies have greatly simplified the final rule.

Section __.23 Allocation of Excess Payments

When an account has balances with different annual percentage rates, proposed § __.23(a) would have required institutions to allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances in a manner that is no less beneficial to consumers than one of three listed methods. First, proposed § __.23(a)(1) would have allowed an institution to apply the excess payment first to the balance with the highest annual percentage rate and any remaining portion to the balance with the next highest annual percentage rate and so forth. Second, proposed § __.23(a)(2) would have allowed an institution to allocate equal portions of the excess payment to each balance. Third, proposed § __.23(a)(3) would have allowed an institution to allocate the excess payment among the balances in the same proportion as each balance bears to the total balance (in other words, pro rata).

As discussed above, some consumer group commenters argued that—because the Board's consumer testing indicates that disclosure does not enable consumers to understand the effects of payment allocation on interest charges—providing institutions with the ability to choose between different allocation methods would only make payment allocation more complex and the associated costs less transparent. Because this result would be contrary to the intended purpose of proposed § __.23, the final rule allows only two allocation methods for excess payments: Applying the excess payment first to the balance with the highest annual percentage rate and any remaining amount to the other balances in descending order based on the applicable annual percentage rate; and allocating the excess payment pro rata.

Although consumer groups and others argued that the Agencies should require allocation to the highest rate balance first in all circumstances because this method would minimize interest charges, the Agencies believe that the final version of § __.23 strikes the appropriate balance between institutions and consumers. It prohibits institutions from using the allocation method that maximizes interest charges but does not require use of the method that minimizes interest charges. The Agencies expect that most institutions will use the pro rata method, which will standardize payment allocation practices and focus competition on more transparent costs of credit (such as interest rates). Although permitting a second allocation method creates the potential for increased complexity, the Agencies believe that the allocation of excess payments first to the highest rate balance should be permitted because, even if few institutions will do so, this method minimizes interest charges for consumers.

The Agencies have not included the proposed methods allowing allocation of equal portions of the excess payment to each balance and allowing institutions to allocate excess payments in a manner that is no less beneficial to the consumer than one of the listed methods in order to reduce complexity and promote transparency. In addition, because information received during the comment period indicates that, as a general matter, consumers have approximately 25 percent of their total balance at a discounted promotional rate,[83] it appears that the equal share method would generally be less beneficial to consumers than the pro rata method because—unless the account has four or more balances—the equal share method would apply more of the excess payment to the discounted promotional rate balance (and therefore less to balances with higher interest rates) than the pro rata method.[84] Finally, because an allocation method would have been no less beneficial to a consumer than a listed method only if it resulted in the same or lesser interest charges,[85] institutions were unlikely to take advantage of this option because it would require individualized determinations based on each consumer's balances and rates.

The Agencies note that several industry commenters argued that institutions should be permitted to allocate payments first to the oldest transactions on the account, which would often be transactions on which the institution is prohibited from increasing the annual percentage rate pursuant to proposed § __.24. These commenters stated that this method (which is sometimes referred to as ''first in, first out'' or ''FIFO'') would pay down those transactions faster, thereby reducing the burden to institutions of carrying balances at rates that no longer reflect market rates or the consumer's risk. However, the Agencies believe that concerns related to proposed § __.24 are better addressed through revisions to that proposal (as discussed below), rather than through payment allocation. In addition, permitting FIFO allocation would, in some circumstances, allow institutions to allocate excess payments first to the balance with the lowest rate. For example, if a consumer opened an account by transferring a balance in reliance on a discounted promotional rate, that balance would be the oldest balance on the account. Consequently, FIFO allocation could perpetuate the current practice of using payment allocation to maximize interest charges.

Although some industry commenters stated that their payment allocation systems could allocate excess payments pro rata or in equal portions, others stated that their systems could not and

[83] *See* Exhibit 7, Table 1c to Argus Analysis (column labeled ''Overall'').

[84] The Agencies note that, according to the Argus Analysis, the pro rata method will result in a greater loss in annual interest revenue than the equal share method. *See* Exhibit 1, Table 3a to Argus Analysis (column labeled ''New Payment Allocation Method,'' rows labeled ''Proportional'' and ''Equal''). Thus, assuming these data are accurate, the pro rata method will result in lower interest charges for consumers than the equal share method.

[85] *See* proposed comment 23(a)–1, 73 FR at 28944.

that they would be forced instead to allocate payments first to the balance with the highest interest rate. The Agencies note that neither the proposal nor the final rule require institutions to allocate first to the balance with the highest interest rate. Accordingly, if an institution's payment allocation system cannot currently allocate excess payments pro rata, the institution must make the determination whether to adjust that system or allocate to the highest rate balance first and forego the additional interest charges. As discussed below in section VII of this **SUPPLEMENTARY INFORMATION**, institutions will be provided with 18 months in which to adjust their systems.

The Agencies proposed commentary to clarify how proposed § __.23 would be applied. Proposed comment 23–1 clarified that § __.23 would not limit or otherwise address the institution's ability to determine the amount of the required minimum periodic payment or how that payment is allocated. Consumer groups urged the Agencies to apply proposed § __.23 to the entire payment. In contrast, one industry commenter stated that excluding the minimum payment was not helpful because such payments are kept small for competitive reasons. Another industry commenter urged the Agencies to remove the distinction between minimum and excess payments in order to reduce the rule's complexity.

The Agencies, however, believe that proposed § __.23 strikes the appropriate balance by providing institutions flexibility regarding the minimum amount consumers must pay while ensuring that, when consumers voluntarily pay more than the minimum, those payments are not allocated in a manner that maximizes interest charges.[86] In response to comments from institutions whose systems cannot distinguish between minimum and excess payments when allocating and comments objecting to the complexity created by the distinction, the Agencies clarify in comment 23–1 that institutions may apply the entire payment consistent with § __.23 (unless doing so would be inconsistent with applicable law and regulatory guidance). The Agencies have also clarified that the amount and allocation of the required minimum periodic payment must be determined consistent with applicable law and regulatory guidance. Otherwise, proposed comment 23–1 is adopted as proposed.

In order to simplify the allocation process and reduce the operational burden on institutions, proposed comment 23–2 permitted institutions to make small adjustments of one dollar or less when allocating payments. One industry commenter requested that institutions also be permitted to make adjustments equal to or less than one percent of the total balance. This is not, however, the type of small adjustment envisioned by the Agencies. For example, one percent of a $5,000 balance would be $50. Accordingly, comment 23–2 is adopted as proposed.

Because proposed § __.23 would have required institutions to allocate payments based on the balances and annual percentage rates on the account, some industry commenters requested guidance regarding the point in time at which the various determinations required by proposed § __.23 would be made. For example, because transactions are commonly made between the close of a billing cycle and the date on which payment for that billing cycle is received, the balances on the account on the day the payment is applied will often be different than the balances on the periodic statement for the billing cycle. Similarly, the annual percentage rates may have changed in the interim. One industry commenter stated that payment allocation should be based on the balances and rates on the preceding periodic statement, while two other industry commenters stated that the balances and rates at the time the payment is credited should be used. The Agencies believe that, because the benefit to consumers of one approach or the other will depend on the consumer's individual circumstances, there is no need to require a particular approach. Accordingly, the Agencies adopt comment 23–3, which clarifies that an institution may allocate based on the balances and annual percentage rates on the date the preceding billing cycle ends (which will typically be the balances and rates reflected on the periodic statement), on the date the payment is credited to the account, or on any day in between those two dates.

Some commenters requested that the Agencies prohibit institutions from varying the allocation method on an account from billing cycle to billing cycle or from account to account, while others requested that this be expressly permitted. The Agencies are not prohibiting institutions from moving from one permissible allocation method to another or from using one permissible method on some accounts and a different permissible method on other accounts. Because, under the final rule, the only alternative to allocating pro rata is allocating to the highest rate balance first, the Agencies do not believe there is a significant danger that institutions will be able to manipulate the payment allocation process to their advantage by switching from one method to another. Accordingly, the Agencies adopt comment 23–4, which acknowledges that § __.23 does not restrict an institution's ability to shift between permissible allocation methods or to use different permissible allocation methods for different accounts.

One industry commenter noted that the commentary to Regulation Z, 12 CFR 226.12(c) sets forth specific payment allocation requirements when a consumer asserts a claim or defense under that section that could be inconsistent with those in proposed § __.23. Because the payment allocation requirements in the commentary to § 226.12(c) are intended to prevent extinguishment of claims or defenses, the Agencies adopt comment 23–5, which clarifies that, when a consumer has made a claim or defense pursuant to 12 CFR 226.12(c), an institution must allocate payments consistent with 12 CFR 226.12 comment 226.12(c)–4, as adopted elsewhere in today's **Federal Register**.

An industry commenter requested clarification regarding allocation of payments when an account has multiple balances with the same annual percentage rate. As an initial matter, because § __.23 applies only ''when different annual percentage rates apply to different balances on a consumer credit card account,'' this section does not apply if all balances in the account have the same rate. If, however, an account has multiple balances with the same annual percentage rate and another balance with a different rate, the benefit to the consumer of allocating between the balances with the same rate in a particular manner will depend on the circumstances and the allocation method chosen by the institution. Accordingly, the Agencies have adopted comment 23–6, which clarifies that, in these circumstances, the institution may allocate between balances with the same rate in the manner that the institution determines is appropriate. This comment also clarifies that institutions may treat balances with the same annual percentage rate as separate balances or as a single balance.

The Agencies have also revised the proposed commentary and adopted new commentary in response to comments

[86] One commenter requested that proposed § __.23 be revised to permit excess payments to be allocated first to interest and fees. The Agencies do not believe such a change is necessary because, to the extent that an institution wishes to recover interest and fees, those amounts can (and often are) included in the required minimum periodic payment.

regarding specific allocation methods.[87] Proposed comment 23(a)(1)–1 provided examples of allocating excess payments to the highest rate balance first. In response to requests from commenters, the Agencies have added examples illustrating application of this method to accounts with balances on which the annual percentage rate cannot be increased pursuant to § __.24 and accounts with multiple balances at the same rate and at least one balance at a different rate. Otherwise, this comment is redesignated as comment 23(a)–1 and adopted as proposed.

With respect to pro rata allocation, some industry commenters requested guidance on how the total balance should be determined. They suggested that amounts paid by the required minimum periodic payment should be included in the total balance because excluding such amounts would be operationally burdensome insofar as it would require institutions to allocate the minimum payment and then recalculate each balance for purposes of allocating pro rata. The Agencies agree that the suggested clarification will reduce burden and assist institutions in allocating payments consistent with § __.23(b). Accordingly, the Agencies have adopted comment 23(b)–1 clarifying that an institution may, but is not required to, deduct amounts paid by the consumer's required minimum periodic payment when calculating the total balance for purposes of § __.23(b). An illustrative example is provided in comment 23(b)–2.iii.

In the May 2008 Proposal, proposed comment 23(a)(3)–1 provided an example of allocating excess payments pro rata among the balances. This comment is redesignated as comment 23(b)–2 for organizational reasons and generally adopted as proposed. In response to requests from commenters, however, the Agencies have added examples illustrating application of this method to accounts with balances on which the annual percentage rate cannot be increased pursuant to § __.24 and, as noted above, the different methods of calculating the total balance consistent with comment 23(b)–1.

Proposed Section __.23(b) Special Rules for Accounts With Promotional Rate Balances or Deferred Interest Balances

As proposed, § __.23(b) contained special rules for accounts with promotional rate and deferred interest balances that were intended to ensure that consumers received the full benefit of the promotional rate or deferred interest plan. Proposed § __.23(b)(1)(i) would have required that excess payments be allocated to promotional rate balances or deferred interest balances only after all other balances had been paid in full. Because, however, the Agencies were concerned that consumers may want to pay off deferred interest balances shortly before the deferred interest period expired, proposed § __.23(b)(1)(ii) would have permitted the existing practice by some institutions of allocating the entire payment first to the deferred interest balance in the last two months of the deferred interest period. Finally, proposed § __.23(b)(2) would have prohibited institutions from requiring consumers who are otherwise eligible for a grace period to repay any portion of a promotional rate balance or deferred interest balance in order to receive the benefit of a grace period on other balances (such as purchases).

Proposed § __.23(b) was strongly opposed by industry commenters on the grounds that, if implemented, it would significantly diminish interest revenue, leading institutions to significantly reduce or eliminate promotional rate and deferred interest offers that provide substantial benefits to consumers. Many of these commenters requested that proposed § __.23(b) be withdrawn and that institutions instead be permitted to apply excess payments first to promotional rate and deferred interest balances. Some industry commenters, however, requested that the general rule in proposed § __.23(a) be applied to all balances. In contrast, some consumer advocates urged the Agencies to ban deferred interest balances rather than create an exception for them.

As an initial matter, the Agencies have not included the special rules regarding deferred interest balances. As discussed below with respect to the § __.24, the final rule does not permit institutions to charge interest retroactively and thus does not permit deferred interest plans.

With respect to promotional rates, the Argus Analysis indicates that 16–19 percent of active accounts have one or more promotional rate balances and that the average promotional rate on those balances is between two and three percent, which is approximately 13 percentage points lower than the average non-promotional rate.[88] Furthermore, when the rates were weighted to account for the proportion of the total balance that was at a promotional rate, the effective annual percentage rate for these accounts was approximately 5.5 percent or roughly ten percentage points lower than the average rate for non-promotional balances.[89] Assuming this information is accurate, it appears that discounted promotional rates offer significant benefits to many consumers.

Notwithstanding these benefits, the Agencies continue to believe that, as suggested by other commenters, allocating payments to promotional rate balances before other balances with higher interest rates significantly diminishes the value of promotional rate offers. Furthermore, although the Agencies believe that proposed § __.23 would have had a negative impact on the availability of promotional rates, the commenters provided little data regarding the extent of that impact. Thus, the Agencies believe that application of the general payment allocation rule in § __.23 to promotional rate balances is appropriate. Application of this rule to all balances will limit the extent to which institutions may reduce promotional rate offers while ensuring that payment allocation is not used to significantly undercut the benefits to consumers who act in reliance on such offers. Accordingly, the Agencies have not included proposed § __.23(b)(1)(i) in the final rule. To the extent that specific practices raise concerns regarding unfairness or deception under the FTC Act, the Agencies plan to address those practices on a case-by-case basis through supervisory and enforcement actions.

The Agencies have also omitted proposed § __.23(b)(2), which would have prohibited institutions from denying a grace period solely because a consumer did not repay a promotional rate or deferred interest balance. This proposal was strongly criticized by industry as operationally burdensome and punitive for institutions that voluntarily provide a grace period on purchases. Proposed § __.23(b)(2) was intended to act in combination with proposed § __.23(b)(1)(i) to ensure that consumers receive the full benefit of promotional rate and deferred interest offers. Because the Agencies have concluded that a different approach is appropriate, the Agencies have not included proposed § __.23(b)(2) in the

[87] Because the final rule does not permit institutions to use a payment allocation method that is no less beneficial to consumers than one of the listed methods, the Agencies have omitted proposed comments 23(a)–1 and –2, which clarified the meaning of this aspect of the proposal. Similarly, because the final rule does not permit institutions to allocate equal portions of the excess payment to each balance, the Agencies have omitted proposed comment 23(a)(2)–1, which provided examples of that allocation method.

[88] *See* Exhibit 7, Tables 1b and 2 to Argus Analysis.

[89] *See id.*

final rule. To the extent that specific practices raise concerns regarding unfairness or deception under the FTC Act, the Agencies plan to address those practices on a case-by-case basis through supervisory and enforcement actions.

Other Issues

Implementation. As discussed in section VII of this **SUPPLEMENTARY INFORMATION**, the effective date for § __.23 is July 1, 2010. As of that date, this provision applies to existing as well as new consumer credit card accounts and balances. Thus, institutions must apply amounts paid by the consumer in excess of the required minimum periodic payment that the institution receives after the effective date consistent with § __.23.

Alternative to proposed rule. The Agencies requested comment on whether consumers should be permitted to instruct the institution regarding allocation of amounts in excess of the required minimum periodic payment. The response was mixed. Some consumer groups supported creating an exception to proposed § __.23 allowing consumers to select how their excess payments would be allocated, while others expressed concern that such an exception would be ineffective and subject to abuse because disclosures do not enable consumers to understand payment allocation. Similarly, institutions that currently allow consumers to select how their payments are allocated requested that they be permitted to continue doing so, while most industry commenters opposed any provision that would require them to allocate consistent with consumer choice as operationally burdensome.

In consumer testing prior to the May 2008 Proposal, the Board tested whether, given the opportunity, consumers could select how amounts paid in excess of the minimum would be allocated using the payment coupon. Most participants, however, were not able to understand the effects of payment allocation sufficiently to apply payments in a manner that minimized interest charges. Additional testing conducted by the Board after the May 2008 Proposal produced similar results. Accordingly, because it does not appear that consumer choice would be effective, the Agencies have not included such an exception in the final rule.

Supplemental Legal Basis for This Section of the OTS Final Rule

As discussed above, HOLA provides authority for both safety and soundness and consumer protection regulations. Section 535.23 supports safety and soundness by reducing reputational risk that would result from allocating consumers' payments in an unfair manner. Section 535.23 also protects consumers by providing them with fair allocations of their payments. When a creditor treats a consumer credit card account as having separate balances with separate interest rates and terms, it is essentially treating the card as having separate debts even though the consumer makes only one payment. Were the separate balances actually separate debts being collected by a debt collector, the consumer would have the right under section 810 of the Fair Debt Collection Practices Act (15 U.S.C. 1692h) to have payments applied in accordance with the consumer's directions. As discussed above, that approach did not test well for consumer credit card accounts with multiple balances, and the Agencies are not imposing the same requirement under § __.23. However, ensuring that the consumer's payment will be applied to the highest rate balance first or pro rata will be an important protection for consumers. Consequently, HOLA serves as an independent basis for § 535.23.

Section __.24—Unfair Acts or Practices Regarding Increases in Annual Percentage Rates

Summary. In May 2008, the Agencies proposed to prohibit the application of increased rates to outstanding balances, except in certain limited circumstances. *See* 73 FR 28917–28921. Specifically, proposed § __.24(a)(1) would have prohibited the application of an increased annual percentage rate to an outstanding balance on a consumer credit card account, except as provided in proposed § __.24(b). Proposed § __.24(a)(2) would have defined ''outstanding balance'' as the amount owed on an account at the end of the fourteenth day after the institution provides the notice required by Regulation Z, 12 CFR 226.9(c) or (g). Proposed § __.24(b) would have permitted institutions to increase the rate on an outstanding balance due to an increase in an index, when a promotional rate expired or was lost, or when the account became more than 30 days' delinquent. Finally, proposed § __.24(c) would have prohibited institutions from engaging in certain practices that would undercut the protections in proposed § __.24(a). Under proposed § __.24(c)(1), institutions would have been prohibited from requiring consumers to repay the outstanding balance over a period of less than 5 years or from more than doubling the repayment rate on the outstanding balance. Proposed § __.24(c)(2) would also have prohibited institutions from assessing fees or charges based solely on the outstanding balance (for example, assessing a maintenance fee in lieu of increased interest charges).

Based on the comments received and further analysis, the Agencies have revised proposed § __.24(a) to prohibit institutions from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in § __.24(b). The final rule also requires institutions to disclose at account opening all rates that will apply to each category of transactions on the account. Because consumers rely on the rates stated by the institution when deciding whether to open a credit card account and whether to use the account for transactions, these requirements are intended to ensure that consumers are protected from unfair surprise and to better enable them to comparison shop.

The Agencies have also revised the exceptions in proposed § __.24(b). First, the Agencies have adopted a new § __.24(b)(1), which permits an institution that has disclosed at account opening that an annual percentage rate will increase at a specified time to a specified amount to increase that rate accordingly. Second, the Agencies have adopted the proposed exception for variable rates as § __.24(b)(2). Third, the Agencies have adopted a new § __.24(b)(3), which permits institutions to increase rates for new transactions pursuant to the 45-day advance notice requirement in 12 CFR 226.9 (adopted by the Board elsewhere in today's **Federal Register**), although this exception does not apply during the first year after account opening. Fourth, to allow institutions to adjust rates in response to serious delinquencies, the Agencies have adopted the proposed exception allowing repricing when an account becomes more than 30 days' delinquent as § __.24(b)(4). Fifth, to avoid discouraging workout arrangements that decrease rates for consumers in default if the consumer abides by certain conditions (for example, making payment on time each month), § __.24(b)(5) has been added allowing a decreased rate to be returned to the pre-existing rate if the consumer fails to abide by the conditions of the workout arrangement. Finally, the Agencies have adopted the repayment provisions in proposed § __.24(c) with some stylistic changes.

Background. Prior to the Regulation Z amendments published elsewhere in today's **Federal Register**, 12 CFR

226.9(c) required 15 days' advance notice of certain changes to the terms of an open-end plan as well as increases in the minimum payment. However, advance notice was not required if an interest rate or other finance charge increased due to a consumer's default or delinquency.[90] Furthermore, no change-in-terms notice was required if the creditor set forth the specific change in the account-opening disclosures.[91]

In its June 2007 Regulation Z Proposal, the Board expressed concern that the imposition of penalty pricing can come as a costly surprise to consumers who are not aware of, or do not understand, what behavior is considered a ''default'' under their agreement. *See* 72 FR at 33009–33013. The Board noted that penalty rates can be more than twice as much as the consumer's normal rate on purchases and may apply to all of the balances on the consumer's account for several months or longer.[92]

Consumer testing conducted for the Board indicated that interest rates are a primary consideration for consumers when shopping for credit card accounts but that some consumers do not understand that events such as one late payment can cause them to lose the advertised rate and incur penalty pricing. In addition, some testing participants did not appear to understand that penalty rates can apply to all of their balances, including outstanding balances. Some participants also did not appear to understand how long a penalty rate could remain in effect. The Board observed that account-opening disclosures may be provided to the consumer too far in advance for the consumer to recall the circumstances that may cause rates to increase. In addition, the consumer may not have retained a copy of the account-opening disclosures and may not be able to effectively link the information disclosed at account opening to the current repricing of the account.

The Board's June 2007 Regulation Z Proposal included revisions to the regulation and its commentary designed to improve consumers' awareness about changes in their account terms and increased rates, including rate increases imposed as a penalty for delinquency or other acts or omissions constituting default under the account agreement. These revisions were also intended to enhance consumers' ability to shop for alternative financing before such changes in terms or increased rates become effective. Specifically, the Board proposed to give consumers 45 days' advance notice of a change in terms or an increased rate imposed as a penalty and to make the disclosures about changes in terms and increased rates more effective.[93] The Board also proposed to require that periodic statements for credit card accounts disclose the annual percentage rate or rates that may be imposed as a result of late payment.[94]

When developing the June 2007 Regulation Z Proposal, the Board considered, but did not propose, a prohibition on so-called ''universal default clauses'' or similar practices under which a creditor raises a consumer's interest rate to the penalty rate if, for example, the consumer makes a late payment on an account with a different creditor. The Board also considered but did not propose a requirement similar to that in some state laws providing consumers with the right to reject a change in terms if the consumer agrees to close the account.

In response to its June 2007 Regulation Z Proposal, individual consumers, consumer groups, another federal banking agency, and a member of Congress stated that notice alone was not sufficient to protect consumers from the harm caused by rate increases. These commenters argued that many consumers would not read or understand the proposed disclosures and, even if they did, many would be unable to transfer the balance to a new credit card account with comparable terms before the increased rate went into effect. Some of these commenters argued that creditors should be prohibited from increasing the rate on an outstanding balance in all instances. Others argued that consumers should be given the right to reject application of an increased rate to an outstanding balance by closing the account, but only if the increase was not triggered by a late payment or other violation of the terms of that account. This approach was also endorsed by some credit card issuers. On the other hand, most industry commenters stated that the 45-day notice requirement would delay issuers from increasing rates to reflect a consumer's increased risk of default, requiring them to account for that risk by, for example, charging higher annual percentage rates at the outset of the account relationship. These commenters also noted that, because rate increases are also used to pass on the cost of funds issuers themselves pay, delays in the imposition of increased rates could result in higher costs of credit or less available credit.

In the May 2008 Proposal, the Agencies expressed concern that disclosure alone may be insufficient to protect consumers from the harm caused by the application of increased rates to outstanding balances. Accordingly, the Agencies proposed § __.24, which would have prohibited this practice except in certain limited circumstances. This aspect of the proposal received strong support from individual consumers, consumer groups, members of Congress, the FDIC, two state attorneys general, and a state consumer protection agency. Many of these commenters urged the Agencies to go further, by eliminating all but the exception for variable rates and by applying the prohibition to rate increases on future transactions. In contrast, however, the proposal received strong opposition from credit card issuers, industry groups, and the OCC. These commenters generally argued that the proposed restrictions undermined institutions' ability to price according to current market conditions and the risk presented by the consumer and would therefore result in higher costs of credit or reduced credit availability for all consumers. They requested that the Agencies adopt additional exceptions to the proposed rule, take a different approach (such as requiring consumers to opt out of rate increases), or withdraw the proposal entirely. To the extent that commenters addressed specific aspects of the proposal or its supporting legal analysis, those comments are discussed below.

Legal Analysis

The Agencies conclude that, except in certain limited circumstances, increasing the annual percentage rate applicable to an outstanding balance on a consumer credit card account is an unfair practice under 15 U.S.C. 45(n) and the standards articulated by the FTC. In addition, based on these standards, the Agencies conclude that it is also an unfair practice to increase an annual percentage rate that applies to a consumer credit card account during the first year after account opening (except in certain limited circumstances).

[90] *See* prior versions of 12 CFR 226.9(c)(1); 12 CFR 226.9 comment 226.9(c)(1)–3.

[91] *See* prior version of 12 CFR 226.9 comment 226.9(c)–1.

[92] *See also* GAO Credit Card Report at 24 (noting that, for the 28 credit cards it reviewed, ''[t]he default rates were generally much higher than rates that otherwise applied to purchases, cash advances, or balance transfers. For example, the average default rate across the 28 cards was 27.3 percent in 2005—up from the average of 23.8 in 2003—with as many as 7 cards charging rates over 30 percent'').

[93] *See* proposed 12 CFR 226.9(c), (g), 72 FR at 33056–33058, 73 FR at 28891. Elsewhere in today's **Federal Register**, the Board has adopted a revised version of this proposal.

[94] *See* proposed 12 CFR 226.7(b)(11)(i)(C), 72 FR at 33053. Elsewhere in today's **Federal Register**, the Board has adopted a revised version of this proposal.

Substantial consumer injury. In May 2008, the Agencies stated that application of an increased annual percentage rate to an outstanding balance appeared to cause substantial monetary injury by increasing the interest charges assessed to a consumer's credit card account. Commenters who opposed the proposed rule did not dispute that such increases result in additional interest charges. Indeed, the Argus Analysis indicated that consumers are charged more than $11 billion in interest annually as a result of the practices addressed by proposed § __.24.[95]

Some industry commenters stated that only a minority of accounts are repriced each year and that even consumers who have violated the account terms by, for example, paying late are, as a general matter, not repriced. This does not, however, alter the fact that consumers who are repriced incur substantial monetary injury.

Some industry commenters argued that, to the extent the increased rate reflects the prevailing market rate for consumers with the same risk profile and other relevant characteristics, it cannot constitute an injury under the FTC Act. These commenters did not provide—nor are the Agencies aware of—any legal authority supporting the proposition that increasing the cost of credit is not an injury under the FTC Act so long as the increased rate does not exceed the market rate.

For all of these reasons, the Agencies conclude that applying an increased annual percentage rate to an outstanding balance causes substantial consumer injury. The Agencies further conclude that consumers who rely on advertised interest rates when deciding to open and use a credit card account experience substantial injury in the form of the increased cost of new transactions when rates are increased during the first year after account opening.[96] In addition, the account loses some of its value because the cost of financing transactions is higher than anticipated when the consumer decided to open the account.

Injury is not reasonably avoidable. In May 2008, the Agencies stated that, although the injury resulting from increases in the annual percentage rate may be avoidable by some consumers under certain circumstances, this injury did not appear to be reasonably avoidable as a general matter because consumers appeared to lack control over many of the circumstances in which institutions increase rates. The Agencies grouped these circumstances into four categories: Circumstances that are completely unrelated to the consumer's behavior (for example, changes in market conditions); consumer behavior that is unrelated to the account on which the rate is increased (for example, so-called ''universal defaults''); consumer behavior that is related to the account in question but does not violate the terms of that account (for example, using most but not all of the credit limit); and consumer behavior that violates the terms of the account (for example, late payment or exceeding the credit limit). As discussed below, based on the comments and further analysis, the Agencies conclude that consumers cannot, as a general matter, reasonably avoid rate increases on outstanding balances.

First, an institution may increase a rate for reasons that are completely unrelated to the consumer's behavior. For instance, an institution may increase rates to increase revenues or to respond to changes in the cost to the institution of borrowing funds. In May 2008, the Agencies observed that consumers lack any control over these increases and cannot be reasonably expected to predict when such repricings will occur because many institutions reserve the right to change the terms of the consumer's account at any time and for any reason. Accordingly, the Agencies concluded that consumers appeared to be unable to reasonably avoid injury in these circumstances.

Some industry commenters responded that consumers can reasonably avoid injury by transferring the balance to another credit card account, particularly if the consumer receives the 45 days' advance notice required by proposed 12 CFR 226.9. These commenters acknowledged, however, that many consumers will be unable to find another credit card account with a rate comparable to the pre-increase rate. Furthermore, even if a comparable rate could be found, the transfer may carry a cost because many institutions charge a flat fee for transferring a balance or a fee equal to a percentage of the transferred balance. Accordingly, the Agencies conclude that consumers cannot reasonably avoid the injury caused by rate increases on outstanding balances for reasons that are unrelated to their behavior.

Second, an institution may increase an annual percentage rate on a consumer credit card account based on behavior that is unrelated to the consumer's performance on that account. This is sometimes referred to as ''off-account'' behavior or ''universal default.'' For example, an institution may increase a rate due to a drop in a consumer's credit score or a default on an account with a different creditor even though the consumer has paid the credit card account with the institution according to the terms of the cardholder agreement.[97] The consumer may or may not have been aware of or able to control the factor that caused the drop in credit score, and the consumer cannot control what factors are considered or how those factors are weighted in creating the credit score. For example, a consumer is not likely to be aware that using a certain amount of the available credit on open-end credit accounts can lead to a reduction in credit score. Moreover, even if a consumer were aware that the utilization of available credit can affect a credit score, the consumer could not control how the institution uses credit scores or other information to set interest rates.[98] Furthermore, as discussed below, a late payment or default on a different account (or the account in question) will not be reasonably avoidable in some instances.

One industry commenter stated that a consumer has a right under the Fair Credit Reporting Act (FCRA) to dispute any inaccurate information that causes a drop in credit score.[99] This right, however, does not assist consumers whose credit scores decrease due to information that accurately reflects events that were nevertheless unavoidable by the consumer. Furthermore, even when the drop in credit score was caused by inaccurate information, the right to dispute that information comes too late to enable the consumer to avoid the harm caused by an increase in rate on an outstanding balance. Accordingly, the Agencies conclude that, as a general matter, consumers cannot reasonably avoid the

[95] *See* Exhibit 1, Table 1 to Argus Analysis (estimated annualized interest lost for rows labeled ''30+DPD Penalty Trigger,'' ''CIT Repricing,'' and ''Non 30+DPD Penalty Triggers''). The Argus Analysis indicates that some portion of this total is attributable to the requirement in Regulation Z, 12 CFR 226.9, that creditors provide 45 days' advance notice of most rate increases.

[96] For this reason, consumers must be informed at account opening of the rates that will apply to each category of transactions on the account.

[97] *See, e.g.*, Statement of Janet Hard before S. Perm. Subcomm. on Investigations, *Hearing on Credit Card Practices: Unfair Interest Rate Increases* (Dec. 4, 2007) (available at *http://www.senate.gov/~govt-aff/index.cfm?Fuseaction=Hearings.Detail&HearingID=509*).

[98] Indeed, several credit card issuers stated in their comments that, rather than relying solely on credit scores to increase rates, they use proprietary underwriting systems that examine a wide range of criteria. Because those criteria are not available to the public, consumers cannot be reasonably expected to know what behavior will cause their issuer to increase the rate on their account.

[99] *See* 15 U.S.C. 1681i.

injury caused by rate increases on outstanding balances that are based on a drop in credit score or on behavior that is unrelated to the consumer's performance on the account in question.

Third, some institutions increase annual percentage rates on consumer credit card accounts based on consumer behavior that is related to the account but does not violate the account terms. For example, an institution may increase the annual percentage rates of consumers who are close to (but not over) the credit limit on the account or who make only the required minimum periodic payment set by the institution for several consecutive months.[100] Although in some cases this type of activity may be within the consumer's control, the consumer cannot reasonably avoid the resulting injury because the consumer is not aware that this behavior may be used by the institution's internal risk models as a basis for increasing the rate on the account. Indeed, a consumer could reasonably interpret an institution's provision of a specific credit limit, minimum payment, or other account term as an implicit representation that the consumer will not be penalized if the credit limit is not exceeded, the minimum payment is made, or the consumer otherwise complies with the terms of the account. Accordingly, the Agencies conclude that consumers cannot reasonably avoid the injury caused rate increases based on behavior that does not violate the account terms.

Fourth, institutions increase annual percentage rates based on consumer behavior that violates the account terms. Although what violates the account terms can vary from institution to institution and from account to account, the most common violations that result in an increase in rate are exceeding the credit limit, a payment that is returned for insufficient funds, and a late payment.[101] In the May 2008 Proposal, the Agencies stated that, in some cases, it appeared that individual consumers could avoid these events by taking reasonable precautions. In other cases, however, it appeared that the event was not reasonably avoidable. For example, consumers who carefully track their transactions are less likely to exceed their credit limit than those who do not, but these consumers may still exceed the limit due to charges of which they were unaware (such as the institution's imposition of interest or fees) or because of the institution's delay in replenishing the credit limit following payment. Similarly, although consumers can reduce the risk of making a payment that will be returned for insufficient funds by carefully tracking the credits and debits on their deposit account, consumers still lack sufficient information about key aspects on their accounts, including when funds from a deposit or a credit will be made available by the depository institution.[102] Finally, the Agencies noted that, although proposed § __.22 would ensure that a consumer's payment would not be treated as late for any reason (including for purposes of triggering an increase in rate) unless the consumer received a reasonable amount of time to make that payment, consumers may nevertheless pay late for reasons that are not reasonably avoidable. As support, the Agencies cited the FTC's conclusion with respect to its Credit Practices Rule that the majority of defaults are not reasonably avoidable by consumers as well as studies, reports, and other evidence indicating that involuntary factors such as unemployment play a large role in delinquency.[103]

In response, some industry commenters asserted that, because most consumers pay on time and do not otherwise violate the account terms, these behaviors must be reasonably avoidable. As an initial matter, although the information available is limited, it appears that a significant number of consumers are penalized for violating the account terms.[104] Furthermore, the fact that a particular behavior may be relatively infrequent does not necessarily make it reasonably avoidable.[105]

Another commenter cited as evidence that late payment is reasonably avoidable a study finding that a consumer is 44 percent less likely to pay a late fee in the current month if that consumer paid a late fee the prior month.[106] While this study indicates that consecutive late payments are less likely to be accidental, it does not indicate that the initial late payment (which currently may trigger a rate increase) is reasonably avoidable.

Accordingly, the Agencies conclude that, as a general matter, the injury caused by rate increases on outstanding balances due to a violation of the account terms is not reasonably avoidable. For all of the reasons discussed above, the Agencies further conclude that, although the injury resulting from the application of increased annual percentage rates to outstanding balances is avoidable in some individual cases, this injury is not reasonably avoidable by consumers as a general matter.[107]

For these same reasons, the Agencies also conclude that the injury caused by

[100] *See, e.g.*, Statement of Bruce Hammonds, President, Bank of America Card Services before S. Perm. Subcomm. on Investigations, *Hearing on Credit Card Practices: Unfair Interest Rate Increases* at 5 (Dec. 4, 2007) (available at *http://hsgac.senate.gov/public/_files/STMTHammondsBOA.pdf*).

[101] *See* GAO Credit Card Report at 25.

[102] *See also* 73 FR at 28927–28933 (discussing unfairness concerns regarding overdraft services and debit holds).

[103] *See* Statement for FTC Credit Practices Rule, 49 FR at 7747–48 (finding that ''the majority [of defaults] are not reasonably avoidable by consumers'' because of factors such as loss of income or illness); Testimony of Gregory Baer, Deputy General Counsel, Bank of America before the H. Fin. Servs. Subcomm. on Fin. Instit. & Consumer Credit at 4 (Mar. 13, 2008) (''If a customer falls behind on an account, our experience tells us it is likely due to circumstances outside his or her control.''); Sumit Agarwal & Chunlin Liu, *Determinants of Credit Card Delinquency and Bankruptcy: Macroeconomic Factors,* 27 J. of Econ. & Finance 75, 83 (2003) (finding ''conclusive evidence that unemployment is critical in determining delinquency''); *Fitch: U.S. Credit Card & Auto ABS Would Withstand Sizeable Unemployment Stress,* Reuters (Mar. 24, 2008) (''According to analysis performed by Fitch, increases in the unemployment rate are expected to cause auto loan and credit card loss rates to increase proportionally with subprime assets experiencing the highest proportional rate.'') (available at *http://www.reuters.com/article/pressRelease/idUS94254+24-Mar-2008+BW20080324*).

[104] *See* GAO Report at 32–33 (finding that, in 2005, 11% of active accounts were being assessed a penalty interest rate, 35% had been assessed a late fee, and 13% had been assessed a fee for exceeding the credit limit); Exhibit 6, Tables 1a to Argus Analysis (stating that a total of 15.6% of accounts were repriced as a penalty from March 2007 through February 2008). One credit card issuer cited data showing that its consumers tend to make payments close to the due date, which—it argued—indicates that consumers are able to reasonably avoid late payment. This same data, however, indicated that a significant number of payments are received after the due date.

[105] Some industry commenters noted that the Board's consumer testing indicated that consumers have a general understanding that their rate would change if they violated the account terms by, for example, paying late. This does not, however, mean that consumers can, as a general matter, reasonably avoid such violations.

[106] *See* Sumit Agarwal *et al.*, Stimulus and Response: The Path from Naivete to Sophistication in the Credit Card Market (Aug. 20, 2006) (available at *http://www.iue.it/FinConsEU/ResearchActivities/BehavioralApproachesMay2007/Driscoll.pdf*).

[107] Some commenters argued that the Board's existing or proposed Regulation Z disclosures or state laws allowing consumers to opt out of rate increases by closing the account enable consumers to reasonably avoid injury. These arguments are addressed below in the Agencies' discussion of public policy. In particular, the Agencies note that disclosure will not enable consumers to select a credit card that does not reprice because institutions almost uniformly reserve the right to increase rates at any time and for any reason. *See* Statement for FTC Credit Practices Rule, 48 FR at 7746. In addition, some commenters criticized the May 2008 Proposal for failing to explain why injury was reasonably avoidable for each of the proposed exceptions in proposed § __.24(b). As discussed below, the exceptions in § __.24(b) are not based on a conclusion that the injury is reasonably avoidable as a general matter but instead on a determination that allowing repricing in those circumstances ensures that the costs of prohibiting rate increases on outstanding balances do not outweigh the benefits.

rate increases during the first year after account opening is not, as a general matter, reasonably avoidable, particularly if consumers are not informed at account opening of the rates that will apply to the account. A consumer will receive 45 days' advance notice of such increases pursuant to the Board's revisions to 12 CFR 226.9 (adopted elsewhere in today's **Federal Register**) but, as discussed above, many consumers will be unable to find another credit card account with a rate comparable to the pre-increase rate. Thus, although some consumers may be able to avoid injury by using a different credit card account for transactions or ceasing to use credit cards entirely, consumers who open an account to finance important purchases (such as medical services or home or automotive repairs) and cannot obtain credit at the same or a better rate elsewhere cannot reasonably avoid injury. Furthermore, to the extent that consumers are injured because the rate increase caused the account to lose value as a means of financing transactions, this injury is not reasonably avoidable because, as discussed above, rate increases are not, as a general matter, reasonably avoidable.

Injury is not outweighed by countervailing benefits. In May 2008, the Agencies stated that, although proposed § __.24 could result in increased costs or reduced credit availability for consumers generally, these costs did not appear to outweigh the substantial benefits to consumers of avoiding significant unanticipated increases in the cost of completed transactions. As discussed below, based on the comments received and further analysis, the Agencies have revised aspects of proposed § __.24 in order to ensure that the final rule creates benefits for consumers that exceed any associated costs. In light of these revisions, the Agencies conclude that, to the extent prohibited by § __.24, increases in the annual percentage rate do not produce benefits for consumers or competition that outweigh the injury.

In response to the May 2008 Proposal, individual consumers, consumer groups, and some members of Congress argued that repricing is inherently unfair and should be prohibited in most if not all circumstances. In contrast, industry commenters generally argued that flexible pricing models that respond to changes in the consumer's risk of default have produced substantial benefits for consumers and competition that outweigh any injury. These commenters noted that, whereas institutions once charged a single rate of around 20 percent on all credit card accounts regardless of the risk presented by the consumer, institutions now vary the interest rate based on the consumer's risk profile with the result that the great majority of consumers receive rates below 20 percent.[108]

The exceptions in proposed § __.24(b) permitted three types of repricing that appeared to produce benefits for consumers and competition that outweighed the injury. These exceptions were designed to provide institutions with flexibility in the repricing of outstanding balances while protecting consumers from unfair surprise. Based on the comments and further analysis, the Agencies have modified these exceptions as well as the general rule. As discussed below, the Agencies believe that the final rule achieves the appropriate balance between providing consumers with increased certainty and transparency regarding the cost of credit and providing institutions with sufficient flexibility to adjust to market conditions and allocate risk efficiently.

1. Increases in the Rate That Applies to New Transactions

Individual consumers, consumer groups, members of Congress, and the FDIC urged the Agencies to apply the proposed restrictions on the repricing of outstanding balances to increases in the rates that apply to future transactions. Some argued that consumers who have opened an account in reliance on the rates stated by the institution should be protected from unexpected increases in those rates for a specified period of time.

As discussed above, the Agencies agree that rate increases during the first year after account opening can cause substantial injury that is not, as a general matter, reasonably avoidable by consumers. In addition, because the Board's consumer testing indicates that interest rates are a primary focus for consumers when reviewing credit card applications and solicitations, the Agencies believe that allowing unlimited rate increases during the first year would be contrary to the purpose of § __.24, which is to prevent surprise increases in the cost of credit. Indeed, as noted below with respect to promotional rates, allowing this type of repricing while restricting others would create an incentive for institutions to offer artificially low interest rates to attract new customers based on the expectation that future repricings will generate sufficient revenues, a practice which distorts competition and undermines consumers' ability to evaluate the true cost of using credit. Accordingly, because consumers who open an account should be able to rely on the interest rate (or rates) stated by the institution, the Agencies have revised § __.24 to prohibit, as a general matter, rate increases during the first year after account opening.

This prohibition, however, is not absolute. The exception in § __.24(b)(1) permits an institution to increase any annual percentage rate disclosed at account opening so long as the institution also disclosed a period of time after which the rate will increase and the increased rate that will apply. In addition, a variable rate may be increased due to an increase in the index pursuant to § __.24(b)(2). Furthermore, after the first year, § __.24(b)(3) permits an institution to increase the rates that apply to new transactions, provided the institution complies with Regulation Z's 45-day advance notice requirement. Finally, § __.24(b)(4) permits an institution to increase rates when the account becomes more than 30 days delinquent.

The Agencies acknowledge that these additional restrictions will reduce interest revenue and therefore have some effect on the cost and availability of credit. Industry commenters, however, generally stated that the amount of interest revenue generated from raising rates on future transactions was relatively small in comparison to the revenue generated from applying increased rates to outstanding balances. Therefore, the Agencies believe that the effect of restricting rate increases during the first year after account opening will be significantly less than that for restricting rate increases on outstanding balances. Accordingly, the Agencies conclude that repricing during the first year after account opening does not produce benefits for consumers or competition that outweigh the injury to consumers.

By requiring institutions to commit in advance to the rates that will ultimately apply to transactions and to disclose those rates to consumers, the final rule will also prevent institutions from relying on the ability to reprice outstanding balances when setting upfront rates, thereby creating additional incentives for institutions to ensure that the rates offered to consumers at the outset fully reflect the risk presented by the consumer as well

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108 Many of these commenters relied on the GAO Credit Card Report, which states that data reported by six top issuers indicated that, in 2005, about 80% of active accounts were assessed rates of less than 20% (with more than 40% receiving rates of 15% or less). *See* GAO Credit Card Report at 5. However, as noted by consumer groups, this data also indicated that approximately 11% of active accounts were charged rates over 25%. *See id.* at 32.

as current and anticipated market conditions.

2. Variable Rates

The proposed rule provided that the prohibition on applying an increased annual percentage rate to an outstanding balance would not extend to variable rates. This exception was intended to allow institutions to adjust to increases in the cost of funds by utilizing a variable rate that reflects market conditions because, if institutions were not permitted to do so, they would be less willing to extend open-end credit. The Agencies reasoned that, although the injury caused by application of an increased variable rate to an outstanding balance is not reasonably avoidable insofar as the increase is due to market conditions that are beyond the consumer's ability to predict or control, the proposed exception would protect consumers from arbitrary rate increases by requiring that the index for the variable rate be outside the institution's control and available to the general public. This exception was supported by most commenters. Accordingly, because allowing institutions to utilize variable rates provides countervailing benefits sufficient to outweigh the increased interest charges, the Agencies have adopted the proposed exception for variable rates as § __.24(b)(2) with some stylistic changes.

3. Non-Variable Rates

Industry commenters urged the Agencies to revise proposed § __.24 to provide greater flexibility to offer rates that do not vary with an index. Without such an exception, they argued, concerns regarding increases in the cost of funds would force institutions to offer only variable rates, depriving consumers of the reliability of rates that do not fluctuate with the market. Some of these commenters requested that proposed § __.24 be revised to allow repricing of outstanding balances at the end of a specified period (such as six months, one year, or two years).

The Agencies agree that non-variable rates can provide significant benefits to consumers but only if consumers are informed before opening an account or engaging in transactions how long the rate will apply and what rate will be applied thereafter. Accordingly, the final rule provides two ways for institutions to offer non-variable rates. First, at account opening, § __.24(b)(1) permits institutions to offer non-variable rates that apply for a specified period of time and to reprice at the end of that period so long as the institution discloses at account opening the increased rate that will apply. For example, an institution could offer a consumer credit card account with a non-variable rate of 10% for six months after which a variable rate based on a disclosed index and margin will apply to outstanding balances and new transactions. Similarly, following the first year after account opening, § __.24(b)(3) permits institutions to provide non-variable rates that apply for a specified period of time, although these rates can only be applied to new transactions. For example, consistent with the notice requirements in 12 CFR 226.9(c), an institution could apply a non-variable rate of 15% to purchases for one year after which a variable rate will apply.

In either case, a consumer who receives a non-variable rate would be subject to repricing. However, the consumer will know at the time of each purchase not only how long the current rate will apply to that purchase but also the specific rate that will apply thereafter. Thus, the final rule provides institutions with the ability to increase rates to reflect anticipated changes in market conditions while enabling consumers to make informed decisions about the cost of using credit. Accordingly, the Agencies conclude that the benefits of allowing repricing under these circumstances outweigh the injury.

4. Promotional Rates

The proposed rule would have allowed institutions to apply an increased rate to an outstanding balance upon expiration or loss of a promotional rate, except that, when a promotional rate was lost, the increased rate could not exceed the rate that would have applied after expiration. Consumer groups opposed this exception, stating that, because it did not limit the circumstances in which a promotional rate could be lost, it would leave in place abusive repricing practices. These commenters argued that this exception would allow institutions to continue to engage in ''hair trigger'' repricing by, for example, increasing the rate on an outstanding balance from a 0% promotional rate to a 15% standard rate when the consumer's payment was received one day after the due date. They also stated that some institutions impose conditions on retention of a promotional rate that are unrelated to the consumer's risk of default and are instead intended to trap unwary consumers into losing the discounted rate (for example, requiring consumers to make a certain number or dollar amount of purchases each billing cycle). Accordingly, they argued that, because discounted promotional rate offers are used to encourage consumers to engage in transactions they would not otherwise make (such as large purchases or balance transfers), consumers who rely on promotional rate offers need the same protections as consumers who rely on non-promotional rates.

Based on the comments and further analysis, the Agencies agree that this aspect of the proposed rule could allow the very practices that the Agencies intended to prevent. For example, an institution seeking to attract new consumers by offering a promotional rate that is lower than its competitors' rates could offer a rate that would be unprofitable if the institution did not place conditions on retention of the rate that, based on past consumer behavior, it anticipates will result in a sufficient number of repricings to generate sufficient revenues. This type of practice distorts competition and undermines consumers' ability to evaluate the true cost of using credit.

Although the Agencies understand that discounted promotional rates can provide substantial benefits to consumers [109] and that institutions may reduce promotional rate offers if their ability to reprice is restricted, practices that cause consumers to lose a promotional rate before the previously-disclosed expiration date deprive those consumers of the benefit of a rate on which they have relied. Accordingly, because proposed § __.24 was intended to improve transparency and prevent surprise increases in the cost of completed transactions, the Agencies conclude that the injury caused by the repricing of promotional rate balances prior to expiration is not outweighed by the benefits of the promotional rate itself. Absent a serious default, a consumer should be able to rely on a rate for the period specified in advance by the institution. Therefore, the final rule does not permit repricing of outstanding balances prior to the end of the specified period (except in the case of a delinquency of more than 30 days as provided in § __.24(b)(4)). As discussed above, however, the final rule (like the proposal) permits repricing at the end of a specified period so long as the increased rate was disclosed in advance.

5. Violations of the Account Terms

The proposed rule would have permitted institutions to increase the annual percentage rate on an outstanding balance if the consumer became more than 30 days delinquent.

[109] *See* above discussion regarding the benefits of promotional rates in relation to § __.23 (payment allocation).

The Agencies observed that, although this delinquency may not have been reasonably avoidable in certain individual cases, the consumer will have received notice of the delinquency (in the periodic statement and likely in other notices as well) and had an opportunity to cure before becoming more than 30 days delinquent. The Agencies noted that a consumer is unlikely, for example, to become more than 30 days delinquent due to a single returned item or the loss of a payment in the mail. Thus, the harm in individual cases where a delinquency of more than 30 days is not reasonably avoidable appeared to be outweighed by the benefits to all consumers (in the form of lower annual percentage rates and broader access to credit) of allowing institutions to reprice for risk once a consumer has become significantly delinquent. For these reasons and for the additional reasons discussed below, the Agencies conclude that the benefits of allowing repricing in these circumstances outweigh the costs. The Agencies further conclude, however, that the same is not true for repricing based on other violations of the account terms.

In response to the May 2008 Proposal, consumer groups argued that repricing outstanding balances based on violations of the account terms is fundamentally unfair and should be prohibited entirely or, failing that, a delinquency of more than 30 days should be the only circumstance in which institutions are permitted to reprice based on a violation of the account terms. A consumer group explained that a delinquency of more than 30 days was the appropriate period because, under industry guidelines governing credit reporting, an account is not reported as delinquent until it is at least 30 days late, suggesting that paying less than 30 days late is not considered to affect creditworthiness significantly.[110] In contrast, industry commenters and the OCC argued that the proposed rule provided insufficient flexibility because accounts that become more than 30 days delinquent have such a high rate of loss that repricing is ineffective. The Argus Analysis stated that 32.4 percent of accounts that are more than 30 days past due and 49.8 percent of the balances on those accounts will become losses within the next twelve months.[111] Industry commenters argued that, given these rates, institutions would be unable to compensate for the losses through rate increases on all accounts that become more than 30 days delinquent. Instead, they argued, these losses would have to be spread over a larger population of accounts, potentially raising rates and reducing credit availability for many or all consumers.

The Argus Analysis stated that—as a result of the restrictions in proposed §__.23 (payment allocation), proposed §__.24 (repricing), and proposed 12 CFR 226.9 (45 days advance notice of most rate increases)—institutions could lose 1.639 percent of their annual interest revenue on revolving credit card accounts.[112] This analysis estimated that, in order to offset this loss, institutions might increase interest rates by approximately 120 percent of the loss (1.937 percentage points), decrease the average credit line of $9,561 by approximately 22 percent ($2,029), cease lending to consumers with Fair Isaac Corporation (''FICO'') scores below 620, or engage in some combination of these responses.[113]

Although the Argus Analysis did not estimate the potential impact on interest rates and credit availability specifically attributable to proposed §__.24, it did state that annual interest revenue on revolving accounts would be reduced by approximately 1.514 percent as a result of proposed §__.24 and proposed 12 CFR 226.9.[114] Therefore, assuming for the sake of discussion that the data and assumptions underlying the Argus Analysis are accurate, that analysis predicts that institutions might respond by increasing interest rates approximately 1.817 percentage points, by decreasing credit limits approximately $1,874, or by substantially reducing lending to consumers with FICO scores below 620.[115] Accordingly, if, for example, an institution currently charges a consumer an interest rate of 15% on a credit line of $9,000, the institution could respond to proposed §__.24 and proposed 12 CFR 226.9 by increasing the rate to 16.82% or by decreasing the credit limit to $7,126.

As noted above, however, the Agencies are unable to verify the accuracy of the conclusions reached by the Argus Analysis or its supporting data. Furthermore, this analysis assumed that institutions could only respond to the proposed rules by increasing rates, reducing credit limits, or eliminating credit to consumers with FICO scores below 620, ignoring other potential responses such as offsetting lost interest revenue by increasing revenue from fees (including annual fees) or developing improved underwriting techniques in order to reduce losses on accounts that eventually default.[116]

In addition, even if the Agencies were to accept the Argus Analysis and its underlying data at face value, that analysis also indicates that the typical rate increase is approximately eight percentage points and that approximately 22 percent of accounts are repriced over the course of a year.[117] Thus, with respect to interest rates, the Argus Analysis indicates that the impact of the proposed rule would be relatively neutral because the rule would prevent a six percentage point net increase on roughly a quarter of accounts while the other three-quarters may experience an increase of less than two percentage points.[118] Although the Argus Analysis

[110] *See* Consumer Data Industry Ass'n, *Credit Reporting Resource Guide* 6–6 (2006).

[111] *See* Exhibit 5, Tables 1a and 1b to Argus Analysis (row labeled ''Mar–07'' containing twelve-month outcome duration). The Argus Analysis categorized an account as a loss if it became 90 or more days delinquent, charged off, or bankrupt. *Id.*

[112] *See* Argus Analysis at 3; Exhibit 1, Table 1 to Argus Analysis.

[113] *See* Argus Analysis at 4; Exhibit 1, Tables 7–11 to Argus Analysis.

[114] *See* Exhibit 1, Table 1 to Argus Analysis (combining the predictions for ''Revolvers'' in the rows labeled ''30+DPD Penalty Trigger,'' ''CIT Repricing,'' and ''Non 30+DPD Penalty Triggers'').

[115] As noted above, the Argus Analysis estimated that proposed §__.24 and proposed 12 CFR 226.9 would reduce interest revenue by 1.514 percent. Accordingly, the Agencies assumed that, consistent with the Argus Analysis, the increase in interest rates attributable to proposed §__.24 and proposed 12 CFR 226.9 would be 120 percent of the reduction in interest revenue ($1.514 \times 1.2 = 1.817$). The Agencies also assumed that the reduction in credit limits attributable to proposed §__.24 and proposed 12 CFR 226.9 would be proportionate to the overall reduction predicted by the Argus Analysis. Thus, because the estimated revenue loss attributable to proposed §__.24 and proposed 12 CFR 226.9 (1.514) is 92.4% of the overall estimated revenue loss (1.637), the Agencies assumed that the reduction in credit limits attributable to proposed §__.24 and proposed 12 CFR 226.9 would be 92.4% of the overall reduction of $2,029 predicted by the Argus Analysis ($\$2{,}029 \times 0.924 = \$1{,}874.26$). The Agencies were not able to estimate the potential impact on credit availability for consumers with FICO scores below 620 but, because proposed §__.24 and proposed 12 CFR 226.9 accounted for 92.4% of the estimated revenue loss, the Agencies assumed the reduction in available credit for these consumers would be substantial.

[116] As discussed above with respect to §__.23 and in greater detail below in section VII of this SUPPLEMENTARY INFORMATION, the Agencies anticipate that, prior to the effective date, some institutions may respond to the restrictions in proposed §__.24 and proposed 12 CFR 226.9 by, for example, adjusting interest rates on existing balances, increasing fees, or reducing credit limits.

[117] *See* Argus Analysis at 7; Exhibit 6, Tables 1a and 3a to Argus Analysis (totaling the percentage of accounts repriced as a penalty and as a change-in-terms from March 2007 through February 2008).

[118] In other words, if, according to the Argus Analysis, roughly 22% of consumers currently experience a rate increase averaging 8 percentage points each year and all consumers will experience a 1.817-point increase in interest rate as a result of the proposed rules, then the proposed rules will prevent 22% of consumers from incurring a net increase of 6.183 points (8 minus 1.817) while the other 78% may experience an increase of 1.817.

also predicted that—instead of increasing interest rates—institutions might reduce credit limits or lending to consumers with lower FICO scores, those responses would reduce or eliminate the need for a rate increase, thereby retaining roughly the same relationship between the costs and benefits of the rule.[119]

As with § __.23, even if the shifting of costs from one group of consumers to another, much larger group is viewed as neutral from a cost-benefit perspective, the less quantifiable benefits to consumers and competition of more transparent upfront pricing weigh in favor of § __.24. Upfront annual percentage rates that are artificially reduced based on the expectation of future increases do not represent a true benefit to consumers as a whole. In addition to protecting consumers from unexpected increases in the cost of transactions that have already been completed, § __.24 will enable consumers to more accurately assess the cost of using their credit card accounts at the time they engage in new transactions. Finally, competition will be enhanced because institutions that offer annual percentage rates that more accurately reflect risk and market conditions will no longer be forced to compete with institutions offering artificially reduced rates. Accordingly, the Agencies conclude that limiting rate increases on outstanding balances and during the first year to circumstances where the account is more than 30 days delinquent produces benefits that outweigh the associated costs.

Industry commenters and the OCC urged the Agencies to adopt additional exceptions to proposed § __.24 based on violations of the account terms other than a single late payment (specifically, exceeding the credit limit, making payment with a check that is returned for insufficient funds, and paying late twice in a twelve month period). Many of these commenters provided data indicating that these behaviors are associated with loss rates that are significantly higher than those for consumers who do not violate the account terms (although all of these loss rates were significantly lower than the loss rates associated with delinquencies of more than 30 days). As an initial matter, the Agencies note that the impact on the cost and availability of credit of prohibiting repricing based on these behaviors is subsumed within the impact of prohibiting repricing based on any violation of the account terms other than a delinquency of more than 30 days. Accordingly, for the reasons already stated above, repricing outstanding balances based on these behaviors does not provide benefits to consumers or competition that outweigh the injury to consumers.

Furthermore, with respect to repricing outstanding balances when the credit limit is exceeded or when a payment is returned for insufficient funds, the Agencies have already concluded that these violations of the account terms are not, as a general matter, reasonably avoidable by consumers. Accordingly, allowing repricing in those circumstances would undermine the purpose of § __.24, which is to protect consumers from being unfairly surprised by increases in the cost of completed transactions.

Similarly, the Agencies conclude that allowing repricing based on two late payments in twelve months would not sufficiently protect consumers from unfair surprise. As discussed above, the Agencies have already concluded that consumers cannot, as a general matter, reasonably avoid repricing based on late payments. Furthermore, making a payment that is received one day after the due date twice in a period of twelve months is precisely the type of ‘‘hair trigger’’ repricing that § __.24 is intended to prevent. Even if repricing were allowed only when the late payments were received two, three, or even five days after the due date (as some commenters suggested), these periods would not provide consumers with sufficient time to learn of the delinquency and cure it (unlike a delinquency of 30 days or more).[120] Furthermore, as discussed above with respect to § __.22, the Agencies have already concluded that providing a short period of time after the due date during which payments must be treated as timely could create consumer confusion regarding when payment is actually due and undermine the Board's efforts elsewhere in today's **Federal Register** to ensure that consumers' due dates are meaningful. Finally, the Agencies note that the exception in § __.24(b)(4) permitting repricing for delinquencies of more than 30 days is similar to an exception allowing repricing based on consecutive delinquencies because a consumer who is more than 30 days' delinquent will, in most cases, have missed two due dates.

6. Assessment of Deferred Interest

As noted above, consumer groups stated that the assessment of deferred interest raises many of the same concerns as the repricing of outstanding balances. Deferred interest plans are typically marketed as being ‘‘interest free’’ for a specified period (such as a year) and are often offered to promote large purchases such as furniture or appliances. However, although interest is not charged to the account during that period, interest accrues at a specified rate. If the consumer violates the account terms (which could include a ‘‘hair trigger’’ violation such as paying one day late) or fails to pay the purchase balance in full before expiration of the period, the institution retroactively charges all interest accrued from the date of purchase.

Consumer groups stated that, like discounted promotional rates, deferred interest plans are used to encourage consumers to engage in transactions they would not otherwise make. They argued that, because of ‘‘hair trigger’’ repricing, many consumers lose the benefit of the deferred interest plan earlier than expected and that many other consumers incur deferred interest charges by failing to pay the balance in full prior to expiration either inadvertently or because they lack the resources to do so. In addition, they noted that the injury to the consumer in such cases may be far greater than when a promotional rate is lost because interest is charged retroactively on the outstanding balance. Finally, they stated that deferred interest plans cannot be adequately disclosed to consumers because of their complexity.

Based on the comments and further analysis, the Agencies believe that the assessment of deferred interest under these circumstances is effectively a repricing of an outstanding balance. For example, assume that an institution offers a consumer credit card account that accrues interest on purchases at an annual percentage rate of 15% but interest will not be charged on purchases for one year unless the

Although some portion of the 22 percent are presumably accounts that become 30 days delinquent and thus would still be repriced, the comments indicate that this portion is relatively small.

[119] The Agencies also note that, while the estimated impact on interest rates and credit availability is a prediction regarding potential future events, the average eight percentage point increase appears to reflect the harm that is currently imposed on consumers. Accordingly, the Agencies believe that the latter figure is entitled to greater weight.

[120] One commenter suggested that the second late payment would be reasonably avoidable if the first late payment was followed by a notice warning the consumer that a second delinquency would result in repricing. Because, however, this notice could precede the second late payment by as much as eleven months, the Agencies do not believe it would be effective to enable consumers to avoid repricing. *See* Agarwal, Stimulus and Response (finding that a consumer is 44 percent less likely to pay a late fee in the current month if that consumer paid a late fee the prior month but that this effect decreases with each additional month).

consumer violates the account terms or the purchase balance is not paid in full by the end of the year. The account is marketed as ''no interest on purchases for one year.'' On January 1 of year one, a consumer opens an account in order to make a $3,000 purchase. Although interest technically accrues on the $3,000 purchase at 15% from January 1 through December 31, this interest is not charged to the account, making the rate that applies to the purchase effectively zero during that period. If, however, the consumer violates the account terms during year one by paying late or fails to pay the $3,000 in full by January 1 of year two, all of the interest that has accrued at 15% since January 1 of year one will be charged retroactively to the account. In addition, the 15% rate (or a higher penalty rate) will apply to the $3,000 balance thereafter.

The Agencies believe that this is precisely the type of surprise increase in the cost of completed transactions that § __.24 is intended to prevent. As noted by the commenters, the assessment of accrued interest causes substantial injury to consumers. In addition, for the same reasons that consumers cannot, as a general matter, reasonably avoid rate increases as a result of a violation of the account terms, consumers cannot, as a general matter, reasonably avoid assessment of deferred interest as a result of a violation of the account terms or the failure to pay the balance in full prior to expiration of the deferred interest period. For example, just as illness or unemployment may reasonably prevent some consumers from paying on time, these conditions may reasonably prevent some consumers from paying the deferred interest balance in full prior to expiration. In addition, as noted by the commenters, disclosure may not provide an effective means for consumers to avoid the harm caused by these plans.

Finally, although deferred interest plans provide some consumers with substantial benefits in the form of an interest-free advance if the balance is paid in full prior to expiration, the Agencies conclude that these benefits do not outweigh the substantial injury to consumers. As discussed above, deferred interest plans are typically marketed as ''interest free'' products but many consumers fail to receive that benefit and are instead charged interest retroactively. Accordingly, as with the prohibitions on other repricing practices discussed above, prohibiting the assessment of deferred interest will improve transparency and enable consumers to make more informed decisions regarding the cost of using credit. Accordingly, the Agencies conclude that an exception to the general prohibition on rate increases is not warranted for the assessment of deferred interest.

The Agencies note, however, that the final rule does not preclude institutions from offering consumers interest-free promotional plans. As discussed above, institutions can still offer 0% promotional rates for specified periods so long as they disclose the rate that will apply thereafter. Furthermore, an institution could offer a plan where interest is assessed on purchases at a disclosed rate for a period of time but the interest charges are waived or refunded if the principal is paid in full by the end of the period. For example, assume that an institution offers an account that charges interest on purchases at a 15% non-variable rate but only requires the consumer to repay a portion of the outstanding principal balance each month during the first year after the account is opened. If the principal is paid in full by the end of that year, the institution waives all interest accrued during that year. At account opening on January 1 of year one, the institution discloses these terms (including the 15% rate at which interest will accrue). The consumer uses the account for a $3,000 purchase on January 1. The consumer makes no other purchases and begins making payments. At the end of each billing cycle, the institution charges to the account interest accrued on the principal balance at the 15% rate. On December 15 of year one, the consumer pays the remaining principal balance and the institution waives all accrued interest. This type of product would comply with the final rule.

Public policy. Industry commenters and the OCC argued that proposed § __.24 conflicted with established public policy, citing a variety of sources. The Agencies note that public policy is not a required element of the unfairness analysis.[121] Nevertheless, after carefully considering the materials cited by the comments, the Agencies conclude that any inconsistency is necessary to protect consumers from practices that satisfy the required statutory elements of unfairness.

First, industry commenters and the OCC cited testimony, guidance, reports, and advisory letters from federal banking regulators (including the Board and OTS) stating or suggesting that institutions should actively manage risk on credit card accounts, that one method of managing risk is adjusting interest rates on outstanding balances and new transactions to reflect the consumer's risk of default, and that doing so can be beneficial for consumers insofar as it reduces rates overall.[122] The Agencies agree that, to the extent that these materials constitute public policy for purposes of the FTC Act unfairness analysis, many contain statements that could be deemed inconsistent with the restrictions in § __.24. As discussed above, however, the Agencies have already taken the benefits of adjusting rates to reflect changes in a consumer's risk of default into account and concluded that these benefits do not outweigh the injury to consumers caused by this practice. Accordingly, the Agencies find that the regulatory materials cited do not preclude a determination that, to the extent prohibited by § __.24, application of increased annual percentage rates is an unfair practice.

Second, some industry commenters and the OCC stated that proposed § __.24 conflicts with previous Board policy regarding rate increases. Specifically, these commenters noted that, prior to the revisions to Regulation Z in today's **Federal Register**, 12 CFR 226.9 placed no restrictions on rate increases resulting from a violation of the account terms and required only 15 days' advance notice of rate increases resulting from a change in the terms of the contract. These commenters further noted that, rather than proposing to prohibit repricing of outstanding balances in the June 2007 Regulation Z Proposal, the Board instead proposed to improve disclosures regarding the rate increases. According to these commenters, the improved Regulation Z disclosures are sufficient, by themselves, to address any concerns regarding application of increased rates to outstanding balances.

These commenters first argued that disclosure in solicitations and at account opening of the circumstances in which a penalty rate will be applied to

[121] *See* 15 U.S.C. 45(n).

[122] *See, e.g.*, Testimony of Julie L. Williams, Chief Counsel & First Senior Deputy Controller, OCC before H. Subcomm. on Fin. Instits. & Consumer Credit at 5 (Apr. 17, 2008); Board of Governors of the Federal Reserve System, Report to Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit at O5 (Aug. 2007) (available at *http://www.federalreserve.gov/boarddocs/RptCongress/creditscore/creditscore.pdf*); Testimony of John C. Dugan, Comptroller of the Currency, OCC, before the H. Subcomm. on Fin. Instits. & Consumer Credit at 21–24 (June 7, 2007) (available at *http://www.house.gov/apps/list/hearing/financialsvcs_dem/htdugan060707.pdf*); OTS Handbook on Credit Card Lending § 218 (2006) (available at *http://files.ots.treas.gov/422064.pdf*); OCC Advisory Letter 2004–10, at 3 (Sept. 14, 2004); OCC Handbook, Rating Credit Risk (Apr. 2001) (available at *http://www.occ.treas.gov/handbook/RCR.pdf*).

a consumer credit card account will enable consumers to avoid those circumstances and therefore any injury. Although these disclosures are necessary and appropriate for the informed use of credit, the Agencies do not believe that, by themselves, they would be effective in preventing the harm caused by application of increased rates. Disclosure will not enable consumers to select a credit card that does not reprice outstanding balances because institutions almost uniformly reserve the right to increase rates at any time and for any reason and to apply those increased rates to prior transactions.[123] Nor, as discussed above, would disclosure enable consumers to avoid rate increases resulting from circumstances outside their control, such as late payments due to delays in the delivery of mail. Furthermore, as noted in the May 2008 Proposal, there is evidence that disclosure at solicitation and account opening has limited effectiveness in preventing subsequent defaults because consumers do not focus on the consequences of default when deciding whether to open a credit card account and whether to use the account for a particular transaction.[124]

Industry commenters also argued that disclosure of the rate increase 45 days before that increase goes into effect allows consumers to avoid injury by paying the balance in full or transferring that balance to another credit card account.[125] It would be unreasonable, however, to expect consumers who have chosen to use a credit card to finance purchases in reliance on the rate in effect at that time to pay those purchases in full in order to avoid injury. Furthermore, as discussed above, alternative financing (such as a balance transfer) only enables the consumer to avoid injury if the consumer can obtain a comparable annual percentage rate and terms elsewhere, which often will not be the case. Accordingly, because disclosure alone would not be effective in preventing the harm caused by application of increased rates to outstanding balances, the Agencies conclude that § __.24 does not conflict with the Board's Regulation Z.

Third, industry commenters and the OCC argued that proposed § __.24 conflicts with state laws that, rather than prohibiting repricing of outstanding balances, require consumers to affirmatively reject (or opt out of) such increases by closing the account.[126] These commenters urged the Agencies to adopt this approach as a less restrictive alternative to proposed § __.24.

In the May 2008 Proposal, the Agencies considered a similar suggestion raised by some commenters in response to the Board's June 2007 Regulation Z Proposal and concluded that this remedy would not effectively protect consumers.[127] The Agencies noted that, in most cases, it would not be economically rational for a consumer to choose to pay more for credit that has already been extended, particularly when the increased rate is significantly higher than the prior rate. If consumers understand their right to reject a rate increase, most would rationally exercise that right.[128] Thus, the Agencies conclude that providing consumers with a right to opt out of rate increases on outstanding balances would be less restrictive than prohibiting such increases only if a significant number of consumers inadvertently forfeited that right by failing to read, understand, or act on the notice.[129] According to the GAO Report, however, although state laws applying to four of the six largest credit card issuers require an opt-out, representatives of those issuers stated that few consumers exercise that right.[130] Although several institutions asserted that providing an opt-out would allow consumers to reasonably avoid injury, none provided the percentage of consumers that currently opt out under applicable state statutes.[131]

Finally, some industry commenters argued that the failure to provide an opt-out for rate increases was inconsistent with the provision of an opt-out for payment of overdrafts in proposed § __.32(a). As discussed below, the Agencies are not taking action on proposed § __.32(a) at this time. The Board has proposed a revised opt-out right with respect to overdraft services under Regulation E elsewhere in today's **Federal Register**. The Board is also proposing an alternative approach that would require consumer opt-in to overdraft services. Furthermore, the Agencies' decision to propose an opt-out with respect to payment of overdrafts but not with respect rate increases was based on an evaluation of the consumers' incentives in each situation. A consumer could rationally prefer assessment of an overdraft fee to rejection of the transaction because of the costs associated with rejection (for example, a merchant fee for a check that is not honored), whereas—for the reasons discussed above—few if any consumers would willingly choose to pay more for credit already extended.

Accordingly, although § __.24 is broader than the law in some states, the Agencies conclude that provision of a right to opt out of rate increases would not be effective in preventing the harm

[123] The GAO's 2005 analysis of 28 popular credit cards, for example, identified only one that did not reprice outstanding balances to a default rate. *See* GAO Report at 24. Furthermore, the comments from industry on the May 2008 Proposal generally stated that all or almost all credit card issuers reprice outstanding balances. Thus, as the FTC concluded with respect to its Credit Practices Rule, the prevalence of a contractual provision indicates that harm caused by that provision is not reasonably avoidable. *See* Statement for FTC Credit Practices Rule, 48 FR at 7746.

[124] *See* Statement for FTC Credit Practices Rule, 49 FR at 7744 (''Because remedies are relevant only in the event of default, and default is relatively infrequent, consumers reasonably concentrate their search on such factors as interest rates and payment terms.''); *see, e.g.*, Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers,* 80 Tex. L. Rev. 451, 467–478, 494 (2008) (''Issuers currently compete on the basis of interest rates, but because this competition focuses on initial interest rates and not on the total amount that consumers will pay, it fails to give sufficient decision-making information either to consumers who literally do not understand the events that trigger higher interest rates and fees or to consumers who underestimate the likelihood that they will be faced with these rates and fees.''); Shane Frederick, *et al., Time Discounting and Time Preference: A Critical Review,* 40 J. Econ. Literature 351, 366–67 (2002); Ted O'Donoghue & Matthew Rabin, *Doing It Now or Later,* 89 Am. Econ. Rev. 103, 103, 111 (1999). Some industry commenters argued that, under the FTC Policy Statement on Unfairness, a finding of unfairness is not appropriate when the institutions did not *create* an obstacle to the free exercise of consumer decisionmaking. In fact, the FTC Policy Statement on Unfairness states (at 3) that the proper analysis is whether the institution ''unreasonably creates *or takes advantage of* an obstacle to the free exercise of consumer decisionmaking.'' (Emphasis added.)

[125] *See* 12 CFR 226.9(c)(2) and (g).

[126] *See, e.g.*, Ala. Code § 5–20–5; 5 Del. Code § 952; Off. Code of Ga. § 7–5–4; Nev. Rev. Stat. § 97A.140; S.D. Codified Laws § 54–11–10; Utah Code § 70C–4–102.

[127] At that time, commenters urged that the opt-out right not apply when the rate increase was due to a violation of the account terms. As the Agencies noted in May 2008, such a right would not address the injury to consumers whose rates were increased due to a violation of the account terms that was not reasonably avoidable. The Agencies understand the commenters on this proposal to urge that the opt-out right be given in all circumstances. This suggestion, however, does not alter the Agencies' conclusion that an opt-out right would not effectively address the injury to consumers.

[128] As some commenters noted, a consumer who cannot obtain a lower rate elsewhere and wants continued access to a credit card account could rationally choose not to reject application of an increased rate to an outstanding balance if rejection meant closing the account. In the scenario, however, the consumer cannot reasonably avoid injury.

[129] The Agencies also noted in May 2008 that providing consumers with notice and a means to exercise an opt-out right (*e.g.*, a toll-free telephone number) would create additional costs and burdens for institutions.

[130] GAO Credit Card Report at 26–27.

[131] One institution stated that half of the consumers who called its customer service with questions regarding an opt-out notice exercised that right, although it is unclear what percentage of all affected consumers this subset comprised.

caused by application of increased rates to outstanding balances.

Applicability of unfairness analysis to other practices. Industry and consumer group commenters questioned why the Agencies' unfairness analysis with respect to rate increases as a result of a violation of the account terms could not be applied to other consequences of such violations, such as increases in the rate for new transactions or fees. As discussed above, the Agencies have concluded that the unfairness analysis does, in fact, preclude rate increases during the first year after account opening. After the first year, however, the Agencies believe that the consumer has less of a reasonable expectation that the rate promised at account opening will continue to apply to new transactions. At that point, even if the reason for the rate increase was not reasonably avoidable, other provisions should enable consumers to reasonably avoid the harm caused by an increase in the rate for new transactions. Specifically, consumers will receive notice of most rate increases 45 days before the increase goes into effect.[132] Furthermore, as discussed below, § __.24(b)(3) prevents surprise by prohibiting application of the increased rate to transactions made up to seven days after provision of the 45-day notice. After the first year, these provisions will enable consumers to reasonably avoid any injury caused by application of an increased rate to new transactions by providing them sufficient time to receive the 45-day notice and to decide whether to continue using the card.

Similarly, although there will be circumstances in which some consumers cannot reasonably avoid fees for violating the account terms (for example, a late payment fee when a delay in mail delivery caused the late payment), this injury is not sufficient to outweigh the countervailing benefits to consumers and competition of discouraging violations of the account terms. The application of an increased rate to an outstanding balance increases consumers' costs until the rate is reduced or the balance is paid in full or transferred to an account with more favorable terms. Similarly, an increase in the rate applicable to new transactions increases the costs of using the account indefinitely. The assessment of a fee, however, is generally an isolated cost that will not be repeated unless the account terms are violated again.

[132] *See* 12 CFR 226.9(c)(2) and (g).

Final Rule

As discussed below, § __.24 imposes certain disclosure requirements on institutions. Comment 24–1 clarifies that an institution that complies with the applicable disclosure requirements in Regulation Z, 12 CFR part 226, has complied with the disclosure requirements in § 227.24. This comment further clarifies that nothing in § __.24 alters the 45-day advance notice requirements in 12 CFR 226.9(c) and (g). However, nothing in § __.24, its commentary, or this **SUPPLEMENTARY INFORMATION** should be construed to suggest that, by itself, a failure to comply with the notice requirements in 12 CFR 226.9 constitutes a violation of § __.24.

Section __.24(a) General Rule

Proposed § __.24(a)(1) would have prohibited institutions from increasing the annual percentage rate applicable to any outstanding balance on a consumer credit card account, except in the circumstances set forth in proposed § __.24(b). Proposed § __.24(a)(2) defined ''outstanding balance.''

As discussed above, the Agencies have adopted a new § __.24(a), which requires institutions to disclose at account opening the annual percentage rates that will apply to each category of transactions on the consumer credit card account. Section __.24(a) further provides that an institution must not increase the annual percentage rate for a category of transactions on any consumer credit card account except as provided in § __.24(b). As discussed below, the general prohibition on increasing rates in § __.24(b) applies to existing accounts and balances as of the July 1, 2010 effective date.

Comment 24(a)–1 clarifies that an institution cannot satisfy the disclosure requirement in § __.24(a) by disclosing at account opening only a range of rates or that a rate will be ''up to'' a particular amount. Comment 24(a)–2 provides illustrative examples of the application of the prohibition on increasing rates.

Section __.24(b) Exceptions

Proposed § __.24(b) set forth exceptions to the general prohibition in proposed § __.24(a) on applying increased rates to outstanding balances. As discussed above, the Agencies have revised § __.24(b) to reflect the changes to § __.24(a) and to ensure that consumers are protected from unfair surprise regarding the cost of credit.

Section __.24(b)(1) Account Opening Disclosure Exception

Section __.24(b)(1) permits an increase in the annual percentage rate for a category of transactions to a rate that was disclosed at account opening upon expiration of a period of time that was also disclosed at account opening. For example, an institution could offer a consumer credit card account that applies a 5% non-variable rate during the first six months after account opening, a 15% non-variable rate for an additional six months, and a variable rate thereafter. So long as the institution discloses these terms to the consumer at account opening, § __.24(b)(1) permits the institution to apply the 15% rate to the purchase balance and to new purchases after six months and the variable rate to the purchase balance and new purchases after the first year. However, the institution could not subsequently increase that variable rate unless specifically permitted by one of the other exceptions in § __.24(b).

Comment 24(b)(1)–1 clarifies that § __.24(b)(1) does not permit application of increased rates that are disclosed at account opening but are contingent on a particular event or occurrence or may be applied at the institution's discretion (unless one of the exceptions in § __.24(b) applies). The comment provides several examples, including the retroactive assessment of deferred interest. However, comment 24(b)(1)–2 clarifies that nothing in § __.24 prohibits an institution from assessing interest due to the loss of a grace period as provided in § __.25. In addition, comment 24(b)(1)–3 clarifies that nothing in § __.24 prohibits an institution from applying a rate that is lower than the disclosed rate upon expiration of the period. However, if the lower rate is applied to an existing balance, the institution cannot subsequently increase the rate with respect to that balance unless it has provided the consumer with advance notice pursuant to 12 CFR 226.9(c). An illustrative example is provided.

Section __.24(b)(2) Variable Rate Exception

Proposed § __.24(b)(1) would have permitted an increase in the annual percentage rate due to an increase in an index that is not under the institution's control and is available to the general public. This exception was designed to be similar to the exception for variable rates in 12 CFR 226.5b(f)(1). This aspect of the proposal was supported by comments from both industry and consumer groups. Accordingly, proposed § __.24(b)(1) is adopted as § __.24(b)(2) with stylistic revisions. This provision cannot be used to increase the annual percentage rate based on an index except to the extent disclosed.

The Agencies have adopted a new comment 24(b)(2)–1, which clarifies that § __.24(b)(2) does not permit an institution to increase an annual percentage rate by changing the method used to determine a variable (such as by increasing the margin), even if that change will not result in an immediate increase.

Proposed comment 24(b)(1)–1 clarified that an institution may not increase a variable rate balance based on its own prime rate but may use a published prime rate, such as that in the *Wall Street Journal*, even if the institution's prime rate is one of several rates used to establish the published rate. This comment also clarified that an institution may not increase a variable rate by changing the method used to determine the indexed rate. Proposed comment 24(b)(1)–2 clarified when a rate is considered ''publicly available.''

One industry commenter requested clarification that institutions were not limited to basing variable rates on prime rates and could also use one or more other publicly available indices, such as the Consumer Price Index. Because the method for determining the variable rate must be disclosed consistent with 12 CFR 226.6, the Agencies believe that the use of multiple indices is appropriate so long as those indices are publicly available. The Agencies have revised proposed comments 24(b)(1)–1 and –2 accordingly and adopted those comments as 24(b)(2)–2 and –3.

Some industry commenters requested that institutions be permitted to change a non-variable rate to a variable rate or to change the method used to determine a variable rate so long as, at the time of the change, the rate would not increase. Because such changes could lead to future increases in a rate during the first year or a rate applicable to an outstanding balance, comment 24(b)(2)–4 clarifies that a non-variable rate may be converted to a variable rate only when specifically permitted by § __.24. For example, under § __.24(b)(1), an institution may convert a non-variable rate to a variable rate if this change was disclosed at account opening.

Because § __.24 applies only to increases in annual percentage rates, the Agencies have adopted comment 24(b)(2)–5, which clarifies that nothing in § __.24 prohibits an institution from changing a variable rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the institution provides the notice required by 12 CFR 226.9(c). For example, assume that on March 1 a variable rate that is currently 15% applies to a balance of $2,000 and the institution sends a notice pursuant to 12 CFR 226.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 16. On April 16, the institution may apply the 15% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on April 16 was less than 14%.

Comment 24(b)(2)–6 clarifies that an institution may change the index and margin used to determine a variable rate if the original index becomes unavailable, so long as historical fluctuations in the original and replacement indices were substantially similar and the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. This comment further clarifies that, if the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable. This comment is modeled on comment 226.5b(f)(3)(ii)–1 to 12 CFR 226.5b.

Section __.24(b)(3) Advance Notice Exception

The Agencies have adopted a new § __.24(b)(3), which provides that an annual percentage rate for a category of transactions may be increased pursuant to a notice under 12 CFR 226.9(c) or (g) for transactions that occur more than seven days after provision of the notice. An institution cannot, however, utilize this exception during the first year after account opening.

The prohibition in § __.24(b)(3) on applying an increased rate to transactions that occur more than seven days after provision of the 12 CFR 226.9 notice is modeled on the definition of ''outstanding balance'' in proposed § __.24(a)(2). Proposed § __.24(a)(2) defined ''outstanding balance'' as the amount owed on a consumer credit card account at the end of the fourteenth day after the institution provides the notice required by proposed 12 CFR 226.9(c) or (g). This definition was intended to prevent the requirement in proposed 12 CFR 226.9 that creditors provide 45 days' advance notice of rate increases from creating an extended period following receipt of that notice during which new transactions could be made at the prior rate. Although institutions could address this concern by denying additional extensions of credit after sending the 45-day notice, the Agencies believe that this outcome would not be beneficial to consumers who have received the notice and wish to use the account for new transactions. The 14-day period was intended to be consistent with the 21-day safe harbor in proposed § __.22(b) insofar as it would allow seven days for the notice to reach the consumer and seven days for the consumer to review that notice and take appropriate action.

Some industry commenters opposed proposed § __.24(a)(2) entirely, arguing that—because rates are often increased as a result of increases in the consumer's risk of default—delaying imposition of the new rate only increases the risk borne by the institution. Other industry commenters acknowledged that it is reasonable to provide some period of time for consumers to receive and review the notice but that fourteen days is excessive because average mail times are much less than seven days and because a consumer who does not wish to engage in transactions at the new rate need only cease to use the card.

As discussed above with respect to § __.22, while the Agencies believe that seven days will be more than sufficient for the great majority of consumers to receive a periodic statement or notice by mail, relying on average mailing times would not adequately protect the significant number of consumers whose delivery times are longer than average. The Agencies agree, however, that consumers do not require seven days to review the notice and take appropriate action. Indeed, many consumers will not be required to take any action to reasonably avoid transactions to which the increased rate will apply. In addition, because in most cases the notice will be delivered in less than seven days, most consumers will have time to cancel recurring charges to their account (if necessary). The Agencies conclude that, in order to protect consumers from inadvertently engaging in transactions to which an increased rate will apply while minimizing the period during which credit extended by the institution must remain at the pre-increase rate, a rate that is increased pursuant to § __.24(b)(3) should apply only to transactions that occur after the seventh day following provision of the 12 CFR 226.9 notice.

Comment 24(b)(3)–1 clarifies that the limitation in § __.24(b)(3) regarding rate increases during the first year after an account is opened does not apply to accounts opened prior to July 1, 2010.

One industry commenter expressed concern that the ''outstanding balance'' under proposed § __.24(a)(2) could be construed to include transactions that were authorized before the end of the relevant date but were settled until after that date. The Agencies agree that an institution should not be required to include such transactions in the balance to which the increased rate cannot be applied. Accordingly, comment 24(b)(3)–2 clarifies that an institution may apply a rate increased pursuant to § __.24(b)(3) to transactions that occur within seven days after provision of the notice but are settled more than seven days after that notice was provided. An illustrative example is provided in comment 24(b)(3)–3.

Section __.24(b)(4) Delinquency Exception

Proposed § __.24(b)(3) provided that an institution could apply an increased rate if the consumer's minimum payment had not been received within 30 days after the due date. This exception was intended to ensure that consumers would generally have notice and an opportunity to cure the delinquency before becoming more than 30 days' past due. As discussed above, the Agencies have adopted proposed § __.24(b)(3) as § __.24(b)(4) with stylistic changes.[133]

Some commenters requested that, in addition to restricting the circumstances in which institutions could apply high penalty rates to existing balances based on a violation of the account terms, the Agencies also restrict the length of time a penalty rate can be applied to an account. They suggested that, for example, institutions be prohibited from applying a penalty rate to an account for more than six months if the consumer does not violate the account terms during that period. The Agencies, however, are not imposing a substantive prohibition at this time. As discussed above, the Agencies have placed significant limitations on institutions' ability to reprice outstanding balances based on violations of the account terms. Furthermore, because the amendments to Regulation Z adopted by the Board elsewhere in today's **Federal Register** require creditors to provide 45 days' advance notice of the imposition of a penalty rate, a consumer will have the opportunity to decide whether to engage in transactions at the penalty rate.[134] Finally, the Board has also improved the disclosures under Regulation Z to require creditors to disclose how long a penalty rate will remain in effect or, if the creditor reserves the right to apply the penalty rate indefinitely, to affirmatively state that fact.[135] Although the Agencies are not requiring such practices as part of today's final rule, they believe that limiting the duration of a penalty rate and periodically reevaluating a consumer's creditworthiness to determine eligibility to return to the non-penalty rate are policies that can be both beneficial for the consumer and safe and sound policy for the institution. Some industry commenters indicated that they already follow such a practice.

Section __.24(b)(5) Workout Arrangement Exception

One commenter noted that, as proposed, § __.24 would prohibit institutions that reduced the annual percentage rate on an account pursuant to a workout arrangement from increasing the rate if the consumer failed to comply with the terms of the arrangement. Because workout arrangements can provide important benefits to consumers in serious default, the Agencies have adopted § __.24(b)(5), which provides that, when a consumer fails to comply with the terms of a workout arrangement, the institution may increase the annual percentage rate to a rate that does not exceed the rate that applied prior to the arrangement. For example, assume that, consistent with § __.24(b)(4), the annual percentage rate on a $5,000 balance is increased from 15% to 25%. Assume also that the institution and the consumer subsequently agree to a workout arrangement that reduces the rate to 15% on the condition that the consumer pay a specified amount by the payment due date each month. If the consumer does not pay the agreed-upon amount by the payment due date, § __.24(b)(5) permits the institution to increase the rate on the $5,000 balance to no more than 25%. *See* comment 24(b)(5)–3.

Comment 24(b)(5)–1 clarifies that, except as expressly provided, § __.24(b)(5) does not permit an institution to alter any of the requirements in § __.24 pursuant to a workout arrangement between a consumer and the institution. For example, an institution cannot increase a rate pursuant to a workout arrangement unless otherwise permitted by § __.24. In addition, an institution cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under § __.24(c).

Comment 24(b)(5)–2 clarifies that, if the rate that applied prior to the workout arrangement was a variable rate, the rate that can be applied if the consumer fails to comply with the terms of the arrangement must be calculated using the same formula as before the arrangement.

Section __.24(c) Treatment of Protected Balances

Proposed § __.24(c) was intended to ensure that the protections in § __.24 were not undercut. Accordingly, it would have provided that, when an institution increases the annual percentage rate applicable to a category of transactions (for example, purchases), the institution was prohibited from requiring repayment of an outstanding balance in that category using a method that is less beneficial to the consumer than one of the methods listed in § __.24(c)(1) and from assessing fees or charges solely on an outstanding balance. In order to clarify the application of § __.24(c), the Agencies have revised this paragraph to state that it applies only to ''protected balances,'' which are defined as amounts owed for a category of transactions to which an increased annual percentage rate cannot be applied after the rate for that category of transactions has been increased pursuant to § __.24(b)(3). This definition is similar to the definition of ''outstanding balance'' in proposed § __.24. In addition, proposed § .24(c) has been revised for consistency with the revisions to § __.24(b) and for stylistic reasons. Otherwise, it has been adopted as proposed.

The Agencies have replaced proposed comments 23(c)–1 and –2 with a new comment 24(c)–1, which clarifies that, because rates cannot be increased pursuant to § __.24(b)(3) during the first year after account opening, the requirements of § __.24(c) do not apply to balances during the first year. Instead, § __.24(c) applies only to ''protected balances.'' For example, assume that, on March 15 of year two, an account has a purchase balance of $1,000 at a non-variable rate of 12% and that, on March 16, the bank sends a notice pursuant to 12 CFR 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 15% on May 2. On March 20, the consumer makes a $100 purchase. On March 24, the consumer makes a $150 purchase. On May 2, § __.24(b)(3) permits the bank to start charging interest at 15% on the $150 purchase made on March 24 but does not permit the bank to apply that 15% rate to the $1,100 purchase balance as of March 23. Accordingly, § __.24(c) applies to the $1,100 purchase balance as of March 23 but not the $150 purchase made on March 24.

Section __.24(c)(1) Repayment

In the May 2008 Proposal, the Agencies stated that, while there may be

[133] The example provided in proposed comment 24(b)(3)–1 has been removed. Instead, examples of the application of this exception are provided in comment 24(a)–1.

[134] *See* 12 CFR 226.9(g).

[135] *See* 12 CFR 226.5a(b)(1)(iv); comment 5a(b)(1)–5; App. G–10(B) and G–10(C).

circumstances in which institutions would accelerate repayment of the outstanding balance to manage risk, proposed § __.24 would provide little effective protection if consumers did not receive a reasonable amount of time to pay off the outstanding balance. Accordingly, proposed § __.24(c)(1) would have required institutions to provide consumers with a method of paying the outstanding balance that is no less beneficial to the consumer than one of the methods listed in proposed § __.24(c)(1)(i) and (ii).

Proposed § __.24(c)(1)(i) would have allowed an institution to amortize the outstanding balance over a period of no less than five years, starting from the date on which the increased rate went into effect for new transactions. Although some industry commenters criticized the five-year period as excessive and requested that it be reduced or eliminated, the OCC and consumer groups generally supported this repayment period as reasonable. One consumer group argued that, if the amount owed is large, five years may be insufficient.

In May 2008, the Agencies cited as support for the proposed five-year amortization period guidance issued by the Board, OCC, FDIC, and OTS (under the auspices of the Federal Financial Institutions Examination Council) stating that credit card workout arrangements should generally strive to have borrowers repay debt within 60 months.[136] One commenter argued that the Agencies' reliance on this guidance was misplaced because it applies to workout arrangements and uses 60 months as a maximum repayment period, rather than a minimum. The Agencies note, however, that the guidance set 60 months as the repayment period preferred in most cases for consumers who had become sufficiently delinquent to be placed in workout arrangements. Section __.24(c), however, will generally apply to a less risky population of consumers because accounts that have paid more than 30 days late are excluded. *See* § __.24(b)(4). Accordingly, based on the comments and the Agencies' own analysis, the Agencies conclude that a five-year minimum amortization period is appropriate. Therefore, proposed § __.24(c)(1)(i) has been revised for stylistic reasons and adopted as proposed.

An industry commenter requested clarification regarding the relationship between § __.24(c)(1) and the payment allocation rules in proposed § __.23. Section .23 addresses only payments in excess of the required minimum periodic payment. Thus, nothing in § __.23 limits an institution's ability to set a required minimum periodic payment consistent with § __.24(c). By the same token, nothing in § __.24(c)(1) alters the requirement regarding allocation of excess payments in § __.23. Thus, if an institution has elected to set a required minimum periodic payment on a protected balance that will amortize that balance over a five-year period consistent with § __.24(c)(1)(i), the institution must apply excess payments consistent with § __.23 even if doing so will cause the protected balance to pay off in less than five years. In order to eliminate any ambiguity, the Agencies have added examples to the commentary to § __.23 illustrating how an excess payment could be applied in this situation. *See* comment 23(a)–1.iii; comment 23(b)–2.ii. In addition, the Agencies have added comment 24(c)(1)(i)–1, which clarifies that an institution is not required to recalculate the amortization period even if, during the course of that period, allocation of excess payments to the protected balance means the balance will be paid off in less than 5 years.

An industry commenter requested clarification on whether an institution that chose to provide an amortization period of five years for the outstanding balance consistent with proposed § __.24(c)(1)(i) was prohibited from applying some or all of the required minimum periodic payment to the outstanding balance before the effective date of the rate increase if doing so would result in a shorter amortization period. Section __.24(c)(1)(i) provides for ''[a]n amortization period for the outstanding balance of no less than five years, *starting from the date on which the increased annual percentage rate becomes effective*.'' (Emphasis added.) Accordingly, § __.24(c)(1)(i) does not affect an institution's ability to apply some or all of the required minimum periodic payment to the protected balance prior to the effective date of the rate increase.

An industry commenter requested clarification regarding how an amortization period would be calculated if the annual percentage rate was variable. Comment 24(c)(1)(i)–2 clarifies that, if the annual percentage rate that applies to the protected balance varies with an index as provided in § __.24(b)(2), the institution may vary the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the protected balance is amortized in five years.

As an alternative to the five-year amortization period, proposed § __.24(c)(1)(ii) would have allowed the percentage of the total balance that was included in the required minimum periodic payment before the rate increase to be doubled with respect to the outstanding balance. For example, if the required minimum periodic payment prior to the rate increase was one percent of the total amount owed plus accrued interest and fees, an institution would be permitted to increase the minimum payment for the outstanding balance up to two percent of that balance plus accrued interest and fees. The Agencies did not receive any significant comment on this aspect of the proposal. Accordingly, § __.24(c)(1)(ii) has been revised for stylistic reasons and adopted as proposed.

Proposed comment 24(c)(1)(ii)–1 clarified that proposed § __.24(c)(1)(ii) did not limit or otherwise address an institution's ability to determine the amount of the minimum payment on other balances (in other words, balances that are not outstanding balances under § __.24(a)(2)). This comment has been revised for stylistic reasons and adopted as proposed.

Proposed comment 24(c)(1)(ii)–2 provided an example of how an institution could adjust the minimum payment on the outstanding balance. This comment has been revised for clarity.

Proposed comment 24(c)(1)–1 clarified that an institution may provide a method of paying the outstanding balance that is different from the methods listed in § __.24(c)(1) so long as the method used is no less beneficial to the consumer than one of the listed methods. It further stated that a method is no less beneficial to the consumer if the method amortizes the outstanding balance in five years or longer or if the method results in a required minimum periodic payment on the outstanding balance that is equal to or less than a minimum payment calculated consistent with § __.24(c)(1)(ii). As requested by the commenters, the Agencies have clarified and expanded the examples provided in the proposed comment. Otherwise, the comment has been revised for stylistic reasons and adopted as proposed.

An industry commenter asked whether, if amortization of the outstanding balance over a five-year period would result in a required minimum periodic payment below the lower limit or ''floor'' used by the

[136] *See, e.g.*, Board Supervisory Letter SR 03–1 on Account Management and Loss Allowance Methodology for Credit Card Lending (Jan. 8, 2003) (available at *http://www.federalreserve.gov/boarddocs/srletters/2003/sr0301.htm).*

institution for such payments,[137] the institution could require the consumer to pay the floor minimum payment. The Agencies believe this should be permitted, so long as the lower limit for the required minimum periodic payment on the protected balance is the same limit used by the institution before the increased rate went into effect. Similarly, an institution is permitted to require the consumer to make a pre-existing floor minimum payment that exceeds the amount permitted under § __.24(c)(1)(ii). Accordingly, the Agencies have adopted comment 24(c)(1)–2.

Section __.24(c)(2) Fees and Charges

The protections of proposed § __.24(a) would also be undercut if institutions were permitted to assess fees or other charges as a substitute for an increase in the annual percentage rate. Accordingly, proposed § __.24(c)(2) would have prohibited institutions from assessing any fee or charge based solely on the outstanding balance. As explained in proposed comment 24(c)(2)–1, this proposal would have prohibited, for example, an institution from assessing a monthly maintenance fee on the outstanding balance. The proposal would not, however, have prohibited an institution from assessing fees such as late payment fees or fees for exceeding the credit limit that are based in part on the outstanding balance. Similarly, proposed § __.24(c)(2) would not have prohibited assessment of fees that are unrelated to the outstanding balance, such as fees for providing account documents.

The Agencies did not receive any significant comment on this aspect of the proposal. Accordingly, proposed § __.24(c)(2) and the accompanying commentary have been revised for stylistic reasons and adopted as proposed.

Other Issues

Implementation. As discussed in section VII of this **SUPPLEMENTARY INFORMATION**, the effective date for § __.24 is July 1, 2010. As of that date, this provision applies to existing as well as new consumer credit card accounts and balances (except as expressly stated below). The Agencies provide the following guidance:

• *Account opening disclosures.* The disclosure requirements in § __.24(a) apply only to accounts opened on or after the effective date. Thus, if a consumer credit card account is opened on or after July 1, 2010, the institution must disclose the annual percentage rates that will apply to each category of transactions on that account.

• *Rates that expire after a specified period of time.* If a rate that will expire after a specified period of time applies to a balance on the effective date, the institution can apply an increased rate to that balance at expiration so long as the institution previously disclosed the increased rate. For example, if on January 1, 2010 an account is opened with a non-variable promotional rate of 5% on purchases that applies for one year (after which a variable rate will apply) and, on July 1, 2010, the 5% rate applies to a balance of $2,000, the institution can apply the previously disclosed variable rate to any remaining portion of the $2,000 balance on January 1, 2011 pursuant to § __.24(b)(1).

• *Variable rates that do not expire.* If a variable rate that does not expire applies to a balance on the effective date, the institution may continue to adjust that rate due to increases in an index consistent with § __.24(b)(2).

• *Non-variable rates that do not expire.* If a non-variable rate that does not expire applies to a balance on the effective date, the institution cannot increase the rate that applies to that balance unless the account becomes more than 30 days delinquent (in which case an increase is permitted by § __.24(b)(4)). For example, if an account has a $3,000 purchase balance at a non-variable rate of 15% on July 1, 2010, the institution cannot subsequently increase the rate that applies to the $3,000 (unless the account becomes more than 30 days delinquent, in which case § __.24(b)(4) applies).

• *Rate increases pursuant to advance notice under 12 CFR 226.9(c) or (g).* Section __.24(b)(3) applies to any rate increase for new transactions that will take effect on or after the July 1, 2010 effective date. For example, assume that an account has a $3,000 purchase balance at a non-variable rate of 15%. In order to increase the rate that applies to purchases made on or after July 1, 2010 to a non-variable rate of 18%, the institution must comply with 12 CFR 226.9(c) by providing notice of the increase at least 45 days in advance (in this case, on or before May 17, 2010). Assuming the institution provides the notice on May 17, the requirements in § __.24(c) will apply to the $3,000 balance beginning on May 24, 2010.

• *First year after the account is opened.* An institution may not increase an annual percentage rate pursuant to § __.24(b)(3) during the first year after the account is opened. However, this limitation does not apply to accounts opened prior to July 1, 2010. For example, if an account is opened on June 1, 2010, the institution may increase a rate for new transactions pursuant to § __.24(b)(3).

• *Delinquencies of more than 30 days.* An institution may increase a rate pursuant to § __.24(b)(4) when an account becomes more than 30 days delinquent even if the delinquency began prior to the effective date. For example, if the required minimum periodic payment due on June 15, 2010 is not received until July 20, § __.24(b)(4) permits the institution to increase the rates on that account.

• *Workout arrangements.* If a workout arrangement applies to an account on the effective date and the consumer fails to comply with the terms of arrangement after the effective date, § __.24(b)(5) only permits the institution to apply an increased rate that does not exceed the rate that applied prior to commencement of the workout arrangement. For example, assume that, on June 1, 2010, an institution decreases the rate that applies to a $5,000 balance from a non-variable penalty rate of 30% to a non-variable rate of 15% pursuant to a workout arrangement between the institution and the consumer. Under this arrangement, the consumer must pay by the fifteenth of each month in order to retain the 15% rate. The institution does not receive the payment due on July 15 until July 20. In these circumstances, § __.24(b)(5) does not permit the institution to apply a rate to the $5,000 balance that exceeds the 30% penalty rate.

Effect of § __.24 on securitization. In the May 2008 Proposal, the Agencies requested comment on what effect the restrictions in proposed § __.24 would have on outstanding securitizations and institutions' ability to securitize credit card assets in the future. In response, industry commenters raised general concerns that a reduction in interest revenue as a result of proposed § __.24 could require institutions to alter the structure of existing securities and could reduce investor interest in future offerings. As discussed below, however, the Agencies are providing institutions and the markets for credit card securities with 18 months in which to adjust interest rates and other account terms to compensate for the restrictions in the final rules. Accordingly, the Agencies do not believe that any additional revisions are necessary to accommodate securitization of credit card assets.

[137] For example, an institution might require a minimum periodic payment that is the greater of $20 or the total of 1% of the amount owed plus interest and fees.

Supplemental Legal Basis for This Section of the OTS Final Rule

As discussed above, HOLA provides authority for both safety and soundness and consumer protection regulations. For example, § 535.24 supports safety and soundness by reducing reputation risk that would occur from repricing consumer credit card accounts in an unfair manner. Section 535.24 also protects consumers by providing them with fair terms on which their accounts may be repriced. Consequently, HOLA serves as an independent basis for § 535.24.

Section __.25—Unfair Balance Computation Method

Summary. In the May 2008 Proposal, the Agencies proposed § __.26, which would have prohibited institutions from imposing finance charges on consumer credit card accounts based on balances for days in billing cycles that precede the most recent billing cycle. 73 FR at 28922–28923. This proposal was intended to prohibit the balance computation method sometimes referred to as ''two-cycle billing'' or ''double-cycle billing.'' As discussed below, based on the comments and further analysis, the Agencies have revised the proposed rule and its commentary to clarify that the final rule prohibits the assessment of interest charges on balances for days in prior billing cycles when such charges are imposed as a result of the loss of a grace period. The Agencies have also removed the exception for assessment of deferred interest and added an exception permitting adjustments to finance charges following the return of a payment for insufficient funds. Finally, because the Agencies are not taking action on proposed § __.25 at this time (as discussed below), proposed § __.26 has been designated in the final rule as § __.25.

Background. TILA requires creditors to explain as part of the account-opening disclosures the method used to determine the balance to which interest rates are applied. 15 U.S.C. 1637(a)(2). In its June 2007 Regulation Z Proposal, the Board proposed that the balance computation method be disclosed outside the account-opening table because explaining lengthy and complex methods may not benefit consumers. 72 FR at 32991–32992. That proposal was based on the Board's consumer testing, which indicated that consumers did not understand explanations of balance computation methods. Nevertheless, the Board observed that, because some balance computation methods are more favorable to consumers than others, it was appropriate to highlight the method used, if not the technical computation details.

In response to the June 2007 Regulation Z Proposal, consumers, consumer groups, and a member of Congress urged the Board to prohibit two-cycle billing. The two-cycle balance computation method has several permutations but, generally speaking, an institution using the two-cycle method assesses interest not only on the balance for the current billing cycle but also on balances on days in the preceding billing cycle. This method generally does not result in additional finance charges for a consumer who consistently carries a balance from month to month (and therefore does not receive a grace period) because interest is always accruing on the balance. Nor does the two-cycle method affect consumers who pay their balance in full within the grace period every month because interest is not imposed on their balances. The two-cycle method does, however, result in greater interest charges for consumers who pay their balance in full one month but not the next month (and therefore lose the grace period).

The following example illustrates how the two-cycle method results in higher costs for these consumers than other balance computation methods: Assume that the billing cycle on a consumer credit card account starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. Under the terms of the account, the consumer will not be charged interest on purchases if the balance at the end of a billing cycle is paid in full by the following payment due date (in other words, if the consumer receives a grace period). The consumer uses the credit card to make a $500 purchase on March 15. The consumer pays the balance for the February billing cycle in full on March 25. At the end of the March billing cycle (March 31), the consumer's balance consists only of the $500 purchase and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25). The consumer pays $400 on April 25, leaving a $100 balance. Because the consumer did not pay the balance for the March billing cycle in full on April 25, the consumer would lose the grace period and most institutions would charge interest on the $500 purchase from the start of the April billing cycle (April 1) through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 30). Institutions using the two-cycle method, however, would also charge interest on the $500 purchase from the date of purchase (March 15) to the end of the March billing cycle (March 31).

The proposed ban on two-cycle billing was generally supported by individual consumers, consumer groups, members of Congress, other federal banking regulators, state consumer protection agencies, state attorneys general, and some industry groups and credit card issuers. On the other hand, some credit card issuers and one industry group opposed the proposal on the grounds that two-cycle billing was not sufficiently prevalent to warrant a ban. As discussed below, the Agencies are including a prohibition on the two-cycle method because that method continues to be used by a number of large credit card issuers. To the extent that the commenters addressed specific aspects of the proposal or the supporting legal analysis, those comments are discussed below.

Legal Analysis

The Agencies conclude that, based on the comments received and their own analysis, it is an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC to impose finance charges on consumer credit card accounts based on balances for days in billing cycles that precede the most recent billing cycle as a result of the loss of any time period provided by the institution within which the consumer may repay any portion of the credit extended without incurring a finance charge (in other words, a grace period).

Substantial consumer injury. In the May 2008 Proposal, the Agencies stated that computing finance charges based on balances preceding the most recent billing cycle appeared to cause substantial consumer injury because consumers who lose the grace period incur higher interest charges than they would under a balance computation method that calculates interest based only on the most recent billing cycle.

One industry commenter asserted that use of the two-cycle method could not cause an injury for purposes of the FTC Act simply because other, less costly methods exist. As discussed above, however, it is well established that monetary harm constitutes an injury under the FTC Act.[138] As with similar arguments raised regarding § __.23, this commenter did not provide any legal

[138] *See* Statement for FTC Credit Practices Rule, 49 FR at 7743; FTC Policy Statement on Unfairness at 3.

authority distinguishing interest charges assessed as a result of the two-cycle method from other monetary harms, nor are the Agencies aware of any such authority.

Another industry commenter stated that assessing interest consistent with a contractual provision to which the consumer agreed cannot constitute an injury under the FTC Act. As discussed above, however, this argument is inconsistent with the FTC's application of the unfairness analysis in support of the Credit Practices Rule, where the FTC determined that otherwise valid contractual provisions injured consumers.[139]

Finally, an industry commenter argued that the two-cycle method was not unfair because it only injures consumers who lose the grace period. A practice need not, however, injure all consumers in order to be unfair.

Accordingly, the Agencies conclude that the two-cycle balance computation method causes substantial consumer injury.

Injury is not reasonably avoidable. The Agencies' May 2008 Proposal stated that it did not appear that consumers can reasonably avoid injury because, once they use the card, they have no control over the methods used to calculate the finance charges on their accounts. The proposal further noted that, because the Board's consumer testing indicates that disclosures are not successful in helping consumers understand balance computation methods, a disclosure would not enable consumers to avoid the two-cycle method when comparing credit card accounts or to avoid the effects of the two-cycle method when using a credit card.[140]

One industry commenter argued that consumers could reasonably avoid the injury by paying their balance in full each month. As discussed above, however, because one of the intended purposes of a credit card (as opposed to a charge card) is to finance purchases over multiple billing cycles, it would not be reasonable to expect consumers to avoid the two-cycle method by paying their balance in full each month.

Accordingly, the Agencies conclude that consumers cannot reasonably avoid the injury caused by the two-cycle balance computation method.

Injury is not outweighed by countervailing benefits. The May 2008 Proposal stated that there did not appear to be any significant benefits to consumers or competition from computing finance charges based on balances for days in billing cycles preceding the most recent billing cycle. The Agencies also noted that many institutions no longer use the two-cycle balance computation method. In addition, the Agencies noted that, although prohibition of the two-cycle method may reduce revenue for the institutions that currently use it and those institutions may replace that revenue by charging consumers higher annual percentage rates or fees, it appeared that this result would nevertheless benefit consumers because it will result in more transparent pricing.

One industry commenter stated that, given a preference, consumers would choose lower prices and other purported benefits of the two-cycle method (such as the provision of a grace period) over transparency. As an initial matter, the commenter did not cite any evidence that institutions that use the two-cycle method are more likely to offer lower prices and grace periods than institutions that do not, nor are the Agencies aware of any such evidence. Furthermore, individual consumers overwhelmingly supported the proposed prohibition on the two-cycle method. Finally, the Agencies believe that transparent pricing provides substantial benefits to consumer by enabling them to make informed decisions about the use of credit.

Accordingly, the Agencies conclude that the two-cycle method does not produce benefits that outweigh the injury to consumers.

Public policy. Several industry commenters stated that the proposed rule was contrary to established public policy because, as noted above, TILA requires creditors to disclose the balance computation method at account opening (15 U.S.C. 1637(a)(2)) and Regulation Z includes the two-cycle method in the list of methods that may be described by name (12 CFR 226.5a(g)).[141] Regulation Z's acknowledgment that the two-cycle method has been a commonly used balance computation method does not, however, constitute an endorsement of that method. Furthermore, nothing in TILA or Regulation Z requires use of the two-cycle method.

One industry commenter noted that, more than twenty years ago, a member of the Board expressed concern that the costs of regulating balance computation methods could outweigh the benefits for consumers.[142] As discussed above, however, the Agencies have concluded that, in today's marketplace, the costs associated with prohibiting this particular balance computation method do not outweigh the benefits to consumers.

Final Rule

As discussed below, the Agencies are not taking action on credit holds at this time. Accordingly, subject to the revisions discussed below, proposed § __.26 is adopted as § __.25. The proposed commentary has been redesignated to reflect this change.

Section __.25(a) General Rule

The proposed rule prohibited institutions from imposing finance charges on balances on consumer credit card accounts based on balances for days in billing cycles preceding the most recent billing cycle. Proposed comment 26(a)–1 cited the two-cycle average daily balance computation method as an example of balance computation methods that would be prohibited by the proposed rule, tracking commentary under Regulation Z. *See* 12 CFR 226.5a(g)(2). Proposed comment 26(a)–2 provided an example of the circumstances in which the proposed rule prohibited the assessment of interest.

Industry commenters stated that, as drafted, the proposed rule went further than necessary to protect consumers from the injury caused by the two-cycle balance computation method. Specifically, because the proposed rule was not limited to circumstances in which the two-cycle method results in greater interest charges than other balance computation methods (that is, when a consumer who has been eligible for a grace period does not pay the balance in full on the due date), it would prohibit the assessment of interest from the date of the transaction even when the consumer was not eligible for a grace period. Because the Agencies did not intend this result, § __.25(a) and its commentary have been revised to clarify that an institution is prohibited from imposing finance charges based on balances for days in billing cycles that precede the most

[139] *See* Statement for FTC Credit Practices Rule, 49 FR 7740 *et seq.*; see also Am. Fin. Servs. Assoc. 767 F.2d at 978–83 (upholding the FTC's analysis).

[140] Although several industry commenters on the May 2008 Proposal argued that disclosure would enable consumers to choose a credit card with a different balance computation method, those commenters did not provide any evidence that refutes the Board's consumer testing.

[141] As discussed elsewhere in today's **Federal Register**, the Board has not deleted the two-cycle method from the list in 12 CFR 226.5a(g) because the prohibition in § __.25 does not apply to all credit card issuers.

[142] *See* Statement of Emmett J. Rice, Member, Board of Governors of the Federal Reserve System before the S. Subcomm. on Fin. Instits. (May 21, 1986).

recent billing cycle as a result of the loss of the grace period. Otherwise, the Agencies adopt the proposed rule and commentary.

Section __.25(b) Exceptions

As proposed, § __.26(b) contained two exceptions to the general prohibition in § __.26(a). First, under proposed § __.26(b)(1), institutions would not be prohibited from charging consumers for deferred interest even though that interest may have accrued over multiple billing cycles. Thus, if a consumer did not pay a balance or transaction in full by the specified date under a deferred interest plan, the institution would have been permitted to charge the consumer for interest accrued during the period the plan was in effect. As discussed above, because current practices regarding the assessment of deferred interest are prohibited by § __.24, this exception has not been adopted.

Second, under proposed § __.26(b)(2), institutions would not have been prohibited from adjusting finance charges following resolution of a billing error dispute. For example, if after complying with the requirements of 12 CFR 226.13 an institution determines that a consumer owes all or part of a disputed amount, the institution would be permitted to adjust the finance charge consistent with 12 CFR 226.13, even if that requires computing finance charges based on balances in billing cycles preceding the most recent billing cycle. The Agencies did not receive any significant comment on this exception. Accordingly, the Agencies have revised this exception for clarity and adopted it as § __.25(b)(1).

Industry commenters requested two additional exceptions to the proposed rule. First, they requested an exception when the date of a transaction for which the consumer does not receive a grace period is in a different billing cycle than the date on which that transaction is posted to the account—for example, if a consumer uses a convenience check for a cash advance transaction (which is not typically subject to a grace period) on the last day of a billing cycle, the check may not reach the institution for posting to the account until the first day of the next billing cycle or later. These commenters stated that the proposed rule should not apply in this situation because the institution is entitled to assess interest from the transaction date. Rather than creating an additional exception, the Agencies have addressed this concern by clarifying, as discussed above, that § __.25(a) only applies to interest charges imposed as a result of the consumer losing the grace period. Accordingly, when a consumer is not eligible for a grace period at the time of a transaction, the final rule does not prohibit the institution from assessing interest from the date of the transaction.

Second, industry commenters requested an exception allowing adjustments to finance charges when a consumer's payment is credited to the account in one billing cycle but is returned for insufficient funds in the subsequent billing cycle. This could occur, for example, when a consumer's check is received and credited by the institution near the end of a billing cycle but is returned to the institution for insufficient funds early in the next billing cycle. The Agencies view this situation as analogous to adjusting finance charges following resolution of a billing error or other dispute, which is permitted under § __.25(b)(1). Accordingly, the final rule adopts, in § __.25(b)(2), an exception permitting adjustments to finance charges as a result of the return of a payment for insufficient funds.

Other Issues

Implementation. As discussed in section VII of this **SUPPLEMENTARY INFORMATION**, the effective date for § __.25 is July 1, 2010. As of the effective date, this provision applies to existing as well as new consumer credit card accounts and balances.

Additional prohibitions considered. Consumer groups and a member of Congress requested that the proposed rule be expanded to cover two additional practices. First, they urged that, when a consumer who is eligible for a grace period pays some but not all of the relevant balance by the due date, the institution be prohibited from assessing interest on the amount paid. For example, assume that the billing cycle on a consumer credit card account starts on the first day of the month and ends on the last day of the month and that the payment due date is the twenty-fifth day of the month. Under the terms of the account, the consumer will receive a grace period on purchases if the balance at the end of a billing cycle is paid in full by the following payment due date. The consumer is eligible for a grace period on a $500 purchase made on March 15. At the end of the March billing cycle (March 31), the consumer's balance consists only of the $500 purchase. The consumer pays $400 on the following due date (April 25), leaving a $100 balance. Because the consumer did not pay the balance for the March billing cycle in full on April 25, § __.25(a) prohibits the institution from charging interest on the $500 purchase from the date of purchase (March 15) to the end of the March billing cycle (March 31). The commenters would also prohibit the institution from assessing any interest on $400 of the $500 purchase during the April billing cycle because the consumer paid that amount by the due date.

The Agencies, however, are not taking action on this issue at this time. As an initial matter, elsewhere in today's **Federal Register**, the Board has improved the disclosures under Regulation Z to assist consumers in understanding that they must pay the entire balance by the due date to receive the grace period.[143] Furthermore, because TILA does not require institutions to provide a grace period, the requested prohibition could reduce the availability of such periods, which provide substantial benefits to consumers. To the extent that specific practices raise concerns regarding unfairness or deception under the FTC Act, the Agencies plan to address those practices on a case-by-case basis through supervisory and enforcement actions.

Second, many of the same commenters requested that, when a consumer who has been carrying a balance from month to month—and therefore has not been receiving a grace period—pays the balance stated on the most recent periodic statement by the applicable due date, the institution be prohibited from assessing interest on that balance in the period between mailing or delivery of the statement and receipt of the consumer's payment. This type of interest is sometimes referred to as ''trailing interest.'' For example, assume that a consumer who is not eligible for a grace period receives a periodic statement reflecting a balance of $1,000 as of March 31 and a due date of April 25. The consumer mails a payment of $1,000, which is credited by the institution on April 25. Ordinarily, because the consumer was not eligible for a grace period, this payment will not be sufficient to pay off the balance in full because interest will have accrued on the $1,000 balance from April 1 through April 24. The commenters, however, would prohibit the assessment

[143] *See* 12 CFR 226.5a(b)(5) comment 5a(b)(5)–1 (''The card issuer must state any conditions on the applicability of the grace period. An issuer that offers a grace period on all purchases and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: 'Your due date is [at least] __days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance by the due date each month.' '').

of interest on the $1,000 balance after March 31. The Agencies note that, because an institution will not know at the time it sends a periodic statement whether the consumer will pay the balance in full, the requested prohibition would essentially require institutions to waive subsequent interest charges for the subset of consumers who do so. To the extent that specific practices raise concerns regarding unfairness or deception under the FTC Act, the Agencies plan to address those practices on a case-by-case basis through supervisory and enforcement actions.

Supplemental Legal Basis for This Section of the OTS Final Rule

As discussed above, HOLA provides authority for both safety and soundness and consumer protection regulations. Section 535.25 supports safety and soundness by reducing reputation risk that would occur from using unfair balance computation methods. Section 535.25 also protects consumers by providing them with fair balance computation methods on their account so that they do not pay additional interest due to the application of this balance computation method that testing shows few understand. Section 535.25 is consistent with the best practices of thrift institutions nationwide. Few institutions still use the two-cycle balance computation method. Based on OTS supervisory observations and experience, no large savings associations are currently engaged in this practice. Consequently, HOLA serves as an independent basis for § 535.25.

Section __.26—Unfair Charging of Security Deposits and Fees for the Issuance or Availability of Credit to Consumer Credit Card Accounts

Summary. In the May 2008 Proposal, the Agencies proposed § __.27(a), which would have prohibited institutions from charging to a consumer credit card account security deposits and fees for the issuance or availability of credit during the twelve months after the account is opened that, in the aggregate, constitute the majority of the credit limit for that account. The Agencies also proposed § __.27(b), which would have prohibited institutions from charging to the account during the first billing cycle security deposits and fees for the issuance or availability of credit that total more than 25 percent of the credit limit and would have required that if security deposits and fees for the issuance or availability of credit total more than 25 percent but less than the majority of the credit limit during the first year, the institution must spread that amount equally over the eleven billing cycles following the first billing cycle. Further, the Agencies proposed § __.27(c), which would have defined ''fees for the issuance or availability of credit.'' *See* 73 FR at 28925–28926.

Based on the comments received and further analysis, the Agencies have revised proposed § __.27(a) for clarity and adopted that provision as § __.26(a).[144] The Agencies have revised proposed § __.27(b) to permit security deposits and fees to be spread over no fewer than the first six months, rather than the first year (as proposed). This provision has been adopted as § __.26(b).[145]

In § __.26(c), the Agencies have adopted a new provision prohibiting institutions from evading §§ __.26(a) and (b) by providing the consumer with additional credit to fund the payment of security deposits and fees for the issuance or availability of credit in excess of the amounts permitted by §§ __.26(a) and (b). The Agencies have also added definitions to proposed § __.27(c) and adopted that provision as § __.26(d).

Background. Subprime credit cards often have substantial fees related to the issuance or availability of credit. For example, these cards may impose an annual fee and a monthly maintenance fee for the card. In other cases, a security deposit may be charged to the account. These cards may also impose multiple one-time fees when the consumer opens the card account, such as an application fee and a program fee. Those amounts are often billed to the consumer as part of the first periodic statement and substantially reduce the amount of credit that the consumer has available to make purchases or other transactions on the account. For example, some subprime credit card issuers assess $250 in fees at account opening on accounts with credit limits of $300, leaving the consumer with only $50 of available credit with which to make purchases or other transactions. In addition, the consumer will pay interest on the $250 in fees until they are paid in full.

The federal banking agencies have received many complaints from consumers with respect to subprime credit cards. Consumers often stated that they were not aware of how the high upfront fees would affect their ability to use the card for its intended purpose of engaging in transactions. In an effort to address these concerns, the Board's June 2007 and May 2008 Regulation Z Proposals included several proposed amendments to the disclosure requirements for credit and charge cards (which have been adopted in a revised form elsewhere in today's **Federal Register**). Because, however, the Agencies were concerned that disclosure alone was insufficient to protect consumers from unfair practices regarding high-fee subprime credit cards, the May 2008 Proposal contained additional, substantive protections.

The Agencies received comments on the proposed rule from a wide range of interested parties. The proposal received strong support from consumer groups, several members of Congress, the FDIC, the OCC, two state attorneys general, and a state consumer protection agency. These commenters generally argued that high-fee subprime credit cards trap consumers with low incomes or poor credit histories, causing those consumers either to pay off the upfront fees by depleting their limited resources or to default and further damage their credit records. In particular, one consumer group stated that high-fee subprime credit cards are unfair because: (1) The upfront fees impose an overly high price for access to credit and significantly reduce available credit, leading consumers to exceed their credit limit and incur additional fees; (2) disclosures are insufficient because subprime consumers are particularly vulnerable to predatory marketing practices and may have limited educational or literacy skills; and (3) subprime consumers generally have limited incomes and therefore cannot pay the upfront fees within the grace period for the initial billing cycle, causing them to incur interest charges. Many of these commenters urged the Agencies to strengthen the proposed rule by, for example, lowering the thresholds for security deposits and fees, applying those thresholds to all security deposits and fees regardless of whether they are charged to the account, and prohibiting the marketing of subprime credit cards as credit repair products.

Some industry commenters also expressed support for the proposed rule, stating that it was an appropriate use of the Agencies' rulemaking authority under the FTC Act. In contrast, other issuers who specialize in subprime credit cards strongly opposed the proposed rule. According to these commenters, the large upfront fees and

[144] As discussed above, the Agencies are not taking action on proposed § __.25 at this time. Accordingly, proposed § __.26 and § __.27 have been adopted as § __.25 and § __.26, respectively.

[145] For purposes of this discussion, products that currently charge security deposits and fees for the issuance or availability of credit that exceed the amounts permitted by the final rule are referred to as ''high-fee subprime credit cards.''

limited initial credit availability that characterize high-fee subprime credit cards are necessitated by the risk and expense of extending credit to consumers who pose a greater risk of default than prime consumers. They asserted that subprime credit card accounts have higher delinquencies, losses, reserve requirements, and servicing costs than prime credit card accounts.[146] They further argued that, to the extent the proposal would prevent issuers from protecting themselves against the risk of loss, it would ultimately harm consumers because issuers would be forced to reduce credit access and increase the price of credit. They also asserted that high-fee subprime credit cards offer important benefits by providing credit cards to consumers who could not otherwise obtain them and by enabling consumers with limited or damaged credit records to build positive credit histories and qualify for prime credit. Finally, these commenters argued that any concerns regarding high-fee subprime credit cards should be addressed through improved disclosures, such as those proposed by the Board under Regulation Z.

Subprime credit card issuers received support from some state and Congressional representatives. The Agencies also received comments from thousands of individual consumers, who explained that high-fee subprime credit cards were the only option available to them because of their credit problems. These consumers expressed concern that they might have fewer credit alternatives if the proposal were finalized. Finally, two advocacy organizations expressed concern that the proposed rule would result in reduced credit availability for low-income minority consumers.

Legal Analysis

The Agencies conclude that, based on the comments received and their own analysis, it is an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC to charge to a consumer credit card account security deposits or fees for the issuance or availability of credit that exceed the limits in the final rule.

Substantial consumer injury. The Agencies conclude that consumers incur substantial monetary injury when security deposits and fees for the issuance or availability of credit are charged to a consumer credit card account, both in the form of the charges themselves and in the form of interest on those charges. Even in cases where the institution provides a grace period, many consumers will be unable to pay the charges in full during that grace period and will incur interest. Indeed, many consumers who use high fee subprime cards submitted comments explaining that they have very limited incomes. Moreover, a large issuer of subprime cards commented that, while it offers consumers the option of paying fees up front, most new cardholders do not do so. Thus, as consumer advocates noted in their comments, consumers who open a high-fee subprime credit card account are unlikely to be able to pay down the upfront charges quickly. In addition, when security deposits and fees for the issuance or availability of credit are charged to the consumer's account, they substantially diminish the value of that account by reducing the credit available to the consumer for purchases or other transactions.[147]

Injury is not reasonably avoidable. In May 2008, the Agencies stated that the Board's proposed disclosures under Regulation Z did not appear to be sufficient, by themselves, to allow consumers to reasonably avoid the injury caused by security deposits and fees that consume most of the available credit at account opening. Specifically, the Agencies expressed concern that high-fee subprime credit cards are typically marketed to financially vulnerable consumers with limited credit options and that these products have in the past been associated with deceptive sales practices. Although several industry commenters asserted that the disclosures in Regulation Z were sufficient to enable consumers to avoid any injury, the Agencies conclude, for the reasons discussed below, that consumers cannot, as a general matter, reasonably avoid the injury caused by high-fee subprime credit cards.

In the May 2008 Proposal, the Agencies noted that high-fee subprime credit cards are typically marketed to vulnerable consumers whose credit histories or other characteristics prevent them from obtaining less expensive credit card products.[148] In support of its Credit Practices Rule, the FTC suggested that, when most or all credit offers received by a consumer contain particular terms, those terms may not be reasonably avoidable.[149] In addition, when evaluating whether a practice violates the FTC Act, the FTC has considered whether that practice targets consumers who are particularly vulnerable to unfair or deceptive practices.[150] Similarly, states have used statutes and regulations prohibiting unfairness and deception to ensure that lenders do not ''exploit the lack of access of low-income individuals, the elderly, and communities of color to mainstream banking institutions.'' [151]

In response to the proposed rule, the Agencies received thousands of comments from individual consumers who have used high-fee subprime credit cards. These consumers frequently stated that, due to their credit problems

[146] One subprime credit card issuer stated that approximately 30% of its consumers charge off without paying all or part of the balance due. The same issuer stated that the delinquency rate for subprime credit card accounts is approximately 20% (versus 4–5% for prime accounts) and that reserve requirements for such accounts can be up to 56% of outstanding balances (versus as little as 8% for prime credit card issuers). Finally, this issuer stated that subprime consumers contact their issuers an average of once or twice a month (versus once per year for prime consumers).

[147] *See* OCC Advisory Letter 2004–4, at 3 (Apr. 28, 2004) (stating that a finding of unfairness with respect to subprime cards with financed security deposits could be based on the fact that ''because charges to the card by the issuer utilize all or substantially all of the nominal credit line assigned by the issuer, they eliminate the card utility and credit availability applied and paid for by the cardholder'') (available at *http://www.occ.treas.gov/ftp/advisory/2004-4.txt*).

[148] For a consumer who has sufficient funds, a secured credit card account is generally a more beneficial product than a high-fee subprime credit card. Secured credit cards generally require the consumer to provide a cash collateral deposit that is equal to the credit line for the account. For example, in order to obtain a credit line of $300, a consumer would be required to deposit $300 with the lender. Generally, the consumer can receive the deposit back if the account is closed with no outstanding balance. In some cases, these deposits earn interest. *See* OTS Examination Handbook, Asset Quality, Section 218 Credit Card Lending at § 218.3 (May 2006). The final rule does not limit issuers' ability to offer secured credit cards. Indeed, by restricting the financing of security deposits and fees, the final rule may encourage issuers to expand secured credit card offerings.

[149] *See* Statement for FTC Credit Practices Rule, 48 FR at 7746 (''If 80 percent of creditors include a certain clause in their contracts, for example, even the consumer who examines contract[s] from three different sellers has a less than even chance of finding a contract without the clause. In such circumstances relatively few consumers are likely to find the effort worthwhile, particularly given the difficulties of searching for contract terms. * * *'' (footnotes omitted)).

[150] *See* FTC Trade Regulation Rule; Funeral Industry Practices, 47 FR 42260, 42262 (Sept. 24, 1982) (stating finding by the FTC's Presiding Offer ''that the funeral transaction has several characteristics which place the consumer in a disadvantaged bargaining position * * *, leave the consumer vulnerable to unfair and deceptive practices, and cause consumers to have little knowledge of legal requirements [and] available alternatives. * * *''); *In the Matter of Travel King, Inc.*, 86 F.T.C. 715 (Sept. 30, 1975), paragraphs 7 and 8 (alleging that ''[p]eople who are seriously ill, and their families, are vulnerable to the influence of respondents' promotions [regarding 'psychic surgery'] which held out tantalizing hope which the medical profession, by contrast, cannot offer'').

[151] *United Companies Lending Corp.* v. *Sargeant,* 20 F. Supp. 2d 192, 203 (D. Mass. 1998) (upholding a state regulation that limited the rates and other terms of certain subprime mortgage loans in order to ''prevent[] lenders from exploiting the financial vacuum created by redlining'').

and limited incomes, high-fee subprime credit cards were the only type of credit card that they could obtain. Many of these consumers described themselves as elderly, living on limited incomes, and/or having serious health problems. Accordingly, because high-fee subprime credit cards are marketed to financially vulnerable consumers who generally cannot obtain credit card products with less onerous terms, the Agencies conclude that—even with improved disclosures—those consumers cannot, as a general matter, reasonably avoid the injury caused by high upfront fees and low initial credit availability.

As discussed in the May 2008 Proposal, this conclusion is further supported by the Agencies' concern that the Regulation Z disclosures could be undermined by deceptive sales practices. In addition to taking enforcement actions against issuers of high-fee subprime credit cards, the OCC has found as a general matter that ''solicitations and other marketing materials used for [high-fee subprime] credit card programs have not adequately informed consumers of the costs and other terms, risks, and limitations of the product being offered'' and that, ''[i]n a number of cases, disclosure problems associated with secured credit cards and related products have constituted deceptive practices under the applicable standards of the FTC Act.'' [152] The Agencies believe that the amendments to Regulation Z published elsewhere in today's **Federal Register** will reduce the risk of deception in written solicitations. However, because of the vulnerable nature of subprime consumers and the history of deceptive practices by some subprime credit card issuers, the Agencies remain concerned that the required disclosures could be undermined by, for example, deceptive telemarketing practices.[153]

Injury is not outweighed by countervailing benefits. In May 2008, the Agencies recognized that, in some cases, high-fee subprime credit cards can provide access to credit to consumers who are unable to obtain other credit card products. Nevertheless, the Agencies stated that, once security deposits and fees for the issuance or availability of credit consume a majority of the initial credit limit, the benefit to consumers from access to credit appeared to be outweighed by the high cost of paying for that credit. In order to minimize the impact on access to credit, the Agencies tailored the proposed rule to allow institutions to charge to the account security deposits and fees that total less than a majority of the credit limit during the first year and by allowing institutions to charge amounts totaling up to 25 percent of the initial credit limit in the first billing cycle. In addition, the Agencies clarified that security deposits and fees paid from separate funds would not be affected by the proposal.

In response, industry commenters who opposed the rule primarily relied on two arguments. First, they contended that, rather than increasing access to credit, the restrictions in the proposed rule would reduce or eliminate the availability of credit cards for subprime consumers. Specifically, they argued that the cost of extending credit to subprime consumers is substantially higher than the cost of extending credit to prime consumers and that the proposed rule would limit subprime issuers' ability to pass those higher costs on to consumers. In addition, they argued that the proposed restrictions on the amount of security deposits and fees that may be charged to the account in the first billing cycle will actually increase issuer costs because subprime issuers will be forced to make more credit available to consumers, which will increase their cost of funds, their reserve requirements, and their losses. As a result, they argued, subprime credit card issuers will be forced to reduce costs by substantially reducing the amount of credit extended to subprime consumers.

The Agencies have carefully considered the arguments presented by these commenters but have concluded that, while the final rule may result in some subprime consumers who are currently eligible for high-fee subprime credit cards not having access to a credit card, this outcome does not outweigh the benefits to subprime consumers generally of receiving credit cards that provide a meaningful amount of available credit. The Agencies recognize that credit cards enable consumers to engage in certain types of transactions, such as making purchases by telephone or online or renting a car or hotel room. As noted above, however, credit lines for subprime credit card accounts are typically very low, meaning that, once security deposits and fees have been charged to the account, consumers receive little available credit with which to make purchases until they pay off the deposits or fees. Currently, many subprime credit card issuers assess fees that consume 75 percent or more of the credit line at account opening. Thus, on an account with a $400 credit limit, a consumer may pay $300 (plus interest charges) to obtain $100 of available credit. The benefit of receiving this relatively small amount of available credit does not outweigh its high cost.

Some industry commenters suggested that, rather than focusing on the amount of available credit at account opening, the Agencies should consider the benefits to consumers who pay the upfront charges and then have access to the entire credit line. As an initial matter, these commenters did not provide information regarding how many consumers are able to obtain access to the entire credit line or how long it takes them to do so. Furthermore, as noted above, a large issuer of subprime cards indicated that few new cardholders choose not to finance the upfront fees, and many consumer commenters who use high fee subprime cards explained that they have limited incomes. Therefore, it is unlikely that consumers who open a high-fee subprime credit card account will be able to pay down the upfront charges quickly. Moreover, as noted above, consumers who have the resources to pay upfront charges may receive more economic benefit from using those resources to obtain secured credit card accounts instead of high-fee subprime credit cards.

Accordingly, the Agencies conclude that, when security deposits and fees charged to a credit card account in the first year exceed the amount of credit extended at account opening, the injury caused by the charges outweighs the benefit to the consumer of receiving available credit. Similarly, the Agencies conclude that, in order to ensure that consumers receive a meaningful amount of available credit at account opening that outweighs the injury, security deposits and fees can consume no more than 25 percent of the available credit at account opening.[154]

[152] OCC Advisory Letter 2004–4, at 2–3 (emphasis in original); *see also In re* First Nat'l Bank in Brookings, No. 2003–1 (Dept. of the Treasury, OCC) (Jan. 17, 2003) (available at *http://www.occ.treas.gov/ftp/eas/ea2003-1.pdf*); *In re* First Nat'l Bank of Marin, No. 2001–97 (Dept. of the Treasury, OCC Dec. 3, 2001) (available at *http://www.occ.treas.gov/ftp/eas/ea2001-97.pdf*).

[153] *See, e.g., People* v. *Applied Card Sys., Inc.,* 805 N.Y.S.2d 175, 178 (App. Div. 2005) (finding that credit card marketing materials sent to consumers who were otherwise unable to qualify for credit ''did not represent an accurate estimation of a consumer's credit limit'' and that, ''at all times, it appeared that the confusion was purposely fostered by [the defendant's] telemarketers.'').

[154] Some issuers and members of Congress recommended that the Agencies endorse a ''Code of Fair Practices'' instead of finalizing the rule. These practices include enhanced disclosure, offering consumers the option to pay fees up front, not assessing interest on fees posted to the account, a commitment to report account payment experience to credit reporting agencies, and offering consumers the opportunity to cancel the card after receiving disclosures. Several of these ''best practices'' have essentially been codified by the Board's amendments to Regulation Z elsewhere in today's

Although these restrictions will require issuers of high-fee subprime credit cards to adjust their lending practices, the Agencies believe that the final rule provides sufficient flexibility for these issuers to continue offering credit cards to subprime consumers. Specifically, subprime issuers may charge to the account in the first year security deposits and fees totaling 50 percent of the initial credit limit and may charge half of that total at account opening.[155] In addition, the Agencies have modified the proposal to permit issuers to spread deposits and fees that constitute more than 25 percent of the initial credit limit over the first six months rather than the first year. This change is intended to better enable issuers to limit the risk from the early default of new cardholders, but still ensure that consumers who obtain these cards have meaningful access to credit. Furthermore, although issuers are prohibited from evading the final rule by providing the consumer with additional credit to finance additional fees, the final rule does not limit issuers' ability to collect additional amounts if the consumer can obtain those funds independently.

The second argument raised by industry commenters was that high-fee subprime credit cards offer an opportunity for consumers with damaged or limited credit histories to build or repair their credit records and qualify for credit at prime rates. However, the data supplied by these commenters indicates that most users of high-fee subprime credit cards do not experience an increase in credit score. Specifically, a study of subprime accounts performed by TransUnion (one of the three nationwide consumer reporting agencies) indicates that, while approximately 37 percent of consumers experienced an increase in credit score during the twelve months following the opening of a subprime credit card, the other 63 percent experienced a drop or no change in credit score.[156] Similarly, a subprime credit card issuer stated that only 35 percent of consumers who receive its low limit credit cards improve their credit score within 24 months of account opening.[157] The Agencies cannot verify the accuracy of this data, nor can the Agencies verify that the subset of consumers who did experience an increase in credit score did so as a result of the use of a subprime credit card and not due to other factors. Furthermore, even assuming for purposes of this discussion that the data are accurate, they indicate that most consumers who use subprime credit cards do not experience an increase in credit score. In fact, it appears that the majority of the consumers in the sample studied by TransUnion actually experienced a decrease in credit score within twelve months of opening a subprime credit card account.[158]

Accordingly, for the reasons discussed above, the Agencies conclude that high-fee subprime credit cards do not produce benefits that outweigh the injury to consumers.

Public policy. For purposes of the unfairness analysis, public policy is generally embodied in a statute, regulation, or judicial decision.[159] In the May 2008 Proposal, however, the Agencies noted that the OCC has concluded in regulatory guidance that high-fee subprime credit card accounts increase the risk of default and therefore present concerns regarding the safety and soundness of financial institutions.[160] To the extent that this guidance constitutes public policy, that policy weighs in favor of the restrictions in the final rule. The OCC's guidance does not, however, serve as a primary basis for the Agencies' unfairness determination.

Supplemental Legal Basis for This Section of the OTS Final Rule

As discussed above, HOLA provides authority for both safety and soundness and consumer protection regulations. Section 535.26 supports safety and soundness. The commenters described very high credit risks associated with high-fee subprime credit cards. One estimated that at least one-third of new high fee cardholders default and over 75 percent of them default immediately, upon using 97 percent of their available credit, paying no fees, and repaying no principal. The TransUnion study also found that about 60 percent of subprime cardholders experience a drop in their VantageScore, which suggests a continuing inability to pay these obligations. Section 535.26 provides issuers with an incentive to employ better underwriting in order to target customers who are less likely to default. Consequently, it fosters the safe and sound operation of the institutions that offer these products.

In this vein, it should be noted that the federal banking agencies have agreed that subprime lending that is appropriately underwritten, priced and administered can serve the goals of enhancing credit access for borrowers with blemished credit histories.[161] However, OTS has made it clear that credit card issuers under its jurisdiction must have well-defined credit approval criteria to ensure that underwriting standards are appropriately and uniformly followed.[162] OTS advises all of its institutions that whether they use a judgmental process, an automated scoring system, or a combination of both to make the credit decision, it is important to have well-defined credit approval criteria to ensure that underwriting standards are appropriately and uniformly followed.[163] Appropriate underwriting should reduce the costs of default for issuers and consumers with subprime credit histories.

Moreover, as noted above, subprime cardholders now receive little usable credit due to the current market practice of charging fees for the issuance of credit in amounts that substantially

Federal Register. For example, creditors will be required to disclose the impact of security deposits and fees for the issuance or availability of credit on the amount of available credit the consumer will receive at account opening. *See* 12 CFR 226.5a(b)(14). In addition, the Board has clarified the circumstances under which a consumer who has received account-opening disclosures (but has not yet used the account or paid a fee) may reject the plan and not be obligated to pay upfront fees. *See* 12 CFR 226.5(b)(1)(iv). As discussed above, few consumers considering high fee subprime cards are likely to have the resources to pay the amount of fees currently assessed ''up front.'' Moreover, while the Agencies support accurate credit reporting, the rulemaking record discussed below indicates that the majority of high fee subprime cardholders do not improve their credit scores. Finally, while forbearance from charging interest on fees would provide some benefit to consumers, that benefit is outweighed by the harm that consumers experience from the high fees themselves.

[155] Notably, the final rule does not place any limit on the dollar amount of security deposits and fees that may be charged to the account. Instead, the amount of deposits and fees that an issuer may charge to the account is tied to the credit limit, which the issuer determines.

[156] *See* TransUnion Summary of Results for CEAC Coalition (''TransUnion Summary'') at 4 (dated July 2008) (attached to comment letter from the Political and Economic Research Council (PERC) (dated Aug. 4, 2008)).

[157] This same issuer also stated that, on average, only 22.5% of these consumers receive a higher limit card within 24 months, which—it asserted—is higher than the industry average of 20%.

[158] *See* TransUnion Summary at 6.

[159] *See, e.g.*, FTC Policy Statement on Unfairness at 5.

[160] *See* OCC Advisory Letter 2004–4, at 4 (''[P]roducts carrying fee structures that are significantly higher than the norm pose a greater risk of default. * * * This is particularly true when the security deposit and fees deplete the credit line so as to provide little or no card utility or credit availability upon issuance. In such circumstances, when the consumer has no separate funds at stake, and little or no consideration has been provided in exchange for the fees and other amounts charged to the consumer, the product may provide a disincentive for responsible credit behavior and adversely affect the consumer's credit standing.'')

[161] Interagency Expanded Guidance for Subprime Lending Programs (Feb. 2, 2001).

[162] OTS Examination Handbook, Asset Quality, Section 218 Credit Card Lending, at § 218.5 (May 2006).

[163] *Id.*

exhaust the line. Section 535.26 should alleviate some of the negative consequences associated with this practice, including the creation of unmanageable debt that consumers cannot repay. In particular, requiring issuers to spread the payment of a portion of account opening fees over a number of billing cycles should increase the likelihood that borrowers can repay them. It is therefore consistent with guidance issued by the federal banking agencies on the management of credit card lending.[164] It is also consistent with guidance issued by the OTS.[165]

Given the high default rate and the unsecured nature of credit card lending, OTS concludes that it is not a safe and sound practice for savings associations to offer consumer credit cards that charge security deposits and fees that do not comply with § 535.26.

With regard to consumer protection, § 535.26 is consistent with regulating savings associations in a manner that protects consumers and gives due consideration to best practices of thrift institutions nationwide. As a result of this provision, consumers will be protected from excessive security deposits and fees for the issuance or availability of credit that diminish the value of the account by reducing the credit available to the consumer for purchases or other transactions. They will also be protected from incurring excessive cost for credit cards that provide access to a very small amount of credit. Issuers will have less incentive to make unsubstantiated claims that these products facilitate credit repair. These benefits are particularly important when it is recognized that the consumers most likely to receive the protections provided by § 535.26 are those who are the most vulnerable, including people who are elderly, live on limited incomes, have serious health problems, or live with a combination of these circumstances. Among OTS-supervised institutions, cards that do not comply with the restrictions in § 535.26 are rare. In fact, based on OTS supervisory observations and experience, only two savings associations currently offer such cards and those products are a small part of their business.

Consequently, HOLA serves as an independent basis for § 535.26.

Final Rule

As discussed above, the Agencies have redesignated proposed § __.27 as § __.26. The proposed commentary has been revised accordingly. In addition, the title of this section has been revised for clarity.

Section __.26(a) Limitation for First Year

Proposed § __.27(a) would have prohibited institutions from charging to the account security deposits and fees for the issuance or availability of credit during the twelve months following account opening if, in the aggregate, those fees constitute a majority of the initial credit limit. The Agencies have revised this paragraph of the proposed rule for clarity and adopted it as § __.26(a).

Proposed comment 27(a)–1 clarified that the total amount of security deposits and fees for the issuance or availability of credit constitutes a majority of the initial credit limit if that total is greater than half of the limit and provided an example. The Agencies adopt this comment as comment 26(a)–1.

Proposed § __.27(b) would have prohibited institutions from charging to the account during the first billing cycle security deposits and fees for the issuance or availability of credit that, in the aggregate, constitute more than 25 percent of the initial credit limit. It would have further required that any additional security deposits and fees be spread equally among the eleven billing cycles following the first billing cycle. Proposed comment 27(b)–1 clarified that, when dividing amounts pursuant to § __.27(b)(2), the institution may adjust amounts by one dollar or less. Proposed comment 27(b)–2 provided an example of the application of the rule.

As discussed above, the Agencies have adopted § __.27(b) as § __.26(b) with modifications. The final rule provides that security deposits and fees that constitute more than 25 percent of the initial credit limit be charged to the account in equal portions in no fewer than the five billing cycles immediately following the first billing cycle. Institutions that wish to spread these deposits and fees over a longer period may do so. This change is intended to better enable issuers to limit the risk of early default by new cardholders, but still ensure that consumers who obtain these cards have meaningful access to credit. The Agencies have revised proposed comments 27(b)–1 and 27(b)–2 for consistency with the final rule and adopted those comments as 26(b)–1 and 26(b)–2, respectively.

Section __.26(c) Evasion Prohibited

As discussed above, some consumer groups expressed concern that institutions could evade the proposed rule by requiring consumers to pay security deposits and fees for the issuance or availability of credit from separate funds. Although the Agencies generally do not intend the final rule to apply to amounts that are not charged to the account (such as deposits for secured credit cards), the Agencies conclude that § __.26 would provide little effective protection against the unfair assessment of security deposits and fees if institutions could evade its requirements by providing the consumer with additional credit to fund the payment of security deposits and fees for the issuance or availability of credit that exceed the total amounts permitted by § __.26(a) and (b). Accordingly, the Agencies have adopted § __.26(c), which prohibits this practice. The Agencies have also adopted comment 26(c)–1 (which provides an example of the application of the rule) and comment 26(c)–2 (which clarifies that an institution does not violate § __.26(c) if it requires the consumer to pay security deposits or fees for the issuance or availability of credit using funds that are not obtained, directly or indirectly, from the institution).

Section __.26(d) Definitions

Proposed § __.27(c) would have defined ''fees for the issuance or availability of credit'' as including any annual or other periodic fee, any fee based on account activity or inactivity, and any non-periodic fee that relates to opening an account. This definition is based on the definition of ''fees for the issuance or availability of credit'' in 12 CFR 226.5a(b)(2), published by the Board elsewhere in today's **Federal Register**. This definition does not include fees such as late fees or fees for exceeding the credit limit. In order to provide additional clarity, the Agencies have added definitions of other terms used in the rule and have adopted those definitions in § __.26(d). Specifically, the Agencies have moved the definition of ''initial credit limit'' in proposed comment 27–1 into the text of the regulation and added definitions clarifying the meaning of the terms ''first billing cycle'' and ''first year.''

Proposed comments 27(c)–1, –2, and –3 clarified the meaning of ''fees for the

[164] *See* Interagency Guidance, Credit Card Lending, Account Management and Loss Allowance Guidance, OTS, Examination Handbook, Asset Quality, Credit Card Lending, Appendix A.

[165] OTS Examination Handbook, Asset Quality, Section 218 Credit Card Lending, p. 218.10 (May 2006). Notably, OTS has recognized the risks to safety and soundness of subprime lending by requiring more intensive risk management and capital for institutions that engage in subprime lending. *Id.* at § 218.4. These risks are particularly pronounced in the current economic environment, in which credit card charge-offs have increased. *See* Federal Reserve Board Statistical Release, Charge-off and Delinquency Rates, 3rd Q 2008 (available at: *http://www.federalreserve.gov/releases/chargeoff/chgallsa.htm).*

issuance or availability of credit.'' These comments were based on similar commentary to 12 CFR 226.5a(b)(2), which was proposed by the Board with its June 2007 Regulation Z Proposal. The Agencies have revised the proposed commentary to § __.26(d) for consistency with the final Regulation Z commentary published by the Board elsewhere in today's **Federal Register**. Specifically, proposed comment 27(c)–2 has been revised to clarify that fees for providing additional cards to primary cardholders (as opposed to authorized users) are fees for the issuance or availability of credit. Otherwise, these comments are redesignated as comments 26(d)–1, –2, and –3 and adopted as proposed.

Other Issues

Implementation. As discussed in section VII of this **SUPPLEMENTARY INFORMATION**, the effective date for § __.26 is July 1, 2010. Although the Agencies particularly encourage institutions to use their best efforts to conform their practices to this section of the final rule sooner, institutions are not prohibited from charging security deposits and fees for the issuance or availability that do not comply with § __.26 until the effective date. These provisions do not affect security deposits and fees charged to consumer credit card accounts prior to that date, even if some or all of the security deposits and fees have not been paid in full as of the effective date.

Advertising. Based on the record in this rulemaking, the Agencies are not persuaded that, as a general matter, high-fee subprime credit cards provide meaningful benefits to consumers as credit repair tools. Notably, institutions that make marketing claims regarding the use of subprime credit cards as a means to improve credit scores risk violating the FTC Act's prohibition on deception if they cannot substantiate their claims.[166] Savings associations that cannot do so are also at risk of violating the OTS rule against making inaccurate representations in advertising.[167]

Other Proposals

Proposed § __.25—Unfair Acts or Practices Regarding Fees for Exceeding the Credit Limit Caused by Credit Holds

Summary. In May 2008, the Agencies proposed § __.25, which would have prohibited institutions from assessing a fee or charge for exceeding the credit limit on a consumer credit card account if the credit limit would not have been exceeded but for a hold placed on any portion of the available credit on the account that is in excess of the actual purchase or transaction amount. *See* 73 FR 28921–28922. The Agencies intended this provision to parallel proposed § __.32(b), which would have imposed identical restrictions with respect to holds placed on available funds in a deposit account as a result of a debit card transaction. *See id.* at 28931–32892. As discussed below, the Agencies are not taking action on debit holds or credit holds at this time.

Background. Although the Board's June 2007 Regulation Z Proposal did not directly address over-the-credit-limit (OCL) fees, the Board received comments from consumers, consumer groups, and members of Congress expressing concern about the penalties imposed by creditors for exceeding the credit limit. Specifically, commenters were concerned that consumers may unknowingly exceed their credit limit and incur significant rate increases and fees as a result.

As discussed in the May 2008 Proposal, the Agencies believed these concerns were addressed by proposed § __.24 to the extent that it prohibited institutions from applying increased rates to outstanding balances as a penalty for exceeding the credit limit. The Agencies were concerned, however, about the imposition of OCL fees in connection with credit holds. As further discussed below in section VI of this **SUPPLEMENTARY INFORMATION**, some merchants place a temporary ''hold'' on an account when a consumer uses a credit or debit card for a transaction in which the actual purchase amount is not known at the time the transaction is authorized. For example, when a consumer uses a credit card to obtain a hotel room, the hotel often will not know the total amount of the transaction at the time because that amount may depend on, for example, the number of days the consumer stays at the hotel or the charges for incidental services the hotel may provide to the consumer during the stay (such as room service). Therefore, the hotel may place a hold on the available credit on the consumer's account in an amount sufficient to cover the expected length of the stay plus an additional amount for potential purchases of incidentals. In these circumstances, the institution may authorize the hold but the final amount of the transaction will not be known until the hotel submits the actual purchase amount for settlement.

Typically, the hold is kept in place until the transaction amount is presented to the institution for payment and settled, which may take place a few days after the original authorization. During this time between authorization and settlement, the hold may remain in place on the consumer's account. As discussed in the May 2008 Proposal, the Agencies were concerned that consumers who were unfamiliar with credit hold practices might inadvertently exceed the credit limit and incur an OCL fee because they assumed that the available credit was reduced only by the actual amount of the purchase.

Comments received. Industry commenters stated that credit holds do not typically reduce the amount of available credit on a consumer credit card account (in contrast to debit holds, which do reduce the amount of available funds in a deposit account). Some stated that, for this reason, they did not object to the proposed rule, while others argued that—to the extent the provision would require any changes to issuers' systems—it would be unnecessarily burdensome because credit holds are very unlikely to result in OCL fees.

The proposed rule was supported by consumer groups, members of Congress, the FDIC, state attorneys general, and state consumer protection agencies, although these commenters generally argued that the final rule should go further in addressing the harm caused by OCL fees. Some of these commenters argued that exceeding the credit limit should not be a basis for loss of a promotional rate under proposed § __.24(b)(2). As discussed above with respect to § __.24, the Agencies agree and the final version of § __.24(b)(2) does not permit this practice.

In addition, some of these commenters argued that institutions that reduce the credit limit on a consumer credit card account should be prohibited from penalizing consumers for exceeding that reduced limit. The Agencies believe that these concerns are addressed by the Board's revisions to Regulation Z, published elsewhere in today's **Federal Register**. Specifically, 12 CFR 226.9(c)(2)(v) provides that, if a creditor decreases the credit limit on an account, notice of the decrease must be provided at least 45 days before an OCL fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly-decreased limit.

These commenters also urged the Agencies to take a variety of other actions with respect to OCL fees, including prohibiting OCL fees unless the account is over the credit limit at the

[166] *See* FTC Policy Statement Regarding Advertising Substantiation, 49 FR 30999 (Aug. 2, 1984); *see also FTC* v. *QT, Inc.,* 448 F. Supp. 2d. 908, 959–960 (N.D. Ill. 2006) (substantiation policy used in federal litigation as guidance for the court), *aff'd,* 512 F.3d 858 (7th Cir. 2008).

[167] *See* 12 CFR 563.27.

end of the billing cycle, prohibiting OCL fees when the institution approved the transaction that put the account over the credit limit (or allowing consumers to direct institutions not to honor such transactions), prohibiting OCL fees when interest charges or other fees placed the account over the credit limit, prohibiting multiple OCL fees based on a single transaction, and prohibiting OCL fees that are not reasonably related to the institution's cost. The Agencies, however, believe that the protections provided elsewhere in Regulation Z and in this final rule—particularly the prohibition on repricing existing balances as a penalty for exceeding the credit limit—provide substantial protections for consumers who exceed their credit limit.

Conclusion. The Agencies are not taking action on credit holds or debit holds at this time. As discussed below in section VI of this **SUPPLEMENTARY INFORMATION**, the Board has published proposed amendments to Regulation E addressing debit holds elsewhere in today's **Federal Register**. The Agencies will review information obtained through that rulemaking to determine whether to take further action. In addition, to the extent that specific practices involving debit or credit holds raise concerns regarding unfairness or deception under the FTC Act, the Agencies plan to address those practices on a case-by-case basis through supervisory and enforcement actions.

Proposed § __.28—Deceptive Acts or Practices Regarding Firm Offers of Credit

Summary. In May 2008, the Agencies proposed § __.28 to address circumstances in which institutions make firm offers of credit for consumer credit card accounts that contain a range of or multiple annual percentage rates or credit limits because such offers appeared to be deceptive. *See* 72 FR at 28925–28927. When the rate or credit limit that a consumer responding to such an offer will receive depends on specific criteria bearing on creditworthiness, proposed § __.28 would have required that the institution disclose the types of eligibility criteria in the solicitation. An institution would have been permitted to use the following disclosure to meet these requirements: ''If you are approved for credit, your annual percentage rate and/or credit limit will depend on your credit history, income, and debts.'' Based on the comments and further analysis, the Agencies have concluded that concerns regarding firm offers of credit containing a range of or multiple annual percentage rates are adequately addressed by provisions of Regulation Z published by the Board elsewhere in today's **Federal Register**. Accordingly, as discussed below, the Agencies are not taking action on this issue at this time.

Background. The Fair Credit Reporting Act (FCRA) limits the purposes for which consumer reports can be obtained. It permits consumer reporting agencies to furnish consumer reports only for one of the ''permissible purposes'' enumerated in the statute.[168] One of the permissible purposes set forth in the FCRA relates to prescreened firm offers of credit or insurance.[169] In a typical use of prescreening for firm offers of credit, a creditor submits a request to a consumer reporting agency for the contact information of consumers meeting certain pre-established criteria, such as credit scores or a lack of serious delinquencies. The creditor then sends offers of credit targeted to those consumers, which state certain terms under which credit may be provided. For example, a firm offer of credit may contain statements regarding the annual percentage rate or credit limit that may be provided.

The FCRA requires that a firm offer of credit state, among other things, that (1) information contained in the consumer's credit report was used in connection with the transaction; (2) the consumer received the firm offer because the consumer satisfied the criteria for creditworthiness under which the consumer was selected for the offer; and (3) if applicable, the credit may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any other applicable criteria bearing on creditworthiness or does not furnish any required collateral.[170] The creditor may apply certain additional criteria to evaluate applications from consumers that respond to the offer, such as the consumer's income.[171]

As discussed in the May 2008 Proposal, the Agencies were concerned that, because firm offers of credit often state that consumers have been ''pre-selected'' for credit or make similar statements, consumers receiving such offers may not understand that they are not necessarily eligible for the lowest annual percentage rate and the highest credit limit stated in the offer. Thus, in the absence of an affirmative statement to the contrary, consumers could reasonably believe that they could receive the lowest annual percentage rate and highest credit limit stated in the offer even though that is not the case. Accordingly, the Agencies proposed § __.28.

Comments received. Proposed § __.28 was supported by some industry commenters as well as some members of Congress, the FDIC, and state attorneys general. Other industry commenters argued that the Agencies' concerns regarding firm offers of credit were more appropriately addressed under Regulation Z or the FCRA. Consumer groups, some members of Congress, and a state consumer protection agency criticized the proposed disclosure as ineffective and requested that the Agencies take more substantive action, such as prohibiting institutions from making firm offers of credit that do not state a specific annual percentage rate or credit limit or making firm offers of credit to consumers who are not eligible for the best terms stated in the offer.

Conclusion. The Agencies believe that the Board's final rules under Regulation Z (published elsewhere in today's **Federal Register**) adequately address their concerns regarding firm offers of credit that contain a range of or multiple annual percentage rates. Specifically, the Board has adopted 12 CFR 226.5a(b)(1)(v) to address circumstances in which a creditor is unable to state in a solicitation the exact rate all consumers who respond to the solicitation will receive because that rate depends on a subsequent evaluation of the consumer's creditworthiness. This provision generally requires the creditor to disclose in the Schumer Box provided with credit card solicitations (including firm offers of credit) the specific rates or the range of rates that could apply and to state that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness and other factors (if applicable).

After conducting consumer testing, the Board has also provided model forms that can be used to disclose multiple rates or a range of rates. *See* App. G to 12 CFR 226, Samples G–10(B) and G–10(C). In this testing, almost all participants understood that, when multiple rates or a range of rates were provided in the Schumer Box, it meant that the consumer's initial annual percentage rate would be determined among those rates or within that range based on the consumer's credit history and credit score. Accordingly, the Agencies believe that 12 CFR

[168] *See* 15 U.S.C. 1681b. Similarly, persons obtaining consumer reports may do so only with a permissible purpose. *See* 15 U.S.C. 1681b(f).

[169] *See* 15 U.S.C. 1681b(c); *see also* 15 U.S.C. 1681a(l) (defining ''firm offer of credit or insurance'').

[170] *See* 15 U.S.C. 1681m(d)(1); *see also* 16 CFR 642.1–642.4 (Prescreen Opt-Out Notice Rule).

[171] *See, e.g.,* 15 U.S.C. 1681a(l).

226.5a(b)(1)(v) adequately addresses concerns that consumers will be misled when firm offers state multiple or a range of annual percentage rates.

Similarly, although Regulation Z does not require disclosure of the credit limit in the Schumer Box, the Board's consumer testing indicates that consumers are not misled by solicitations stating multiple credit limits or a range of credit limits. Specifically, when a solicitation did not state a specific credit limit, almost all participants understood that the credit limit for which they would qualify depended on their creditworthiness. In addition, when looking at statements that the initial credit limit would be ''up to $2,500,'' most participants understood that the limit they would receive might be lower than $2,500.[172]

Accordingly, the Agencies are not taking action regarding firm offers of credit at this time. To the extent that specific practices regarding firm offers of credit raise concerns regarding unfairness or deception under the FTC Act, the Agencies plan to address those practices on a case-by-case basis through supervisory and enforcement actions. Further, to the extent that individual consumers do not wish to receive firm offers of credit, they can elect to be excluded from firm offer lists.[173]

VI. Proposed Subpart Regarding Overdraft Services

Background

Historically, if a consumer attempted to engage in a transaction that would overdraw his or her deposit account, the consumer's depository institution used its discretion on an ad hoc basis to determine whether to pay the overdraft. If an overdraft was paid, the institution usually imposed a fee on the consumer's account. In recent years, many institutions have largely automated the overdraft payment process. Automation is used to apply specific criteria for determining whether to honor overdrafts and set limits on the amount of the coverage provided.

Overdraft services vary among institutions but often share certain common characteristics. In general, consumers who meet the institution's criteria are automatically enrolled in overdraft services.[174] While institutions generally do not underwrite on an individual account basis when enrolling the consumer in the service, most institutions will review individual accounts periodically to determine whether the consumer continues to qualify for the service, and the amounts that may be covered. Most institutions disclose to consumers that the payment of overdrafts is discretionary, and that the institution has no legal obligation to pay any overdraft.

In the past, institutions generally provided overdraft coverage only for check transactions. In recent years, however, the service has been extended to cover overdrafts resulting from non-check transactions, including withdrawals at ATMs, automated clearinghouse (ACH) transactions, debit card transactions at point-of-sale (POS), pre-authorized automatic debits from a consumer's account, telephone-initiated funds transfers, and online banking transactions.[175]

Institutions charge a flat fee each time an overdraft is paid, regardless of the amount of the overdraft. Institutions commonly charge the same amount for paying the overdraft as they would if they returned the item unpaid.[176] A daily fee also may apply for each day the account remains overdrawn.

In the May 2008 Proposal, the Agencies proposed to establish a new Subpart D to their respective FTC Act regulations which would adopt rules prohibiting specific unfair acts or practices with respect to overdraft services. One provision (discussed in more detail below) would have prohibited institutions from assessing any fees on a consumer's account in connection with an overdraft service, unless the consumer is given notice and a reasonable opportunity to opt out of the service, and the consumer does not opt out.[177] The Agencies also proposed to prohibit institutions from assessing an overdraft fee where the overdraft would not have occurred but for a hold placed on funds that exceeds the actual purchase or transaction amount.

Based on the comments received and further analysis, the Agencies are not taking action regarding overdraft services or debit holds at this time. As noted above, the Board has proposed rules regarding overdraft services under Regulation E elsewhere in today's **Federal Register**.[178] The Agencies will review information obtained during that rulemaking to determine whether to take further action.

A. Proposed Section __.32(a)—Consumer Right To Opt Out

The Agencies proposed in § __.32(a) to prohibit institutions from assessing any fees on a consumer's account in connection with an overdraft service, unless the consumer is given notice and a reasonable opportunity to opt out of the service, and the consumer does not opt out. The proposed opt-out right would have applied to overdrafts resulting from all methods of payment, including check, ACH transactions, ATM withdrawals and debit card transactions (full opt-out). In addition, the proposal would have required institutions to provide consumers with the option of opting out of only those overdrafts resulting from ATM withdrawals and debit card transactions at POS (partial opt-out). In a separate proposal under TISA and Regulation DD, the Board proposed additional amendments regarding the form, content, and timing requirements for the opt-out notice.

[172] In the May 2008 Proposal, the Agencies noted that prior consumer testing by the Board indicated that consumers who read solicitations that did not state a specific credit limit generally understood that the limit they would receive depended on their creditworthiness. This testing did not, however, specifically focus on firm offers of credit that contain statements that the consumer has been selected for the offer. Accordingly, after the May 2008 Proposal, the Board conducted additional testing using such an offer, which produced similar results.

[173] 12 U.S.C. 1681b(e).

[174] These criteria may include whether the account has been open a certain number of days, whether the account is in ''good standing,'' and whether deposits are regularly made to the account.

[175] According to the FDIC's Study of Bank Overdraft Programs (FDIC Study), nearly 70 percent of banks surveyed implemented their automated overdraft program after 2001. In addition, 81 percent of banks surveyed that operate automated programs allow overdrafts to be paid at ATMs and POS debit card terminals. *See* FDIC Study of Bank Overdraft Programs 8, 10 (Nov. 2008) (hereinafter, *FDIC Study*) (available at: *http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_FinalTOC.pdf). See also Overdraft Protection: Fair Practices for Consumers: Hearing before the House Subcomm. on Financial Institutions and Consumer Credit, House Comm. on Financial Services,* 110th Cong., at 72 (2007) (hereinafter, *Overdraft Protection Hearing*) (available at *http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr0705072.shtml*) (stating that as recently as 2004, 80 percent of banks still declined ATM and debit card transactions without charging a fee when account holders did not have sufficient funds in their account).

[176] *See Bank Fees: Federal Banking Regulators Could Better Ensure That Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts,* GAO Report 08–281, at 14 (Jan. 2008) (reporting that the average cost of overdraft and insufficient funds fees was just over $26 per item in 2007). *See also Bankrate 2008 Checking Account Study,* posted October 27, 2008 (available at: *http://www.bankrate.com/brm/news/chk/chkstudy/20081027-bounced-check-fees-a1.asp?caret=2)* (reporting an average overdraft fee of approximately $29 per item).

[177] As noted above, the Board also separately published a proposal under its authority under TISA and Regulation DD setting forth requirements regarding the form, content and timing for the opt-out notice. 73 FR 28739 (May 19, 2008).

[178] The proposed provisions under Regulation DD regarding the form, content and timing of delivery for the opt-out notice are not included in that final rule, but instead are included with certain revisions in the Regulation E proposal. Both rulemakings are published elsewhere in today's **Federal Register**.

Comments received. The Agencies received approximately 1,500 comment letters on the overdraft services portion of the May 2008 Proposal. Banks, savings associations, credit unions, and industry trade associations, generally, but not uniformly, opposed the proposed requirement to provide consumers with the right to opt out of an institution's payment of overdrafts. Industry commenters stated that the cost of complying with the rule would far exceed any consumer benefits. Rather than causing consumer harm, industry commenters asserted that overdraft services provide consumers substantial benefits, particularly with respect to check transactions. These industry commenters observed that the payment of overdrafts for checks enables consumers to avoid more significant injuries, such as merchant fees, negative credit reports, and violations of bad check laws. Industry commenters and the OCC stated that if the opt-out right applied to check transactions, more checks would be returned unpaid. Industry commenters and the OCC also noted a potential unintended consequence of the rule could be that institutions would lengthen their availability schedules to the extent permitted by the Board's Regulation CC, 12 CFR Part 229, to ensure that a deposited check was written on good funds. As a result, consumers would have to wait longer than they do today before gaining access to deposited funds.

Industry commenters also raised a number of operational concerns regarding the proposed partial opt-out for ATM and POS transactions. These commenters noted that most systems may not be able to differentiate POS debit card transactions from other types of debit card transactions. Some industry commenters, however, argued that the opt-out should be limited to ATM withdrawals and debit card transactions. These commenters stated that the majority of consumer complaints about overdraft fees arise in connection with debit card purchases in which the amount of the overdraft fee is significantly higher than the amount of the overdraft.

Finally, industry commenters believed that it was inappropriate to address overdraft practices under the Agencies' FTC Act authority. In particular, industry commenters disputed the suggestion that overdraft services were unfair in light of the consumer benefits when overdrafts are paid, such as the avoidance of merchant fees. Industry commenters also argued that consumers could reasonably avoid overdraft fees even without being given an opportunity to opt out by properly managing their accounts. Lastly, industry commenters noted that the federal banking agencies have not previously indicated that institutions' payment of overdrafts pursuant to non-promoted overdraft services raise significant supervisory concerns, and asserted that the Agencies' proposal would subject institutions to potential litigation risks. Accordingly, many industry commenters recommended that the Board address any concerns about overdraft services under other regulatory authority, such as Regulation E and Regulation DD.

Consumer groups, members of Congress, the FDIC, individual consumers, and others supported the Agencies' proposal to prohibit institutions from assessing fees for overdraft services, unless the consumer is given notice and the opportunity to opt out. However, most of these commenters argued that the rule should instead require institutions to obtain the consumer's affirmative consent (that is, opt-in) before overdrafts could be paid and fees assessed. These commenters also stated that overdrafts are extensions of credit and should be subject to Regulation Z. Specifically, they asserted that institutions should be required to disclose the cost of an overdraft service as an annual percentage rate to allow consumers to compare those costs with other forms of credit.

Consumer testing. The Agencies noted in the May 2008 Proposal that, as part of the rulemaking process, the Board would conduct consumer testing on a proposed opt-out form (set forth in the accompanying May 2008 Regulation DD Proposal) to ensure that the notice can be easily understood by consumers. After considering the comments received in response to both proposals, Board staff worked with a testing consultant, Macro International (Macro), to revise the proposed model form and to create a short-form opt-out notice that would appear on the periodic statement. In September 2008, Macro conducted two rounds of one-on-one interviews with a diverse group of consumers.

In general, after reviewing the model disclosures, testing participants generally understood the concept of overdraft coverage, and that they would be charged fees if their institution paid their overdrafts. Participants also appeared to understand that if they opted out of overdraft coverage, this meant their checks would not be paid and they could be charged fees by both their institution and by the merchant.[179]

[179] *See Review and Testing of Overdraft Notices,* Macro International (Dec. 8, 2008).

During the first round of testing, Macro tested an opt-out form that allowed consumers to opt out of the payment of overdrafts for all transaction types, including checks and recurring debits. During both rounds, virtually all of the participants indicated that they would not opt out if their checks would be returned unpaid. However, when asked if they would opt out if the choice was limited to opting out of overdrafts in connection with ATM withdrawals and debit card purchases, half of the participants indicated that they would consider doing so.

Conclusion. Based on the comments received and further analysis, the Board is publishing a proposal elsewhere in today's **Federal Register** under Regulation E that would require that an institution provide its consumers the right to opt out of the institution's payment of ATM withdrawals and one-time debit card transactions pursuant to the institution's overdraft service. The Board is also proposing an alternative approach that would require an institution to obtain a consumer's affirmative consent (that is, opt-in) before the institution could pay overdrafts for ATM withdrawals and one-time debit card transactions and assess a fee. Additional comments received in response to the Agencies' May 2008 Proposal and the Board's Regulation DD Proposal regarding the content, timing, and format of the opt-out notice are further discussed in the Board's Regulation E proposal. The Board also anticipates conducting further consumer testing following its review of the comments received on the Regulation E proposal.

Accordingly, the Agencies are not taking action regarding overdraft services at this time. The Agencies will review information obtained from the Board's rulemaking to determine whether to take further action.

B. Proposed Section __.32(b)—Debit Holds

When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is commonly referred to as a ''debit hold.'' During the time the debit hold remains in place, which may be up to three days after authorization, those funds may be unavailable for the consumer's use for other transactions.

In some cases, the actual purchase amount is not known at the time the transaction is authorized, such as when a consumer uses a debit card to pay for gas at the pump or pay for a meal at a restaurant. Consequently, a debit hold may be placed for an estimated amount which may exceed the actual transaction amount. The consumer may engage in subsequent transactions reasonably assuming that the account has only been debited for the actual transaction amount. Because of the excess hold, however, the consumer may incur overdraft fees for those subsequent transactions.

In May 2008, the Agencies proposed in § __.32(b) to prohibit institutions from assessing an overdraft fee where the overdraft would not have occurred but for a hold placed on funds in the consumer's account that exceeds the actual purchase or transaction amount. The proposed prohibition was intended to enable consumers to avoid the assessment of fees when the consumer would not have overdrawn his or her account had the actual transaction amount been presented for payment in a timely manner.

Consumer groups supported the proposed prohibition. However, they recommended that the Agencies also address check holds and prohibit the assessment of overdraft fees if a consumer has deposited funds that have not yet cleared, but where the deposit would have been sufficient to cover the overdraft. Alternatively, consumer groups urged the Board to use its authority under the Expedited Funds Availability Act (EFAA) to shorten the funds availability schedule for deposited items.

Industry commenters, however, opposed the debit hold proposal, stating that it would present significant operational difficulties. For example, industry commenters noted that institutions authorize transactions in real time, taking into account transactions subject to a debit hold. Because the actual purchase amount for certain transactions subject to a debit hold will not be known until the transaction is presented for payment, some industry commenters expressed concern that the rule would require institutions to monitor accounts retroactively and manually adjust transactions and fees that have posted to the account to determine whether an overdraft was caused by an excess hold. Otherwise, institutions would have to stop placing holds altogether which, industry commenters argued, raised potential safety and soundness concerns. Nonetheless, a few financial institution commenters stated that for fuel purchases, they do not place holds beyond the $1 pre-authorization amount, and one large financial institution commenter stated that it does not currently place holds of any amount on authorizations coming from gas stations, hotels, or rental car companies.

Rather than using their FTC Act authority, industry commenters urged the Agencies to use other existing regulatory authority. For example, industry commenters recommended that the Board exercise its authority under Regulation E to require merchants to disclose at the point-of-sale when holds may be placed on debit card transactions.

As discussed above, the Board is proposing to address concerns about debit holds pursuant to the Board's authority under the EFTA and Regulation E in a separate proposal published elsewhere in today's **Federal Register**. Accordingly, the Agencies are not taking action regarding overdraft services at this time. The Agencies will review information obtained from the Board's rulemaking to determine whether to take further action.[180]

Other Overdraft Practices

Balance disclosures. The Agencies also noted their concerns in the proposal regarding how consumer balances are disclosed. In particular, the Agencies observed that consumers could be misled by balance disclosures that include additional funds that the institution may provide to cover an overdraft. The Board is addressing this issue in the final rule under Regulation DD published contemporaneously in today's **Federal Register**.

Transaction clearing practices. The May 2008 Proposal also noted the Agencies' concerns about the impact of transaction clearing practices on the amount of overdraft fees that may be incurred by the consumer. The February 2005 overdraft guidance recommends as a best practice that institutions explain the impact of transaction clearing policies to consumers. For example, institutions could disclose that transactions may not be processed in the order in which they occurred and that the order in which transactions are received by the institution and processed can affect the total amount of overdraft fees incurred by the consumer.[181] In its Guidance on Overdraft Protection Programs, the OTS also recommended as best practices: (1) Clearly disclosing rules for processing and clearing transactions; and (2) having transaction clearing rules that are not administered unfairly or manipulated to inflate fees.[182]

The May 2008 Proposal did not propose any rules addressing transaction clearing practices. Instead, the Agencies solicited comment on the impact of requiring institutions to pay smaller-dollar items before larger-dollar items when received on the same day for purposes of assessing overdraft fees on a consumer's account. The Agencies also solicited comment on how such a rule would impact an institution's ability to process transactions on a real-time basis.

Industry commenters urged the Agencies not to engage in a rulemaking relating to transaction clearing practices. First, they argued that state law under the Uniform Commercial Code[183] specifically provides institutions flexibility in determining posting order.[184] Second, industry commenters stated that each transaction clearing method has inherent flaws, and that most customers prefer high-to-low posting order because it results in consumers' largest bills—typically their higher priority payments—being paid first. Third, these commenters argued that transaction clearing processes are more complex than high-to-low or low-to-high decisions. Industry commenters stated, for example, that institutions use a variety of other clearing methods based on different processing capabilities, such as real-time processing or processing in check number order. In addition, an institution may use a combination of posting order methods based on the capabilities of its processing system and the transaction type. For example, an institution may clear some items in real-time and others on a high-to-low basis during batch processing, depending on how the item is presented and depending on applicable funds availability and payment decision requirements. Industry commenters also expressed concern that requiring a particular processing order would create significant litigation risk given the complexity of items processing. Finally, industry commenters stated that it would be technologically impracticable to permit a small subset of consumers to opt in to a particular processing order and to treat their transactions differently than other consumers' transactions.

Consumer groups and some members of Congress urged the Agencies to ban institutions from engaging in

[180] Additional comments received on the proposed FTC Act debit hold provision are discussed in more detail in the Board's Regulation E proposal where relevant.

[181] 70 FR at 8431; 70 FR at 9132.

[182] 70 FR at 8431.

[183] U.C.C. § 4–303. The commentary to § 4–303 states that any posting order is permitted because (1) it is impossible to state a rule that would be fair in all circumstances, and (2) a drawer should have sufficient funds on deposit at all times, he or she should thus be indifferent as to posting order.

[184] *See also* OCC Interp. Letter No. 916 (May 22, 2001).

manipulative clearing practices. In particular, they asserted that institutions use transaction processing order to maximize revenue from overdrafts because more overdraft fees can be levied if largest debits are processed first and cause other small debits to overdraw the account multiple times. They also argued that the justification favoring high-to-low payment order because higher-priority items are paid first is undermined by the fact that all items are paid via the institution's overdraft protection program.

The Agencies are not addressing transaction processing order at this time. The Agencies believe that it would be difficult to set forth a bright-line rule that would clearly result in the best outcome for all or most consumers. For example, requiring institutions to pay smaller dollar items first may cause an institution to return unpaid a large dollar nondiscretionary item, such as a mortgage payment, if there is an insufficient amount of overdraft coverage remaining to cover the large dollar item after the smaller items have been paid. The Agencies also acknowledge the inherent complexity of payments processing and recognize that mandating a particular posting order could create complications for institutions seeking to move toward real-time transaction processing.

VII. Effective Date

The May 2008 Proposal solicited comment on whether the rules should become effective one year after issuance or whether a different period was appropriate. Although some industry commenters agreed that a one-year period was appropriate, most urged the Agencies to allow 18 or 24 months due to the difficulty of redesigning systems and procedures to comply with the rules. In contrast, some consumer advocates requested a shorter period.

The final rule is effective on July 1, 2010. Compliance with the provisions of the final rule is not required before the effective date. Accordingly, the final rule and the Agencies' accompanying analysis should have no bearing on whether or not acts or practices restricted or prohibited under this rule are unfair or deceptive before the effective date of this rule.

Unfair acts or practices can be addressed through case-by-case enforcement actions against specific institutions, through regulations applying to all institutions, or both. An enforcement action concerns a specific institution's conduct and is based on all of the facts and circumstances surrounding that conduct. By contrast, a regulation is prospective and applies to the market as a whole, drawing bright lines that distinguish broad categories of conduct.

Because broad regulations, such as those in the final rule, can require large numbers of institutions to make major adjustments to their practices, there could be more harm to consumers than benefit if the regulations were effective earlier than the effective date. If institutions were not provided a reasonable time to make changes to their operations and systems to comply with the final rule, they would either incur excessively large expenses, which would be passed on to consumers, or cease engaging in the regulated activity altogether, to the detriment of consumers. And because the Agencies find an act or practice unfair only when the harm outweighs the benefits to consumers or to competition, the implementation period preceding the effective date set forth in the final rule is integral to the Agencies' decision to restrict or prohibit certain acts or practices by regulation.

For these reasons, acts or practices occurring before the effective date of the final rule will be judged on the totality of the circumstances under applicable laws or regulations. Similarly, acts or practices occurring after the rule's effective date that are not governed by these rules will continue to be judged on the totality of the circumstances under applicable laws or regulations.

Some industry commenters requested that, because existing accounts were established with the expectation that institutions could engage in the practices prohibited by the final rule, those accounts (or existing balances on those accounts) be exempted from the final rule. The Agencies recognize that, as discussed above with respect to specific prohibitions, the final rule prohibits some long-standing practices that have been expressly or implicitly permitted under state or federal law or the guidance of the federal banking agencies. As noted above, the final rule is not intended to suggest that these practices are unfair or deceptive prior to the effective date. However, the Agencies do not believe the requested exemption is necessary because institutions will have sufficient time prior to the effective date to adjust their pricing and other practices with respect to existing accounts and balances. Indeed, prior to the effective date, institutions may change interest rates on existing balances and take other actions that will be prohibited once the final rule is effective. However, in light of the significant nature of the changes required by the final rule (including training staff), the Agencies anticipate that institutions will need to begin the compliance process long before the effective date. Although institutions are not required to comply with the final rule before the effective date, the Agencies strongly encourage institutions to use their best efforts to conform their practices to the final rule before July 1, 2010.

VIII. Regulatory Analysis

A. Regulatory Flexibility Act

Board: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The Board prepared an initial regulatory flexibility analysis in connection with the May 2008 Proposal, which reached the preliminary conclusion that the proposed rule would not have a significant economic impact on a substantial number of small entities. *See* 73 FR 28933–28934 (May 19, 2008). The Board received no comments specifically addressing its initial regulatory flexibility analysis. However, industry commenters generally stated that the overall proposal would impose significant implementation costs and result in a loss of revenue from interest charges and overdraft fees.

Based on the comments and further analysis, the Board has concluded that the final rule will have a significant economic impact on a substantial number of small entities. Accordingly, the Board has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

1. *Succinct statement of the need for, and objectives of, the rule.* The Federal Trade Commission Act (15 U.S.C. 41 *et seq.*) (FTC Act) prohibits unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. 45(a)(1). The FTC Act provides that the Board (with respect to banks), OTS (with respect to savings associations), and the NCUA (with respect to federal credit unions) are responsible for prescribing regulations prohibiting such acts or practices. 15 U.S.C. 57a(f)(1). The Board, OTS, and NCUA are jointly issuing regulations under the FTC Act to protect consumers from specific unfair or deceptive acts or practices regarding consumer credit card accounts. The

Board's final rule will amend Regulation AA.

The **SUPPLEMENTARY INFORMATION** above describes in detail the need for, and objectives of, the final rule.

2. *Summary of the significant issues raised by public comments in response to the Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments*. As discussed above, the Board's initial regulatory flexibility analysis reached the preliminary conclusion that the proposed rule would not have a significant economic impact on a substantial number of small entities. *See* 73 FR 28933–28934 (May 19, 2008). The Board received no comments specifically addressing this analysis.

3. *Description and estimate of the number of small entities to which the final rule applies*. The Board's final rule applies to banks and their subsidiaries, except savings associations as defined in 12 U.S.C. 1813(b). Based on 2008 call report data, there are approximately 709 banks with assets of $175 million or less that offer credit cards and are therefore required to comply with the Board's final rule.

4. *Description of the recordkeeping, reporting, and other compliance requirements of the final rule*. The final rule does not impose any new recordkeeping or reporting requirements. The final rule does, however, impose new compliance requirements.

Section 227.22 will require some small entities to extend the period of time provided to consumers to make payments on consumer credit card accounts. One commenter estimated the cost of compliance at $30,000 per institution, although this cost will vary depending on the size of the institution. Based on the comments, however, many credit card issuers already send periodic statements 21 days in advance of the payment due date, which constitutes a reasonable amount of time under the rule. Indeed, a trade association representing community banks (many of which are small entities under the RFA) stated in its comment that 90 percent of its members currently mail or deliver periodic statements more than 21 days before the payment due date.

Section 227.23 will require small entities that provide consumer credit card accounts with multiple balances at different rates to alter their payment allocation systems and, in some cases, develop new systems for allocating payments among different balances. The cost of such changes will depend on the size of the institution and the composition of its portfolio. Compliance with this provision will also reduce interest revenue for small entities that currently allocate payments first to balances with the lowest annual percentage rate. The economic impact, however, will be mitigated to the extent that small entities adjust other terms to compensate for the loss of revenue (such as by increasing the dollar amount of fees and the annual percentage rates offered to consumers when an account is opened).

Section 227.24 generally prohibits small entities from increasing annual percentage rates, except in certain circumstances. This provision will reduce interest revenue, although—as noted above—small entities can mitigate the economic impact by increasing the dollar amount of fees, increasing the annual percentage rates offered to consumers when an account is opened, or otherwise adjusting account terms. In addition, § 227.24 permits small entities to increase the rates applicable to new transactions after the first year and to increase the rates on outstanding balances pursuant to an increase in an index and when the consumer's payment has not been received within 30 days after the due date.

Section 227.25 may require some small entities to change the way finance charges are calculated. The Board understands, however, that few institutions still use the prohibited method.

Section 227.26 will reduce the revenue that some small entities derive from security deposits and fees. These costs, however, will be borne only by those entities offering cards with security deposits and fees that currently consume a majority of the credit limit.

Accordingly, the Board believes that, in the aggregate, the provisions in its final rule will have a significant economic impact on a substantial number of small entities.

5. *Description of the steps the Board has taken to minimize the significant economic impact on small entities consistent with the stated objectives of the FTC Act.* As discussed above in this **SUPPLEMENTARY INFORMATION**, the Board has considered a wide variety of alternatives and has concluded that the restrictions in the final rule achieve the appropriate balance between providing effective protections for consumers against unfair or deceptive acts or practices (which are prohibited by the FTC Act) and minimizing the burden on institutions that offer credit cards (including small entities). In the May 2008 Proposal, the Board considered whether small entities should be exempted from the proposed rules. The Board indicated, however, that such an exemption would not be appropriate because the FTC Act neither exempts small entities from the prohibition against engaging in unfair or deceptive acts or practices nor provides the Board with authority to create such an exemption. Furthermore, the Board noted that whether an act or practice is unfair or deceptive should not depend on the size of the institution. *See* 73 FR at 28934. The Board did not receive any comments regarding this preliminary conclusion. Accordingly, the Board has not exempted small entities from the final rule.

The Board also believes that the final rule, where appropriate, provides sufficient flexibility and choice for institutions, including small entities. As such, any institution, regardless of size, may tailor its operations to its individual needs and thereby mitigate to some degree any burdens created by the final rule. For instance, although § 227.23 prohibits institutions from applying payments in excess of the minimum payment first to the balance with the lowest interest rate, it allows institutions to choose between two permissible allocation methods and does not place any limitations on institutions' ability to allocate the minimum payment. In addition, although § 227.24 generally prohibits institutions from increasing the annual percentage rates on outstanding balances, it provides reasonable exceptions and does not restrict the ability of institutions to increase rates on future transactions after the first year.

OTS: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities. For purposes of the RFA and OTS-regulated entities, a ''small entity'' is a savings association with assets of $175 million or less. Under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. OTS certified that the proposed rule would not have a significant economic impact on a substantial number of small entities but prepared an initial regulatory flexibility analysis in connection with the May 2008 Proposal anyway. *See* 73 FR 28934–28935 (May 19, 2008). OTS received no comments specifically addressing its initial regulatory flexibility analysis.

OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. OTS is the primary federal regulator for 817 federally- and state-chartered savings associations. Of these 817 savings associations, only 116 report any credit card assets. Of these 116, only 22 have assets of $175 million or less.

NCUA: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities. For purposes of the RFA and NCUA, a ''small entity'' is a credit union with assets of $10 million or less. Under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. NCUA certified that the proposed rule would not have a significant economic impact on a substantial number of small entities, but prepared an initial regulatory flexibility analysis in connection with the May 2008 Proposal anyway. *See* 73 FR 28904, 28935 (May 19, 2008). NCUA received no comments specifically addressing its initial regulatory flexibility analysis.

Accordingly, NCUA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. NCUA regulates approximately 5036 federal credit unions. Only 2427 federal credit unions report credit card assets. Of those federal credit unions offering loan products, 2363 small federal credit unions offer loans, and 425 small federal credit unions offer credit cards to members.

B. Paperwork Reduction Act

Board: In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collections of information that are required by this proposed rule are found in 12 CFR 227.14 and 227.24(b)(2).

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 4301 *et seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Regulation AA establishes consumer complaint procedures and defines unfair or deceptive acts or practices in extending credit to consumers. As discussed above, the final rule amends Regulation AA to prohibit institutions from engaging in certain acts or practices in connection with consumer credit card accounts. This proposal evolved from the Board's June 2007 Regulation Z Proposal. This final rule is coordinated with the Board's final rule under the Truth in Lending Act and Regulation Z, which is published elsewhere in today's **Federal Register**.

Under § 227.24(a) (Unfair acts or practices regarding increases in annual percentage rates), banks are generally required to disclose at account opening the annual percentage rates that will apply to the account. In addition, under § 227.24(b)(3), banks must disclose in advance any increase in the rate that applies to new transactions pursuant to 12 CFR 226.9. The Board anticipates that banks will, with no additional burden, incorporate the disclosure requirements under § 227.24(a) with the disclosure requirements regarding credit and charge cards in Regulation Z, 12 CFR 226.5a and 226.6. Thus, in order to avoid double-counting, the Board will account for the burden associated with proposed Regulation AA § 227.24(a) under Regulation Z (OMB No. 7100–0199) §§ 226.5a and 226.6. Similarly, because the Board anticipates that banks will, with no additional burden, incorporate the disclosure requirement under § 227.24(b)(3) with the disclosure requirements in Regulation Z, 12 CFR 226.9, the Board will account for the burden associated with proposed Regulation AA § 227.24(b)(2) under Regulation Z (OMB No. 7100–0199) § 226.9.

Under Regulation AA § 227.14(b) (Unfair and deceptive practices involving cosigners), a clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to being obligated. The disclosure statement must be substantively similar to the example provided in § 227.14(b). The Board will also account for the burden associated with Regulation AA § 227.14(b) under Regulation Z. The title of the Regulation Z information collection will be updated to account for this section of Regulation AA.

In May 2008, the Board proposed § 227.28, which would have prohibited banks from engaging in certain marketing practices in relation to prescreened firm offers of credit for consumer credit card accounts unless a disclaimer sufficiently explained the limitations of the offer. As discussed elsewhere in the **SUPPLEMENTARY INFORMATION**, the Board has not taken action on proposed § 227.28 at this time because, among other reasons, the disclosures required by Regulation Z will address the Board's concerns. The burden increase of 1,808 hours associated with proposed § 227.28 would have been accounted for under Regulation Z (OMB No. 7100–0199) § 226.5a; however, it has been removed from the Regulation Z burden estimate.

In May 2008, the Board proposed § 227.32, which would have provided that a consumer could not be assessed a fee or charge for paying an overdraft unless the consumer was provided with the right to opt out of the payment of overdrafts and a reasonable opportunity to exercise that right but did not do so. The Board stated that the burden associated with proposed § 227.32 would be accounted for under Regulation DD (OMB No. 7100–0271). However, as discussed elsewhere in the **SUPPLEMENTARY INFORMATION**, the Board is not taking action on proposed § 227.32 at this time.

OTS and NCUA: In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (''PRA''), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The information requirements contained in this joint final rule have been submitted by the OTS and NCUA to OMB for review and approval under section 3507 of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The review and authorization information for the Board is provided earlier in this section along with the Board's burden estimates. The collections of information that are required by this final rule are found in 12 CFR __.13 and __.24. Collections of information that were required by the proposed rule in § __.28 and § __.32 are not included in the final rule.

OTS: Savings associations and their subsidiaries.

NCUA: Federal credit unions.

Abstract: Under section 18(f) of the FTC Act, the Agencies are responsible for prescribing rules to prevent unfair or deceptive acts or practices in or affecting commerce, including acts or practices that are unfair or deceptive to consumers. Under the final rule, the Agencies are incorporating their existing Credit Practices Rules, which govern unfair or deceptive acts or practices involving consumer credit, into new, more comprehensive rules that also address unfair or deceptive acts or practices involving credit cards.

Under § __.24(a) (Unfair acts or practices regarding increases in annual percentage rates), institutions are generally required to disclose at account opening the annual percentage rates that will apply to the account. In addition, under § __.24(b)(3), institutions must disclose in advance any increase in the rate that applies to new transactions pursuant to 12 CFR 226.9 in Regulation Z. The OTS and NCUA anticipate that institutions would, with little additional burden, incorporate the proposed disclosure requirement under § __.24(a) with the existing disclosure requirements regarding credit and charge cards in Regulation Z, 12 CFR 226.5a, and 226.6. Similarly, the OTS and NCUA anticipate that institutions will, with little additional burden, incorporate the disclosure requirement under § __.24(b)(3) with the disclosure requirements in Regulation Z, 12 CFR 226.9.

Under the existing Credit Practices Rule, 12 CFR 535.3 (to be recodified at 12 CFR 535.13) and 12 CFR 706.3, (to be recodified at 12 CFR 706.13) both entitled ''Unfair or deceptive cosigner practices,'' a clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to being obligated. The disclosure statement must be substantively similar to the example provided in the section of the rule. Since this is not a new requirement, the OTS and NCUA anticipate little additional burden associated with this section of the rule.

In May 2008, the OTS, NCUA and the Board proposed § __.28, which would have prohibited financial institutions from engaging in certain marketing practices in relation to prescreened firm offers of credit for consumer credit card accounts unless a disclaimer sufficiently explained the limitations of the offer. As discussed elsewhere in this **SUPPLEMENTARY INFORMATION**, the Agencies are not taking action on proposed § __.28 at this time. The burden increases of 8,260 for OTS and 50,360 for NCUA have been removed from the burden estimate.

In May 2008, the Agencies' proposed § __.32, which would have provided that a consumer could not be assessed a fee or charge for paying an overdraft unless the consumer was provided with the right to opt out of the payment of overdrafts and a reasonable opportunity to exercise that right but did not do so. The OTS stated that the burden associated with proposed § 535.32 would be 8,260 hours. OTS's burden estimate was based on the effect of this rule on all of its institutions because they are all depository institutions, most of which offer overdraft services. By not including provisions on overdrafts, OTS's rule affects only the 116 OTS-supervised institutions that issue credit cards. The NCUA stated that the burden associated with proposed § 706.32 would be 50,360 hours. As discussed elsewhere in this **SUPPLEMENTARY INFORMATION**, the Agencies are not taking action on proposed § __.32 at this time. Accordingly, the OTS and NCUA remove their respective burden increase.

Estimated Burden: The burden associated with this collection of information may be summarized as follows.

OTS:

Estimated number of respondents: 116.

Estimated time for developing disclosures: 4 hours.

Estimated time for training: 4 hours.

Total estimated time per respondent: 8 hours.

Total estimated annual burden: 928 hours.

NCUA:

Estimated number of respondents: 2,427.

Estimated time for developing disclosures: 4 hours.

Estimated time for training: 4 hours.

Total estimated time per respondent: 8 hours.

Total estimated annual burden: 19,416 hours.

C. OTS Executive Order 12866 Determination

Executive Order 12866 requires federal agencies to prepare a regulatory impact analysis for agency actions that are found to be ''significant regulatory actions.'' ''Significant regulatory actions'' include, among other things, rulemakings that ''have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' [185]

Based on the prediction of industry commenters, OTS anticipates that the final rule will exceed the $100 million threshold. However, OTS believes that these estimates may overstate the actual costs borne by institutions under OTS jurisdiction for a number of reasons. First, OTS-supervised institutions account for only a small portion of the entire credit card market. Second, several provisions included in the proposed rulemaking are not being finalized at this time, which reduces the overall economic impact of the final rule. Third, OTS-supervised institutions already refrain from engaging in many of the practices prohibited by this final rule. Issuing a rule to prevent institutions from taking up these practices will help ensure that market conduct standards remain high, but it will not cause significant economic impact on these institutions.

OTS acknowledges that several provisions of the rules may carry operational costs, although the general information provided by commenters on this point does not permit the OTS to quantify such costs with any precision. Moreover, commenter suggestions about the effect that two provisions of the rule may have on the fee and interest income may be overestimated. Notably, these suggestions blend the effects of this rulemaking with those of a related Board rulemaking on Regulation Z.

Further, given the continuing contraction in the economy since the May 2008 proposal and the close of the August 2008 comment period, OTS anticipates that the economic effect on credit card issuers will be lower than projected by commenters as the industry itself shrinks.[186]

OTS has provided the Administrator of the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) an economic analysis. As required by Executive Order 12866, it addresses: (1) The need for the regulatory action and how the rule meets that need, (2) the costs and benefits of the rule and its consistency with a statutory mandate that avoids interference with State, local and tribal governments, (3) the benefits anticipated from the regulation, (4) the costs anticipated from the regulation, and (5) alternatives to the regulation.

1. The Need for the Regulatory Action and How the Rule Meets That Need

The OTS final rule, like the rules issued by the Board and NCUA, consists of five provisions intended to protect consumers from unfair acts or practices with respect to consumer credit card accounts. The identified unfair acts or practices inhibit or prevent a consumer from accurately assessing the costs and benefits of their actions and thus produce a market failure. The rule should permit cardholders to better predict how their actions will affect their costs and benefits. Presently, they cannot do so effectively.[187] The final

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[185] *See* 58 FR 51735 (October 4, 1993), as amended.

[186] *See* National Bureau of Economic Research, *Determination of the December 2007 Peak in Economic Activity* (Dec. 1, 2008) (available at: *http://www.dev.nber.org/dec2008.html*).

[187] ''Although they work well for many consumers, credit card plans have become more

Continued

rule should also promote the safe and sound operation of institutions that issue credit cards by better aligning the interests of the financial markets and consumers to ensure that credit card loans will be repaid.

Regulatory Background

OTS issued an Advance Notice of Proposed Rulemaking on August 6, 2007, requesting comment on possible changes to its rules under section 5 of the FTC Act. *See* 72 FR 43570 (OTS ANPR). OTS received comments from consumers, the industry and Congress. Industry commenters suggested that OTS should use guidance rather than rules, arguing OTS would create an unlevel playing field for OTS-regulated institutions and that uniformity among the federal banking agencies and the NCUA is essential, and that the possible practices listed in the ANPR were neither unfair nor deceptive under the FTC standards.

In contrast, the consumer commenters urged OTS to move ahead with a rule that would combine the FTC's principles-based standards with prohibitions on specific practices. They urged OTS to ban numerous practices, including several practices addressed in the final rule, such as ''universal default'' repricing, applying payments first to balances with the lowest interest rate, and credit cards marketed at subprime consumers that provide little available credit at account opening.

The May 2008 Proposal

To address the issue of lack of uniformity if only OTS issued a rule, and to best ensure that all entities that offer consumer credit card accounts and overdraft services on deposit accounts are treated in a like manner, the OTS, Board, and NCUA joined together to issue the May 2008 Proposal.[188] This proposal was based on outreach conducted by the Agencies, consumer testing and Congressional hearings.[189] It was accompanied by complementary proposals by the Board under Regulation Z with respect to consumer credit card accounts and Regulation DD with respect to deposit accounts.[190]

The Final Rule

A description of the five provisions in this final rule follows. It includes observations about how each provision responds to a specific unfair practice.

First, § 535.22 prohibits savings associations from treating a payment as late for any purpose unless consumers have been provided a reasonable amount of time to make that payment. The rule provides that 21 days is a safe harbor. Consumers have complained that they encountered situations where they did not have enough time to make payments and that this was an unfair practice. This provision will prevent card issuers from providing an insufficient time for consumers to make payments, and then charging fees or increasing interest rates because the payment was late. The largest issuers under OTS supervision already provide at least a 20 day period to pay.

Second, when an account has balances with different annual percentage rates, § 535.23 requires savings associations to allocate amounts paid in excess of the minimum payment using one of two specified methods: either allocating the excess payment to the highest interest balance or proportionately to all balances. This provision addresses the unfairness that consumers experience when they accept low-rate promotional offers, but do not appreciate that card issuers now allocate their payments to minimize the benefits of the offer and maximize interest charges.

Third, § 535.24 prohibits savings associations from increasing the APR during the first year unless the planned increase has been disclosed at account opening, the APR varies with an index, the card holder fails to pay within 30 days of the due date, or the card holder fails to comply with a workout arrangement. After the first year, the rule also allows savings associations to increase the annual percentage rate on transactions that occur more than seven days after the institution provides a notice of the APR increase under Regulation Z. This section addresses the unfairness consumers experience when a creditor increases interest rates at any time and for any reason, and where a creditor applies a new rate to purchases that have already been made. The rule will allow consumers to more accurately estimate their costs and to predict the consequences of their decisions and actions.

Fourth, § 535.25 prohibits savings associations from using the practice sometimes referred to as two-cycle billing, in which, as a result of the loss of a grace period, a savings association imposes finance charges based on balances associated with previous billing cycles. Research conducted by the Board showed that consumers do not understand disclosures that attempt to explain this billing practice. As a result, consumers could not avoid cards that feature this practice. However, this practice is now rare, especially for OTS-supervised issuers.

Fifth, to address concerns regarding subprime credit cards with high fees and low credit limits, § 535.26 prohibits savings associations from charging to the account security deposits and fees for the issuance or availability of credit that constitute a majority of the initial credit limit in the first year or more than 25 percent of the initial credit limit in the first month. In addition the rule requires that if the fees and security deposit charges exceed 25% of the available credit, repayment would be spread over at least the first six months. These cards impose multiple fees when the consumer opens the card account and those amounts are billed to the consumer in the first statement. These large initial billings substantially reduce the amount of credit that the consumer has available on the card. For example, a card with a credit line of $250 may have only $100 available after security deposits or fees have been billed and consumers will pay interest on these billings until they are paid in full. Consumers have complained that they were not aware of how little available credit they would have after the assessment of security deposits and fees. This rule prevents this practice and provides that consumers will have a sizeable percentage of the initial credit on the card available for use.

2. The Costs and Benefits of the Rule, Consistency With Statutory Mandate and Non-Interference With State, Local and Tribal Governments

Costs and Benefits

Both the costs and the benefits of the rule are difficult to measure with precision. As noted above, OTS has relied on cost projections submitted by industry commenters, but has reduced these estimates where they appear to be overstated. Benefits, such as protecting consumers from unfairness, are more intangible and more difficult to quantify. Moreover, the monetary costs

complex. The greater complexity has reduced transparency in credit card pricing and increased the risk that consumers will not understand key terms that affect the cost of using the account. The Federal Reserve has used consumer testing to make great strides in developing improved disclosures under the Truth in Lending Act. However, based on our review of consumers' response to the Board's recent regulatory initiative, it seems clear that improved disclosures alone cannot solve all of the problems consumers face in trying to manage their credit card accounts.'' Statement by Federal Reserve Board Chairman Ben S. Bernanke (May 2, 2008) (available at: *http://www.federalreserve.gov/newsevents/press/bcreg/bernankecredit20080502.htm*).

[188] *See* 73 FR 28904 (May 19, 2008) (May 2008 Proposal).

[189] *See* 73 FR at 28905–07.

[190] *See* 73 FR 28866 (May 19, 2008) (May 2008 Regulation Z Proposal); 73 FR 28739 (May 19, 2008) (May 2008 Regulation DD Proposal).

and benefits of this rule have a net effect in some important ways. The approach taken by the OTS with respect to these issues is explained in subsequent sections of this statement.

Consistency With Statutory Mandate and Non-Interference With State, Local and Tribal Governments

Section 18(f)(1) of the FTC Act provides that OTS (with respect to savings associations), as well as the Board (with respect to banks) and the NCUA (with respect to federal credit unions) are responsible for prescribing ''regulations defining with specificity * * * unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices.''[191] The FTC Act allocates responsibility for enforcing compliance with regulations prescribed under section 18 with respect to savings associations, banks, and federal credit unions among OTS, the Board, and NCUA, as well as the OCC and FDIC.[192] Consistent with the FTC Act, this final rule is intended to prevent the unfair practices discussed more fully elsewhere in the **SUPPLEMENTARY INFORMATION.**

Also, as discussed in the **SUPPLEMENTARY INFORMATION** that accompanied the OTS August 6, 2007 ANPR,[193] reflected in the proposed rule,[194] and explained in detail in the **SUPPLEMENTARY INFORMATION** to today's issuance, HOLA serves as an independent basis for the final OTS final rule. HOLA provides authority for both safety and soundness and consumer protection regulations. Consistent with HOLA, this final rule is intended to prevent unsafe and unsound practices and to protect consumers as discussed more fully elsewhere in the **SUPPLEMENTARY INFORMATION.**

Issuing the rule on an interagency basis is consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.[195] Section 303(a)(3)[196] directs the federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. Two federal banking agencies—the Board and OTS—are primarily implementing the same statutory provision, section 18(f) of the FTC Act, as is the NCUA. Accordingly, the Agencies endeavored to finalize rules that are as uniform as possible. This rule will not interfere with State, local, or tribal governments in the exercise of their governmental functions.

3. Benefits of the Regulation

The most important benefit of the rule is that it will protect consumers from certain practices that meet well established standards for unfairness. In so doing, the rule will increase consumer confidence in the financial system.

Since the rule was proposed in May 2008, exigent market circumstances have arisen which necessitate immediate liquidity in consumer credit cards. These circumstances are reflected in the announcement on November 25, 2008 of the Treasury Department and Federal Reserve Board Term Asset-Backed Securities Loan Facility (TALF) program.[197] This final rule furthers liquidity in the consumer credit card market by providing certainty to the industry, consumers, and other members of the public as to rules governing such transactions in the future. In addition, OTS anticipates that provisions of the final rule that are designed to ensure greater safety and soundness for financial institutions may also yield a beneficial economic result for the taxpayers who ultimately bear the cost of a program such as the TALF, which will make and insure loans backed by credit card securities.

However, because this rule provides more rationality and integrity to the credit card system, its broader benefits are more qualitative than quantitative. For example, the rule will promote more efficient functioning of the economy by creating more transparency for consumers as they make credit card agreements. Consumers currently are confused by the complexity of credit card agreements, and are surprised by unexpected terms. In several of the areas addressed by the rule, disclosures have been inadequate to make the terms understandable.[198] Consequently, the clear standards set by this rule will promote more efficient credit decisions by consumers.

The monetary costs and benefits of this rule have a net effect. Particularly as a result of the payment allocation and retroactive rate increase provisions, some card issuers will experience reduced revenues and additional expenses, but the cost of credit will be substantially reduced for many consumers. Moreover, the rule will create stability, predictability, and standardization in the credit card market and its receivables, and will help foster steady sources of funding that would otherwise avoid some risk and uncertainty.

Another benefit of the rule is that it will create a uniform playing field for credit card issuers, not only because the federal financial regulators are issuing consistent rules, but also because of its clarity. As the Board and the NCUA are simultaneously issuing virtually identical rules governing credit card practices for other types of federally insured financial institutions, the OTS final rule will ensure that consistent rules apply among banks, federal credit unions, and savings associations.

Significantly, issuers that have tried to provide better and clearer terms for consumers will no longer face a competitive disadvantage for doing so. Consumers will have more confidence in the credit card system because of the uniform protections.[199]

By substantially limiting behavioral risk pricing, the rule will foster more efficient risk-based pricing by credit card issuers at the initial underwriting stage. Consequently, this rule will improve credit risk management. Issuer interest in assessing the cost of risk will be more closely aligned with the consumer interest in taking on more credit and being able to repay it.

Finally, because the rule clearly defines several examples of unfair practices, the federal financial institution regulatory agencies will be able to monitor and supervise the credit card market more efficiently. Similarly, the reduced uncertainty will simplify issuer efforts to act in compliance with the law.

[191] 15 U.S.C. 57a(f)(1).

[192] *See* 15 U.S.C. 57a(f)(2)–(4). The FTC Act grants the FTC rulemaking and enforcement authority with respect to other persons and entities, subject to certain exceptions and limitations. *See* 15 U.S.C. 45(a)(2); 15 U.S.C. 57a(a). The FTC Act, however, sets forth specific rulemaking procedures for the FTC that do not apply to OTS, the Board, or the NCUA. *See* 15 U.S.C. 57a(b)–(e), (g)–(j); 15 U.S.C. 57a-3.

[193] 72 FR at 43572–73.

[194] *See* 73 FR at 28910 and 28948.

[195] *See* 12 U.S.C. 4803.

[196] 12 U.S.C. 4803(a)(3).

[197] *See* November 25, 2008 announcements by the Department of Treasury and Board of the TALF under the authority in the Emergency Economic Stabilization Act of 2008, Pub. L. 110–343 and section 13(3) of the Federal Reserve Act (12 U.S.C. 343) (available at *http://www.treas.gov/press/releases/hp1292.htm* and *http://www.federalreserve.gov/newsevents/press/monetary/monetary20081125a1.pdf*).

[198] *See* ''Design and Testing of Effective Truth in Lending Disclosures'' (available at: *http://www.federalreserve.gov/dcca/regulationz/20070523/Execsummary.pdf).*

[199] *See* Furletti, Mark, Payment System Regulation and How It Causes Consumer Confusion, Discussion Paper, Payment Cards Center, Philadelphia Federal Reserve, Nov 2004, at 7, quoting Professor Mark Budnitz of Georgia State University School of Law (available at: *http://www.philadelphiafed.org/payment-cards-center/publications/discussion-papers/2004/PaymentSystemRegulation_112004.pdf*).

4. Anticipated Costs of the Regulation

It is helpful to put the share of OTS supervised issuers in context. OTS is the primary federal regulator for 817 federally- and state-chartered savings associations. Of these 817 savings associations, only 116 report any credit card assets. Among the 116 savings associations that offer credit cards, only 18 have more than 1% of their total assets in credit card receivables. Moreover, credit card assets comprise only 3% of all assets held by savings associations. With respect to the share of the overall credit card market held by OTS supervised institutions, it is notable that savings associations hold only 3.5% of credit card receivables.[200] In part, this figure is attributable to the fact that two large savings associations, one with $10.6 billion in credit card receivables, have failed since OTS proposed these rules in May 2008 and do not currently operate under OTS supervision.[201] In sum, most provisions of the rulemaking would have no economic effect on the vast majority of the institutions under OTS jurisdiction, since the vast majority simply does not issue credit cards.

Limited Economic Effect: Several Affected Practices Are Uncommon

The majority of the practices covered by this rulemaking have been included as a prophylactic measure to ensure that institutions do not begin to use or expand the use of activities deemed unfair or deceptive. Since most OTS-supervised institutions do not currently engage in these practices, the costs of complying with the provisions of the final rules are likely to be minimal.

Unfair time to make payments. This section prohibits treating a payment on a consumer credit card account as late for any purpose unless consumers have been provided a reasonable amount of time to make payment with 21 days serving as a safe harbor.

Although some commenters indicated that implementing this provision would entail operational costs, OTS supervisory observations and experience indicates that most savings associations generally mail or deliver periodic statements to their customers at least 20 days before the due date, including the ten largest.[202] Therefore, a rule that requires institutions to provide a reasonable amount of time to make payment, such as by complying with the safe harbor for mailing or delivering periodic statements to customers at least 21 days in advance of the payment due date, should have insignificant or no economic impact on institutions under OTS jurisdiction.

Unfair balance computation method. OTS has adopted this section substantially as proposed in May 2008. It prohibits institutions from imposing finance charges on consumer credit card accounts based on balances for days in billing cycles that precede the most recent billing cycle. This rule is intended to prohibit the balance computation method sometimes referred to as ''two-cycle billing'' or ''double-cycle billing.'' The final rule contains an added exception permitting adjustments to finance charges following the return of a payment for insufficient funds.

OTS notes that many institutions no longer use the two-cycle balance computation method and very few institutions compute balances using any method other than a single-cycle method and according to the Government Accountability Office, of the six largest card issuers, only two used the double-cycle billing method between 2003 and 2005.[203] Because few other institutions still use this practice,[204] the prohibition on two-cycle billing should not have a significant impact on institutions under OTS jurisdiction.

Unfair charging to the account of security deposits and fees for the issuance or availability of credit. This section prohibits institutions from charging high security deposits and fees for issuing a credit card to the account's credit limit if those fees amounted to more than half of the credit available over the first year. Further, those fees cannot exceed 25% of the available credit in the first month; fees above that limit would have to be spread out over at least the first 6 months.

This section does not apply to security deposits and fees for the issuance or availability of credit that are not charged to the account, *i.e.*, not financed through the credit card, except to the extent such an arrangement is a mere evasion of the prohibition. Further, this provision does not set any ceiling on the amount of security deposits and fees that may be charged to the account. Rather, any limit is calculated as a percentage of the credit line (a majority or 25%) and changes with the credit line. Since the rule does not limit the credit line that a creditor may offer on high fee accounts, it necessarily does not set a ceiling on the security deposits or fees, either. The final rule contains a new paragraph (d) prohibiting evasions of the section. The paragraph is modeled after the anti-evasion provisions in Regulation Z.[205]

Credit cards to which security deposits and high account opening related fees are charged against the credit line are found predominately in the subprime credit card market, *i.e.*, the market that targets borrowers with lower credit scores. Many of these consumers will incur significantly lower fees as a result of this provision.

As noted above, savings associations have only a 3.5% share of the credit card market generally.[206] Subprime credit cards represent just 5% of all credit cards issued,[207] and high fee cards represent only a portion of the subprime market. Among OTS-supervised institutions, cards of this type are rare. In fact, based on OTS supervisory observations and experience, only two savings

[200] Federal Reserve Board, Statistical Supplement to the November Federal Reserve Bulletin, Nov. 7, 2008, G.19, Consumer Credit (available at: *http://www.federalreserve.gov/releases/g19/Current/*).

[201] IndyMac Bank was closed on July 11, 2008. The Federal Deposit Insurance Corporation is running the successor institution that holds IndyMac's assets. *See* OTS Release OTS 08–029 (available at: *http://www.ots.treas.gov/index.cfm?p=PressReleases&ContentRecord_id=37f10b00-1e0b-8562-ebdd-d5d38f67934c&ContentType_id=4c12f337-b5b6-4c87-b45c-838958422bf3&MonthDisplay=7&YearDisplay=2008*).

After Washington Mutual Bank was closed on Sept. 25, 2008, JPMorganChase, a national bank regulated by the Office of the Comptroller of the Currency, acquired its assets. OTS Release 08–046 (available at: *http://www.ots.treas.gov/index.cfm?p=PressReleases&ContentRecord_id=9c306c81-1e0b-8562-eb0c-fed5429a3a56&ContentType_id=4c12f337-b5b6-4c87-b45c-838958422bf3&MonthDisplay=9&YearDisplay=2008*).

[202] One commenter noted that some institutions could incur up to $30,000 in operational costs if procedural changes are needed to comply with the final rules. It is unclear whether this is an accurate estimate of the cost of those changes and whether the size of the bank would affect the actual cost. Furthermore, as a mitigating economic factor, consumers should incur fewer fees and interest charges as a result of receiving a reasonable amount of time to pay.

[203] ''In our review of 28 popular cards from the six largest issuers, we found that two of the six issuers used the double-cycle billing method on one or more popular cards between 2003 and 2005. The other four issuers indicated they would only go back one cycle to impose finance charges.'' ''Credit Cards, Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers,'' Government Accountability Office, Sept. 2006 at 28. Neither of the two issuers referred to is supervised by OTS.

[204] Based on OTS supervisory observations and experience, only one large savings association engaged in this practice at the time that this provision was proposed. That institution was closed in September 2008 and is no longer subject to rules issued by the OTS, as noted above.

[205] *See* 12 CFR 226.34(a)(3) and 226.35(b)(4).

[206] *See* Federal Reserve Board, Statistical Supplement to the November Federal Reserve Bulletin, Nov. 7, 2008, G.19, Consumer Credit (available at: *http://www.federalreserve.gov/releases/g19/Current/*).

[207] Outstanding credit card balances as of February 2008 as reported by Fitch Ratings, Know Your Risk; Asset Backed Securities Prime Credit Card Index and Subprime Credit Card Index (available at: *http://www.fitchresearch.com/creditdesk/sectors/surveilance/asset_backed/credit_card*).

associations currently offer such cards and those product lines are a small part of their business.

Based on one commenter's estimate, this provision of the rule would mean these OTS-supervised subprime issuers would receive as much as $10,948,000 less revenue.[208] This estimate is based on the rule as it was proposed, with a repayment schedule spread over 12 months. The final rule allows the repayment period to be shortened to six months. This shorter time would mitigate some of the estimated lost revenue. The commenter's estimate assumes that the issuers will experience higher losses from making more credit available to consumers with blemished credit histories, and it assumes that the issuers will make no changes in the way that they acquire new accounts as a result of the rule. However, with better underwriting, issuers should be able to target customers who are less likely to default and thereby limit their losses. Another strategy to limit loss would be to offer consumers smaller lines of credit. In sum, the limited economic impact noted above may be overstated.

Economic Effect That Appears To Trigger the Requirements of Executive Order 12866

This final rule contains two other sections with a greater economic impact. One affects the way in which an institution allocates customer payments among the customer's outstanding balances. The other specifies the conditions under which an institution can raise the APR on outstanding balances.

Unfair payment allocations. A consumer may have multiple balances on a consumer credit card account, each with a different interest rate. Currently, most institutions allocate payments they receive from a consumer by first covering fees and finance charges, then allocating any remaining amount from the lowest APR balance to the highest. In May 2008, OTS proposed this section in response to concerns that, by following this practice, institutions were applying consumers' payments in a way that inappropriately maximized interest charges on consumer credit card accounts by not allocating payments to balances that accrue interest at higher rates unless all balances are paid in full. Commenters noted that some institutions would have to alter their systems and in some cases develop new systems for allocating payments among different balances, although the cost of such changes is not known and will depend on the size of the institution and the composition of its portfolio. Commenters further noted that this provision would discourage promotional rate offers to consumers and would affect the institutions' interest revenue. Finally, commenters predicted that issuers would compensate by increasing costs or decreasing credit available to consumers.

Based on the comments received and OTS's analysis, the final rule adopts the general payment allocation rule as proposed with a few important changes to reduce burden and cost to the industry. This section will prohibit institutions from allocating payments above the minimum required to the balance with the lowest rate first. It will allow institutions to split such payments pro rata among the balances or to allocate them to the balance with the highest rate first. The costs of this rule are mitigated somewhat by providing institutions with flexibility as to which of the allocation methods they choose. In addition, by allowing institutions to have a general rule for allocating payments to all balances, including promotional balances, the costs to institutions have been reduced.

Due to concerns that this section as proposed could significantly reduce or eliminate promotional rate offers, OTS has modified this provision. For the most part, this is because commenters supplied data that indicates that promotional rates provide an overall benefit to consumers in addition to the marketing benefits that such rates provide to institutions. Consequently, OTS believes that applying the general allocation rule to promotional rate balances strikes the appropriate balance by preserving promotional rate offers that provide substantial benefits to consumers while prohibiting the most harmful payment allocation practices. Accordingly, the final rule, unlike the proposal, does not require payments above the minimum payment to be applied to promotional rate balances last, after other balances are paid.

Commenters indicated that this provision may affect institutions' interest revenue. Based on a projection for the total industry by a group of credit card issuers representing 70% of outstanding balances, the Board has estimated that this rule could result in an annual loss in interest revenue of $415 million.[209] Savings associations currently account for a 3.5 percent share of total credit card receivables.[210] The estimated loss of revenue for savings associations under this provision could be as high as $14,525,000.[211] However, neither the OTS nor the Board has the data necessary to quantify the economic impact of this provision with specificity. Notably, the commenter did not provide adequate information to validate its assertions.

It should also be noted that while this provision will significantly reduce interest charges that consumers will pay, removing requirements in the proposed rule regarding promotional rate balances will mitigate this effect by reducing the estimated impact on interest revenue. Moreover, to the extent that the payment allocation restrictions included in the rule impose costs, institutions are likely to adjust initial credit card terms to reflect those costs. If this occurs, consumers will likely have a clearer initial disclosure of potential costs with which to compare credit card offerings than they do now. Their actual cost of credit will not be increased by low-to-high balance payment allocation strategies implemented by institutions after charges have been incurred.

Unfair annual percentage rate increases. This section generally prohibits institutions from increasing the annual percentage rate on any balance the first year and on outstanding balances thereafter. For new accounts, institutions would be prohibited from increasing the APR during the first year unless the APR varies with an index, the card holder fails to pay within 30 days of the due date, or the card holder fails to comply with a workout arrangement. After the first year, the rule also allows savings associations to increase the annual percentage rate on transactions that occur more than seven days after the institution provides a notice of the APR

[208] The commenter estimated that this provision of the rule could reduce revenue to subprime issuers by as much as $119 per account. OTS estimates that the institutions under its jurisdiction hold approximately 92,000 affected high fee accounts.

[209] The commenter projected a loss of interest revenue of up to $930 million, based on a drop of 0.098 percent in income. Board and OTS staff estimate that the removal of requirements in the proposed rule regarding grace periods reduced the projected loss by $100 million, and the removal of requirements in the proposed rule regarding promotional rate balances further decreases the impact on interest revenue by at least 55 percent, to approximately $415 million.

[210] Outstanding revolving credit for September 2008 was $970.5 billion. Of this, savings institutions accounted for $34.4 billion, a 3.5% share. Federal Reserve Board, Statistical Supplement to November 2008 Federal Reserve Bulletin, G.19 (Nov. 7, 2008) (available at *http://www.federalreserve.gov/releases/g19/Current/*).

[211] This estimate may be excessive because the OTS estimate of overall credit card receivables may inappropriately include charge cards, which do not carry balances and do not have different interest rates. To the extent that outstanding balances on charge cards are included, the economic effect of the rule is overstated.

increase under Regulation Z. Nothing in the final rule prohibits issuers from imposing late charges or other sanctions short of increasing the APR.

The rule will not permit the institution to increase the APR on the outstanding balances if the consumer defaults on other debt obligations. This practice is sometimes referred to as ''universal default.'' Based on OTS supervisory observations and experience, none of the larger savings associations practice universal default. The final rule will also require issuers to adjust the manner in which they offer deferred interest rate balances to ensure that consumers are not unfairly surprised by the assessment of deferred interest.

A group of credit card issuers representing 70% of outstanding balances submitted a comment which projected that the overall cost to the industry of this provision of the rule as proposed would result in an annual loss in interest revenue of 0.872 percent, or $7.40 billion. This analysis stated that banks will compensate for a loss in interest revenue by increasing rates and/or decreasing available credit for consumers. Even assuming this analysis is accurate, the OTS, Board, and NCUA believe that the revisions to the proposed rule may decrease the estimated impact on interest revenue by more than 70 percent (to an annual loss of interest revenue of 0.242 percent, or approximately $2.05 billion) and, therefore, result in a proportionately lower impact on consumers.[212] However, this lower projection may still be overstated because some of the impact asserted by the commenter is attributable to disclosure requirements of Regulation Z. These Regulation Z requirements, implemented by the Board, require advance notice to consumers of increased rates and delay implementation of increased rates for 45 days.

Applying these estimates to institutions under OTS jurisdiction, this provision of the final rule appears to have an economic impact on savings associations that ranges from $71.75 million (based on a potential $2.05 billion in loss of industry revenue)[213] to $259 million (based on loss of industry revenue of $7.4 billion).[214]

However, if such revenue is economically justified in a competitive environment for the allocation of credit, then a likely longer-term outcome will be that institutions will incorporate such economic factors in the initial terms of credit card contracts. If that occurs, then consumers will have clearer initial information than they currently have on the comparative costs of credit card offerings. Consequently, the short-term disruptions to institutions caused by this rulemaking will likely be addressed in the longer term by changes in disclosed credit card account interest rates and fees, thus making it easier for consumers to more easily compare and consider the costs and benefits of different credit cards.

Costs to Consumers

Commenters have suggested that institutions will compensate for potential losses in interest revenue by increasing credit card rates and/or decreasing credit available to consumers. Even assuming this assertion is accurate, OTS believes that the differences between the proposed and final rules will lead to both a smaller loss of revenue for issuers and decreased incentives for raising rates or limiting credit offered to consumers. To the extent income to savings associations is affected, the corresponding offset is an equally sized consumer benefit of lower fees and interest payments. Although OTS is unable to estimate its precise impact, OTS believes that many consumers will incur significantly reduced interest charges as a result of the rule. As a result, the economic effects of this rulemaking may result in transfers from institutions to consumers, with an overall limited net effect.

Costs to the Government

The costs to OTS from this rule are insignificant. OTS, like the other federal financial regulators, conducts examinations of institutions on a regular basis for safety, soundness and compliance with laws and regulations. This rule will not add to that supervisory burden. To the contrary, OTS anticipates that this rule, by clarifying some of the prohibitions against unfair acts and practices in credit card lending with bright line rules, will make the supervision of savings associations more efficient, less time consuming, and less burdensome.

Conclusion

Some predict that because of this rule, issuers will raise credit card rates for consumers and lower credit limits. However, OTS believes that many consumers will incur significantly reduced interest charges as a result of the rule.

The costs to OTS from this rule are insignificant. In fact, this rule will make supervision and enforcement more efficient, less time consuming, and less burdensome.

The cost to savings associations is limited because of the small size of the credit card market held by savings associations, the reduced impact of this rule caused by the Agencies' decision not to finalize several provisions, and the small number of institutions that presently employ the practices prohibited in this rule. Although the revenue loss data submitted by commenters has not been verified, the OTS has used it to provide the most generous estimate of the costs of this rule. Based on that data, the costs of this rule range between $97,223,000 and $284,473,000.[215]

5. Why the Final Regulation Is Preferable to Alternatives

Alternative A: OTS Issues Rule Alone

In proposing this rule, OTS considered different approaches. As suggested in the ANPR, one approach was for OTS to issue a rule under either the FTC Act or as an expansion of OTS's Advertising rule that would cover only OTS-supervised institutions.[216] Industry commenters responded that such an approach would create an unlevel playing field, and put OTS-supervised institutions at a possible competitive disadvantage. They argued that uniformity among the federal banking agencies and the NCUA is essential for the efficient functioning of the market. Consequently, the OTS has joined with the Board and NCUA to issue rules applicable to all banks, federal credit unions, and savings associations.[217]

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[212] The issuers' analysis does not consider the effect of prohibiting APR changes in the first year on new balances or the adjustments that they will likely make to the way deferred interest rate balances are offered.

[213] Applying 3.5 percent to the $2.05 billion loss of revenue gives an estimated revenue loss of $71,750,000 for this provision. *See* Federal Reserve Board, Statistical Supplement to November 2008 Federal Reserve Bulletin, G.19 (Nov. 7, 2008) (available at *http://www.federalreserve.gov/releases/g19/Current/*). As with the payment allocation estimate, this estimate may be excessive since it may inappropriately include charge cards, which do not carry balances and do not have different interest rates. To the extent that charge card outstanding balances are included, the effect of the rule has been overstated.

[214] Applying 3.5 percent to the $7.4 billion estimate gives an estimated revenue loss for OTS-supervised institutions of $259 million for this provision.

[215] The range is based on $10,948,000 (high fee cards) + $14,525,000 (payment allocation) + $71,750,000 (restriction on rate increases—with reduced impact) = $97,223,000. The higher figure is based on $10,948,000 (high fee cards) + $14,525,000 (payment allocation) + $259,000,000 (restriction on rate increases—higher estimated impact) = $284,747,000.

[216] 72 FR 43573.

[217] The Agencies recognized that state-chartered credit unions and any entities providing consumer

Alternative B: Agencies Issue Rules That Address a Range of Issues in a Variety of Markets

In its ANPR, the OTS sought comment on whether it should attempt to address a broad range of potentially unfair or deceptive practices including those relating credit cards, residential mortgage lending, gift cards, and deposit accounts.[218] However, the May 2008 Proposal focused on unfair and deceptive acts or practices involving credit cards and overdraft services, which are generally provided only by depository institutions such as banks, savings associations, and credit unions. Targeting such practices fosters a level playing field and the efficient functioning of the market.

Alternative C: Agencies Issue Rules Addressing All Practices Covered in the May 2008 Proposal

In the May 2008 Proposal, the Agencies proposed seven provisions under the FTC Act regarding consumer credit card accounts and two provisions regarding checking account overdraft services. These provisions were intended to ensure that consumers were protected from harmful practices that they could not reasonably avoid and have the ability to make informed decisions about the use of credit card accounts and checking accounts without being subjected to unfair or deceptive acts or practices.

However, after considering the comments received, OTS has decided not to address the practices covered by four of the proposed provisions in a final rule at this time. These provisions concerned overdraft and overlimit fees caused by holds, deceptive firm offers of credit, and a provision that would have provided a mechanism for a consumer to opt out of overdraft protection services.

The Board is issuing a proposal under Regulation E published elsewhere in today's **Federal Register** to address overdraft and overlimit fees caused by holds and a mechanism for a consumer to opt out of overdraft protection services. OTS will determine whether to address these matters in the future in light of further information that may be obtained through the Board's Regulation E rulemaking. The Board is also publishing a final rule under Regulation Z that will address firm offers of credit containing a range of or multiple annual percentage rates. OTS will also address unfair or deceptive acts or practices that are not specifically included in today's final rule on a case-by-case basis.

Alternative D: Agencies Issue Rules That Address Five Unfair Credit Card Practices

There were more than 65,000 comments on the May 2008 Proposal, and the overwhelming majority of these were from consumers. There were also comments from the industry, members of Congress[219] and other governmental organizations. Based on the comments, outreach and Congressional testimony, the Agencies concluded that the final rule should contain five provisions.

Time to make payments. Based on the comments of consumers and on Congressional testimony, there were many instances of consumers who received their statements just before the due date, and that the consequence of late fees and higher interest was not avoidable. The Agencies agreed that a consumer should have a reasonable time to pay. A reasonable amount of time to pay may vary depending on the circumstances, but if a consumer is to have the possibility of disputing errors on the statement, that amount of time needs to be approximately three weeks. That allows a week to receive the statement, a week to review it, and a week for the payment to travel by mail. Shorter amounts of time for mailing would cover the majority of consumers, but would not adequately protect the small but significant number of consumers whose delivery times are longer than average.

Unfair payment allocation. This rule requires issuers to allocate a consumer's payment over the required minimum to balances with the highest interest first or proportionately to all balances. This provision was a response to concerns that institutions applied consumers' payments in a manner that inappropriately maximized interest charges on consumer credit card accounts with balances at different interest rates. Interest charges were maximized by applying payments to balances with the lowest interest rate. The Agencies considered an exception for promotional rate balances, so that they would not be paid down and thereby lose the benefit of the promotional rate. However, the Agencies decided not to pursue that alternative because it would discourage promotional balance offers, and such offers are a significant benefit to consumers. The Agencies also considered an exception for deferred interest balances, but the need for this exception is negated by the final rule's restriction on the manner in which deferred interest rate balances are offered. The Agencies also considered using consumer disclosures as an alternative to this rule. After extensive testing by the Board, it became clear that consumers did not understand payment allocation practices and could not make informed decisions on using credit cards for different types of transactions.

Unfair annual percentage rate increases. The rule will prohibit credit card issuers from increasing interest rates during the first year unless the planned increase has been disclosed at account opening, the annual percentage rate varies with an index, the card holder fails to pay within 30 days of the due date, or the card holder fails to comply with a workout arrangement. After the first year, the rule also allows card issuers to increase the annual percentage rate on transactions that occur more than seven days after the institution provides a notice of the annual percentage rate increase under Regulation Z. This rule was a response to changes in credit card terms that consumers either did not expect or could not avoid. Some changes in terms were a response to a consumer's lowered credit score—caused by actions unrelated to the credit card account (universal default). Some changes were a response to a payment that was late by a day (hair trigger penalty repricing). Some changes in terms were based on a credit card issuer's changed business circumstances (any time any reason repricing). Consumer testing showed that many consumers did not understand what factors, such as one late payment, can trigger penalty pricing.

Many consumer commenters, as well as consumer groups, members of Congress, the FDIC, two state attorneys general and a state consumer protection agency supported the proposal to limit repricing except in very limited situations. Some advocated providing

credit card accounts independent of a depository institution fall within the FTC's jurisdiction and therefore would not be subject to the proposed rules. However, FTC-regulated entities appear to represent a small percentage of the market for consumer credit card accounts and overdraft services. See, Federal Reserve Board, Statistical Supplement to November 2008 Federal Reserve Bulletin, G.19 (Nov. 7, 2008) (available at *http://www.federalreserve.gov/releases/g19/Current/*).

[218] 72 FR 43575.

[219] Members of Congress have proposed several bills addressing consumer protection issues regarding credit cards. *See, e.g., H.R. 5244 and S. 3255. See also The Credit Cardholders' Bill of Rights: Providing New Protections for Consumers: Hearing before the H. Subcomm. on Fin. Instits. & Consumer Credit,* 110th Cong. (2007); *Credit Card Practices: Unfair Interest Rate Increases: Hearing before the S. Permanent Subcomm. on Investigations,* 110th Cong. (2007); *Credit Card Practices: Current Consumer and Regulatory Issues: Hearing before H. Comm. on Fin. Servs.,* 110th Cong. (2007); *Credit Card Practices: Fees, Interest Rates, and Grace Periods: Hearing before the S. Permanent Subcomm. on Investigations,* 110th Cong. (2007).

the consumer with a right to opt-out of interest rate increases.

The injury to consumers of having their interest rate increased substantially is difficult for most consumers to avoid. There are several circumstances that give rise to interest rate changes: market conditions (unrelated to consumer behavior), consumer default on an unrelated account, using a large proportion of the available credit, or late payment or overlimit charges. It is only the last two that are violations of the card agreement. Most consumers would not avoid the rate increase because they would not expect it in the circumstances described.

The Agencies considered, and rejected the alternative proposed by some commenters to allow a consumer to ''opt out'' of the card relationship by closing it and transferring the balance. This was not a good alternative because it may not be possible for a consumer to close the card and transfer the balance to a comparable rate card without paying a transfer fee. The Agencies considered the impact on credit card issuers by limiting this rule to apply to outstanding balances, not to new purchases, except for the first year an account is open.

The Agencies considered requiring the use of disclosures to inform consumers about the triggers for repricing. However, it was clear, based on consumer testing, that consumers did not understand how the triggers work, and consumers do not focus on the possibility of default at the time they open accounts. More importantly, disclosures would not allow consumers to avoid credit cards with this feature, since institutions almost uniformly apply increased rates to prior transactions.

Unfair balance computation method. The final rule prohibits ''double-cycle'' billing—charging interest on credit card balances for the days preceding the most recent billing cycle. The effect on a consumer is to lose the grace period for paying the full balance when a consumer who normally pays in full pays less than the full balance one month. This rule prohibits this practice because it is so difficult for consumers to understand. The Agencies considered the alternative of disclosures. However, after extensive consumer testing by the Board, it became clear that it was not possible to disclose this practice so that consumers could understand it.

Unfair charging to the account of security deposits and fees for the issuance or availability of credit. This rule prohibits a credit card issuer from charging fees or security deposits to an account that use up more than the majority of the available credit. If the fees amount to more than 25% of the initial available credit, their repayment must be spread out over at least six months. These cards are called high fee accounts, or derogatorily, ''fee-harvester cards.''

The Agencies have received many complaints from consumers about these cards from consumers who say they were not aware of how little available credit they would have after the security deposit and fees were charged to the card. Over 70 members of Congress, several states, the Federal Deposit insurance Corporation and the Office of the Comptroller of the Currency supported this provision. Many commenters wanted to add more prohibitions to this rule, by lowering fee thresholds, prohibiting the charging of security deposits to the cards, enhancing disclosure and prohibiting the marketing of these cards and credit repair products. Many industry commenters supported this rule.

However, some commenters who are in this business asserted that they provide credit to consumers who would otherwise be unable to obtain it. In an effort to balance the concerns of consumers and the subprime credit card industry, the Agencies have limited the percentage of the fees and security deposits that can be charged to the card. This limit is no more than the majority. In addition, the rule will require issuers to spread repayment over the first six months if the fees and security deposits amount to more than 25 percent of the available credit. OTS believes that its issuers will change their underwriting, or reduce initial credit available, in response to this rule.

D. OTS Executive Order 13132 Determination

OTS has determined that its portion of the rulemaking does not have any federalism implications for purposes of Executive Order 13132. As discussed in section IV of this **SUPPLEMENTARY INFORMATION**, OTS is removing from codification 12 CFR 535.5. This section had allowed OTS to grant state exemptions from OTS's Credit Practices Rule if state law affords a greater or substantially similar level of protection. The FHLBB, OTS's predecessor agency, had granted an exemption to the State or Wisconsin for substantially equivalent provisions of the Wisconsin Consumer Act. By removing this section, the exemption will cease to exist on July 1, 2010, the rule's effective date. As a result, state chartered savings associations that had previously been exempt from complying with OTS's Credit Practices Rule with regard to their Wisconsin operations but were required to comply with equivalent provisions of the Wisconsin Consumer Act, will now be required to comply with both OTS's Credit Practices Rule and the equivalent provisions of the Wisconsin Consumer Act.

E. NCUA Executive Order 13132 Determination

The NCUA has determined that its portion of the rulemaking does not have any federalism implications for purposes of Executive Order 13132.

F. OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. (The inflation adjusted threshold is $133 million or more.) If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

OTS has determined that this rule will not result in expenditures by State, local, and tribal governments in excess of the threshold but may result in expenditures by the private sector in excess of the threshold. Accordingly, OTS has prepared a budgetary impact statement and addressed the regulatory alternatives considered. This is discussed further in section VIII.C. of this **SUPPLEMENTARY INFORMATION** (''OTS Executive Order 12866 Analysis'').

G. NCUA: The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

IX. Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board and OTS to use plain language in all proposed and final rules published after January 1, 2000. Additionally, NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burdens. Therefore, the Agencies invited comment on how to make the May 2008 Proposal easier to understand.

The Agencies received only one comment in response. A credit card issuer suggested that the proposed rules prohibiting unfair or deceptive acts or practices with respect to consumer credit card accounts would be easier to understand if placed with the rules governing credit cards in the Board's Regulation Z. As discussed above, however, the Agencies have determined that the FTC Act is the appropriate authority for issuance of the final rule.

List of Subjects

12 CFR Part 227

Banks, Banking, Credit, Intergovernmental relations, Trade practices.

12 CFR Part 535

Consumer credit, Consumer protection, Credit, Credit cards, Deception, Intergovernmental relations, Savings associations, Trade practices, Unfairness.

12 CFR Part 706

Credit, Credit unions, Deception, Intergovernmental relations, Trade practices, Unfairness.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons discussed in the joint preamble, the Board amends 12 CFR part 227 as set forth below:

PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES (REGULATION AA)

■ 1. The separate authority citations for subparts A and B are removed and a new authority citation for part 227 is added to read as follows:

Authority: 15 U.S.C. 57a(f).

Subpart A—General Provisions

■ 2. The heading for subpart A is revised to read as set forth above.

§ 227.1 [Removed]

■ 3. Section 227.1 is removed.

§ 227.11 [Redesignated as § 227.1]

■ 3a. Section 227.11 is redesignated as § 227.1 and transferred to subpart A, and revised to read as follows:

§ 227.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Board under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f) (section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93–637).

(b) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). Subparts B and C define and contain requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices of banks. The prohibitions in subparts B and C do not limit the Board's or any other agency's authority to enforce the FTC Act with respect to any other unfair or deceptive acts or practices.

(c) *Scope.* Subparts B and C apply to banks, including subsidiaries of banks and other entities listed in paragraph (c)(2) of this section. Subparts B and C do not apply to savings associations as defined in 12 U.S.C. 1813(b). Compliance is to be enforced by:

(1) The Comptroller of the Currency, in the case of national banks and federal branches and federal agencies of foreign banks;

(2) The Board of Governors of the Federal Reserve System, in the case of banks that are members of the Federal Reserve System (other than banks referred to in paragraph (c)(1) of this section), branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(3) The Federal Deposit Insurance Corporation, in the case of banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in paragraphs (c)(1) and (c)(2) of this section), and insured state branches of foreign banks.

(d) *Definitions.* Unless otherwise noted, the terms used in paragraph (c) of this section that are not defined in the Federal Trade Commission Act or in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

■ 4. Section 227.2 is revised to read as follows:

§ 227.2 Consumer-complaint procedure.

(a) *Definitions.* For purposes of this section, unless the context indicates otherwise, the following definitions apply:

(1) ''Board'' means the Board of Governors of the Federal Reserve System.

(2) ''Consumer complaint'' means an allegation by or on behalf of an individual, group of individuals, or other entity that a particular act or practice of a State member bank is unfair or deceptive, or in violation of a regulation issued by the Board pursuant to a Federal statute, or in violation of any other act or regulation under which the bank must operate. Unless the context indicates otherwise, ''complaint'' shall be construed to mean a ''consumer complaint'' for purposes of this section.

(3) ''State member bank'' means a bank that is chartered by a State and is a member of the Federal Reserve System.

(b) *Submission of complaints.* (1) Any consumer having a complaint regarding a State member bank is invited to submit it to the Federal Reserve System. The complaint should be submitted in writing, if possible, and should include the following information:

(i) A description of the act or practice that is thought to be unfair or deceptive, or in violation of existing law or regulation, including all relevant facts;

(ii) The name and address of the State member bank that is the subject of the complaint; and

(iii) The name and address of the complainant.

(2) Consumer complaints should be made to—Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480, Toll-free number: (888) 851–1920, Fax number: (877) 888–2520, TDD number: (877) 766–8533, E-mail address: *ConsumerHelp@FederalReserve.gov*, Web site address: *www.federalreserveconsumerhelp.gov.*

(c) *Response to complaints.* Within 15 business days of receipt of a written complaint by the Board or a Federal Reserve Bank, a substantive response or an acknowledgment setting a reasonable time for a substantive response will be sent to the individual making the complaint.

(d) *Referrals to other agencies.* Complaints received by the Board or a Federal Reserve Bank regarding an act or practice of an institution other than a State member bank will be forwarded to the Federal agency having jurisdiction over that institution.

§ 227.11 [Added and reserved]

■ 5. In Subpart B, § 227.11 is added and reserved.

■ 6. A new Subpart C is added to part 227 to read as follows:

Subpart C—Consumer Credit Card Account Practices Rule

Subpart C—Consumer Credit Card Account Practices Rule

§ 227.21 Definitions.

For purposes of this subpart, the following definitions apply:

(a) ''Annual percentage rate'' means the product of multiplying each periodic rate for a balance or transaction on a consumer credit card account by the number of periods in a year. The term ''periodic rate'' has the same meaning as in 12 CFR 226.2.

(b) ''Consumer'' means a natural person to whom credit is extended under a consumer credit card account or a natural person who is a co-obligor or guarantor of a consumer credit card account.

(c) ''Consumer credit card account'' means an account provided to a consumer primarily for personal, family, or household purposes under an open-end credit plan that is accessed by a credit card or charge card. The terms ''open-end credit,'' ''credit card,'' and ''charge card'' have the same meanings as in 12 CFR 226.2. The following are not consumer credit card accounts for purposes of this subpart:

(1) Home equity plans subject to the requirements of 12 CFR 226.5b that are accessible by a credit or charge card;

(2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; and

(4) Lines of credit accessed solely by account numbers.

§ 227.22 Unfair acts or practices regarding time to make payment.

(a) *General rule.* Except as provided in paragraph (c) of this section, a bank must not treat a payment on a consumer credit card account as late for any purpose unless the consumer has been provided a reasonable amount of time to make the payment.

(b) *Compliance with general rule*—(1) *Establishing compliance.* A bank must be able to establish that it has complied with paragraph (a) of this section.

(2) *Safe harbor.* A bank complies with paragraph (a) of this section if it has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

(c) *Exception for grace periods.* Paragraph (a) of this section does not apply to any time period provided by the bank within which the consumer may repay any portion of the credit extended without incurring an additional finance charge.

§ 227.23 Unfair acts or practices regarding allocation of payments.

When different annual percentage rates apply to different balances on a consumer credit card account, the bank must allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances using one of the following methods:

(a) *High-to-low method.* The amount paid by the consumer in excess of the required minimum periodic payment is allocated first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.

(b) *Pro rata method.* The amount paid by the consumer in excess of the required minimum periodic payment is allocated among the balances in the same proportion as each balance bears to the total balance.

§ 227.24 Unfair acts or practices regarding increases in annual percentage rates.

(a) *General rule.* At account opening, a bank must disclose the annual percentage rates that will apply to each category of transactions on the consumer credit card account. A bank must not increase the annual percentage rate for a category of transactions on any consumer credit card account except as provided in paragraph (b) of this section.

(b) *Exceptions.* The prohibition in paragraph (a) of this section on increasing annual percentage rates does not apply where an annual percentage rate may be increased pursuant to one of the exceptions in this paragraph.

(1) *Account opening disclosure exception.* An annual percentage rate for a category of transactions may be increased to a rate disclosed at account opening upon expiration of a period of time disclosed at account opening.

(2) *Variable rate exception.* An annual percentage rate for a category of transactions that varies according to an index that is not under the bank's control and is available to the general public may be increased due to an increase in the index.

(3) *Advance notice exception.* An annual percentage rate for a category of transactions may be increased pursuant to a notice under 12 CFR 226.9(c) or (g) for transactions that occur more than seven days after provision of the notice. This exception does not permit an increase in any annual percentage rate during the first year after the account is opened.

(4) *Delinquency exception.* An annual percentage rate may be increased due to the bank not receiving the consumer's required minimum periodic payment within 30 days after the due date for that payment.

(5) *Workout arrangement exception.* An annual percentage rate may be increased due to the consumer's failure to comply with the terms of a workout arrangement between the bank and the consumer, provided that the annual percentage rate applicable to a category of transactions following any such increase does not exceed the rate that applied to that category of transactions prior to commencement of the workout arrangement.

(c) *Treatment of protected balances.* For purposes of this paragraph, ''protected balance'' means the amount owed for a category of transactions to which an increased annual percentage rate cannot be applied after the rate for that category of transactions has been increased pursuant to paragraph (b)(3) of this section.

(1) *Repayment.* The bank must provide the consumer with one of the following methods of repaying a protected balance or a method that is no less beneficial to the consumer than one of the following methods:

(i) An amortization period of no less than five years, starting from the date on which the increased rate becomes effective for the category of transactions; or

(ii) A required minimum periodic payment that includes a percentage of the protected balance that is no more than twice the percentage required before the date on which the increased rate became effective for the category of transactions.

(2) *Fees and charges.* The bank must not assess any fee or charge based solely on a protected balance.

§ 227.25 Unfair balance computation method.

(a) *General rule.* Except as provided in paragraph (b) of this section, a bank must not impose finance charges on balances on a consumer credit card account based on balances for days in billing cycles that precede the most recent billing cycle as a result of the loss of any time period provided by the bank within which the consumer may repay any portion of the credit extended without incurring a finance charge.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under 12 CFR 226.12 or 12 CFR 226.13; or

(2) Adjustments to finance charges as a result of the return of a payment for insufficient funds.

§ 227.26 Unfair charging of security deposits and fees for the issuance or availability of credit to consumer credit card accounts.

(a) *Limitation for first year.* During the first year, a bank must not charge to a consumer credit card account security deposits and fees for the issuance or availability of credit that in total constitute a majority of the initial credit limit for the account.

(b) *Limitations for first billing cycle and subsequent billing cycles.* (1) First billing cycle. During the first billing cycle, the bank must not charge to a consumer credit card account security deposits and fees for the issuance or availability of credit that in total constitute more than 25 percent of the initial credit limit for the account.

(2) *Subsequent billing cycles.* Any additional security deposits and fees for the issuance or availability of credit permitted by paragraph (a) of this section must be charged to the account in equal portions in no fewer than the five billing cycles immediately following the first billing cycle.

(c) *Evasion prohibited.* A bank must not evade the requirements of this section by providing the consumer with additional credit to fund the payment of security deposits and fees for the issuance or availability of credit that exceed the total amounts permitted by paragraphs (a) and (b) of this section.

(d) *Definitions.* For purposes of this section, the following definitions apply:

(1) ''Fees for the issuance or availability of credit'' means:

(i) Any annual or other periodic fee that may be imposed for the issuance or availability of a consumer credit card account, including any fee based on account activity or inactivity; and

(ii) Any non-periodic fee that relates to opening an account.

(2) ''First billing cycle'' means the first billing cycle after a consumer credit card account is opened.

(3) ''First year'' means the period beginning with the date on which a consumer credit card account is opened and ending twelve months from that date.

(4) ''Initial credit limit'' means the credit limit in effect when a consumer credit card account is opened.

■ 7. A new Supplement I is added to part 227 as follows:

Supplement I to Part 227—Official Staff Commentary

Subpart A—General Provisions for Consumer Protection Rules

Section 227.1—Authority, Purpose, and Scope

1(c) Scope

1. *Penalties for noncompliance.* Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease-and-desist orders requiring that actions be taken to remedy violations and civil money penalties.

2. *Industrial loan companies.* Industrial loan companies that are insured by the Federal Deposit Insurance Corporation are covered by the Board's rule.

Subpart C—Consumer Credit Card Account Practices Rule

Section 227.22—Unfair Acts or Practices Regarding Time To Make Payment

22(a) General Rule

1. *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, or assessing a late fee or any other fee based on the consumer's failure to make a payment within the amount of time provided to make that payment under this section.

2. *Reasonable amount of time to make payment.* Whether an amount of time is reasonable for purposes of making a payment is determined from the perspective of the consumer, not the bank. Under § 227.22(b)(2), a bank provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

22(b) Compliance with General Rule

1. *Reasonable procedures.* A bank is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. A bank provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period in § 227.24(b)(2) when determining the payment due date. For example, if a bank has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date on the periodic statement must be no less than 24 days after the closing date of the billing cycle.

2. *Payment due date.* For purposes of § 227.22(b)(2), ''payment due date'' means the date by which the bank requires the consumer to make the required minimum periodic payment in order to avoid being treated as late for any purpose, except as provided in § 227.22(c).

3. *Example of alternative method of compliance.* Assume that, for a particular type of consumer credit card account, a bank only provides periodic statements electronically and only accepts payments electronically (consistent with applicable law and regulatory guidance). Under these circumstances, the bank could comply with § 227.22(a) even if it does not provide periodic statements 21 days before the payment due date consistent with § 227.22(b)(2).

Section 227.23—Unfair Acts or Practices Regarding Allocation of Payments

1. *Minimum periodic payment.* Section 227.23 addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the bank. Section 227.23 does not limit or otherwise address the bank's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. A bank may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in § 227.23 to the extent consistent with other applicable law or regulatory guidance.

2. *Adjustments of one dollar or less permitted.* When allocating payments, the bank may adjust amounts by one dollar or less. For example, if a bank is allocating $100 pursuant to § 227.23(b) among balances of $1,000, $2,000, and $4,000, the bank may apply $14 to the $1,000 balance, $29 to the $2,000 balance, and $57 to the $4,000 balance.

3. *Applicable balances and annual percentage rates.* Section 227.23 permits a bank to allocate an amount paid by the consumer in excess of the required minimum periodic payment based on the balances and annual percentage rates on the date the preceding billing cycle ends, on the date the payment is credited to the account, or on any day in between those two dates. For example, assume that the billing cycles for a consumer credit card account start on the first day of the month and end on the last day of the month. On the date the March billing cycle ends (March 31), the account has a purchase balance of $500 at a variable annual percentage rate of 14% and a cash advance balance of $200 at a variable annual percentage rate of 18%. On April 1, the rate for purchases increases to 16% and the rate for cash advances increases to 20% consistent with § 227.24(b)(2). On April 15, the purchase balance increases to $700. On April 25, the bank credits to the account $400 paid by the consumer in excess of the required minimum periodic payment. Under

§ 227.23, the bank may allocate the $400 based on the balances in existence and rates in effect on any day from March 31 through April 25.

4. *Use of permissible allocation methods.* A bank is not prohibited from changing the allocation method for a consumer credit card account or from using different allocation methods for different consumer credit card accounts, so long as the methods used are consistent with § 227.23. For example, a bank may change from allocating to the highest rate balance first pursuant to § 227.23(a) to allocating pro rata pursuant to § 227.23(b) or vice versa. Similarly, a bank may allocate to the highest rate balance first pursuant to § 227.23(a) on some of its accounts and allocate pro rata pursuant to § 227.23(b) on other accounts.

5. *Claims or defenses under Regulation Z, 12 CFR 226.12(c).* When a consumer has asserted a claim or defense against the card issuer pursuant to 12 CFR 226.12(c), the bank must allocate consistent with 12 CFR 226.12 comment 226.12(c)–4.

6. *Balances with the same annual percentage 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, § 227.23 does not require that any particular method be used when allocating among the balances with the same annual percentage rate. Under these circumstances, a bank may treat the balances with the same rate as a single balance or separate balances. *See* comments 23(a)–1.iv and 23(b)–2.iv.

23(a) High-to-Low Method

1. *Examples.* For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed (unless otherwise stated).

i. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $800 in excess of the required minimum periodic payment. A bank using this method would allocate $500 to pay off the cash advance balance and then allocate the remaining $300 to the purchase balance.

ii. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $400 in excess of the required minimum periodic payment. A bank using this method would allocate the entire $400 to the cash advance balance.

iii. Assume that a consumer's account has a cash advance balance of $100 at an annual percentage rate of 20%, a purchase balance of $300 at an annual percentage rate of 18%, and a $600 protected balance on which the 12% annual percentage rate cannot be increased pursuant to § 227.24. If the consumer pays $500 in excess of the required minimum periodic payment, a bank using this method would allocate $100 to pay off the cash advance balance, $300 to pay off the purchase balance, and $100 to the protected balance.

iv. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20%, a purchase balance of $1,000 at an annual percentage rate of 15%, and a transferred balance of $2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 15%. Assume also that the consumer pays $800 in excess of the required minimum periodic payment. A bank using this method would allocate $500 to pay off the cash advance balance and allocate the remaining $300 among the purchase balance and the transferred balance in the manner the bank deems appropriate.

23(b) Pro Rata Method

1. *Total balance.* A bank may, but is not required to, deduct amounts paid by the consumer's required minimum periodic payment when calculating the total balance for purposes of § 227.23(b)(3). *See* comment 23(b)–2.iii.

2. *Examples.* For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed (unless otherwise stated) and that the amounts allocated to each balance are rounded to the nearest dollar.

i. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $555 in excess of the required minimum periodic payment. A bank using this method would allocate 25% of the amount ($139) to the cash advance balance and 75% of the amount ($416) to the purchase balance.

ii. Assume that a consumer's account has a cash advance balance of $100 at an annual percentage rate of 20%, a purchase balance of $300 at an annual percentage rate of 18%, and a $600 protected balance on which the 12% annual percentage rate cannot be increased pursuant to § 227.24. If the consumer pays $130 in excess of the required minimum periodic payment, a bank using this method would allocate 10% of the amount ($13) to the cash advance balance, 30% of the amount ($39) to the purchase balance, and 60% of the amount ($78) to the protected balance.

iii. Assume that a consumer's account has a cash advance balance of $300 at an annual percentage rate of 20% and a purchase balance of $600 at an annual percentage rate of 15%. Assume also that the required minimum periodic payment is $50 and that the bank allocates this payment first to the balance with the lowest annual percentage rate (the $600 purchase balance). If the consumer pays $300 in excess of the $50 minimum payment, a bank using this method could allocate based on a total balance of $850 (consisting of the $300 cash advance balance plus the $550 purchase balance after application of the $50 minimum payment). In this case, the bank would apply 35% of the $300 ($105) to the cash advance balance and 65% of that amount ($195) to the purchase balance. In the alternative, the bank could allocate based on a total balance of $900 (which does not reflect the $50 minimum payment). In that case, the bank would apply one third of the $300 excess payment ($100) to the cash advance balance and two thirds ($200) to the purchase balance.

iv. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20%, a purchase balance of $1,000 at an annual percentage rate of 15%, and a transferred balance of $2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 15%. Assume also that the consumer pays $800 in excess of the required minimum periodic payment. A bank using this method would allocate 14% of the excess payment ($112) to the cash advance balance and allocate the remaining 86% ($688) among the purchase balance and the transferred balance in the manner the bank deems appropriate.

Section 227.24—Unfair Acts or Practices Regarding Increases in Annual Percentage Rates

1. *Relationship to Regulation Z, 12 CFR part 226.* A bank that complies with the applicable disclosure requirements in Regulation Z, 12 CFR part 226, has complied with the disclosure requirements in § 227.24. *See* 12 CFR 226.5a, 226.6, 226.9. For example, a bank may comply with the requirement in § 227.24(a) to disclose at account opening the annual percentage rates that will apply to each category of transactions by complying with the disclosure requirements in 12 CFR 226.5a regarding applications and solicitations and the requirements in 12 CFR 226.6 regarding account-opening disclosures. Similarly, in order to increase an annual percentage rate on new transactions pursuant to § 227.24(b)(3), a bank must comply with the disclosure requirements in 12 CFR 226.9(c) or (g). However, nothing in § 227.24 alters the requirements in 12 CFR 226.9(c) and (g) that creditors provide consumers with written notice at least 45 days prior to the effective date of certain increases in the annual percentage rates on open-end (not home-secured) credit plans.

24(a) General Rule

1. *Rates that will apply to each category of transactions.* Section 227.24(a) requires banks to disclose, at account opening, the annual percentage rates that will apply to each category of transactions on the account. A bank cannot satisfy this requirement by disclosing at account opening only a range of rates or that a rate will be ''up to'' a particular amount.

2. *Application of prohibition on increasing rates.* Section 227.24(a) prohibits banks from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in § 227.24(b). The following examples illustrate the application of the rule:

i. Assume that, at account opening on January 1 of year one, a bank discloses that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The bank also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly available index not under the bank's control. Finally, the bank discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

A. On January 15, the consumer uses the account to make a $2,000 purchase and a $500 cash advance. No other transactions are made on the account. At the start of each quarter, the bank adjusts the variable rate that applies to the $500 cash advance consistent with changes in the index (pursuant to § 227.24(b)(2)). All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the bank on May 28. The bank is prohibited by § 227.24 from increasing the rates that apply to the $2,000 purchase, the $500 cash advance, or future purchases and cash advances. Six months after account opening (July 1), the bank begins accruing interest on the $2,000 purchase at the previously disclosed variable rate determined using an 8-point margin (pursuant to § 227.24(b)(1)). Because no other increases in rate were disclosed at account opening, the bank may not subsequently increase the variable rate that applies to the $2,000 purchase and the $500 cash advance (except due to increases in the index pursuant to § 227.24(b)(2)). On November 16, the bank provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 12 percentage points). On January 1 of year two, the bank increases the margin used to determine the variable rate that applies to new purchases to 12 percentage points (pursuant to § 227.24(b)(3)). On January 15 of year two, the consumer makes a $300 purchase. The bank applies the variable rate determined using the 12-point margin to the $300 purchase but not the $2,000 purchase.

B. Same facts as above except that the required minimum periodic payment due on May 25 of year one is not received by the bank until June 30 of year one. Because the bank received the required minimum periodic payment more than 30 days after the payment due date, § 227.24(b)(4) permits the bank to increase the annual percentage rate applicable to the $2,000 purchase, the $500 cash advance, and future purchases and cash advances. However, the bank must first comply with the notice requirements in 12 CFR 226.9(g). Thus, if the bank provided a 12 CFR 226.9(g) notice on June 25 stating that all rates on the account would be increased to a non-variable penalty rate of 30%, the bank could apply that 30% rate beginning on August 9 to all balances and future transactions.

ii. Assume that, at account opening on January 1 of year one, a bank discloses that the annual percentage rate for purchases will increase as follows: A non-variable rate of 5% for six months; a non-variable rate of 10% for an additional six months; and thereafter a variable rate that is currently 15% and will be adjusted monthly by adding a margin of 5 percentage points to a publicly available index not under the bank's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15, the consumer uses the account to make a $1,500 purchase. Six months after account opening (July 1), the bank begins accruing interest on the $1,500 purchase at the previously disclosed 10% non-variable rate (pursuant to § 227.24(b)(1)). On September 15, the consumer uses the account for a $700 purchase. On November 16, the bank provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 8 percentage points). One year after account opening (January 1 of year two), the bank begins accruing interest on the $2,200 purchase balance at the previously disclosed variable rate determined using a 5-point margin (pursuant to § 227.24(b)(1)). Because the variable rate determined using the 8-point margin was not disclosed at account opening, the bank may not apply that rate to the $2,200 purchase balance. Furthermore, because no other increases in rate were disclosed at account opening, the bank may not subsequently increase the variable rate that applies to the $2,200 purchase balance (except due to increases in the index pursuant to § 227.24(b)(2)). The bank may, however, apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two (pursuant to § 227.24(b)(3)).

iii. Assume that, at account opening on January 1 of year one, a bank discloses that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly available index outside of the bank's control. The bank also discloses that, to the extent consistent with § 227.24 and other applicable law, a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has a purchase balance of $1,000. On May 31, the creditor provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on July 16 for all purchases made on or after June 8 (calculated by using the same index and an increased margin of 8 percentage points). On June 7, the consumer makes a $500 purchase. On June 8, the consumer makes a $200 purchase. On June 25, the bank has not received the payment due on June 15 and provides the consumer with a notice pursuant to 12 CFR 226.9(g) stating that the penalty rate of 28% will apply as of August 9 to all transactions made on or after July 3. On July 4, the consumer makes a $300 purchase.

A. The payment due on June 15 of year two is received on June 26. On July 16, § 227.24(b)(3) permits the bank to apply the variable rate determined using the 8-point margin to the $200 purchase made on June 8 but does not permit the bank to apply this rate to the $1,500 purchase balance. On August 9, § 227.24(b)(3) permits the bank to apply the 28% penalty rate to the $300 purchase made on July 4 but does not permit the bank to apply this rate to the $1,500 purchase balance (which remains at the variable rate determined using the 6-point margin) or the $200 purchase (which remains at the variable rate determined using the 8-point margin).

B. Same facts as above except the payment due on September 15 of year two is received on October 20. Section 227.24(b)(4) permits the bank to apply the 28% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. However, in order to apply the 28% penalty rate to the entire $2,000 purchase balance, the bank must provide an additional notice pursuant to 12 CFR 226.9(g). This notice must be sent no earlier than October 16, which is the first day the account became more than 30 days' delinquent.

C. Same facts as paragraph A. above except the payment due on June 15 of year two is received on July 20. Section 227.24(b)(4) permits the bank to apply the 28% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. Because the bank provided a 12 CFR 226.9(g) notice on June 24 stating the 28% penalty rate, the bank may apply the 28% penalty rate to all balances on the account as well as any future transactions on August 9 without providing an additional notice pursuant to 12 CFR 226.9(g).

24(b) Exceptions

24(b)(1) Account Opening Disclosure Exception

1. *Prohibited increases in rate.* Section 227.24(b)(1) permits an increase in the annual percentage rate for a category of transactions to a rate disclosed at account opening upon expiration of a period of time that was also disclosed at account opening. Section 227.24(b)(1) does not permit application of increased rates that are disclosed at account opening but are contingent on a particular event or occurrence or may be applied at the bank's discretion. The following examples illustrate rate increases that are not permitted by § 227.24(a):

i. Assume that a bank discloses at account opening on January 1 of year one that a non-variable rate of 15% applies to purchases but that all rates on an account may be increased to a non-variable penalty rate of 30% if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. On March 1, the account has a $2,000 purchase balance. The payment due on March 15 is not received until March 20. Section 227.24 does not permit the bank to apply the 30% penalty rate to the $2,000 purchase balance. However, pursuant to § 227.24(b)(3), the bank could provide a 12 CFR 226.9(c) or (g) notice on November 16 informing the consumer that, on January 1 of year two, the 30% rate (or a different rate) will apply to new transactions.

ii. Assume that a bank discloses at account opening on January 1 of year one that a non-variable rate of 5% applies to transferred balances but that this rate will increase to a non-variable rate of 18% if the consumer does not use the account for at least $200 in purchases each billing cycle. On July 1, the consumer transfers a balance of $4,000 to the account. During the October billing cycle, the consumer uses the account for $150 in purchases. Section 227.24 does not permit the bank to apply the 18% rate to the $4,000 transferred balance. However, pursuant to § 227.24(b)(3), the bank could provide a 12 CFR 226.9(c) or (g) notice on November 16 informing the consumer that, on January 1 of year two, the 18% rate (or a different rate) will apply to new transactions.

iii. Assume that a bank discloses at account opening on January 1 of year one that interest on purchases will be deferred for one year, although interest will accrue on purchases during that year at a non-variable rate of 20%. The bank further discloses that, if all purchases made during year one are not paid in full by the end of that year, the bank will begin charging interest on the purchase balance and new purchases at 20% and will retroactively charge interest on the purchase balance at a rate of 20% starting on the date of each purchase made during year one. On January 1 of year one, the consumer makes a purchase of $1,500. No other transactions are made on the account. On January 1 of year two, $500 of the $1,500 purchase remains unpaid. Section 227.24 does not permit the bank to reach back to charge interest on the $1,500 purchase from January 1 through December 31 of year one. However, the bank may apply the previously disclosed 20% rate to the $500 purchase balance beginning on January 1 of year two (pursuant to § 227.24(b)(1)).

2. *Loss of grace period.* Nothing in § 227.24 prohibits a bank from assessing interest due to the loss of a grace period to the extent consistent with § 227.25.

3. *Application of rate that is lower than disclosed rate.* Section 227.24(b)(1) permits an increase in the annual percentage rate for a category of transactions to a rate disclosed at account opening upon expiration of a period of time that was also disclosed at account opening. Nothing in § 227.24 prohibits a bank from applying a rate that is lower than the disclosed rate upon expiration of the period. However, if a lower rate is applied to an existing balance, the bank cannot subsequently increase the rate on that balance unless it has provided the consumer with advance notice of the increase pursuant to 12 CFR 226.9(c). Furthermore, the bank cannot increase the rate on that existing balance to a rate that is higher than the increased rate disclosed at account opening. The following example illustrates the application of this rule:

i. Assume that, at account opening on January 1 of year one, a bank discloses that a non-variable annual percentage rate of 15% will apply to purchases for one year and discloses that, after the first year, the bank will apply a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly available index not under the bank's control. On December 31 of year one, the account has a purchase balance of $3,000.

A. On November 16 of year one, the bank provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and a reduced margin of 8 percentage points). The notice further states that, on July 1 of year two, the margin will increase to the margin disclosed at account opening (10 percentage points). On July 1 of year two, the bank increases the margin used to determine the variable rate that applies to new purchases to 10 percentage points and applies that rate to any remaining portion of the $3,000 purchase balance (pursuant to § 227.24(b)(1)).

B. Same facts as above except that the bank does not send a notice on November 16 of year one. Instead, on January 1 of year two, the bank lowers the margin used to determine the variable rate to 8 percentage points and applies that rate to the $3,000 purchase balance and to new purchases. 12 CFR 226.9 does not require advance notice in these circumstances. However, unless the account becomes more than 30 days' delinquent, the bank may not subsequently increase the rate that applies to the $3,000 purchase balance except due to increases in the index (pursuant to § 227.24(b)(2)).

24(b)(2) Variable Rate Exception

1. *Increases due to increase in index.* Section 227.24(b)(2) provides that an annual percentage rate for a category of transactions that varies according to an index that is not under the bank's control and is available to the general public may be increased due to an increase in the index. This section does not permit a bank to increase the annual percentage rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase.

2. *External index.* A bank may increase the annual percentage rate if the increase is based on an index or indices outside the bank's control. A bank may not increase the rate based on its own prime rate or cost of funds. A bank is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal*, even if the bank's own prime rate is one of several rates used to establish the published rate.

3. *Publicly available.* The index or indices must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the rate applied to the outstanding balance.

4. *Changing a non-variable rate to a variable rate.* Section 227.24 generally prohibits a bank from changing a non-variable annual percentage rate to a variable rate because such a change can result in an increase in rate. However, § 227.24(b)(1) permits a bank to change a non-variable rate to a variable rate if the change was disclosed at account opening. Furthermore, following the first year after the account is opened, § 227.24(b)(3) permits a bank to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in 12 CFR 226.9(c) or (g)). Finally, § 227.24(b)(4) permits a bank to change a non-variable rate to a variable rate if the required minimum periodic payment is not received within 30 days of the payment due date (after complying with the notice requirements in 12 CFR 226.9(g)).

5. *Changing a variable annual percentage rate to a non-variable annual percentage rate.* Nothing in § 227.24 prohibits a bank from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the bank provides the notice required by 12 CFR 226.9(c). For example, assume that on March 1 a variable rate that is currently 15% applies to a balance of $2,000 and the bank sends a notice pursuant to 12 CFR 226.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 17. On April 17, the bank may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

6. *Substitution of index.* A bank may change the index and margin used to determine the annual percentage rate under § 227.24(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

24(b)(3) Advance Notice Exception

1. *First year after the account is opened.* A bank may not increase an annual percentage rate pursuant to § 227.24(b)(3) during the first year after the account is opened. This limitation does not apply to accounts opened prior to July 1, 2010.

2. *Transactions that occur more than seven days after notice provided.* Section 227.24(b)(3) generally prohibits a bank from applying an increased rate to transactions that occur within seven days after provision of the 12 CFR 226.9(c) or (g) notice. This prohibition does not, however, apply to transactions that are authorized within seven days after provision of the 12 CFR 226.9(c) or (g) notice but are settled more than seven days after the notice was provided.

3. *Examples.*

i. Assume that a consumer credit card account is opened on January 1 of year one. On March 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 15%. On March 15, the bank provides a notice pursuant to 12 CFR 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 18% on May 1. The notice further states that the 18% rate will apply for six months (until November 1) and states that thereafter the bank will apply a variable rate that is currently 22% and is determined by adding a margin of 12 percentage points to a publicly-available index that is not under the bank's control. The seventh day after provision of the notice is March 22 and, on that date, the consumer makes a $200 purchase. On March 24, the consumer makes a $1,000 purchase. On May 1, § 227.24(b)(3) permits the bank to begin accruing interest at 18% on the $1,000 purchase made on March 24. The bank is not permitted to apply the 18% rate to the $2,200 purchase balance as of March 22. After six months (November 2), the bank may begin accruing interest on any remaining portion of the $1,000 purchase at the previously-disclosed variable rate determined using the 12-point margin.

ii. Same facts as above except that the $200 purchase is authorized by the bank on March 22 but is not settled until March 23. On May 1, § 227.24(b)(3) permits the bank to start charging interest at 18% on both the $200 purchase and the $1,000 purchase. The bank is not permitted to apply the 18% rate to the $2,000 purchase balance as of March 22.

iii. Same facts as in paragraph i. above except that on September 17 of year two (which is 45 days before expiration of the 18% non-variable rate), the bank provides a notice pursuant to 12 CFR 226.9(c) informing the consumer that, on November 2, a new variable rate will apply to new purchases and any remaining portion of the $1,000 balance (calculated by using the same index and a reduced margin of 10 percentage points). The notice further states that, on May 1 of year three, the margin will increase to the margin disclosed at account opening (12 percentage points). On May 1 of year three, § 227.24(b)(3) permits the bank to increase the margin used to determine the variable rate that applies to new purchases to 12 percentage points and to apply that rate to any remaining portion of the $1,000 purchase as well as to new purchases. *See* comment 24(b)(1)–3. The bank is not permitted to apply this rate to any remaining portion of the $2,200 purchase balance as of March 22.

24(b)(5) Workout Arrangement Exception

1. *Scope of exception.* Nothing in § 227.24(b)(5) permits a bank to alter the requirements of § 227.24 pursuant to a workout arrangement between a consumer and the bank. For example, a bank cannot increase an annual percentage rate pursuant to a workout arrangement unless otherwise permitted by § 227.24. In addition, a bank cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under § 227.24(c).

2. *Variable annual percentage rates.* If the annual percentage rate that applied to a category of transactions prior to commencement of the workout arrangement varied with an index consistent with § 227.24(b)(2), the rate applied to that category of transactions following an increase pursuant to § 227.24(b)(5) must be determined using the same formula (index and margin).

3. *Example.* Assume that, consistent with § 227.24(b)(4), the margin used to determine a variable annual percentage rate that applies to a $5,000 balance is increased from 5 percentage points to 15 percentage points. Assume also that the bank and the consumer subsequently agree to a workout arrangement that reduces the margin back to 5 points on the condition that the consumer pay a specified amount by the payment due date each month. If the consumer does not pay the agreed-upon amount by the payment due date, the bank may increase the margin for the variable rate that applies to the $5,000 balance up to 15 percentage points. 12 CFR 226.9 does not require advance notice of this type of increase.

24(c) Treatment of Protected Balances

1. *Protected balances.* Because rates cannot be increased pursuant to § 227.24(b)(3) during the first year after account opening, § 227.24(c) does not apply to balances during the first year. Instead, the requirements in § 227.24(c) apply only to ''protected balances,'' which are amounts owed for a category of transactions to which an increased annual percentage rate cannot be applied after the rate for that category of transactions has been increased pursuant to § 227.24(b)(3). For example, assume that, on March 15 of year two, an account has a purchase balance of $1,000 at a non-variable rate of 12% and that, on March 16, the bank sends a notice pursuant to 12 CFR 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 15% on May 2. On March 20, the consumer makes a $100 purchase. On March 24, the consumer makes a $150 purchase. On May 2, § 227.24(b)(3) permits the bank to start charging interest at 15% on the $150 purchase made on March 24 but does not permit the bank to apply that 15% rate to the $1,100 purchase balance as of March 23. Accordingly, § 227.24(c) applies to the $1,100 purchase balance as of March 23 but not the $150 purchase made on March 24.

24(c)(1) Repayment

1. *No less beneficial to the consumer.* A bank may provide a method of repaying the protected balance that is different from the methods listed in § 227.24(c)(1) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method amortizes the protected balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 227.24(c)(1)(ii). For example, a bank could increase the percentage of the protected balance included in the required minimum periodic payment from 2% to 5% so long as doing so would not result in amortization of the protected balance in less than five years. Alternatively, a bank could require a consumer to make a minimum payment that amortizes the protected balance in less than five years so long as the payment does not include a percentage of the balance that is more than twice the percentage included in the minimum payment before the effective date of the increased rate. For example, a bank could require the consumer to make a minimum payment that amortizes the protected balance in four years so long as doing so would not more than double the percentage of the balance included in the minimum payment prior to the effective date of the increased rate.

2. *Lower limit for required minimum periodic payment.* If the required minimum periodic payment under § 227.24(c)(1)(i) or (c)(1)(ii) is less than the lower dollar limit for minimum payments established in the cardholder agreement before the effective date of the rate increase, the bank may set the minimum payment consistent with that limit. For example, if at account opening the cardholder agreement stated that the required minimum periodic payment would be either the total of fees and interest charges plus 1% of the total amount owed or $20 (whichever is greater), the bank may require the consumer to make a minimum payment of $20 even if doing so would pay off the protected balance in less than five years or constitute more than 2% of the protected balance plus fees and interest charges.

Paragraph 24(c)(1)(i)

1. *Amortization period starting from date on which increased rate becomes effective.* Section 227.24(c)(1)(i) provides for an amortization period for the protected balance of no less than five years, starting from the date on which the increased annual percentage rate becomes effective. A bank is not required to recalculate the required minimum periodic payment for the protected balance if, during the amortization period, that balance is reduced as a result of the allocation of amounts paid by the consumer in excess of the minimum payment consistent with § 227.23 or any other practice permitted by these rules and other applicable law.

2. *Amortization when applicable annual percentage rate is variable.* If the annual percentage rate that applies to the protected balance varies with an index consistent with § 227.24(b)(2), the bank may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the outstanding balance is amortized in five years. For example, assume that a variable rate that is currently 15% applies to a protected balance and that, in order to amortize that balance in five years, the required minimum periodic payment must include a specific amount of principal plus all accrued interest charges. If the 15% variable rate increases due to an increase in the index, the bank may increase the required minimum periodic payment to include the additional interest charges.

Paragraph 24(c)(1)(ii)

1. *Required minimum periodic payment on other balances.* Section 227.24(c)(1)(ii) addresses the required minimum periodic payment on the protected balance. Section 227.24(c)(1)(ii) does not limit or otherwise address the bank's ability to determine the amount of the required minimum periodic payment for other balances.

2. *Example.* Assume that the method used by a bank to calculate the required minimum periodic payment for a consumer credit card account requires the consumer to pay either the total of fees and interest charges plus 1% of the total amount owed or $20, whichever is greater. Assume also that the account has a purchase balance of $2,000 at an annual percentage rate of 15% and a cash advance balance of $500 at an annual percentage rate of 20% and that the bank increases the rate for purchases to 18% but does not increase

the rate for cash advances. Under § 227.24(c)(1)(ii), the bank may require the consumer to pay fees and interest plus 2% of the $2,000 purchase balance. Section 227.24(c)(1)(ii) does not prohibit the bank from increasing the required minimum periodic payment for the cash advance balance.

24(c)(2) Fees and Charges

1. *Fee or charge based solely on the protected balance*. A bank is prohibited from assessing a fee or charge based solely on balances to which § 227.24(c) applies. For example, a bank is prohibited from assessing a monthly maintenance fee that would not be charged if the account did not have a protected balance. A bank is not, however, prohibited from assessing fees such as late payment fees or fees for exceeding the credit limit even if such fees are based in part on the protected balance.

Section 227.25—Unfair Balance Computation Method

25(a) General Rule

1. *Two-cycle method prohibited*. When a consumer ceases to be eligible for a time period provided by the bank within which the consumer may repay any portion of the credit extended without incurring a finance charge (a grace period), the bank is prohibited from computing the finance charge using the so-called two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance (including or excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

2. *Examples*.

i. Assume that the billing cycle on a consumer credit card account starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. Under the terms of the account, the consumer will not be charged interest on purchases if the balance at the end of a billing cycle is paid in full by the following payment due date. The consumer uses the credit card to make a $500 purchase on March 15. The consumer pays the balance for the February billing cycle in full on March 25. At the end of the March billing cycle (March 31), the consumer's balance consists only of the $500 purchase and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25). The consumer pays $400 on April 25, leaving a $100 balance. The bank may charge interest on the $500 purchase from the start of the April billing cycle (April 1) through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 30). The bank is prohibited, however, from reaching back and charging interest on the $500 purchase from the date of purchase (March 15) to the end of the March billing cycle (March 31).

ii. Assume the same circumstances as in the previous example except that the consumer does not pay the balance for the February billing cycle in full on March 25 and therefore, under the terms of the account, is not eligible for a time period within which to repay the $500 purchase without incurring a finance charge. With respect to the $500 purchase, the bank may charge interest from the date of purchase (March 15) through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 30).

Section 227.26—Unfair Charging of Security Deposits and Fees for the Issuance or Availability of Credit to Consumer Credit Card Accounts

26(a) Limitation for First Year

1. *Majority of the credit limit*. The total amount of security deposits and fees for the issuance or availability of credit constitutes a majority of the initial credit limit if that total is greater than half of the limit. For example, assume that a consumer credit card account has an initial credit limit of $500. Under § 227.26(a), a bank may charge to the account security deposits and fees for the issuance or availability of credit totaling no more than $250 during the first year (consistent with § 227.26(b)).

26(b) Limitations for First Billing Cycle and Subsequent Billing Cycles

1. *Adjustments of one dollar or less permitted*. When dividing amounts pursuant to § 227.26(b)(2), a bank may adjust amounts by one dollar or less. For example, if a bank is dividing $87 over five billing cycles, the bank may charge $18 for two months and $17 for the remaining three months.

2. *Examples*.

i. Assume that a consumer credit card account opened on January 1 has an initial credit limit of $500. Assume also that the billing cycles for this account begin on the first day of the month and end on the last day of the month. Under § 227.26(a), the bank may charge to the account no more than $250 in security deposits and fees for the issuance or availability of credit during the first year after the account is opened. If it charges $250, the bank may charge up to $125 during the first billing cycle. If it charges $125 during the first billing cycle, it may then charge no more than $25 in each of the next five billing cycles. If it chooses, the bank may spread the additional security deposits and fees over a longer period, such as by charging $12.50 in each of the ten billing cycles following the first billing cycle.

ii. Same facts as above except that on July 1 the bank increases the credit limit on the account from $500 to $750. Because the prohibition in § 227.26(a) is based on the initial credit limit of $500, the increase in credit limit does not permit the bank to charge to the account additional security deposits and fees for the issuance or availability of credit (such as a fee for increasing the credit limit).

26(c) Evasion Prohibited

1. *Evasion*. Section 227.26(c) prohibits a bank from evading the requirements of this section by providing the consumer with additional credit to fund the consumer's payment of security deposits and fees that exceed the total amounts permitted by § 227.26(a) and (b). For example, assume that on January 1 a consumer opens a consumer credit card account with an initial credit limit of $400 and the bank charges to that account $100 in fees for the issuance or availability of credit. Assume also that the billing cycles for the account coincide with the days of the month and that the bank will charge $20 in fees for the issuance or availability of credit in the February, March, April, May, and June billing cycles. The bank violates § 227.26(c) if it provides the consumer with a separate credit product to fund additional security deposits or fees for the issuance or availability of credit.

2. *Payment with funds not obtained from the bank*. A bank does not violate § 227.26(c) if it requires the consumer to pay security deposits or fees for the issuance or availability of credit using funds that are not obtained, directly or indirectly, from the bank. For example, a bank does not violate § 227.26(c) if a $400 security deposit paid by a consumer to obtain a consumer credit card account with a credit line of $400 is not charged to a credit account provided by the bank or its affiliate.

26(d) Definitions

1. *Membership fees*. Membership fees for opening an account are fees for the issuance or availability of credit. A membership fee to join an organization that provides a credit or charge card as a privilege of membership is a fee for the issuance or availability of credit only if the card is issued automatically upon membership. If membership results merely in eligibility to apply for an account, then such a fee is not a fee for the issuance or availability of credit.

2. *Enhancements*. Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) are not fees for the issuance or availability of credit if the basic account may be opened without paying such fees. Issuing a card to each primary cardholder (not authorized users) is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, are fees for the issuance or availability of credit. Thus, a fee to obtain an additional card on the account beyond the first card (so that each cardholder would have his or her own card) is a fee for the issuance or availability of credit even if the fee is optional; that is, if the fee is charged only if the cardholder requests one or more additional cards.

3. *One-time fees*. Non-periodic fees related to opening an account (such as application fees or one-time membership or participation fees) are fees for the issuance or availability of credit. Fees for reissuing a lost or stolen card, statement reproduction fees, and fees for late payment or other violations of the account terms are examples of fees that are not fees for the issuance or availability of credit.

■ 8. The Federal Reserve System Board of Governors' Staff Guidelines on the Credit Practices Rule, published November 14, 1985 at 50 FR 47036, is amended by revising paragraph 3 to read as follows:

Staff Guidelines on the Credit Practices Rule

Effective January 1, 1986; as amended effective July 1, 2010.

Introduction

* * * * *

3. *Scope; enforcement.* As stated in subpart A of Regulation AA, this rule applies to all banks and their subsidiaries, except savings associations as defined in 12 U.S.C. 1813(b). The Board has enforcement responsibility for state-chartered banks that are members of the Federal Reserve System. The Office of the Comptroller of the Currency has enforcement responsibility for national banks. The Federal Deposit Insurance Corporation has enforcement responsibility for insured state-chartered banks that are not members of the Federal Reserve System.

* * * * *

■ 9. The following portions of the Federal Reserve System Board of Governors' Staff Guidelines on the Credit Practices Rule, published November 14, 1985 at 50 FR 47036, are removed:

Section 227.11 Authority, Purpose, and Scope

Q11(c)–1: *Penalties for noncompliance.* What are the penalties for noncompliance with the rule?

A: Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease-and-desist orders requiring that actions be taken to remedy violations. If the terms of the order are violated, the federal supervisory agency may impose penalties of up to $1,000 per day for every day that the bank is in violation of the order.

Q11(c)–2: *Industrial loan companies.* Are industrial loan companies subject to the Board's rule?

A: Industrial loan companies that are insured by the Federal Deposit Insurance Corporation are covered by the Board's rule.

* * * * *

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons discussed in the joint preamble, OTS revises 12 CFR part 535 to read as follows:

PART 535—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 57a.

Subpart A—General Provisions

§ 535.1 Authority, purpose and scope.

(a) *Authority.* This part is issued by OTS under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f) (section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93–637) and the Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*

(b) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). Subparts B and C define and contain requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices of savings associations. The prohibitions in subparts B and C do not limit OTS's authority to enforce the FTC Act with respect to any other unfair or deceptive acts or practices. The purpose of this part is also to prohibit unsafe and unsound practices and protect consumers under the Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*

(c) *Scope.* This part applies to savings associations and subsidiaries owned in whole or in part by a savings association (''you'').

Subpart B—Consumer Credit Practices

§ 535.11 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Consumer* means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, other than for the purchase of real property, and who applies for or is extended *consumer credit.*

(b) *Consumer credit* means credit extended to a natural person for personal, family, or household purposes. It includes consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; overdraft loans; and credit cards. It also includes loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security but only if you rely substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan.

(c) *Earnings* means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(d) *Obligation* means an agreement between you and a consumer.

(e) *Person* means an individual, corporation, or other business organization.

§ 535.12 Unfair credit contract provisions.

It is an unfair act or practice for you, directly or indirectly, to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation you purchased, any of the following provisions:

(a) *Confession of judgment.* A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(b) *Waiver of exemption.* An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) *Assignment of wages.* An assignment of wages or other earnings unless:

(1) The assignment by its terms is revocable at the will of the debtor;

(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or

(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) *Security interest in household goods.* A nonpossessory security interest in household goods other than a purchase-money security interest. For purposes of this paragraph, *household goods:*

(1) Means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents.

(2) Does not include:

(i) Works of art;

(ii) Electronic entertainment equipment (except one television and one radio);

(iii) Antiques (any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character); or

(iv) Jewelry (other than wedding rings).

§ 535.13 Unfair or deceptive cosigner practices.

(a) *Prohibited deception.* It is a deceptive act or practice for you, directly or indirectly in connection with the extension of credit to consumers, to misrepresent the nature or extent of cosigner liability to any person.

(b) *Prohibited unfairness.* It is an unfair act or practice for you, directly or indirectly in connection with the extension of credit to consumers, to obligate a cosigner unless the cosigner is informed, before becoming obligated, of the nature of the cosigner's liability.

(c) *Disclosure requirement*—(1) *Disclosure statement.* A clear and conspicuous statement must be given in writing to the cosigner before becoming obligated. In the case of open-end credit, the disclosure statement must be given to the cosigner before the time that the cosigner becomes obligated for any fees or transactions on the account. The disclosure statement must contain the following statement or one that is substantially similar:

Notice of Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) *Compliance.* Compliance with paragraph (d)(1) of this section constitutes compliance with the consumer disclosure requirement in paragraph (b) of this section.

(3) *Additional content limitations.* If the notice is a separate document, nothing other than the following items may appear with the notice:

(i) Your name and address;

(ii) An identification of the debt to be cosigned (*e.g.*, a loan identification number);

(iii) The date (of the transaction); and

(iv) The statement, ''This notice is not the contract that makes you liable for the debt.''

(d) *Cosigner defined*—(1) *Cosigner* means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

(2) *Cosigner* includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse or other person whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a *cosigner*, whether or not the person is designated as such on a credit obligation.

§ 535.14 Unfair late charges.

(a) *Prohibition.* In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for you, directly or indirectly, to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) *Collecting a debt defined*—*Collecting a debt* means, for the purposes of this section, any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

Subpart C—Consumer Credit Card Account Practices

§ 535.21 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Annual percentage rate* means the product of multiplying each periodic rate for a balance or transaction on a consumer credit card account by the number of periods in a year. The term ''periodic rate'' has the same meaning as in 12 CFR 226.2.

(b) *Consumer* means a natural person to whom credit is extended under a consumer credit card account or a natural person who is a co-obligor or guarantor of a consumer credit card account.

(c) *Consumer credit card account* means an account provided to a consumer primarily for personal, family, or household purposes under an open-end credit plan that is accessed by a credit card or charge card. The terms *open-end credit, credit card,* and *charge card* have the same meanings as in 12 CFR 226.2. The following are not consumer credit card accounts for purposes of this subpart:

(1) Home equity plans subject to the requirements of 12 CFR 226.5b that are accessible by a credit or charge card;

(2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; and

(4) Lines of credit accessed solely by account numbers.

§ 535.22 Unfair time to make payment.

(a) *General rule.* Except as provided in paragraph (c) of this section, you must not treat a payment on a consumer credit card account as late for any purpose unless you have provided the consumer a reasonable amount of time to make the payment.

(b) *Compliance with general rule*—(1) *Establishing compliance.* You must be able to establish that you have complied with paragraph (a) of this section.

(2) *Safe harbor.* You comply with paragraph (a) of this section if you have adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

(c) *Exception for grace periods.* Paragraph (a) of this section does not apply to any time period you provided within which the consumer may repay any portion of the credit extended without incurring an additional finance charge.

§ 535.23 Unfair allocation of payments.

When different annual percentage rates apply to different balances on a consumer credit card account, you must allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances using one of the following methods:

(a) *High-to-low method.* The amount paid by the consumer in excess of the required minimum periodic payment is allocated first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.

(b) *Pro rata method.* The amount paid by the consumer in excess of the required minimum periodic payment is allocated among the balances in the same proportion as each balance bears to the total balance.

§ 535.24 Unfair increases in annual percentage rates.

(a) *General rule.* At account opening, you must disclose the annual percentage rates that will apply to each category of transactions on the consumer credit card account. You must not increase the annual percentage rate for a category of transactions on any consumer credit card account except as provided in paragraph (b) of this section.

(b) *Exceptions.* The prohibition in paragraph (a) of this section on increasing annual percentage rates does not apply where an annual percentage rate may be increased pursuant to one of the exceptions in this paragraph.

(1) *Account opening disclosure exception.* An annual percentage rate for a category of transactions may be increased to a rate disclosed at account opening upon expiration of a period of time disclosed at account opening.

(2) *Variable rate exception.* An annual percentage rate for a category of transactions that varies according to an index that is not under your control and is available to the general public may be increased due to an increase in the index.

(3) *Advance notice exception.* An annual percentage rate for a category of transactions may be increased pursuant to a notice under 12 CFR 226.9(c) or (g) for transactions that occur more than seven days after provision of the notice. This exception does not permit an increase in any annual percentage rate during the first year after the account is opened.

(4) *Delinquency exception.* An annual percentage rate may be increased due to your not receiving the consumer's required minimum periodic payment within 30 days after the due date for that payment.

(5) *Workout arrangement exception.* An annual percentage rate may be increased due to the consumer's failure to comply with the terms of a workout arrangement between you and the consumer, provided that the annual percentage rate applicable to a category of transactions following any such increase does not exceed the rate that applied to that category of transactions prior to commencement of the workout arrangement.

(c) *Treatment of protected balances.* For purposes of this paragraph, "protected balance" means the amount owed for a category of transactions to which an increased annual percentage rate cannot be applied after the rate for that category of transactions has been increased pursuant to paragraph (b)(3) of this section.

(1) *Repayment.* You must provide the consumer with one of the following methods of repaying a protected balance or a method that is no less beneficial to the consumer than one of the following methods:

(i) An amortization period of no less than five years, starting from the date on which the increased rate becomes effective for the category of transactions; or

(ii) A required minimum periodic payment that includes a percentage of the protected balance that is no more than twice the percentage required before the date on which the increased rate became effective for the category of transactions.

(2) *Fees and charges.* You must not assess any fee or charge based solely on a protected balance.

§ 535.25 Unfair balance computation method.

(a) *General rule.* Except as provided in paragraph (b) of this section, you must not impose finance charges on balances on a consumer credit card account based on balances for days in billing cycles that precede the most recent billing cycle as a result of the loss of any time period you provided within which the consumer may repay any portion of the credit extended without incurring a finance charge.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under 12 CFR 226.12 or 12 CFR 226.13; or

(2) Adjustments to finance charges as a result of the return of a payment for insufficient funds.

§ 535.26 Unfair charging of security deposits and fees for the issuance or availability of credit to consumer credit card accounts.

(a) *Limitation for first year.* During the first year, you must not charge to a consumer credit card account security deposits and fees for the issuance or availability of credit that in total constitute a majority of the initial credit limit for the account.

(b) *Limitations for first billing cycle and subsequent billing cycles*—(1) *First billing cycle.* During the first billing cycle, you must not charge to a consumer credit card account security deposits and fees for the issuance or availability of credit that in total constitute more than 25 percent of the initial credit limit for the account.

(2) *Subsequent billing cycles.* Any additional security deposits and fees for the issuance or availability of credit permitted by paragraph (a) of this section must be charged to the account in equal portions in no fewer than the five billing cycles immediately following the first billing cycle.

(c) *Evasion prohibited.* You must not evade the requirements of this section by providing the consumer with additional credit to fund the payment of security deposits and fees for the issuance or availability of credit that exceed the total amounts permitted by paragraphs (a) and (b) of this section.

(d) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Fees for the issuance or availability of credit* means:

(i) Any annual or other periodic fee that may be imposed for the issuance or availability of a consumer credit card account, including any fee based on account activity or inactivity; and

(ii) Any non-periodic fee that relates to opening an account.

(2) *First billing cycle* means the first billing cycle after a consumer credit card account is opened.

(3) *First year* means the period beginning with the date on which a consumer credit card account is opened and ending twelve months from that date.

(4) *Initial credit limit* means the credit limit in effect when a consumer credit card account is opened.

Appendix A to Part 535—Official Staff Commentary

Subpart A—General Provisions for Consumer Protection Rules

Section 535.1—Authority, Purpose, and Scope

1(c) Scope

1. *Penalties for noncompliance.* Administrative enforcement of the rule for savings associations may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease-and-desist orders requiring that actions be taken to remedy violations and civil money penalties.

2. *Application to subsidiaries.* The term ''savings association'' as used in this Appendix also includes subsidiaries owned in whole or in part by a savings association.

Subpart C—Consumer Credit Card Account Practices

Section 535.22—Unfair Time To Make Payment

22(a) General Rule

1. *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, or assessing a late fee or any other fee based on the consumer's failure to make a payment within the amount of time provided to make that payment under this section.

2. *Reasonable amount of time to make payment.* Whether an amount of time is reasonable for purposes of making a payment is determined from the perspective of the consumer, not the savings association. Under § 535.22(b)(2), a savings association provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

22(b) Compliance with General Rule

1. *Reasonable procedures.* A savings association is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. A savings association provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period in § 535.24(b)(2) when determining the payment due date. For example, if a savings association has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date on the periodic statement must be no less than 24 days after the closing date of the billing cycle.

2. *Payment due date.* For purposes of § 535.22(b)(2), ''payment due date'' means the date by which the savings association requires the consumer to make the required minimum periodic payment in order to avoid being treated as late for any purpose, except as provided in § 535.22(c).

3. *Example of alternative method of compliance.* Assume that, for a particular type of consumer credit card account, a savings association only provides periodic statements electronically and only accepts payments electronically (consistent with applicable law and regulatory guidance). Under these circumstances, the savings association could comply with § 535.22(a) even if it does not provide periodic statements 21 days before the payment due date consistent with § 535.22(b)(2).

Section 535.23—Unfair Allocation of Payments

1. *Minimum periodic payment.* Section 535.23 addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the savings association. Section 535.23 does not limit or otherwise address the savings association's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. A savings association may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in § 535.23 to the extent consistent with other applicable law or regulatory guidance.

2. *Adjustments of one dollar or less permitted.* When allocating payments, the savings association may adjust amounts by one dollar or less. For example, if a savings association is allocating $100 pursuant to § 535.23(b) among balances of $1,000, $2,000, and $4,000, the savings association may apply $14 to the $1,000 balance, $29 to the $2,000 balance, and $57 to the $4,000 balance.

3. *Applicable balances and annual percentage rates.* Section 535.23 permits a savings association to allocate an amount paid by the consumer in excess of the required minimum periodic payment based on the balances and annual percentage rates on the date the preceding billing cycle ends, on the date the payment is credited to the account, or on any day in between those two dates. For example, assume that the billing cycles for a consumer credit card account start on the first day of the month and end on the last day of the month. On the date the March billing cycle ends (March 31), the account has a purchase balance of $500 at a variable annual percentage rate of 14% and a cash advance balance of $200 at a variable annual percentage rate of 18%. On April 1, the rate for purchases increases to 16% and the rate for cash advances increases to 20% consistent with § 535.24(b)(2). On April 15, the purchase balance increases to $700. On April 25, the savings association credits to the account $400 paid by the consumer in excess of the required minimum periodic payment. Under § 535.23, the savings association may allocate the $400 based on the balances in existence and rates in effect on any day from March 31 through April 25.

4. *Use of permissible allocation methods.* A savings association is not prohibited from changing the allocation method for a consumer credit card account or from using different allocation methods for different consumer credit card accounts, so long as the methods used are consistent with § 535.23. For example, a savings association may change from allocating to the highest rate balance first pursuant to § 535.23(a) to allocating pro rata pursuant to § 535.23(b) or vice versa. Similarly, a savings association may allocate to the highest rate balance first pursuant to § 535.23(a) on some of its accounts and allocate pro rata pursuant to § 535.23(b) on other accounts.

5. *Claims or defenses under Regulation Z, 12 CFR 226.12(c).* When a consumer has asserted a claim or defense against the card issuer pursuant to 12 CFR 226.12(c), the savings association must allocate consistent with 12 CFR 226.12 comment 226.12(c)–4.

6. *Balances with the same annual percentage 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, § 535.23 does not require that any particular method be used when allocating among the balances with the same annual percentage rate. Under these circumstances, a savings association may treat the balances with the same rate as a single balance or separate balances. *See* comments 23(a)–1.iv and 23(b)–2.iv.

23(a) High-to-Low Method

1. *Examples.* For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed (unless otherwise stated).

i. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $800 in excess of the required minimum periodic payment. A savings association using this method would allocate $500 to pay off the cash advance balance and then allocate the remaining $300 to the purchase balance.

ii. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $400 in excess of the required minimum periodic payment. A savings association using this method would allocate the entire $400 to the cash advance balance.

iii. Assume that a consumer's account has a cash advance balance of $100 at an annual percentage rate of 20%, a purchase balance of $300 at an annual percentage rate of 18%, and a $600 protected balance on which the 12% annual percentage rate cannot be increased pursuant to § 535.24. If the consumer pays $500 in excess of the required minimum periodic payment, a savings association using this method would allocate $100 to pay off the cash advance balance, $300 to pay off the purchase balance, and $100 to the protected balance.

iv. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20%, a purchase balance of $1,000 at an annual percentage rate of 15%, and a transferred balance of $2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 15%. Assume also that the consumer pays $800 in excess of the required minimum periodic payment. A savings association using this method would allocate $500 to pay off the cash advance balance and allocate the remaining $300 among the purchase balance and the transferred balance in the manner the savings association deems appropriate.

23(b) Pro Rata Method

1. *Total balance.* A savings association may, but is not required to, deduct amounts paid by the consumer's required minimum periodic payment when calculating the total balance for purposes of § 535.23(b)(3). *See* comment 23(b)–2.iii.

2. *Examples.* For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed (unless otherwise stated) and that the amounts allocated to each balance are rounded to the nearest dollar.

i. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $555 in excess of the required minimum periodic payment. A savings association using this method would allocate 25% of the amount ($139) to the cash advance balance and 75% of the amount ($416) to the purchase balance.

ii. Assume that a consumer's account has a cash advance balance of $100 at an annual percentage rate of 20%, a purchase balance of $300 at an annual percentage rate of 18%, and a $600 protected balance on which the 12% annual percentage rate cannot be increased pursuant to § 535.24. If the consumer pays $130 in excess of the required minimum periodic payment, a savings association using this method would allocate 10% of the amount ($13) to the cash advance balance, 30% of the amount ($39) to the purchase balance, and 60% of the amount ($78) to the protected balance.

iii. Assume that a consumer's account has a cash advance balance of $300 at an annual percentage rate of 20% and a purchase balance of $600 at an annual percentage rate of 15%. Assume also that the required minimum periodic payment is $50 and that the savings association allocates this payment first to the balance with the lowest annual percentage rate (the $600 purchase balance). If the consumer pays $300 in excess of the $50 minimum payment, a savings association using this method could allocate based on a total balance of $850 (consisting of the $300 cash advance balance plus the $550 purchase balance after application of the $50 minimum payment). In this case, the savings association would apply 35% of the $300 ($105) to the cash advance balance and 65% of that amount ($195) to the purchase balance. In the alternative, the savings association could allocate based on a total balance of $900 (which does not reflect the $50 minimum payment). In that case, the savings association would apply one third of the $300 excess payment ($100) to the cash advance balance and two thirds ($200) to the purchase balance.

iv. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 20%, a purchase balance of $1,000 at an annual percentage rate of 15%, and a transferred balance of $2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 15%. Assume also that the consumer pays $800 in excess of the required minimum periodic payment. A savings association using this method would allocate 14% of the excess payment ($112) to the cash advance balance and allocate the remaining 86% ($688) among the purchase balance and the transferred balance in the manner the savings association deems appropriate.

Section 535.24—Unfair Increases in Annual Percentage Rates

1. *Relationship to Regulation Z, 12 CFR part 226.* A savings association that complies with the applicable disclosure requirements in Regulation Z, 12 CFR part 226, has complied with the disclosure requirements in § 535.24. *See* 12 CFR 226.5a, 226.6, 226.9. For example, a savings association may comply with the requirement in § 535.24(a) to disclose at account opening the annual percentage rates that will apply to each category of transactions by complying with the disclosure requirements in 12 CFR 226.5a regarding applications and solicitations and the requirements in 12 CFR 226.6 regarding account-opening disclosures. Similarly, in order to increase an annual percentage rate on new transactions pursuant to § 535.24(b)(3), a savings association must comply with the disclosure requirements in 12 CFR 226.9(c) or (g). However, nothing in § 535.24 alters the requirements in 12 CFR 226.9(c) and (g) that creditors provide consumers with written notice at least 45 days prior to the effective date of certain increases in the annual percentage rates on open-end (not home-secured) credit plans.

24(a) General Rule

1. *Rates that will apply to each category of transactions.* Section 535.24(a) requires savings associations to disclose, at account opening, the annual percentage rates that will apply to each category of transactions on the account. A savings association cannot satisfy this requirement by disclosing at account opening only a range of rates or that a rate will be ''up to'' a particular amount.

2. *Application of prohibition on increasing rates.* Section 535.24(a) prohibits savings associations from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in § 535.24(b). The following examples illustrate the application of the rule:

i. Assume that, at account opening on January 1 of year one, a savings association discloses that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The savings association also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the savings association's control. Finally, the savings association discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

A. On January 15, the consumer uses the account to make a $2,000 purchase and a $500 cash advance. No other transactions are made on the account. At the start of each quarter, the savings association adjusts the variable rate that applies to the $500 cash advance consistent with changes in the index (pursuant to § 535.24(b)(2)). All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the savings association on May 28. The savings association is prohibited by § 535.24 from increasing the rates that apply to the $2,000 purchase, the $500 cash advance, or future purchases and cash advances. Six months after account opening (July 1), the savings association begins accruing interest on the $2,000 purchase at the previously-disclosed variable rate determined using an 8-point margin (pursuant to § 535.24(b)(1)). Because no other increases in rate were disclosed at account opening, the savings association may not subsequently increase the variable rate that applies to the $2,000 purchase and the $500 cash advance (except due to increases in the index pursuant to § 535.24(b)(2)). On November 16, the savings association provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 12 percentage points). On January 1 of year two, the savings association increases the margin used to determine the variable rate that applies to new purchases to 12 percentage points (pursuant to § 535.24(b)(3)). On January 15 of year two, the consumer makes a $300 purchase. The savings association applies the variable rate determined using the 12-point margin to the $300 purchase but not the $2,000 purchase.

B. Same facts as above except that the required minimum periodic payment due on May 25 of year one is not received by the savings association until June 30 of year one. Because the savings association received the required minimum periodic payment more than 30 days after the payment due date, § 535.24(b)(4) permits the savings association to increase the annual percentage rate applicable to the $2,000 purchase, the $500 cash advance, and future purchases and cash advances. However, the savings association must first comply with the notice requirements in 12 CFR 226.9(g). Thus, if the savings association provided a 12 CFR 226.9(g) notice on June 25 stating that all rates on the account would be increased to a non-variable penalty rate of 30%, the savings association could apply that 30% rate beginning on August 9 to all balances and future transactions.

ii. Assume that, at account opening on January 1 of year one, a savings association discloses that the annual percentage rate for purchases will increase as follows: A non-variable rate of 5% for six months; a non-variable rate of 10% for an additional six months; and thereafter a variable rate that is currently 15% and will be adjusted monthly by adding a margin of 5 percentage points to a publicly available index not under the savings association's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15, the consumer uses the account to make a $1,500 purchase. Six months after account opening (July 1), the savings association begins accruing interest on the $1,500 purchase at the previously disclosed 10% non-variable rate (pursuant to § 535.24(b)(1)). On September 15, the consumer uses the account for a $700 purchase. On November 16, the savings association provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 8 percentage points). One year after account opening (January 1 of year two), the savings association begins accruing interest on the $2,200 purchase balance at the previously disclosed variable rate determined using a 5-point margin (pursuant to § 535.24(b)(1)). Because the variable rate determined using the 8-point margin was not disclosed at account opening, the savings association may not apply that rate to the $2,200 purchase balance. Furthermore, because no other increases in rate were disclosed at account opening, the savings association may not subsequently increase the variable rate that applies to the $2,200 purchase balance (except due to increases in the index pursuant to § 535.24(b)(2)). The savings association may, however, apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two (pursuant to § 535.24(b)(3)).

iii. Assume that, at account opening on January 1 of year one, a savings association discloses that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly available index outside of the savings association's control. The savings association also discloses that, to the extent consistent with § 535.24 and other applicable law, a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has a purchase balance of $1,000. On May 31, the creditor provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on July 16 for all purchases made on or after June 8 (calculated by using the same index and an increased margin of 8 percentage points). On June 7, the consumer makes a $500 purchase. On June 8, the consumer makes a $200 purchase. On June 25, the savings association has not received the payment due on June 15 and provides the consumer with a notice pursuant to 12 CFR 226.9(g) stating that the penalty rate of 28% will apply as of August 9 to all transactions made on or after July 3. On July 4, the consumer makes a $300 purchase.

A. The payment due on June 15 of year two is received on June 26. On July 16, § 535.24(b)(3) permits the savings association to apply the variable rate determined using the 8-point margin to the $200 purchase made on June 8 but does not permit the savings association to apply this rate to the $1,500 purchase balance. On August 9, § 535.24(b)(3) permits the savings association to apply the 28% penalty rate to the $300 purchase made on July 4 but does not permit the savings association to apply this rate to the $1,500 purchase balance (which remains at the variable rate determined using the 6-point margin) or the $200 purchase (which remains at the variable rate determined using the 8-point margin).

B. Same facts as above except the payment due on September 15 of year two is received on October 20. Section 535.24(b)(4) permits the savings association to apply the 28% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. However, in order to apply the 28% penalty rate to the entire $2,000 purchase balance, the savings association must provide an additional notice pursuant to 12 CFR 226.9(g). This notice must be sent no earlier than October 16, which is the first day the account became more than 30 days' delinquent.

C. Same facts as paragraph A. above except the payment due on June 15 of year two is received on July 20. Section 535.24(b)(4) permits the savings association to apply the 28% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. Because the savings association provided a 12 CFR 226.9(g) notice on June 24 stating the 28% penalty rate, the savings association may apply the 28% penalty rate to all balances on the account as well as any future transactions on August 9 without providing an additional notice pursuant to 12 CFR 226.9(g).

24(b) Exceptions

24(b)(1) Account Opening Disclosure Exception

1. *Prohibited increases in rate.* Section 535.24(b)(1) permits an increase in the annual percentage rate for a category of transactions to a rate disclosed at account opening upon expiration of a period of time that was also disclosed at account opening. Section 535.24(b)(1) does not permit application of increased rates that are disclosed at account opening but are contingent on a particular event or occurrence or may be applied at the savings association's discretion. The following examples illustrate rate increases that are not permitted by § 535.24(a):

i. Assume that a savings association discloses at account opening on January 1 of year one that a non-variable rate of 15% applies to purchases but that all rates on an account may be increased to a non-variable penalty rate of 30% if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. On March 1, the account has a $2,000 purchase balance. The payment due on March 15 is not received until March 20. Section 535.24 does not permit the savings association to apply the 30% penalty rate to the $2,000 purchase balance. However, pursuant to § 535.24(b)(3), the savings association could provide a 12 CFR 226.9(c) or (g) notice on November 16 informing the consumer that, on January 1 of year two, the 30% rate (or a different rate) will apply to new transactions.

ii. Assume that a savings association discloses at account opening on January 1 of year one that a non-variable rate of 5% applies to transferred balances but that this rate will increase to a non-variable rate of 18% if the consumer does not use the account for at least $200 in purchases each billing cycle. On July 1, the consumer transfers a balance of $4,000 to the account. During the October billing cycle, the consumer uses the account for $150 in purchases. Section 535.24 does not permit the savings association to apply the 18% rate to the $4,000 transferred balance. However, pursuant to § 535.24(b)(3), the savings association could provide a 12 CFR 226.9(c) or (g) notice on November 16 informing the consumer that, on January 1 of year two, the 18% rate (or a different rate) will apply to new transactions.

iii. Assume that a savings association discloses at account opening on January 1 of year one that interest on purchases will be deferred for one year, although interest will accrue on purchases during that year at a non-variable rate of 20%. The savings association further discloses that, if all purchases made during year one are not paid in full by the end of that year, the savings association will begin charging interest on the purchase balance and new purchases at 20% and will retroactively charge interest on the purchase balance at a rate of 20% starting on the date of each purchase made during year one. On January 1 of year one, the consumer makes a purchase of $1,500. No other transactions are made on the account. On January 1 of year two, $500 of the $1,500 purchase remains unpaid. Section 535.24 does not permit the savings association to reach back to charge interest on the $1,500 purchase from January 1 through December 31 of year one. However, the savings association may apply the previously disclosed 20% rate to the $500 purchase balance beginning on January 1 of year two (pursuant to § 535.24(b)(1)).

2. *Loss of grace period.* Nothing in § 535.24 prohibits a savings association from assessing interest due to the loss of a grace period to the extent consistent with § 535.25.

3. *Application of rate that is lower than disclosed rate.* Section § 535.24(b)(1) permits an increase in the annual percentage rate for a category of transactions to a rate disclosed at account opening upon expiration of a period of time that was also disclosed at account opening. Nothing in § 535.24 prohibits a savings association from applying a rate that is lower than the disclosed rate upon expiration of the period. However, if a lower rate is applied to an existing balance, the savings association cannot subsequently increase the rate on that balance unless it has provided the consumer with advance notice

of the increase pursuant to 12 CFR 226.9(c). Furthermore, the savings association cannot increase the rate on that existing balance to a rate that is higher than the increased rate disclosed at account opening. The following example illustrates the application of this rule:

i. Assume that, at account opening on January 1 of year one, a savings association discloses that a non-variable annual percentage rate of 15% will apply to purchases for one year and discloses that, after the first year, the savings association will apply a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly available index not under the savings association's control. On December 31 of year one, the account has a purchase balance of $3,000.

A. On November 16 of year one, the savings association provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and a reduced margin of 8 percentage points). The notice further states that, on July 1 of year two, the margin will increase to the margin disclosed at account opening (10 percentage points). On July 1 of year two, the savings association increases the margin used to determine the variable rate that applies to new purchases to 10 percentage points and applies that rate to any remaining portion of the $3,000 purchase balance (pursuant to § 535.24(b)(1)).

B. Same facts as above except that the savings association does not send a notice on November 16 of year one. Instead, on January 1 of year two, the savings association lowers the margin used to determine the variable rate to 8 percentage points and applies that rate to the $3,000 purchase balance and to new purchases. 12 CFR 226.9 does not require advance notice in these circumstances. However, unless the account becomes more than 30 days' delinquent, the savings association may not subsequently increase the rate that applies to the $3,000 purchase balance except due to increases in the index (pursuant to § 535.24(b)(2)).

24(b)(2) Variable Rate Exception

1. *Increases due to increase in index.* Section 535.24(b)(2) provides that an annual percentage rate for a category of transactions that varies according to an index that is not under the savings association's control and is available to the general public may be increased due to an increase in the index. This section does not permit a savings association to increase the annual percentage rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase.

2. *External index.* A savings association may increase the annual percentage rate if the increase is based on an index or indices outside the savings association's control. A savings association may not increase the rate based on its own prime rate or cost of funds. A savings association is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal,* even if the savings association's own prime rate is one of several rates used to establish the published rate.

3. *Publicly available.* The index or indices must be available to the public. A publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the rate applied to the outstanding balance.

4. *Changing a non-variable rate to a variable rate.* Section 535.24 generally prohibits a savings association from changing a non-variable annual percentage rate to a variable rate because such a change can result in an increase in rate. However, § 535.24(b)(1) permits a savings association to change a non-variable rate to a variable rate if the change was disclosed at account opening. Furthermore, following the first year after the account is opened, § 535.24(b)(3) permits a savings association to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in 12 CFR 226.9(c) or (g)). Finally, § 535.24(b)(4) permits a savings association to change a non-variable rate to a variable rate if the required minimum periodic payment is not received within 30 days of the payment due date (after complying with the notice requirements in 12 CFR 226.9(g)).

5. *Changing a variable annual percentage rate to a non-variable annual percentage rate.* Nothing in § 535.24 prohibits a savings association from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the savings association provides the notice required by 12 CFR 226.9(c). For example, assume that on March 1 a variable rate that is currently 15% applies to a balance of $2,000 and the savings association sends a notice pursuant to 12 CFR 226.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 17. On April 17, the savings association may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

6. *Substitution of index.* A savings association may change the index and margin used to determine the annual percentage rate under § 535.24(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

24(b)(3) Advance Notice Exception

1. *First year after the account is opened.* A savings association may not increase an annual percentage rate pursuant to § 535.24(b)(3) during the first year after the account is opened. This limitation does not apply to accounts opened prior to July 1, 2010.

2. *Transactions that occur more than seven days after notice provided.* Section 535.24(b)(3) generally prohibits a savings association from applying an increased rate to transactions that occur within seven days after provision of the 12 CFR 226.9(c) or (g) notice. This prohibition does not, however, apply to transactions that are authorized within seven days after provision of the 12 CFR 226.9(c) or (g) notice but are settled more than seven days after the notice was provided.

3. *Examples.*

i. Assume that a consumer credit card account is opened on January 1 of year one. On March 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 15%. On March 15, the savings association provides a notice pursuant to 12 CFR 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 18% on May 1. The notice further states that the 18% rate will apply for six months (until November 1) and states that thereafter the savings association will apply a variable rate that is currently 22% and is determined by adding a margin of 12 percentage points to a publicly-available index that is not under the savings association's control. The seventh day after provision of the notice is March 22 and, on that date, the consumer makes a $200 purchase. On March 24, the consumer makes a $1,000 purchase. On May 1, § 535.24(b)(3) permits the savings association to begin accruing interest at 18% on the $1,000 purchase made on March 24. The savings association is not permitted to apply the 18% rate to the $2,200 purchase balance as of March 22. After six months (November 2), the savings association may begin accruing interest on any remaining portion of the $1,000 purchase at the previously-disclosed variable rate determined using the 12-point margin.

ii. Same facts as above except that the $200 purchase is authorized by the savings association on March 22 but is not settled until March 23. On May 1, § 535.24(b)(3) permits the savings association to start charging interest at 18% on both the $200 purchase and the $1,000 purchase. The savings association is not permitted to apply the 18% rate to the $2,000 purchase balance as of March 22.

iii. Same facts as in paragraph i. above except that on September 17 of year two (which is 45 days before expiration of the 18% non-variable rate), the savings association provides a notice pursuant to 12 CFR 226.9(c) informing the consumer that, on November 2, a new variable rate will apply to new purchases and any remaining portion of the $1,000 balance (calculated by using the same index and a reduced margin of 10 percentage points). The notice further states that, on May 1 of year three, the margin will increase to the margin disclosed at account opening (12 percentage points). On May 1 of year three, § 535.24(b)(3) permits the savings association to increase the margin used to determine the variable rate that applies to new purchases to 12 percentage points and to apply that rate to any remaining portion of the $1,000 purchase as well as to new purchases. *See* comment 24(b)(1)–3. The savings association is not permitted to apply this rate to any remaining portion of the $2,200 purchase balance as of March 22.

24(b)(5) Workout Arrangement Exception

1. *Scope of exception.* Nothing in § 535.24(b)(5) permits a savings association to alter the requirements of § 535.24 pursuant to a workout arrangement between a consumer and the savings association. For example, a savings association cannot increase an annual percentage rate pursuant to a workout arrangement unless otherwise permitted by § 535.24. In addition, a savings association cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under § 535.24(c).

2. *Variable annual percentage rates.* If the annual percentage rate that applied to a category of transactions prior to commencement of the workout arrangement varied with an index consistent with § 535.24(b)(2), the rate applied to that category of transactions following an increase pursuant to § 535.24(b)(5) must be determined using the same formula (index and margin).

3. *Example.* Assume that, consistent with § 535.24(b)(4), the margin used to determine a variable annual percentage rate that applies to a $5,000 balance is increased from 5 percentage points to 15 percentage points. Assume also that the savings association and the consumer subsequently agree to a workout arrangement that reduces the margin back to 5 points on the condition that the consumer pay a specified amount by the payment due date each month. If the consumer does not pay the agreed-upon amount by the payment due date, the savings association may increase the margin for the variable rate that applies to the $5,000 balance up to 15 percentage points. 12 CFR 226.9 does not require advance notice of this type of increase.

24(c) Treatment of Protected Balances

1. *Protected balances.* Because rates cannot be increased pursuant to § 535.24(b)(3) during the first year after account opening, § 535.24(c) does not apply to balances during the first year. Instead, the requirements in § 535.24(c) apply only to ''protected balances,'' which are amounts owed for a category of transactions to which an increased annual percentage rate cannot be applied after the rate for that category of transactions has been increased pursuant to § 535.24(b)(3). For example, assume that, on March 15 of year two, an account has a purchase balance of $1,000 at a non-variable rate of 12% and that, on March 16, the savings association sends a notice pursuant to 12 CFR 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 15% on May 2. On March 20, the consumer makes a $100 purchase. On March 24, the consumer makes a $150 purchase. On May 2, § 535.24(b)(3) permits the savings association to start charging interest at 15% on the $150 purchase made on March 24 but does not permit the savings association to apply that 15% rate to the $1,100 purchase balance as of March 23. Accordingly, § 535.24(c) applies to the $1,100 purchase balance as of March 23 but not the $150 purchase made on March 24.

24(c)(1) Repayment

1. *No less beneficial to the consumer.* A savings association may provide a method of repaying the protected balance that is different from the methods listed in § 535.24(c)(1) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method amortizes the protected balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 535.24(c)(1)(ii). For example, a savings association could increase the percentage of the protected balance included in the required minimum periodic payment from 2% to 5% so long as doing so would not result in amortization of the protected balance in less than five years. Alternatively, a savings association could require a consumer to make a minimum payment that amortizes the protected balance in less than five years so long as the payment does not include a percentage of the balance that is more than twice the percentage included in the minimum payment before the effective date of the increased rate. For example, a savings association could require the consumer to make a minimum payment that amortizes the protected balance in four years so long as doing so would not more than double the percentage of the balance included in the minimum payment prior to the effective date of the increased rate.

2. *Lower limit for required minimum periodic payment.* If the required minimum periodic payment under § 535.24(c)(1)(i) or (c)(1)(ii) is less than the lower dollar limit for minimum payments established in the cardholder agreement before the effective date of the rate increase, the savings association may set the minimum payment consistent with that limit. For example, if at account opening the cardholder agreement stated that the required minimum periodic payment would be either the total of fees and interest charges plus 1% of the total amount owed or $20 (whichever is greater), the savings association may require the consumer to make a minimum payment of $20 even if doing so would pay off the protected balance in less than five years or constitute more than 2% of the protected balance plus fees and interest charges.

Paragraph 24(c)(1)(i)

1. *Amortization period starting from date on which increased rate becomes effective.* Section 535.24(c)(1)(i) provides for an amortization period for the protected balance of no less than five years, starting from the date on which the increased annual percentage rate becomes effective. A savings association is not required to recalculate the required minimum periodic payment for the protected balance if, during the amortization period, that balance is reduced as a result of the allocation of amounts paid by the consumer in excess of the minimum payment consistent with § 535.23 or any other practice permitted by these rules and other applicable law.

2. *Amortization when applicable annual percentage rate is variable.* If the annual percentage rate that applies to the protected balance varies with an index consistent with § 535.24(b)(2), the savings association may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the outstanding balance is amortized in five years. For example, assume that a variable rate that is currently 15% applies to a protected balance and that, in order to amortize that balance in five years, the required minimum periodic payment must include a specific amount of principal plus all accrued interest charges. If the 15% variable rate increases due to an increase in the index, the savings association may increase the required minimum periodic payment to include the additional interest charges.

Paragraph 24(c)(1)(ii)

1. *Required minimum periodic payment on other balances.* Section 535.24(c)(1)(ii) addresses the required minimum periodic payment on the protected balance. Section 535.24(c)(1)(ii) does not limit or otherwise address the savings association's ability to determine the amount of the required minimum periodic payment for other balances.

2. *Example.* Assume that the method used by a savings association to calculate the required minimum periodic payment for a consumer credit card account requires the consumer to pay either the total of fees and interest charges plus 1% of the total amount owed or $20, whichever is greater. Assume also that the account has a purchase balance of $2,000 at an annual percentage rate of 15% and a cash advance balance of $500 at an annual percentage rate of 20% and that the savings association increases the rate for purchases to 18% but does not increase the rate for cash advances. Under § 535.24(c)(1)(ii), the savings association may require the consumer to pay fees and interest plus 2% of the $2,000 purchase balance. Section 535.24(c)(1)(ii) does not prohibit the savings association from increasing the required minimum periodic payment for the cash advance balance.

24(c)(2) Fees and Charges

1. *Fee or charge based solely on the protected balance.* A savings association is prohibited from assessing a fee or charge based solely on balances to which § 535.24(c) applies. For example, a savings association is prohibited from assessing a monthly maintenance fee that would not be charged if the account did not have a protected balance. A savings association is not, however, prohibited from assessing fees such as late payment fees or fees for exceeding the credit limit even if such fees are based in part on the protected balance.

Section 535.25—Unfair Balance Computation Method

25(a) General Rule

1. *Two-cycle method prohibited.* When a consumer ceases to be eligible for a time period provided by the savings association within which the consumer may repay any portion of the credit extended without incurring a finance charge (a grace period), the savings association is prohibited from

computing the finance charge using the so-called two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance (including or excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

2. *Examples.*

i. Assume that the billing cycle on a consumer credit card account starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. Under the terms of the account, the consumer will not be charged interest on purchases if the balance at the end of a billing cycle is paid in full by the following payment due date. The consumer uses the credit card to make a $500 purchase on March 15. The consumer pays the balance for the February billing cycle in full on March 25. At the end of the March billing cycle (March 31), the consumer's balance consists only of the $500 purchase and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25). The consumer pays $400 on April 25, leaving a $100 balance. The savings association may charge interest on the $500 purchase from the start of the April billing cycle (April 1) through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 30). The savings association is prohibited, however, from reaching back and charging interest on the $500 purchase from the date of purchase (March 15) to the end of the March billing cycle (March 31).

ii. Assume the same circumstances as in the previous example except that the consumer does not pay the balance for the February billing cycle in full on March 25 and therefore, under the terms of the account, is not eligible for a time period within which to repay the $500 purchase without incurring a finance charge. With respect to the $500 purchase, the savings association may charge interest from the date of purchase (March 15) through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 30).

Section 535.26—Unfair Charging of Security Deposits and Fees for the Issuance or Availability of Credit to Consumer Credit Card Accounts

26(a) Limitation for First Year

1. *Majority of the credit limit.* The total amount of security deposits and fees for the issuance or availability of credit constitutes a majority of the initial credit limit if that total is greater than half of the limit. For example, assume that a consumer credit card account has an initial credit limit of $500. Under § 535.26(a), a savings association may charge to the account security deposits and fees for the issuance or availability of credit totaling no more than $250 during the first year (consistent with § 535.26(b)).

26(b) Limitations for First Billing Cycle and Subsequent Billing Cycles

1. *Adjustments of one dollar or less permitted.* When dividing amounts pursuant to § 535.26(b)(2), a savings association may adjust amounts by one dollar or less. For example, if a savings association is dividing $87 over five billing cycles, the savings association may charge $18 for two months and $17 for the remaining three months.

2. *Examples.*

i. Assume that a consumer credit card account opened on January 1 has an initial credit limit of $500. Assume also that the billing cycles for this account begin on the first day of the month and end on the last day of the month. Under § 535.26(a), the savings association may charge to the account no more than $250 in security deposits and fees for the issuance or availability of credit during the first year after the account is opened. If it charges $250, the savings association may charge up to $125 during the first billing cycle. If it charges $125 during the first billing cycle, it may then charge no more than $25 in each of the next five billing cycles. If it chooses, the savings association may spread the additional security deposits and fees over a longer period, such as by charging $12.50 in each of the ten billing cycles following the first billing cycle.

ii. Same facts as above except that on July 1 the savings association increases the credit limit on the account from $500 to $750. Because the prohibition in § 535.26(a) is based on the initial credit limit of $500, the increase in credit limit does not permit the savings association to charge to the account additional security deposits and fees for the issuance or availability of credit (such as a fee for increasing the credit limit).

26(c) Evasion Prohibited

1. *Evasion.* Section 535.26(c) prohibits a savings association from evading the requirements of this section by providing the consumer with additional credit to fund the consumer's payment of security deposits and fees that exceed the total amounts permitted by § 535.26(a) and (b). For example, assume that on January 1 a consumer opens a consumer credit card account with an initial credit limit of $400 and the savings association charges to that account $100 in fees for the issuance or availability of credit. Assume also that the billing cycles for the account coincide with the days of the month and that the savings association will charge $20 in fees for the issuance or availability of credit in the February, March, April, May, and June billing cycles. The savings association violates § 535.26(c) if it provides the consumer with a separate credit product to fund additional security deposits or fees for the issuance or availability of credit.

2. *Payment with funds not obtained from the savings association.* A savings association does not violate § 535.26(c) if it requires the consumer to pay security deposits or fees for the issuance or availability of credit using funds that are not obtained, directly or indirectly, from the savings association. For example, a savings association does not violate § 535.26(c) if a $400 security deposit paid by a consumer to obtain a consumer credit card account with a credit line of $400 is not charged to a credit account provided by the savings association or its affiliate.

26(d) Definitions

1. *Membership fees.* Membership fees for opening an account are fees for the issuance or availability of credit. A membership fee to join an organization that provides a credit or charge card as a privilege of membership is a fee for the issuance or availability of credit only if the card is issued automatically upon membership. If membership results merely in eligibility to apply for an account, then such a fee is not a fee for the issuance or availability of credit.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) are not fees for the issuance or availability of credit if the basic account may be opened without paying such fees. Issuing a card to each primary cardholder (not authorized users) is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, are fees for the issuance or availability of credit. Thus, a fee to obtain an additional card on the account beyond the first card (so that each cardholder would have his or her own card) is a fee for the issuance or availability of credit even if the fee is optional; that is, if the fee is charged only if the cardholder requests one or more additional cards.

3. *One-time fees.* Non-periodic fees related to opening an account (such as application fees or one-time membership or participation fees) are fees for the issuance or availability of credit. Fees for reissuing a lost or stolen card, statement reproduction fees, and fees for late payment or other violations of the account terms are examples of fees that are not fees for the issuance or availability of credit.

National Credit Union Administration

12 CFR Chapter VII

Authority and Issuance

■ For the reasons discussed in the joint preamble, NCUA revises part 706 of Title 12 of the Code of Federal Regulations to read as follows:

PART 706—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Subpart A—General Provisions

Subpart B—Consumer Credit Practices

Subpart C—Consumer Credit Card Account Practices Rule

Authority: 15 U.S.C. 57a.

Subpart A—General Provisions

§ 706.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by NCUA under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f) (section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93–637).

(b) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). Subparts B and C define and contain requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices of federal credit unions. The prohibitions in subparts B and C do not limit NCUA's authority to enforce the FTC Act with respect to any other unfair or deceptive acts or practices.

(c) *Scope.* This part applies to federal credit unions.

§§ 706.2–706.10 [Reserved]

Subpart B—Consumer Credit Practices

§ 706.11 Definitions.

For purposes of this subpart, the following definitions apply:

Consumer means a natural person member who seeks or acquires goods, services, or money for personal, family, or household purposes, other than for the purchase of real property, and who applies for or is extended *consumer credit.*

Consumer credit means credit extended to a natural person member for personal, family, or household purposes. It includes consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; overdraft loans; and credit cards. It also includes loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security but only if the federal credit union relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan.

Earnings means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

Obligation means an agreement between a consumer and a federal credit union.

Person means an individual, corporation, or other business organization.

§ 706.12 Unfair credit contract provisions.

It is an unfair act or practice for a federal credit union, directly or indirectly, to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation the federal credit union purchased, any of the following provisions:

(a) *Confession of judgment.* A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(b) *Waiver of exemption.* An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) *Assignment of wages.* An assignment of wages or other earnings unless:

(1) The assignment by its terms is revocable at the will of the debtor;

(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or

(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) *Security interest in household goods.* A nonpossessory security interest in household goods other than a purchase-money security interest. For purposes of this paragraph, *household goods*:

(1) Means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents.

(2) Does not include:

(i) Works of art;

(ii) Electronic entertainment equipment (except one television and one radio);

(iii) Antiques (any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character); or

(iv) Jewelry (other than wedding rings).

§ 706.13 Unfair or deceptive cosigner practices.

(a) *Prohibited deception.* It is a deceptive act or practice for a federal credit union, directly or indirectly in connection with the extension of credit to consumers, to misrepresent the nature or extent of cosigner liability to any person.

(b) *Prohibited unfairness.* It is an unfair act or practice for a federal credit union, directly or indirectly in connection with the extension of credit to consumers, to obligate a cosigner unless the cosigner is informed, before becoming obligated, of the nature of the cosigner's liability.

(c) *Disclosure requirement*—(1) *Disclosure statement.* A clear and conspicuous statement must be given in writing to the cosigner before becoming obligated. In the case of open-end credit, the disclosure statement must be given to the cosigner before the time that the cosigner becomes obligated for any fees or transactions on the account. The disclosure statement must contain the following statement or one that is substantially similar:

Notice of Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) *Compliance.* Compliance with paragraph (c)(1) of this section constitutes compliance with the consumer disclosure requirement in paragraph (b) of this section.

(3) *Additional content limitations.* If the notice is a separate document, nothing other than the following items may appear with the notice:

(i) The federal credit union's name and address;

(ii) An identification of the debt to be cosigned (*e.g.*, a loan identification number);

(iii) The date (of the transaction); and

(iv) The statement, ''This notice is not the contract that makes you liable for the debt.''

(d) *Cosigner defined*—(1) *Cosigner* means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

(2) *Cosigner* includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse or other person whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a cosigner, whether or not the person is designated as such on a credit obligation.

§ 706.14 Unfair late charges.

(a) *Prohibition.* In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a federal credit union, directly or indirectly, to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) *Collecting a debt defined. Collecting a debt* means, for the purposes of this section, any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

§§ 706.15–706.20 [Reserved]

Subpart C—Consumer Credit Card Account Practices Rule

§ 706.21 Definitions.

For purposes of this subpart, the following definitions apply:

Annual percentage rate means the product of multiplying each periodic rate for a balance or transaction on a consumer credit card account by the number of periods in a year. The term ''periodic rate'' has the same meaning as in 12 CFR 226.2.

Consumer means a natural person member to whom credit is extended under a consumer credit card account or a natural person who is a co-obligor or guarantor of a consumer credit card account.

Consumer credit card account means an account provided to a consumer primarily for personal, family, or household purposes under an open-end credit plan that is accessed by a credit card or charge card. The terms ''open-end credit,'' ''credit card,'' and ''charge card'' have the same meanings as in 12 CFR 226.2. The following are not consumer credit card accounts for purposes of this subpart:

(1) Home equity plans subject to the requirements of 12 CFR 226.5b that are accessible by a credit or charge card;

(2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; and

(4) Lines of credit accessed solely by account numbers.

§ 706.22 Unfair time to make payment.

(a) *General rule.* Except as provided in paragraph (c) of this section, a federal credit union must not treat a payment on a consumer credit card account as late for any purpose unless the consumer has been provided a reasonable amount of time to make the payment.

(b) *Compliance with general rule*—(1) *Establishing compliance.* A federal credit union must be able to establish that it has complied with paragraph (a) of this section.

(2) *Safe harbor.* A federal credit union complies with paragraph (a) of this section if it has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

(c) *Exception for grace periods.* Paragraph (a) of this section does not apply to any time period a federal credit union provides within which the consumer may repay any portion of the credit extended without incurring an additional finance charge.

§ 706.23 Unfair allocation of payments.

When different annual percentage rates apply to different balances on a consumer credit card account, a federal credit union must allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances using one of the following methods:

(a) *High-to-low method.* The amount paid by the consumer in excess of the required minimum periodic payment is allocated first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.

(b) *Pro rata method.* The amount paid by the consumer in excess of the required minimum periodic payment is allocated among the balances in the same proportion as each balance bears to the total balance.

§ 706.24 Unfair increases in annual percentage rates.

(a) *General rule.* At account opening, a federal credit union must disclose the annual percentage rates that will apply to each category of transactions on the consumer credit card account. A federal credit union must not increase the annual percentage rate for a category of transactions on any consumer credit card account except as provided in paragraph (b) of this section.

(b) *Exceptions.* The prohibition in paragraph (a) of this section on increasing annual percentage rates does not apply where an annual percentage rate may be increased pursuant to one of the exceptions in this paragraph.

(1) *Account opening disclosure exception.* An annual percentage rate for a category of transactions may be increased to a rate disclosed at account opening upon expiration of a period of time disclosed at account opening.

(2) *Variable rate exception.* An annual percentage rate for a category of transactions that varies according to an index that is not under the federal credit union's control and is available to the general public may be increased due to an increase in the index.

(3) *Advance notice exception.* An annual percentage rate for a category of transactions may be increased pursuant to a notice under 12 CFR 226.9(c) or (g) for transactions that occur more than seven days after provision of the notice. This exception does not permit an increase in any annual percentage rate during the first year after the account is opened.

(4) *Delinquency exception.* An annual percentage rate may be increased due to the federal credit union not receiving the consumer's required minimum periodic payment within 30 days after the due date for that payment.

(5) *Workout arrangement exception.* An annual percentage rate may be increased due to the consumer's failure to comply with the terms of a workout arrangement between the federal credit union and the consumer, provided that the annual percentage rate applicable to

a category of transactions following any such increase does not exceed the rate that applied to that category of transactions prior to commencement of the workout arrangement.

(c) *Treatment of protected balances.* For purposes of this paragraph, ''protected balance'' means the amount owed for a category of transactions to which an increased annual percentage rate cannot be applied after the rate for that category of transactions has been increased pursuant to paragraph (b)(3) of this section.

(1) *Repayment.* A federal credit union must provide the consumer with one of the following methods of repaying a protected balance or a method that is no less beneficial to the consumer than one of the following methods:

(i) An amortization period of no less than five years, starting from the date on which the increased rate becomes effective for the category of transactions; or

(ii) A required minimum periodic payment that includes a percentage of the protected balance that is no more than twice the percentage required before the date on which the increased rate became effective for the category of transactions.

(2) *Fees and charges.* A federal credit union must not assess any fee or charge based solely on a protected balance.

§ 706.25 Unfair balance computation method.

(a) *General rule.* Except as provided in paragraph (b) of this section, a federal credit union must not impose finance charges on balances on a consumer credit card account based on balances for days in billing cycles that precede the most recent billing cycle as a result of the loss of any time period provided by the federal credit union within which the consumer may repay any portion of the credit extended without incurring a finance charge.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under 12 CFR 226.12 or 12 CFR 226.13; or

(2) Adjustments to finance charges as a result of the return of a payment for insufficient funds.

§ 706.26 Unfair charging of security deposits and fees for the issuance or availability of credit to consumer credit card accounts.

(a) *Limitation for first year.* During the first year, a federal credit union must not charge to a consumer credit card account security deposits and fees for the issuance or availability of credit that in total constitute a majority of the initial credit limit for the account.

(b) *Limitations for first billing cycle and subsequent billing cycles*—(1) *First billing cycle.* During the first billing cycle, the federal credit union must not charge to a consumer credit card account security deposits and fees for the issuance or availability of credit that in total constitute more than 25 percent of the initial credit limit for the account.

(2) *Subsequent billing cycles.* Any additional security deposits and fees for the issuance or availability of credit permitted by paragraph (a) of this section must be charged to the account in equal portions in no fewer than the five billing cycles immediately following the first billing cycle.

(c) *Evasion prohibited.* A federal credit union must not evade the requirements of this section by providing the consumer additional credit to fund the payment of security deposits and fees for the issuance or availability of credit that exceed the total amounts permitted by paragraphs (a) and (b) of this section.

(d) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Fees for the issuance or availability of credit* means:

(i) Any annual or other periodic fee that may be imposed for the issuance or availability of a consumer credit card account, including any fee based on account activity or inactivity; and

(ii) Any non-periodic fee that relates to opening an account.

(2) *First billing cycle* means the first billing cycle after a consumer credit card account is opened.

(3) *First year* means the period beginning with the date on which a consumer credit card account is opened and ending twelve months from that date.

(4) *Initial credit limit* means the credit limit in effect when a consumer credit card account is opened.

Appendix A to Part 706—Official Staff Commentary

Subpart A—General Provisions for Consumer Protection Rules

Section 706.1—Authority, Purpose, and Scope

1(c) Scope

1. *Penalties for noncompliance.* Administrative enforcement of the rule for federal credit unions may involve actions under section 206 of the Federal Credit Union Act (12 U.S.C. 1786), including cease-and-desist orders requiring that actions be taken to remedy violations and civil money penalties.

Subpart C—Consumer Credit Card Account Practices Rule

Section 706.22—Unfair Time To Make Payment

22(a) General Rule

1. *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, or assessing a late fee or any other fee based on the consumer's failure to make a payment within the amount of time provided to make that payment under this section.

2. *Reasonable amount of time to make payment.* Whether an amount of time is reasonable for purposes of making a payment is determined from the perspective of the consumer, not the federal credit union. Under § 706.22(b)(2), a federal credit union provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

22(b) Compliance With General Rule

1. *Reasonable procedures.* A federal credit union is not required to determine the specific date on which periodic statements are mailed or delivered to each consumer. A federal credit union provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period in § 706.24(b)(2) when determining the payment due date. For example, if a federal credit union has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date on the periodic statement must be no less than 24 days after the closing date of the billing cycle.

2. *Payment due date.* For purposes of § 706.22(b)(2), ''payment due date'' means the date by which a federal credit union requires the consumer to make the required minimum periodic payment in order to avoid being treated as late for any purpose, except as provided in § 706.22(c).

3. *Example of alternative method of compliance.* Assume that, for a particular type of consumer credit card account, a federal credit union only provides periodic statements electronically and only accepts payments electronically, consistent with applicable law and regulatory guidance. Under these circumstances, the federal credit union could comply with § 706.22(a) even if it does not provide periodic statements 21 days before the payment due date consistent with § 706.22(b)(2).

Section 706.23—Unfair Allocation of Payments

1. *Minimum periodic payment.* Section 706.23 addresses the allocation of amounts paid by a consumer in excess of the minimum periodic payment required by a

federal credit union. Section 706.23 does not limit or otherwise address a federal credit union's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. A federal credit union may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in § 706.23 to the extent consistent with other applicable law or regulatory guidance.

2. *Adjustments of one dollar or less permitted.* When allocating payments, a federal credit union may adjust amounts by one dollar or less. For example, if a federal credit union is allocating $100 pursuant to § 706.23(b) among balances of $1,000, $2,000, and $4,000, the federal credit union may apply $14 to the $1,000 balance, $29 to the $2,000 balance, and $57 to the $4,000 balance.

3. *Applicable balances and annual percentage rates.* Section 706.23 permits a federal credit union to allocate an amount paid by the consumer in excess of the required minimum periodic payment based on the balances and annual percentage rates on the date the preceding billing cycle ends, on the date the payment is credited to the account, or on any day between those two dates. For example, assume that the billing cycles for a consumer credit card account start on the first day of the month and end on the last day of the month. On the date the March billing cycle ends, March 31, the account has a purchase balance of $500 at a variable annual percentage rate of 10% and a cash advance balance of $200 at a variable annual percentage rate of 13%. On April 1, the rate for purchases increases to 13% and the rate for cash advances increases to 15% consistent with § 706.24(b)(2). On April 15, the purchase balance increases to $700. On April 25, the federal credit union credits to the account $400 paid by the consumer in excess of the required minimum periodic payment. Under § 706.23, the federal credit union may allocate the $400 based on the balances in existence and rates in effect on any day from March 31 through April 25.

4. *Use of permissible allocation methods.* A federal credit union is not prohibited from changing the allocation method for a consumer credit card account or from using different allocation methods for different consumer credit card accounts, so long as the methods used are consistent with § 706.23. For example, a federal credit union may change from allocating to the highest rate balance first pursuant to § 706.23(a) to allocating pro rata pursuant to § 706.23(b) or vice versa. Similarly, a federal credit union may allocate to the highest rate balance first pursuant to § 706.23(a) on some of its accounts and allocate pro rata pursuant to § 706.23(b) on other accounts.

5. *Claims or defenses under Regulation Z, 12 CFR 226.12(c).* When a consumer has asserted a claim or defense against the card issuer pursuant to 12 CFR 226.12(c), a federal credit union must allocate consistent with 12 CFR 226.12 comment 226.12(c)–4.

6. *Balances with the same annual percentage 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, § 706.23 does not require that a federal credit union use any particular method when allocating among the balances with the same annual percentage rate. Under these circumstances, a federal credit union may treat the balances with the same rate as a single balance or separate balances. *See* comments 23(a)–1.iv and 23(b)–2.iv.

23(a) High-to-Low Method

1. *Examples.* For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed, unless otherwise stated.

i. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 15% and a purchase balance of $1,500 at an annual percentage rate of 10% and that the consumer pays $800 in excess of the required minimum periodic payment. A federal credit union using this method would allocate $500 to pay off the cash advance balance and then allocate the remaining $300 to the purchase balance.

ii. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 15% and a purchase balance of $1,500 at an annual percentage rate of 10% and that the consumer pays $400 in excess of the required minimum periodic payment. A federal credit union using this method would allocate the entire $400 to the cash advance balance.

iii. Assume that a consumer's account has a cash advance balance of $100 at an annual percentage rate of 15%, a purchase balance of $300 at an annual percentage rate of 13%, and a $600 protected balance on which the 10% annual percentage rate cannot be increased pursuant to § 706.24. If the consumer pays $500 in excess of the required minimum periodic payment, a federal credit union using this method would allocate $100 to pay off the cash advance balance, $300 to pay off the purchase balance, and $100 to the protected balance.

iv. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 15%, a purchase balance of $1,000 at an annual percentage rate of 12%, and a transferred balance of $2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 12%. Assume also that the consumer pays $800 in excess of the required minimum periodic payment. A federal credit union using this method would allocate $500 to pay off the cash advance balance and allocate the remaining $300 among the purchase balance and the transferred balance in the manner the federal credit union deems appropriate.

23(b) Pro Rata Method

1. *Total balance.* A federal credit union may, but is not required to, deduct amounts paid by the consumer's required minimum periodic payment when calculating the total balance for purposes of § 706.23(b)(3). *See* comment 23(b)–2.iii.

2. *Examples.* For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed, unless otherwise stated, and that the amounts allocated to each balance are rounded to the nearest dollar.

i. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 15% and a purchase balance of $1,500 at an annual percentage rate of 12% and that the consumer pays $555 in excess of the required minimum periodic payment. A federal credit union using this method would allocate 25% of the amount ($139) to the cash advance balance and 75% of the amount ($416) to the purchase balance.

ii. Assume that a consumer's account has a cash advance balance of $100 at an annual percentage rate of 15%, a purchase balance of $300 at an annual percentage rate of 13%, and a $600 protected balance on which the 10% annual percentage rate cannot be increased pursuant to § 706.24. If the consumer pays $130 in excess of the required minimum periodic payment, a federal credit union using this method would allocate 10% of the amount ($13) to the cash advance balance, 30% of the amount ($39) to the purchase balance, and 60% of the amount ($78) to the protected balance.

iii. Assume that a consumer's account has a cash advance balance of $300 at an annual percentage rate of 15% and a purchase balance of $600 at an annual percentage rate of 13%. Assume also that the required minimum periodic payment is $50 and that the federal credit union allocates this payment first to the balance with the lowest annual percentage rate, the $600 purchase balance. If the consumer pays $300 in excess of the $50 minimum payment, a federal credit union using this method could allocate based on a total balance of $850, consisting of the $300 cash advance balance plus the $550 purchase balance after application of the $50 minimum payment. In this case, the federal credit union would apply 35% of the $300 ($105) to the cash advance balance and 65% of that amount ($195) to the purchase balance. In the alternative, the federal credit union could allocate based on a total balance of $900, which does not reflect the $50 minimum payment. In that case, the federal credit union would apply one-third of the $300 excess payment ($100) to the cash advance balance and two-thirds ($200) to the purchase balance.

iv. Assume that a consumer's account has a cash advance balance of $500 at an annual percentage rate of 15%, a purchase balance of $1,000 at an annual percentage rate of 12%, and a transferred balance of $2,000 that was previously at a discounted annual percentage rate of 5%, but is now at an annual percentage rate of 12%. Assume also that the consumer pays $800 in excess of the required minimum periodic payment. A federal credit union using this method would allocate 14% of the excess payment ($112) to the cash advance balance and allocate the remaining 86% ($688) among the purchase balance and the transferred balance in the manner the federal credit union deems appropriate.

Section 706.24—Unfair Increases in Annual Percentage Rates

1. *Relationship to Regulation Z, 12 CFR part 226.* A federal credit union that complies with the applicable disclosure

requirements in Regulation Z, 12 CFR part 226, has complied with the disclosure requirements in § 706.24. *See* 12 CFR 226.5a, 226.6, 226.9. For example, a federal credit union may comply with the requirement in § 706.24(a) to disclose at account opening the annual percentage rates that will apply to each category of transactions by complying with the disclosure requirements in 12 CFR 226.5a regarding applications and solicitations and the requirements in 12 CFR 226.6 regarding account-opening disclosures. Similarly, in order to increase an annual percentage rate on new transactions pursuant to § 706.24(b)(3), a federal credit union must comply with the disclosure requirements in 12 CFR 226.9(c) or (g). However, nothing in § 706.24 alters the requirements in 12 CFR 226.9(c) and (g) that creditors provide consumers with written notice at least 45 days prior to the effective date of certain increases in the annual percentage rates on open-end (not home-secured) credit plans.

24(a) General Rule

1. *Rates that will apply to each category of transactions.* Section 706.24(a) requires federal credit unions to disclose, at account opening, the annual percentage rates that will apply to each category of transactions on the account. A federal credit union cannot satisfy this requirement by disclosing at account opening only a range of rates or that a rate will be ''up to'' a particular amount.

2. *Application of prohibition on increasing rates.* Section 706.24(a) prohibits federal credit unions from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in § 706.24(b). The following examples illustrate the application of the rule:

i. Assume that, at account opening on January 1 of year one, a federal credit union discloses that the annual percentage rate for purchases is a non-variable rate of 1% and will apply for six months. The federal credit union also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 9% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the federal credit union's control. Finally, the federal credit union discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

A. On January 15, the consumer uses the account to make a $2,000 purchase and a $500 cash advance. No other transactions are made on the account. At the start of each quarter, the federal credit union adjusts the variable rate that applies to the $500 cash advance consistent with changes in the index, pursuant to § 706.24(b)(2). All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the federal credit union on May 28. The federal credit union is prohibited by § 706.24 from increasing the rates that apply to the $2,000 purchase, the $500 cash advance, or future purchases and cash advances. Six months after account opening, July 1, the federal credit union applies the previously-disclosed variable rate determined using an 8-point margin pursuant to § 706.24(b)(1). Because no other increases in rate were disclosed at account opening, the federal credit union may not subsequently increase the variable rate that applies to the $2,000 purchase and the $500 cash advance, except due to increases in the index pursuant to § 706.24(b)(2). On November 16, the federal credit union provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two, calculated using the same index and an increased margin of 12 percentage points. On January 1 of year two, the federal credit union increases the margin used to determine the variable rate that applies to new purchases to 12 percentage points pursuant to § 706.24(b)(3). On January 15 of year two, the consumer makes a $300 purchase. The federal credit union applies the variable rate determined using the 12-point margin to the $300 purchase but not the $2,000 purchase.

B. Same facts as above, except that the required minimum periodic payment due on May 25 of year one is not received by the federal credit union until June 30 of year one. Because the federal credit union received the required minimum periodic payment more than 30 days after the payment due date, § 706.24(b)(4) permits the federal credit union to increase the annual percentage rate applicable to the $2,000 purchase, the $500 cash advance, and future purchases and cash advances. However, the federal credit union must first comply with the notice requirements in 12 CFR 226.9(g). Thus, if the federal credit union provided a 12 CFR 226.9(g) notice on June 25 stating that all rates on the account would be increased to a non-variable penalty rate of 15%, the federal credit union could apply that 15% rate beginning on August 9, to all balances and future transactions.

ii. Assume that, at account opening on January 1 of year one, a federal credit union discloses that the annual percentage rate for purchases will increase as follows: A non-variable rate of 3% for six months; a non-variable rate of 8% for an additional six months; and thereafter a variable rate that is currently 13% and will be adjusted monthly by adding a margin of 5 percentage points to a publicly available index not under the federal credit union's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15, the consumer uses the account to make a $1,500 purchase. Six months after account opening, July 1, the federal credit union begins accruing interest on the $1,500 purchase at the previously disclosed 8% non-variable rate pursuant to § 706.24(b)(1). On September 15, the consumer uses the account for a $700 purchase. On November 16, the federal credit union provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two, calculated using the same index and an increased margin of 8 percentage points. One year after account opening, January 1 of year two, the federal credit union begins accruing interest on the $2,200 purchase balance at the previously disclosed variable rate determined using a 5-point margin pursuant to § 706.24(b)(1). Because the variable rate determined using the 8-point margin was not disclosed at account opening, the federal credit union may not apply that rate to the $2,200 purchase balance. Furthermore, because no other increases in rate were disclosed at account opening, the federal credit union may not subsequently increase the variable rate that applies to the $2,200 purchase balance (except due to increases in the index pursuant to § 706.24(b)(2)). The federal credit union may, however, apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two pursuant to § 706.24(b)(3).

iii. Assume that, at account opening on January 1 of year one, a federal credit union discloses that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly available index outside of the federal credit union's control. The federal credit union also discloses that, to the extent consistent with § 706.24 and other applicable law, a non-variable penalty rate of 15% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has a purchase balance of $1,000. On May 31, the creditor provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on July 16 for all purchases made on or after June 8, calculated by using the same index and an increased margin of 8 percentage points. On June 7, the consumer makes a $500 purchase. On June 8, the consumer makes a $200 purchase. On June 25, the federal credit union has not received the payment due on June 15, and provides the consumer with a notice pursuant to 12 CFR 226.9(g) stating that the penalty rate of 15% will apply as of August 9, to all transactions made on or after July 2. On July 4, the consumer makes a $300 purchase.

A. The payment due on June 15 of year two is received on June 25. On July 17, § 706.24(b)(3) permits the federal credit union to apply the variable rate determined using the 8-point margin to the $200 purchase made on June 8 but does not permit the federal credit union to apply this rate to the $1,500 purchase balance. On August 9, § 706.24(b)(3) permits the federal credit union to apply the 15% penalty rate to the $300 purchase made on July 4, but does not permit the federal credit union to apply this rate to the $1,500 purchase balance, which remains at the variable rate determined using the 6-point margin, or the $200 purchase, which remains at the variable rate determined using the 8-point margin.

B. Same facts as above, except the payment due on September 15 of year two is received on October 20. Section 706.24(b)(4) permits the federal credit union to apply the 15% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. However, in order to apply the 15% penalty rate to the entire $2,000 purchase balance, the federal credit union must provide an additional notice pursuant to 12 CFR 226.9(g). This notice must be sent no earlier than October 16, which is the first day the account became more than 30 days delinquent.

C. Same facts as paragraph A above, except the payment due on June 15 of year two is received on July 20. Section 706.24(b)(4) permits the federal credit union to apply the 15% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. Because the federal credit union provided a 12 CFR 226.9(g) notice on June 24 stating the 15% penalty rate, the federal credit union may apply the 15% penalty rate to all balances on the account as well as any future transactions on August 9, without providing an additional notice pursuant to 12 CFR 226.9(g).

24(b) Exceptions

24(b)(1) Account Opening Disclosure Exception

1. *Prohibited increases in rate.* Section § 706.24(b)(1) permits an increase in the annual percentage rate for a category of transactions to a rate disclosed at account opening upon expiration of a period of time that was also disclosed at account opening. Section 706.24(b)(1) does not permit application of increased rates that are disclosed at account opening but are contingent on a particular event or occurrence or may be applied at the federal credit union's discretion. The following examples illustrate rate increases that are not permitted by § 706.24(a):

i. Assume that a federal credit union discloses at account opening on January 1 of year one that a non-variable rate of 8% applies to purchases, but that all rates on an account may be increased to a non-variable penalty rate of 15% if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. On March 1, the account has a $2,000 purchase balance. The payment due on March 15 is not received until March 20. Section 706.24 does not permit the federal credit union to apply the 15% penalty rate to the $2,000 purchase balance. However, pursuant to § 706.24(b)(3), the federal credit union could provide a 12 CFR 226.9(c) or (g) notice on November 16, informing the consumer that, on January 1 of year two, the 15% rate (or a different rate) will apply to new transactions.

ii. Assume that a federal credit union discloses at account opening on January 1 of year one that a non-variable rate of 5% applies to transferred balances but that this rate will increase to a non-variable rate of 15% if the consumer does not use the account for at least $200 in purchases each billing cycle. On July 1, the consumer transfers a balance of $4,000 to the account. During the October billing cycle, the consumer uses the account for $150 in purchases. Section 706.24 does not permit the federal credit union to apply the 15% rate to the $4,000 transferred balance. However, pursuant to § 706.24(b)(3), the federal credit union could provide a 12 CFR 226.9(c) or (g) notice on November 16 informing the consumer that, on January 1 of year two, the 15% rate, or a different rate, will apply to new transactions.

iii. Assume that a federal credit union discloses at account opening on January 1 of year one that interest on purchases will be deferred for one year, although interest will accrue on purchases during that year at a non-variable rate of 15%. The federal credit union further discloses that, if all purchases made during year one are not paid in full by the end of that year, the federal credit union will begin charging interest on the purchase balance and new purchases at 15% and will retroactively charge interest on the purchase balance at a rate of 15% starting on the date of each purchase made during year one. On January 1 of year one, the consumer makes a purchase of $1,500. No other transactions are made on the account. On January 1 of year two, $500 of the $1,500 purchase remains unpaid. Section 706.24 does not permit the federal credit union to reach back to charge interest on the $1,500 purchase from January 1 through December 31 of year one. However, the federal credit union may apply the previously disclosed 15% rate to the $500 purchase balance beginning on January 1 of year two pursuant to § 706.24(b)(1).

2. *Loss of grace period.* Nothing in § 706.24 prohibits a federal credit union from assessing interest due to the loss of a grace period to the extent consistent with § 706.25.

3. *Application of rate that is lower than disclosed rate.* Section 706.24(b)(1) permits an increase in the annual percentage rate for a category of transactions to a rate disclosed at account opening upon expiration of a period of time that was also disclosed at account opening. Nothing in § 706.24 prohibits a federal credit union from applying a rate that is lower than the disclosed rate upon expiration of the period. However, if a lower rate is applied to an existing balance, the federal credit union cannot subsequently increase the rate on that balance unless it has provided the consumer with advance notice of the increase pursuant to 12 CFR 226.9(c). Furthermore, the federal credit union cannot increase the rate on that existing balance to a rate that is higher than the increased rate disclosed at account opening. The following example illustrates the application of this rule:

i. Assume that, at account opening on January 1 of year one, a federal credit union discloses that a non-variable annual percentage rate of 5% will apply to purchases for one year and discloses that, after the first year, the federal credit union will apply a variable rate that is currently 15% and is determined by adding a margin of 10 percentage points to a publicly available index not under the federal credit union's control. On December 31 of year one, the account has a purchase balance of $3,000.

A. On November 16 of year one, the federal credit union provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two, calculated using the same index and a reduced margin of 8 percentage points. The notice further states that, on July 1 of year two, the margin will increase to the margin disclosed at account opening, 5 percentage points. On July 1 of year two, the federal credit union increases the margin used to determine the variable rate that applies to new purchases to 10 percentage points and applies that rate to any remaining portion of the $3,000 purchase balance pursuant to § 706.24(b)(1).

B. Same facts as above, except that the federal credit union does not send a notice on November 16 of year one. Instead, on January 1 of year two, the federal credit union lowers the margin used to determine the variable rate to 8 percentage points and applies that rate to the $3,000 purchase balance and to new purchases. 12 CFR 226.9 does not require advance notice in these circumstances. However, unless the account becomes more than 30 days delinquent, the federal credit union may not subsequently increase the rate that applies to the $3,000 purchase balance except due to increases in the index pursuant to § 706.24(b)(2).

24(b)(2) Variable Rate Exception

1. *Increases due to increase in index.* Section 706.24(b)(2) provides that an annual percentage rate for a category of transactions that varies according to an index that is not under the federal credit union's control and is available to the general public may be increased due to an increase in the index. This section does not permit a federal credit union to increase the annual percentage rate by changing the method used to determine a rate that varies with an index, such as by increasing the margin, even if that change will not result in an immediate increase.

2. *External index.* A federal credit union may increase the annual percentage rate if the increase is based on an index or indices outside the federal credit union's control. A federal credit union may not increase the rate based on its own prime rate or cost of funds. A federal credit union is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal*, even if the federal credit union's own prime rate is one of several rates used to establish the published rate.

3. *Publicly available.* The index or indices must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain, by telephone, for example, and use to verify the rate applied to the outstanding balance.

4. *Changing a non-variable rate to a variable rate.* Section 706.24 generally prohibits a federal credit union from changing a non-variable annual percentage rate to a variable rate because such a change can result in an increase in rate. However, § 706.24(b)(1) permits a federal credit union to change a non-variable rate to a variable rate if the change was disclosed at account opening. Furthermore, following the first year after the account is opened, § 706.24(b)(3) permits a federal credit union to change a non-variable rate to a variable rate with respect to new transactions, after complying with the notice requirements in 12 CFR 226.9(c) or (g). Finally, § 706.24(b)(4) permits a federal credit union to change a

non-variable rate to a variable rate if the required minimum periodic payment is not received within 30 days of the payment due date, after complying with the notice requirements in 12 CFR 226.9(g).

5. *Changing a variable annual percentage rate to a non-variable annual percentage rate.* Nothing in § 706.24 prohibits a federal credit union from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the federal credit union provides the notice required by 12 CFR 226.9(c). For example, assume that on March 1 a variable rate that is currently 15% applies to a balance of $2,000 and the federal credit union sends a notice pursuant to 12 CFR 226.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 17. On April 17, the federal credit union may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

6. *Substitution of index.* A federal credit union may change the index and margin used to determine the annual percentage rate under § 706.24(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

24(b)(3) Advance Notice Exception

1. *First year after the account is opened.* A federal credit union may not increase an annual percentage rate pursuant to § 706.24(b)(3) during the first year after the account is opened. This limitation does not apply to accounts opened prior to July 1, 2010.

2. *Transactions that occur more than seven days after notice provided.* Section 706.24(b)(3) generally prohibits a federal credit union from applying an increased rate to transactions that occur within seven days after provision of the 12 CFR 226.9(c) or (g) notice. This prohibition does not, however, apply to transactions that are authorized within seven days after provision of the 12 CFR 226.9(c) or (g) notice but are settled more than seven days after the notice was provided.

3. *Examples.*

i. Assume that a consumer credit card account is opened on January 1 of year one. On March 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 5%. On March 15, the federal credit union provides a notice pursuant to 12 CFR 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 15% on May 1. The notice further states that the 5% rate will apply for six months until November 1, and states that thereafter the federal credit union will apply a variable rate that is currently 15% and is determined by adding a margin of 10 percentage points to a publicly-available index that is not under the federal credit union's control. The seventh day after provision of the notice is March 22 and, on that date, the consumer makes a $200 purchase. On March 24, the consumer makes a $1,000 purchase. On May 1, § 706.24(b)(3) permits the federal credit union to begin accruing interest at 15% on the $1,000 purchase made on March 24. The federal credit union is not permitted to apply the 15% rate to the $2,200 purchase balance as of March 22. After six months, November 2, the federal credit union may begin accruing interest on any remaining portion of the $1,000 purchase at the previously-disclosed variable rate determined using the 10-point margin.

ii. Same facts as above except that the $200 purchase is authorized by the federal credit union on March 22 but is not settled until March 23. On May 1, § 706.24(b)(3) permits the federal credit union to start charging interest at 15% on both the $200 purchase and the $1,000 purchase. The federal credit union is not permitted to apply the 15% rate to the $2,000 purchase balance as of March 22.

iii. Same facts as in paragraph i above, except that on September 17 of year two, which is 45 days before expiration of the 18% non-variable rate, the federal credit union provides a notice pursuant to 12 CFR 226.9(c) informing the consumer that, on November 2, a new variable rate will apply to new purchases and any remaining portion of the $1,000 balance, calculated by using the same index and a reduced margin of 10 percentage points. The notice further states that, on May 1 of year three, the margin will increase to the margin disclosed at account opening, 12 percentage points. On May 1 of year three, § 706.24(b)(3) permits the federal credit union to increase the margin used to determine the variable rate that applies to new purchases to 12 percentage points and to apply that rate to any remaining portion of the $1,000 purchase as well as to new purchases. *See* comment 24(b)(1)–3. The federal credit union is not permitted to apply this rate to any remaining portion of the $2,200 purchase balance as of March 22.

24(b)(5) Workout Arrangement Exception

1. *Scope of exception.* Nothing in § 706.24(b)(5) permits a federal credit union to alter the requirements of § 706.24 pursuant to a workout arrangement between a consumer and the federal credit union. For example, a federal credit union cannot increase an annual percentage rate pursuant to a workout arrangement unless otherwise permitted by § 706.24. In addition, a federal credit union cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under § 706.24(c).

2. *Variable annual percentage rates.* If the annual percentage rate that applied to a category of transactions prior to commencement of the workout arrangement varied with an index consistent with § 706.24(b)(2), the rate applied to that category of transactions following an increase pursuant to § 706.24(b)(5) must be determined using the same formula, index and margin.

3. *Example.* Assume that, consistent with § 706.24(b)(4), the margin used to determine a variable annual percentage rate that applies to a $5,000 balance is increased from 5 percentage points to 15 percentage points. Assume also that the federal credit union and the consumer subsequently agree to a workout arrangement that reduces the margin back to 5 points on the condition that the consumer pay a specified amount by the payment due date each month. If the consumer does not pay the agreed-upon amount by the payment due date, the federal credit union may increase the margin for the variable rate that applies to the $5,000 balance up to 15 percentage points. 12 CFR 226.9 does not require advance notice of this type of increase.

24(c) Treatment of Protected Balances

1. *Protected balances.* Because rates cannot be increased pursuant to § 706.24(b)(3) during the first year after account opening, § 706.24(c) does not apply to balances during the first year. Instead, the requirements in § 706.24(c) apply only to ''protected balances,'' which are amounts owed for a category of transactions to which an increased annual percentage rate cannot be applied after the rate for that category of transactions has been increased pursuant to § 706.24(b)(3). For example, assume that, on March 15 of year two, an account has a purchase balance of $1,000 at a non-variable rate of 12% and that, on March 16, the federal credit union sends a notice pursuant to 12 CFR 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 15% on May 2. On March 20, the consumer makes a $100 purchase. On March 24, the consumer makes a $150 purchase. On May 2, § 706.24(b)(3) permits the federal credit union to start charging interest at 15% on the $150 purchase made on March 24 but does not permit the federal credit union to apply that 15% rate to the $1,100 purchase balance as of March 23. Accordingly, § 706.24(c) applies to the $1,100 purchase balance as of March 23 but not the $150 purchase made on March 24.

24(c)(1) Repayment

1. *No less beneficial to the consumer.* A federal credit union may provide a method of repaying the protected balance that is different from the methods listed in § 706.24(c)(1) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method amortizes the protected balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 706.24(c)(1)(ii). For example, a federal credit union could increase the percentage of the protected balance included in the required minimum periodic payment from 2% to 5% so long as doing so would not result in amortization of the protected balance in less than five years. Alternatively, a federal credit union could require a consumer to make a minimum payment that amortizes the protected balance

in less than five years so long as the payment does not include a percentage of the balance that is more than twice the percentage included in the minimum payment before the effective date of the increased rate. For example, a federal credit union could require the consumer to make a minimum payment that amortizes the protected balance in four years so long as doing so would not more than double the percentage of the balance included in the minimum payment prior to the effective date of the increased rate.

2. *Lower limit for required minimum periodic payment.* If the required minimum periodic payment under § 706.24(c)(1)(i) or (c)(1)(ii) is less than the lower dollar limit for minimum payments established in the cardholder agreement before the effective date of the rate increase, the federal credit union may set the minimum payment consistent with that limit. For example, if at account opening the cardholder agreement stated that the required minimum periodic payment would be either the total of fees and interest charges plus 1% of the total amount owed or $20, whichever is greater, the federal credit union may require the consumer to make a minimum payment of $20 even if doing so would pay off the protected balance in less than five years or constitute more than 2% of the protected balance plus fees and interest charges.

Paragraph 24(c)(1)(i)

1. *Amortization period starting from date on which increased rate becomes effective.* Section 706.24(c)(1)(i) provides for an amortization period for the protected balance of no less than five years, starting from the date on which the increased annual percentage rate becomes effective. A federal credit union is not required to recalculate the required minimum periodic payment for the protected balance if, during the amortization period, that balance is reduced as a result of the allocation of amounts paid by the consumer in excess of the minimum payment consistent with § 706.23 or any other practice permitted by these rules and other applicable law.

2. *Amortization when applicable annual percentage rate is variable.* If the annual percentage rate that applies to the protected balance varies with an index consistent with § 706.24(b)(2), the federal credit union may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the outstanding balance is amortized in five years. For example, assume that a variable rate that is currently 10% applies to a protected balance and that, in order to amortize that balance in five years, the required minimum periodic payment must include a specific amount of principal plus all accrued interest charges. If the 10% variable rate increases due to an increase in the index, the federal credit union may increase the required minimum periodic payment to include the additional interest charges.

Paragraph 24(c)(1)(ii)

1. *Required minimum periodic payment on other balances.* Section 706.24(c)(1)(ii) addresses the required minimum periodic payment on the protected balance. Section 706.24(c)(1)(ii) does not limit or otherwise address the federal credit union's ability to determine the amount of the required minimum periodic payment for other balances.

2. *Example.* Assume that the method used by a federal credit union to calculate the required minimum periodic payment for a consumer credit card account requires the consumer to pay either the total of fees and interest charges plus 1% of the total amount owed or $20, whichever is greater. Assume also that the account has a purchase balance of $2,000 at an annual percentage rate of 10% and a cash advance balance of $500 at an annual percentage rate of 15% and that the federal credit union increases the rate for purchases to 15%, but does not increase the rate for cash advances. Under § 706.24(c)(1)(ii), the federal credit union may require the consumer to pay fees and interest plus 2% of the $2,000 purchase balance. Section 706.24(c)(1)(ii) does not prohibit the federal credit union from increasing the required minimum periodic payment for the cash advance balance.

24(c)(2) Fees and Charges

1. *Fee or charge based solely on the protected balance.* A federal credit union is prohibited from assessing a fee or charge based solely on balances to which § 706.24(c) applies. For example, a federal credit union is prohibited from assessing a monthly maintenance fee that would not be charged if the account did not have a protected balance. A federal credit union is not, however, prohibited from assessing fees such as late payment fees or fees for exceeding the credit limit even if such fees are based in part on the protected balance.

Section 706.25—Unfair Balance Computation Method

25(a) General Rule

1. *Two-cycle method prohibited.* When a consumer ceases to be eligible for a time period provided by the federal credit union within which the consumer may repay any portion of the credit extended without incurring a finance charge, a grace period, the federal credit union is prohibited from computing the finance charge using the so-called two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance, including or excluding new purchases and deducting payments and credits, for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

2. *Examples.*

i. Assume that the billing cycle on a consumer credit card account starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. Under the terms of the account, the consumer will not be charged interest on purchases if the balance at the end of a billing cycle is paid in full by the following payment due date. The consumer uses the credit card to make a $500 purchase on March 15. The consumer pays the balance for the February billing cycle in full on March 25. At the end of the March billing cycle, March 31, the consumer's balance consists only of the $500 purchase and the consumer will not be charged interest on that balance if it is paid in full by the following due date, April 25. The consumer pays $400 on April 25, leaving a $100 balance. The federal credit union may charge interest on the $500 purchase from the start of the April billing cycle, April 1, through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle, April 30. The federal credit union is prohibited, however, from reaching back and charging interest on the $500 purchase from the date of purchase, March 15 to the end of the March billing cycle, March 31.

ii. Assume the same circumstances as in the previous example except that the consumer does not pay the balance for the February billing cycle in full on March 25 and therefore, under the terms of the account, is not eligible for a time period within which to repay the $500 purchase without incurring a finance charge. With respect to the $500 purchase, the federal credit union may charge interest from the date of purchase, March 15, through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle, April 30.

Section 706.26—Unfair Charging of Security Deposits and Fees for the Issuance or Availability of Credit to Consumer Credit Card Accounts

26(a) Limitation for First Year

1. *Majority of the credit limit.* The total amount of security deposits and fees for the issuance or availability of credit constitutes a majority of the initial credit limit if that total is greater than half of the limit. For example, assume that a consumer credit card account has an initial credit limit of $500. Under § 706.26(a), a federal credit union may charge to the account security deposits and fees for the issuance or availability of credit totaling no more than $250 during the first year (consistent with § 706.26(b)).

26(b) Limitations for First Billing Cycle and Subsequent Billing Cycles

1. *Adjustments of one dollar or less permitted.* When dividing amounts pursuant to § 706.26(b)(2), a federal credit union may adjust amounts by one dollar or less. For example, if a federal credit union is dividing $87 over five billing cycles, the federal credit union may charge $18 for two months and $17 for the remaining three months.

2. *Examples.*

i. Assume that a consumer credit card account opened on January 1 has an initial credit limit of $500. Assume also that the billing cycles for this account begin on the first day of the month and end on the last day of the month. Under § 706.26(a), the federal credit union may charge to the account no more than $250 in security deposits and fees for the issuance or availability of credit during the first year after the account is opened. If it charges $250, the federal credit union may charge up to $125 during the first billing cycle. If it charges $125 during the first billing cycle, it may then charge no more than $25 in each of the next five billing cycles. If it chooses, the federal credit union may spread the additional security deposits and fees over a longer period, such as by charging $12.50 in each of the ten billing cycles following the first billing cycle.

ii. Same facts as above except that on July 1 the federal credit union increases the credit limit on the account from $500 to $750. Because the prohibition in § 706.26(a) is based on the initial credit limit of $500, the increase in credit limit does not permit the federal credit union to charge to the account additional security deposits and fees for the issuance or availability of credit, such as a fee for increasing the credit limit.

26(c) Evasion Prohibited

1. *Evasion.* Section 706.26(c) prohibits a federal credit union from evading the requirements of this section by providing the consumer with additional credit to fund the consumer's payment of security deposits and fees that exceed the total amounts permitted by § 706.26(a) and (b). For example, assume that on January 1 a consumer opens a consumer credit card account with an initial credit limit of $400 and the federal credit union charges to that account $100 in fees for the issuance or availability of credit. Assume also that the billing cycles for the account coincide with the days of the month and that the federal credit union will charge $20 in fees for the issuance or availability of credit in the February, March, April, May, and June billing cycles. The federal credit union violates § 706.26(c) if it provides the consumer with a separate credit product to fund additional security deposits or fees for the issuance or availability of credit.

2. *Payment with funds not obtained from the federal credit union.* A federal credit union does not violate § 706.26(c) if it requires the consumer to pay security deposits or fees for the issuance or availability of credit using funds that are not obtained, directly or indirectly, from the federal credit union. For example, a federal credit union does not violate § 706.26(c) if a $400 security deposit paid by a consumer to obtain a consumer credit card account with a credit line of $400 is not charged to a credit account provided by the federal credit union or its affiliate.

26(d) Definitions

1. *Membership fees.* Membership fees for opening an account are fees for the issuance or availability of credit. A membership fee to join an organization that provides a credit or charge card as a privilege of membership is a fee for the issuance or availability of credit only if the card is issued automatically upon membership. If membership results merely in eligibility to apply for an account, then such a fee is not a fee for the issuance or availability of credit.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account, for example, travel insurance or card-registration services, are not fees for the issuance or availability of credit if the basic account may be opened without paying such fees. Issuing a card to each primary cardholder, not authorized users, is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, are fees for the issuance or availability of credit. Thus, a fee to obtain an additional card on the account beyond the first card, so that each cardholder would have his or her own card, is a fee for the issuance or availability of credit even if the fee is optional; that is, if the fee is charged only if the cardholder requests one or more additional cards.

3. *One-time fees.* Non-periodic fees related to opening an account, such as application fees or one-time membership or participation fees, are fees for the issuance or availability of credit. Fees for reissuing a lost or stolen card, statement reproduction fees, and fees for late payment or other violations of the account terms are examples of fees that are not fees for the issuance or availability of credit.

By order of the Board of Governors of the Federal Reserve System, December 18, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated: December 16, 2008.

By the Office of Thrift Supervision,

John M. Reich,

Director.

By the National Credit Union Administration Board, on December 18, 2008.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E8–31186 Filed 1–28–09; 8:45 am]

BILLING CODE 6720–01–P; 6720–01–P; 7535–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1315]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: The Federal Reserve Board (Board) is amending Regulation DD, which implements the Truth in Savings Act, and the official staff commentary to the regulation to require all depository institutions to disclose aggregate overdraft fees on periodic statements, and not solely institutions that promote the payment of overdrafts. The final rule also addresses balance disclosures provided to consumers through automated systems. In addition, the Board is separately issuing a proposed rulemaking, published in today's **Federal Register**, to incorporate the notice requirements into Regulation E that were previously proposed under Regulation DD.

DATES: *Effective Date:* The rule is effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Dana E. Miller, Attorney, or Ky Tran-Trong, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. The Truth in Savings Act

The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is implemented by the Board's Regulation DD (12 CFR part 230). The purpose of the act and regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield, the interest rate, and other account terms. An official staff commentary interprets the requirements of Regulation DD (12 CFR part 230 (Supp. I)). Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration (NCUA).

The Board's authority under section 269(a) of TISA provides that its regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of accounts as, in the judgment of the Board, are necessary or proper to carry out the purposes of TISA, to prevent circumvention or evasion of the requirements of TISA, or to facilitate compliance with the requirements of TISA. 12 U.S.C. 4308. It is the purpose of TISA to require the clear and uniform disclosure of the fees that are assessable against deposit accounts, so that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts. 12 U.S.C. 4301.

In addition, under TISA and Regulation DD, account disclosures must be provided upon a consumer's request and before an account is opened. Institutions are not required to provide periodic statements; but if they do, the act requires that fees, yields, and other information be provided on the statements.

TISA and Regulation DD contain rules for advertising deposit accounts. TISA and Regulation DD prohibit inaccurate or misleading advertisements, announcements, or solicitations, or those that misrepresent the deposit contract. TISA and Regulation DD also prohibit institutions from advertising an account as free (or using words of similar meaning) if a regular service or transaction fee is imposed, if a minimum balance must be maintained, or if a fee is imposed when a customer exceeds a specified number of transactions.

II. Background on Overdraft Services and Regulatory Action to Date

Historically, if a consumer attempted to engage in a transaction that would overdraw his or her deposit account, the consumer's depository institution used its discretion on an ad hoc basis to determine whether to pay the overdraft. If an overdraft was paid, the institution usually imposed a fee on the consumer's account.[1] In recent years, many institutions have largely automated the overdraft payment process. Automation is used to set specific criteria for determining whether to honor overdrafts and set limits on the amount of the coverage provided.

Overdraft services vary among institutions but often share certain common characteristics. In general, consumers who meet the institution's criteria are automatically enrolled in overdraft services.[2] While institutions generally do not initially underwrite on an individual account basis when enrolling a consumer in the service, most institutions will review individual accounts periodically to determine whether the consumer continues to qualify for the service, and the amounts that may be covered. Most institutions disclose to consumers that the payment of overdrafts is discretionary, and that the institution has no legal obligation to pay any overdraft.

In the past, institutions generally provided overdraft coverage only for check transactions.[3] In recent years, however, the service has been extended to cover overdrafts resulting from non-check transactions, including withdrawals at automated teller machines (ATMs), automated clearinghouse transactions, debit card transactions at point-of-sale, pre-authorized automatic debits from a consumer's account, telephone-initiated funds transfers, and online banking transactions.[4]

A flat fee is charged each time an overdraft is paid, regardless of the amount of the overdraft. Institutions commonly charge the same amount for paying the overdraft as they would if they returned the item unpaid. A daily fee also may apply for each day the account remains overdrawn.

The Board, Federal Deposit Insurance Corporation (FDIC), NCUA and Office of the Comptroller of the Currency published guidance on overdraft protection programs in February 2005 (Joint Guidance) in response to concerns about aspects of the growing marketing, disclosure, and implementation of overdraft services. The Joint Guidance addressed three primary areas—safety and soundness considerations, legal risks, and best practices. The Office of Thrift Supervision (OTS) published similar guidance which focused on safety and soundness considerations and best practices (OTS Guidance). The best practices described in the Joint Guidance and the OTS Guidance focused on the marketing of overdraft services and the disclosure and operation of program features, including distinguishing actual available account balances from account balances that include overdraft protection amounts.

In May 2005, the Board separately published revisions to Regulation DD and the official staff commentary to address concerns about the uniformity and adequacy of institutions' disclosure of overdraft fees generally, and the advertisement of overdraft services in particular. 70 FR 29582, May 24, 2005.[5] Under the May 2005 final rule, which became effective July 1, 2006, all depository institutions were required to specify in their account disclosures the categories of transactions for which an overdraft fee may be imposed. Depository institutions that promote the payment of overdrafts in an advertisement were required to include in such advertisements certain information about the costs associated with the service and the circumstances under which the institution would not pay an overdraft. These institutions were also required to disclose separately on their periodic statements the total amount of fees or charges imposed on the account for paying overdrafts and the total amount of fees charged for returning items unpaid. These disclosures were required to be provided for the statement period and for the calendar year-to-date.

III. The Board's Proposed Revisions to Regulation DD

In May 2008, the Board issued two proposals relating to overdraft services. These proposals were intended to address concerns that consumers may not adequately understand the costs of overdraft services or how overdraft services operate generally. The Board, along with the OTS and the NCUA, proposed to adopt substantive protections using their authority under the Federal Trade Commission Act (FTC Act).[6] The Board also separately proposed to add a new Subpart D on overdraft services to the Board's Regulation AA, Unfair or Deceptive Acts or Practices (FTC Act Proposal) (12 CFR part 227). Among other provisions, the proposed rules would require institutions to provide consumers the right to opt out of their institutions' payment of overdrafts.

Pursuant to its authority under sections 263, 264, 268 and 269(a) of TISA,[7] the Board also proposed new disclosure requirements under Regulation DD to facilitate consumers' ability to make informed judgments about the use of their accounts.[8] The proposed revisions to Regulation DD addressed three types of overdraft disclosures. First, the Board proposed to revise § 230.10 to establish format, content, and timing requirements for the notices given to consumers by their depository institution informing them about their right to opt out of their

[1] The Board recognized this longstanding practice when it initially adopted Regulation Z in 1969 to implement the Truth in Lending Act (TILA). The regulation provided that these transactions are generally not covered under Regulation Z where there is no written agreement between the consumer and institution to pay an overdraft and impose a fee. See 12 CFR 226.4(c)(3). The treatment of overdrafts in Regulation Z was designed to facilitate depository institutions' ability to accommodate consumer's transactions on any ad hoc basis.

[2] These criteria may include whether the account has been open a certain number of days, whether the account is in ''good standing,'' and whether deposits are regularly made to the account.

[3] According to the FDIC's Study of Bank Overdraft Programs, nearly 70 percent of banks surveyed implemented their automated overdraft program after 2001. In addition, 81 percent of banks surveyed that operate automated programs allow overdrafts to be paid at ATMs and POS debit card terminals. *See* FDIC Study of Bank Overdraft Programs 8, 10 (November 2008) (available at: *http://www.fdic.gov/bank/analytical/overdraft/FDIC138__Report__FinalTOC.pdf*) (*FDIC Study*). *See also Overdraft Protection: Fair Practices for Consumers: Hearing before the House Subcomm. on Financial Institutions and Consumer Credit, House Comm. on Financial Services* 110th Cong., at 72 (2007) (hereinafter, *Overdraft Protection Hearing*) (available at *http://www.house.gov/apps/list/hearing/financialsvcs__dem/hr0705072.shtml*) (stating that as recently as 2004, 80 percent of banks still declined ATM and debit card transactions without charging a fee when account holders did not have sufficient funds in their account).

[4] *See* Interagency Guidance on Overdraft Protection Programs, 70 FR 9127, Feb. 24, 2005, and OTS Guidance on Overdraft Protection Programs, 70 FR 8428, Feb. 18, 2005.

[5] A substantively similar rule applying to credit unions was issued separately by the NCUA. 71 FR 24568, Apr. 26, 2006.

[6] 73 FR 28904, May 19, 2008. For simplicity, this notice will refer only to the Board's proposal.

[7] 12 U.S.C. 4302(e), 4303(b) & (d), 4307, 4308(a). While the NCUA did not separately propose amendments to its 12 CFR part 707 in May 2008, TISA requires the NCUA to promulgate regulations substantially similar to Regulation DD. Accordingly, the NCUA anticipates issuing proposed amendments to part 707 shortly after the Board's adoption of final rules under Regulation DD.

[8] 73 FR 28739, May 19, 2008.

institution's overdraft service. The proposal included a model opt-out form. Second, the Board proposed to extend to all institutions the requirement to disclose on periodic statements the aggregate dollar amounts charged for overdraft fees and for returned-item fees (for the statement period and the year-to-date). Currently, Regulation DD requires that only institutions that promote or advertise the payment of overdrafts must disclose aggregate amounts. Third, the Board proposed to require institutions that provide account balance information through an automated system to disclose the amount of funds available for the consumer's immediate use or withdrawal, without including additional funds the institution may provide to cover overdrafts. Under the proposal, institutions would be permitted to disclose a second account balance that includes funds available for paying overdrafts, provided the institution prominently discloses at the same time that this balance includes additional funds provided by the institution to cover overdrafts.

Overview of Public Comments

The Board received over 600 comments on the Regulation DD proposal. Additionally, a number of comments submitted in connection with the FTC Act Proposal contained comments on the Regulation DD proposal. Commenters included individual consumers, consumer advocates, federal and state regulators and officials, large financial institutions, credit unions, community banks, industry trade associations, members of Congress, core systems providers, and vendors of overdraft services.

Most commenters focused on the proposed model opt-out form.[9] Consumer groups supported the proposed model form for notifying consumers of their right to opt out of overdraft services, but urged the Board to enhance the model form in various ways, including making the opt-out right more prominent. Most industry commenters stated that the proposed model form was unduly biased towards encouraging consumers to opt out and did not sufficiently explain that payment of overdrafts is discretionary. These commenters maintained that the model form could mislead consumers into believing that overdrafts will be paid in all cases.

Consumers and consumer groups supported extending the aggregate overdraft fee disclosures on periodic statements to all financial institutions. These commenters maintained that streamlined disclosures will ensure that consumers fully understand the consequences of overdrawing their account. However, most industry commenters objected to extending the aggregate fee disclosures to all institutions, stating the burden would outweigh the limited benefits of the disclosure.

Consumer groups also supported the proposed requirement that institutions disclose account balance information without including any overdraft funds provided by the institution. Consumer groups urged the Board to apply the same requirement to balance information provided in person, by telephone or e-mail, or in Internet ''chats'' with bank personnel. Some consumer groups argued that institutions also should be prohibited from disclosing a second balance that includes these overdraft funds because it could mislead consumers. Industry response to the balance disclosure proposal was mixed; of those commenters that supported the proposal, some argued that it should only apply to proprietary ATMs. Other industry commenters requested the rule be revised to clarify what funds must be excluded from the balance (and from any second balance that might be disclosed).

Subsequent to the issuance of the Regulation DD proposal, the Board used a testing consultant, Macro International, Inc. (Macro), to conduct qualitative consumer testing to assess consumer understanding of the model form. Macro also conducted qualitative consumer testing of various model opt-out language and aggregate fee tables. Except where relevant to this final rule, the testing results are discussed in the final FTC Act rule and the Board's Regulation E proposal, where appropriate. These rulemakings are published elsewhere in today's **Federal Register**.

IV. Summary of the Final Rule

The following is a summary of the significant revisions to the regulation and the official staff commentary. The revisions are discussed in more detail below in the section-by-section analysis.

The Board is adopting final revisions to Regulation DD and the official staff commentary to expand the requirement to disclose overdraft fees on periodic statements to apply to all institutions, and not solely to institutions that promote the payment of overdrafts. The final rule adds format requirements to help make the aggregate fee disclosures more effective and noticeable to consumers.

In addition, the final rule requires an account balance disclosed to a consumer through any automated system (including, but not limited to, an ATM, Internet Web site, or telephone response system) to exclude additional amounts that the institution may provide or that may be transferred from another account of the consumer to cover an item where there are insufficient or unavailable funds in the consumer's account. The rule is designed to ensure that consumers are not confused or misled about the available amount of funds in their account when they request their account balance. The final rule permits the institution to disclose an additional balance that includes funds provided pursuant to a discretionary overdraft service or a line of credit, or funds that could be transferred from a consumer's linked individual or joint account, so long as the institution prominently states that the balance includes these additional amounts.

Based on the Board's review of comments received and consumer testing results, the Board believes it is appropriate to place opt-out requirements under the Board's authority under the Electronic Fund Transfer Act and Regulation E.[10] Thus, a revised substantive opt-out is set forth in a proposal under Regulation E. The Regulation E proposal also proposes, in the alternative, to require institutions to provide customers an opt-in to payment of overdrafts for ATM and debit transactions, and includes a proposed model opt-in notice. The Regulation E proposal would also incorporate the content and timing requirements for consumer opt-out (and opt-in) notices. The new proposed model forms have been modified to conform to the revised substantive opt-out right, and reflect consumer testing results and commenter suggestions.

[9] Comments that addressed the merits of the substantive opt-out right were provided in response to the May 2008 FTC Act Proposal. Many industry commenters argued that the substantive opt-out right should be addressed under Regulation E. These commenters argued that consumers prefer to have their checks paid and an overdraft fee assessed rather than face possible negative consequences resulting from a bounced check.

[10] These comments and the testing results are more fully discussed in the final FTC Act rule and the Board's Regulation E proposal published elsewhere in today's **Federal Register**, where appropriate.

V. Section-by-Section Analysis

Section 230.11 Additional Disclosure Requirements Regarding Overdraft Services

11(a) Disclosure of Total Fees on Periodic Statements

Applicability of Aggregate Fee Disclosures

Although periodic statements are not required under TISA, institutions that provide such statements are required to disclose fees or charges imposed on the account during the statement period. *See* 12 U.S.C. 4307(3) and 12 CFR 230.6(a)(3). Further, § 230.11(a) of Regulation DD requires institutions that promote the payment of overdrafts in an advertisement to provide on periodic statements the aggregate dollar amount totals for overdraft fees and for returned item fees, both for the statement period as well as for the calendar year-to-date. Pursuant to its authority under Sections 268 and 269 of TISA, the Board proposed to expand § 230.11(a) to require all institutions, regardless of whether they promote the payment of overdrafts, to disclose the aggregate fee information. The revision was intended to provide all consumers that use discretionary overdraft services, consistent with the purposes of TISA, with additional information about fees to help them better understand the costs associated with their accounts. The proposed rule also added format requirements to help make the aggregate fee disclosures more effective and noticeable to consumers. The final rule generally adopts the proposal, with certain clarifications to reflect the expanded scope of the rule. The final rule deletes as unnecessary certain of the examples in existing § 230.11(a)(2) of communications that would not trigger the aggregate fee disclosure requirement. As under the current rule, institutions must provide these totals for both the statement period and the calendar year-to-date. *See* § 230.11(a)(2). In addition, the Board is adopting, generally as proposed, commentary clarifying that the aggregate fee total does not include fees for transferring funds from another account of the consumer to avoid an overdraft, or fees charged under a service subject to the Board's Regulation Z (12 CFR part 226). *See* comment 11(a)(1)–2.

Consumers and consumer groups supported extending the aggregate overdraft fee disclosures on periodic statements to all financial institutions because, in their view, most institutions systematically cover overdrafts whether they promote the service or not. These commenters asserted that consistent disclosures will ensure that consumers fully understand the consequences of overdrawing their account. These commenters stated that the aggregate fee disclosures would help consumers to better manage their bank accounts and to understand the total costs they have incurred over time. In addition, these commenters believed that the aggregate disclosures may encourage consumers to explore other potentially lower-cost alternatives that may be available to them.

In contrast, most industry commenters objected to extending the aggregate fee disclosures to all institutions. These commenters stated that revisions to periodic statements would be costly and would require extensive and time-consuming programming changes. Industry commenters also argued that the burden would outweigh the limited benefits of the disclosure; some argued that aggregate fee information would benefit only a limited number of consumers who incur substantial fees.

The final rule is intended to provide all consumers who use discretionary overdraft services with additional information to help them better understand the overdraft and NSF (returned item) costs associated with their accounts. The aggregate fee disclosures will benefit those consumers who overdraw their accounts with some frequency but who do not currently receive aggregate fee disclosures because their institution does not promote its overdraft service.

In addition, the Board believes the final rule will promote greater transparency about the terms and costs of overdraft services for all institutions. Under the current rule, institutions that do not promote their overdraft service may be reluctant to provide information about the service out of concern that such disclosures might trigger the aggregate fee disclosure requirements. The Board also believes the rule will create consistency in disclosures and will eliminate compliance challenges inherent in a regulatory scheme based on a ''promoting'' or ''marketing'' distinction.

Several industry commenters argued that overdraft fees are already disclosed in the deposit agreement or fee schedule, and questioned why these types of fees deserve special attention on the statement compared to other types of account fees. Others argued that consumers already receive itemized fees on their periodic statements. Some industry commenters argued that the emphasis on overdraft and returned item fees would detract from other account charges.

The Board believes this requirement is appropriate because overdraft and returned item fees are not as predictable as many other types of account fees. Consumers cannot always know when settlement on any one item will occur (particularly relative to other transactions, where an institution processes items using different methods). Also, balance inquiries may not always contain real-time balance information; therefore, consumers may not realize that one overdrawn item could trigger overdrafts on other transactions, and thus may not be able to predict the total fees that will be charged for any one overdraft occurrence. When there are multiple overdrafts, fee amounts may be significant, even though each item may represent a relatively small dollar amount.[11] In addition, a small segment of consumers incur the majority of overdraft fees.[12] The aggregate fee disclosures will benefit these consumers by showing them the total expenditures on overdraft fees for the statement period and year, which may encourage them to explore alternatives that might be less costly.

A few industry commenters requested that, in lieu of a year-to-date fee total, the Board permit a rolling twelve-statement-cycle total, because the latter would be more useful for consumers. However, consumer testing on both credit card and overdraft disclosures indicated that consumers noticed year-to-date cost figures, and that they would find the numbers helpful in making financial decisions. The Board further

[11] Eric Halperin, Lisa James & Peter Smith, *Debit Card Danger*, Ctr. For Responsible Lending at 25 (consumers pay $1.94 in fees for every one dollar borrowed to cover a debit card POS overdraft). The FDIC's Study of Bank Overdraft Programs found that the median overdraft amount for debit card overdrafts was $20, and the median overdraft amount for ATM transactions was $60. FDIC Study of Bank Overdraft Programs 79 (Nov. 2008), available at: *http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_FinalTOC.pdf*. Overdraft fees have increased significantly over the last decade. *See* Federal Reserve Bulletin, *Retail Fees of Depository Institutions, 1997–2001*, 405, 409, available at: *http://www.federalreserve.gov/pubs/bulletin/2002/0902lead.pdf* (average overdraft fee in 1997: $16.51); Bankrate, *2007 Courtesy Overdraft Study*, available at: *http://www.bankrate.com/brm/news/chk/20071219_overdraft_survey_main_a1.asp* (average overdraft fee in 2007: $29). *See also Bank Fees: Federal Banking Regulators Could Better Ensure that Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts*, GAO Report 08–281 (January 2008) (11% increase from 2000 to 2007, according to one estimate).

[12] *See, e.g.*, Jacqueline Duby, Eric Halperin & Lisa James, *High Cost and Hidden From View: The $10 Billion Overdraft Loan Market*, Ctr. For Responsible Lending (May 26, 2005).

notes that some consumers are already receiving year-to-date totals from institutions currently subject to the rule; thus, requiring year-to-date disclosures for all institutions will promote consistency of disclosure across institutions. The Board is also adopting, elsewhere in today's **Federal Register**, requirements to disclose year-to-date interest charges and fees under Regulation Z. Consistency among the various consumer disclosure regulations should facilitate consumer understanding of disclosures. Thus, the final rule requires totals for both the statement period and the calendar year-to-date. *See* § 230.11(a)(2).

Several industry commenters asked whether an institution must provide an aggregate fee disclosure if the consumer has not been charged an overdraft or returned item fee for the year-to-date. Section 230.11(a)(1) states that a depository institution must separately make the fee disclosures on each periodic statement, *as applicable* (emphasis added). Thus, if a consumer has not incurred fees since the beginning of the year (or statement period), the institution is not required to provide a ''$0'' aggregate total for the year-to-date (or statement period). However, institutions may, at their option, provide aggregate fee disclosures even if a consumer has not been charged fees since the beginning of the year or for a particular statement period.

Because the final rule expands the applicability of the aggregate fee disclosures to all financial institutions, certain existing staff comments addressing institutions that promote overdraft services require modification or are no longer applicable. Thus, comment 11(a)(3)–1 has been revised, and comment 11(a)(5)–1 has been deleted.

Format of Aggregate Fee Disclosures

Pursuant to the Board's authority under TISA Section 269, the final rule also adds proximity and format requirements which are intended to enhance the effectiveness of the disclosures and to make them more noticeable to consumers. Board staff reviewed current periodic statement disclosures for institutions that promote overdraft services. This review indicated that the aggregate fee totals are often disclosed in a manner that may not be effective in informing consumers of the totals.[13] Accordingly, proposed § 230.11(a)(3) stated that aggregate fee disclosures must be provided in close proximity to the fees identified under § 230.6(a)(3). For example, the aggregate fee totals could appear immediately after the transaction history on the periodic statement reflecting the fees that have been imposed on the account during the statement period. The proposed rule also provided that the information must be presented in a tabular format similar to the proposed interest charge and total fees disclosures under the Board's June 2007 proposal under Regulation Z. *See* 72 FR at 32996, 33052. The proposal requested comment on two alternatives of Sample Form B–11, which illustrates how institutions should provide the aggregate cost information on their periodic statements.

Consumer groups supported the proposed proximity and formatting requirements. These commenters maintained that the requirement to place the aggregate fee disclosures in close proximity to the transaction history would better enable consumers to understand how their current account activity may have contributed to a history of overdrafts. They also supported the proposed tabular format.

Industry commenters, however, objected to the proximity and fee table requirement. They argued that it would require extensive, costly systems changes to provide a fee table in close proximity to the transaction history. Some industry commenters also argued that a proximity requirement is subjective and subject to litigation risk.

As described above, Board staff's review of current periodic statement disclosures for institutions that promote overdraft services showed that in some cases, fee tables were not placed in a location noticeable to consumers. Thus, the Board believes that uniform proximity requirements are necessary to enable consumers to easily find fee information so that, consistent with the purposes of TISA, they better understand the costs of using the service. The proposed proximity and format requirements were informed by the Board's consumer testing undertaken in the context of credit card disclosure requirements under Regulation Z. In that testing, consumers reviewing transactions identified on their periodic statements consistently noticed totals for fees and interest charges when they were grouped together with transactions. *See* 72 FR at 32996. Additional consumer testing was conducted subsequent to the May 2008 proposal on overdraft fee disclosures and confirmed that aggregate cost disclosures for overdraft and returned item fees were more noticeable to consumers when grouped together with the itemized fees.[14] Further, the testing indicated that consumers tend to notice fee disclosures when expressed in tabular form. Consumer testing on the two proposed tabular format alternatives demonstrated that the first alternative, a clear graphic disclosure, was the preferred alternative. Consumers found it easiest to identify and digest the relevant fees in a column and row format. Thus, the Board is adopting the first proposed alternative, renumbered as Sample Form B–10, to illustrate how an institution should provide the aggregate cost data. Aggregate fee disclosures must be provided using a format substantially similar to Sample Form B–10. *See* § 230(11)(a)(3).

Despite their general support of the aggregate fee disclosures, consumer groups nonetheless urged the Board to find that overdraft services are credit under Regulation Z so that consumers would be provided disclosures containing an effective APR figure. The Board believes that requiring an effective APR is not necessary to alert consumers to the costs of the service. Moreover, the Board believes the proposed aggregate fee table will be of more value than an effective APR in the overdraft context. Consumer testing in the credit card context showed that consumers preferred seeing costs reflected as amount totals rather than expressed as an effective APR.[15]

Several industry commenters requested that the Board permit some flexibility in the language used in the aggregate fee table for the total returned item fees, because their customers are more familiar with language such as ''NSF fee'' rather than ''returned item fee.'' The Board has revised comment 11(a)(1)–3 to clarify that institutions may use terminology such as ''returned item fee'' or ''NSF fee'' to describe the fees for returning items unpaid.

Several industry commenters also requested clarification on how to display fees that have been refunded. Comment 11(a)(1)–6, which has been redesignated as comment 11(a)(1)–4 in the final rule, addresses this issue where an institution provides a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. This comment provides that, in these circumstances, institutions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date

[13] For example, several statements contained inconsistent formatting, or fee totals were included at the end of the statement and not highlighted in a manner noticeable to consumers.

[14] *See Review and Testing of Overdraft Notices*, Macro International, December 8, 2008.

[15] For this reason, the Board is revising Regulation Z to replace the disclosure of the effective APR with a tabular disclosure of the proposed interest charge and total fees.

and in the applicable statement period. For example, if an institution assesses a fee in January and refunds the fee in February, the institution could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the February statement period, because the fee was not assessed in the February statement period. However, because some institutions may assess and then waive and credit a fee within the same statement cycle, the comment has been revised to clarify that, in such a case, the institution may reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. In this case, if the institution assesses and waives the fee in February, the February fee total could reflect a total net of the waived fee.

11(b) Advertising Disclosures for Overdraft Services

Section 230.11(b)(2) lists the types of communications about the payment of overdrafts that are not subject to additional advertising disclosures under § 230.11(b)(1). The final rule expands the list in § 230.11(b)(2) to include an opt-out or opt-in notice regarding the institution's payment of overdrafts or provision of discretionary overdraft services. *See* § 230.11(b)(2)(xii).

11(c) Disclosure of Account Balances

Section 230.11(b)(1) currently requires institutions that promote the payment of overdrafts to include certain disclosures in their advertisements about the service to avoid confusion between overdraft services and traditional lines of credit. The May 2005 final rule provided examples of institutions promoting the payment of overdrafts in the staff commentary.[16] In particular, the commentary stated that an institution must include the additional advertising disclosures if it ''discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed on an automated system, such as a telephone response machine, ATM screen or the institution's Internet site.'' [17] To facilitate responsible use of overdraft services and ensure that consumers receive accurate information about their account balances, the May 2008 Regulation DD Proposal would have prohibited institutions from including funds the institution may provide to cover an overdraft item in a consumer's account balance disclosed through any automated system in response to a balance inquiry. The proposal would have permitted an institution to disclose a second balance that includes these additional funds, if the institution prominently indicates these funds are included. The rule as adopted has been revised to clarify that the balance disclosed may not include any funds the institution may provide to cover an overdraft, funds that will be paid by the institution under a service subject to the Board's Regulation Z (12 CFR part 226), or funds transferred from another account of the consumer. The final rule permits an institution to disclose another balance that includes these additional funds, so long as the institution prominently states that the balance includes such funds.

Industry response to the proposal was mixed. Some supported the rule as proposed; for example, one national community bank trade association stated that a common consumer complaint has been misunderstanding whether an account has sufficient funds to cover a transaction. This commenter believed that requiring the bank to disclose the available balance would help avoid customer confusion. Others argued for limiting the scope of coverage to balances provided at proprietary ATMs; some opposed the rule altogether as too burdensome. Some commenters requested that the rule be revised to clarify what funds must be excluded from the balance.

Consumer groups supported the proposed rule as a significant protection for consumers. These commenters argued that disclosing a balance without overdraft funds provided by the institution would equip consumers with the knowledge necessary to make informed financial decisions. However, these commenters urged the Board to apply the same requirement to balance information provided during communications with bank personnel. Some consumer groups also urged the Board to prohibit financial institutions from disclosing a second account balance.

The Board is adopting a revised rule, pursuant to its authority in TISA section 263(e) to prohibit misleading or inaccurate advertisements, announcements, or solicitations relating to a deposit account. Under § 230.11(c) of the final rule, if an institution discloses balance information through an automated system, it must disclose an account balance that excludes funds that the institution may provide to cover an overdraft in its discretion, funds that will be paid by the institution under a service subject to the Board's Regulation Z (12 CFR part 226), or funds transferred from another account of the consumer. For example, although an institution may add a $500 cushion to the consumer's account balance when determining whether to pay an overdrawn item, under the final rule, the additional $500 could not be included in the balance provided to the consumer through an automated system.

The proposed rule covered account balances disclosed in response to a consumer's inquiry. However, balances may also be disclosed to the consumer even if the consumer has not specifically requested a balance. For example, if a consumer withdraws funds at an ATM from his or her checking account, the receipt for that transaction may also include the consumer's account balance. Or, a consumer may receive an account balance when requesting a transaction history online. The Board believes the requirement to provide a balance not supplemented by overdraft funds should apply equally in these circumstances to ensure consumers are given an accurate account balance. Thus, the final rule deletes the reference to the consumer's inquiry.

Funds Included In and Excluded From Balance

Several industry commenters argued that the reference in proposed § 230.11(c) to ''funds that are available for the consumer's immediate use or withdrawal'' is superfluous and adds unnecessary complexity to the rule. They contended that this language could lead to litigation over what is actually ''available.'' Some commenters suggested that, to provide greater certainty, the rule should focus on the funds that must be excluded from the balance, rather than on the funds that should be included. The proposed language was intended to provide clarity that institutions should not provide a balance including overdraft funds, so that a consumer receives an accurate disclosure of his or her balance to help the consumer better manage his or her account. The rule was not intended to define what funds are available pursuant to Regulation CC. Accordingly, to avoid any ambiguity, § 230.11(c) has been revised to delete the language ''funds that are available for the consumer's immediate use or withdrawal.'' As discussed below, the final rule does not require disclosures of real-time balances nor otherwise affect what funds an institution considers to be available.

Several other industry commenters requested clarification as to whether institutions may include in the balance disclosure amounts available under a consumer's overdraft line of credit with

[16] *See* comment 11(b)–1.

[17] Comment 11(b)–1.iii.

the institution, and how to treat funds from a linked account (such as a savings account). As described above, the rule was intended to give consumers an accurate idea of their balance. The Board is concerned that permitting a balance to include funds available under a consumer's overdraft line of credit or through a transfer from a consumer's savings or other linked account would cause consumer confusion—comparable to the inclusion of an overdraft cushion—as to the amount a consumer may withdraw or spend without incurring an overdraft. Thus, § 230.11(c) has been revised to clarify that an institution must disclose a balance that does not include additional amounts that the institution may provide in its discretion to cover an overdraft, funds that will be paid by the institution under a service subject to the Board's Regulation Z (12 CFR part 226), or funds transferred from another account of the consumer.

Proposed comment 11(c)–1 clarified that the institution may, but need not, include in the balance funds that are deposited in the consumer's account, such as from a check, but that are not yet made available for withdrawal in accordance with the funds availability rules under the Board's Regulation CC (12 CFR part 229). Similarly, the comment stated that the balance may, but need not, include any funds that are held by the bank to satisfy a prior obligation of the consumer (for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the bank has not settled). The comment is generally adopted as proposed.

Some consumer groups argued that the disclosed account balance should not be permitted to reflect deposits not yet available under the institution's funds availability policy, or debit card holds. They argued that inclusion of such funds misstates the balance and can cause consumers to incur overdraft fees. In contrast, industry commenters supported proposed comment 11(c)–1 based on operational concerns. These commenters agreed that the methods used by depository institutions for determining the balances that are available for the consumer's use or withdrawal may vary significantly by institution. Industry commenters also agreed that the disclosed balance should be able to include funds that have deposited but not yet cleared.

Proposed comment 11(c)–1 reflected the Board's intent not to require institutions to reconfigure their internal systems to provide ''real-time'' balance disclosures in order to comply with the balance disclosure provision. For example, some institutions may only be able to provide a balance to the ATM network that reflects the ledger balance for the consumer's account at the end of the previous day after the institution has completed its processing activities. Section 230.11(c) does not require institutions to provide a ''real-time'' balance, but only prohibits institutions from including additional overdraft funds such as a discretionary overdraft cushion in the disclosed balance.

Additional Balances

The February 2005 Joint Guidance stated that if more than one balance is provided, the institution should ''separately (and prominently) identify the balance without the inclusion of overdraft protection.'' 70 FR at 9132. Proposed § 205.11(c) incorporated this portion of the Joint Guidance by providing that the institution may, at its option, disclose a second account balance that includes the additional overdraft funds, if the institution prominently indicates that this balance includes funds provided by the institution to cover overdrafts.[18]

Some consumer groups urged the Board to prohibit financial institutions from disclosing this second account balance. These commenters argued that disclosure of a second balance could be confusing to consumers, who may not realize they will incur fees by accessing the overdraft funds. One bank trade association also questioned whether permitting disclosure of a second balance would be particularly useful, although it supported including the option for banks to provide that information.

The final rule permits, but does not require, disclosure of an additional balance that includes these additional overdraft funds, which may be useful to some consumers. For example, consumers may wish to receive a balance disclosure that indicates how much overdraft coverage they have available, so that they can make an informed decision as to whether or not to go forward with a transaction. The final rule thus permits an additional balance to be disclosed, so long as the institution prominently states that the balance contains additional overdraft funds. To address commenter concerns that consumers will be confused if multiple balances are disclosed to them on an automated system, new comment 11(c)–2 has been added to provide guidance on how institutions can appropriately identify that an additional balance includes overdraft funds. (Proposed comment 11(c)–2, described below, has been renumbered as comment 11(c)–3.) New comment 11(c)–2 explains that the institution may not simply state, for instance, that the second balance is the consumer's ''available balance,'' or contains ''available funds.'' Rather, the institution should provide enough information to convey that the second balance includes these overdraft amounts. For example, the institution may state that the balance includes ''overdraft funds.''

Further, the Board notes that § 230.11(c) does not affect the existing application of the advertising disclosure rules of § 230.11(b). Thus, to the extent an institution includes the dollar amount of a discretionary overdraft limit in a disclosed balance on an automated system, the disclosure will continue to be considered an advertisement promoting the payment of overdrafts. *See* comment 11(b)–1.iii. Therefore, the disclosures required by § 230.11(b)(1) (including the amount of overdraft fees) must be provided. The existing exemption in § 230.11(b)(2) from these disclosures for ATM receipts also continues to apply. However, under the final rule, any receipt containing a second balance including overdraft funds must prominently state that those funds are included and may not simply label the second balance as the consumer's ''available balance'' or ''available funds.'' *See* comment 11(c)(2).

Many institutions currently provide consumers the ability to opt out of or opt into their overdraft service. Where a consumer has opted out of the institution's overdraft service (or, where an institution offers an opt-in and the consumer has not opted in), comment 11(c)–2 also clarifies that any additional balance disclosed may not include funds provided under their institution's service (because presumably the consumer would not have access to those funds). For example, if a consumer has $200 in his or her account, and has opted out of the institution's overdraft service, a second balance may not reflect the additional $100 that the institution might otherwise have provided under the service. (However, if the consumer is not enrolled in the institution's overdraft service but has a line of credit or other overdraft alternative, the

[18] The FDIC Study found that of the 374 study population banks that extended their overdraft service to ATM withdrawals, most excluded the overdraft limit from ATM balances. Of the remaining banks, 16.1% displayed the overdraft limit separately from the account balance at proprietary ATMs (7.0% at non-proprietary ATMs), and 7.1% combined the overdraft limit with the account balance in the only balance displayed to customers at proprietary ATMs (5.6% at non-proprietary ATMs). *See* FDIC Study at 38–39.

additional balance may continue to include funds available pursuant to that other alternative.)

Similarly, some institutions may provide consumers the ability to opt out of overdraft services for ATM and debit card transactions. In this instance, the institution would continue to offer the overdraft service for other transactions, such as check transactions. Because the institution's overdraft service would be available for some, but not all transactions, comment 11(c)–2 states that if an institution discloses an additional balance where a consumer has opted out of some, but not all of the institution's overdraft services, the institution may choose whether or not to include the overdraft funds in the balance. However, if the institution chooses to include the overdraft funds in the additional balance, it must indicate that the additional overdraft funds are not available for all transactions.

Automated Systems

Proposed comment 11(c)–2 explained that the balance disclosure requirement applies to *any* automated system through which the consumer requests a balance, including, but not limited to, a telephone response machine (such as an interactive voice response system), at an ATM (both on the ATM screen and on receipts), or on an institution's Internet site (other than live chats with an account representative). Proposed comment 11(c)–2 also clarified that the reference to ATMs applies equally to ATMs owned or operated by a consumer's account-holding institution, as well as to ''foreign'' ATMs, including those operated by non-depository institutions. Some industry commenters supported the proposed comment, stating that it reflected the current practice at some institutions. However, other industry commenters argued that the account balance disclosure requirement should only apply to disclosures at proprietary ATMs. They stated that if the institution makes two balances available to the ATM network, one for balances and one for authorizations, it would have no control over what balances are displayed by a foreign ATM.

The comment, renumbered as comment 11(c)–3, is adopted with minor adjustments. The balance disclosure requirements apply to account balances an institution discloses through any ATM. Because account-holding institutions have discretion with respect to the balances they provide to an ATM network, they ultimately determine what additional funds (whether from the institution's discretionary overdraft service, an overdraft line of credit, or a linked account) are included in those balances (*i.e.*, the institution has the discretion to provide to the network only balances that exclude overdraft funds). Thus, the Board believes that it is appropriate to include the information that account-holding institutions disclose through foreign ATMs within the scope of the rule.

Several industry commenters requested clarification that the rule applies only where a financial institution chooses to provide balance information, or when an ATM or other electronic terminal has the capability to provide a balance. The final rule applies only to the extent balance information is offered on an automated system; it does not require financial institutions or other automated systems owners to provide balance information on automated systems available to consumers.

Consumer groups commented that the Board should apply the balance disclosure requirement to information provided during discussions with bank personnel, whether in person, by telephone or e-mail, or over the Internet. They argued that many consumers obtain account balances directly from bank personnel, and that banks should be required to instruct employees to provide consumers with an account balance that does not include additional funds. Nonetheless, the Board continues to believe that the compliance burden and enforcement challenges associated with monitoring individual conversations and responses would outweigh the benefits provided by such a rule. Therefore, the final rule applies only to balance information disclosed through an automated system.

VI. Regulatory Flexibility Analysis

The Board has prepared a final regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA). The RFA requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the proposed rule.* TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. Such disclosures allow consumers to make meaningful comparisons between different accounts and also allow consumers to make informed judgments about the use of their accounts. 12 U.S.C. 4301. TISA requires the Board to prescribe regulations to carry out the purpose and provisions of the statute. 12 U.S.C. 4308(a)(1).

The Board is revising Regulation DD to expand the current requirements for disclosing totals for overdraft and returned item fees on periodic statements. The requirement is expanded to all institutions and not solely to institutions that promote the payment of overdrafts. Thus, all consumers that use overdraft services will receive additional information about fees to help them better understand the costs associated with their accounts, regardless of whether the service is marketed to them. The Board is also revising Regulation DD to address balance disclosures provided to consumers through automated systems.

2. *Significant issues raised by comments in response to the initial regulatory flexibility analysis.* In accordance with section 3(a) of the RFA, the Board conducted an initial regulatory flexibility analysis in connection with the proposed rule. The Board did not receive any comments on its initial regulatory flexibility analysis.

3. *Description and estimate of classes of small entities affected by the final rule.* Approximately 12,356 depository institutions in the United States that must comply with TISA have assets of $175 million or less and thus are considered small entities for purposes of the RFA, based on June 30, 2008, Call Report data. Approximately 5,075 are institutions that must comply with the Board's Regulation DD; approximately 7,281 are credit unions that must comply with NCUA's Truth in Savings regulations which must be substantially similar to the Board's Regulation DD.

The Board believes that many small depository institutions will not be significantly impacted by the final rule because many of these institutions already have required systems in place for compliance with the rule, either in conformity with the May 2005 Regulation DD amendments or the February 2005 Joint Guidance containing similar obligations. Under the rule, all small depository institutions that did not previously revise their periodic statement disclosures to comply with the prior May 2005 Regulation DD amendments because they did not promote their overdraft service will need to do so to reflect aggregate overdraft and aggregate returned-item fees for the statement period and year-to-date. Those institutions that previously revised their periodic statements may also need to reprogram their automated systems to include the specified fee table format in the statement. Institutions may also have to reprogram their automated systems to disclose balances that exclude additional funds the institution may provide to cover an overdraft, if the institution has not done so as previously recommended by the February 2005 Joint Guidance, and to exclude funds paid by the institution under a service subject to Regulation Z, or funds transferred from another account held individually or jointly by a consumer. To the extent institutions disclose an additional balance that includes overdraft funds, institutions may also have to reprogram their systems to prominently state that the balance includes those additional overdraft funds, as described in the preamble.

4. *Recordkeeping, reporting, and other compliance requirements.* As discussed in more detail above, institutions that have not previously provided total dollar amounts of fees imposed on the account for paying overdrafts and total dollar amounts of fees for returning items unpaid will be required to do so for both the statement period and the calendar year-to-date. Institutions that disclose balances through any automated system must also, at a minimum, disclose balances that are not supplemented by additional funds that may be provided to cover an overdraft. For example, the balance must exclude funds that will be paid by the institution under a service subject to Regulation Z, and funds transferred from another account held individually or jointly by a consumer.

5. *Steps taken to minimize the economic impact on small entities.* The factual, policy, and legal reasons for selecting the alternatives adopted and why other significant alternatives were not adopted, are described above in the **SUPPLEMENTARY INFORMATION**. For example, the Board has provided more specific commentary on the balance disclosure rule in response to comments received in order to ease compliance burdens. In addition, based on the Board's review of comments received and consumer testing results, the Board is not adopting the proposed format, content and timing requirements regarding a consumer's right to opt out of overdraft coverage under Regulation DD, and instead is proposing these requirements under Regulation E (as well as an alternative opt-in proposal), revised in response to commenter suggestions. An initial RFA analysis is included in that proposal.

The Board is also providing an implementation period that responds to commenters' concerns about the time needed to comply with the final rule. The Board believes the extended effective date will decrease costs for small entities by providing them with sufficient time to come into compliance with the final rule's requirements.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Federal Reserve by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this final rulemaking is found in 12 CFR part 230. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0271.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are entities subject to Regulation DD, including for-profit small business depository institutions.

Section 269 of the Truth in Savings Act (TISA) (12 U.S.C. 4308) authorizes the Board to issue regulations to carry out the provisions of TISA. TISA and Regulation DD require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield earned during those statement periods. The act and regulation mandate the methods by which institutions determine the account balance on which interest is calculated. They also contain rules about advertising deposit accounts. To ease the compliance cost (particularly for small entities), model clauses and sample forms are appended to the regulation. Depository institutions are required to retain evidence of compliance for twenty-four months, but the regulation does not specify types of records that must be retained.

Regulation DD applies to all depository institutions except credit unions. Credit unions are covered by a substantially similar rule issued by the National Credit Union Administration. Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation DD only for Federal Reserve-supervised institutions. Regulation DD defines Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the depository institutions for which they have administrative enforcement authority.

The rulemaking makes the current requirements for disclosing totals for overdraft and returned item fees on periodic statements applicable to all institutions and not solely to institutions that promote the payment of overdrafts. The rulemaking also requires that institutions that disclose balances through any automated system must, at a minimum, disclose a balance that is not supplemented by additional funds that may be provided to cover an overdraft. For example, the balance must exclude funds that will be paid by the institution in its discretion or under a service subject to Regulation Z, or funds transferred from another account held individually or jointly by a consumer.

On May 19, 2008, a notice of proposed rulemaking (NPR) was published in the **Federal Register** (73 FR 28739). The comment period for this notice expired July 18, 2008. No comments specifically addressing the burden estimate were received. As mentioned above, the proposed amendment regarding notice of a consumer's right to opt out of an institution's overdraft service has been withdrawn. Instead, the Federal Reserve is separately proposing to incorporate this notice requirement into its Regulation E (OMB No. 7100–0200).

The Federal Reserve has revised its burden estimate in this final rule to reflect the withdrawn proposed notice. In addition, the number of Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA has been updated from 1,172 to 1,138.

The current total annual burden is estimated to be 170,984 hours. The final rule will impose a one-time increase in the total annual burden under Regulation DD by 18,208 hours to 189,192 hours.

The Board estimates that 1,138 respondents regulated by the Federal Reserve would take, on average, 16 hours (two business days) to re-program and update their systems to comply with the disclosure requirements. These disclosure requirements include disclosure of total fees on periodic statements (§ 230.11(a)) and disclosure of account balances (§ 230.11(c)). The Federal Reserve estimates the total annual one-time burden to be 18,208 hours and believes that, on a continuing basis, there would be no increase in burden as the disclosures would be sufficiently accounted for once incorporated into the current periodic statement disclosure (§ 230.6). To ease the compliance burden, model clause B–10 (aggregate overdraft and returned item fees sample clause) (§ 230.11), is adopted in Appendix B.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Board's burden estimation methodology. Using the Board's method, the total estimated annual burden for all financial institutions subject to Regulation DD, including Federal Reserve-regulated institutions, would be approximately 2,584,275 hours. The final rule would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation DD by 275,200 hours to 2,859,475 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including depository institutions (of which there are approximately 17,200), potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Reporting and recordkeeping requirements, Truth in savings.

■ For the reasons set forth in the preamble, the Board amends Regulation DD, 12 CFR part 230, and the Official Staff Commentary, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

■ 1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

■ 2. Section 230.1 is amended by revising paragraph (a) to read as follows:

§ 230.1 Authority, purpose, coverage, and effect on state laws.

(a) *Authority.* This part, known as Regulation DD, is issued by the Board of Governors of the Federal Reserve System to implement the Truth in Savings Act of 1991 (the act), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 3201 *et seq.*, Pub. L. 102–242, 105 Stat. 2236). Information-collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0271.

* * * * *

■ 3. Section 230.11 is amended by revising the heading, paragraphs (a), (b)(2)(x) and (b)(2)(xi), and adding paragraphs (b)(2)(xii) and (c) to read as follows:

§ 230.11 Additional disclosure requirements for overdraft services.

(a) *Disclosure of total fees on periodic statements*—(1) *General.* A depository institution must separately disclose on each periodic statement, as applicable:

(i) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn; and

(ii) The total dollar amount for all fees or charges imposed on the account for returning items unpaid.

(2) *Totals required.* The disclosures required by paragraph (a)(1) of this section must be provided for the statement period and for the calendar year-to-date;

(3) *Format requirements.* The aggregate fee disclosures required by paragraph (a) of this section must be disclosed in close proximity to fees identified under § 230.6(a)(3), using a format substantially similar to Sample Form B–10 in Appendix B to this part.

(b) * * *

(2) * * *

(x) A notice provided to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee;

(xi) Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service; or

(xii) An opt-out or opt-in notice regarding the institution's payment of overdrafts or provision of discretionary overdraft services.

* * * * *

(c) *Disclosure of account balances.* If an institution discloses balance information to a consumer through an automated system, the balance may not include additional amounts that the institution may provide to cover an item when there are insufficient or unavailable funds in the consumer's account, whether under a service provided in its discretion, a service subject to the Board's Regulation Z (12 CFR part 226), or a service to transfer funds from another account of the consumer. The institution may, at its option, disclose additional account balances that include such additional amounts, if the institution prominently states that any such balance includes such additional amounts and, if applicable, that additional amounts are not available for all transactions.

■ 4. Amend Appendix B to part 230, by adding B–10 to read as follows:

Appendix B to Part 230—Model Clauses and Sample Forms

* * * * *

B–10 Aggregate Overdraft and Returned Item Fees Sample Form

	Total for this period	Total year-to-date
Total Overdraft Fees	$60.00	$150.00
Total Returned Item Fees	0.00	30.00

■ 5. In Supplement I to part 230:

■ a. In Section 230.11 and Section 230.11(a), the headings are revised and paragraphs (a)(1)–1. and (a)(1)–2. are removed.

■ b. In Section 230.11, paragraphs (a)(1)–3. through (a)(1)–8. are redesignated as paragraphs (a)(1)–1. through (a)(1)–6, respectively.

■ c. In Section 230.11, newly designated paragraphs (a)(1)–2. through (a)(1)–4. are revised.

■ d. In Section 230.11, paragraph (a)(3)–1. is revised.

■ e. In Section 230.11, paragraph (a)(5). is removed.

■ f. In Section 230.11, new paragraphs (c)–1. through (c)–3. are added.

Supplement I to Part 230—Official Staff Interpretations

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Section 230.11 Additional disclosures regarding the payment of overdrafts

(a) Disclosure of total fees on periodic statements

(a)(1) General

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2. *Fees for paying overdrafts.* Institutions must disclose on periodic statements a total dollar amount for all fees or charges imposed on the account for paying overdrafts. The institution must disclose separate totals for the statement period and for the calendar year-to-date. The total dollar amount includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another account of the consumer to avoid an overdraft, or fees charged under a service subject to the Board's Regulation Z (12 CFR part 226).

3. *Fees for returning items unpaid.* The total dollar amount for all fees for returning items unpaid must include all fees charged to the account for dishonoring or returning checks or other items drawn on the account. The institution must disclose separate totals for the statement period and for the calendar year-to-date. Fees imposed when deposited items are returned are not included. Institutions may use terminology such as ''returned item fee'' or ''NSF fee'' to describe fees for returning items unpaid.

4. *Waived fees.* In some cases, an institution may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Institutions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date and in the applicable statement period. For example, if an institution assesses a fee in January and refunds the fee in February, the institution could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the February statement period, because the fee was not assessed in the February statement period. If an institution assesses and then waives and credits a fee within the same cycle, the institution may, at its option, reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. Thus, if the institution assesses and waives the fee in the February statement period, the February fee total could reflect a total net of the waived fee.

* * * * *

(a)(3) Time period covered by disclosures

1. *Periodic statement disclosures.* The disclosures under section 230.11(a) must be included on periodic statements provided by an institution starting the first statement period that begins after January 1, 2010. For example, if a consumer's statement period typically closes on the 15th of each month, an institution must provide the disclosures required by § 230.11(a)(1) on subsequent periodic statements for that consumer beginning with the statement reflecting the period from January 16, 2010 to February 15, 2010.

* * * * *

(c) Disclosure of account balances

1. *Balance that does not include additional amounts.* For purposes of the balance disclosure requirement in § 230.11(c), if an institution discloses balance information to a consumer through an automated system, it must disclose a balance that excludes any funds that the institution may provide to cover an overdraft pursuant to a discretionary overdraft service, that will be paid by the institution under a service subject to the Board's Regulation Z (12 CFR part 226), or that will be transferred from another account held individually or jointly by a consumer. The balance may, but need not, include funds that are deposited in the consumer's account, such as from a check, that are not yet made available for withdrawal in accordance with the funds availability rules under the Board's Regulation CC (12 CFR part 229). In addition, the balance may, but need not, include funds that are held by the institution to satisfy a prior obligation of the consumer (for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the bank has not settled).

2. *Additional balance.* The institution may disclose additional balances supplemented by funds that may be provided by the institution to cover an overdraft, whether pursuant to a discretionary overdraft service, a service subject to the Board's Regulation Z (12 CFR part 226), or a service that transfers funds from another account held individually or jointly by the consumer, so long as the institution prominently states that any additional balance includes these additional overdraft amounts. The institution may not simply state, for instance, that the second balance is the consumer's ''available balance,'' or contains ''available funds.'' Rather, the institution should provide enough information to convey that the second balance includes these amounts. For example, the institution may state that the balance includes ''overdraft funds.'' Where a consumer has opted out of the institution's discretionary overdraft service, any additional balance disclosed should not include funds institutions provide under that service. Where a consumer has opted out of the institution's discretionary overdraft service for some, but not all transactions (*e.g.*, the consumer has opted out overdraft services for ATM and debit card transactions), an institution that includes funds from its discretionary overdraft service in the balance should convey that the overdraft funds are not available for all transactions. For example, the institution could state that overdraft funds are not available for ATM and debit card transactions.

3. *Automated systems.* The balance disclosure requirement in § 230.11(c) applies to any automated system through which the consumer requests a balance, including, but not limited to, a telephone response system, the institution's Internet site, or an ATM. The requirement applies whether the institution discloses a balance through an ATM owned or operated by the institution or through an ATM not owned or operated by the institution (including an ATM operated by a non-depository institution). If the balance is obtained at an ATM, the requirement also applies whether the balance is disclosed on the ATM screen or on a paper receipt.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 18, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–31183 Filed 1–28–09; 8:45 am]

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S.J. Res. 3/P.L. 111–1

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