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Part II

Federal Reserve System

12 CFR Parts 226 and 227

Truth in Lending; Unfair or Deceptive Acts or Practices; Final Rules

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1370]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that are effective on February 22, 2010. The rule establishes a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans, including credit card accounts. In particular, the rule limits the application of increased rates to existing credit card balances, requires credit card issuers to consider a consumer's ability to make the required payments, establishes special requirements for extensions of credit to consumers who are under the age of 21, and limits the assessment of fees for exceeding the credit limit on a credit card account.

DATES: *Effective date.* The rule is effective February 22, 2010.

Mandatory compliance dates. The mandatory compliance date for the portion of § 226.5(a)(2)(iii) regarding use of the term "fixed" and for §§ 226.5(b)(2)(ii), 226.7(b)(11), 226.7(b)(12), 226.7(b)(13), 226.9(c)(2) (except for 226.9(c)(2)(iv)(D)), 226.9(e), 226.9(g) (except for 226.9(g)(3)(ii)), 226.9(h), 226.10, 226.11(c), 226.16(f), and §§ 226.51–226.58 is February 22, 2010. The mandatory compliance date for all other provisions of this final rule is July 1, 2010.

FOR FURTHER INFORMATION CONTACT: Jennifer S. Benson or Stephen Shin, Attorneys, Amy Henderson, Benjamin K. Olson, or Vivian Wong, Senior Attorneys, or Krista Ayoub or Ky Tran-Trong, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background and Implementation of the Credit Card Act

January 2009 Regulation Z and FTC Act Rules

On December 18, 2008, the Board adopted two final rules pertaining to open-end (not home-secured) credit. These rules were published in the **Federal Register** on January 29, 2009. The first rule makes comprehensive changes to Regulation Z's provisions applicable to open-end (not home-secured) credit, including amendments that affect all of the five major types of required disclosures: Credit card applications and solicitations, account-opening disclosures, periodic statements, notices of changes in terms, and advertisements. *See* 74 FR 5244 (January 2009 Regulation Z Rule). The second is a joint rule published with the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA) under the Federal Trade Commission Act (FTC Act) to protect consumers from unfair acts or practices with respect to consumer credit card accounts. *See* 74 FR 5498 (January 2009 FTC Act Rule). The effective date for both rules is July 1, 2010.

On May 5, 2009, the Board published proposed clarifications and technical amendments to the January 2009 Regulation Z Rule (May 2009 Regulation Z Proposed Clarifications) in the **Federal Register**. *See* 74 FR 20784. The Board, the OTS, and the NCUA (collectively, the Agencies) concurrently published proposed clarifications and technical amendments to the January 2009 FTC Act Rule. *See* 74 FR 20804 (May 2009 FTC Act Rule Proposed Clarifications). In both cases, as stated in the **Federal Register**, these proposals were intended to clarify and facilitate compliance with the consumer protections contained in the January 2009 final rules and not to reconsider the need for—or the extent of—those protections. The comment period on both of these proposed sets of amendments ended on June 4, 2009.

The Credit Card Act

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law. Public Law No. 111–24, 123 Stat. 1734 (2009). The Credit Card Act primarily amends the Truth in Lending Act (TILA) and establishes a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans. Several of the provisions of the Credit Card Act are similar to provisions in the Board's January 2009 Regulation Z and FTC Act Rules, while other portions of the Credit Card Act address practices or mandate disclosures that were not addressed in the Board's rules.

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

As is discussed further in the supplementary information to § 226.5(b)(2), on November 6, 2009, TILA Section 163 was further amended by the Credit CARD Technical Corrections Act of 2009 (Technical Corrections Act), which narrowed the application of the requirement regarding the time consumers receive to pay to credit card accounts. Public Law 111–93, 123 Stat. 2998 (Nov. 6, 2009). The Board is as adopting amendments to § 226.5(b)(2) to conform to the requirements of TILA Section 163 as amended by the Technical Corrections Act.

Implementation of Credit Card Act

On July 22, 2009, the Board published an interim final rule to implement those provisions of the Credit Card Act that became effective on August 20, 2009 (July 2009 Regulation Z Interim Final Rule). *See* 74 FR 36077. As discussed in the supplementary information to the July 2009 Regulation Z Interim Final

Rule, the Board is implementing the provisions of the Credit Card Act in stages, consistent with the statutory timeline established by Congress. Accordingly, the interim final rule implemented those provisions of the statute that became effective August 20, 2009, primarily addressing change-in-terms notice requirements and the amount of time that consumers have to make payments. The Board issued rules in interim final form based on its determination that, given the short implementation period established by the Credit Card Act and the fact that similar rules were already the subject of notice-and-comment rulemaking, it would be impracticable and unnecessary to issue a proposal for public comment followed by a final rule. The Board solicited comment on the interim final rule; the comment period ended on September 21, 2009. The Board has considered comments on the interim final rule in connection with this rule.

On October 21, 2009 the Board published a proposed rule in the **Federal Register** to implement the provisions of the Credit Card Act that become effective February 22, 2010 (October 2009 Regulation Z Proposal). 74 FR 54124. The comment period on the October 2009 Regulation Z Proposal closed on November 20, 2009. The Board received approximately 150 comments in response to the proposed rule, including comments from credit card issuers, trade associations, consumer groups, individual consumers, and a member of Congress. As discussed in more detail elsewhere in this supplementary information, the Board has considered comments received on the October 2009 Regulation Z Proposal in adopting this final rule.

The Board is separately considering the two remaining provisions under the Credit Card Act regarding reasonable and proportional penalty fees and charges and the re-evaluation of rate increases, and intends to finalize implementing regulations upon notice and after giving the public an opportunity to comment.

To the extent appropriate, the Board has used its January 2009 rules and the underlying rationale as the basis for its rulemakings under the Credit Card Act. This final rule incorporates in substance those portions of the Board's January 2009 Regulation Z Rule that are unaffected by the Credit Card Act, except as specifically noted in V. Section-by-Section Analysis. Because the requirements of the Board's January 2009 Regulation Z and FTC Act Rules are incorporated in this rule, the Board is publishing elsewhere in this **Federal Register** two notices withdrawing the January 2009 Regulation Z Rule and its January 2009 FTC Act Rule.

Provisions of January 2009 Regulation Z Rule Applicable to HELOCs

The final rule incorporates several sections of the January 2009 Regulation Z Rule that are applicable only to home-equity lines of credit subject to the requirements of § 226.5b (HELOCs). In particular, the final rule includes new §§ 226.6(a), 226.7(a) and 226.9(c)(1), which are identical to the analogous provisions adopted in the January 2009 Regulation Z Rule. These sections, as discussed in the supplementary information to the January 2009 Regulation Z Rule, are intended to preserve the existing requirements of Regulation Z for home-equity lines of credit until the Board's ongoing review of the rules that apply to HELOCs is completed. On August 26, 2009, the Board published proposed revisions to those portions of Regulation Z affecting HELOCs in the **Federal Register.** *See* 74 FR 43428 (August 2009 Regulation Z HELOC Proposal). This final rule is not intended to amend or otherwise affect the August 2009 Regulation Z HELOC Proposal. However, the Board believes that these sections are necessary to give HELOC creditors clear guidance on how to comply with Regulation Z after the effective date of this rule but prior to the effective date of the forthcoming final rules directly addressing HELOCs.

Finally, the Board has incorporated in the regulatory text and commentary for §§ 226.1, 226.2, and 226.3 several changes that were adopted in the Board's recent rulemaking pertaining to private education loans. *See* 74 FR 41194 (August 14, 2009) for further discussion of these changes.

Effective Date and Mandatory Compliance Dates

As noted above, the effective date of the Board's January 2009 Regulation Z Rule was July 1, 2010. However, the effective date of the provisions of the Credit Card Act implemented by this final rule is February 22, 2010. Many of the provisions of the Credit Card Act as implemented by this final rule are closely related to provisions of the January 2009 Regulation Z Rule. For example, § 226.9(c)(2)(ii), which describes "significant changes in terms" for which 45 days' advance notice is required, cross-references § 226.6(b)(1) and (b)(2) as adopted in the January 2009 Regulation Z Rule.

For consistency with the Credit Card Act, the Board is making the effective date for the final rule February 22, 2010. However, in the October 2009 Regulation Z Proposal, the Board solicited comment on whether compliance should be mandatory on February 22, 2010 for the provisions of the January 2009 Regulation Z Rule that are not directly affected by the Credit Card Act.

Many industry commenters urged the Board to retain the original July 1, 2010 mandatory compliance date for amendments to Regulation Z that are not specifically required by the Credit Card Act. These commenters noted that there would be significant operational issues associated with accelerating the effective date for all of the revisions contained in the January 2009 Regulation Z Rule that are not specific requirements of the Credit Card Act. Commenters noted that they have already allocated resources and planned for a July 1, 2010 mandatory compliance date for the January 2009 Regulation Z Rule and that it would be unworkable, if not impossible, to comply with all of the requirements of this final rule by February 22, 2010. The Board notes that this final rule is being issued less than two months prior to the February 22, 2010 effective date of the majority of the Credit Card Act requirements, and that an acceleration of the mandatory compliance date for provisions originally adopted in the January 2009 Regulation Z Rule that are not directly impacted by the Credit Card Act would be extremely burdensome for creditors. For some creditors, it may be impossible to implement these provisions by February 22, 2010. Accordingly, the Board is generally retaining a July 1, 2010 mandatory compliance date for those provisions originally adopted in the January 2009 Regulation Z Rule that are not requirements of the Credit Card Act.[1]

Accordingly, as discussed further in VI. Mandatory Compliance Dates, the mandatory compliance date for the portion of § 226.5(a)(2)(iii) regarding use of the term "fixed" and for §§ 226.5(b)(2)(ii), 226.7(b)(11), 226.7(b)(12), 226.7(b)(13), 226.9(c)(2) (except for 226.9(c)(2)(iv)(D)), 226.9(e), 226.9(g) (except for 226.9(g)(3)(ii)), 226.9(h), 226.10, 226.11(c), 226.16(f),

[1] The Board notes that the provisions regarding advance notice of changes in terms and rate increases set forth in § 226.9(c)(2) and (g) apply to all open-end (not home-secured) plans. The Credit Card Act's requirements regarding advance notice of changes in terms and rate increases, as implemented in this final rule, apply only to credit card accounts under an open-end (not home-secured) consumer credit plan. In order to have one consistent rule for all open-end (not home-secured) plans, compliance with the requirements of § 226.9(c)(2) and (g) (except for specific formatting requirements) is mandatory for all open-end (not home-secured) plans on February 22, 2010.

and §§ 226.51–226.58 is February 22, 2010. The mandatory compliance date for all other provisions of this final rule is July 1, 2010.

II. Summary of Major Revisions

A. Increases in Annual Percentage Rates

Existing balances. Consistent with the Credit Card Act, the final rule prohibits credit card issuers from applying increased annual percentage rates and certain fees and charges to existing credit card balances, except in the following circumstances: (1) When a temporary rate lasting at least six months expires; (2) when the rate is increased due to the operation of an index (*i.e.,* when the rate is a variable rate); (3) when the minimum payment has not been received within 60 days after the due date; and (4) when the consumer successfully completes or fails to comply with the terms of a workout arrangement. In addition, when the annual percentage rate on an existing balance has been reduced pursuant to the Servicemembers Civil Relief Act (SCRA), the final rule permits the card issuer to increase that rate once the SCRA ceases to apply.

New transactions. The final rule implements the Credit Card Act's prohibition on increasing an annual percentage rate during the first year after an account is opened. After the first year, the final rule provides that a card issuer is permitted to increase the annual percentage rates that apply to new transactions so long as the issuer provides the consumer with 45 days advance notice of the increase.

B. Evaluation of Consumer's Ability To Pay

General requirements. The Credit Card Act prohibits credit card issuers from opening a new credit card account or increasing the credit limit for an existing credit card account unless the issuer considers the consumer's ability to make the required payments under the terms of the account. Because credit card accounts typically require consumers to make a minimum monthly payment that is a percentage of the total balance (plus, in some cases, accrued interest and fees), the final rule requires card issuers to consider the consumer's ability to make the required minimum payments.

However, because an issuer will not know the exact amount of a consumer's minimum payments at the time it is evaluating the consumer's ability to make those payments, the Board proposed to require issuers to use a reasonable method for estimating a consumer's minimum payments and proposed a safe harbor that issuers could use to satisfy this requirement. For example, with respect to the opening of a new credit card account, the proposed safe harbor provided that it would be reasonable for an issuer to estimate minimum payments based on a consumer's utilization of the full credit line using the minimum payment formula employed by the issuer with respect to the credit card product for which the consumer is being considered.

Based on comments received and further analysis, the final rule adopts these aspects of the proposal. In addition, the final rule provides that—if the applicable minimum payment formula includes fees and accrued interest—the estimated minimum payment must include mandatory fees and must include interest charges calculated using the annual percentage rate that will apply after any promotional or other temporary rate expires.

The proposed rule would also have specified the types of factors card issuers should review in considering a consumer's ability to make the required minimum payments. Specifically, it provided that an evaluation of a consumer's ability to pay must include a review of the consumer's income or assets as well as current obligations, and a creditor must establish reasonable policies and procedures for considering that information. When considering a consumer's income or assets and current obligations, an issuer would have been permitted to rely on information provided by the consumer or information in a consumer's credit report.

Based on comments received and further analysis, the final rule adopts these aspects of the proposal. In addition, when evaluating a consumer's ability to pay, the final rule requires issuers to consider the ratio of debt obligations to income, the ratio of debt obligations to assets, or the income the consumer will have after paying debt obligations (*i.e.,* residual income). Furthermore, the final rule provides that it would be unreasonable for an issuer not to review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets. Finally, in order to provide flexibility regarding consideration of income or assets, the final rule permits issuers to make a reasonable estimate of the consumer's income or assets based on empirically derived, demonstrably and statistically sound models.

Specific requirements for underage consumers. Consistent with the Credit Card Act, the final rule prohibits a creditor from issuing a credit card to a consumer who has not attained the age of 21 unless the consumer has submitted a written application that meets certain requirements. Specifically, the application must include either: (1) Information indicating that the underage consumer has the ability to make the required payments for the account; or (2) the signature of a cosigner who has attained the age of 21, who has the means to repay debts incurred by the underage consumer in connection with the account, and who assumes joint liability for such debts.

C. Marketing to Students

Prohibited inducements. The Credit Card Act limits a creditor's ability to offer a student at an institution of higher education any tangible item to induce the student to apply for or open an open-end consumer credit plan offered by the creditor. Specifically, the Credit Card Act prohibits such offers: (1) On the campus of an institution of higher education; (2) near the campus of an institution of higher education; or (3) at an event sponsored by or related to an institution of higher education.

The final rule contains official staff commentary to assist creditors in complying with these prohibitions. For example, the commentary clarifies that "tangible item" means a physical item (such as a gift card, t-shirt, or magazine subscription) and does not include non-physical items (such as discounts, rewards points, or promotional credit terms). The commentary also clarifies that a location that is within 1,000 feet of the border of the campus of an institution of higher education (as defined by the institution) is considered near the campus of that institution. Finally, consistent with guidance recently adopted by the Board with respect to certain private education loans, the commentary states that an event is related to an institution of higher education if the marketing of such event uses words, pictures, or symbols identified with the institution in a way that implies that the institution endorses or otherwise sponsors the event.

Disclosure and reporting requirements. The final rule also implements the provisions of the Credit Card Act requiring institutions of higher education to publicly disclose agreements with credit card issuers regarding the marketing of credit cards. The final rule states that an institution may comply with this requirement by, for example, posting the agreement on its Web site or by making the agreement available upon request.

In addition, the final rule implements the provisions of the Credit Card Act requiring card issuers to make annual reports to the Board regarding any business, marketing, or promotional agreements between the issuer and an institution of higher education (or an affiliated organization) regarding the issuance of credit cards to students at that institution. The first report must provide information regarding the 2009 calendar year and must be submitted to the Board by February 22, 2010.[2]

D. Fees or Charges for Transactions That Exceed the Credit Limit

Consumer consent requirement. Consistent with the Credit Card Act, the final rule requires credit card issuers to obtain a consumer's express consent (or opt-in) before imposing any fees on a consumer's credit card account for making an extension of credit that exceeds the account's credit limit. Prior to obtaining this consent, the issuer must disclose, among other things, the dollar amount of any fees or charges that will be assessed for an over-the-limit transaction as well as any increased rate that may apply if the consumer exceeds the credit limit. In addition, if the consumer consents, the issuer is also required to provide a notice of the consumer's right to revoke that consent on any periodic statement that reflects the imposition of an over-the-limit fee or charge.

The final rule applies these requirements to all consumers (including existing accountholders) if the issuer imposes a fee or charge for paying an over-the-limit transaction. Thus, after February 22, 2010, issuers are prohibited from assessing any over-the-limit fees or charges on an account until the consumer consents to the payment of transactions that exceed the credit limit.

Prohibited practices. Even if the consumer has affirmatively consented to the issuer's payment of over-the-limit transactions, the Credit Card Act prohibits certain practices in connection with the assessment of over-the-limit fees or charges. Consistent with these statutory prohibitions, the final rule would prohibit an issuer from imposing more than one over-the-limit fee or charge per billing cycle. In addition, an issuer could not impose an over-the-limit fee or charge on the account for the same over-the-limit transaction in more than three billing cycles.

The Credit Card Act also directs the Board to prescribe regulations that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees. Pursuant to this authority, the proposed rule would have prohibited issuers from assessing over-the-limit fees or charges that are caused by the issuer's failure to promptly replenish the consumer's available credit. The proposed rule would have also prohibited issuers from conditioning the amount of available credit on the consumer's consent to the payment of over-the-limit transactions. Finally, the proposed rule would have prohibited the imposition of any over-the-limit fees or charges if the credit limit is exceeded solely because of the issuer's assessment of fees or charges (including accrued interest charges) on the consumer's account. The final rule adopts these prohibitions.

E. Payment Allocation

When different rates apply to different balances on a credit card account, the Board's January 2009 FTC Act Rule required banks to allocate payments in excess of the minimum first to the balance with the highest rate or pro rata among the balances. The Credit Card Act contains a similar provision, except that excess payments must always be allocated first to the balance with the highest rate. In addition, the Credit Card Act provided that, when a balance on an account is subject to a deferred interest or similar program, excess payments must be allocated first to that balance during the last two billing cycles of the deferred interest period so that the consumer can pay the balance in full and avoid deferred interest charges.

The final rule mirrors the statutory requirements. However, in order to provide consumers who utilize deferred interest programs with an additional means of avoiding deferred interest charges, the final rule also permits issuers to allocate excess payments in the manner requested by the consumer at any point during a deferred interest period. This exception allows issuers to retain existing programs that permit consumers to, for example, pay off a deferred interest balance in installments over the course of the deferred interest period. However, this provision applies only when a balance on an account is subject to a deferred interest or similar program.

F. Timely Settlement of Estates

The Credit Card Act directs the Board to prescribe regulations requiring credit card issuers to establish procedures ensuring that any administrator of an estate can resolve the outstanding credit card balance of a deceased accountholder in a timely manner. The proposed rule would have imposed two specific requirements designed to enable administrators to determine the amount of and pay a deceased consumer's balance in a timely manner.

First, upon request by the administrator, the issuer would have been required to disclose the amount of the balance in a timely manner. The final rule adopts this requirement. Second, once an administrator has requested the account balance, the proposed rule would have prohibited the issuer from imposing additional fees and charges on the account so that the amount of the balance does not increase while the administrator is arranging for payment. However, because the Board was concerned that a permanent moratorium on fees and interest charges could be unduly burdensome, the proposal solicited comment on whether a particular period of time would generally be sufficient to enable an administrator to arrange for payment.

Based on comments received and further analysis, the Board believes that it would not be appropriate to permanently prohibit the accrual of interest on a credit card account once an administrator requests the account balance because interest will continue to accrue on other types of credit accounts that are part of the estate. Instead, the final rule provides that—if the administrator pays the balance stated by the issuer in full within 30 days—the issuer must waive any additional interest charges. However, the final rule retains the proposed prohibition on the imposition of additional fees so that the account is not, for example, assessed late payment fees or annual fees while the administrator is settling the estate.

G. On-Line Disclosure of Credit Card Agreements

The Credit Card Act requires issuers to post credit card agreements on their Web sites and to submit those agreements to the Board for posting on its Web site. The Credit Card Act further provides that the Board may establish exceptions to these requirements in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of accountholders.

[2] Technical specifications for these submissions are set forth in Attachment I to this **Federal Register** notice.

The final rule adopts the proposed requirement that issuers post on their Web sites or otherwise make available their credit card agreements with current cardholders. In addition, consistent with the Credit Card Act, the final rule generally requires that—no later than February 22, 2010—issuers submit to the Board for posting on its Web site all credit card agreements offered to the public as of December 31, 2009. Subsequent submissions are due on August 2, 2010 and on a quarterly basis thereafter.[3]

However, the final rule also adopts certain exceptions to this submission requirement. First, the final rule adopts the proposed de minimis exception for issuers with fewer than 10,000 open credit card accounts. Because the overwhelming majority of credit card accounts are held by issuers that have more than 10,000 open accounts, the information provided through the Board's Web site would still reflect virtually all of the terms available to consumers. Similarly, based on comments received and further analysis, the final rule provides that issuers are not required to submit agreements for private label plans offered on behalf of a single merchant or a group of affiliated merchants or for plans that are offered in order to test a new credit card product so long as the plan involves no more than 10,000 credit card accounts.

Second, the final rule adopts the proposed exception for agreements that are not currently offered to the public. The Board believes that the primary purpose of the information provided through the Board's Web site is to assist consumers in comparing credit card agreements offered by different issuers when shopping for a new credit card. Including agreements that are no longer offered to the public would not facilitate comparison shopping by consumers. In addition, including such agreements could create confusion regarding which terms are currently available.

G. Additional Provisions

The final rule also implements the following provisions of the Credit Card Act, all of which go into effect on February 22, 2010.

Limitations on fees. The Board's January 2009 FTC Act Rule prohibited banks from charging to a credit card account during the first year after account opening certain account-opening and other fees that, in total, constituted the majority of the initial credit limit. The Credit Card Act contains a similar provision, except that it applies to all fees (other than fees for late payments, returned payments, and exceeding the credit limit) and limits the total fees to 25% of the initial credit limit.

Double-cycle billing. The Board's January 2009 FTC Act Rule prohibited banks from imposing finance charges on balances for days in previous billing cycles as a result of the loss of a grace period (a practice sometimes referred to as "double-cycle billing"). The Credit Card Act contains a similar prohibition. In addition, when a consumer pays some but not all of a balance prior to expiration of a grace period, the Credit Card Act prohibits the issuer from imposing finance charges on the portion of the balance that has been repaid.

Fees for making payment. The Credit Card Act prohibits issuers from charging a fee for making a payment, except for payments involving an expedited service by a service representative of the issuer.

Minimum payments. The Board's January 2009 Regulation Z Rule implemented provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requiring creditors to provide a toll-free telephone number where consumers could receive an estimate of the time to repay their account balances if they made only the required minimum payment each month. The Credit Card Act substantially revised the statutory requirements for these disclosures. In particular, the Credit Card Act requires the following new disclosures on the periodic statement: (1) The amount of time and the total cost (interest and principal) involved in paying the balance in full making only minimum payments; and (2) the monthly payment amount required to pay off the balance in 36 months and the total cost (interest and principal) of repaying the balance in 36 months.

III. Statutory Authority

General Rulemaking Authority

Section 2 of the Credit Card Act states that the Board "may issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act." This final rule implements several sections of the Credit Card Act, which amend TILA. TILA mandates that the Board prescribe regulations to carry out its purposes and specifically authorizes the Board, among other things, to do the following:

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

For the reasons discussed in this notice, the Board is using its specific authority under TILA and the Credit Card Act, in concurrence with other TILA provisions, to effectuate the purposes of TILA, to prevent the circumvention or evasion of TILA, and to facilitate compliance with the act.

Authority To Issue Final Rule With an Effective Date of February 22, 2010

Because the provisions of the Credit Card Act implemented by this final rule are effective on February 22, 2010,[4] this final rule is also effective on February 22, 2010 (except as otherwise provided). The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) generally requires that rules be published not less than 30 days before their effective date. *See* 15 U.S.C. 553(d). However, the APA provides an exception when "otherwise provided by the agency for good cause found and published with the rule." *Id.* § 553(d)(3). Although the Board is issuing this final rule more than 30 days before February 22, 2010, it is unclear whether it will be published in the **Federal Register** more than 30 days before that date.[5] Accordingly, the Board finds that good cause exists to publish the final rule less than 30 days before the effective date.

[3] Technical specifications for these submissions are set forth in Attachment I to this **Federal Register** notice.

[4] *See* Credit Card Act § 3.

[5] The date on which the Board's notice is published in the **Federal Register** depends on a number of variables that are outside the Board's control, including the number and size of other notices submitted to the **Federal Register** prior to the Board's notice.

Similarly, although 12 U.S.C. 4802(b)(1) generally requires that new regulations and amendments to existing regulations take effect on the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form (in this case, April 1, 2010), the Board has determined that—in light of the statutory effective date—there is good cause for making this final rule effective on February 22, 2010. *See* 12 U.S.C. 4802(b)(1)(A) (providing an exception to the general requirement when "the agency determines, for good cause published with the regulation, that the regulations should become effective before such time"). Furthermore, the Board believes that providing creditors with guidance regarding compliance before April 1, 2010 is consistent with 12 U.S.C. 4802(b)(1)(C), which provides an exception to the general requirement when "the regulation is required to take effect on a date other than the date determined under [12 U.S.C. 4802(b)(1)] pursuant to any other Act of Congress."

Finally, TILA Section 105(d) provides that any regulation of the Board (or any amendment or interpretation thereof) requiring any disclosure which differs from the disclosures previously required by Chapters 1, 4, or 5 of TILA (or by any regulation of the Board promulgated thereunder) shall have an effective date no earlier than "that October 1 which follows by at least six months the date of promulgation." However, even assuming that TILA Section 105(d) applies to this final rule, the Board believes that the specific provision in Section 3 of the Credit Card Act governing effective dates overrides the general provision in TILA Section 105(d).

IV. Applicability of Provisions

While several provisions under the Credit Card Act apply to all open-end credit, others apply only to certain types of open-end credit, such as credit card accounts under open-end consumer credit plans. As a result, the Board understands that some additional clarification may be helpful as to which provisions of the Credit Card Act as implemented in Regulation Z are applicable to which types of open-end credit products. In order to clarify the scope of the revisions to Regulation Z, the Board is providing the below table, which summarizes the applicability of each of the major revisions to Regulation Z.[6]

Provision	Applicability
§ 226.5(a)(2)(iii)	All open-end (not home-secured) consumer credit plans.
§ 226.5(b)(2)(ii)(A)	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.5(b)(2)(ii)(B)	All open-end consumer credit plans.
§ 226.7(b)(11)	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.7(b)(12)	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.7(b)(14)	All open-end (not home-secured) consumer credit plans.
§ 226.9(c)(2)	All open-end (not home-secured) consumer credit plans.
§ 226.9(e)	Credit or charge card accounts subject to § 226.5a.
§ 226.9(g)	All open-end (not home-secured) consumer credit plans.
§ 226.9(h)	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.10(b)(2)(ii)	All open-end consumer credit plans.
§ 226.10(b)(3)	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.10(d)	All open-end consumer credit plans.
§ 226.10(e)	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.10(f)	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.11(c)	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.16(f)	All open-end consumer credit plans.
§ 226.16(h)	All open-end (not home-secured) consumer credit plans.
§ 226.51	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.52	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.53	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.54	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.55	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.56	Credit card accounts under an open-end (not home-secured) consumer credit plan.
§ 226.57	Credit card accounts under an open-end (not home-secured) consumer credit plan, except that § 226.57(c) applies to all open-end consumer credit plans.
§ 226.58	Credit card accounts under an open-end (not home-secured) consumer credit plan.

V. Section-by-Section Analysis

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(15) Credit Card

In the January 2009 Regulation Z Rule, the Board revised § 226.2(a)(15) to read as follows: "*Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit. *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge." 74 FR 5257. In order to clarify the application of certain provisions of the Credit Card Act that apply to "credit card account[s] under an open end consumer credit plan," the October 2009 Regulation Z Proposal would have further revised § 226.2(a)(15) by adding a definition of "credit card account under an open-end (not home-secured) consumer credit plan." Specifically, proposed § 226.2(a)(15)(ii) would have defined this term to mean any credit account accessed by a credit card except a credit card that accesses a home-equity plan subject to the requirements of § 226.5b or an overdraft line of credit accessed by a debit card. The Board proposed to move the definitions of "credit card" and "charge card" in the January 2009 Regulation Z Rule to § 226.2(a)(15)(i) and (iii), respectively.

The Board noted that the exclusion of credit cards that access a home-equity plan subject to § 226.5b was consistent

[6] This table summarizes the applicability only of those new paragraphs or provisions added to Regulation Z in order to implement the Credit Card Act, as well as the applicability of proposed provisions addressing deferred interest or similar offers. The Board notes that it has not changed the applicability of provisions of Regulation Z amended by the January 2009 Regulation Z Rule or May 2009 Regulation Z Proposed Clarifications.

with the approach adopted by the Board in the July 2009 Regulation Z Interim Final Rule. *See* 74 FR 36083. Specifically, in the interim final rule, the Board used its authority under TILA Section 105(a) and § 2 of the Credit Card Act to interpret the term "credit card account under an open-end consumer credit plan" in new TILA Section 127(i) to exclude home-equity lines of credit subject to § 226.5b, even if those lines could be accessed by a credit card. Instead, the Board applied the disclosure requirements in current § 226.9(c)(2)(i) and (g)(1) to "credit card accounts under an open-end (not home-secured) consumer credit plan." *See* 74 FR 36094–36095. For consistency with the interim final rule, the Board proposed to generally use its authority under TILA Section 105(a) and § 2 of the Credit Card Act to apply the same interpretation to other provisions of the Credit Card Act that apply to a "credit card account under an open end consumer credit plan." *See, e.g.,* revised TILA § 127(j), (k), (l), (n); revised TILA § 171; new TILA §§ 140A, 148, 149, 172.[7] The Board noted that this interpretation was also consistent with the Board's historical treatment of HELOC accounts accessible by a credit card under TILA; for example, the credit and charge card application and solicitation disclosure requirements under § 226.5a expressly do not apply to home-equity plans accessible by a credit card that are subject to § 226.5b. *See* current § 226.5a(a)(3); revised § 226.5a(a)(5)(i), 74 FR 5403. The Board has issued the August 2009 Regulation Z HELOC Proposal to address changes to Regulation Z that it believes are necessary and appropriate for HELOCs and will consider any appropriate revisions to the requirements for HELOCs in connection with that review. Commenters generally supported this exclusion, which is adopted in the final rule.

The Board also proposed to interpret the term "credit card account under an open end consumer credit plan" to exclude a debit card that accesses an overdraft line of credit. Although such cards are "credit cards" under current § 226.2(a)(15), the Board has generally excluded them from the provisions of Regulation Z that specifically apply to credit cards. For example, as with credit cards that access HELOCs, the provisions in § 226.5a regarding credit and charge card applications and solicitations do not apply to overdraft lines of credit tied to asset accounts accessed by debit cards. *See* current § 226.5a(a)(3); revised § 226.5a(a)(5)(ii), 74 FR 5403.

Instead, Regulation E (Electronic Fund Transfers) generally governs debit cards that access overdraft lines of credit. *See* 12 CFR part 205. For example, Regulation E generally governs the issuance of debit cards that access an overdraft line of credit, although Regulation Z's issuance provisions apply to the addition of a credit feature (such as an overdraft line) to a debit card. *See* 12 CFR 205.12(a)(1)(ii) and (a)(2)(i). Similarly, when a transaction that debits a checking or other asset account also draws on an overdraft line of credit, Regulation Z treats the extension of credit as incident to an electronic fund transfer and the error resolution provisions in Regulation E generally govern the transaction. *See* 12 CFR 205.12 comment 12(a)–1.i.[8]

Consistent with this approach, the Board believes that debit cards that access overdraft lines of credit should not be subject to the regulations implementing the provisions of the Credit Card Act that apply to "credit card accounts under an open end consumer credit plan." As discussed in the January 2009 Regulation Z Rule, the Board understands that overdraft lines of credit are not in wide use.[9] Furthermore, as a general matter, the Board understands that creditors do not generally engage in the practices addressed in the relevant provisions of the Credit Card Act with respect to overdraft lines of credit. For example, as discussed in the January 2009 Regulation Z Rule, overdraft lines of credit are not typically promoted as—or used for—long-term extensions of credit. *See* 74 FR 5331. Therefore, because proposed § 226.9(c)(2) would require a creditor to provide 45 days' notice before increasing an annual percentage rate for an overdraft line of credit, a creditor is unlikely to engage in the practices prohibited by revised TILA Section 171 with respect to the application of increased rates to existing balances. Similarly, because creditors generally do not apply different rates to different balances or provide grace periods with respect to overdraft lines of credit, the provisions in proposed §§ 226.53 and 226.54 would not provide any meaningful protection. Accordingly, the Board proposed to use its authority under TILA Section 105(a) and § 2 of the Credit Card Act to create an exception for debit cards that access an overdraft line of credit.

Commenters generally supported this exclusion, which is adopted in the final rule. Several industry commenters also requested that the Board exclude lines of credit accessed by a debit card that can be used only at automated teller machines and lines of credit accessed solely by account numbers. These commenters argued that—like overdraft lines of credit accessed by a debit card—these products are not "traditional" credit cards and that creditors may be less willing to provide these products if they are required to comply with the provisions of the Credit Card Act. They also noted that the Board has excluded these products from the disclosure requirements for credit and charge cards in § 226.5a and the definition of "consumer credit card account" in the January 2009 FTC Act Rule. *See* § 226.5a(a)(5); 12 CFR 227.21(c), 74 FR 5560.

The Board believes that, as a general matter, Congress intended the Credit Card Act to apply broadly to products that meet the definition of a credit card. As discussed above, the Board's exclusion of HELOCs and overdraft lines of credit accessed by cards is based on the Board's determination that alternative forms of regulation exist that are better suited to protecting consumers from harm with respect to those products. No such alternative exists for lines of credit accessed solely by account numbers. Similarly, although the protections in Regulation E generally apply when a debit card is used at an automated teller machine to credit a deposit account with funds obtained from a line of credit,[10]

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[7] In certain cases, the Board has applied a statutory provision that refers to "credit card accounts under an open end consumer credit plan" to a wider range of products. Specifically, see the discussion below regarding the implementation of new TILA Section 127(i) in § 226.9(c)(2), the implementation of new TILA Section 127(m) in §§ 226.5(a)(2)(iii) and 226.16(f), and the implementation of new TILA Section 127(o)(2) in § 226.10(d).

[8] However, the error resolution provisions in § 226.13(d) and (g) do apply to such transactions. *See* 12 CFR 205.12 comment 12(a)–1.ii.D; *see also* current §§ 226.12(g) and 13(i); current comments 12(c)(1)–1 and 13(i)–3; new comment 12(c)–3, 74 FR 5488; revised comment 12(c)(1)–1.iv., 74 FR 5488. In addition, if the transaction solely involves an extension of credit and does not include a debit to a checking or other asset account, the liability limitations and error resolution requirements in Regulation Z apply. *See* 12 CFR 205.12(a)–1.i.

[9] The 2007 Survey of Consumer Finances data indicates that few families (1.7 percent) had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. In comparison, 73 percent of families had a credit card, and 60.3 percent of these families had a credit card balance at the time of the interview. *See* Brian Bucks, *et al., Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances,* Federal Reserve Bulletin (February 2009) ("*Changes in U.S. Family Finances from 2004 to 2007*").

[10] 12 CFR 205.3(a) (stating that Regulation E "applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account").

Regulation E generally does not apply when a debit card is used at an automated teller machine to obtain cash from the line of credit. Furthermore, because it appears that both type of credit lines are more likely to be used for long-term extensions of credit than overdraft lines, consumers are more likely to experience substantial harm if—for example—an increased annual percentage rate is applied to an outstanding balance.[11] Thus, the Board does not believe that an exclusion is warranted for lines of credit accessed by a debit card that can be used only at automated teller machines or lines of credit accessed solely by account numbers.

Finally, the Board notes that the revisions to 226.2(a)(15) are not intended to alter the scope or coverage of provisions of Regulation Z that refer generally to credit cards or open-end credit rather than the new defined term "credit card account under an open-end (not home-secured) consumer credit plan."

Section 226.5 General Disclosure Requirements

5(a) Form of Disclosures

5(a)(2) Terminology

New TILA Section 127(m) (15) U.S.C. 1637(m)), as added by Section 103 of the Credit Card Act, states that with respect to the terms of any credit card account under an open-end consumer credit plan, the term "fixed," when appearing in conjunction with a reference to the APR or interest rate applicable to such account, may only be used to refer to an APR or interest rate that will not change or vary for any reason over the period specified clearly and conspicuously in the terms of the account. In the January 2009 Regulation Z Rule, the Board had adopted §§ 226.5(a)(2)(iii) and 226.16(f) to restrict the use of the term "fixed," or any similar term, to describe a rate disclosed in certain required disclosures and in advertisements only to instances when that rate would not increase until the expiration of a specified time period. If no time period is specified, then the term "fixed," or any similar term, may not be used to describe the rate unless the rate will not increase while the plan is open. As discussed in the October 2009 Regulation Z Proposal, the Board believes that §§ 226.5(a)(2)(iii) and 226.16(f), as adopted in the January 2009 Regulation Z Rule, would be consistent with new TILA Section 127(m). Sections 226.5(a)(2)(iii) and 226.16(f) were therefore republished in the October 2009 Regulation Z Proposal to implement TILA Section 127(m). The Board did not receive any comments on §§ 226.5(a)(2)(iii) and 226.16(f), and they are adopted as proposed.

5(b) Time of Disclosures

5(b)(1) Account-Opening Disclosures

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

In certain circumstances, a creditor may substitute or replace one credit card account with another credit card account. For example, if an existing cardholder requests additional features or benefits (such as rewards on purchases), the creditor may substitute or replace the existing credit card account with a new credit card account that provides those features or benefits. The Board also understands that creditors often charge higher annual percentage rates or annual fees to compensate for additional features and benefits. As discussed below, § 226.55 and its commentary address the application of the general prohibitions on increasing annual percentage rates, fees, and charges during the first year after account opening and on applying increased rates to existing balances in these circumstances. *See* § 226.55(d); comments 55(b)(3)–3 and 55(d)–1 through –3.

In order to clarify the application of the disclosure requirements in §§ 226.6(b) and 226.9(c)(2) when one credit card account is substituted or replaced with another, the Board has adopted comment 5(b)(1)(i)–6, which states that, when a card issuer substitutes or replaces an existing credit card account with another credit card account, the card issuer must either provide notice of the terms of the new account consistent with § 226.6(b) or provide notice of the changes in the terms of the existing account consistent with § 226.9(c)(2). The Board understands that, when an existing cardholder requests new features or benefits, disclosure of the new terms pursuant to § 226.6(b) may be preferable because the cardholder generally will not want to wait 45 days for the new terms to take effect (as would be the case if notice were provided pursuant to § 226.9(c)(2)). Thus, this comment is intended to provide card issuers with flexibility regarding whether to treat the substitution or replacement as the opening of a new account (subject to § 226.6(b)) or a change in the terms of an existing account (subject to § 226.9(c)(2)).

However, the comment is not intended to permit card issuers to circumvent the disclosure requirements in § 226.9(c)(2) by treating a change in terms as the opening of a new account. Accordingly, the comment further states that whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§ 226.6(b) and 226.9(c)(2) is determined in light of all the relevant facts and circumstances.

The comment provides the following list of relevant facts and circumstances: (1) Whether the card issuer provides the consumer with a new credit card; (2) whether the card issuer provides the consumer with a new account number; (3) whether the account provides new features or benefits after the substitution or replacement (such as rewards on purchases); (4) whether the account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement; (5) whether the card issuer implemented the substitution or replacement on an individualized basis; and (6) whether the account becomes a different type of open-end plan after the substitution or replacement (such as when a charge card is replaced by a credit card). The comment states that, when most of these facts and circumstances are present, the substitution or replacement likely constitutes the opening of a new account for which § 226.6(b) disclosures are appropriate. However, the comment also states that, when few of these facts and circumstances are present, the substitution or replacement likely constitutes a change in the terms of an existing account for which § 226.9(c)(2) disclosures are appropriate.[12]

In the October 2009 Regulation Z Proposal, the Board solicited comment on whether additional facts and circumstances were relevant. The Board also solicited comment on alternative approaches to determining whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§ 226.6(b) and 226.9(c)(2).

On the one hand, consumer groups commenters stated that the Board's proposed approach was not sufficiently restrictive. They argued that § 226.9(c)(2) should apply whenever a

[11] Commenters that supported an exclusion for lines of credit accessed by a debit card that can be used only at automated teller machines noted that—unlike most credit cards—the debit card cannot access the line of credit for purchases at point of sale. However, it appears that consumers can use the debit card to obtain extensions of credit either in the form of cash or a transfer of funds to a deposit account.

[12] The comment also provides cross-references to other provisions in Regulation Z and its commentary that address the substitution or replacement of credit card accounts.

credit card account is substituted or replaced with another credit card account so that consumers will always receive 45 days' notice before any significant new terms take effect. However, the Board is concerned that this strict approach may not be beneficial to consumers overall. As discussed above, when an existing cardholder has requested new features or benefits, the cardholder generally will not want to wait 45 days to receive those features or benefits. Although a card issuer could provide the new features or benefits immediately, it may not be willing to do so if it cannot simultaneously compensate for the additional features or benefits by, for example, charging a higher annual percentage rate on new transactions or adding an annual fee.

On the other hand, industry commenters stated that the Board's proposed approach was overly restrictive. They argued that § 226.6(b) should apply whenever the substitution or replacement was requested by the consumer so that the new terms can be applied immediately. However, the Board has generally declined to provide a consumer request exception to the 45-day notice requirement in § 226.9(c)(2) because of the difficulty of defining by regulation the circumstances under which a consumer is deemed to have requested a change versus the circumstances in which the change is "suggested" by the card issuer. *See* revised § 226.9(c)(2)(i). Thus, the Board does not believe that the determination of whether §§ 226.6(b) or 226.9(c)(2) applies should turn solely on whether a consumer has requested the replacement or substitution.

For the foregoing reasons, the Board believes that the proposed standard provides the appropriate degree of flexibility insofar as it states that whether §§ 226.6(b) or 226.9(c)(c)(2) applies is determined in light of the relevant facts and circumstances. However, in response to requests from commenters, the Board has clarified some of the listed facts and circumstances. Specifically, the Board has added the substitution or replacement of a retail card with a cobranded general purpose credit card as an example of a circumstance in which an account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement. Similarly, the Board has added a substitution or replacement in response to a consumer's request as an example of a substitution or replacement on an individualized basis. Finally, the Board has clarified that, notwithstanding the listed facts and circumstances, a card issuer that replaces a credit card or provides a new account number because the consumer has reported the card stolen or because the account appears to have been used for unauthorized transactions is not required to provide a notice under § 226.6(b) or 226.9(c)(2) unless the card issuer has changed a term of the account that is subject to §§ 226.6(b) or 226.9(c)(2).

5(b)(2) Periodic Statements

As amended by the Credit Card Act in May 2009, TILA Section 163 generally prohibited a creditor from treating a payment as late or imposing additional finance charges unless the creditor mailed or delivered the periodic statement at least 21 days before the payment due date and the expiration of any period within which any credit extended may be repaid without incurring a finance charge (*i.e.,* a "grace period"). *See* Credit Card Act § 106(b)(1). Unlike most of the Credit Card Act's provisions, the amendments to Section 163 applied to all open-end consumer credit plans rather than just credit card accounts.[13] The Board's July 2009 Regulation Z Interim Final Rule implemented the amendments to TILA Section 163 by revising § 226.5(b)(2)(ii) and the accompanying official staff commentary. Both the statutory amendments and the interim final rule became effective on August 22, 2009. *See* Credit Card Act § 106(b)(2).

However, in November 2009, the Credit CARD Technical Corrections Act of 2009 (Technical Corrections Act) further amended TILA Section 163, narrowing application the requirement that statements be mailed or delivered at least 21 days before the payment due date to credit card accounts. Public Law 111–93, 123 Stat. 2998 (Nov. 6, 2009).[14] Accordingly, the Board adopts § 226.5(b)(2)(ii) and its commentary in this final rule with revisions implementing the Technical Corrections Act and clarifying aspects of the July 2009 interim final rule in response to comments.

5(b)(2)(ii) Mailing or Delivery

Prior to the Credit Card Act, TILA Section 163 required creditors to send periodic statements at least 14 days before the expiration of the grace period (if any), unless prevented from doing so by an act of God, war, natural disaster, strike, or other excusable or justifiable cause (as determined under regulations of the Board). 15 U.S.C. 1666b. The Board's Regulation Z, however, applied the 14-day requirement even when the consumer did not receive a grace period. Specifically, § 226.5(b)(2)(ii) required that creditors mail or deliver periodic statements 14 days before the date by which payment was due for purposes of avoiding not only finance charges as a result of the loss of a grace period but also any charges other than finance charges (such as late fees). *See also* comment 5(b)(2)(ii)–1.

In the January 2009 FTC Act Rule, the Board and the other Agencies prohibited institutions from treating payments on consumer credit card accounts as late for any purpose unless the institution provided a reasonable amount of time for consumers to make payment. *See* 12 CFR 227.22(a), 74 FR 5560; *see also* 74 FR 5508–5512.[15] This rule included a safe harbor for institutions that adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date were mailed or delivered to consumers at least 21 days before the payment due date. *See* 12 CFR 227.22(b)(2), 74 FR 5560. The 21-day safe harbor was intended to allow seven days for the periodic statement to reach the consumer by mail, seven days for the consumer to review their statement and make payment, and seven days for that payment to reach the institution by mail. However, to avoid any potential conflict with the 14-day requirement in TILA Section 163(a), the rule expressly stated that it would not apply to any grace period provided by an institution. *See* 12 CFR 227.22(c), 74 FR 5560.

The Credit Card Act's amendments to TILA Section 163 codified aspects of the Board's § 226.5(b)(2)(ii) as well as the provision in the January 2009 FTC Act Rule regarding the mailing or delivery of periodic statements. Specifically, like the Board's § 226.5(b)(2)(ii), amended TILA Section 163 applies the mailing or delivery requirement to both the expiration of the grace period and the payment due date. In addition, similar to the January 2009 FTC Act Rule,

[13] Specifically, while most provisions in the Credit Card Act apply to "credit card account[s] under an open end consumer credit plan" (*e.g.,* § 101(a)), the May 2009 amendments to TILA Section 163 applied to all "open end consumer credit plan[s]."

[14] As discussed below, the Technical Corrections Act did not alter the requirement in amended TILA Section 163 that all open-end consumer credit plans generally mail or deliver periodic statements at least 21 days before the date on which any grace period expires.

[15] Although the Board, OTS, and NCUA adopted substantively identical rules under the FTC Act, each agency placed its rules in its respective part of Title 12 of the Code of Federal Regulations. Specifically, the Board placed its rules in part 227, the OTS in part 535, and the NCUA in part 706. For simplicity, this supplementary information cites to the Board's rules and official staff commentary.

amended TILA Section 163 adopts 21 days as the appropriate time period between the date on which the statement is mailed or delivered to the consumer and the date on which the consumer's payment must be received by the creditor to avoid adverse consequences.

Rather than establishing an absolute requirement that periodic statements be mailed or delivered 21 days in advance of the payment due date, amended TILA Section 163(a) codifies the same standard adopted by the Board and the other Agencies in the January 2009 FTC Act Rule, which requires creditors to adopt "reasonable procedures designed to ensure" that statements are mailed or delivered at least 21 days before the payment due date. Notably, however, the 21-day requirement for grace periods in amended TILA Section 163(b) does not include similar language regarding "reasonable procedures." Because the payment due date generally coincides with the expiration of the grace period, the Board believes that it will facilitate compliance to apply a single standard to both circumstances. The "reasonable procedures" standard recognizes that, for issuers mailing hundreds of thousands of periodic statements each month, it would be difficult if not impossible to know whether a specific statement is mailed or delivered on a specific date. Furthermore, applying different standards could encourage creditors to establish a payment due date that is different from the date on which the grace period expires, which could lead to consumer confusion.

Accordingly, the Board's interim final rule amended § 226.5(b)(2)(ii) to require that creditors adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days before the payment due date *and* the expiration of the grace period. In doing so, the Board relied on its authority under TILA Section 105(a) to make adjustments that are necessary or proper to effectuate the purposes of TILA and to facilitate compliance therewith. *See* 15 U.S.C. 1604(a).

For clarity, the interim final rule also amended § 226.5(b)(2)(ii) to define "grace period" as "a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate." This definition is consistent with the definition of grace period adopted by the Board in its January 2009 Regulation Z Rule. *See* §§ 226.5a(b)(5), 226.6(b)(2)(v), 74 FR 5404, 5407; *see also* 74 FR 5291–5294, 5310.

Finally, the Credit Card Act removed prior TILA Section 163(b), which stated that the 14-day mailing requirement does not apply "in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of [the] periodic statement within the time period specified * * * because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board." 15 U.S.C. 1666b(b). The Board believes that the Credit Card Act's removal of this language is consistent with the adoption of a "reasonable procedures" standard insofar as a creditor's procedures for responding to any of the situations listed in prior TILA Section 163(b) will now be evaluated for reasonableness. Accordingly, the interim final rule removed the language implementing prior TILA Section 163(b) from footnote 10 to § 226.5(b)(2)(ii).[16]

Commenters generally supported the interim final rule, with one notable exception. Credit unions and community bank commenters strongly opposed the interim final rule on the grounds that requiring creditors to mail or deliver periodic statements at least 21 days before the payment due date with respect to open-end consumer credit plans other than credit card accounts was unnecessary and unduly burdensome. In particular, these commenters noted that the requirement disproportionately impacted credit unions, which frequently provide open-end products with multiple due dates during a month (such as bi-weekly due dates that correspond to the dates on which the consumer is paid) as well as consolidated periodic statements for multiple open-end products with different due dates. These commenters argued that applying the 21-day requirement to these products would significantly increase costs by requiring multiple periodic statements or cause creditors to cease offering such products altogether. However, these commenters noted that the requirement that statements be provided at least 21 days before the expiration of a grace period was not problematic because these products do not provide a grace period.

The Technical Corrections Act addressed these concerns by narrowing the application of the 21-day requirement in TILA Section 163(a) to credit cards. However, open-end consumer credit plans that provide a grace period remain subject to the 21-day requirement in Section 163(b). The final rule revises § 226.5(b)(2)(ii) consistent with the Technical Corrections Act. Specifically, because the Technical Corrections Act amended TILA Section 163 to apply different requirements to different types of open-end credit accounts, the Board has reorganized § 226.5(b)(2)(ii) into § 226.5(b)(2)(ii)(A) and § 226.5(b)(2)(ii)(B). This reorganization does not reflect any substantive revision of the interim final rule beyond those changes necessary to implement the Technical Corrections Act.

5(b)(2)(ii)(A) Payment Due Date

Section 226.5(b)(2)(ii)(A)(*1*) provides that, for consumer credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date. Furthermore, § 226.5(b)(2)(ii)(A)(*2*) provides that the card issuer must also adopt reasonable procedures designed to ensure that a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment is not treated as late for any purpose.

For clarity and consistency, § 226.5(b)(2)(ii)(A)(*1*) provides that a periodic statement generally must be mailed or delivered at least 21 days before the payment due date disclosed pursuant to § 226.7(b)(11)(i)(A). As discussed in greater detail below, § 226.7(b)(11)(i)(A) implements the Credit Card Act's requirement that periodic statements for credit card accounts disclose a payment due date. *See* amended TILA Section 127(b)(12)(A).[17] The Board believes that—like the mailing or delivery requirements for periodic statements in the January 2009 FTC Act Rule—the Credit Card Act's amendments to TILA Section 163 are intended to ensure that consumers have a reasonable amount of time to make payment after receiving their periodic statements. For that reason, the Board believes that it is important to ensure that the payment due date disclosed pursuant to § 226.7(b)(11)(i)(A) is consistent with requirements of § 226.5(b)(2)(ii)(A). If creditors were permitted to disclose a payment due date on the periodic statement that was less than 21 days

[16] The Board notes that the October 2009 Regulation Z Proposal erroneously included this language in § 226.5(b)(2)(iii). The final rule corrects this error.

[17] Although the 21-day requirement in amended TILA Section 163(a) is specifically tied to provision of a periodic statement that "includ[es] the information required by [TILA] section 127(b)]," the July 2009 interim final rule did not cross-reference the due date disclosure because that disclosure was not scheduled to go into effect until February 22, 2010.

after mailing or delivery of the periodic statement, consumers could be misled into believing that they have less time to pay than provided under TILA Section 163 and § 226.5(b)(2)(ii)(A).

The interim final rule adopted a new comment 5(b)(2)(ii)–1, which clarifies that, under the "reasonable procedures" standard, a creditor is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. Instead, a creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period required by § 226.5(b)(2)(ii) when determining the payment due date and the date on which any grace period expires. For example, if a creditor has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date and the date on which any grace period expires must be no less than 24 days after the closing date of the billing cycle. The final rule retains this comment with revisions to reflect the reorganization of § 226.5(b)(2)(ii).[18]

The interim final rule also adopted a new comment 5(b)(2)(ii)–2, which clarifies that treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within a specified amount of time or by a specified date.[19] Several commenters requested that the Board narrow or expand this language to clarify that certain activities are included or excluded. The current language is consistent with the Board's intent that the prohibition on treating a payment as late for purpose be broadly construed and that the list of examples be illustrative rather than exhaustive. Nevertheless, in order to provide additional clarity, the final rule amends comment 5(b)(2)(ii)–2 to provide two additional examples of activities that constitute treating a payment as late for purposes of § 226.5(b)(2)(ii)(A)(*2*): terminating benefits (such as rewards on purchases) and initiating collection activities. However, the provision of additional examples should not be construed as a determination by the Board that other activities would not constitute treating a payment as late for any purpose.

In the October 2009 Regulation Z Proposal, the Board proposed to amend other aspects of comment 5(b)(2)(ii)–2. In particular, the Board proposed to clarify that the prohibition in § 226.5(b)(2)(ii) on treating a payment as late for any purpose or collecting finance or other charges applies only during the 21-day period following mailing or delivery of the periodic statement stating the due date for that payment. Thus, if a creditor does not receive a payment within 21 days of mailing or delivery of the periodic statement, the prohibition does not apply and the creditor may, for example, impose a late payment fee. Commenters generally supported this clarification. Accordingly, the Board has adopted this guidance—with additional clarifications—in the final rule. In addition, for consistency with the reorganization of § 226.5(b)(2)(ii), the Board has moved the guidance regarding grace periods to comment 5(b)(2)(ii)–3.

5(b)(2)(ii)(B) Grace Period Expiration Date

Section 226.5(b)(2)(ii)(B)(*1*) provides that, for open-end consumer credit plans, a creditor must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the date on which any grace period expires. Furthermore, § 226.5(b)(2)(ii)(B)(*2*) provides that the creditor must also adopt reasonable procedures designed to ensure that the creditor does not impose finance charges as a result of the loss of a grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement. Finally, the interim final rule's definition of "grace period" has been moved to § 226.5(b)(2)(ii)(B)(*3*) without any substantive change.

The interim final rule adopted comment 5(b)(2)(ii)–3, which clarified that, for purposes of § 226.5(b)(2)(ii), "payment due date" generally excluded courtesy periods following the contractual due date during which a consumer could make payment without incurring a late payment fee. This comment was intended to address open-end consumer credit plans other than credit cards and therefore is not necessary in light of the Technical Corrections Act.[20] Accordingly, the guidance in current comment 5(b)(2)(ii)–3 has been replaced with guidance regarding application of the grace period requirements in § 226.5(b)(2)(ii)(B). Specifically, this comment incorporates current comment 5(b)(2)(ii)–4, which clarifies that the definition of "grace period" in § 226.5(b)(2)(ii) does not include a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. The comment also clarifies that courtesy periods following the payment due date during which a late payment fee will not be assessed are not grace periods for purposes of § 226.5(b)(2)(ii)(B) and provides a cross-reference to comments 7(b)(11)–1 and –2 for additional guidance regarding such periods.

Comment 5(b)(2)(ii)–3 also clarifies the applicability of § 226.5(b)(2)(ii)(B). Specifically, it states that § 226.5(b)(2)(ii)(B) applies if an account is eligible for a grace period when the periodic statement is mailed or delivered. It further states that § 226.5(b)(2)(ii)(B) does not require the creditor to provide a grace period or prohibit the creditor from placing limitations and conditions on a grace period to the extent consistent with § 226.5(b)(2)(ii)(B) and § 226.54. Finally, it states that the prohibition in § 226.5(b)(2)(ii)(B)(*2*) applies only during the 21-day period following mailing or delivery of the periodic statement and applies only when the creditor receives a payment that satisfies the terms of the grace period within that 21-day period. An illustrative example is provided.

[18] The Board and the other Agencies adopted a similar comment in the January 2009 FTC Act Rule. *See* 12 CFR 227.22 comment 22(b)–1, 74 FR 5511, 5561. The interim final rule deleted prior comment 5(b)(2)(ii)–1 because it referred to the 14-day rule for grace periods and was therefore no longer consistent with § 226.5(b)(2)(ii). In doing so, the Board concluded that, to the extent that the comment clarified that § 226.5(b)(2)(ii) applied in circumstances where the consumer is not eligible or ceases to be eligible for a grace period, it was no longer necessary because that requirement was reflected in amended § 226.5(b)(2)(ii) and elsewhere in the amended commentary.

[19] The Board and the other Agencies adopted a similar comment in the January 2009 FTC Act Rule. *See* 12 CFR 227.22 comment 22(a)–1, 74 FR 5510, 5561. The interim final rule deleted prior comment 5(b)(2)(ii)–2, which clarified that the emergency circumstances exception in prior footnote 10 does not extend to the failure to provide a periodic statement because of computer malfunction. As discussed above, prior footnote 10 was based on prior TILA Section 163(b), which has been repealed.

[20] Furthermore, similar guidance is provided in comments 7(b)(11)–1 and –2, which the Board is adopting in this final rule (as discussed below). The Board initially adopted comments 7(b)(11)–1 and –2 in the January 2009 Regulation Z Rule. *See* 74 FR 5478. However, because this commentary was not yet effective, the July 2009 Regulation Z Interim Final Rule provided similar guidance in current comment 5(b)(2)(ii)–3.

As noted above, current comment 5(b)(2)(ii)–4 has been incorporated into comment 5(b)(2)(ii)–3. In its place, the Board has adopted guidance to address confusion regarding the interaction between the payment due date disclosure in proposed § 226.7(b)(11)(i)(A) and the 21-day requirements in § 226.5(b)(2)(ii) with respect to charge card accounts and charged-off accounts. Charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable when the periodic statement is received. *See* § 226.5a(b)(7). Therefore, the contractual payment due date for a charge card account is the date on which the consumer receives the periodic statement (although charge card issuers generally request that the consumer make payment by some later date). *See* comment 5a(b)(7)–1. Similarly, when an account is over 180 days past due and has been placed in charged off status, full payment is due immediately.

However, as discussed below, the Board has concluded that it would not be appropriate to apply the payment due date disclosure in § 226.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts or periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately. In addition, a card issuer could not comply with the requirement to mail or deliver the periodic statement 21 days before the payment due date if the payment due date is the date that the consumer receives the statement. Accordingly, comment 5(b)(2)(ii)–4 clarifies that, because the payment due date disclosure in § 226.7(b)(11)(i)(A) does not apply to periodic statements provided solely for charge card accounts or periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately, § 226.5(b)(2)(ii)(A)(*1*) does not apply to the mailing or delivery of periodic statements provided solely for such accounts.

Comment 5(b)(2)(ii)–4 further clarifies that, with respect to charge card accounts, § 226.5(b)(2)(ii)(A)(*2*) nevertheless requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of that statement. Thus, notwithstanding the contractual due date, consumers with charge card accounts must receive at least 21 days to make payment without penalty.

With respect to charged-off accounts, comment 5(b)(2)(ii)–4 clarifies that, as discussed above with respect to comment 5(b)(2)(ii)–2, a card issuer is only prohibited from treating a payment as late during the 21-day period following mailing or delivery of the periodic statement stating the due date for that payment. Thus, because a charged-off account will generally have several past due payments, the card issuer may continue to treat those payments as late during the 21-day period for new payments.

Comment 5(b)(2)(ii)–4 also clarifies the application of the grace period requirements in § 226.5(b)(2)(ii)(B) to charge card and charged-off accounts. Specifically, the comment states that § 226.5(b)(2)(ii)(B) does not apply to charge card accounts because, for purposes of § 226.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with § 226.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate. Similarly, the comment states that § 226.5(b)(2)(ii)(B) does not apply to charged-off accounts where full payment of the entire account balance is due immediately because such accounts do not provide a grace period.

The final rule does not alter current comment 5(b)(2)(ii)–5, which provides that, when a consumer initiates a request, the creditor may permit, but may not require, the consumer to pick up periodic statements. Finally, the Board has adopted the proposed revisions to comment 5(b)(2)(ii)–6, which amend the cross-reference to reflect the restructuring of the commentary to § 226.7.

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

The Board republished proposed comment 5a(b)(1)–9 in the October 2009 Regulation Z Proposal, which was originally published in the May 2009 Regulation Z Proposed Clarifications. The comment clarified that an issuer offering a deferred interest or similar plan may not disclose a rate as 0% due to the possibility that the consumer may not be obligated for interest pursuant to a deferred interest or similar transaction. The Board did not receive any comments opposing this provision, and the comment is adopted as proposed. The Board notes that comment 5a(b)(1)–9 would apply to account opening disclosures pursuant to comment 6(b)(1)–1.

5a(b)(5) Grace Period

Sections 226.5a(b)(5) and 6(b)(2)(v) require that creditors disclose, among other things, any conditions on the availability of a grace period. As discussed below with respect to § 226.54, the Credit Card Act provides that, when a consumer pays some but not all of the balance subject to a grace period prior to expiration of the grace period, the card issuer is prohibited from imposing finance charges on the portion of the balance paid. Industry commenters requested that the Board clarify that §§ 226.5a(b)(5) and 6(b)(2)(v) do not require card issuers to disclose this limitation.

In the January 2009 Regulation Z Rule, the Board provided the following model language for the disclosures required by §§ 226.5a(b)(5) and 6(b)(2)(v): "Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month." *See, e.g.,* App. G–10(B).[21] This language was developed through extensive consumer testing. However, the Board has not been able to conduct additional consumer testing with respect to disclosure of the limitations on the imposition of finance charges in § 226.54. Accordingly, the Board is concerned that the inclusion of language attempting to describe those limitations could reduce the effectiveness of the disclosure.

Furthermore, the Board does not believe that such a disclosure is necessary insofar as the model language accurately states that a consumer generally will not be charged any interest on purchases if the entire purchase balance is paid by the due date. Thus, although § 226.54 limits the imposition of finance charges if the consumer pays less than the entire balance, the model language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges.

Accordingly, the Board has created new comments 5a(b)(5)–4 and 6(b)(2)(v)–4, which clarify that §§ 226.5a(b)(5) and 6(b)(2)(v) do not require card issuers to disclose the limitations on the imposition of finance charges in § 226.54. For additional clarity, the Board also states in a new comment 7(b)(8)–3 that a card issuer is

[21] The model forms in Appendix G–17(B) and (C) also state: "We will begin charging interest on cash advances and balance transfers on the transaction date."

not required to include this disclosure when disclosing the date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges pursuant to § 226.7(b)(8).

Section 226.6 Account-Opening Disclosures

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

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

Section 226.6(b)(2)(i) sets forth disclosure requirements for rates that apply to open-end (not home-secured) accounts. Under the January 2009 Regulation Z Rule, creditors generally must disclose the specific APRs that will apply to the account in the table provided at account opening. The Board, however, provided a limited exception to this rule where the APRs that creditors may charge vary by state for accounts opened at the point of sale. *See* § 226.6(b)(2)(i)(E). Pursuant to that exception, creditors imposing APRs that vary by state and providing the disclosures required by § 226.6(b) in person at the time an open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose in the account-opening table either (1) the specific APR applicable to the consumer's account, or (2) the range of the APRs, if the disclosure includes a statement that the APR varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening summary table where the APR applicable to the consumer's account is disclosed, for example in a list of APRs for all states.

In the May 2009 Regulation Z Proposed Clarifications, the Board proposed to provide similar flexibility to the disclosure of APRs at the point of sale when rates vary based on the consumer's creditworthiness. Thus, the Board proposed to amend § 226.6(b)(2)(i)(E) to state that creditors providing the disclosures required by § 226.6(b) in person at the time an open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose in the account-opening table either (1) the specific APR applicable to the consumer's account, or (2) the range of the APRs, if the disclosure includes a statement that the APR varies by state or depends on the consumer's creditworthiness, as applicable, and refers the consumer to an account agreement or other disclosure provided with the account-opening summary table where the APR applicable to the consumer's account is disclosed, for example in a separate document provided with the account-opening table.

The Board noted in the supplementary information to the proposed clarifications that if creditors are not given additional flexibility, some consumers could be disadvantaged because creditors may provide a single rate for all consumers rather than varying the rate, with some consumers receiving lower rates than would be offered under a single-rate plan. Thus, without the proposed change, some consumers may be harmed by receiving higher rates. Moreover, the Board noted its understanding that the operational changes necessary to provide the specific APR applicable to the consumer's account in the table at point of sale when that rate depends on the consumer's creditworthiness may be too burdensome and increase creditors' risk of inadvertent noncompliance. Currently, creditors that establish open-end plans at point of sale provide account-opening disclosures at point of sale before the first transaction, with a reference to the APR in a separate document provided with the account agreement, and commonly provide a second, additional set of disclosures which reflect the actual APR for the account when, for example, a credit card is sent to the consumer.

Industry commenters generally supported the proposed clarification, for the reasons stated by the Board in the supplementary information to the May 2009 Regulation Z Proposed Clarifications. Consumer group commenters opposed the proposed clarification. However, the Board notes that the consumer group comments were premised on consumer groups' understanding that the clarification would require disclosure of the actual rate that will apply to the consumer's account only at a later point of time, subsequent to when the other account-opening disclosures are provided at point of sale. The Board notes that the proposed clarification would require the disclosure of the specific APR that will apply to the consumer's account at the same time that other account-opening disclosures are provided at point of sale. The clarification would, however, provide creditors with the flexibility to disclose the specific APR on a separate page or document than the tabular disclosure.

The Board is adopting the clarification to § 226.6(b)(2)(i)(E) as proposed. The Board believes that permitting creditors to provide the specific APR information outside of the table at point of sale, with the expectation that consumers will also receive a second set of disclosures with the specific APR applicable to the consumer properly formatted in the account-opening table at a later time, strikes the appropriate balance between the burden on creditors and the need to disclose to consumers the specific APR applicable to the consumer's account in the account-opening table provided at point of sale. Under the final rule, the consumer must receive a disclosure of the actual APR that applies to the account at the point of sale, but that rate could be provided in a separate document.

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

See discussion regarding § 226.5a(b)(5).

6(b)(4) Disclosure of Rates for Open-End (Not Home-Secured) Plans

6(b)(4)(ii) Variable-Rate Accounts

Section 226.6(b)(4)(ii) as adopted in the January 2009 Regulation Z Rule sets forth the rules for variable-rate disclosures at account-opening, including accuracy requirements for the disclosed rate. The accuracy standard as adopted provides that a disclosed rate is accurate if it is in effect as of a "specified date" within 30 days before the disclosures are provided. *See* § 226.6(b)(4)(ii)(G).

Currently, creditors generally update rate disclosures provided at point of sale only when the rates have changed. The Board understands that some confusion has arisen as to whether the new rule as adopted literally requires that the account-opening disclosure specify a date as of which the rate was accurate, and that this date must be within 30 days of when the disclosures are given. Such a requirement could pose operational challenges for disclosures provided at point of sale as it would require creditors to reprint disclosures periodically, even if the variable rate has not changed since the last time the disclosures were printed.

The Board did not intend such a result. Requiring creditors to update rate disclosures to specify a date within the past 30 days would impose a burden on creditors with no corresponding benefit to consumers, where the disclosed rate is still accurate within the last 30 days before the disclosures are provided. Accordingly, the Board proposed in May 2009 to revise the rule to clarify that a variable rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided. No significant issues were raised by commenters on this clarification, which is adopted as proposed.

The Board is adopting one additional amendment to § 226.6(b)(4)(ii), to provide flexibility when variable rates are disclosed at point of sale. The Board understands that one consequence of the Credit Card Act's amendments regarding repricing of accounts, as implemented in § 226.55 of this final rule, is that private label and retail card issuers may be more likely to impose variable, rather than non-variable, rates when opening new accounts. The Board further understands that account-opening disclosures provided at point of sale are often pre-printed, which presents particular operational difficulties when those disclosures must be replaced at a large number of retail locations. As discussed above, the general accuracy standard for variable rates disclosed at account opening is that a variable rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided. The Board notes that for a creditor establishing new open-end accounts at point of sale, this could mean that the disclosures at each retail location must be replaced each month, if the creditor's variable rate changes in accordance with an index value each month.

For reasons similar to those discussed above in the supplementary information to § 226.6(b)(2)(i)(E), the Board believes that additional flexibility is appropriate for issuers providing account-opening disclosures at point of sale when the rate being disclosed is a variable rate. The Board believes that permitting issuers to provide a variable rate in the table that is in effect within 90 days before the disclosures are provided, accompanied by a separate disclosure of a variable rate in effect within the last 30 days will strike the balance between operational burden on creditors and ensuring that consumers receive clear and timely disclosures of the terms that apply to their accounts.

Accordingly, the Board is adopting a new § 226.6(b)(4)(ii)(H), which states that creditors imposing annual percentage rates that vary according to an index that is not under the creditor's control that provide the disclosures required by § 226.6(b) in person at the time an open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may disclose in the table a rate, or range of rates to the extent permitted by § 226.6(b)(2)(i)(E), that was in effect within the last 90 days before the disclosures are provided, along with a reference directing the consumer to the account agreement or other disclosure provided with the account-opening table where an annual percentage rate applicable to the consumer's account in effect within the last 30 days before the disclosures are provided is disclosed.

Section 226.7 Periodic Statement

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

7(b)(8) Grace Period

See discussion regarding § 226.5a(b)(5).

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

In 2005, the Bankruptcy Act amended TILA to add Section 127(b)(12), which required creditors that charge a late payment fee to disclose on the periodic statement (1) the payment due date or, if the due date differs from when a late payment fee would be charged, the earliest date on which the late payment fee may be charged, and (2) the amount of the late payment fee. *See* 15 U.S.C. 1637(b)(12). In the January 2009 Regulation Z Rule, the Board implemented this section of TILA for open-end (not home-secured) credit plans. Specifically, the final rule added § 226.7(b)(11) to require creditors offering open-end (not home-secured) credit plans that charge a fee or impose a penalty rate for paying late to disclose on the periodic statement: The payment due date, and the amount of any late payment fee and any penalty APR that could be triggered by a late payment. For ease of reference, this supplementary information will refer to the disclosure of any late payment fee and any penalty APR that could be triggered by a late payment as "the late payment disclosures."

Section 226.7(b)(13), as adopted in the January 2009 Regulation Z Rule, sets forth formatting requirements for the due date and the late payment disclosures. Specifically, § 226.7(b)(13) requires that the due date be disclosed on the front side of the first page of the periodic statement. Further, the amount of any late payment fee and any penalty APR that could be triggered by a late payment must be disclosed in close proximity to the due date.

Section 202 of the Credit Card Act amends TILA Section 127(b)(12) to provide that for a "credit card account under an open-end consumer credit plan," a creditor that charges a late payment fee must disclose in a conspicuous location on the periodic statement (1) the payment due date, or, if the due date differs from when a late payment fee would be charged, the earliest date on which the late payment fee may be charged, and (2) the amount of the late payment fee. In addition, if a late payment may result in an increase in the APR applicable to the credit card account, a creditor also must provide on the periodic statement a disclosure of this fact, along with the applicable penalty APR. The disclosure related to the penalty APR must be placed in close proximity to the due-date disclosure discussed above.

In addition, Section 106 of the Credit Card Act adds new TILA Section 127(o), which requires that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan be the same day each month. 15 U.S.C. 1637(o).

As discussed in more detail below, in the October 2009 Regulation Z Proposal, the Board proposed to retain the due date and the late payment disclosure provisions adopted in § 226.7(b)(11) as part of the January 2009 Regulation Z Rule, with several revisions. Format requirements relating to the due date and the late payment disclosure provisions are discussed in more detail in the section-by-section analysis to § 226.7(b)(13).

Applicability of the due date and the late payment disclosure requirements. The due date and the late payment disclosures added to TILA Section 127(b)(12) by the Bankruptcy Act applied to all open-end credit plans. Consistent with TILA Section 127(b)(12), as added by the Bankruptcy Act, the due date and the late payment disclosures in § 226.7(b)(11) (as adopted in the January 2009 Regulation Z Rule) apply to all open-end (not home-secured) credit plans, including credit card accounts, overdraft lines of credit and other general purpose lines of credit that are not home secured.

The Credit Card Act amended TILA Section 127(b)(12) to apply the due date and the late payment disclosures only to creditors offering a credit card account under an open-end consumer credit plan. Consistent with newly-revised TILA Section 127(b)(12), in the October 2009 Regulation Z Proposal, the Board proposed to amend § 226.7(b)(11) to require the due date and the late payment disclosures only for a "credit card account under an open-end (not home-secured) consumer credit plan," as that term would have been defined under proposed § 226.2(a)(15)(ii). Based on the proposed definition of "credit card account under an open-end (not home-secured) consumer credit plan," the due date and the late payment disclosures would not have applied to (1) open-end credit plans that are not credit card accounts such as general purpose lines of credit that are not accessed by a credit card; (2) HELOC accounts subject to § 226.5b even if they are accessed by a credit card device; and (3) overdraft lines of credit even if they are accessed by a debit card. In addition, as discussed in more detail below, under proposed § 226.7(b)(11)(ii), the Board also proposed to exempt charge card accounts from the late payment disclosure requirements.

In response to the October 2009 Regulation Z Proposal, several consumer groups encouraged the Board to use its authority under Section 105(a) of TILA to require the payment due date and late payment disclosures for all open-end credit, not just "credit card accounts under an open-end (not home-secured) consumer credit plan."

However, the final rule applies the payment due date and late payment disclosures only to credit card accounts under an open-end (not home-secured) consumer credit plan, as that term is defined in § 226.2(a)(15)(ii). Thus, the due date and the late payment disclosures would not apply to (1) open-end credit plans that are not credit card accounts such as general purpose lines of credit that are not accessed by a credit card; (2) HELOC accounts subject to § 226.5b even if they are accessed by a credit card device; and (3) overdraft lines of credit even if they are accessed by a debit card. In addition, as discussed in more detail below, under § 226.7(b)(11)(ii), the final rule also exempts charge card accounts and charged-off accounts from the payment due date and late payment disclosure requirements.

1. *HELOC accounts.* In the August 2009 Regulation Z HELOC Proposal, the Board did not propose to use its authority in TILA Section 105(a) to apply the due date and late payment disclosures to HELOC accounts subject to § 226.5b, even if they are accessed by a credit card device. In the supplemental information to the August 2009 Regulation Z HELOC Proposal, the Board stated its belief that the payment due date and late payment disclosures are not needed for HELOC accounts to effectuate the purposes of TILA. The consequences to a consumer of not making the minimum payment by the payment due date are less severe for HELOC accounts than for unsecured credit cards. Unlike with unsecured credit cards, creditors offering HELOC accounts subject to 226.5b typically do not impose a late-payment fee until 10–15 days after the payment is due. In addition, as proposed in the August 2009 Regulation Z HELOC Proposal, creditors offering HELOC accounts would be restricted from terminating and accelerating the account, permanently suspending the account or reducing the credit line, or imposing penalty rates or penalty fees (except for the contractual late-payment fee) for a consumer's failure to pay the minimum payment due on the account, unless the payment is more than 30 days late. For unsecured credit cards, under the Credit Card Act, after the first year an account is opened, unsecured credit card issuers may increase rates and fees on new transactions for a late payment, even if the consumer is only one day late in making the minimum payment. Unlike with unsecured credit cards, as proposed in the August 2009 Regulation HELOC Proposal, even after the first year that the account is open, creditors offering HELOC accounts subject to § 226.5b could not impose penalty rates or penalty fees (except for a contractual late-payment fee) on new transactions for a consumer's failure to pay the minimum payment on the account, unless the consumer's payment is more than 30 days late. For these reasons, the final rule does not extend the payment due date and late payment disclosures to HELOC accounts subject to § 226.5b, even if they are accessed by a credit card device.

2. *Overdraft lines of credit and other general purpose credit lines.* For several reasons, the Board also does not use its authority in TILA Section 105(a) to apply the due date and late payment disclosures to overdraft lines of credit (even if they are accessed by a debit card) and general purpose credit lines that are not accessed by a credit card. First, these lines of credit are not in wide use. The 2007 Survey of Consumer Finances data indicates that few families—1.7 percent—had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. (By comparison, 73 percent of families had a credit card, and 60.3 percent of these families had a credit card balance at the time of the interview.)[22] Second, the Board is concerned that the operational costs of requiring creditors to comply with the payment due date and late payment disclosure requirements for overdraft lines of credit and other general purpose lines of credit may cause some institutions to no longer provide these products as accommodations to consumers, to the detriment of consumers who currently use these products. For these reasons, the final rule does not extend the payment due date and late payment disclosure requirements to overdraft lines of credit and other general purpose credit lines.

3. *Charge card accounts.* As discussed above, the late payment disclosures in TILA Section 127(b)(12), as amended by the Credit Card Act, apply to "creditors" offering credit card accounts under an open-end consumer credit plan. Issuers of "charge cards" (which are typically products where outstanding balances cannot be carried over from one billing period to the next and are payable when a periodic statement is received) are "creditors" for purposes of specifically enumerated TILA disclosure requirements. 15 U.S.C. 1602(f); § 226.2(a)(17). The late payment disclosure requirement in TILA Section 127(b)(12), as amended by the Credit Card Act, is not among those specifically enumerated.

Under the October 2009 Regulation Z Proposal, a charge card issuer would have been required to disclose the payment due date on the periodic statement that was the same day each month. However, under proposed § 226.7(b)(11)(ii), a charge card issuer would not have been required to disclose on the periodic statement the late payment disclosures, namely any late payment fee or penalty APR that could be triggered by a late payment. The Board noted that, as discussed above, the late payment disclosure requirements are not specifically enumerated in TILA Section 103(f) to apply to charge card issuers. In addition, the Board noted that for some charge card issuers, payments are not considered "late" for purposes of imposing a fee until a consumer fails to make payments in two consecutive billing cycles. Therefore, the Board concluded that it would be undesirable to encourage consumers who in January receive a statement with the balance due upon receipt, for example, to avoid paying the balance when due because a late payment fee may not be assessed until mid-February; if consumers routinely avoided paying a charge card balance by the due date, it could cause issuers to change their practice with respect to charge cards.

An industry commenter noted that charge cards should also be exempt from the requirement in new TILA Section 127(o) that the payment due date be the same day each month because that requirement, like the late payment disclosure requirements in revised TILA Section 127(b)(12), is not specifically enumerated in TILA Section 103(f) as applying to charge card issuers. Historically, however, the Board has generally used its authority under TILA Section 105(a) to apply the same requirements to credit and charge cards.

[22] Brian Bucks, *et al.,* Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin (February 2009).

See § 226.2(a)(15); comment 2(a)(15)–3. The Board has taken a similar approach with respect to implementation of the Credit Card Act. *See* § 226.2(a)(15)(ii). Nevertheless, in these circumstances, the Board believes that it would not be appropriate to apply the requirements in TILA Section 127(b)(12) and (o) to periodic statements provided solely for charge card accounts.

Charge card accounts generally require that the consumer pay the full balance upon receipt of the periodic statement. *See* comment 2(a)(15)–3. In practice, however, the Board understands that charge card issuers generally request that consumers make payment by some later date. *See* comment 5a(b)(7)–1. As discussed below, proposed comments 7(b)(11)–1 and –2 clarify that the payment due date disclosed pursuant to § 226.7(b)(11)(i)(A) must be the date on which the consumer is legally obligated to make payment, even if the contract or state law provides that a late payment fee cannot be assessed until some later date. Thus, proposed § 226.7(b)(11)(i)(A) would have required a charge card issuer to disclose that payment was due immediately upon receipt of the periodic statement. As discussed above with respect to § 226.5(b)(2)(ii), the Board believes that such a disclosure would be unnecessarily confusing for consumers and would prevent a charge card issuer from complying with the requirement that periodic statements be mailed or delivered 21 days before the payment due date. Instead, the Board believes that it is appropriate to amend proposed § 226.7(b)(11)(ii)(A) to exempt charge card periodic statements from the requirements of § 226.7(b)(11)(i).

However, as discussed above, charge card issuers are still prohibited by § 226.5(b)(2)(ii)(A)(*2*) from treating a payment as late for any purpose during the 21-day period following mailing or delivery of the periodic statement. Furthermore, § 226.7(b)(11)(ii) makes clear the exemption is for periodic statements provided solely for charge card accounts; periodic statements provided for credit card accounts with a charge card feature and revolving feature must comply with the due date and late payment disclosure provisions as to the revolving feature. The Board is also retaining comment app. G–9 (which was adopted in the January 2009 Regulation Z Rule). Comment app. G–9 explains that creditors offering card accounts with a charge card feature and a revolving feature may revise disclosures, such as the late payment disclosures and the repayment disclosures discussed in the section-by-section analysis to § 226.7(b)(12) below, to make clear the feature to which the disclosures apply.

4. *Charged-off accounts.* In response to the October 2009 Regulation Z Proposal, one commenter requested that credit card issuers not be required to provide the payment due date and late payment disclosures for charged-off accounts since, on those accounts, consumers are over 180 days late, the accounts have been placed in charge-off status, and full payment is due immediately. The final rule provides that the payment due date and late payment disclosures do not apply to a charged-off account where full payment of the entire account balance is due immediately. *See* § 226.7(b)(11)(ii)(B). In these cases, it would be impossible for card issuers to ensure that the payment due date is the same day each month because the payment is due immediately upon receipt of the periodic statement, and issuers cannot control which day the periodic statement will be received. In addition, the late payment disclosures are not likely to be meaningful to consumers because consumers are likely aware of any penalties for late payment when an account is 180 days late.

5. *Lines of credit accessed solely by account numbers.* In response to the October 2009 Regulation Z Proposal, one commenter requested that the Board provide an exemption from the due date and late payment disclosures for lines of credit accessed solely by account numbers. This commenter believed that this exemption would simplify compliance issues, especially for smaller retailers offering in-house revolving open-end accounts, in view of some case law indicating that a reusable account number could constitute a "credit card." The final rule does not contain a specific exemption from the payment due date and late payment disclosure requirements for lines of credit accessed solely by account numbers. The Board believes that consumers that use these lines of credit (to the extent they are considered credit card accounts) would benefit from the due date and late payment disclosures.

Payment due date. As adopted in the January 2009 Regulation Z Rule, § 226.7(b)(11) requires creditors offering open-end (not home-secured) credit to disclose the due date for a payment if a late payment fee or penalty rate could be imposed under the credit agreement, as discussed in more detail as follows. As adopted in the January 2009 Regulation Z Rule, § 226.7(b)(11) applies to all open-end (not home-secured) credit plans, even those plans that are not accessed by a credit card device. In the October 2009 Regulation Z Proposal, the Board proposed generally to retain the due date disclosure, except that this disclosure would have been required only for a card issuer offering a "credit card account under an open-end (not home-secured) consumer credit plan," as that term would have been defined in proposed § 226.2(a)(15)(ii).

In addition, the Board proposed several other revisions to § 226.7(b)(11) in order to implement new TILA Section 127(o), which requires that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan be the same day each month. In addition to requiring that the due date disclosed be the same day each month, in order to implement new TILA Section 127(o), the Board proposed to require that the due date disclosure be provided regardless of whether a late payment fee or penalty rate could be imposed and proposed to require that the due date be disclosed for charge card accounts, although charge card issuers would not be required to provide the late payment disclosures set forth in proposed § 226.7(b)(11)(i)(B). The final rule retains this provision with one modification. For the reasons discussed above, the final rule amends proposed § 226.7(b)(11)(ii) to provide that the due date and late payment disclosure requirements do not apply to periodic statements provided solely for charge card accounts or to periodic statements provided for charged-off accounts where payment of the entire account balance is due immediately.

1. *Courtesy periods.* In the January 2009 Regulation Z Rule, § 226.7(b)(11) interpreted the due date to be a date that is required by the legal obligation. Comment 7(b)(11)–1 clarified that creditors need not disclose informal "courtesy periods" not part of the legal obligation that creditors may observe for a short period after the stated due date before a late payment fee is imposed, to account for minor delays in payments such as mail delays. In the October 2009 Regulation Z Proposal, the Board proposed to retain comment 7(b)(11)–1 with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the due date and late payment disclosures to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term would have been defined in proposed § 226.2(a)(15)(ii). The Board received no comments on this provision. The final rule adopts comment 7(b)(11)–1 as proposed.

2. *Assessment of late fees.* Under TILA Section 127(b)(12), as revised by the Credit Card Act, a card issuer must disclose on periodic statements the

payment due date or, if different, the earliest date on which the late payment fee may be charged. Some state laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. Under such a state law, the later date arguably would be required to be disclosed on periodic statements.

In the January 2009 Regulation Z Rule, the Board required creditors to disclose the due date under the terms of the legal obligation, and not a later date, such as when creditors are restricted by state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date. Specifically, comment 7(b)(12)–2 (as adopted as part of the January 2009 Regulation Z Rule) notes that some state or other laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. For example, assume a payment is due on March 10 and state law provides that a late payment fee cannot be assessed before March 21. Comment 7(b)(11)–2 clarifies that creditors must disclose the due date under the terms of the legal obligation (March 10 in this example), and not a date different than the due date, such as when creditors are restricted by state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date (March 21 in this example). Consumers' rights under state law to avoid the imposition of late payment fees during a specified period following a due date are unaffected by the disclosure requirement. In this example, the creditor would disclose March 10 as the due date for purposes of § 226.7(b)(11), even if under state law the creditor could not assess a late payment fee before March 21.

The Board was concerned that disclosure of the later date would not provide a meaningful benefit to consumers in the form of useful information or protection and would result in consumer confusion. In the example above, highlighting March 20 as the last date to avoid a late payment fee may mislead consumers into thinking that a payment made any time on or before March 20 would have no adverse financial consequences. However, failure to make a payment when due is considered an act of default under most credit contracts, and can trigger higher costs due to loss of a grace period, interest accrual, and perhaps penalty APRs. The Board considered additional disclosures on the periodic statement that would more fully explain the consequences of paying after the due date and before the date triggering the late payment fee, but such an approach appeared cumbersome and overly complicated.

For these reasons, notwithstanding TILA Section 127(b)(12) (as revised by the Credit Card Act), in the October 2009 Regulation Z Proposal, the Board proposed to continue to require card issuers to disclose the due date under the terms of the legal obligation, and not a later date, such as when creditors are restricted by state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date.

Thus, the Board proposed to retain comment 7(b)(11)–2 with several revisions. First, the comment would have been revised to refer to card issuers, rather than creditors, consistent with the proposal to limit the due date and late payment disclosures to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term would have been defined in proposed § 226.2(a)(15)(ii). Second, the comment would have been revised to address the situation where the terms of the account agreement (rather than state law) limit a card issuer from imposing a late payment fee unless a payment is late a certain number of days following a due date. The Board proposed to revise comment 7(b)(11)–2 to provide that in this situation a card issuer must disclose the date the payment is due under the terms of the legal obligation, and not the later date when a late payment fee may be imposed under the contract.

The Board did not receive any comments on this aspect of the October 2009 Regulation Z Proposal. For the reasons described above, comment 7(b)(11)–2 is adopted as proposed. The Board adopts this exception to the TILA requirement to disclose the later date pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

3. *Same due date each month.* The Credit Card Act created a new TILA Section 127(o), which states in part that the payment due date for a credit card account under an open end consumer credit plan shall be the same day each month. The Board proposed to implement this requirement by revising § 226.7(b)(11)(i). The text the Board proposed to insert into amended § 226.7(b)(11)(i) generally tracked the statutory language in new TILA Section 127(o) and stated that for credit card accounts under open-end (not home-secured) consumer credit plans, the due date disclosed pursuant to § 226.7(b)(11)(i) must be the same day of the month for each billing cycle.

The Board proposed several new comments to clarify the requirement that the due date be the same day of the month for each billing cycle. Proposed comment 7(b)(11)–6 clarified that the same day of the month means the same numerical day of the month. The proposed comment noted that one example of a compliant practice would be to have a due date that is the 25th of every month. In contrast, it would not be permissible for the payment due date to be the same relative date, but not numerical date, of each month, such as the third Tuesday of the month. The Board believes that the intent of new TILA Section 127(o) is to promote predictability and to enhance consumer awareness of due dates each month to make it easier to make timely payments. The Board stated in the proposal that requiring the due date to be the same numerical day each month would effectuate the statute, and that the Board believed permitting the due date to be the same relative day each month would not as effectively promote predictability for consumers.

The Board noted that in practice the requirement that the due date be the same numerical date each month would preclude creditors from setting due dates that are the 29th, 30th, or 31st of the month. The Board is aware that some credit card issuers currently set due dates for a portion of their accounts on every day of the month, in order to distribute the burden associated with processing payments more evenly throughout the month. The Board solicited comment on any operational burden associated with processing additional payments received on the 1st through 28th of the month in those months with more than 28 days.

Several industry commenters requested that the Board permit creditors to set a due date that is the last day of each month, even though the last day of the month will fall on a different numerical date in some months. Other industry commenters stated that the rule should permit due dates that are the 29th or 30th of each month, noting that February is the only month that has fewer than 30 days. One commenter noted that there could be customer service problems with the rule as proposed, especially if a consumer requests a payment due date that is the last day of the month. The Board believes that the intent of new TILA Section 127(o) is that a consumer's due date be predictable and generally not change from month to month. However, comment 7(b)(11)–6 has been revised from the proposal to provide that a consumer's due date may be the last day of the month, notwithstanding the fact that this will not be the same numerical date for each month. The Board believes that consumers can generally understand what the last day of the month will be, and that this clarification effectuates the intent of new TILA Section 127(o) that consumer's due date be predictable from month to month.

Proposed comment 7(b)(11)(i)–7 provided that a creditor may adjust a consumer's due date from time to time, for example in response to a consumer-initiated request, provided that the new due date will be the same numerical date each month on an ongoing basis. The proposed comment cross-referenced existing comment 2(a)(4)–3 for guidance on transitional billing cycles that might result when the consumer's due date is changed. The Board stated its belief that it is appropriate to permit creditors to change the consumer's due date from time to time, for example, if the creditor wishes to honor a consumer request for a new due date that better coincides with the time of the month when the consumer is paid by his or her employer. While the proposed comment referred to consumer-initiated requests as one example of when a change in due date might occur, proposed § 226.7(b)(11)(i) and comment 7(b)(11)–7 did not prohibit changes in the consumer's due date from time to time that are not consumer-initiated, for example, if a creditor acquires a portfolio and changes the consumer's due date as it migrates acquired accounts onto its own systems.

The Board received only one comment on proposed comment 7(b)(11)(i)–7, which is adopted as proposed. One industry commenter stated that the guidance that the due date may be adjusted from time to time, but must be the same thereafter is overly restrictive. This commenter stated that consumers should be able to choose their desired due date. The Board believes that comment 7(b)(11)(i)–7 does permit sufficient flexibility for card issuers to permit consumers to change their due dates from time to time. However, the Board believes that clarification that the due date must generally be the same each month is necessary to effectuate the purposes of new TILA Section 127(o) and to provide predictability to consumers regarding their payment due dates.

Regulation Z's definition of "billing cycle" in § 226.2(a)(4) contemplates that the interval between the days or dates of regular periodic statements must be equal and no longer than a quarter of a year. Therefore, some creditors may have billing cycles that are two or three months in duration. The Board proposed comment 7(b)(11)–8 to clarify that new § 226.7(b)(11)(i) does not prohibit billing cycles that are two or three months, provided that the due date for each billing cycle is on the same numerical date of each month. The Board received no comments on comment 7(b)(11)–8, which is adopted as proposed.

Finally, the Board proposed comment 7(b)(11)–9 to clarify the relationship between §§ 226.7(b)(11)(i) and 226.10(d). As discussed elsewhere in this supplementary information, § 226.10(d) provides that if the payment due date is a day on which the creditor does not receive or accept payments by mail, the creditor is generally required to treat a payment received the next business day as timely. It is likely that, from time to time, a due date that is the same numerical date each month as required by § 226.7(b)(11)(i) may fall on a date on which the creditor does not accept or receive mailed payments, such as a holiday or weekend. Proposed comment 7(b)(11)–9 clarified that in such circumstances the creditor must disclose the due date according to the legal obligation between the parties, not the date as of which the creditor is permitted to treat the payment as late. For example, if the consumer's due date is the 4th of every month, a card issuer may not accept or receive payments by mail on Thursday, July 4. Pursuant to § 226.10(d), the creditor may not treat a mailed payment received on the following business day, Friday, July 5, as late for any purpose. The creditor must nonetheless, however, disclose July 4 as the due date on the periodic statement and may not disclose a July 5 due date.

Two industry commenters objected to proposed comment 7(b)(11)–9 and stated that creditors should be permitted to disclose the next business day as the due date if the regular due date falls on a weekend or holiday on which they do not receive or accept payments by mail. One commenter noted that this proposed requirement could create operational difficulties, because some creditors' systems do not process payments as timely if the payment is received after the posted due date on the periodic statement. The commenter stated that this would require some creditors to apply back-end due diligence to ensure that they are not inadvertently creating penalties, which can pose a significant burden on creditors.

The Board is adopting comment 7(b)(11)–9 as proposed. The Board believes that the purpose of TILA Section 127(o) is to promote consistency and predictability regarding a consumer's due date. The Board believes that predictability is not promoted by permitting creditors to disclose different numerical dates during months where the consumer's payment due date falls, for example, on a weekend or holiday when the card issuer does not receive or accept payments by mail. This is consistent with the approach that the Board has taken with regard to payment due dates in comments 7(b)(11)–1 and –2, where the due date disclosed is required to reflect the legal obligation between the parties, not any courtesy period offered by the creditor or required by state or other law.

Late payment fee and penalty APR. In the January 2009 Regulation Z Rule, the Board adopted § 226.7(b)(11) to require creditors offering open-end (not home-secured) credit plans that charge a fee or impose a penalty rate for paying late to disclose on the periodic statement the amount of any late payment fee and any penalty APR that could be triggered by a late payment (in addition to the payment due date discussed above). Consistent with TILA Section 127(b)(12), as revised by the Credit Card Act, proposed § 226.7(b)(11) would have continued to require that a card issuer disclose any late payment fee and any penalty APR that may be imposed on the account as a result of a late payment, in addition to the payment due date discussed above. No comments were received on this aspect of the proposal. The final rule adopts this provision as proposed.

Fee or rate triggered by multiple events. In the January 2009 Regulation Z Rule, the Board added comment 7(b)(11)–3 to provide guidance on complying with the late payment disclosure if a late fee or penalty APR is triggered after multiple events, such as two late payments in six months. Comment 7(b)(11)–3 provides that in such cases, the creditor may, but is not required to, disclose the late payment and penalty APR disclosure each month. The disclosures must be included on any periodic statement for which a late payment could trigger the late payment fee or penalty APR, such as after the consumer made one late payment in this example. In the October 2009 Regulation Z Proposal, the Board proposed to retain this comment with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the late payment disclosures to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term would have been defined in proposed § 226.2(a)(15)(ii).

In response to the October 2009 Regulation Z Proposal, one commenter suggested that consumers would benefit from disclosure of the issuer's policy on late fee and penalty APRs on each periodic statement, whether or not the cardholder could trigger such consequences by making a late payment with respect to a particular billing period. The final rule retains comment 7(b)(11)–3 as proposed. The Board believes that issuers should be given the flexibility to tailor the late payment disclosure to the activity on the consumer's account, which will likely make the disclosure more useful to consumers.

Range of fees and rates. In the January 2009 Regulation Z Rule, § 226.7(b)(11)(i)(B) provides that if a range of late payment fees or penalty APRs could be imposed on the consumer's account, creditors may disclose the highest late payment fee and rate and at the creditor's option, an indication (such as using the phrase "up to") that lower fees or rates may be imposed. Comment 7(b)(11)–4 was added to illustrate the requirement. The final rule also permits creditors to disclose a range of fees or rates. In the October 2009 Regulation Z Proposal, the Board proposed to retain § 226.7(b)(11)(i)(B) and comment 7(b)(11)–4 with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the late payment disclosures to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term would have been defined in proposed § 226.2(a)(15)(ii). This approach recognizes the space constraints on periodic statements and provides card issuers flexibility in disclosing possible late payment fees and penalty rates.

In response to the October 2009 Regulation Z Proposal, one industry commenter requested that the Board allow credit card issuers to disclose a range of rates or a highest rate for a card program where different penalty APRs apply to different accounts in the program. According to the commenter, different penalty APRs may apply to consumers' accounts within the same card program because some consumers in a program may not have received a change in terms for a program (possibly because the account was not active at the time of the change), or the consumer may have opted out of a change in terms related to an increase in the penalty APR. The commenter indicates that some systems do not have the operational capability to tailor the periodic statement warning message as a variable message and include the precise penalty APR that applies to each account. The commenter believed that there is no detriment to a consumer in allowing a more generic warning message because the intent of the warning message is to give consumers notice that paying late can have serious consequences. Section 226.7(b)(11)(i)(B) and comment 7(b)(11)–4 are adopted as proposed. The Board did not amend these provisions to allow card issuers to disclose to a consumer a range of rates or highest rate for a card program, where those rates do not apply to a consumer's account. The Board is mindful of compliance costs associated with customizing the disclosure to reflect terms applicable to a consumer's account; however, the Board believes the purposes of TILA would not be served if a consumer received a late-payment disclosure for a penalty APR that exceeded, perhaps substantially, the penalty APR the consumer could be assessed under the terms of the legal obligation of the account. For that reason, § 226.7(b)(11)(i)(B) and comment 7(b)(11)–4 provide that ranges or the highest fee or penalty APR must be those applicable to the consumer's account. Accordingly, a creditor may state a range or highest penalty APR only if all penalty APRs in that range or the highest penalty APR would be permitted to be imposed on the consumer's account under the terms of the consumer's account.

Penalty APR in effect. In the January 2009 Regulation Z Rule, comment 7(b)(11)–5 was added to provide that if the highest penalty APR has previously been triggered on an account, the creditor may, but is not required to, delete as part of the late payment disclosure the amount of the penalty APR and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the creditor may, but is not required to, modify the language to indicate that the penalty APR has been increased due to previous late payments, if applicable. In the October 2009 Regulation Z Proposal, the Board proposed to retain this comment with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the late payment disclosures to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term would have been defined in proposed § 226.2(a)(15)(ii).

In response to the October 2009 Regulation Z Proposal, one commenter suggested that the Board revise comment 7(b)(11)–5 to provide that if the highest APR has previously been triggered on an account, a creditor must modify the language of the late payment disclosure to indicate that the penalty APR has been increased due to previous late payment. The final rule adopts comment 7(b)(11)–5 as proposed. To ease compliance burdens, the Board believes that it is appropriate to provide flexibility to card issuers in providing the late payment disclosure when the highest penalty APR has previously been triggered on the account. The Board notes that consumers will receive advance notice under § 226.9(g) when a penalty APR is being imposed on the consumer's account. In cases where the highest penalty APR has been imposed, the Board does not believe that allowing the late payment disclosures to continue to include the amount of the penalty APR and the warning that the rate may be imposed for an untimely payment is likely to confuse consumers.

7(b)(12) Repayment Disclosures

The Bankruptcy Act added TILA Section 127(b)(11) to require creditors that extend open-end credit to provide a disclosure on the front of each periodic statement in a prominent location about the effects of making only minimum payments. 15 U.S.C. 1637(b)(11). This disclosure included: (1) A "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) a hypothetical example of how long it would take to pay off a specified balance if only minimum payments are made; and (3) a toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay his or her actual account balance ("generic repayment estimate"). In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act directed the Board to prepare a "table" illustrating the approximate number of months it would take to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other advances are made. The Board was directed to create the table by assuming a significant number of different APRs, account balances, and minimum payment amounts; the Board was required to provide instructional guidance on how the information contained in the table should be used to respond to consumers' requests.

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

For ease of reference, this supplementary information will refer to the above disclosures in the Bankruptcy Act about the effects of making only the minimum payment as "the minimum payment disclosures."

In the January 2009 Regulation Z Rule, the Board implemented this section of TILA. In that rulemaking, the Board limited the minimum payment disclosures required by the Bankruptcy Act to credit card accounts, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). In addition, the final rule in § 226.7(b)(12) provided that credit card issuers could choose one of three ways to comply with the minimum payment disclosure requirements set forth in the Bankruptcy Act: (1) Provide on the periodic statement a warning about making only minimum payments, a hypothetical example, and a toll-free telephone number where consumers may obtain generic repayment estimates; (2) provide on the periodic statement a warning about making only minimum payments, and a toll-free telephone number where consumers may obtain actual repayment disclosures; or (3) provide on the periodic statement the actual repayment disclosure. The Board issued guidance in Appendix M1 to part 226 for how to calculate the generic repayment estimates, and guidance in Appendix M2 to part 226 for how to calculate the actual repayment disclosures. Appendix M3 to part 226 provided sample calculations for the generic repayment estimates and the actual repayment disclosures discussed in Appendices M1 and M2 to part 226.

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

The Credit Card Act provides that the repayment disclosures discussed above (except for the warning statement) must be disclosed in the form and manner which the Board prescribes by regulation and in a manner that avoids duplication; and be placed in a conspicuous and prominent location on the billing statement. By regulation, the Board must require that the disclosure of the repayment information (except for the warning statement) be in the form of a table that contains clear and concise headings for each item of information and provides a clear and concise form stating each item of information required to be disclosed under each such heading. In prescribing the table, the Board must require that all the information in the table, and not just a reference to the table, be placed on the billing statement and the items required to be included in the table must be listed in the order in which such items are set forth above. In prescribing the table, the statute states that the Board shall use terminology different from that used in the statute, if such terminology is more easily understood and conveys substantially the same meaning. With respect to the toll-free telephone number for providing information about credit counseling and debt management services, the Credit Card Act provides that the Board must issue guidelines by rule, in consultation with the Secretary of the Treasury, for the establishment and maintenance by creditors of a toll-free telephone number for purposes of providing information about accessing credit counseling and debt management services. These guidelines must ensure that referrals provided by the toll-free telephone number include only those nonprofit budget and credit counseling agencies approved by a U.S. bankruptcy trustee pursuant to 11 U.S.C. 111(a).

As discussed in more detail below, in the October 2009 Regulation Z Proposal, the Board proposed to revise § 226.7(b)(12) to implement Section 201 of the Credit Card Act.

Limiting the repayment disclosure requirements to credit card accounts. Under the Credit Card Act, the repayment disclosure requirements apply to all open-end accounts (such as credit card accounts, HELOCs, and general purpose credit lines). As discussed above, in the January 2009 Regulation Z Rule, the Board limited the minimum payment disclosures required by the Bankruptcy Act to credit card accounts. For similar reasons, in the October 2009 Regulation Z Proposal, the Board proposed to limit the repayment disclosures in the Credit Card Act to credit card accounts under open-end (not home-secured) consumer credit plans, as that term would have been defined in proposed § 226.2(a)(15)(ii).

As proposed, the final rule limits the repayment disclosures in the Credit Card Act to credit card accounts under open-end (not home-secured) consumer credit plans, as that term is defined in § 226.2(a)(15)(ii). As discussed in more detail in the section-by-section analysis to § 226.2(a)(15)(ii), the term "credit card account under an open-end (not home-secured) consumer credit plan" means any open-end account accessed by a credit card, except this term does not include HELOC accounts subject to § 226.5b that are accessed by a credit card device or overdraft lines of credit that are accessed by a debit card. Thus, based on the proposed exemption to limit the repayment disclosures to credit card accounts under open-end (not home-secured) consumer credit plans, the following products would be exempt from the repayment disclosures in TILA Section 127(b)(11), as set forth in the Credit Card Act: (1) HELOC accounts subject to § 226.5b even if they are accessed by a credit card device; (2) overdraft lines of credit even if they are accessed by a debit card; and (3) open-end credit plans that are not credit card accounts, such as general purpose lines of credit that are not accessed by a credit card.

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

As discussed in more detail below, the Board has considered each of these factors carefully, and based on that review, believes that the exemption is appropriate.

1. *HELOC accounts.* In the August 2009 Regulation Z HELOC Proposal, the Board proposed that the repayment disclosures required by TILA Section 127(b)(11), as amended by the Credit Card Act, not apply to HELOC accounts, including HELOC accounts that can be accessed by a credit card device. *See* 74 FR 43428. The Board proposed this rule pursuant to its exception and exemption authorities under TILA Section 105(a) and 105(f), as discussed above. In the supplementary information to the August 2009 Regulation Z HELOC Proposal, the Board stated its belief that the minimum payment disclosures in the Credit Card Act would be of limited benefit to consumers for HELOC accounts and are not necessary to effectuate the purposes of TILA. First, the Board understands that most HELOCs have a fixed repayment period. Under the August 2009 Regulation Z HELOC Proposal, in proposed § 226.5b(c)(9)(i), creditors offering HELOCs subject to § 226.5b would be required to disclose the length of the plan, the length of the draw period and the length of any repayment period in the disclosures that must be given within three business days after application (but not later than account opening). In addition, this information also must be disclosed at account opening under proposed § 226.6(a)(2)(v)(A), as set forth in the August 2009 Regulation Z HELOC Proposal. Thus, for a HELOC account with a fixed repayment period, a consumer could learn from those disclosures the amount of time it would take to repay the HELOC account if the consumer only makes required minimum payments. The cost to creditors of providing this information a second time, including the costs to reprogram periodic statement systems, appears not to be justified by the limited benefit to consumers.

In addition, in the supplementary information to the August 2009 Regulation Z HELOC Proposal, the Board stated its belief that the disclosure about total cost to the consumer of paying the outstanding balance in full (if the consumer pays only the required minimum monthly payments and if no further advances are made) would not be useful to consumers for HELOC accounts because of the nature of consumers' use of HELOC accounts. The Board understands that HELOC consumers tend to use HELOC accounts for larger transactions that they can finance at a lower interest rate than is offered on unsecured credit cards, and intend to repay these transactions over the life of the HELOC account. By contrast, consumers tend to use unsecured credit cards to engage in a significant number of small dollar transactions per billing cycle, and may not intend to finance these transactions for many years. The Board also understands that HELOC consumers often will not have the ability to repay the balances on the HELOC account at the end of each billing cycle, or even within a few years. To illustrate, the Board's 2007 Survey of Consumer Finances data indicates that the median balance on HELOCs (for families that had a balance at the time of the interview) was $24,000, while the median balance on credit cards (for families that had a balance at the time of the interview) was $3,000.[23]

As discussed in the supplementary information to the August 2009 Regulation Z HELOC Proposal, the nature of consumers' use of HELOCs also supports the Board's belief that periodic disclosure of the monthly payment amount required for the consumer to pay off the outstanding balance in 36 months, and the total cost to the consumer of paying that balance in full if the consumer pays the balance over 36 months, would not provide useful information to consumers for HELOC accounts.

For all these reasons, the final rule exempts HELOC accounts (even when they are accessed by a credit card account) from the repayment disclosure requirements set forth in TILA Section 127(b)(11), as revised by the Credit Card Act.

2. *Overdraft lines of credit and other general purpose credit lines.* The final rule also exempts overdraft lines of credit (even if they are accessed by a debit card) and general purpose credit lines that are not accessed by a credit card from the repayment disclosure requirements set forth in TILA Section 127(b)(11), as revised by the Credit Card Act, for several reasons. 15 U.S.C. 1637(b)(11). First, these lines of credit are not in wide use. The 2007 Survey of Consumer Finances data indicates that few families—1.7 percent—had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. (By comparison, 73 percent of families had a credit card, and 60.3 percent of these families had a credit card balance at the time of the interview.)[24] Second, these lines of credit typically are neither promoted, nor used, as long-term credit options of the kind for which the repayment disclosures are intended. Third, the Board is concerned that the operational costs of requiring creditors to comply with the repayment disclosure requirements for overdraft lines of credit and other general purpose lines of credit may cause some institutions to no longer provide these products as accommodations to consumers, to the detriment of consumers who currently use these products. For these reasons, the Board uses its TILA Section 105(a) and 105(f) authority (as discussed above) to exempt overdraft lines of credit and other general purpose credit lines from the repayment disclosure requirements, because in this context the Board believes the repayment disclosures are not necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a) and (f).

7(b)(12)(i) In General

TILA Section 127(b)(11)(A), as amended by the Credit Card Act, requires that a creditor that extends open-end credit must provide the following disclosures on each periodic statement: (1) A "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) the number of months that it would take to repay the outstanding balance if

[23] Changes in U.S. Family Finances from 2004 to 2007.

[24] Changes in U.S. Family Finances from 2004 to 2007.

the consumer pays only the required minimum monthly payments and if no further advances are made; (3) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made; (4) the monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and (5) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

In implementing these statutory disclosures, proposed § 226.7(b)(12)(i) would have set forth the repayment disclosures that a credit card issuer generally must provide on the periodic statement. As discussed in more detail below, proposed § 226.7(b)(12)(ii) would have set forth the repayment disclosures that a credit card issuer must provide on the periodic statement when negative or no amortization occurs on the account.

Warning statement. TILA Section 127(b)(11)(A), as amended by the Credit Card Act, requires that a creditor include the following statement on each periodic statement: "Minimum Payment Warning: Making only the minimum payment will increase the amount of interest you pay and the time it takes to repay your balance," or a similar statement that is required by the Board pursuant to consumer testing. 15 U.S.C. 1637(b)(11)(A). Under proposed § 226.7(b)(12)(i)(A), if amortization occurs on the account, a credit card issuer generally would have been required to disclose the following statement with a bold heading on each periodic statement: "**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance." The proposed warning statement would have contained several stylistic revisions to the statutory language, based on plain language principles, in an attempt to make the language of the warning more understandable to consumers.

The Board received no comments on this aspect of the proposal. The Board adopts the above warning statement as proposed. The Board tested the warning statement as part of the consumer testing conducted by the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule. Participants in that consumer testing reviewed periodic statement disclosures with the warning statement, and they indicated they understood from this statement that paying only the minimum payment would increase both interest charges and the length of time it would take to pay off a balance.

Minimum payment disclosures. TILA Section 127(b)(11)(B)(i) and (ii), as amended by the Credit Card Act, requires that a creditor provide on each periodic statement: (1) The number of months that it would take to pay the entire amount of the outstanding balance, if the consumer pays only the required minimum monthly payments and if no further advances are made; and (2) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made. 15 U.S.C. 1637(b)(11)(B)(i) and (ii). In the October 2009 Regulation Z Proposal, the Board proposed new § 226.7(b)(12)(i)(B) and (C) to implement these statutory provisions.

1. *Minimum payment repayment estimate.* Under proposed § 226.7(b)(12)(i)(B), if amortization occurs on the account, a credit card issuer generally would have been required to disclose on each periodic statement the minimum payment repayment estimate, as described in proposed Appendix M1 to part 226. As described in more detail in the section-by-section analysis to Appendix M1 to part 226, the minimum payment repayment estimate would be an estimate of the number of months that it would take to pay the entire amount of the outstanding balance shown on the periodic statement, if the consumer pays only the required minimum monthly payments and if no further advances are made.

Proposed § 226.7(b)(12)(i)(B) would have provided that if the minimum payment repayment estimate is less than 2 years, a credit card issuer must disclose the estimate in months. Otherwise, the estimate would be disclosed in years. If the estimate is 2 years or more, the estimate would have been rounded to the nearest whole year, meaning that if the estimate contains a fractional year less than 0.5, the estimate would be rounded down to the nearest whole year. The estimate would have been rounded up to the nearest whole year if the estimate contains a fractional year equal to or greater than 0.5. In response to the October 2009 Regulation Z Proposal, several consumer groups commented that the minimum payment repayment estimate should not be rounded to the nearest year if the repayment period is 2 years or more. Instead, the Board should require in those cases that the minimum payment repayment estimate be disclosed in years and months. For example, assume a minimum payment repayment estimate of 209 months. The consumer groups suggest that credit card issuers should be required to disclose the repayment estimate of 209 months as 17 years and 5 months, instead of disclosing this repayment estimate as 17 years which would be required under the rounding rules set forth in the proposal. The consumer groups indicated that six months can be a significant amount of time for some consumers.

As proposed, the final rule in § 226.7(b)(12)(i)(B) provides that if the minimum payment repayment estimate is less than 2 years, a credit card issuer must disclose the estimate in months. Otherwise, the estimate would be disclosed in years. If the estimate is 2 years or more, the estimate would have been rounded to the nearest whole year. The Board adopts this provision of the final rule pursuant to the Board's authority to make adjustments to TILA's requirements to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The Board believes that disclosing the estimated minimum payment repayment period in years (if the estimated payoff period is 2 years or more) allows consumers to better comprehend longer repayment periods without having to convert the repayment periods themselves from months to years. In consumer testing conducted by the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule, participants reviewed disclosures with estimated minimum payment repayment periods in years, and they indicated they understood the length of time it would take to repay the balance if only minimum payments were made.

Thus, if the minimum payment repayment estimate is 2 years or more, the final rule does not require credit card issuers to disclose the minimum payment repayment estimate in years and months, such as disclosing the minimum payment repayment estimate of 209 months as 17 years and 5 months, instead of disclosing this repayment estimate as 17 years (which is required under the rounding rules set forth in the final rule). The Board recognizes that the minimum payment repayment estimates, as calculated in Appendix M1 to part 226, are estimates, calculated using a number of assumptions about current and future account terms. The Board believes that disclosing minimum payment repayment estimates that are 2 years or more in years and months might cause consumers to believe that the estimates are more accurate than they really are, especially for longer repayment periods. The Board believes that rounding the minimum payment repayment estimate to the nearest year (if the repayment estimate is 2 years or more) provides consumers with an appropriate estimate of how long it would take to repay the outstanding balance if only minimum payments are made.

2. *Minimum payment total cost estimate.* Consistent with TILA Section 127(b)(11)(B)(ii), as revised by the Credit Card Act, proposed § 226.7(b)(12)(i)(C) provided that if amortization occurs on the account, a credit card issuer generally must disclose on each periodic statement the minimum payment total cost estimate, as described in proposed Appendix M1 to part 226. As described in more detail in the section-by-section analysis to proposed Appendix M1 to part 226, the minimum payment total cost estimate would have been an estimate of the total dollar amount of the interest and principal that the consumer would pay if he or she made minimum payments for the length of time calculated as the minimum payment repayment estimate, as described in proposed Appendix M1 to part 226. Under the proposal, the minimum payment total cost estimate must be rounded to the nearest whole dollar. The final rule adopts this provision as proposed.

3. *Disclosure of assumptions used to calculate the minimum payment repayment estimate and the minimum payment total cost estimate.* Under proposed § 226.7(b)(12)(i)(D), a creditor would have been required to provide on the periodic statement the following statements: (1) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement; and (2) a statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance. The final rule adopts this provision as proposed. The Board believes that this information is needed to help consumers understand the minimum payment repayment estimate and the minimum payment total cost estimate. The final rule does not require issuers to disclose other assumptions used to calculate these estimates. The many assumptions that are necessary to calculate the minimum payment repayment estimate and the minimum payment total cost estimate are complex and unlikely to be meaningful or useful to most consumers.

Repayment disclosures based on repayment in 36 months. TILA Section 127(b)(11)(B)(iii), as revised by the Credit Card Act, requires that a creditor disclose on each periodic statement: (1) The monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made; and (2) the total costs to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months. 15 U.S.C. 1637(b)(11)(B)(iii).

1. *Estimated monthly payment for repayment in 36 months and total cost estimate for repayment in 36 months.* In implementing TILA Section 127(b)(11)(B)(iii), as revised by the Credit Card Act, proposed § 226.7(b)(12)(i)(F) provided that except when the minimum payment repayment estimate disclosed under proposed § 226.7(b)(12)(i)(B) is 3 years or less, a credit card issuer must disclose on each periodic statement the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months, as described in proposed Appendix M1 to part 226. As described in more detail in the section-by-section analysis to Appendix M1 to part 226, the proposed estimated monthly payment for repayment in 36 months would have been an estimate of the monthly payment amount that would be required to pay off the outstanding balance shown on the statement within 36 months, assuming the consumer paid the same amount each month for 36 months. Also, as described in Appendix M1 to part 226, the proposed total cost estimate for repayment in 36 months would have been the total dollar amount of the interest and principal that the consumer would pay if he or she made the estimated monthly payment each month for 36 months. Under the proposal, the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months would have been rounded to the nearest whole dollar. The final rule adopts these provisions as proposed, except with several additional exceptions to when the 36-month disclosures must be disclosed as discussed below.

2. *Savings estimate for repayment in 36 months.* In addition to the disclosure of the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months, proposed § 226.7(b)(12)(i)(F) also would have required that a credit card issuer generally must disclose on each periodic statement the savings estimate for repayment in 36 months, as described in proposed Appendix M1 to part 226. As described in proposed Appendix M1 to part 226, the savings estimate for repayment in 36 months would have been calculated as the difference between the minimum payment total cost estimate and the total cost estimate for repayment in 36 months. Thus, the savings estimate for repayment in 36 months would have represented an estimate of the amount of interest that a consumer would "save" if the consumer repaid the balance shown on the statement in 3 years by making the estimated monthly payment for repayment in 36 months each month, rather than making minimum payments each month. In response to the October 2009 Regulation Z Proposal, one commenter indicated that the Board should not require the savings estimate for repayment in 36 months because this disclosure would not be helpful to consumers. The final rule requires credit card issuers generally to disclose the savings estimate for repayment in 36 months on periodic statements, as proposed. The Board adopts this disclosure requirement pursuant to the Board's authority to make adjustments to TILA's requirements to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The Board continues to believe that the savings estimate for repayment in 36 months will allow consumers more easily to understand the potential savings of paying the balance shown on the periodic statement in 3 years rather than making minimum payments each month. This potential savings appears to be Congress' purpose in requiring that the total cost for making minimum payments and the total cost for repayment in 36 months be disclosed on the periodic statement. The Board believes that including the savings estimate on the periodic statement allows consumers to comprehend better the potential savings without having to compute this amount themselves from the total cost estimates disclosed on the periodic statement. In consumer testing conducted by the Board on closed-end mortgage disclosures in relation to the

August 2009 Regulation Z Closed-End Credit Proposal, some participants were shown two offers for mortgage loans with different APRs and different totals of payments. In that consumer testing, in comparing the two mortgage loans, participants tended not to calculate for themselves the difference between the total of payments for the two loans (*i.e.,* the potential savings in choosing one loan over another), and use that amount to compare the two loans. Instead, participants tended to disregard the total of payments for both loans, because both totals were large numbers. Given the results of that consumer testing, the Board believes it is important to disclose the savings estimate on the periodic statement to focus consumers' attention explicitly on the potential savings of repaying the balance in 36 months.

3. *Minimum payment repayment estimate disclosed on the periodic statement is three years or less.* Under proposed § 226.7(b)(12)(i)(F), a credit card issuer would not have been required to provide the disclosures related to repayment in 36 months if the minimum payment repayment estimate disclosed under proposed § 226.7(b)(12)(i)(B) was 3 years or less. The Board retains this exemption in the final rule with several technical revisions. The Board adopts this exemption pursuant to the Board's authority exception and exemption authorities under TILA Section 105(a) and (f). The Board has considered the statutory factors carefully, and based on that review, believes that the exemption is appropriate. The Board believes that the estimated monthly payment for repayment in 36 months, and the total cost estimate for repayment in 36 months would not be useful and may be misleading to consumers where based on the minimum payments that would be due on the account, a consumer would be required to repay the outstanding balance in three years or less. For example, assume that based on the minimum payments due on an account, a consumer would repay his or her outstanding balance in two years if the consumer only makes minimum payments and take no additional advances. The consumer under the account terms would not have the option to repay the outstanding balance in 36 months (*i.e.,* 3 years). In this example, disclosure of the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months would be misleading, because under the account terms the consumer does not have the option to make the estimated monthly payment each month for 36 months. Requiring that this information be disclosed on the periodic statement when it is might be misleading to consumers would undermine TILA's goal of consumer protection, and could make the credit process more expensive by requiring card issuers to incur costs to address customer confusion about these disclosures.

In the final rule, the provision that exempts credit card issuers from disclosing on the periodic statement the disclosures related to repayment in 36 months if the minimum payment repayment estimate disclosed under § 226.7(b)(12)(i)(B) is 3 years or less has been moved to § 226.7(b)(1)(i)(F)(*2*)(*i*). In addition, the language of this exemption has been revised to clarify that the exemption applies if the minimum payment repayment estimate disclosed on the periodic statement under § 226.7(b)(12)(i)(B) after rounding is 3 years or less. For example, under the final rule, if the minimum payment repayment estimate is 2 years 6 month to 3 years 5 months, issuers would be required to disclose on the periodic statement that it would take 3 years to pay off the balance in full if making only the minimum payment. In these cases, an issuer would not be required to disclose the 36-month disclosures on the periodic statement because the minimum payment repayment estimate disclosed to the consumer on the periodic statement (after rounding) is 3 years or less. Comment 7(b)(12)(i)(F)–1 has been added to clarify these disclosure rules.

4. *Estimated monthly payment for repayment in 36 months is less than the minimum payment for a particular billing cycle.* In response to the October 2009 Regulation Z Proposal, several commenters suggested that card issuer should not be required to disclose the 36-month disclosures in a billing cycle where the minimum payment for that billing cycle is higher than the payment amount that would be disclosed in order to pay off the account in 36 months (*i.e.,* the estimated monthly payment for repayment in 36 months). One commenter indicated that this can occur for credit card programs that use a graduated payment schedule, which require a larger minimum payment in the initial months after a transaction on the account. This may also occur when an account is past due, and the required minimum payment for a particular billing cycle includes the entire past due amount. Commenters were concerned that disclosing an estimated monthly payment for repayment in 36 months in a billing cycle where this estimated payment is lower than the required minimum payment for that billing cycle might be confusing and even deceptive to consumers. A consumer that paid the estimated monthly payment for repayment in 36 months (which is lower than the required minimum payment that billing cycle) could incur a late fee and be subject to other penalties. The Board shares these concerns, and thus, the final rule provides that a card issuer is not required to disclose the 36-month disclosures for any billing cycle where the estimated monthly payment for repayment in 36 months, as described in Appendix M1 to part 226, rounded to the nearest whole dollar that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle. *See* § 226.7(b)(12)(i)(F)(*2*)(*ii*). The Board adopts this exemption pursuant to the Board's authority exception and exemption authorities under TILA Section 105(a). The Board has considered the statutory factors carefully, and based on that review, believes that the exemption is appropriate. Requiring that the 36-month disclosures be disclosed on the periodic statement when they might be misleading to consumers would undermine TILA's goal of consumer protection, and could make the credit process more expensive by requiring card issuers to incur costs to address customer confusion about these disclosures.

5. *A billing cycle where an account has both a balance on a revolving feature and on a fixed repayment feature.* In response to the October 2009 Regulation Z Proposal, several commenters raised concerns that the 36-month disclosures could be misleading in a particular billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months. For example, assume a retail card has several features. One feature is a general revolving feature, where the required minimum payment for this feature does not pay off the balance in a fixed period of time. Another feature allows consumers to make specific types of purchases (such as furniture purchases, or other large purchases), with a required minimum payment that will

pay off the purchase within a fixed period of time as set forth in the account agreement that is less than 36 months, such as one year. Commenters indicated that in many cases, where this type of account has balances on both the revolving feature and fixed repayment feature for a particular billing cycle, the required minimum due may initially be higher than what would be required to repay the entire account balance in 36 equal payments. In addition, calculation of the estimated monthly payment for repayment in 36 months assumes that the entire balance may be repaid in 36 months, while under the account agreement the balance in the fixed repayment feature must be repaid in a shorter timeframe. Based on these concerns, the Board amends the final rule to provide that a card issuer is not required to provide the 36-month disclosures on a periodic statement for a billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months. *See* § 226.7(b)(12)(i)(F)(*2*)(*iii*). The Board adopts this exemption pursuant to the Board's authority exception and exemption authorities under TILA Section 105(a). The Board has considered the statutory factors carefully, and based on that review, believes that the exemption is appropriate. Requiring that the 36-month disclosures be disclosed on the periodic statement when they might be misleading to consumers would undermine TILA's goal of consumer protection, and could make the credit process more expensive by requiring card issuers to incur costs to address customer confusion about these disclosures.

6. *Disclosure of assumptions used to calculate the 36-month disclosures.* If a card issuer is required to provide the 36-month disclosures, proposed § 226.7(b)(12)(i)(F)(*2*) would have provided that a credit card issuer must disclose as part of those disclosures a statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years. The final rule retains this provision as proposed, except that this provision is moved to § 226.7(b)(12)(i)(F)(*1*)(*ii*). The Board believes that this information is needed to help consumers understand the estimated monthly payment for repayment in 36 months. The final rule does not require issuers to disclose assumptions used to calculate this estimated monthly payment. The many assumptions that are necessary to calculate the estimated monthly payment for repayment in 36 months are complex and unlikely to be meaningful or useful to most consumers.

Disclosure of extremely long repayment periods. In response to the October 2009 Regulation Z Proposal, one commenter indicated that it had observed accounts that result in very long repayment periods. This commenter indicated that this situation usually results when the minimum payment requirements are very low in proportion to the APRs on the account. The commenter indicated that these scenarios result most frequently when issuers endeavor to provide temporary relief to consumers during periods of hardship, workout and disasters such as floods. This commenter indicated that requiring issuers to calculate and disclose these long repayment periods would cause compliance problems, because the software program cannot be written to execute an ad infinitum number of cycles. The commenter requested that the Board establish a reasonable maximum number of years for repayment and provide an appropriate statement disclosure message to reflect an account that exceeds the number of years and total costs provided.

With respect to these temporarily reduced minimum payments, the calculation of these long repayment periods often result from assuming that the temporary minimum payment will apply indefinitely. The Board notes that guidance provided in Appendix M1 to part 226 for how to handle temporary minimum payments may reduce the situations in which the calculation of a long repayment period would result. In particular, as discussed in more detail in the section-by-section analysis to Appendix M1 to part 226, Appendix M1 provides that if any promotional terms related to payments apply to a cardholder's account, such as a deferred billing plan where minimum payments are not required for 12 months, credit card issuers may assume no promotional terms apply to the account. In Appendix M1 to part 226, the term "promotional terms" is defined as terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer. Appendix M1 to part 226 clarifies that issuers have two alternatives for handling promotional minimum payments. Under the first alternative, an issuer may disregard the promotional minimum payment during the promotional period, and instead calculate the minimum payment repayment estimate using the standard minimum payment formula that is applicable to the account. For example, assume that a promotional minimum payment of $10 applies to an account for six months, and then after the promotional period expires, the minimum payment is calculated as 2 percent of the outstanding balance on the account or $20 whichever is greater. An issuer may assume during the promotional period that the $10 promotional minimum payment does not apply, and instead calculate the minimum payment disclosures based on the minimum payment formula of 2 percent of the outstanding balance or $20, whichever is greater. The Board notes that allowing issuers to disregard promotional payment terms on accounts where the promotional payment terms apply only for a limited amount of time eases the compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers.

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

While the Board believes that the above guidance for how to handle temporary minimum payments may reduce the situations in which the calculation of a long repayment period would result, the Board understands that there may still be circumstances where long repayment periods result, because the standard minimum payment is low in comparison to the APR that applies to the account. The final rule does not contain special rules for disclosing extremely long repayment periods, such as allowing credit card issuers to disclose long repayment periods as "over 100 years." As proposed, the final rule requires a credit card issuer to disclose the minimum payment repayment estimate, as described in Appendix M1 to part 226, on the periodic statement even if that repayment period is extremely long, such as over 100 years. The Board believes that it was Congress' intent to require that estimates of the repayment periods be disclosed on periodic statements, even if the repayment periods are extremely long.

Toll-free telephone number. TILA Section 127(b)(11)(B)(iii), as revised by the Credit Card Act, requires that a creditor disclose on each periodic statement a toll-free telephone number at which the consumer may receive information about credit counseling and debt management services. 15 U.S.C. 1637(b)(11)(B)(iii). Proposed § 226.7(b)(12)(i)(E) provided that a credit card issuer generally must disclose on each periodic statement a toll-free telephone number where the consumer may obtain information about credit counseling services consistent with the requirements set forth in proposed § 226.7(b)(12)(iv). The final rule adopts this provision as proposed. As discussed in more detail below, § 226.7(b)(12)(iv) sets forth the information that a credit card issuer must provide through the toll-free telephone number.

7(b)(12)(ii) Negative or No Amortization

Negative or no amortization can occur if the required minimum payment is the same as or less than the total finance charges and other fees imposed during the billing cycle. Several major credit card issuers have established minimum payment requirements that prevent prolonged negative or no amortization. But some creditors may use a minimum payment formula that allows negative or no amortization (such as by requiring a payment of 2 percent of the outstanding balance, regardless of the finance charges or fees incurred).

The Credit Card Act appears to require the following disclosures even when negative or no amortization occurs: (1) A "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) the number of months that it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and if no further advances are made; (3) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made; (4) the monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and (5) a toll-free telephone number at which the consumer may receive information about credit counseling and debt management services.

Nonetheless, for the reasons discussed in more detail below, in the October 2009 Regulation Z Proposal, the Board proposed to make adjustments to the above statutory requirements when negative or no amortization occurs. Specifically, when negative or no amortization occurs, the Board proposed in new § 226.7(b)(12)(ii) to require a credit card issuer to disclose to the consumer on the periodic statement the following information: (1) the following statement: "**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month;" (2) the following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner;" (3) the estimated monthly payment for repayment in 36 months; (4) the fact that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and (5) the toll-free telephone number for obtaining information about credit counseling services. The final rule adopts these disclosures, as proposed, pursuant to the Board's authority under TILA Section 105(a) to make adjustments or exceptions to effectuate the purposes of TILA. 15 U.S.C. 1604(a). When negative or no amortization occurs, the number of months to repay the balance shown on the statement if minimum payments are made and the total cost in interest and principal if the balance is repaid making only minimum payments cannot be calculated because the balance will never be repaid if only minimum payments are made. Under the final rule, these statutory disclosures are replaced with a warning that the consumer will never repay the balance if making minimum payments each month.

In addition, under the final rule, if negative or no amortization occurs, card issuers would be required to disclose the following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner." This sentence is similar to, and accomplishes the goals of, the statutory warning statement, by informing consumers that they can pay less interest and pay off the balance sooner if the consumer pays more than the minimum payment each month.

In addition, consistent with TILA Section 127(b)(11) as revised by the Credit Card Act, if negative or no amortization occurs, under the final rule, a credit card issuer must disclose to the consumer the estimated monthly payment for repayment in 36 months and a statement of the fact the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years.

Under the final rule, if negative or no amortization occurs, a card issuer, however, would not disclose the total cost estimate for repayment in 36 months, as described in Appendix M1 to part 226. The Board adopts an exception to TILA's requirement to disclose the total cost estimate for repayment in 36 months pursuant to the Board's exception and exemption authorities under TILA Section 105(f).

The Board has considered each of the statutory factors carefully, and based on that review, believes that the exemption is appropriate. As discussed above, when negative or no amortization occurs, a minimum payment total cost estimate cannot be calculated because the balance shown on the statement will never be repaid if only minimum payments are made. Thus, under the final rule, a credit card issuer would not be required to disclose a minimum payment total cost estimate as described in proposed Appendix M1 to part 226. Because the minimum payment total cost estimate will not be disclosed when negative or no amortization occurs, the Board does not believe that the total cost estimate for repayment in 36 months would be useful to consumers. The Board believes that the total cost estimate for repayment in 36 months is useful when it can be compared to the minimum payment total cost estimate. Requiring that this information be disclosed on the periodic statement when it is not useful to consumers could distract consumers from more important information on the periodic statement, which could undermine TILA's goal of consumer protection.

7(b)(12)(iii) Format Requirements

As discussed above, TILA Section 127(b)(11)(D), as revised by the Credit Card Act, provides that the repayment disclosures (except for the warning statement) must be disclosed in the form and manner which the Board prescribes by regulation and in a manner that avoids duplication and must be placed in a conspicuous and prominent location on the billing statement. 15 U.S.C. 1637(b)(11)(D). By regulation, the Board must require that the disclosure of the repayment information (except for the warning statement) be in the form of a table that contains clear and concise headings for each item of information and provides a clear and concise form stating each item of information required to be disclosed under each such heading. In prescribing the table, the Board must require that all the information in the table, and not just a reference to the table, be placed on the billing statement. In addition, the items required to be included in the table must be listed in the following order: (1) The minimum payment repayment estimate; (2) the minimum payment total cost estimate; (3) the estimated monthly payment for repayment in 36 months; (4) the total cost estimate for repayment in 36 months; and (5) the toll-free telephone number. In prescribing the table, the Board must use terminology different from that used in the statute, if such terminology is more easily understood and conveys substantially the same meaning.

Samples G–18(C)(1), G–18(C)(2) and G–18(C)(3). Proposed § 226.7(b)(12)(iii) provided that a credit card issuer must provide the repayment disclosures in a format substantially similar to proposed Samples G 18(C)(1), G–18(C)(2) and G–18(C)(3) in Appendix G to part 226, as applicable.

Proposed Sample G–18(C)(1) would have applied when amortization occurs and the 36-month disclosures were required to be disclosed under proposed § 226.7(b)(12)(i)(F). In this case, as discussed above, a credit card issuer would have been required under proposed § 226.7(b)(12) to disclose on the periodic statement: (1) The warning statement; (2) the minimum payment repayment estimate; (3) the minimum payment total cost estimate; (4) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement, and the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance; (5) the estimated monthly payment for repayment in 36 months; (6) the total cost estimate for repayment in 36 months; (7) the savings estimate for repayment in 36 months; (8) the fact that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and (9) the toll-free telephone number for obtaining information about credit counseling services. Sample G–18(C)(1) is adopted as proposed, with technical edits to the heading of the sample form.

As shown in Sample G–18(C)(1), card issuers are required to provide the following disclosures in the form of a table with headings, content and format substantially similar to Sample G–18(C)(1): (1) The fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made; (2) the minimum payment repayment estimate; (3) the minimum payment total cost estimate, (4) the estimated monthly payment for repayment in 36 months; (5) the fact the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; (6) total cost estimate for repayment in 36 months; and (7) the savings estimate for repayment in 36 months. The following information is incorporated into the headings for the table: (1) The fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement; and (2) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that no other amounts are added to the balance. The warning statement must be disclosed above the table and the toll-free telephone number must be disclosed below the table.

Proposed Sample G–18(C)(2) would have applied when amortization occurs and the 36-month disclosures were not required to be disclosed under proposed § 226.7(b)(12)(i)(F). In this case, as discussed above, a credit card issuer would have been required under proposed § 226.7(b)(12) to disclose on the periodic statement: (1) The warning statement; (2) the minimum payment repayment estimate; (3) the minimum payment total cost estimate; (4) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement, and the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance; and (5) the toll-free telephone number for obtaining information about credit counseling services. Sample G–18(C)(2) is adopted as proposed, with technical edits to the heading of the sample form.

As shown in Sample G–18(C)(2), disclosure of the above information is similar in format to how this information is disclosed in Sample G–18(C)(1). Specifically, as shown in Sample G–18(C)(2), card issuers are required to disclose the following disclosures in the form of a table with headings, content and format substantially similar to Sample G–18(C)(2): (1) The fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made; (2) the minimum payment repayment estimate; and (3) the minimum payment total cost estimate. The following information is incorporated into the headings for the table: (1) The fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement; and (2) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that no other amounts are added to the balance. The warning statement must be disclosed above the table and the toll-free telephone number must be disclosed below the table.

Proposed Sample G–18(C)(3) would have applied when negative or no amortization occurs. In this case, as discussed above, a credit card issuer would have been required under proposed § 226.7(b)(12) to disclose on the periodic statement: (1) The following statement: "**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month;" (2) the following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner;" (3) the estimated monthly payment for repayment in 36 months; (4) the fact the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and (5) the toll-free telephone number for obtaining information about credit counseling services. Sample G–18(C)(3) is adopted as proposed.

As shown in Sample G–18(C)(3), none of the above information would be required to be in the form of a table, notwithstanding TILA's requirement that the repayment information (except the warning statement) be in the form of a table. The Board adopts this exemption to this TILA requirement pursuant to the Board's authority exception and exemption authorities under TILA Section 105(a). The Board does not believe that the tabular format is a useful format for disclosing that negative or no amortization is occurring. The Board believes that a narrative format is better than a tabular format for communicating to consumers that making only minimum payments will not repay the balance shown on the periodic statement. For consistency, Sample G–18(C)(3) also provides the disclosures about repayment in 36 months in a narrative form as well. To help ensure that consumers notice the disclosures about negative or no amortization and the disclosures about repayment in 36 months, the Board would require that card issuers disclose certain key information in bold text, as shown in Sample G–18(C)(3).

As discussed above, TILA Section 127(b)(11)(D), as revised by the Credit Card Act, provides that the toll-free telephone number for obtaining credit counseling information must be disclosed in the table with: (1) The minimum payment repayment estimate; (2) the minimum payment total cost estimate; (3) the estimated monthly payment for repayment in 36 months; and (4) the total cost estimate for repayment in 36 months. As proposed, the final rule does not provide that the toll-free telephone number must be in a tabular format. *See* Samples G–18(C)(1), G–18(C)(2) and G–18(C)(3). The Board adopts this exemption pursuant to the Board's exception and exemption authorities under TILA Section 105(a), as discussed above. The Board believes that it might be confusing to consumers to include the toll-free telephone number in the table because it does not logically flow from the other information included in the table. To help ensure that the toll-free telephone number is noticeable to consumer, the final rule requires that the toll-free telephone number be grouped with the other repayment information.

Format requirements set forth in § 226.7(b)(13). Proposed § 226.7(b)(12)(iii) provided that a credit card issuer must provide the repayment disclosures in accordance with the format requirements of proposed § 226.7(b)(13). The final rule adopts this provision as proposed. As discussed in more detail in the section-by-section analysis to § 226.7(b)(13), the final rule in § 226.7(b)(13) requires that the repayment disclosures required to be disclosed under § 226.7(b)(12) must be disclosed closely proximate to the minimum payment due. In addition, under the final rule, the repayment disclosures must be grouped together with the due date, late payment fee and annual percentage rate, ending balance, and minimum payment due, and this information must be disclosed on the front of the first page of the periodic statement.

7(b)(12)(iv) Provision of Information About Credit Counseling Services

Section 201(c) of the Credit Card Act requires the Board to issue guidelines by rule, in consultation with the Secretary of the Treasury, for the establishment and maintenance by creditors of the toll-free number disclosed on the periodic statement from which consumers can obtain information about accessing credit counseling and debt management services. The Credit Card Act requires that these guidelines ensure that consumers are referred "only [to] those nonprofit and credit counseling agencies approved by a United States bankruptcy trustee pursuant to [11 U.S.C. 111(a)]." The Board proposed to implement Section 201(c) of the Credit Card Act in § 226.7(b)(12)(iv). In developing this final rule, the Board consulted with the Treasury Department as well as the Executive Office for United States Trustees.

Prior to filing a bankruptcy petition, a consumer generally must have received "an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted [the consumer] in performing a related budget analysis." 11 U.S.C. 109(h). This briefing can only be provided by "nonprofit budget and credit counseling agencies that provide 1 or more [of these] services * * * [and are] currently approved by the United States trustee (or the bankruptcy administrator, if any)." 11 U.S.C. 111(a)(1); *see also* 11 U.S.C. 109(h). In order to be approved to provide credit counseling services, an agency must, among other things: be a nonprofit entity; demonstrate that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, and provide adequate counseling with respect to client credit problems; charge only a reasonable fee for counseling services and make such services available without regard to ability to pay the fee; and provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services. *See* 11 U.S.C. 111(c).

Proposed § 226.7(b)(12)(iv)(A) required that a card issuer provide through the toll-free telephone number disclosed pursuant to proposed § 226.7(b)(12)(i)(E) or (ii)(E) the name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in the state in which the billing address for the account is located or the state specified by the consumer. In addition, proposed § 226.7(b)(12)(iv)(B) required that, upon the request of the consumer and to the extent available from the United States Trustee or a bankruptcy administrator, the card issuer must provide the consumer with the name, street address, telephone number, and Web site address for at least one organization meeting the above requirements that provides credit counseling services in a language other than English that is specified by the consumer.

Several industry commenters stated that requiring card issuers to provide information regarding credit counseling through a toll-free number would be unduly burdensome, particularly for small institutions that do not currently have automated response systems for providing consumers with information about their accounts over the telephone. These commenters requested that card issuers instead be permitted to refer consumers to the United States Trustee or the Board. However, Section 201(c) of the Credit Card Act explicitly requires that card issuers establish and maintain a toll-free telephone number for providing information regarding approved credit counseling services. Nevertheless, as discussed below, the Board has made several revisions to proposed § 226.7(b)(12)(iv) in order to reduce the burden of compliance.

In particular, the Board has revised § 226.7(b)(12)(iv)(A) to clarify that card issuers are only required to disclose information regarding approved organizations to the extent available from the United States Trustee or a bankruptcy administrator. The United States Trustee collects the name, street address, telephone number, and Web site address for approved organizations and provides that information to the public through its Web site, organized by state.[25] For states where credit counseling organizations are approved by a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1), a card issuer can obtain this information from the relevant administrator. Accordingly, as discussed in the proposal, the information that § 226.7(b)(12)(iv) requires a card issuer to provide is readily available to issuers.

The Board has also revised § 226.7(b)(12)(iv)(A) to clarify that the card issuer must provide information regarding approved organizations in, at its option, either the state in which the billing address for the account is located or the state specified by the consumer. Furthermore, although the United States Trustee's Web site also organizes information regarding approved organizations by the language in which the organization can provide credit counseling services, the Board has removed the requirement in proposed § 226.7(b)(12)(iv)(B) that card issuers provide this information upon request. Although consumer group commenters supported the requirement, comments from small institutions argued that Section 201(c) does not expressly require provision of this information and that it would be particularly burdensome for card issuers to do so. Specifically, it would be difficult for a card issuer to use an automated response system to comply with a consumer's request for a particular language without listing each of the nearly thirty languages listed on the United States Trustee's Web site. Instead, a card issuer would have to train its customer service representatives to respond to such requests on an individualized basis. Accordingly, although information regarding approved organizations that provide credit counseling services in languages other than English can be useful to consumers, it appears that the costs associated with providing this information through the toll-free number outweigh the benefits. Instead, as discussed below, the Board has revised the proposed commentary to provide guidance for card issuers on how to handle requests for this type of information (such as by referring the consumer to the United States Trustee's Web site).

The Board has replaced proposed § 226.7(b)(12)(iv)(B) with a requirement that card issuers update information regarding approved organizations at least annually for consistency with the information provided by the United States Trustee or a bankruptcy administrator. This requirement was previously proposed as guidance in comment 7(b)(12)(iv)–2. In connection with that proposed guidance, the Board solicited comment on whether card issuers should be required to update the credit counseling information they provide to consumers more or less frequently. Commenters generally supported an annual requirement, which the Board has adopted. Although one credit counseling organization suggested that card issuers be required to coordinate their verification process with the United States Trustee's review of its approvals, the Board believes such a requirement would unnecessarily complicate the updating process.

Because different credit counseling organizations may provide different services and charge different fees, the Board stated in the proposal that providing information regarding at least three approved organizations would enable consumers to make a choice about the organization that best suits their needs. However, the Board solicited comment on whether card issuers should provide information regarding a different number of approved organizations. In response, commenters generally agreed that the provision of information regarding three approved organizations was appropriate, although some industry commenters argued that card issuers generally have an established relationship with one credit counseling organization and should not be required to disclose information regarding additional organizations. Because the Board believes that consumers should be provided with more than one option for obtaining credit counseling services, the final rule adopts the requirement that card issuers provide information regarding three approved organizations.

In addition, some credit counseling organizations and one city government consumer protection agency requested that the Board require card issuers to disclose information regarding at least one organization that operates in the consumer's local community. However, Section 201(c) of the Credit Card Act does not authorize the Board to impose this type of requirement. In addition, the Board believes that it would be difficult to develop workable standards for determining whether a particular organization operated in a consumer's community. Nevertheless, the Board emphasizes that nothing in § 226.7(b)(12)(iv) should be construed as preventing card issuers from providing information regarding organizations that have been approved by the United States Trustee or a bankruptcy administrator to provide credit counseling services in a consumer's community.

Proposed § 226.7(b)(12)(iv) relied in two respects on the Board's authority under TILA Section 105(a) to make adjustments or exceptions to effectuate the purposes of TILA or to facilitate compliance therewith. *See* 15 U.S.C. 1604(a). First, although revised TILA Section 127(b)(11)(B)(iv) and Section 201(c)(1) of the Credit Card Act refer to the creditors' obligation to provide information about accessing "credit counseling *and* debt management services," proposed § 226.7(b)(12)(iv) only required the creditor to provide information about obtaining credit counseling services.[26] Although credit counseling may include information that assists the consumer in managing his or her debts, 11 U.S.C. 109(h) and 111(a)(1) do not require the United States Trustee or a bankruptcy administrator to approve organizations to provide debt management services. Because Section 201(c) of the Credit Card Act requires that creditors only provide information about organizations approved pursuant to 11 U.S.C. 111(a), the Board does not believe that Congress intended to require creditors to provide information about services that are not subject to that approval process. Accordingly, proposed § 226.7(b)(12)(iv) would not have required card issuers to disclose information about debt management services.

Second, although Section 201(c)(2) of the Credit Card Act refers to credit counseling organizations approved pursuant to 11 U.S.C. 111(a), proposed

[25] *See* U.S. Trustee Program, List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. 111 (available at *http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm*).

[26] Similarly, proposed § 226.7(b)(12)(i)(E) and (ii)(E) only required a card issuer to disclose on the periodic statement a toll-free telephone number where the consumer may acquire from the card issuer information about obtaining credit counseling services.

§ 226.7(b)(12)(iv) clarified that creditors may provide information only regarding organizations approved pursuant to 11 U.S.C. 111(a)(1), which addresses the approval process for credit counseling organizations. In contrast, 11 U.S.C. 111(a)(2) addresses a different approval process for instructional courses concerning personal financial management.

Commenters did not object to these adjustments, which are adopted in the final rule. However, the United States Trustee and several credit counseling organizations requested that the Board clarify that the credit counseling services subject to review by the United States Trustee or a bankruptcy administrator are designed for consumers who are considering whether to file for bankruptcy and may not be helpful to consumers who are seeking more general credit counseling services. Based on these comments, the Board has made several revisions to the commentary for § 226.7(b)(12)(iv), which are discussed below.

Proposed comment 7(b)(12)(iv)–1 clarified that, when providing the information required by § 226.7(b)(12)(iv)(A), the card issuer may use the billing address for the account or, at its option, allow the consumer to specify a state. The comment also clarified that a card issuer does not satisfy the requirement to provide information regarding credit counseling agencies approved pursuant to 11 U.S.C. 111(a)(1) by providing information regarding providers that have been approved to offer personal financial management courses pursuant to 11 U.S.C. 111(a)(2). This comment has been revised for consistency with the revisions to § 226.7(b)(12)(iv)(A) but is otherwise adopted as proposed.

Proposed comment 7(b)(12)(iv)–2 clarified that a card issuer complies with the requirements of § 226.7(b)(12)(iv) if it provides the consumer with the information provided by the United States Trustee or a bankruptcy administrator, such as information provided on the Web site operated by the United States Trustee. If, for example, the Web site address for an organization approved by the United States Trustee is not available from the Web site operated by the United States Trustee, a card issuer is not required to provide a Web site address for that organization. However, at least annually, the card issuer must verify and update the information it provides for consistency with the information provided by the United States Trustee or a bankruptcy administrator. These aspects of the proposed comment have been revised for consistency with the revisions to § 226.7(b)(12)(iv) but are otherwise adopted as proposed.

However, because the Board understands that many nonprofit organizations provide credit counseling services under a name that is different than the legal name under which the organization has been approved by the United States Trustee or a bankruptcy administrator, the Board has revised comment 7(b)(12)(iv)–2 to clarify that, if requested by the organization, the card issuer may at its option disclose both the legal name and the name used by the organization. This clarification will reduce the possibility of consumer confusion in these circumstances while still ensuring that consumers can verify that card issuers are referring them to organizations approved by the United States Trustee or a bankruptcy administrator.

In addition, because the contact information provided by the United States Trustee or a bankruptcy administrator relates to pre-bankruptcy credit counseling, the Board has revised comment 7(b)(12)(iv)–2 to clarify that, at the request of an approved organization, a card issuer may at its option provide a street address, telephone number, or Web site address for the organization that is different than the street address, telephone number, or Web site address obtained from the United States Trustee or a bankruptcy administrator. This will enable card issuers to provide contact information that directs consumers to general credit counseling services rather than pre-bankruptcy counseling services. Furthermore, because some approved organizations may not provide general credit counseling services, the Board has revised comment 7(b)(12)(iv)–2 to clarify that, if requested by an approved organization, a card issuer must not provide information regarding that organization through the toll-free number.

As noted above, the Board has also revised the commentary to § 226.7(b)(12)(iv) to provide guidance regarding the handling of requests for information about approved organizations that provide credit counseling services in languages other than English. Specifically, comment 7(b)(12)(iv)–2 states that a card issuer may at its option provide such information through the toll-free number or, in the alternative, may state that such information is available from the Web site operated by the United States Trustee.

Finally, the Board has revised comment 7(b)(12)(iv)–2 to clarify that § 226.7(b)(12)(iv) does not require a card issuer to disclose that credit counseling organizations have been approved by the United States Trustee or a bankruptcy administrator. However, if a card issuer chooses to make such a disclosure, the revised comment clarifies that the card issuer must provide certain additional information in order to prevent consumer confusion. This revision responds to concerns raised by the United States Trustee that, if a consumer is informed that a credit counseling organization has been approved by the United States Trustee, the consumer may incorrectly assume that all credit counseling services provided by that organization are subject to approval by the United States Trustee. Accordingly, the revised comment clarifies that, in these circumstances, a card issuer must disclose the following additional information: (1) The United States Trustee or a bankruptcy administrator has determined that the organization meets the minimum requirements for nonprofit pre-bankruptcy budget and credit counseling; (2) the organization may provide other credit counseling services that have not been reviewed by the United States Trustee or a bankruptcy administrator; and (3) the United States Trustee or the bankruptcy administrator does not endorse or recommend any particular organization.

Proposed comment 7(b)(12)(iv)–3 clarified that, at their option, card issuers may use toll-free telephone numbers that connect consumers to automated systems, such as an interactive voice response system, through which consumers may obtain the information required by § 226.7(b)(12)(iv) by inputting information using a touch-tone telephone or similar device. This comment is adopted as proposed.

Proposed comment 7(b)(12)(iv)–4 clarified that a card issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by § 226.7(b)(12)(iv) is prominently disclosed to the consumer. For automated systems, the option to receive the information required by § 226.7(b)(12)(iv) is prominently disclosed to the consumer if it is listed as one of the options in the first menu of options given to the consumer, such as "Press or say '3' if you would like information about credit counseling services." If the automated system permits callers to select the language in which the call is conducted and in which information is provided, the menu to select the language may precede the menu with the option to receive information about accessing credit counseling services. The Board has adopted this comment as proposed.

Proposed comment 7(b)(12)(iv)–5 clarified that, at their option, card issuers may use a third party to establish and maintain a toll-free telephone number for use by the issuer to provide the information required by § 226.7(b)(12)(iv). This comment is adopted as proposed.

Proposed comment 7(b)(12)(iv)–6 clarified that, when providing the toll-free telephone number on the periodic statement pursuant to § 226.7(b)(12)(iv), a card issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain the information required by § 226.7(b)(12)(iv), so long as the information provided on the Web site complies with § 226.7(b)(12)(iv). The Web site address disclosed must take consumers directly to the Web page where information about accessing credit counseling may be obtained. In the alternative, the card issuer may disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations. This guidance is adopted as proposed. In addition, the Board has revised this comment to clarify that disclosing the United States Trustee's Web site address does not by itself constitute a statement that organizations have been approved by the United States Trustee for purposes of comment 7(b)(12)(iv)–2.

Finally, proposed comment 7(b)(12)(iv)–7 clarified that, if a consumer requests information about credit counseling services, the card issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required by § 226.7(b)(12)(iv). However, educational materials that do not solicit business are not considered advertisements or marketing materials for this purpose. The comment also provides examples of how the restriction on the provision of advertisements and marketing materials applies in the context of the toll-free number and a Web page. This comment is adopted as proposed.

7(b)(12)(v) Exemptions

As explained above, as proposed, the final rule provides that the repayment disclosures required under § 226.7(b)(12) be provided only for a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in § 226.2(a)(15)(ii).

In addition, as discussed below, the final rule contains several additional exemptions from the repayment disclosure requirements pursuant to the Board's exception and exemption authorities under TILA Section 105(a) and (f).

As discussed in more detail below, the Board has considered the statutory factors carefully, and based on that review, believes that following exemptions are appropriate.

Exemption for charge cards. In the October 2009 Regulation Z Proposal, the Board proposed to exempt charge cards from the repayment disclosure requirements. Charge cards are used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. The Board adopts this exemption as proposed. *See* § 226.7(b)(12)(v)(A). The Board believes that the repayment disclosures would not be useful for consumers with charge card accounts.

Exemption where cardholders have paid their accounts in full for two consecutive billing cycles. In proposed § 226.7(b)(v)(B), the Board proposed to provide that a card issuer is not required to include the repayment disclosures on the periodic statement for a particular billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero balance or had a credit balance.

In response to the October 2009 Regulation Z Proposal, several consumer groups argued that this exemption should be deleted. These consumer groups believe that even consumers that pay their credit card accounts in full each month should be provided repayment disclosures because these disclosures will inform those consumers of the disadvantages of changing their payment behavior. These consumer groups believe these repayment disclosures would educate these consumers on the magnitude of the consequences of making only minimum payments and may induce these consumers to encourage their friends and family members not to make only the minimum payment each month on their credit card accounts. On the other hand, several industry commenters requested that the Board broaden this exception to not require repayment disclosures in a particular billing cycle if there is a zero balance or credit balance in the current cycle, regardless of whether this condition existed in the previous cycle.

The final rule retains this exception as proposed. The Board believes the two consecutive billing cycle approach strikes an appropriate balance between benefits to consumers of the repayment disclosures, and compliance burdens on issuers in providing the disclosures. Consumers who might benefit from the repayment disclosures would receive them. Consumers who carry a balance each month would always receive the repayment disclosures, and consumers who pay in full each month would not. Consumers who sometimes pay their bill in full and sometimes do not would receive the repayment disclosures if they do not pay in full two consecutive months (cycles). Also, if a consumer's typical payment behavior changes from paying in full to revolving, the consumer would begin receiving the repayment disclosures after not paying in full one billing cycle, when the disclosures would appear to be useful to the consumer. In addition, credit card issuers typically provide a grace period on new purchases to consumers (that is, creditors do not charge interest to consumers on new purchases) if consumers paid both the current balance and the previous balance in full. Thus, card issuers already currently capture payment history for consumers for two consecutive months (or cycles).

The Board notes that card issuers would not be required to use this exemption. A card issuer would be allowed to provide the repayment disclosures to all of its cardholders, even to those cardholders that fall within this exemption. If issuers choose to provide voluntarily the repayment disclosures to those cardholders that fall within this exemption, the Board would expect issuers to follow the disclosure rules set forth in proposed § 226.7(b)(12), the accompanying commentary, and Appendix M1 to part 226 for those cardholders.

Exemption where minimum payment would pay off the entire balance for a particular billing cycle. In proposed § 226.7(b)(12)(v)(C), the Board proposed to exempt a card issuer from providing the repayment disclosure requirements for a particular billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle. For example, if the entire outstanding balance on an account for a particular billing cycle is $20 and the minimum payment is $20, an issuer would not need to comply with the repayment disclosure requirements for that particular billing cycle. The final rule retains this exemption as proposed. The Board believes that the repayment disclosures would not be helpful to consumers in this context.

As discussed in more detail below, the Board notes that this exemption also would apply to a charged-off account where payment of the entire account balance is due immediately. Comment 7(b)(12)(v)–1 is added to provide examples of when this exception would apply.

Other exemptions. In response to the October 2009 Regulation Z Proposal, several commenters requested that the Board include several additional exemptions to the repayment disclosures set forth in § 226.7(b)(12). These suggested exemptions are discussed below.

1. *Fixed repayment periods.* In the January 2009 Regulation Z Rule, the Board in § 226.7(b)(12)(v)(E) exempted a credit card account from the minimum payment disclosure requirements where a fixed repayment period for the account is specified in the account agreement and the required minimum payments will amortize the outstanding balance within the fixed repayment period. This exemption would be applicable to, for example, accounts that have been closed due to delinquency and the required monthly payment has been reduced or the balance decreased to accommodate a fixed payment for a fixed period of time designed to pay off the outstanding balance. *See* comment 7(b)(12)(v)–1.

In addition, in the January 2009 Regulation Z Rule, the Board in § 226.7(b)(12)(v)(F) exempted credit card issuers from providing the minimum payment disclosures on periodic statements in a billing cycle where the entire outstanding balance held by consumers in that billing cycle is subject to a fixed repayment period specified in the account agreement and the required minimum payments applicable to that balance will amortize the outstanding balance within the fixed repayment period. Some retail credit cards have several credit features associated with the account. One of the features may be a general revolving feature, where the required minimum payment for this feature does not pay off the balance in a specific period of time. The card also may have another feature that allows consumers to make specific types of purchases (such as furniture purchases, or other large purchases), and the required minimum payments for that feature will pay off the purchase within a fixed period of time, such as one year. This exemption was meant to cover retail cards where the entire outstanding balance held by a consumer in a particular billing cycle is subject to a fixed repayment period specified in the account agreement. On the other hand, this exemption would not have applied in those cases where all or part of the consumer's balance for a particular billing cycle is held in a general revolving feature, where the required minimum payment for this feature does not pay off the balance in a specific period of time set forth in the account agreement. *See* comment 7(b)(12)(v)–2.

In adopting these two exemptions to the minimum payment disclosure requirements in the January 2009 Regulation Z Rule, the Board stated that in these two situations, the minimum payment disclosure does not appear to provide additional information to consumers that they do not already have in their account agreements.

In the October 2009 Regulation Z Proposal, the Board proposed not to include these two exemptions in proposed § 226.7(b)(12)(v). In implementing Section 201 of the Credit Card Act, proposed § 226.7(b)(12) would require additional repayment information beyond the disclosure of the estimated length of time it would take to repay the outstanding balance if only minimum payments are made, which was the main type of information that was required to be disclosed under the January 2009 Regulation Z Rule. As discussed above, under proposed § 226.7(b)(12)(i), a card issuer would be required to disclose on the periodic statement information about the total costs in interest and principal to repay the outstanding balance if only minimum payments are made, and information about repayment of the outstanding balance in 36 months. Consumers would not know from the account agreements this additional information about the total cost in interest and principal of making minimum payments, and information about repayment of the outstanding balance in 36 months. Thus, in the proposal, the Board indicated that these two exemptions may no longer be appropriate given the additional repayment information that must be provided on the periodic statement pursuant to proposed § 226.7(b)(12). Nonetheless, the Board solicited comment on whether these exemptions should be retained. For example, the Board solicited comment on whether the repayment disclosures relating to repayment in 36 months would be helpful where a fixed repayment period longer than 3 years is specified in the account agreement and the required minimum payments will amortize the outstanding balance within the fixed repayment period. For these types of accounts, the Board solicited comment on whether consumers tend to enter into the agreement with the intent (and the ability) to repay the account balance over the life of the account, such that the disclosures for repayment of the account in 36 months would not be useful to consumers.

In response to the October 2009 Regulation Z Proposal, several consumer groups supported the Board's proposal not to include these two exemptions to the repayment disclosure requirements. On the other hand, several industry commenters indicated that with respect to these fixed repayment plans, consumers are quite sensitive to the repayment term and have selected the specific repayment term for each balance. These commenters suggest that in this context the proposed repayment disclosures are neither relevant nor helpful, and may be confusing if they tend to suggest that the selected repayment term is no longer available.

The final rule does not contain these two exemptions related to fixed repayment periods. As discussed above, when a fixed repayment period is set forth in the account agreement, the estimate of how long it would take to repay the outstanding balance if only minimum payments are made does not appear to provide additional information to consumers that they do not already have in their account agreements. Nonetheless, consumers would not know from the account agreements additional information about the total cost in interest and principal of making minimum payments, and information about repayment of the outstanding balance in 36 months, that is required to be disclosed on the periodic statement under the Credit Card Act. The Board believes this additional information would be helpful to consumers in managing their accounts, even for consumers that have previously selected the fixed repayment period that applies to the account. For example, assume the fixed repayment period set forth in the account agreement is 5 years. On the periodic statement, the consumer would be informed of the total cost of repaying the outstanding balance in 5 years, compared with the monthly payment and the total cost of repaying the outstanding balance in 3 years. In this example, this additional information on the periodic statement could be helpful to the consumer in deciding whether to repay the balance earlier than in 5 years.

2. *Accounts in bankruptcy.* In response to the October 2009 Regulation Z Proposal, one commenter requested that the Board include in the final rule an exemption from the repayment disclosures set forth in § 226.7(b)(12) in connection with sending monthly

periodic statements or informational statements to customers who have filed for bankruptcy. This commenter indicated that it is possible that a debtor's attorney could argue that including the disclosures, such as the minimum payment warning and the minimum payment repayment estimate, on a monthly bankruptcy informational statement is an attempt to collect a debt in violation of the automatic stay imposed by Section 362 of the Bankruptcy Code or the permanent discharge injunction imposed under Section 524 of the Bankruptcy Code.

The Board does not believe that an exemption from the requirement to provide the repayment disclosures with respect to accounts in bankruptcy is needed. The Board notes that under § 226.5(b)(2), a creditor is not required to send a periodic statement under Regulation Z if delinquency collection proceedings have been instituted. Thus, if a consumer files for bankruptcy, creditors are not longer required to provide periodic statements to that consumer under Regulation Z. A creditor could continue to send periodic statements to consumers that have filed for bankruptcy (if permitted by law) without including the repayment disclosures on the periodic statements, because those periodic statements would not be required under Regulation Z and would not need to comply with the requirements of § 226.7.

3. *Charged-off accounts.* In response to the October 2009 Regulation Z Proposal, one industry commenter requested that the Board include in the final rule an exemption from the repayment disclosures for charged off accounts where consumers are 180 days late, the accounts have been placed in charge-off status and full payment is due immediately. The Board does not believe that a specific exemption is needed for charged-off accounts because charged-off accounts would be exempted from the repayment disclosures under another exemption. As discussed above, the final rule contains an exemption under which a card issuer is not required to provide the repayment disclosure requirements for a particular billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle. Comment 7(b)(12)–1 clarifies that this exemption would apply to a charged-off account where payment of the entire account balance is due immediately.

4. *Lines of credit accessed solely by account numbers.* In response to the October 2009 Regulation Z Proposal, one commenter requested that the Board provide an exemption from the repayment disclosures for lines of credit accessed solely by account numbers. This commenter believed that this exemption would simplify compliance issues, especially for smaller retailers offering in-house revolving open-end accounts, in view of some case law indicating that a reusable account number could constitute a "credit card." The final rule does not contain a specific exemption for lines of credit accessed solely by account numbers. The Board believes that consumers that use these lines of credit (to the extent they are considered credit card account) would benefit from the repayment disclosures.

7(b)(13) Format Requirements

Under the January 2009 Regulation Z Rule, creditors offering open-end (not home-secured) plans are required to disclose the payment due date (if a late payment fee or penalty rate may be imposed) on the front side of the first page of the periodic statement. The amount of any late payment fee and penalty APR that could be triggered by a late payment is required to be disclosed in close proximity to the due date. In addition, the ending balance and the minimum payment disclosures must be disclosed closely proximate to the minimum payment due. Also, the due date, late payment fee, penalty APR, ending balance, minimum payment due, and the minimum payment disclosures must be grouped together. *See* § 226.7(b)(13). In the supplementary information to the January 2009 Regulation Z Rule, the Board stated that these formatting requirements were intended to fulfill Congress' intent to have the due date, late payment and minimum payment disclosures enhance consumers' understanding of the consequences of paying late or making only minimum payments, and were based on consumer testing conducted for the Board in relation to the January 2009 Regulation Z Rule that indicated improved understanding when related information is grouped together. For the reasons described below, the Board proposed in October 2009 to retain these format requirements, with several revisions. Proposed Sample G–18(D) in Appendix G to part 226 would have illustrated the proposed requirements.

Due date and late payment disclosures. As discussed above under the section-by-section analysis to § 226.7(b)(11), Section 202 of the Credit Card Act amends TILA Section 127(b)(12) to provide that for a "credit card account under an open-end consumer credit plan," a creditor that charges a late payment fee must disclose in a conspicuous location on the periodic statement (1) the payment due date, or, if the due date differs from when a late payment fee would be charged, the earliest date on which the late payment fee may be charged, and (2) the amount of the late payment fee. In addition, if a late payment may result in an increase in the APR applicable to the credit card account, a creditor also must provide on the periodic statement a disclosure of this fact, along with the applicable penalty APR. The disclosure related to the penalty APR must be placed in close proximity to the due-date disclosure discussed above.

Consistent with TILA Section 127(b)(12), as revised by the Credit Card Act, in the October 2009 Regulation Z Proposal, the Board proposed to retain the requirement in § 226.7(b)(13) that credit card issuers disclose the payment due date on the front side of the first page of the periodic statement. In addition, credit card issuers would have been required to disclose the amount of any late payment fee and penalty APR that could be triggered by a late payment in close proximity to the due date. Also, the due date, late payment fee, penalty APR, ending balance, minimum payment due, and the repayment disclosures required by proposed § 226.7(b)(12) must be grouped together. *See* § 226.7(b)(13). The final rule retains these formatting requirements, as proposed. The Board believes that these format requirements fulfill Congress' intent that the due date and late payment disclosures be grouped together and be disclosed in a conspicuous location on the periodic statement.

Repayment disclosures. As discussed above under the section-by-section analysis to § 226.7(b)(12), TILA Section 127(b)(11)(D), as revised by the Credit Card Act, provides that the repayment disclosures (except for the warning statement) must be disclosed in the form and manner which the Board prescribes by regulation and in a manner that avoids duplication and must be placed in a conspicuous and prominent location on the billing statement. 15 U.S.C. 1637(b)(11)(D).

Under proposed § 226.7(b)(13), the ending balance and the repayment disclosures required under proposed § 226.7(b)(12) must be disclosed closely proximate to the minimum payment due. In addition, proposed § 226.7(b)(13) provided that the repayment disclosures must be grouped together with the due date, late payment fee, penalty APR, ending balance, and minimum payment due, and this information must appear on the front of the first page of the periodic statement.

The final rule retains these formatting requirements, as proposed. The Board believes that these format requirements fulfill Congress' intent that the repayment disclosures be placed in a conspicuous and prominent location on the billing statement.

Samples G–18(D), 18(E), 18(F) and 18(G). As adopted in the January 2009 Regulation Z Rule, Samples G–18(D) and G–18(E) in Appendix G to part 226 illustrate the requirement to group together the due date, late payment fee, penalty APR, ending balance, minimum payment due, and the repayment disclosures required by § 226.7(b)(12). Sample G–18(D) applies to credit cards and includes all of the above disclosures grouped together. Sample G–18(E) applies to non-credit card accounts, and includes all of the above disclosures except for the repayment disclosures because the repayment disclosures only apply to credit card accounts. Samples G–18(F) and G–18(G) illustrate the front side of sample periodic statements and show the disclosures listed above.

In the October 2009 Regulation Z Proposal, the Board proposed to revise Sample G–18(D), G–18(F) and G–18(G) to incorporate the new format requirements for the repayment disclosures, as shown in proposed Sample G–18(C)(1) and G–18(C)(2). *See* section-by-section analysis to § 226.7(b)(12) for a discussion of these new format requirements. The final rule adopts Sample G–18(D), G–18(F) and G–18(G) as proposed. In addition, as proposed, the final rule deletes Sample G–18(E) (which applies to non-credit card accounts) as unnecessary. The formatting requirements in § 226.7(b)(13) generally are applicable only to credit card issuers because the due date, late payment fee, penalty APR, and repayment disclosures would apply only to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in § 226.2(a)(15)(ii).

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

In the October 2009 Regulation Z Proposal, the Board republished provisions and amendments related to periodic statement disclosures for deferred interest or similar transactions that were initially proposed in the May 2009 Regulation Z Proposed Clarifications. These included proposed revisions to comment 7(b)–1 and Sample G–18(H) as well as a proposed new § 226.7(b)(14). In addition, a related cross-reference in comment 5(b)(2)(ii)–1 was proposed to be updated.

Specifically, the Board proposed to revise comment 7(b)–1 to require creditors to provide consumers with information regarding deferred interest or similar balances on which interest may be imposed under a deferred interest or similar program, as well as the interest charges accruing during the term of a deferred interest or similar program. The Board also proposed to add a new § 226.7(b)(14) to require creditors to include on a consumer's periodic statement, for two billing cycles immediately preceding the date on which deferred interest or similar transactions must be paid in full in order to avoid the imposition of interest charges, a disclosure that the consumer must pay such transactions in full by that date in order to avoid being obligated for the accrued interest. Moreover, proposed Sample G–18(H) provided model language for making the disclosure required by proposed § 226.7(b)(14), and the Board proposed to require that the language used to make the disclosure under § 226.7(b)(14) be substantially similar to Sample G–18(H).

In general, commenters supported the Board's proposals to require certain periodic statement disclosures for deferred interest and other similar programs. Some industry commenters requested that the Board clarify that programs in which a consumer is not charged interest, whether or not the consumer pays the balance in full by a certain time, are not deferred interest programs that are subject to these periodic statement disclosures. One industry commenter also noted that the Board already proposed such clarification with respect to the advertising requirements for deferred interest and other similar programs. *See* proposed comment 16(h)–1. Accordingly, the Board has amended comment 7(b)–1 to reference the definition of "deferred interest" in § 226.16(h)(2) and associated commentary. The Board has also made technical amendments to comment 7(b)–1 to be consistent with the requirement in § 226.55(b)(1) that a promotional or other temporary rate program that expires after a specified period of time (including a deferred interest or similar program) last for at least six months.

Some consumer group and industry commenters also suggested amendments to the model language in Sample G–18(H). In particular, consumer group commenters suggested that language be added to clarify that minimum payments will not pay off the deferred interest balance. Industry commenters suggested that additional language may clarify for consumers how much they should pay in order to avoid finance charges when there are other balances on the account in addition to the deferred interest balance. The Board believes that the language in Sample G–18(H) sufficiently conveys the idea that in order to avoid interest charges on the deferred interest balance, consumers must pay such balance in full. While the additional language recommended by commenters may provide further information to consumers that may be helpful, each of the clauses suggested by commenters would not necessarily apply to all consumers in all situations. Therefore, the Board is opting not to include such clauses in Sample G–18(H). The Board notes, however, that the regulation does not prohibit creditors from providing these additional disclosures. Indeed, the Board encourages any additional disclosure that may be useful to consumers in avoiding finance charges. In response to these comments, however, the Board is amending § 226.7(b)(14) to require that language used to make the disclosure be similar, instead of substantially similar, to Sample G–18(H) in order to provide creditors with some flexibility.

Proposed § 226.7(b)(14) required the warning language only for the last two billing cycles preceding the billing cycle in which the deferred interest period ends. Consumer group commenters recommended that the disclosure be required on each periodic statement during the deferred interest period. Since § 226.53(b) permits issuers to allow consumers to request that payments in excess of the minimum payment be allocated to deferred interest balances any time during the deferred interest period, as discussed below, the Board believes that the disclosure required under § 226.7(b)(14) would be beneficial for consumers to see on each periodic statement issued during the deferred interest period from the time the deferred interest or similar transaction is reflected on a periodic statement. Section 226.7(b)(14) and comment 7(b)–1 have been amended accordingly.

Section 226.9 Subsequent Disclosure Requirements

9(c) Change in Terms

Section 226.9(c) sets forth the advance notice requirements when a creditor changes the terms applicable to a consumer's account. As discussed below, the Board is adopting several changes to § 226.9(c)(2) and the associated staff commentary in order to conform to the new requirements of the Credit Card Act.

9(c)(1) Rules Affecting Home-Equity Plans

In the January 2009 Regulation Z Rule, the Board preserved the existing rules for changes in terms for home-equity lines of credit in a new § 226.9(c)(1), in order to clearly delineate the requirements for HELOCs from those applicable to other open-end credit. The Board noted that possible revisions to rules affecting HELOCs would be considered in the Board's review of home-secured credit, which was underway at the time that the January 2009 Regulation Z rule was published. On August 26, 2009, the Board published proposed revisions to those portions of Regulation Z affecting HELOCs in the **Federal Register.** In order to clarify that the October 2009 Regulation Z Proposal was not intended to amend or otherwise affect the August 2009 Regulation Z HELOC Proposal, the Board did not republish § 226.9(c)(1) in October 2009.

However, this final rule is being issued prior to completion of final rules regarding HELOCs. Therefore, the Board has incorporated § 226.9(c)(1), as adopted in the January 2009 Regulation Z Rule, in this final rule, to give HELOC creditors guidance on how to comply with change-in-terms requirements between the effective date of this rule and the effective date of the forthcoming HELOC rules.

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

Credit Card Act [27]

New TILA Section 127(i)(1) generally requires creditors to provide consumers with a written notice of an annual percentage rate increase at least 45 days prior to the effective date of the increase, for credit card accounts under an open-end consumer credit plan. 15 U.S.C. 1637(i)(1). The statute establishes several exceptions to this general requirement. 15 U.S.C. 1637(i)(1) and (i)(2). The first exception applies when the change is an increase in an annual percentage rate upon expiration of a specified period of time, provided that prior to commencement of that period, the creditor clearly and conspicuously disclosed to the consumer the length of the period and the rate that would apply after expiration of the period. The second exception applies to increases in variable annual percentage rates that change according to operation of a publicly available index that is not under the control of the creditor. Finally, a third exception applies to rate increases due to the completion of, or failure of a consumer to comply with, the terms of a workout or temporary hardship arrangement, provided that prior to the commencement of such arrangement the creditor clearly and conspicuously disclosed to the consumer the terms of the arrangement, including any increases due to completion or failure.

In addition to the rules in new TILA Section 127(i)(1) regarding rate increases, new TILA Section 127(i)(2) establishes a 45-day advance notice requirement for significant changes, as determined by rule of the Board, in the terms (including an increase in any fee or finance charge) of the cardholder agreement between the creditor and the consumer. 15 U.S.C. 1637(i)(2).

New TILA Section 127(i)(3) also establishes an additional content requirement for notices of interest rate increases or significant changes in terms provided pursuant to new TILA Section 127(i). 15 U.S.C. 1637(i)(3). Such notices are required to contain a brief statement of the consumer's right to cancel the account, pursuant to rules established by the Board, before the effective date of the rate increase or other change disclosed in the notice. In addition, new TILA Section 127(i)(4) states that closure or cancellation of an account pursuant to the consumer's right to cancel does not constitute a default under the existing cardholder agreement, and does not trigger an obligation to immediately repay the obligation in full or through a method less beneficial than those listed in revised TILA Section 171(c)(2). 15 U.S.C. 1637(i)(4). The disclosure associated with the right to cancel is discussed in the section-by-section analysis to § 226.9(c) and (g), while the substantive rules regarding this new right are discussed in the section-by-section analysis to § 226.9(h).

The Board implemented TILA Section 127(i), which was effective August 20, 2009, in the July 2009 Regulation Z Interim Final Rule. However, the Board is now implementing additional provisions of the Credit Card Act that are effective on February 22, 2010 that have an impact on the content of change-in-terms notices and the types of changes that are permissible upon provision of a change-in-terms notice pursuant to § 226.9(c) or (g). For example, revised TILA Section 171(a), which the Board is implementing in new § 226.55, as discussed elsewhere in this **Federal Register** notice generally prohibits increases in annual percentage rates, fees, and finance charges applicable to outstanding balances, subject to several exceptions. In addition, revised TILA Section 171(b) requires, for certain types of penalty rate increases, that the advance notice state the reason for a rate increase. Finally, for penalty rate increases applied to outstanding balances when the consumer fails to make a minimum payment within 60 days after the due date, as permitted by revised TILA Section 171(b)(4), a creditor is required to disclose in the notice of the increase that the increase will be terminated if the consumer makes the subsequent six minimum payments on time.

January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule

As discussed in **I. Background and Implementation of the Credit Card Act**, the Board is implementing the changes contained in the Credit Card Act in a manner consistent with the January 2009 Regulation Z Rule, to the extent permitted under the statute. Accordingly, the Board is retaining those requirements of the January 2009 Regulation Z Rule that are not directly affected by the Credit Card Act concurrently with the promulgation of regulations implementing the provisions of the Credit Card Act effective February 22, 2010.[28] Consistent with this approach, the Board has used § 226.9(c)(2) of the January 2009 Regulation Z Rule as the basis for its regulations to implement the change-in-terms requirements of the Credit Card Act. Section 226.9(c)(2) also is intended, except where noted, to contain requirements that are substantively equivalent to the requirements of the July 2009 Regulation Z Interim Final Rule. Accordingly, the Board is adopting a revised version of § 226.9(c)(2) of the January 2009

[27] For convenience, this section summarizes the provisions of the Credit Card Act that apply both to advance notices of changes in terms and rate increases. Consistent with the approach it took in the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule, the Board is implementing the advance notice requirements applicable to contingent rate increases set forth in the cardholder agreement in a separate section (§ 226.9(g)) from those advance notice requirements applicable to changes in the cardholder agreement (§ 226.9(c)). The distinction between these types of changes is that § 226.9(g) addresses changes in a rate being applied to a consumer's account consistent with the existing terms of the cardholder agreement, while § 226.9(c) addresses changes in the underlying terms of the agreement.

[28] However, as discussed in **I. Background and Implementation of the Credit Card Act,** the Board intends to leave in place the mandatory compliance date for certain aspects of proposed § 226.9(c)(2) that are not directly required by the Credit Card Act. These provisions would have a mandatory compliance date of July 1, 2010, consistent with the effective date that the Board adopted in the January 2009 Regulation Z Rule. For example, the Board is not requiring a tabular format for certain change-in-terms notice requirements before the July 1, 2010 mandatory compliance date.

Regulation Z Rule, with several amendments necessary to conform to the new Credit Card Act. This supplementary information focuses on highlighting those aspects in which § 226.9(c)(2) as adopted in this final rule differs from § 226.9(c)(2) of the January 2009 Regulation Z Rule.

May 2009 Regulation Z Proposed Clarifications

On May 5, 2009, the Board published for comment in the **Federal Register** proposed clarifications to the January 2009 Regulation Z Rule. *See* 74 FR 20784. Several of these proposed clarifications pertain to the advance notice requirements in § 226.9(c). The Board is adopting the May 2009 Regulation Z Proposed Clarifications that affect proposed § 226.9(c)(2), with revisions to the extent appropriate, as discussed further in this supplementary information.

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

Section 226.9(c)(2) sets forth the change-in-terms notice requirements for open-end consumer credit plans that are not home-secured. Section 226.9(c)(2)(i) as proposed in October 2009 stated that a creditor must generally provide a written notice at least 45 days prior to the change, when any term required to be disclosed under § 226.6(b)(3), (b)(4), or (b)(5) is changed or the required minimum periodic payment is increased, unless an exception applies. As noted in the supplementary information to the proposal, this rule was intended to be substantively equivalent to § 226.9(c)(2) of the January 2009 Regulation Z Rule. The Board proposed to set forth the exceptions to this general rule in proposed paragraph (c)(2)(v). In addition, proposed (c)(2)(iii) provided that 45 days' advance notice is not required for those changes that the Board is not designating as "significant changes" in terms using its authority under new TILA Section 127(i). Section 226.9(c)(2)(iii), which is discussed in more detail elsewhere in this supplementary information, also is intended to be equivalent in substance to the Board's January 2009 Regulation Z Rule.

Proposed § 226.9(c)(2)(i) set forth two additional clarifications of the scope of the change-in-terms notice requirements, consistent with § 226.9(c)(2) of the January 2009 Regulation Z Rule. First, as proposed, the 45-day advance notice requirement would not apply if the consumer has agreed to the particular change; in that case, the notice need only be given before the effective date of the change. Second, proposed § 226.9(c)(2)(i) also noted that increases in the rate applicable to a consumer's account due to delinquency, default, or as a penalty described in § 226.9(g) that are not made by means of a change in the contractual terms of a consumer's account must be disclosed pursuant to that section.

Proposed § 226.9(c)(2) applied to all open-end (not home-secured) credit, consistent with the January 2009 Regulation Z Rule. TILA Section 127(i), as implemented in the July 2009 Regulation Z Interim Final Rule for the period between August 20, 2009 and February 22, 2010, applies only to credit card accounts under an open-end (not home-secured) consumer credit plan. However, the advance notice requirements adopted by the Board in January 2009 apply to all open-end (not home-secured) credit. For consistency with the January 2009 Regulation Z Rule, the proposal accordingly would have applied § 226.9(c)(2) to all open-end (not home-secured) credit. The final rule adopts this approach, which is consistent with the approach the Board adopted in the January 2009 Regulation Z Rule. The Board notes that while the general notice requirements are consistent for credit card accounts and other open-end credit that is not home-secured, there are certain content and other requirements, such as a consumer's right to reject certain changes in terms, that apply only to credit card accounts under an open-end (not home-secured) consumer credit plan. As discussed in more detail in the supplementary information to § 226.9(c)(2)(iv), the regulation applies such requirements only to credit card accounts under an open-end (not home-secured) consumer credit plan.

Section 226.9(c)(2)(i), as proposed and under the January 2009 Regulation Z Rule, provides that the 45-day advance notice timing requirement does not apply if the consumer has agreed to a particular change. In this case, notice must be given before the effective date of the change. Comment 9(c)(2)(i)–3, as adopted in the January 2009 Regulation Z Rule, states that the provision is intended for use in "unusual instances," such as when a consumer substitutes collateral or when the creditor may advance additional credit only if a change relatively unique to that consumer is made. In the May 2009 Regulation Z Proposed Clarifications, the Board proposed to amend the comment to emphasize the limited scope of the exception and provide that the exception applies solely to the unique circumstances specifically identified in the comment. *See* 74 FR 20788. The proposed comment would also add an example of an occurrence that would not be considered an "agreement" for purposes of relieving the creditor of its responsibility to provide an advance change-in-terms notice. This proposed example stated that an "agreement" does not include a consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features. Thus, a creditor that treats an upgrade of a consumer's account as a change in terms would be required to provide the consumer 45 days' advance notice before increasing the rate for new transactions or increasing the amount of any applicable fees to the account in those circumstances.

Commenters on the October 2009 Regulation Z Proposal and the May 2009 Regulation Z Proposed Clarifications raised concerns about the 45-day notice requirement causing an undue delay when a consumer requests that his or her account be changed to a different product offered by the creditor, for example to take advantage of a rewards or other program. The Board has addressed these concerns in comment 5(b)(1)(i)–6, discussed above. The Board also believes that the proposed clarification to comment 9(c)(2)(i)–3 is appropriate for those circumstances in which a creditor treats an upgrade of an account as a change-in-terms in accordance with proposed comment 5(b)(1)(i)–6. In addition, the Board continues to believe that it would be difficult to define by regulation the circumstances under which a consumer is deemed to have requested the account upgrade, versus circumstances in which the upgrade is suggested by the creditor. For these reasons, the Board is adopting the substantive guidance in proposed 9(c)(2)(i)–3. However, for clarity, the Board has moved this guidance into a new § 226.9(c)(2)(i)(B) of the regulation rather than including it in the commentary. Comment 9(c)(2)(i)–3, as adopted, contains a cross-reference to comment 5(b)(1)(i)–6.

The Board received a number of additional comments on § 226.9(c)(2), as are discussed below in further detail. However, the Board received no comments on the general approach in § 226.9(c)(2)(i), which is substantively equivalent to the rule the Board adopted in January 2009. Therefore, the Board is adopting § 226.9(c)(2)(i) generally as proposed (redesignated as § 226.9(c)(2)(i)(A)), with one technical amendment to correct a scrivener's error in the proposal.

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

Pursuant to new TILA Section 127(i), the Board has the authority to determine by rule what are significant changes in the terms of the cardholder agreement between a creditor and a consumer. The Board proposed § 226.9(c)(2)(ii) to identify which changes are significant changes in terms. Similar to the January 2009 Regulation Z Rule, proposed § 226.9(c)(2)(ii) stated that for the purposes of § 226.9(c), a significant change in account terms means changes to terms required to be disclosed in the table provided at account opening pursuant to § 226.6(b)(1) and (b)(2) or an increase in the required minimum periodic payment. The terms included in the account-opening table are those that the Board determined, based on its consumer testing, to be the most important to consumers. In the July 2009 Regulation Z Interim Final Rule, the Board had expressly listed these terms in § 226.9(c)(2)(ii). Because § 226.6(b) was not in effect as of August 20, 2009, the Board could not identify these terms by a cross-reference to § 226.6(b) in the proposal. However, proposed § 226.9(c)(2)(ii) was intended to be substantively equivalent to the list of terms included in § 226.9(c)(2)(ii) of the July 2009 Regulation Z Interim Final Rule.

Industry commenters generally were supportive of the Board's proposed definition of "significant change in account terms." These commenters believed that the Board's proposed definition provided necessary clarity to creditors in determining for which changes 45 days' advance notice is required, and that it properly focused on changes in those terms that are the most important to consumers.

Consumer group commenters stated that the Board's proposed definition of "significant change in account terms" was overly restrictive, and that 45 days' advance notice should also be required for other types of fees and changes in terms. These commenters specifically noted the addition of security interests or a binding mandatory arbitration provision as changes for which advance notice should be required. In addition, they stated that fees should be permitted to be disclosed orally and immediately prior to their imposition only if they are fees or one-time or time-sensitive services. Consumer groups noted their concerns that the Board's list of "significant changes in account terms" could lead creditors to establish new types of fees that for which 45 days' advance disclosure would not be required.

The Board is adopting § 226.9(c)(2)(ii) generally as proposed. The Board continues to believe, based on its consumer testing, that the list of fees, categories of fees, and other terms required to be disclosed in a tabular format at account-opening includes those terms that are the most important to consumers. The Board notes that consumers will receive notice of any other types of charges imposed as part of the plan prior to their imposition, as required by § 226.5(b)(1)(ii). The Board also believes that TILA Section 127(i) does not require 45 days' advance notice for all changes in terms, because the statute specifically mentions "significant change[s]," and thus by its terms does not apply to all changes.

However, in response to consumer group comments, the Board has added the acquisition of a security interest to the list of significant changes for which 45 days' advance notice is required. The Board believes that if a creditor acquires or will acquire a security interest that was not previously disclosed under § 226.6(b)(5), this constitutes a change of which a consumer should be aware in advance. A consumer may wish to use a different form of financing or to otherwise adjust his or her use of the open-end plan in consideration of such a security interest. Under the final rule, a consumer will receive 45 days' advance notice of this change.

The Board is not adopting a requirement that creditors provide 45 days' advance notice of the addition of, or changes in the terms of, a mandatory arbitration clause. TILA does not address or require disclosures regarding arbitration for open-end credit plans, and Regulation Z's rules applicable to open-end credit have accordingly never addressed arbitration. Furthermore, the Board's regulations generally do not address the remedies for violations of Regulation Z and TILA; rather, the procedures and remedies for violations are addressed in the statute. Accordingly, the Board does not believe it is appropriate at this time to require disclosures regarding mandatory arbitration clauses under Regulation Z.

9(c)(2)(iii) Charges Not Covered by § 226.6(b)(1) and (b)(2)

Proposed § 226.9(c)(2)(iii) set forth the disclosure requirements for changes in terms required to be disclosed under § 226.6(b)(3) that are not significant changes in account terms described in § 226.9(c)(2)(ii). The Board proposed a 45-day notice period only for changes in the terms that are required to be disclosed as a part of the account-opening table under proposed § 226.6(b)(1) and (b)(2) or for increases in the required minimum periodic payment. A different disclosure requirement would apply when a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under proposed § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under proposed § 226.6(b)(1) and (b)(2). Under those circumstances, the proposal required the creditor to either, at its option (1) provide at least 45 days' written advance notice before the change becomes effective, or (2) provide notice orally or in writing of the amount of the charge to an affected consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge. This is consistent with the requirements of both the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule.

One consumer group commenter stated that if the 45-day advance notice requirement does not apply to all undisclosed charges, the Board should require written disclosures of all charges not required to be disclosed in the account-opening table. The Board is not adopting a requirement that notices given pursuant to § 226.9(c)(2)(iii) be in writing. The Board believes that oral disclosure of certain charges on a consumer's open-end (not home-secured) account may, in some circumstances, be more beneficial to a consumer than a written disclosure, because the oral disclosure can be provided at the time that the consumer is considering purchasing an incidental service from the creditor that has an associated charge. In such a case, it would unnecessarily delay the consumer's access to that service to require that a written disclosure be provided.

For the reasons discussed above and in the supplementary information to § 226.9(c)(2)(ii), the Board is adopting § 226.9(c)(2)(iii) as proposed. The Board continues to believe that there are some fees, such as fees for expedited delivery of a replacement card, that it may not be useful to disclose long in advance of when they become relevant to the consumer. For such fees, the Board believes that a more flexible approach, consistent with that adopted in the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule is appropriate. Thus, if a consumer calls to request an expedited replacement card, the consumer could be informed of the amount of the fee in the telephone call in which the consumer requests the card. Otherwise, the consumer would have to wait 45 days from receipt of a change-in-terms notice to be able to order an expedited replacement card, which would likely negate the benefit to the consumer of receiving the expedited delivery service.

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

General Content Requirements

Proposed § 226.9(c)(2)(iv) set forth the Board's proposed content and formatting requirements for change-in-terms notices required to be given for significant changes in account terms pursuant to proposed § 226.9(c)(2)(i). Proposed § 226.9(c)(2)(iv)(A) required such notices to include (1) a summary of the changes made to terms required by § 226.6(b)(1) and (b)(2) or of any increase in the required minimum periodic payment, (2) a statement that changes are being made to the account, (3) for accounts other than credit card accounts under an open-end consumer credit plan subject to § 226.9(c)(2)(iv)(B), a statement indicating that the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable, (4) the date the changes will become effective, (5) if applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice, (6) if the creditor is changing a rate on the account other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate referenced in the notice does not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate, and (7) if the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied and, if applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms.

Proposed § 226.9(c)(2)(iv)(A) generally mirrored the content required under § 226.9(c)(2)(iii) of the January 2009 Regulation Z Rule, except that the Board proposed to require a disclosure regarding any applicable right to opt out of changes under proposed § 226.9(c)(2)(iv)(A)(*3*) only if the change is being made to an open-end (not home-secured) credit plan that is not a credit card account subject to § 226.9(c)(2)(iv)(B). For credit card accounts, as discussed in the supplementary information to §§ 226.9(h) and 226.55, the Credit Card Act imposes independent substantive limitations on rate increases, and generally provides the consumer with a right to reject other significant changes being made to their accounts. A disclosure of this right to reject, when applicable, is required for credit card accounts under proposed § 226.9(c)(2)(iv)(B). Therefore, the Board believed a separate reference to other applicable opt-out rights is unnecessary and may be confusing to consumers, when the notice is given in connection with a change in terms applicable to a credit card account.

The Board received few comments on § 226.9(c)(2)(iv)(A), and it is generally adopted as proposed, except that § 226.9(c)(2)(iv)(A)(*1*) has been amended to refer to security interests being acquired by the creditor, for consistency with § 226.9(c)(2)(ii). The Board is amending comment 9(c)(2)(i)–5, regarding the form of a change in terms notice required for an additional security interest. The comment notes that a creditor must provide a description of the change consistent with § 226.9(c)(2)(iv), but that it may use a copy of the security agreement as the change-in-terms notice. The Board also has made a technical amendment to § 226.9(c)(2)(iv)(A)(*1*) to note that a description, rather than a summary, of any increase in the required minimum periodic payment be disclosed.

Several commenters noted that proposed Sample G–20, which sets forth a sample disclosure for an annual percentage rate increase for a credit card account, erroneously included a reference to the consumer's right to opt out of the change, which is not required by proposed § 226.9(c)(2)(iv)(A)(*3*) for credit card accounts. The reference to opt-out rights has been deleted from Sample G–20 in the final rule.

Consumer groups commented that notices provided in connection with rate increases should set forth the current rate as well as the increased rate that will apply. For the reasons discussed in the supplementary information to the January 2009 Regulation Z Rule, the Board is not adopting a requirement that a change-in-terms notice set forth the current rate or rates. *See* 74 FR 5244, 5347. As noted in that rulemaking, the main purpose of the change-in-terms notice is to inform consumers of the new rates that will apply to their accounts. The Board is concerned that disclosure of each current rate in the change-in-terms notice could contribute to information overload, particularly in light of new restrictions on repricing in § 226.55, which may lead to a consumer's account having multiple protected balances to which different rates apply.

One exception to the repricing rules set forth in § 226.55(b)(3) permits card issuers to increase the rate on new transactions for a credit card account under an open-end (not home-secured) consumer credit plan, provided that the creditor complies with the notice requirements in § 226.9(b), (c), or (g). Under this exception, the increased rate can apply only to transactions that occurred more than 14 days after provision of the applicable notice. One federal banking agency suggested that § 226.9(c) should expressly repeat the 14-day requirement and reference the advance notice exception set forth in § 226.55(b)(3), so that issuers do not have to cross-reference two sections in providing the notice required under § 226.9(c)(2). The Board believes that including an express reference to the 14-day requirement from § 226.55(b)(3) in § 226.9(c)(2) is not necessary. The Board expects that card issuers will be familiar with the substantive requirements regarding rate increases set forth in § 226.55(b)(3), and that a second detailed reference to those requirements in § 226.9(c)(2) therefore would be redundant.

Additional Content Requirements for Credit Card Accounts

Proposed § 226.9(c)(2)(iv)(B) set forth additional content requirements that are applicable only to credit card accounts under an open-end (not home-secured) consumer credit plan. In addition to the information required to be disclosed pursuant to § 226.9(c)(2)(iv)(A), the proposal required credit card issuers making significant changes to terms to disclose certain information regarding the consumer's right to reject the change pursuant to § 226.9(h). The substantive rule regarding the right to reject is discussed in connection with proposed § 226.9(h); however, the associated disclosure requirements are set forth in § 226.9(c)(2). In particular, the proposal provided that a card issuer must generally include in the notice (1) a statement that the consumer has the right to reject the change or changes prior to the effective date, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment, (2) instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection, and (3) if applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended. Proposed section 226.9(c)(2)(iv)(B) generally mirrored requirements made applicable to credit card issuers in the July 2009 Regulation Z Interim Final Rule.

The Board did not receive any significant comments on the content of disclosures regarding a consumer's right to reject certain significant changes to their account terms. Therefore, the content requirements in § 226.9(c)(2)(iv)(B)(*1*)–(*3*) are adopted as proposed.

The proposal provided that the right to reject does not apply to increases in the required minimum payment, an increase in an annual percentage rate applicable to a consumer's account, a change in the balance computation method applicable to a consumer's account necessary to comply with the new prohibition on use of "two-cycle" balance computation methods in proposed § 226.54, or changes due to the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment. The Board is adopting the exceptions to the right to reject as proposed, with one change. For the reasons discussed in the supplementary information to § 226.9(h), the proposed exception for increases in annual percentage rates has been adopted as an exception for all changes in annual percentage rates.

Rate Increases Resulting From Delinquency of More Than 60 Days

As discussed in the supplementary information to § 226.9(g), TILA Section 171(b)(4) requires several additional disclosures to be provided when the annual percentage rate applicable to a credit card account under an open-end consumer credit plan is increased due to the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment. In those circumstances, the notice must state the reason for the increase and disclose that the increase will cease to apply if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. The Board proposed in § 226.9(g)(3)(i)(B) to set forth this additional content for rate increases pursuant to the exercise of a penalty pricing provision in the contract; however, the proposal contained no analogous disclosure requirements in § 226.9(c)(2) when the rate increase is made pursuant to a change in terms notice. One issuer commented that § 226.9(c)(2) also should set forth guidance for disclosing the 6-month cure right when a rate is increased via a change-in-terms notice due to a delinquency of more than 60 days. The final rule adopts new § 226.9(c)(2)(iv)(C), which implements the notice requirements contained in amended TILA Section 171(b)(4), as adopted by the Credit Card Act; the substantive requirements of TILA Section 171(b)(4) are discussed in proposed § 226.55(b)(4), as discussed below.

New § 226.9(c)(2)(iv)(C) requires the notice regarding the 6-month cure right to be provided if the change-in-terms notice is disclosing an increase in an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment. This differs from § 226.9(g)(3)(i)(B), in that it references fees of a type required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). Section 226.9(c)(2) addresses changes in fees and interest rates, while § 226.9(g) applies only to interest rates; therefore, the reference to fees in § 226.9(c)(2)(iv)(C) has been included for conformity with the substantive requirements of § 226.55. The notice is required to state the reason for the increase and that the increase will cease to apply if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

Several industry commenters noted that the model forms for the table required to be provided at account opening disclose a cure right that is more advantageous to the consumer than the cure required by § 226.55. In particular, proposed Samples G–17(B) and G–17(C) state that a penalty rate will apply until the consumer makes six consecutive minimum payments when due. In contrast, the substantive right under § 226.55 applies only if the consumer makes the first six consecutive required minimum periodic payments when due, following the effective date of a rate increase due to the consumer's failure to make a required minimum periodic payment within 60 days of the due date. The Board is adopting the disclosure of penalty rates in Samples G–17(B) and G–17(C) as proposed. The Board notes that Samples G–17(B) and G–17(C) set forth two examples of how the disclosures required by § 226.6(b)(1) and (b)(2) can be made, and those samples can be adjusted as applicable to reflect a creditor's actual practices regarding penalty rates. A creditor is still free, under the final rule, to provide that the penalty APR will cease to apply if the consumer makes any six consecutive payments on time, although the substantive right in § 226.55 does not compel a creditor to do so. The Board does not wish to discourage creditors from providing more advantageous penalty pricing triggers than those that are required by the Credit Card Act and § 226.55.

Formatting Requirements

Proposed § 226.9(c)(2)(iv)(C) set forth the formatting requirements that would apply to notices required to be given pursuant to § 226.9(c)(2)(i). The proposed formatting requirements were generally the same as those that the Board adopted in § 226.9(c)(2)(iii) of the January 2009 Regulation Z Rule, except that the reference to the content of the notice included, when applicable, the information about the right to reject that credit card issuers must disclose pursuant to § 226.9(c)(2)(iv)(B). These formatting requirements are not affected by the Credit Card Act, and therefore the Board proposed to adopt them generally as adopted in January 2009. The Board received no significant comment on the formatting requirements, and § 226.9(c)(2)(iv)(D) (renumbered from proposed § 226.9(c)(2)(iv)(C)) is adopted as proposed.

As proposed, the Board is amending Sample G–20 and adding a new Sample G–21 to illustrate how a card issuer may comply with the requirements of § 226.9(c)(2)(iv). The Board is amending references to these samples in § 226.9(c)(2)(iv) and comment 9(c)(2)(iv)–8 accordingly. Sample G–20 is a disclosure of a rate increase applicable to a consumer's credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G–21 illustrates an increase in the consumer's late payment and returned payment fees, and sets forth the content required in order to disclose the consumer's right to reject those changes.

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

The Board proposed § 226.9(c)(2)(v) to set forth the exceptions to the general change-in-terms notice requirements for open-end (not home-secured) credit. With several exceptions, proposed § 226.9(c)(2)(v) was intended to be substantively equivalent to § 226.9(c)(2)(v) of the July 2009 Regulation Z Interim Final Rule, except that the Board proposed an additional express exception for the extension of a grace period. Proposed § 226.9(c)(2)(v)(A) set forth several exceptions that are in current § 226.9(c), including charges for documentary evidence, reductions of finance charges, suspension of future credit privileges (except as provided in § 226.9(c)(vi), discussed below), termination of an account or plan, or when the change results from an agreement involving a court proceeding. The Board did not include these changes in the set of "significant changes" giving rise to notice requirements pursuant to new TILA Section 127(i)(2). The Board stated that it believes 45 days' advance notice is not necessary for these changes, which are not of the type that generally result in the imposition of a fee or other charge on a consumer's account that could come as a costly surprise.

The Board received several comments on the exceptions in proposed § 226.9(c)(2)(v)(A) for termination of an account or plan and the suspension of future credit privileges. Consumer groups stated that notice should be required of credit limit decreases or account termination, either contemporaneously with or subsequent to those actions. In addition, one member of Congress stated that 45 days' advance notice should be required prior to account termination.

The Board is retaining the exceptions for account termination and suspension of credit privileges in the final rule. As stated in the proposal, the Board believes that for safety and soundness reasons, issuers generally have a legitimate interest in suspending credit privileges or terminating an account or plan when a consumer's creditworthiness deteriorates, and that 45 days' advance notice of these types of changes therefore would not be appropriate. With regard to the suspension of credit privileges, the Board notes that § 226.9(c)(vi) requires creditors to provide 45 days' advance notice that a consumer's credit limit has been decreased before an over-the-limit fee or penalty rate can be imposed solely for exceeding that newly decreased credit limit. The Board believes that § 226.9(c)(vi) will adequately ensure that consumers receive notice of a decrease in their credit limit prior to any adverse consequences as a result of the consumer exceeding the new credit limit.

Similarly, the Board does not believe that it is necessary to require notices of the termination of an account or the suspension of credit privileges contemporaneously with or immediately following such a termination or suspension. In many cases, consumers will receive subsequent notification of the termination of an account or the suspension of credit privileges pursuant to Regulation B. *See* 12 CFR part 202. The Board acknowledges that Regulation B does not require subsequent notification of the termination of an account or suspension of credit privileges in all cases, for example, when the action affects all or substantially all of a class of the creditor's accounts or is an action relating to an account taken in connection with inactivity, default, or delinquency as to that account. However, the Board believes that the benefit to consumers of requiring such a subsequent notice in all cases would be limited. If a consumer's account is terminated or suspended and the consumer attempts to use the account for new transactions, those transactions will be denied. The Board expects that in such circumstances most consumers would call the card issuer and be notified at that time of the suspension or termination of their account.

Increase in Annual Percentage Rate Upon Expiration of Specified Period of Time

Proposed § 226.9(c)(2)(v)(B) set forth an exception contained in the Credit Card Act for increases in annual percentage rates upon the expiration of a specified period of time, provided that prior to the commencement of that period, the creditor disclosed to the consumer clearly and conspicuously in writing the length of the period and the annual percentage rate that would apply after that period. The proposal required that this disclosure be provided in close proximity and equal prominence to any disclosure of the rate that applies during that period, ensuring that it would be provided at the same time the consumer is informed of the temporary rate. In addition, in order to fall within this exception, the annual percentage rate that applies after the period ends may not exceed the rate previously disclosed.

The proposed exception generally mirrored the statutory language, except for two additional requirements. First, the Board's proposal provided, consistent with July 2009 Regulation Z Interim Final Rule and the standard for Regulation Z disclosures under Subpart B, that the disclosure of the period and annual percentage rate that will apply after the period is generally required to be in writing. *See* § 226.5(a)(1). Second, pursuant to its authority under TILA Section 105(a) to prescribe regulations to effectuate the purposes of TILA, the Board proposed to require that the disclosure of the length of the period and the annual percentage rate that would apply upon expiration of the period be set forth in close proximity and equal prominence to the disclosure of the rate that applies during the specified period of time. 15 U.S.C. 1604(a). The Board stated that it believes both of these requirements are appropriate in order to ensure that consumers receive, comprehend, and are able to retain the disclosures regarding the rates that will apply to their transactions.

Proposed comment 9(c)(2)(v)–5 clarified the timing of the disclosure requirements for telephone purchases financed by a merchant or private label credit card issuer. The Board is aware that the general requirement in the July 2009 Regulation Z Interim Final Rule that written disclosures be provided prior to commencement of the period during which a temporary rate will be in effect has caused some confusion for merchants who offer a promotional rate on the telephone to finance the purchase of goods. In order to clarify the application of the rule to such merchants, proposed comment 9(c)(2)(v)–5 stated that the timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a temporary rate if: (1) The first transaction subject to the temporary rate occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase at the temporary rate; (2) the merchant or third-party creditor permits consumers to return any goods financed subject to the temporary rate and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 226.9(c)(2)(v)(B); and (3) the disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate offer and return the goods are disclosed to the consumer as part of the offer to finance the purchase. This clarification mirrored a timing rule for account-opening disclosures provided by merchants financing the purchase of goods by telephone under § 226.5(b)(1)(iii) of the January 2009 Regulation Z Rule.

The Board received a large number of comments from retailers and private label card issuers raising concerns about the proposal and regarding the operational difficulties associated with providing the disclosures required by proposed § 226.9(c)(2)(v)(B). Specifically, these commenters stated that issuers should be permitted to provide consumers with a disclosure of an "up to" annual percentage rate, and not the specific rate that will apply to a consumer's account upon expiration of the promotion. The Board is not adopting this suggestion, for several reasons. First, the Board believes that the appropriate interpretation is that amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(a)(1)) requires disclosure of the actual rate that will apply upon expiration of a temporary rate. Second, the Board believes that a disclosure of a range of rates or "up to" rate will not be as useful for consumers as a disclosure of the specific rate that will apply. The Board is aware that some private label card issuers and retailers permit consumers to make transactions at a promotional rate, even if the consumer's account is currently subject to a penalty rate. In this case, an "up to" rate disclosure would disclose the penalty rate, which would be much higher than the actual rate that will apply upon expiration of the promotion for most consumers. Thus, the disclosure would convey little useful information to a consumer whose account is not subject to the penalty rate.

Other retailers and private label card issuers suggested that the Board permit issuers to provide the required disclosures or a portion of the required disclosures with a receipt or other document. One such commenter stated that these disclosures should be permitted to be given at the conclusion of a transaction. The Board believes that amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(a)(1)) clearly contemplates that the disclosures will be provided prior to commencement of the period during which the temporary rate will be in effect. Therefore, the final rule would not permit a creditor to provide the disclosures after conclusion of a transaction at point of sale.

However, the Board believes that it is appropriate to provide some flexibility for the formatting of notices of temporary rates provided at point of sale. The Board understands that private label and retail card issuers may offer different rates to different consumers based on their creditworthiness and other factors. In addition, some consumers' accounts may be at a penalty rate that differs from the standard rates on the portfolio. Commenters have indicated that there can be significant operational issues associated with ensuring that sales associates provide the correct disclosures to each consumer at point of sale when those consumers' rates vary. In order to address an analogous issue for the disclosures required to be given at account opening, the Board understands that card issuers disclose the rate that will apply to the consumer's account on a separate page which can be printed directly from the receipt terminal, as permitted by § 226.6(b)(2)(i)(E). The Board believes that a similar formatting rule is appropriate for disclosures of temporary rate offers. Accordingly, the Board is adopting a new comment 9(c)(2)(v)–7 which states that card issuers providing the disclosures required by § 226.9(c)(2)(v)(B) in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate that would apply after expiration of the period on a separate page or document from the temporary rate and the length of the period, provided that the disclosure of the annual percentage rate that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate and length of the period. The Board believes that this will ensure that consumers receive the disclosures required for a temporary rate offer, and will be aware of the rate that will apply after the temporary rate expires, while alleviating burden on retail and private label credit card issuers.

One industry commenter urged the Board to provide flexibility in the formatting of the promotional rate disclosures under § 226.9(c)(2)(v)(B), noting that any requirement that these disclosures be presented in a tabular format would present significant operational challenges. The Board notes that the proposal did not require that these disclosures be provided in a tabular format, and the final rule similarly does not require that the disclosures under § 226.9(c)(2)(v)(B) be presented in a table.

In the October 2009 Regulation Z Proposal, the Board stated, that for a brief period necessary to update their systems to disclose a single rate, issuers offering a deferred interest or other promotional rate program at point of sale could disclose a range of rates or an "up to" rate rather than a single rate. The Board noted that stating a range of rates or "up to" rate would only be permissible for a brief transition period and that it expected that merchants and creditors would disclose a single rate that will apply when a deferred interest or other promotional rate expires in accordance with § 226.9(c)(2)(v)(B) as soon as possible. The Board expects that all issuers will disclose a single rate by the February 22, 2010 effective date of this final rule. The Board notes that in addition to the exception to § 226.9(c)(2)'s advance notice requirements, provision of the notice pursuant to § 226.9(c)(2)(v)(B) now also is a condition of an exception to the substantive repricing rules in § 226.55(b)(1). Accordingly, the Board believes that it is particularly important that consumers receive notice of the specific rate that will apply upon expiration of a promotion, since the ability to raise the rate upon termination of the program is conditioned on the consumer's receipt of that disclosure.

Several industry commenters stated that the alternative timing rule for telephone purchases in proposed comment 9(c)(2)(v)–5 should apply to all telephone offers of temporary rate reductions. These commenters argued that consumers should not have to wait for written disclosures to be delivered prior to commencement of a temporary reduced rate, because that rate constitutes a beneficial change to the consumer. Several of these commenters indicated that a consumer who accepts a temporary rate offer by telephone should have a subsequent right to reject the offer for 45 days after provision of the written disclosures.

In response to these comments, the Board is adopting a revised comment 9(c)(2)(v)–5, which provides that the timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a temporary rate, if: (i) The consumer accepts the offer of the temporary rate by telephone; (ii) the creditor permits the consumer to reject the temporary rate offer and have the rate or rates that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 226.9(c)(2)(v)(B); and (iii) the disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the offer and have the rate or rates that previously applied to the consumer's account reinstated are disclosed to the consumer as part of the temporary rate offer. The Board believes that consumers who accept a promotional rate offer by telephone expect that the promotional rate will apply immediately upon their acceptance. The Board believes that requiring written disclosures prior to commencement of a temporary rate when offer is made by telephone and the required disclosures are provided orally would unnecessarily delay, in many cases, a benefit to the consumer. However, the Board believes that a consumer should have a right, subsequent to receiving written disclosures, to change his or her mind and reject the temporary rate offer. The Board believes that comment 9(c)(2)(v)–5, as adopted, ensures that consumers may take immediate advantage of promotions that they believe to be a benefit, while protecting consumers by allowing them to terminate the promotion, with no adverse consequences, upon receipt of written disclosures.

In addition to requesting that the disclosures under § 226.9(c)(2)(v)(B) be permitted to be provided by telephone, other industry commenters stated that these disclosures should be permitted to be provided electronically without regard to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The Board is not providing an exception to the consumer consent requirements under the E-Sign Act at this time. The requirements of the E-Sign Act are implemented in Regulation Z in § 226.36, which states that a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. The Board believes that disclosure of a promotional or other temporary rate is a disclosure related to a transaction, and that consumers should only receive the disclosures under § 226.9(c)(2)(v)(B) electronically if they have affirmatively consented to receive disclosures in that form.

Several commenters asked the Board to provide additional clarification regarding the proposed requirement that the disclosures of the length of the period and the rate that will apply after the expiration of the period be disclosed in close proximity and equal prominence to the disclosure of the temporary rate. One card issuer indicated that the Board should require only that the disclosures required by § 226.9(c)(2)(v)(B) be provided in close proximity and equal prominence to the first listing of the promotional rate, analogous to what § 226.16(g) requires for disclosures of promotional rates in advertisements. The Board believes that this clarification is appropriate, and is adopting a new comment 9(c)(2)(v)–6, which states that the disclosures of the rate that will apply after expiration of the period and the length of the period are only required to be provided in close proximity and equal prominence to the first listing of the temporary rate in the disclosures provided to the consumer. The comment further states that for purposes of § 226.9(c)(2)(v)(B), the first statement of the temporary rate is the most prominent listing on the front side of the first page of the disclosure. The comment notes that if the temporary rate does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. The Board believes that this rule will ensure that consumers notice the disclosure of the rate that will apply after the temporary rate expires, by requiring that it be closely proximate and equally prominent to the most prominent disclosure of the temporary rate, while mitigating burden on issuers to present this disclosure multiple times in the materials provided to the consumer.

One industry commenter stated that there should be an exception analogous to § 226.9(c)(2)(v)(B) for promotional fee offerings. The Board is not adopting such an exception at this time. The Board notes that the exception in amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(a)(1)) refers only to annual percentage rates and not to fees. The Board does not think a similar exception for fees is appropriate or necessary. Fees generally do not apply to a specific balance on the consumer's account, but rather, apply prospectively. Therefore, a creditor could reduce a fee pursuant to the exception in § 226.9(c)(2)(v) for reductions in finance or other charges, without having to provide advance notice of that reduction. The creditor could then increase the fee with prospective application after providing 45 days' advance notice pursuant to § 226.9(c). Nothing in the rule prohibits a creditor from providing notice of the increase in a fee at the same time it temporarily reduces the fee; a creditor could provide information regarding the temporary reduction in the same notice, provided that it is not interspersed with the content required to be disclosed pursuant to § 226.9(c)(2)(iv).

The Board proposed to retain comment 9(c)(2)(v)–6 from the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)–7) to clarify that an issuer offering a deferred interest or similar program may utilize the exception in § 226.9(c)(2)(v)(B). The proposed comment also provides examples of how the required disclosures can be made for deferred interest or similar programs. The Board did not receive any significant comment on the applicability of § 226.9(c)(2)(v)(B) to deferred interest plans, and continues to believe that the application of § 226.9(c)(2)(v)(B) to deferred interest arrangements is consistent with the Credit Card Act. The Board is adopting proposed comment 9(c)(2)(v)–7 (redesignated as comment 9(c)(2)(v)–9), in order to ensure that the final rule does not have unintended adverse consequences for deferred interest promotions. In order to ensure consistent treatment of deferred interest programs, the Board has added a cross-reference to comment 9(c)(2)(v)–9 indicating that for purposes of § 226.9(c)(2)(v)(B) and comment 9(c)(2)(v)–9, "deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary.

In October 2009, the Board proposed to retain comment 9(c)(2)(v)–5 from the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)–6), which is applicable to the exceptions in both § 226.9(c)(2)(v)(B) and (c)(2)(v)(D), and provides additional clarification regarding the disclosure of variable annual percentage rates. The comment provides that if the creditor is disclosing a variable rate, the notice must also state that the rate may vary and how the rate is determined. The comment sets forth an example of how a creditor may make this disclosure. The Board believes that the fact that a rate is variable is an important piece of information of which consumers should be aware prior to commencement of a deferred interest promotion, a promotional rate, or a stepped rate program. The Board received no comments on proposed comment 9(c)(2)(v)–6 and it is adopted as redesignated comment 9(c)(2)(v)–8.

Increases in Variable Rates

The Board proposed § 226.9(c)(2)(v)(C) to implement an exception in the Credit Card Act for increases in variable annual percentage rates in accordance with a credit card or other account agreement that provides for a change in the rate according to operation of an index that is not under the control of the creditor and is available to the general public. The Board proposed a minor amendment to the text of § 226.9(c)(2)(v)(C) as adopted in the July 2009 Regulation Z Interim Final Rule to reflect the fact that this exception would apply to all open-end (not home-secured) credit. The Board believes that even absent this express exception, such a rate increase would not generally be a change in the terms of the cardholder or other account agreement that gives rise to the requirement to provide 45 days' advance notice, because the index, margin, and frequency with which the annual percentage rate will vary will all be specified in the cardholder or other account agreement in advance. However, in order to clarify that 45 days' advance notice is not required for a rate increase that occurs due to adjustments in a variable rate tied to an index beyond the creditor's control, the Board proposed to retain § 226.9(c)(2)(v)(C) of the July 2009 Regulation Z Interim Final Rule.

The Board received no significant comment on § 226.9(c)(2)(v)(C), which is adopted as proposed. The Board notes that, as discussed in the supplementary information to § 226.55(b)(2), it is adopting additional commentary clarifying when an index is deemed to be outside of an issuer's control, in order to address certain practices regarding variable rate "floors" and the adjustment or resetting of variable rates to account for changes in the index. The Board is adopting a new comment 9(c)(2)(v)–11, which cross-references the guidance in comment 55(b)(2)–2.

Exception for Workout or Temporary Hardship Arrangements

In the October 2009 Regulation Z Proposal, the Board proposed to retain § 226.9(c)(2)(v)(D) to implement a statutory exception in amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(b)(3)), for increases in rates or fees or charges due to the completion of, or a consumer's failure to comply with the terms of, a workout or temporary hardship arrangement provided that the annual percentage rate or fee or charge applicable to a category of transactions following the increase does not exceed the rate that applied prior to the commencement of the workout or temporary hardship arrangement. Proposed § 226.9(c)(2)(v)(D) was substantively equivalent to the analogous provision included in the July 2009 Regulation Z Interim Final Rule.

The exception in proposed § 226.9(c)(2)(v)(D) applied both to completion of or failure to comply with a workout arrangement. The proposed exception was conditioned on the creditor's having clearly and conspicuously disclosed, prior to the commencement of the arrangement, the terms of the arrangement (including any such increases due to such completion). The Board notes that the statutory exception applies in the event of either completion of, or failure to comply with, the terms of such a workout or temporary hardship arrangement. This proposed exception generally mirrored the statutory language, except that the Board proposed to require that the disclosures regarding the workout or temporary hardship arrangement be in writing.

The Board also proposed to retain comment 9(c)(2)(v)–7 of the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)–8), which provides clarification as to what terms must be disclosed in connection with a workout or temporary hardship arrangement. The comment stated that in order for the exception to apply, the creditor must disclose to the consumer the rate that will apply to balances subject to the workout or temporary hardship arrangement, as well as the rate that will apply if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement. For consistency with proposed § 226.55(b)(5)(i), the Board proposed to revise the comment to also state that the creditor must disclose the amount of any reduced fee or charge of a type required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) that will apply to balances subject to the arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the arrangement. The proposal also required the notice to state, if applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement. The Board noted its belief that it is important for a consumer to be notified of his or her payment obligations pursuant to a workout or similar arrangement, and that the rate, fee or charge may be increased if he or she fails to make timely payments.

Several industry commenters stated that creditors should be permitted to provide the disclosures pursuant to § 226.9(c)(2)(v)(D) for workout or temporary hardship arrangements orally with subsequent written confirmation. These commenters noted that oral disclosure of the terms of a workout arrangement would permit creditors to reduce rates and fees as soon as the consumer agrees to the arrangement, but that a requirement that written disclosures be provided in advance could unnecessarily delay commencement of the arrangement. These commenters noted that workout arrangements unequivocally benefit consumers, so there is no consumer protection rationale for delaying relief until a creditor can provide written disclosures. Commenters further noted that the consumers who enter such arrangements are having trouble making the payments on their accounts, and that any delay can be detrimental to the consumer.

The Board notes that amended TILA Section 127(i) (which cross-references TILA Section 171(b)(3)) requires clear and conspicuous disclosure of the terms of a workout or temporary hardship arrangement prior to its commencement, but the statute does not contain an express requirement that these disclosures be in writing. The Board further understands that a delay in commencement of a workout or temporary hardship arrangement can have adverse consequences for a consumer. Therefore, § 226.9(c)(2)(v)(D) of the final rule provides that creditors may provide the disclosure of the terms of the workout or temporary hardship arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided. The Board notes that a consumer's rate can only be raised, upon completion or failure to comply with the terms of, a workout or temporary hardship arrangement, to the rate that applied prior to commencement of the arrangement. Therefore, the Board believes that consumers will be adequately protected by receiving written disclosures as soon as practicable after oral disclosures are provided.

In addition to requesting that the disclosures under § 226.9(c)(2)(v)(D) be permitted to be provided by telephone, other industry commenters stated that these disclosures should be permitted to be provided electronically without regard to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The Board is not providing an exception to the consumer consent requirements under the E-Sign Act at this time. The Board believes that disclosure of the terms of a workout or other temporary hardship arrangement is a disclosure related to a transaction, and that consumers should only receive the disclosures under § 226.9(c)(2)(v)(D) electronically if they have affirmatively consented to receive disclosures in that form.

Several industry commenters requested that the Board extend the exception in § 226.9(c)(2)(v)(D) to address the reduction of the consumer's minimum periodic payment as part of a workout or temporary hardship arrangement. The Board understands that a requirement that 45 days' advance notice be given prior to reinstating the prior minimum payment requirements could lead to negative amortization for a period of 45 days or more, when the consumer's rate or rates are increased as a result of the completion of or failure to comply with the terms of, the workout or temporary hardship arrangement. Therefore, the Board has amended § 226.9(c)(2)(v)(D) and comment 9(c)(2)(v)–10 (proposed as comment 9(c)(2)(v)–8) to provide that increases in the required minimum periodic payment are covered by the exception in § 226.9(c)(2)(v)(D), but that such increases in the minimum payment must be disclosed as part of the terms of the workout or temporary hardship arrangement. As with rate increases, a consumer's required minimum periodic payment can only be increased to the required minimum periodic payment prior to commencement of the workout or temporary hardship arrangement in order to qualify for the exception.

One industry commenter asked the Board to simplify the content requirements for the notice required to be given prior to commencement of a workout or temporary hardship arrangement. The issuer stated that the notice could be confusing for consumers because they may have different annual percentage rates applicable to different categories of transactions, promotional rates in effect, and protected balances under § 226.55. While the Board acknowledges that the disclosure of the various annual percentage rates applicable to a consumer's account could be complex, the Board believes that a consumer should be aware of all of the annual percentage rates and fees that would be applicable upon completion of, or failure to comply with, the workout or temporary hardship arrangement. Therefore, the Board is adopting comment 9(c)(2)(v)–10 (proposed as comment 9(c)(2)(v)–8) generally as proposed, except for the addition of a reference to changes in the required minimum periodic payment, discussed above.

Additional Exceptions

A number of commenters urged the Board to adopt additional exceptions to the requirement to provide 45 days' advance notice of significant changes in account terms. Several industry commenters stated that the Board should provide an exception to the advance notice requirements for rate increases made when the provisions of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 *et seq.,* which in some circumstances requires reductions in consumers' interest rates when they are engaged in military service, cease to apply. These commenters noted that proposed § 226.55 provided an exception to the substantive repricing requirements in these circumstances. However, the Board is not adopting an analogous exception to the notice requirements in § 226.9. The Board believes that consumers formerly engaged in military service should receive advance notice when a higher rate will begin to apply to their accounts. A consumer may not be aware of exactly when the SCRA's protections cease to apply and may choose, in reliance on the notice, to change his or her account usage or utilize another source of financing in order to mitigate the impact of the rate increase.

One industry trade association requested an exception to the 45-day advance notice requirement for termination of a preferential rate for employees. The Board notes that it expressly removed such an exception historically set forth in comment 9(c)–1 in the January 2009 Regulation Z Rule. For the reasons discussed in the supplementary information to the January 2009 Regulation Z Rule, the Board is not restoring that exception in this final rule. *See* 74 FR 5244, 5346.

Finally, one industry commenter requested an exception to the advance notice requirements when a change in terms is favorable to a consumer, such as the extension of a grace period, even if it does not involve a reduction in a finance charge. The commenter noted that, for such changes, an issuer also may not want to provide a right to reject under § 226.9(h), because rejecting the change would be unfavorable to the consumer. While the Board notes that, consistent with the proposal, the final rule creates an exception to the advance notice requirements for extensions of the grace period, the Board is not adopting a more general exception to the advance notice requirements for favorable changes at this time. With the exception of reductions in finance or other charges, the Board believes that it is difficult to articulate criteria for when other types of changes are beneficial to a consumer.

9(c)(2)(vi) Reduction of the Credit Limit

Consistent with the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule, the Board proposed to retain § 226.9(c)(2)(vi) to address notices of changes in a consumer's credit limit. Section 226.9(c)(2)(vi) requires an issuer to provide a consumer with 45 days' advance notice that a credit limit is being decreased or will be decreased prior to the imposition of any over-the-limit fee or penalty rate imposed solely as the result of the balance exceeding the newly decreased credit limit. The Board did not propose to include a decrease in a consumer's credit limit itself as a significant change in a term that requires 45 days' advance notice, for several reasons. First, the Board recognizes that creditors have a legitimate interest in mitigating the risk of a loss when a consumer's creditworthiness deteriorates, and believes there would be safety and soundness concerns with requiring creditors to wait 45 days to reduce a credit limit. Second, the consumer's credit limit is not a term generally required to be disclosed under Regulation Z or TILA. Finally, the Board stated its belief that § 226.9(c)(2)(vi) adequately protects consumers against the two most costly surprises potentially associated with a reduction in the credit limit, namely, fees and rate increases, while giving a consumer adequate time to mitigate the effect of the credit line reduction.

The Board received no significant comment on § 226.9(c)(2)(vi), which is adopted as proposed. The Board notes that consumer group commenters stated that the final rule should also require disclosure of a credit line decrease either contemporaneously with the decrease or shortly thereafter; for the reasons discussed above in the section-by-section analysis to § 226.9(c)(2)(v), the Board is not adopting such a requirement at this time.

The Board notes that the final rule contains additional protections against a credit line decrease. First, § 226.55 prohibits a card issuer from applying an increased rate, fee, or charge to an existing balance as a result of transactions that exceeded the credit limit. In addition, § 226.56 allows a card issuer to charge a fee for transactions that exceed the credit limit only when the consumer has consented to such transactions.

Additional Changes to Commentary to § 226.9(c)(2)

The commentary to § 226.9(c)(2) generally is consistent with the commentary to § 226.9(c)(2) of the January 2009 Regulation Z Rule, except for technical changes or changes discussed below. In addition, as discussed above, the Board is adopting several new comments to § 226.9(c)(2)(v) and has renumbered the remaining commentary accordingly.

In October 2009, the Board proposed to amend comment 9(c)(2)(i)–6 to reference examples in § 226.55 that illustrate how the advance notice requirements in § 226.9(c) relate to the substantive rule regarding rate increases in proposed § 226.55. In the January 2009 Regulation Z Rule, comment 9(c)(2)(i)–6 referred to the commentary to § 226.9(g). Because, as discussed in the supplementary information to

§ 226.55, the Credit Card Act moved the substantive rule regarding rate increases into Regulation Z, the Board believed that it is not necessary to repeat the examples under § 226.9. The Board received no comments on the proposed amendments to comment 9(c)(2)(i)–6, which are adopted as proposed.

The Board also proposed to amend comment 9(c)(2)(v)–2 (adopted in the January 2009 Regulation Z Rule as comment 9(c)(2)(iv)–2) in order to conform with the new substantive and notice requirements of the Credit Card Act. This comment addresses the disclosures that must be given when a credit program allows consumers to skip or reduce one or more payments during the year or involves temporary reductions in finance charges. However, new § 226.9(c)(2)(v)(B) requires a creditor to provide a notice of the period for which a temporarily reduced rate will be in effect, as well as a disclosure of the rate that will apply after that period, in order for a creditor to be permitted to increase the rate at the end of the period without providing 45 days' advance notice. Similarly, § 226.55, discussed elsewhere in this supplementary information, requires a creditor to provide advance notice of a temporarily reduced rate if a creditor wants to preserve the ability to raise the rate on balances subject to that temporarily reduced rate. Accordingly, the Board is proposing amendments to clarify that if a credit program involves temporary reductions in an interest rate, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates if these features are disclosed in advance in accordance with the requirements of § 226.9(c)(2)(v)(B). *See* proposed comment 55(b)–3. The proposed comment further clarifies that if a creditor does not provide advance notice in accordance with § 226.9(c)(2)(v)(B), that it must provide a notice that complies with the timing requirements of § 226.9(c)(2)(i) and the content and format requirements of § 226.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). The proposed comment notes that creditors should refer to § 226.55 for additional restrictions on resuming the original rate that is applicable to credit card accounts under an open-end (not home-secured) plan.

Relationship Between § 226.9(c)(2) and (b)

In the October 2009 Regulation Z Proposal, the Board republished proposed amendments to § 226.9(c)(2)(v) and comments 9(c)(2)–4 and 9(c)(2)(i)–3 that were part of the May 2009 Regulation Z Proposed Clarifications. Several of the Board's proposed revisions to § 226.9(c)(2)(v) (proposed in May 2009 as § 226.9(c)(2)(iv)) and proposed comment 9(c)(2)–4 were to clarify the relationship between the change-in-terms requirements of § 226.9(c) and the notice provisions of § 226.9(b) that apply when a creditor adds a credit feature or delivers a credit access device for an existing open-end plan. *See* 74 FR 20787 for further discussion of these proposed amendments. Commenters that addressed this aspect of the proposal generally supported these proposed clarifications, which are adopted as proposed.

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

The Credit Card Act amended TILA Section 127(d), which sets forth the disclosures that card issuers must provide in connection with renewal of a consumer's credit or charge card account. 15 U.S.C. 1637(d). TILA Section 127(d) is implemented in § 226.9(e), which has historically required card issuers that assess an annual or other fee based on inactivity or activity, on a credit card account of the type subject to § 226.5a, to provide a renewal notice before the fee is imposed. The creditor must provide disclosures required for credit card applications and solicitations (although not in a tabular format) and must inform the consumer that the renewal fee can be avoided by terminating the account by a certain date. The notice must generally be provided at least 30 days or one billing cycle, whichever is less, before the renewal fee is assessed on the account. Under current § 226.9(e), there is an alternative delayed notice procedure where the fee can be assessed provided the fee is reversed if the consumer is given notice and chooses to terminate the account.

Alternative Delayed Notice

The Credit Card Act amended TILA Section 127(d) to eliminate the provision permitting creditors to provide an alternative delayed notice. Thus, the statute requires card issuers to provide the renewal notice described in § 226.9(e)(1) prior to imposition of any annual or other periodic fee to renew a credit or charge card account of the type subject to § 226.5a, including any fee based on account activity or inactivity. Card issuers may no longer assess the fee and provide a delayed notice offering the consumer the opportunity to terminate the account and have the fee reversed. Accordingly, the Board proposed to delete § 226.9(e)(2) and to renumber § 226.9(e)(3) as § 226.9(e)(2). The Board proposed technical conforming changes to comments 9(e)–7, 9(e)(2)–1 (currently comment 9(e)(3)–1), and 9(e)(2)–2 (currently comment 9(e)(3)–2).

Consumer groups commented that the Board's final rule should permit the alternative delayed disclosure. These commenters believe that the deletion of TILA Section 127(d)(2) was a drafting error, and that the Board should use its authority under TILA Section 105(a) to restore the alternative delayed notice procedure. These commenters stated that restoring § 226.9(e)(2) would benefit both consumers and issuers, because consumers are in their opinion more likely to notice the fee and exercise their right to cancel the card if the fee appears on the periodic statement.

The Board believes that the language of Section 203 of the Credit Card Act, which amended TILA Section 127(d), clearly deletes the statutory basis for the alternative delayed notice. Therefore, the Board does not believe that use of its TILA Section 105(a) authority is appropriate at this time to override this express statutory provision. The final rule deletes § 226.9(e)(2) and renumbers § 226.9(e)(3) as § 226.9(e)(2), as proposed. Similarly, the Board is adopting the technical conforming changes to comments 9(e)–7, 9(e)(2)–1 (currently comment 9(e)(3)–1), and 9(e)(2)–2 (currently comment 9(e)(3)–2), as proposed.

Terms Amended Since Last Renewal

As amended by the Credit Card Act, TILA Section 127(d) provides that a card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed must provide the renewal disclosure, even if that card issuer does not charge an annual fee, periodic fee, or other fee for renewal of the credit or charge card account. The Board proposed to implement amended TILA Section 127(d) by making corresponding amendments to § 226.9(e)(1). Proposed § 226.9(e)(1) stated, in part, that any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. The Board proposed to use its authority pursuant to TILA Section 105(a) to clarify that the requirement to provide the renewal disclosures due to a change in account terms applies only if the change has not been previously disclosed and is a change of the type required to be disclosed in the table provided at account opening.

Several industry commenters stated that renewal disclosures should be required only if an annual or other renewal fee is assessed on a consumer's account. However, the Credit Card Act specifically amended TILA Section 127(d) to require renewal disclosures when creditors have changed or amended terms of the account since the last renewal that have not been previously disclosed. The Board therefore believes that a rule requiring renewal disclosures to be given only if an annual or other renewal fee is charged would not effectuate the statutory amendment.

Consumer groups stated that renewal disclosures should be required if any undisclosed change has been made to the account terms since the last renewal, not only if undisclosed changes have been made to terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Consumer groups argued that the language "any term of the account" in amended TILA Section 127(d) contemplates that renewal disclosures will be given if any term has been changed and not previously disclosed, regardless of the type of term. As discussed in the supplementary information to the proposal, the Board considered an interpretation of amended TILA Section 127(d), consistent with consumer group comments, that would have required that the renewal disclosures be provided for all changes in account terms that have not been previously disclosed, including changes that are not required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Such an interpretation of the statute would require that the renewal disclosures be given even when creditors have made relatively minor changes to the account terms, such as by increasing the amount of a fee to expedite delivery of a credit card. The Board noted that it believes providing a renewal notice in these circumstances would not provide a meaningful benefit to consumers.

The Board also noted that under such an interpretation, the renewal notice would in many cases not disclose the changed term, which would render it of little value to consumers. Amended TILA Section 127(d) requires only that the renewal disclosure contain the information set forth in TILA Sections 127(c)(1)(A) and (c)(4)(A), which are implemented in § 226.5a(b)(1) through (b)(7). These sections require disclosure of key terms of a credit card account including the annual percentage rates applicable to the account, annual or other periodic membership fees, minimum finance charges, transaction charges on purchases, the grace period, balance computation method, and disclosure of similar terms for charge card accounts. The Board notes that the required disclosures all address terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Therefore, if the rule required that the renewal disclosures be provided for any change in terms, such as a change in a fee for expediting delivery of a credit card, the renewal disclosures would not disclose the amount of the changed fee. The Board also notes that charges imposed as part of an open-end (not home-secured) plan that are not required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) are required to be disclosed to consumers prior to their imposition pursuant to § 226.5(b)(1)(ii). Therefore, if a card issuer changed a charge imposed as part of an open-end (not home-secured) plan but had not previously disclosed that change, a consumer would receive disclosure prior to imposition of the charge.

For these reasons, the Board is adopting § 226.9(e)(1) as proposed. The Board believes that § 226.9(e)(1) as adopted strikes the appropriate balance between ensuring that consumers receive notice of important changes to their account terms that have not been previously disclosed and avoiding burden on issuers with little or no corresponding benefit to consumers. In most cases, changes to terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) will be required to be disclosed 45 days in advance in accordance with § 226.9(c)(2). However, there are several types of changes to terms required to be disclosed under § 226.6(b)(1) and (b)(2) for which advance notice is not required under § 226.9(c)(2)(v)(1), including reductions in finance and other charges and the extension of a grace period. The Board believes that such changes are generally beneficial to the consumer, and therefore a 45-day advance notice requirement is not appropriate for these changes. However, the Board believes that requiring creditors to send consumers subject to such changes a notice prior to renewal disclosing key terms of their accounts will promote the informed use of credit by consumers. The notice will remind consumers of the key terms of their accounts, including any reduced rates or extended grace periods that apply, when consumers are making a decision as to whether to renew their account and how to use the account in the future.

One industry commenter requested that the Board clarify that disclosing a change in terms on a periodic statement is sufficient to constitute prior disclosure of that change for purposes of § 226.9(e). The Board believes that this generally is appropriate, and has adopted a new comment 9(e)–10 . Comment 9(e)–10 states that clear and conspicuous disclosure of a changed term on a periodic statement provided to a consumer prior to renewal of the consumer's account constitutes prior disclosure of that term for purposes of § 226.9(e)(1). The comment contains a cross-reference to § 226.9(c)(2) for additional timing, content, and formatting requirements that apply to certain changes in terms under that paragraph.

Consumer group commenters urged the Board to require that renewal disclosures be tabular, prominently located, and retainable. The Board is not imposing such a requirement at this time. The Board believes that the general requirements of § 226.5(a), which require that renewal disclosures be clear and conspicuous and in writing, are sufficient to ensure that renewal disclosures are noticeable to consumers.

Section 226.9(e)(1), consistent with the proposal, further clarifies the timing of the notice requirement when a card issuer has changed a term on the account but does not impose an annual or other periodic fee for renewal, by stating that if the card issuer has changed or amended any term required to be disclosed under § 226.6(b)(1) and (b)(2) and such changed or amended term has not previously been disclosed to the consumer, the notice shall be provided at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. Accordingly, card issuers that do not charge periodic or other fees for renewal of the credit or charge card account, and who have previously disclosed any changed terms pursuant to § 226.9(c)(2) are not required to provide renewal disclosures pursuant to proposed § 226.9(e).

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

9(g)(1) Increases Subject to This Section

The Board proposed to adopt § 226.9(g) substantially as adopted in the January 2009 Regulation Z Rule, except as required to be amended for conformity with the Credit Card Act. Proposed § 226.9(g), in combination with amendments to § 226.9(c), implemented the 45-day advance notice requirements for rate increases in new TILA Section 127(i). This approach is consistent with the Board's January 2009 Regulation Z Rule and the July

2009 Regulation Z Interim Final Rule, each of which included change-in-terms notice requirements in § 226.9(c) and increases in rates due to the consumer's default or delinquency or as a penalty for events specified in the account agreement in § 226.9(g). Proposed § 226.9(g)(1) set forth the general rule and stated that for open-end plans other than home-equity plans subject to the requirements of § 226.5b, a creditor must provide a written notice to each consumer who may be affected when a rate is increased due to a delinquency or default or as a penalty for one or more events specified in the account agreement. The Board received no significant comment on the general rule in § 226.9(g)(1), which is adopted as proposed.

9(g)(2) Timing of Written Notice

Proposed paragraph (g)(2) set forth the timing requirements for the notice described in paragraph (g)(1), and stated that the notice must be provided at least 45 days prior to the effective date of the increase. The notice must, however, be provided after the occurrence of the event that gave rise to the rate increase. That is, a creditor must provide the notice after the occurrence of the event or events that trigger a specific impending rate increase and may not send a general notice reminding the consumer of the conditions that may give rise to penalty pricing. For example, a creditor may send a consumer a notice pursuant to § 226.9(g) if the consumer makes a payment that is one day late disclosing a rate increase applicable to new transactions, in accordance with § 226.55. However, a more general notice reminding a consumer who makes timely payments that paying late may trigger imposition of a penalty rate would not be sufficient to meet the requirements of § 226.9(g) if the consumer subsequently makes a late payment. The Board received no significant comment on § 226.9(g)(2), which is adopted as proposed.

9(g)(3) Disclosure Requirements for Rate Increases

Proposed paragraph (g)(3) set forth the content and formatting requirements for notices provided pursuant to § 226.9(g). Proposed § 226.9(g)(3)(i)(A) set forth the content requirements applicable to all open-end (not home-secured) credit plans. Similar to the approach discussed above with regard to § 226.9(c)(2)(iv), the Board proposed a separate § 226.9(g)(3)(i)(B) that contained additional content requirements required under the Credit Card Act that are applicable only to credit card accounts under an open-end (not home-secured) consumer credit plan.

Proposed § 226.9(g)(3)(i)(A) provided that the notice must state that the delinquency, default, or penalty rate has been triggered, and the date on which the increased rate will apply. The notice also must state the circumstances under which the increased rate will cease to apply to the consumer's account or, if applicable, that the increased rate will remain in effect for a potentially indefinite time period. In addition, the notice must include a statement indicating to which balances the delinquency or default rate or penalty rate will be applied, and, if applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment.

Proposed § 226.9(g)(3)(i)(B) set forth additional content that credit card issuers must disclose if the rate increase is due to the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment. In those circumstances, the proposal required that the notice state the reason for the increase and disclose that the increase will cease to apply if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. Proposed § 226.9(g)(3)(i)(B) implemented notice requirements contained in amended TILA Section 171(b)(4), as adopted by the Credit Card Act, and implemented in proposed § 226.55(b)(4), as discussed below.

Unlike § 226.9(g)(3) of the July 2009 Regulation Z Interim Final Rule, the notice proposed under § 226.9(g)(3) would not have required disclose the consumer's right to reject the application of the penalty rate. For the reasons discussed in the supplementary information to § 226.9(h), the Board is not providing a right to reject penalty rate increases in light of the new substantive rule on rate increases in proposed § 226.55. Accordingly, the proposal would not have required disclosure of a right to reject for penalty rate increases.

Proposed paragraph (g)(3)(ii) set forth the formatting requirements for a rate increase due to default, delinquency, or as a penalty. These requirements were substantively equivalent to the formatting rule adopted in § 226.9(g)(3)(ii) of the January 2009 Regulation Z Rule and would require the disclosures required under § 226.9(g)(3)(i) to be set forth in the form of a table. As discussed elsewhere in this **Federal Register**, the formatting requirements are not directly compelled by the Credit Card Act, and consequently the Board is retaining the original July 1, 2010 effective date of the January 2009 Regulation Z Rule for the tabular formatting requirements.

The Board proposed to amend Sample G–21 from the January 2009 Regulation Z Rule (redesignated as Sample G–22) and to add a new sample G–23 to illustrate how a card issuer may comply with the requirements of proposed § 226.9(g)(3)(i). The proposal would have amended references to these samples in comment 9(g)–8 accordingly. Proposed Sample G–22 is a disclosure of a rate increase applicable to a consumer's credit card account based on a late payment that is fewer than 60 days late. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G–23 discloses a rate increase based on a delinquency of more than 60 days, and includes the required content regarding the consumer's ability to cure the penalty pricing by making the next six consecutive minimum payments on time.

One industry commenter stated that § 226.9(g)(3) and Model Form G–23 should be revised to more accurately reflect the balances to which the consumer's cure right applies, when the consumer's rate is increased due to a delinquency of greater than 60 days. As discussed in the supplementary information to § 226.55(b)(4)(ii), the rule requires only that the rate be reduced on transactions that occurred prior to or within 14 days of the notice provided pursuant to § 226.9(c) or (g), when the consumer makes the first six required minimum periodic payments on time following the effective date of a rate increase due to a delinquency of more than 60 days. The Board believes that consumers could be confused by a notice, as proposed, that states only that the rate increase will cease to apply if the consumer, but does not distinguish between outstanding balances and new transactions. Accordingly, the Board has revised § 226.9(g)(3)(i)(B)(*2*) to require disclosure that the increase will cease to apply with respect to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. The Board has made a conforming change to Model Form G–23.

The Board received no other significant comment on the disclosure requirements in § 226.9(g)(3) and is otherwise is adopting § 226.9(g)(3) as proposed.

9(g)(4) Exceptions

Proposed § 226.9(g)(4) set forth an exception to the advance notice requirements of § 226.9(g), which is consistent with an analogous exception contained in the January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule. Proposed § 226.9(g)(4) clarified the relationship between the notice requirements in § 226.9(c)(vi) and (g)(1) when the creditor decreases a consumer's credit limit and under the terms of the credit agreement a penalty rate may be imposed for extensions of credit that exceed the newly decreased credit limit. This exception is substantively equivalent to § 226.9(g)(4)(ii) of the January 2009 Regulation Z Rule. In addition, it is generally equivalent to § 226.9(g)(4)(ii) of the July 2009 Regulation Z Interim Final Rule, except that the proposed exception implemented content requirements analogous to those in proposed § 226.9(g)(3)(i) that pertain to whether the rate applies to outstanding balances or only to new transactions. *See* 74 FR 5355 for additional discussion of this exception. The Board received no comments on this exception, which is adopted as proposed.

As discussed in the supplementary information to the October 2009 Regulation Z Proposal, a second exception for an increase in an annual percentage rate due to the failure of a consumer to comply with a workout or temporary hardship arrangement contained in the July 2009 Regulation Z Interim Final Rule has been moved to § 226.9(c)(2)(v)(D).

The Board noted in the supplementary information to the proposal that one respect in which proposed § 226.9(g)(4) differs from the January 2009 Regulation Z Rule is that it did not contain an exception to the 45-day advance notice requirement for penalty rate increases if the consumer's account becomes more than 60 days delinquent prior to the effective date of a rate increase applicable to new transactions, for which a notice pursuant to § 226.9(g) has already been provided.

Industry commenters urged the Board to provide an exception that would permit creditors to send a notice disclosing a rate increase applicable to both a consumer's outstanding balances and new transactions, prior to the consumer's account becoming more than 60 days delinquent. These commenters stated that, as proposed, the rule would require issuers to wait at least 105 days prior to imposing rate increases as a result of the consumer paying more than 60 days late. These commenters also stated that a notice disclosing the consequences that would occur if a consumer paid more than 60 days late would give the consumer the opportunity to avoid the rate increase.

The Board is not adopting an exception that would permit a creditor to send a notice disclosing a rate increase applicable to both a consumer's outstanding balances and new transactions, prior to the consumer's failure to make a minimum payment within 60 days of the due date for that payment. As discussed in the supplementary information to § 226.9(g)(3)(i), amended TILA Section 171(b)(4)(A) requires that specific content be disclosed when a consumer's rate is increased based on a failure to make a minimum payment within 60 days of the due date for that payment. Specifically, TILA Section 171(b)(4)(A) requires the notice to state the reasons for the increase and that the increase will terminate no later than six months from the effective date of the change, provided that the consumer makes the minimum payments on time during that period. The Board believes that the intent of this provision is to create a right for consumers whose rate is increased based on a payment that is more than 60 days late to cure that penalty pricing in order to return to a lower interest rate.

The Board believes that the disclosures associated with this ability to cure will be the most useful to consumers if they receive them after they have already triggered such penalty pricing based on a delinquency of more than 60 days. Under the Board's proposed rule, creditors will be required to provide consumers with a notice specifically disclosing a rate increase based on a delinquency of more than 60 days, at least 45 days prior to the effective date of that increase. The notice will state the effective date of the rate increase, which will give consumers certainty as to the applicable 6-month period during which they must make timely payments in order to return to the lower rate. If creditors were permitted to raise the rate applicable to all of a consumer's balances without providing an additional notice, consumers may be unsure exactly when their account became more than 60 days delinquent and therefore may not know the period in which they need to make timely payments in order to return to a lower rate.

The Board believes that many creditors will impose rate increases applicable to new transactions for consumers who make late payments that are 60 or fewer days late. For notices of such rate increases provided pursuant to § 226.9(g), § 226.9(g)(3)(i)(A)(*5*) requires that the notice describe the balances to which the current rate will continue to apply unless the consumer fails to make a minimum periodic payment within 60 days of the due date for that payment. The Board believes that this will result in consumers receiving a notice of the consequences of paying more than 60 days late and, thus, will give consumers an opportunity to avoid a rate increase applicable to outstanding balances.

In addition, the Board notes that the Credit Card Act, as implemented in § 226.55(b)(4), does not permit a creditor to raise the interest rate applicable to a consumer's existing balances unless that consumer fails to make a minimum payment within 60 days from the due date. This differs from the Board's January 2009 FTC Act Rule, which permitted such a rate increase based on a failure to make a minimum payment within 30 days from the due date. The exception in § 226.9(g)(4)(iii) of the January 2009 Regulation Z Rule reflected the Board's understanding that some creditors might impose penalty pricing on new transactions based on a payment that is one or several days late, and therefore it might be a relatively common occurrence for consumers' accounts to become 30 days delinquent within the 45-day notice period provided for a rate increase applicable to new transactions. The Board believes that, given the 60-day period imposed by the Credit Card Act and § 226.55(b)(4), it will be less common for consumers' accounts to become delinquent within the original 45-day notice period provided for new transactions.

Proposed Changes to Commentary to § 226.9(g)

The commentary to § 226.9(g) generally is consistent with the commentary to § 226.9(g) of the January 2009 Regulation Z Rule, except for technical changes. In addition, the Board has amended comment 9(g)–1 to reference examples in § 226.55 that illustrate how the advance notice requirements in § 226.9(g) relate to the substantive rule regarding rate increases applicable to existing balances. Because, as discussed in the supplementary information to § 226.55, the Credit Card Act placed the substantive rule regarding rate increases into TILA and

Regulation Z, the Board believes that it is not necessary to repeat the examples under § 226.9.

9(h) Consumer Rejection of Certain Significant Changes in Terms

In the July 2009 Regulation Z Interim Final Rule, the Board adopted § 226.9(h), which provided that, in certain circumstances, a consumer may reject significant changes to account terms and increases in annual percentage rates. *See* 74 FR 36087–36091, 36096, 36099–36101. Section 226.9(h) implemented new TILA Section 127(i)(3) and (4), which—like the other provisions of the Credit Card Act implemented in the July 2009 Regulation Z Interim Final Rule—went into effect on August 20, 2009. *See* Credit Card Act § 101(a) (new TILA Section 127(i)(3)–(4)). However, several aspects of § 226.9(h) were based on revised TILA Section 171, which—like the other statutory provisions addressed in this final rule—goes into effect on February 22, 2010. Accordingly, because the Board is now implementing revised TILA Section 171 in § 226.55, the Board has modified § 226.9(h) for clarity and consistency.

Application of Right To Reject to Increases in Annual Percentage Rate

Because revised TILA Section 171 renders the right to reject redundant in the context of rate increases, the Board has amended § 226.9(h) to apply that right only to other significant changes to an account term. Currently, § 226.9(h) provides that, if a consumer rejects an increase in an annual percentage rate prior to the effective date stated in the § 226.9(c) or (g) notice, the creditor cannot apply the increased rate to transactions that occurred within fourteen days after provision of the notice. *See* § 226.9(h)(2)(i), (h)(3)(ii). However, under revised TILA Section 171 (as implemented in proposed § 226.55), a creditor is generally prohibited from applying an increased rate to transactions that occurred within fourteen days after provision of a § 226.9(c) or (g) notice regardless of whether the consumer rejects that increase. Similarly, although the exceptions in § 226.9(h)(3)(i) and revised TILA Section 171(b)(4) permit a creditor to apply an increased rate to an existing balance when an account becomes more than 60 days delinquent, revised TILA Section 171(b)(4)(B) (as implemented in proposed § 226.55(b)(4)(ii)) provides that the creditor must terminate the increase if the consumer makes the next six payments on or before the payment due date. Thus, with respect to rate increases, the right to reject does not provide consumers with any meaningful protections beyond those provided by revised TILA Section 171 and § 226.55. Accordingly, the Board believes that, on or after February 22, 2010, the right to reject will be unnecessary for rate increases. Indeed, once revised TILA Section 171 becomes effective, notifying consumers that they have a right to reject a rate increase could be misleading insofar as it could imply that a consumer who does so will receive some additional degree of protection (such as protection against increases in the rate that applies to future transactions).

Industry commenters strongly opposed the Board's establishment of a right to reject in the July 2009 Regulation Z Interim Final Rule but supported the revisions in the October 2009 Regulation Z Proposal. Consumer group commenters took the opposite position. In particular, along with a federal banking regulator, consumer group commenters argued that the Board should interpret the "right to cancel" in revised TILA Section 127(i)(3) as providing consumers with the right to reject increases in rates that apply to new transactions. However, the Board does not believe this interpretation would be consistent with the Credit Card Act's provisions regarding rate increases. As discussed in detail below with respect to § 226.55, the Credit Card Act generally prohibits card issuers from applying increased rates to existing balances while generally permitting card issuers to increase the rates that apply to new transactions after providing 45 days' advance notice. Furthermore, by prohibiting card issuers from applying an increased rate to transactions that occur during a 14-day period following provision of the notice of the increase, the Credit Card Act ensures that consumers can generally avoid application of increased rates to new transactions by ceasing to use their accounts after receiving the notice of the increase.

Accordingly, the final rule removes references to rate increases from § 226.9(h) and its commentary. Similarly, because the exception in § 226.9(h)(3)(ii) for transactions that occurred more than fourteen days after provision of the notice was based on revised TILA Section 171(d),[29] that exception has been removed from § 226.9(h) and incorporated into § 226.55. Finally, the Board has redesignated comment 9(h)(3)–1 as comment 9(h)–1 and amended it to clarify that § 226.9(h) does not apply to increases in an annual percentage rate.

As noted above, the Board has also revised § 226.9(c)(2)(iv)(B) to clarify that the right to reject does not apply to *changes* in an annual percentage rate that do not result in an immediate increase in rate (such as changes in the method used to calculate a variable rate or conversion of a variable rate to an equivalent fixed rate). As discussed below, consistent with the requirements in the Credit Card Act, § 226.55 generally prohibits a card issuer from applying any change in an annual percentage rate to an existing balance if that change could result in an increase in rate. *See* commentary to § 226.55(b)(2). However, because the Credit Card Act generally permits card issuers to change the rates that apply to new transactions, it would be inconsistent with the Act to apply the right to reject to such changes. Nevertheless, as with rate increases that apply to new transactions, the consumer will receive 45 days' advance notice of the change and thus can decide whether to continue using the account.

Industry and consumer group commenters also requested that the Board add or remove several exceptions to the right to reject. However, the Board does not believe that further revisions are warranted at this time. In particular, industry commenters argued that the right to reject should not apply when the consumer has consented to the change in terms, when the change is unambiguously in the consumer's favor, or in similar circumstances. As discussed elsewhere in this final rule, the Board believes that it would be difficult to develop workable standards for determining when a change has been requested by the consumer (rather than suggested by the issuer), when a change is unambiguously beneficial to the consumer, and so forth. Furthermore, an exception to the right to reject generally should not be necessary if the consumer has actually requested a change or if a change is clearly advantageous to the consumer.

Industry commenters also argued that the Board should exempt increases in fees from the right to reject if the fee is increased to a pre-disclosed amount after a specified period of time, similar to the exception for temporary rates in § 226.9(c)(2)(v)(B). However, as discussed above, § 226.9(c)(2)(v)(B) implements revised TILA Section 171(b)(1), which applies only to increases in annual percentage rates. The fact that the exceptions in Section 171(b)(3) and (b)(4) expressly apply to increases in rates *and* fees indicates that Congress intentionally excluded fees

[29] *See* 74 FR 36089–36090.