FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1286]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: On December 18, 2008, the Board adopted a final rule amending Regulation Z's provisions that apply to open-end (not home-secured) credit plans. The Board believes that clarification is needed regarding compliance with certain aspects of the final rule. Accordingly, in order to facilitate compliance, the Board proposes to amend specific portions of the regulations and official staff commentary.

DATES: Comments on the proposed amendments must be received on or before **[insert date that is 30 days after the date of publication in the Federal Register]**. Comments on the Paperwork Reduction Act analysis set forth in Section V of this **Federal Register** notice must be received on or before **[insert date that is 60 days after the date of publication in the Federal Register]**

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

- Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions

for submitting comments.

- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- Facsimile: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board's web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

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

SUPPLEMENTARY INFORMATION:

I. Background

On December 18, 2008, the Federal Reserve Board (Board) adopted a final rule amending Regulation Z's provisions that apply to open-end (not home-secured) credit. This rule was published in the **Federal Register** on January 29, 2009. See 74 FR 5244 (January 2009 Regulation Z Rule). On the same date, the Board, the Office of Thrift

Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies) adopted a final rule under the Federal Trade Commission Act (FTC Act) to protect consumers from unfair acts or practices with respect to consumer credit card accounts. This rule also was published in the **Federal Register** on January 29, 2009. See 74 FR 5498 (January 2009 FTC Act Rule). The effective date for both rules is July 1, 2010. See 74 FR 5388-5390; 74 FR 5548.

Since publication of the two rules, the Board has become aware that clarification is needed to resolve confusion regarding how institutions will comply with particular aspects of those rules. Accordingly, in order to provide guidance and facilitate compliance with the January 2009 Regulation Z Rule by the effective date, the Board proposes to amend portions of the regulations and the accompanying staff commentary. These proposed amendments are discussed in detail in Section III of this supplementary information. Similarly, elsewhere in today's **Federal Register**, the Agencies have proposed to amend certain aspects of the January 2009 FTC Act Rule (FTC Act Proposed Clarifications).

Although comment is requested on the proposed amendments, the Board emphasizes that the purpose of this rulemaking is to clarify and facilitate compliance with the consumer protections contained in the final rules, not to reconsider the need for – or the extent of – those protections. Thus, commenters are encouraged to limit their submissions accordingly. Finally, in order to ensure that any amendments can be adopted in final form with sufficient time for implementation prior to the effective date,

comments regarding those amendments must be submitted within 30 days of publication in the **Federal Register**.[1]

II. Statutory Authority

In the supplementary information for the January 2009 Regulation Z Rule, the Board set forth the sources of its statutory authority under the Truth in Lending Act. See 74 FR 5249. For purposes of these proposed rules, the Board continues to rely on this legal authority.

III. Section-by-Section Analysis

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

To complement the proposed disclosure requirements for deferred or waived interest plans described in the supplementary information to §§ 226.7 and 226.16, the Board also proposes a new comment 5a(b)(1)-9 to clarify that an issuer offering a deferred or waived interest plan may not disclose a rate as 0% due to the possibility that the consumer may not be obligated for interest regarding the deferred or waived interest transaction. Given the contingent nature of deferred or waived interest programs, and the fact that interest is accruing at a non-zero rate on the account, the Board believes that a disclosure of a 0% rate could be misleading to consumers.

Section 226.6 Account-Opening Disclosures

6(b) Rules Affecting Open-end (not Home-secured) Plans

In addition to the specific proposed amendments to § 226.6 described below, the

[1] As discussed elsewhere in the supplementary information to this proposed rule, commenters have 60 days to submit comments regarding the Paperwork Reduction Act analysis for the Board's proposed amendments to the January 2009 Regulation Z Rule.

Board also is considering whether additional transition guidance is needed for creditors offering open-end credit secured by real property that may not be subject to § 226.5b because the real property is not the consumer's dwelling. The January 2009 Regulation Z Rule preserved certain existing rules, for example the rules under §§ 226.6, 226.7, and 226.9, for home-equity plans subject to § 226.5b pending the completion of the Board's separate review of the rules applicable to home-secured credit. Since publication of the January 2009 Regulation Z Rule, the Board understands that there is uncertainty regarding how creditors that offer open-end credit secured by real property, that may be unaware whether that property is, or remains, the consumer's dwelling, should comply with the January 2009 Regulation Z Rule. In particular, creditors offering such plans have asked whether they may comply with the existing disclosure requirements that were preserved for home-equity plans subject to § 226.5b or whether they need to comply with the new disclosure requirements set forth in the final rule for plans that are not subject to § 226.5b.

Pursuant to the January 2009 Regulation Z Rule, the new disclosure requirements apply to open-end credit that is not subject to § 226.5b. However, the Board believes that it may be appropriate to permit creditors offering open-end credit secured by real property that is not the consumer's dwelling to continue to comply with the existing rules (consistent with treatment of plans covered under § 226.5b) until the Board's review of the rules applicable to home-secured open-end credit is completed. At that time, the Board would determine the appropriate treatment for these plans. The Board solicits comment on the prevalence of such open-end credit plans and the burden that would be associated with determining whether such plans must comply with the new disclosure

requirements contained in the January 2009 Regulation Z Rule or the existing rules (as applicable to plans subject to § 226.5b). The Board also solicits comment on whether it would be appropriate to subject these plans to the same disclosure requirements that apply to home-secured plans or whether they should be treated the same as other open-end (not home-secured) credit.

6(b)(1) Form of Disclosures; Tabular Format for Open-end (not Home-secured) Plans

The Board proposes to make two technical corrections to § 226.6(b)(1) and (b)(1)(ii) to delete parentheses that were inadvertently included in the rule due to a scrivener's error, without intended substantive change.

6(b)(2) Required Disclosures for Account-Opening Table for 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.

The Board is proposing 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 proposes 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 understands 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 believes 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 an additional set of disclosures which reflect the actual APR for the account when, for example, a credit card is sent to the consumer. 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 receive disclosures with the specific APR applicable to the consumer properly formatted in the account-opening table at a later time, would strike an 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. The consumer would 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)(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 proposes 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.

Section 226.7 Periodic Statement

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

Deferred or waived interest plans. Comment 7(b)-1, as adopted in the January 2009 Regulation Z Rule, provides guidance on periodic statement disclosures for deferred interest transactions for open-end (not home-secured) plans, such as plans that permit a consumer to avoid interest charges if a purchase balance is paid in full by a certain date. The comment permits, but does not generally require, creditors to disclose during the promotional period information about accruing interest, balances subject to interest rates, and the date by which the balance must be paid in full to avoid interest. Comment 7(b)-1 as adopted indicated that guidance in the comment does not apply to card issuers that are

subject to 12 CFR § 227.24 or similar law, because in the January 2009 FTC Act Rule, the Agencies had concluded that deferred interest programs, as currently designed and marketed, were inconsistent with the general prohibition on the application of increased rates to existing balances.

As discussed in the supplementary information to the FTC Act Proposed Clarifications, the Board and other Agencies are proposing to clarify that creditors may continue to offer deferred or waived interest programs where the consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full by a specified date or within a specified period of time. Any such programs, however, would be fully subject to the protections set forth in the January 2009 FTC Act Rule as amended by the FTC Act Proposed Clarifications, as well as to disclosure requirements under Regulation Z discussed in this **Federal Register**. These protections would apply to all deferred or waived interest plans and not solely those covered by the January 2009 FTC Act Rule.

The Board believes that it is important that consumers receive clear disclosures regarding deferred or waived interest balances and interest accruing during the term of a deferred or waived interest program, in order to ensure that consumers understand the terms of the promotion and can tailor their account usage and payment patterns accordingly. As a result, the Board is proposing several revisions to comment 7(b)-1 to require creditors to provide consumers with pertinent information throughout the life of a deferred or waived interest promotion.

First, the Board believes that it is important for a consumer to be informed of the amount of interest charges that are accruing and for which the consumer will be obligated

if the consumer does not repay a deferred or waived interest balance in full by the relevant due date. Comment 7(b)-1 would therefore be amended to require creditors offering deferred or waived interest programs to disclose information about accruing interest balances for such programs. The Board also proposes that each periodic statement be required to disclose the amount of the deferred or waived interest balance on which interest may be imposed, so that consumers will be aware of the amount that they are required to pay to avoid being obligated for the deferred or waived interest amount.

The Board also is proposing 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 or waived interest 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. The Board also proposes several complementary changes to comment 7(b)-1 to provide additional guidance on compliance with this disclosure requirement. The Board believes that it is important for consumers to receive this notice in the last two billing cycles prior to the deferred or waived interest due date. This would ensure that consumers are reminded of the terms of the deferred or waived interest promotion close to the date on which full payment is due, in order to give consumers an opportunity to pay off any deferred or waived interest balance and take advantage of the terms of the promotion.

In particular, proposed § 226.7(b)(14) would require creditors offering deferred or waived interest programs to disclose on the front of the periodic statement the date in a future cycle by which the balance on the deferred or waived interest transaction must be paid in full to avoid interest charges. This disclosure would be required to be provided

on each periodic statement for the last two billing cycles immediately preceding such date. Creditors may but would not be required to include this disclosure on prior statements. If the deferred or waived interest period's duration is such that the reminder cannot be given for the last two billing cycles immediately preceding the deferred or waived interest due date, for example if the deferred interest period is less than two months, proposed comment 7(b)-1.iv clarifies that the disclosure must be included on every periodic statement during the deferred or waived interest period. Proposed comment 7(b)-1.iv sets forth examples of how this timing requirement would operate.

Proposed Sample G-18(H) sets forth model language for making the disclosure required by proposed § 226.7(b)(14). The language used to make the disclosure under § 226.7(b)(14) would be required to be substantially similar to Sample G-18(H).

Finally, in a technical amendment, the Board proposes to amend the terminology of comment 7(b)-1 to refer to both deferred and waived interest programs. The provisions in proposed § 226.7(b)(14) and comment 7(b)-1 would apply to all types of deferred or waived interest programs, regardless of the particular nomenclature used to describe a specific plan. In a conforming technical change, the Board proposes to amend comment 5(b)(2)(ii)-1, which cross-references comment 7(b)-1, to refer to deferred and waived interest transactions.

Interest and Fees for Acquired or Modified Accounts. To highlight the overall cost of a credit account to consumers, the January 2009 Regulation Z Rule requires creditors to disclose the total amount of interest charges and fees for the statement period and calendar year to date. See § 226.7(b)(6). New comments 7(b)(6)-6 and -7 would clarify a creditor's obligations under § 227.7(b)(6) when it acquires a plan or account

from another creditor or when the underlying account relationship with the creditor is changed in some way, for example, if a retail credit card account is upgraded to a cobranded general purpose credit card account or if a credit card account is replaced with another credit card product with different or additional features. The proposed comments would generally provide that the creditor must include the interest charges and fees incurred by the consumer prior to the account acquisition or change in the aggregate totals provided for the statement period and calendar year to date after the change. At the creditor's option, it may add the prior charges and fees to the disclosed totals following the change, or it may provide separate totals for each time period. The proposed comments would not apply when the consumer opens a new plan or account with another creditor and transfers balances from the old plan or account. Comment is requested regarding the operational issues associated with carrying over cost totals in the circumstances described in the proposed commentary.

Section 226.9 Subsequent Disclosure Requirements

226.9(c) Change in Terms

9(c)(2) Rules Affecting Open-end (Not Home-secured) Plans

Relationship between §226.9(b) and (c). Section 226.9(c)(2) generally requires creditors to provide 45 days' advance notice prior to a change in any term that must be disclosed in the account-opening summary table. For changed terms that must be disclosed in the account-opening summary table, creditors must similarly provide a summary of that change in a tabular format. Notice is not required in certain specified circumstances, including if the change involves a reduction of any component of a finance or other charge or where future credit privileges have been suspended or an

account or plan has been terminated. The Board proposes to amend § 226.9(c)(2)(iv) to provide that notice is also not required when the change in terms is applicable only to a check or checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with § 226.9(b)(3).

Under § 226.9(b)(3), if a creditor mails or delivers a check that accesses a credit card account, it must disclose certain key terms applicable to the check, including any discounted promotional rate and when that rate will expire; the type of rate that will apply to the checks after expiration of the discounted promotional rate and the applicable APR; the date by which the consumer must use the checks in order to qualify for any discounted promotional rate; and any transaction fees applicable to the checks. These key terms must be disclosed in a tabular format on the front of the page containing the checks.

The format and location requirements were informed through consumer testing conducted on behalf of the Board, which indicated that consumers were more likely to notice and understand the terms applicable to the checks when these terms were presented in this manner. In light of these requirements, requiring an additional tabular disclosure for a change in terms about the access check terms could create consumer confusion and would likely provide little consumer benefit. The Board also believes that given the enhanced disclosure requirements, a 45-day notice period before consumers may use a check would be unnecessary.

The proposed exception in § 226.9(c)(2)(iv) is limited to circumstances where the consumer has been provided disclosures pursuant to § 226.9(b)(3) in connection with a check that accesses a credit card account. Thus, the exception would not permit a

creditor to make a balance transfer offer by other means, such as by telephone or written solicitation, on finance charge terms higher than those previously disclosed for a balance transfer, unless the creditor also complies with the notice and advance timing requirements of § 226.9(c) before the new fee or rate can be applied to the offer.

The exception also would extend only to a check accompanied by the § 226.9(b)(3) disclosures and not to terms applicable to other features of the consumer's account. A creditor would not be permitted to use a set of checks and § 226.9(b)(3) disclosures, for example, to change the rate applicable when a consumer uses his or her credit card to take a cash advance at an ATM machine. For example, assume the rate that typically applies to the checks is the issuer's cash advance rate, currently 20%, and the issuer intends to prospectively increase the cash advance rate to 25%. Under the proposal, the issuer could send a set of checks disclosing the 25% rate in the table required by § 226.9(b)(3), and would not be required to provide an additional 45 days' advance notice indicating that the 25% rate applies to those checks. The issuer would, however, be required to send 45 days' advance notice pursuant to § 226.9(c)(2) prior to changing the cash advance rate applicable to the consumer's account to 25% (for access other than by a check accompanied with the § 226.9(b)(3) disclosure).

Proposed comment 9(c)(2)-4 would clarify the relationship between the change-in-terms requirements in § 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. The proposed comment would provide that notwithstanding any notice provided under § 226.9(b) (except for a notice provided under § 226.9(b)(3) as discussed above), a creditor must also satisfy the change-in-terms notice requirements under

§ 226.9(c), where applicable, including any advance notice requirement. For example, if a creditor adds a balance transfer feature to an account more than 30 days after account-opening disclosures are provided, it must give the finance charge disclosures for the balance transfer feature under § 226.9(b) as well as provide a change in terms notice under § 226.9(c). This notice must be provided at least 45 days prior to the effective date of the change.[2] Similarly, if a creditor makes a balance transfer offer on finance charge terms that are higher than those previously disclosed for balance transfers, it would also generally be required to provide a change-in-terms notice 45 days in advance of the effective date of the change. The proposed comment also provides that a creditor may provide a single notice under § 226.9(c) to satisfy the notice requirements of both § 226.9(b) and (c).

Change-in-terms requirements for temporary rate reductions. The Board believes that clarification is needed as to the relationship between the guidance in comment 9(c)(2)(iv)-2 regarding how to disclose skip payment features and the general timing, format, and content requirements of § 226.9(c)(2), for temporary rate reductions offered on an existing account. In general, under § 226.9(c)(2)(iv), no advance notice need be given prior to the reduction of any component of a finance charge. However, under § 226.9(c)(2)(i), 45 days' advance written notice is required prior to a rate increase. Comment 9(c)(2)(iv)-2 provides guidance as to how a creditor that is offering a skip payment feature or interest waiver may comply with the requirements of § 226.9(c)(2)(iv). This guidance was intended to address only the limited circumstances where a creditor offers a feature that permits a consumer to skip a payment or payments

[2] If the creditor changes a term required to be disclosed in the account-opening table, the creditor must also provide a summary of the change in a tabular format under § 226.9(c)(2)(iii)(B).

or where a creditor intends to waive interest charges due on the account, without changing the contractual rate of interest applicable to the consumer's balances. This comment was not intended to alter the notice requirements of § 226.9(c)(2) for promotional rate offers, where the creditor lowers the rate applicable to the consumer's account and subsequently increases the rate. However, as drafted the comment may create confusion because it refers to any temporary reductions in finance charges.

To clarify that advance notice in accordance with the requirements of § 226.9(c)(2) is required prior to increasing a consumer's rate following a rate reduction, the Board proposes to amend comment 9(c)(2)(iv)-2 by including language indicating that creditors offering a temporary reduction in an interest rate must provide a notice in accordance with the timing requirements of § 226.9(c)(2)(i) and the content and format requirements of § 226.9(c)(2)(ii)(A) and (B) prior to resuming the original rate.

Specific consumer agreement exception. Section 226.9(c)(2)(i) 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 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. The comment further provides examples of actions that do not constitute specific consumer agreement, including the consumer's acceptance of an account agreement that contains a general reservation of the right to change terms or the consumer's use of the account. Thus, the comment recognizes that the change in terms notice requirements generally cannot be waived or forfeited by the consumer.

The Board is proposing 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. 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 example would state 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 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.

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

Section 226.9(g)(4) sets forth exceptions to the general requirement to provide 45 days' advance notice before increasing a rate due to the consumer's delinquency or default or as a penalty. Section 226.9(g)(4)(i) as adopted in the January 2009 Regulation Z Rule provides a specific exception to the notice requirement when the consumer's rate is increased due to the consumer's failure to comply with the terms of a workout arrangement, provided that the annual percentage rate applicable to a category of transactions following any such increase does not exceed the rate that applied to that category of transactions prior to commencement of the workout arrangement. This exception is intended to encourage institutions to continue offering workout arrangements that reduce rates to consumers in serious default, while also ensuring that a consumer who enters into such an arrangement but is unable to comply with its terms is not charged

a rate that exceeds the rate that applied prior to the arrangement without first receiving advance notice of that rate increase.

The Board understands that there is some confusion as to whether this exception also applies to temporary hardship arrangements that assist consumers in overcoming financial difficulties by lowering the annual percentage rate for a period of time. For example, if an account becomes seriously delinquent, the institution may reduce the rate that applies to the outstanding balance from the penalty rate to a rate of zero on the condition that the consumer make payments that will cure the delinquency within a specified period of time. If the consumer successfully cures the delinquency in accordance with the terms of the temporary hardship arrangement, the institution may choose to raise the annual percentage rate to the rate that applied prior to commencement of the temporary hardship arrangement. Because such arrangements can provide important benefits to consumers, the Board proposes to amend § 226.9(g)(4)(i) to clarify that the exception also applies to temporary hardship arrangements.

The Board also proposes to revise § 226.9(g)(4)(iii) for consistency with the terminology used in 12 CFR 227.24 and similar regulation, without intended substantive change, by deleting references to "outstanding balances."

In a technical amendment, the Board proposes to designate as comment 9(g)(4)(ii)-1 commentary that was placed with commentary to § 226.9(g)(4)(ii) but was not numbered due to a scrivener's error.

The Board also proposes several amendments to comment 9(g)-1 for consistency and conformity with substantively similar amendments published elsewhere in today's **Federal Register** as part of the FTC Act Proposed Clarifications. For example, the

Board proposes to correct a typographical error in comment 9(g)-1.iii.C, and to clarify the fact patterns presented in comments 9(g)-1.i and 9(g)-1.iii.

Section 226.12 Special Credit Card Provisions

Section 226.13 Billing Error Resolution

Comment 12(b)-3 states that a card issuer must investigate claims in a reasonable manner before imposing liability for an unauthorized use, and sets forth guidance on conducting an investigation of a claim. Comment 13(f)-3 contains similar guidance for a creditor investigating a billing error claim. The January 2009 Regulation Z Rule amended both comments to specifically provide that a card issuer (or creditor) may not require a consumer to submit an affidavit or to file a police report as a condition of investigating a claim. These additions reflected the Board's concerns that such requests could cause a chilling effect on a consumer's ability to assert his or her error resolution rights.

In the supplementary information discussing the amended comments, the Board recognized that in some cases, a card issuer may need to provide some form of certification indicating that the cardholder's claim is legitimate, for example, to obtain documentation from a merchant relevant to a claim or to pursue chargeback rights. Accordingly, the Board stated that a card issuer could "require" the cardholder to provide a signed statement supporting the asserted claim, provided that the act of providing the signed statement would not subject the cardholder to potential criminal penalty. See 74 FR at 5363. The final comments, however, did not reflect the ability of the card issuer (or creditor) to require a consumer signed statement for these types of circumstances. Instead, the text of the final comments stated that a card issuer (or creditor) could "request" a signed statement. Accordingly, comments 12(b)-3 and 13(f)-3 would be

amended to conform to the Board's intent as stated in the supplementary information to the January 2009 Regulation Z Rule.

Section 226.16 Advertising

TILA Section 143, implemented by the Board in § 226.16, governs advertisements of open-end credit plans. 15 U.S.C. 1663. In May 2008, the Board proposed requirements regarding the advertising of deferred interest offers in order to improve consumer awareness of the terms of such offers. However, the Board and other Agencies concluded in the January 2009 FTC Act Rule that deferred interest programs, as currently designed, are inconsistent with the general prohibition on the application of increased rates to existing balances and prohibited issuers subject to the January 2009 FTC Act Rule from establishing such programs. Consequently, the Board withdrew the proposed advertising requirements related to deferred interest offers from the January 2009 Regulation Z Rule.

Although the January 2009 FTC Act Rule prohibited deferred interest programs, the Agencies noted that institutions were not prohibited from offering promotional programs that provide similar benefits to consumers, such as programs where interest is assessed on purchases at a disclosed rate for a period of time but the interest charged is waived or refunded if the principal is paid in full by the end of that period. Recognizing that the distinction between deferred interest and waived or refunded interest programs has caused confusion, the Agencies are proposing in the FTC Act Proposed Clarifications to clarify that creditors may offer promotional programs where the consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full by a specified date or within a specified period of time. However, such programs remain fully

subject to the consumer protections set forth in the January 2009 FTC Act Rule as amended by the FTC Act Proposed Clarifications.

In light of the FTC Act Proposed Clarifications, the Board also is proposing new advertising requirements in § 226.16(h), similar to those proposed in May 2008, for deferred, waived, or refunded interest programs in order to better inform consumers of the terms of these offers. The Board believes that these advertising requirements will complement the new periodic statement disclosures for such programs that are discussed in the supplementary information to § 226.7(b).

16(h) Deferred or Waived Interest Offers

The Board is proposing to use its authority under TILA Section 143(3) to add a new § 226.16(h) to require additional disclosures in advertisements in order to improve information consumers receive about the terms of deferred or waived interest offers. 15 U.S.C. 1663(3). The new disclosure requirements would apply to advertisements that use terms such as "no interest," "no payments," "deferred interest," "same as cash," or similar terms in describing these offers.[3] In summary, the proposed rules would require that the deferred or waived interest period be disclosed in immediate proximity to each deferred interest triggering term. For advertisements stating "no interest" or a similar term, the fact that the balance must be paid in full by the end of the deferred or waived interest period also would need to be disclosed in immediate proximity to that term. The proposal also would require that certain additional information about the terms of the deferred or waived interest offer be disclosed in close proximity to the first statement of a

[3] For ease of reference, the supplementary information to proposed § 226.16(h) refers generically to these terms as "deferred interest triggering terms."

deferred interest triggering term. Each of these proposals is discussed in more detail below.

16(h)(1) Scope

The new requirements for deferred or waived interest offers under proposed § 226.16(h) would apply to any advertisement of such offers for open-end (not home-secured) plans, and would not be limited to credit card plans. In addition, the rules would apply to promotional materials accompanying applications or solicitations made available by direct mail or electronically, as well as applications or solicitations that are publicly available. The Board believes that the proposed disclosures under this section would be beneficial to consumers whether the offer is applicable to a consumer credit card account or any other open-end (not home-secured) plan.

16(h)(2) Definitions

The Board proposes to define "deferred or waived interest" in new § 226.16(h)(2) as finance charges on balances or transactions that a consumer is not obligated to pay if those balances or transactions are paid in full by a specified date. The term would not, however, include finance charges the creditor allows a consumer to avoid in connection with a recurring grace period. Therefore, an advertisement including information on a recurring grace period that could potentially apply each billing period, would not be subject to the additional disclosure requirements under § 226.16(h). Proposed comment 16(h)-1 clarifies that deferred or waived interest offers also do not include offers that allow a consumer to defer payments during a specified time period, and under which the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. The comment also clarifies that skip

payment programs that allow a consumer to avoid making a minimum payment for one or more billing cycles but where interest continues to accrue and be imposed during that period are not deferred or waived interest offers. Furthermore, proposed comment 16(h)-2 specifies that deferred or waived interest offers do not include zero percent APR offers where a consumer is not obligated under any circumstances for interest attributable to the time period the zero percent APR was in effect, although such offers may be considered promotional rates under § 226.16(g)(2)(i).

Furthermore, the Board proposes to define the "deferred or waived interest period" for purposes of proposed § 226.16(h) as the maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date that the consumer must pay the balance or transaction in full in order to avoid finance charges on such balance or transaction. To clarify the meaning of deferred or waived interest period, the Board is proposing to include a new comment 16(h)-3 to state that the advertisement need not include the end of an informal "courtesy period" in disclosing the deferred or waived interest period. For example, an advertisement may state that the deferred interest period is six months, even if the creditor in practice extends that period by several days, for example, to coincide with the payment due date for other transactions that are not subject to a deferred interest plan.

16(h)(3) Stating the Deferred or Waived Interest Period

General rule. The Board is proposing a new § 226.16(h)(3) to require that advertisements of deferred or waived interest plans disclose the deferred or waived interest period clearly and conspicuously in immediate proximity to each statement of a deferred interest triggering term. New § 226.16(h)(3) also would require such

advertisements that use the phrase "no interest" or similar term to describe the possible avoidance of interest obligations under the deferred or waived interest program to state "if paid in full" in a clear and conspicuous manner preceding the disclosure of the deferred or waived interest period. For example, as described in proposed comment 16(h)-7, an advertisement might state "no interest if paid in full within 6 months" or "no interest if paid in full by December 31, 2010." The Board is proposing to require these disclosures because of concerns that the statement "no interest," in the absence of additional details about the applicable conditions of the offer may confuse consumers who might not understand that they need to pay their balances in full by a certain date in order to avoid the obligation to pay interest.

Immediate proximity. Proposed comment 16(h)-4 provides guidance on the meaning of "immediate proximity" by establishing a safe harbor for disclosures made in the same phrase. Therefore, if the deferred or waived interest period is disclosed in the same phrase as each statement of a deferred interest triggering term (for example, "no interest if paid in full within 12 months" or "no interest if paid in full by December 1, 2010" the deferred or waived interest period would be deemed to be in immediate proximity to the statement.

Clear and conspicuous standard. The Board proposes to amend comment 16-2.ii to provide that advertisements clearly and conspicuously disclose the deferred or waived interest period only if the information is equally prominent to each statement of a deferred interest triggering term. Proposed comment 16-2.ii states that if the disclosure of the deferred or waived interest period is the same type size as the statement of the deferred interest triggering term, it will be deemed to be equally prominent. The Board

believes that requiring equal prominence for the disclosure of the deferred or waived interest period will call attention to the nature and significance of that information by ensuring that the information is at least as significant as the terms to which it relates. Furthermore, applying an equally prominent standard would be consistent with the treatment of certain disclosures related to promotional rates.

The Board also proposes to clarify in comment 16-2.ii that the equally prominent standard applies only to written and electronic advertisements. This approach is consistent with the treatment of written and electronic advertisements of promotional rates. Because equal prominence is a difficult standard to measure outside the context of written and electronic advertisements, the Board believes that the guidance on clear and conspicuous disclosures set forth in proposed comment 16-2.ii, should apply solely to written and electronic advertisements. Disclosure of the deferred or waived interest period under § 226.16(h)(3) for non-written, non-electronic advertisements, while not required to meet the specific clear and conspicuous standard in comment 16-2.ii would nonetheless be subject to the general clear and conspicuous standard set forth in comment 16-1.

16(h)(4) Stating the Terms of the Deferred or Waived Interest Offer

In order to ensure that consumers are informed of the terms applicable to a deferred or waived interest offer, the proposal would require disclosure of key terms of such an offer in a prominent location closely proximate to the first listing of a statement of a deferred interest triggering term. First, the Board proposes to require a statement that if the balance or transaction is not paid within the deferred or waived interest period, interest will be charged from the date the consumer became obligated for the balance or

transaction. Second, the Board also proposes to require a statement, if applicable, that interest can also be charged from the date the consumer became obligated for the balance or transaction if the consumer's account is in default prior to the end of the deferred or waived interest period.

To facilitate compliance with this provision, the Board proposes model language in Sample G-22 in Appendix G. Proposed § 226.16(h)(4) would require that advertisements of deferred or waived interest offers use language similar to Sample G-22. The Board is proposing that language be "similar," rather than "substantially similar," in recognition of the fact that creditors may need to modify or supplement the model language to accurately describe the terms of a particular promotion. For issuers subject to the January 2009 FTC Act Rule or similar law, the proposed language would reflect that interest can be charged from the date the consumer became obligated for the balance or transaction only if the consumer fails to pay the balance subject to the deferred or waived interest program in full or makes a payment that is more than 30 days late.[4] For creditors that are not subject to the January 2009 FTC Act Rule or similar law, such as a creditor that offers a deferred or waived interest program in connection with a line of credit, the Board proposes separate model language.

While most advertisements of deferred or waived interest offers describe the conditions required to take advantage of the offer, the conditions may be placed in a location that is not easily noticed or stated in terms that are not easily understood. Thus, as discussed below, the proposal would require this information to be in a prominent location closely proximate to the first listing of a statement of "no interest," "no

[4] This statement is intended to be consistent with substantive restrictions in the January 2009 FTC Act Rule and FTC Act Proposed Clarifications which would not permit an issuer to revoke a deferred or waived interest program unless the consumer's payment is more than 30 days late.

payments," "deferred interest" or similar term regarding interest and payments under the deferred interest period.

Prominent location closely proximate. The Board is proposing guidance on the meaning of "prominent location closely proximate to the first listing" in comments 16(h)-5 and 16(h)-6. This guidance is similar to, and intended to be consistent with, the provisions in § 226.16(g) that apply to advertisements of promotional rates. Proposed comment 16(h)-5 would provide that if the additional disclosures required under proposed § 226.16(h)(4) are in the same paragraph as the first listing of a deferred interest triggering term, they would be deemed to be in a prominent location closely proximate to the statement. Information appearing in a footnote would not be deemed to be in a prominent location closely proximate to the statement. The Board believes that the safe harbor under proposed comment 16(h)-5 is, and should be, more flexible than the safe harbor for "immediate proximity" under proposed comment 16(h)-4 above.

First listing. Proposed comment 16(h)-6 provides that the first listing of a statement of a deferred interest triggering term is the most prominent listing of one of these statements (on the front side of the first page of the principal promotional document). Consistent with the rules for promotional rates in § 226.16(g), the proposed comment borrows the concept of "principal promotional document" from the FTC's definition of the term under its regulations promulgated under the FCRA. 16 CFR § 642.2(b). Under the proposal, if none of these statements is listed on the principal promotional document or there is no principal promotional document, the first listing of one of these statements would be deemed to be the most prominent listing of the statement on the front side of the first page of each document containing one of these

statements. The Board also proposes that the listing with the largest type size be a safe harbor for determining which listing is the most prominent. The proposed comment notes that a catalog or other multiple-page advertisement would be considered one document for these purposes, consistent with comment 16(c)-1.

Because both the rules for advertising of promotional rates in § 226.16(g) and proposed § 226.16(h)(4) require disclosures closely proximate to the "first listing" of a rate or a statement, respectively, the Board believes that the guidance on what constitutes the "first listing" should be consistent for both rules.

Segregation. The Board also proposes comment 16(h)-7 to clarify that the information required under proposed § 226.16(h)(4) need not be segregated from other information the advertisement discloses about the deferred or waived interest offer. This may include triggered terms that the advertisement is required to disclose under § 226.16(b). The comment is consistent with the Board's approach on many other required disclosures under Regulation Z. See comment 5(a)-2. Moreover, the Board believes flexibility is warranted to allow advertisers to provide other information that may be essential for the consumer to evaluate the offer, such as a minimum purchase amount to qualify for the deferred or waived interest offer.

Clear and conspicuous disclosure. The Board is proposing to amend comment 16-2.ii to require equal prominence only for the disclosure of the information required under § 226.16(h)(3). Therefore, disclosures under proposed § 226.16(h)(4) would not be required to be equally prominent to the first listing of the deferred interest triggering statement. Because of the amount of information the Board is proposing to require under § 226.16(h)(4)(i) and (ii), the Board believes that requiring equal prominence to the

triggering statement for this information would render the advertisement difficult to read and confusing to consumers.

Non-written, non-electronic advertisements. The Board believes providing flexibility in how advertisers may present information to consumers in a non-written, non-electronic context is appropriate due to the time and space constraints of such media. Therefore, consistent with the approach adopted for advertisements of promotional rate offers in the January 2009 Regulation Z Rule and the approach in proposed § 226.16(h)(3) discussed above, the Board is proposing that only written or electronic advertisements be subject to the requirement to provide the disclosures required by proposed § 226.16(h)(4) in a prominent location closely proximate to the first listing of a deferred interest triggering term. For non-written, non-electronic advertisements, the information required under § 226.16(h)(4)(i), and (ii) would be included in the advertisement, but would not be subject to any proximity or formatting requirements other than the general requirement that information be clear and conspicuous, as contemplated under comment 16-1.

16(h)(5) Envelope Excluded

The Board proposes to exclude envelopes or other enclosures in which an application or solicitation is mailed, or banner advertisements or pop-up advertisements linked to an electronic application or solicitation from the requirements of proposed § 226.16(h)(4). This proposed exception is consistent with the approach adopted for promotional rate advertisements in the January 2009 Regulation Z Rule. Interested consumers generally look at the contents of an envelope or click on the link in a banner advertisement or pop-up advertisement in order to learn more about an offer instead of

relying solely on the information on an envelope, banner advertisement, or pop-up advertisement. Given the limited space that envelopes, banner advertisements, and pop-up advertisements have to convey information, the Board believes the burden of providing the information proposed under § 226.16(h)(4) on these types of communications would likely exceed any benefit to consumers.

Appendix G—Open-End Model Forms and Clauses

The Board proposes to revise Model Form G-10(A) to insert a row disclosing any grace period on purchases applicable to the account, in accordance with the requirements set forth in § 226.5a(b)(5). This row was inadvertently omitted from Model Form G-10(A) as published in the **Federal Register** on January 29, 2009.

The Board also proposes to revise the minimum payment warning set forth on Sample Form G-18(G) for conformity with Sample Clause G-18(C), without any intended substantive change to the requirements of the final rule.

As discussed in the supplementary information to §§ 226.7(b)(14) and 226.16(h), the Board proposes to adopt model language for the disclosures required to be given in connection with deferred or waived interest programs as Samples G-18(H) and G-22. The Board notes that proposed Sample G-22 contains two model clauses, one for use by credit card issuers subject to 12 CFR 227.24 or similar law and one for other creditors. The model clause for issuers subject to 12 CFR 227.24 reflects the fact that, under those rules, an issuer may only revoke a deferred or waived interest program if the consumer's payment is more than 30 days late. The Board proposes to add a new comment App. G-12 to clarify which creditors should use each of the model clauses in proposed Sample G-22.

The Board also proposes a technical correction to comment App. G-5.v.C. As adopted in the January 2009 Regulation Z Rule, comment App. G-5.v.C refers to cross-references in the samples of the table provided on or with applications and solicitations and the table provided at account opening. However, cross-references were not included in those samples because they are not a disclosure required by the January 2009 Regulation Z Rule. Accordingly, the Board proposes to delete the examples mentioning cross-references from comment App. G-5.v.C.

IV. Regulatory Flexibility Analysis

Section VIII of the supplementary information to the January 2009 Regulation Z Rule sets forth the Board's analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Board notes that the amendments in this proposed rulemaking would require small entities that offer deferred or waived interest programs to comply with new disclosure requirements for periodic statements and advertisements, as discussed in the supplementary information to the amendments to §§ 226.7 and 226.16. Because the proposed amendments are a continuation of the January 2009 Regulation Z Rule and would not, if adopted, alter the analysis and determination accompanying the January 2009 Regulation Z Rule, the Board continues to rely on that analysis and determination for purposes of this rulemaking.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part

226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 et seq.). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions and small businesses.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 688,607 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation.

The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 27,312 hours, from 688,607 hours to 715,919 hours.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the

respondent. Furthermore, the burden estimate for this rulemaking does not include the burden addressing provisions from the Mortgage Disclosure Improvement Act of 2008 (Docket No. R-1340) or Higher Education Opportunity Act (Docket No.R-1353) announced in separate proposed rulemakings.

The Federal Reserve estimates that 1,138 respondents regulated by the Federal Reserve would take, on average, 16 hours (two business days) to update their systems for periodic statements to comply with the proposed disclosure requirements in § 226.7. In addition, the Federal Reserve estimates that the 1,138 respondents would take, on average, 8 hours (one business day) to update their systems for advertising to comply with the proposed disclosure requirements in § 226.16. These one-time revision would increase the burden by 27,312 hours.

The other federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total current estimated annual burden for institutions regulated by the federal financial agencies, including Federal Reserve-supervised institutions, would be approximately 13,568,725 hours. The proposed rule would impose a one-time increase in the estimated annual burden by 412,800 hours to 13,981,525 hours. The above estimates represent an average across all respondents regulated by federal financial agencies and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, of which there are approximately 17,200, potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151-A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

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

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside ►bold-type arrows◄ while language that would be deleted is set off with **[**bold-type brackets**]**.

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

PART 226—TRUTH IN LENDING (REGULATION Z)

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

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l).

2. Section 226.6 is amended by revising paragraph (b) to read as follows:

§ 226.6 Account-opening disclosures.

*** * * * ***

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

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

* * * * *

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

* * * * *

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

(i) Annual percentage rate.

* * * * *

(E) Point of sale where APRs vary by state► or based on creditworthiness◄. Creditors imposing annual percentage rates that vary by state► or based on the consumer's creditworthiness◄ and providing the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose pursuant to paragraph (b)(2)(i) of this section in the account-opening table ►(1)◄ the specific annual percentage rate applicable to the consumer's account, or ►(2)◄ the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state ►or will be determined based on the consumer's creditworthiness ◄and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the annual percentage rate applicable to the consumer's account is disclosed. A creditor may not list annual percentage rates for multiple states in the account-opening table.

* * * * *

(4) Disclosure of rates for open-end (not home-secured) plans.

* * * * *

(ii) Variable-rate accounts.

* * * * *

(G) A rate is accurate if it is a rate as of a specified date ►and this rate was in effect◄ within the last 30 days before the disclosures are provided.

* * * * *

3. Section 226.7 is amended by revising paragraph (b) to read as follows:

§ 226.7 Periodic statement.

* * * * *

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

* * * * *

►(14) Deferred or waived interest transactions. For accounts with an outstanding balance subject to a deferred or waived interest program, the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance must be disclosed on the front of the periodic statement for two billing cycles immediately preceding the billing cycle in which such date occurs. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G-18(H) in Appendix G to this part.◄

* * * * *

4. Section 226.9 is amended by revising paragraphs (c) and (g) to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

(c) Change-in-terms.

* * * * *

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

* * * * *

(iv) Notice not required. For open-end plans (other than home equity plans subject to the requirements of § 226.5b), a creditor is not required to provide notice under this section when the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in paragraph (c)(2)(v) of this section) or termination of an account or plan; **[**or**]** when the change results from an agreement involving a court proceeding►; or if the change is applicable only to a check or checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with § 226.9(b)(3)◄.

* * * * *

(g) Increase in rates due to delinquency or default or as a penalty.

* * * * *

(4) Exceptions. (i) Workout ►and temporary hardship◄ arrangements. A creditor is not required to provide a notice pursuant to paragraph (g)(1) of this section if a rate applicable to a category of transactions is increased ►due to the consumer's completion of a workout or temporary hardship arrangement or◄ as a result of the consumer's default, delinquency or as a penalty, in each case for failure to comply with the terms of a workout ►or temporary hardship◄ arrangement between the creditor and the consumer, provided that:

(A) The rate following any such increase does not exceed the rate that applied to the category of transactions prior to commencement of the workout ►or temporary hardship◄ arrangement; or

(B) If the rate that applied to a category of transactions prior to the commencement of the workout ►or temporary hardship◄ arrangement was a variable

rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout ►or temporary hardship◄ arrangement.

* * * * *

(iii) Certain rate increases applicable to outstanding balances. A creditor is not required to provide a notice pursuant to paragraph (g)(1) of this section prior to increasing **[**the**]** ►a◄ rate **[**applicable to an outstanding balance as defined in 12 CFR § 227.24(a)(2), if:**]** ►pursuant to 12 CFR 227.24(b)(4) or similar law, if:◄

(A) The creditor previously provided a notice pursuant to paragraph (g)(1) of this section containing the content specified in paragraph (g)(3) of this section;

(B) After that notice is provided but prior to the effective date of the rate increase or rate increases disclosed in the notice pursuant to paragraph (g)(3)(i)(B) of this section, the consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment; and

(C) The rate increase **[**applicable to outstanding balances**]**►pursuant to 12 CFR 227.24(b)(4) or similar law◄ takes effect on the effective date set forth in the notice.

5. Section 226.16 is amended by inserting new paragraph (h) to read as follows:

§ 226.16 Advertising.

*** * * * ***

►(h) Deferred or waived interest offers. (1) Scope. The requirements of this paragraph apply to any advertisement of an open-end credit plan not subject to § 226.5b, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) Definitions. "Deferred interest" or "waived interest" means finance charges accrued on balances or transactions that a consumer is not obligated to pay or that will be waived or refunded to a consumer if those balances or transactions are paid in full by a specified date. The maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date by which the consumer must pay the balance or transaction in full in order to avoid finance charges, or receive a waiver or refund of finance charges, is the "deferred interest period" or "waived interest period." "Deferred interest" or "waived interest" does not include any finance charges the consumer is not obligated to pay in connection with any recurring grace period.

(3) Stating the deferred or waived interest period. If a deferred or waived interest offer is advertised, the deferred or waived interest period must be stated in a clear and conspicuous manner in the advertisement. If the phrase "no interest" or similar term regarding the possible avoidance of interest obligations under the deferred or waived interest program is stated, the term "if paid in full" must also be stated in a clear and conspicuous manner preceding the disclosure of the deferred or waived interest period in the advertisement. If the deferred or waived interest offer is advertised in a written or electronic advertisement, the deferred or waived interest period and, if applicable, the term "if paid in full" must also be stated in immediate proximity to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred or waived interest period.

(4) Stating the terms of the deferred or waived interest offer. If any deferred or waived interest offer is advertised, the information in paragraphs (h)(4)(i) and (h)(4)(ii) of this section must be stated in the advertisement, in language similar to Samples G-22

in appendix G to this part. If the deferred or waived interest offer is advertised in a written or electronic advertisement, the information in paragraphs (h)(4)(i), and (h)(4)(ii) of this section must also be stated in a prominent location closely proximate to the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred or waived interest period.

(i) A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred or waived interest offer if the balance or transaction is not paid in full within the deferred or waived interest period; and

(ii) A statement, if applicable, that interest will be charged from the date the consumer incurs the balance or transaction subject to the deferred or waived interest offer if the account is in default before the end of the deferred or waived interest period.

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

6. Appendix G to Part 226 is amended by:

A. Revising Forms G-10(A) and G-18(G).

B. Inserting new Samples G-18(H) and G-22.

APPENDIX G TO PART 226—OPEN-END MODEL FORMS AND CLAUSES

*** * * * ***

G-10(A) – Applications and Solicitations Model Form (Credit Cards)

[Insert G-10(A) – Applications and Solicitations Model Form (Credit Cards)]

G-18(G) Periodic Statement Form

[Insert G-18(G) Periodic Statement Form]

►G-18(H) Deferred or Waived Interest Periodic Statement Clause

[You must pay your promotional balance in full by [date] to avoid paying accrued interest charges.]◄

* * * * *

►G-22 Deferred or Waived Interest Offer Clauses

(a) For Issuers Subject to 12 CFR 227.24 or Similar Law

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if you make a late payment.]

(b) For Creditors Not Subject to 12 CFR 227.24 or Similar Law

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if your account is otherwise in default.] ◄

7. In Supplement I to Part 226:

A. In Subpart B, revise sections 226.5, 226.6, 226.7, 226.9, and 226.16 as follows.

B. Amend Appendix G by adding paragraph 12.

SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

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SUBPART B – OPEN-END CREDIT

Section 226.5—General Disclosure Requirements

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5(b) Time of disclosures.

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5(b)(2) Periodic statements.

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

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2. Deferred ►or waived◄ interest transactions. See comment 7(b)-1.iv.

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Section 226.5a –Credit and Charge Card Applications and Solicitations

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5a(b) Required disclosures.

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

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►9. Deferred or waived interest transactions. An issuer offering a deferred or waived interest plan, such as a promotional program that provides that a consumer will not be 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, may not disclose a 0% rate as the rate

applicable to deferred or waived interest transactions if there are any circumstances under which the consumer will be obligated for interest on such transactions for the waived or deferred interest period.◄

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Section 226.7—Periodic Statement

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

1. Deferred ►or waived◄ interest transactions. Creditors offer a variety of payment plans for purchases that permit consumers to avoid interest charges if the purchase balance is paid in full by a certain date. The following provides guidance for a deferred ►or waived◄ interest plan where, for example, no interest charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31. **[**The following guidance does not apply to card issuers that are subject to 12 CFR § 227.24 or similar law which does not permit the assessment of deferred interest.**]**

i. Annual percentage rates. Under § 226.7(b)(4), creditors must disclose each annual percentage rate that may be used to compute the interest charge. Under some plans with a deferred ►or waived◄ interest feature, if the deferred ►or waived◄ interest balance is not paid by a certain date, March 31 in this example, interest charges applicable to the billing cycles between the date of purchase in January and March 31 may be imposed. Annual percentage rates that may apply to the deferred ►or waived◄ interest balance ($500 in this example) if the balance is not paid in full by March 31 must appear on periodic statements for the billing cycles between the date of purchase and March 31. However, if the consumer does not pay the deferred ►or waived◄ interest

balance by March 31, the creditor is not required to identify, on the periodic statement disclosing the interest charge for the deferred ►or waived◄ interest balance, annual percentage rates that have been disclosed in previous billing cycles between the date of purchase and March 31.

ii. Balances subject to periodic rates. Under § 226.7(b)(5), creditors must disclose the balances subject to interest during a billing cycle. The deferred interest balance ($500 in this example) is not subject to interest for billing cycles between the date of purchase and March 31 in this example. Periodic statements sent for those billing cycles should not include the deferred interest balance in the balance disclosed under § 226.7(b)(5). **[**At the creditor's option, t**]** ►T◄his amount **[**may**]** ►must◄ be separately disclosed on periodic statements **[**provided it is**]** ►and◄ identified by a term other than the term used to identify the balance disclosed under § 226.7(b)(5) (such as "deferred interest balance"). During any billing cycle in which an interest charge on the deferred ►or waived◄ interest balance is debited to the account, the balance disclosed under § 226.7(b)(5) should include the deferred ►or waived◄ interest balance for that billing cycle.

iii. Amount of interest charge. Under § 226.7(b)(6)(ii), creditors must disclose interest charges imposed during a billing cycle. For some deferred ►or waived◄ interest purchases, the creditor may impose interest from the date of purchase if the deferred ►or waived◄ interest balance ($500 in this example) is not paid in full by March 31 in this example, but otherwise will not impose interest for billing cycles between the date of purchase and March 31. Periodic statements for billing cycles preceding March 31 in this example should not include in the interest charge disclosed

under § 226.7(b)(6)(ii) the amounts a consumer may owe if the deferred ►or waived◄ interest balance is not paid in full by March 31. In this example, the February periodic statement should not identify as interest charges interest attributable to the $500 January purchase. **[**At the creditor's option, t**]** ►T◄his amount **[**may**]** ►must◄ be separately disclosed on periodic statements **[**provided it is**]** ►and◄identified by a term other than "interest charge" (such as "contingent interest charge" or "deferred interest charge"). The interest charge on a deferred ►or waived◄ interest balance should be reflected on the periodic statement under § 226.7(b)(6)(ii) for the billing cycle in which the interest charge is debited to the account.

iv. **[**Grace period.**]** ►Due date to avoid obligation for finance charges under a deferred or waived interest program. Section 226.7(b)(14) requires disclosure on periodic statements of the date by which any outstanding balance subject to a deferred or waived interest program must be paid in full in order to avoid the obligation for finance charges on such balance. This disclosure must appear on the front of the periodic statement for two billing cycles immediately preceding the billing cycle in which the disclosed date occurs. However, if the duration of the deferred or waived interest period is such that the reminder cannot be given for the last two billing cycles immediately preceding the disclosed date, the disclosure must be included on all periodic statements during the deferred or waived interest period.◄ Assuming monthly billing cycles ending at month-end and a **[**grace period ending on**]** ►payment due date of◄ the 25th of the following month ►for balances not subject to the deferred or waived interest program◄, the following **[**are four**]** examples illustrat►e◄**[**ing**]** how a creditor may comply with the requirement ►in § 226.7(b)(14)◄ to disclose the **[**grace period**]** ►date by which

payment in full of balances subject to the deferred or waived interest program must occur in order to avoid the obligation to pay finance charges◄ applicable to a deferred ►or waived◄ interest balance ($500 in this example) **[**and with the 14-day rule for mailing or delivering periodic statements before imposing finance charges (see § 226.5)**]**:

A. **[**The creditor could include the $500 purchase on the periodic statement reflecting account activity for February and sent on March 1 and**]** ►If the creditor◄ identif**[**y**]**►ies◄ March 31 as the payment-due date for the $500 purchase►, the creditor must include the $500 purchase and its due date on the periodic statement reflecting activity for January sent on February 1, and the periodic statement reflecting activity for February sent on March 1◄. (►For the periodic statement reflecting account activity for February sent on March 1,◄ **[**T**]** ►t◄he creditor could also identify March 31 as the payment-due date for any other amounts that would normally be due on March 25.)

B. **[**The creditor could include the $500 purchase on the periodic statement reflecting activity for March and sent on April 1 and identify April 25 as the payment-due date for the $500 purchase,**]** ►If the creditor opts to delay the end of the deferred or waived interest period to coincide with the end of the grace period for balances not subject to the deferred or waived interest program by◄ permitting the consumer to avoid finance charges if the $500 is paid in full by April 25►, the creditor must include the $500 purchase and its due date on the periodic statement reflecting activity for February sent on March 1, and the periodic statement reflecting activity for March sent on April 1◄. ►The creditor could also include the $500 purchase and its due date on ►the periodic statement reflecting activity for January sent on February 1.◄

C. ►If the purchase was made in December (instead of January), ◄**[**T**]**►t◄he creditor ►must include the $500 purchase and its due date on the periodic statement reflecting activity for January sent on February 1 and the periodic statement reflecting activity for February sent on March 1. The creditor ►also◄ could include the $500 purchase and its due date on ►the periodic statement reflecting activity for December sent on January 1◄**[**each periodic statement sent during the deferred interest period (January, February, and March in this example)**]**.

D. If the due date for the deferred ►or waived◄ interest balance is **[**March 7**]**►February 20◄ (instead of March 31), the creditor ►must◄ **[**could**]** include the $500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1**[**, the most recent statement sent at least 14 days prior to the due date**]**.

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7(b)(6) Charges imposed.

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►6. Acquired accounts. An institution that acquires an account or plan must include, as applicable, fees and charges imposed on the account or plan prior to the acquisition in the aggregate disclosures provided under § 226.7(b)(6) for the acquired account or plan. Alternatively, the institution may provide separate totals reflecting activity prior and subsequent to the account or plan acquisition. For example, a creditor that acquires an account or plan on August 12 of a given calendar year may provide one total for the period from January 1 to August 11 and a separate total for the period beginning on August 12 .

7. Account upgrades. A creditor that upgrades, or otherwise changes, a consumer's plan to a different open-end credit plan must include, as applicable, fees and charges imposed for that portion of the calendar year prior to the upgrade or change in the consumer's plan in the aggregate disclosures provided pursuant to § 226.7(b)(6) for the new plan. For example, assume a consumer has incurred $125 in fees for the calendar year to date for a retail credit card account, which is then replaced by a cobranded credit card account also issued by the creditor. In this case, the creditor must reflect the $125 in fees incurred prior to the replacement of the retail credit card account in the calendar year-to-date totals provided for the cobranded credit card account. Alternatively, the institution may provide two separate totals reflecting activity prior and subsequent to the plan upgrade or change.◄

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Section 226.9–Subsequent Disclosure Requirements

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9(c) Change in terms.

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

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►4. Relationship to § 226.9(b). If a creditor adds a feature to the account on the type of terms otherwise required to be disclosed under § 226.6, the creditor must satisfy: (i) the requirement to provide the finance charge disclosures for the added feature under § 226.9(b); and (ii) any applicable requirement to provide a change-in-terms notice under § 226.9(c), including any advance notice that must be provided. For example, if a creditor adds a balance transfer feature to an account more than 30 days after account-

opening disclosures are provided, it must give the finance charge disclosures for the balance transfer feature under § 226.9(b) as well as comply with the change-in-terms notice requirements under § 226.9(c), including providing notice of the change at least 45 days prior to the effective date of the change. Similarly, if a creditor makes a balance transfer offer on finance charge terms that are higher than those previously disclosed for balance transfers, it would also generally be required to provide a change-in-terms notice at least 45 days in advance of the effective date of the change. A creditor may provide a single notice under § 226.9(c) to satisfy the notice requirements of both paragraphs (b) and (c) of § 226.9. For checks that access a credit card account subject to the disclosure requirements in § 226.9(b)(3), a creditor is not subject to the notice requirements under § 226.9(c) even if the applicable rate or fee is higher than those previously disclosed for such checks. Thus, for example, the creditor need not wait 45 days before applying the new rate or fee for transactions made using such checks, but the creditor must make the required disclosures on or with the checks in accordance with § 226.9(b)(3). ◄

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9(c)(2)(i) Changes where written advance notice is required

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3. Timing – advance notice not required. Advance notice of 45 days is not necessary – that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change if the consumer agrees to the particular change. This provision is ►solely◄ intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's

providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of § 226.9(c)(2)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); **[**and**]** the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account►; and the 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◄.

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

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2. Skip features. If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer

of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume or by indicating the duration of the skip option. Language such as "You may skip your October payment," or "We will waive your interest charges for January" may serve as the change-in-terms notice. ►However, a creditor offering a temporary reduction in an interest rate must provide a notice in accordance with the timing requirements of § 226.9(c)(2)(i) and the content and format requirements of § 226.9(c)(2)(ii)(A) and (B) prior to resuming the original rate. ◄

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9(g) Increase in rates due to delinquency or default or as a penalty.

1. Relationship between Regulation Z, 12 CFR 226.9(c) and (g), and Regulation AA, 12 CFR 227.24 or similar law – examples. Issuers subject to 12 CFR 227.24 or similar law are prohibited from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in those rules. The following examples illustrate the relationship between the notice requirements of § 226.9(c) and (g) and 12 CFR 227.24 or similar law:

i. Assume that, at account opening on January 1 of year one, an issuer discloses, in accordance with the applicable notice requirements of § 226.6, that that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The issuer also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the issuer's control. ►Furthermore,◄**[**Finally,**]** the issuer discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months.

►Finally, the bank discloses that a non-variable penalty rate of 30% may apply if the consumer makes a late payment. ◄The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

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iii. Assume that, at account opening on January 1 of year one, a issuer discloses in accordance with the applicable notice requirements in § 226.6 that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly-available index outside of the issuer's control. The issuer also discloses that a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has an outstanding purchase balance of $1,000. On May 31, the creditor provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply effective July 16 for all purchases made on or after June 8 (calculated by using the same index and an increased margin of 8 percentage points). On June 7, the consumer makes a $500 purchase. On June 8, the consumer makes a $200 purchase. On June 25, the issuer has not received the payment due on June 15 and provides the consumer with a notice pursuant to § 226.9(g) stating that the penalty rate of 28% will apply as of August 9 to all transactions made on or after July 3 that includes the content required by § 226.9(g)(3)(i) ►and states that if the consumer becomes more than 30 days late, the penalty rate will apply to all balances on the account◄. On July 4, the consumer makes a $300 purchase.

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C. Same facts as paragraph A. above except the payment due on June 15 of year two is received on July 20. The issuer is permitted under 12 CFR 227.24 or similar law to apply the 28% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. Because the issuer provided a notice pursuant to § 226.9(g) on June ►25◄**[**24**]** disclosing the 28% penalty rate, the issuer may apply the 28% penalty rate to all balances on the account as well as any future transactions on August 9 without providing an additional notice pursuant to § 226.9(g).

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9(g)(4) Exceptions.

9(g)(4)(ii) Decrease in credit limit.

►1. ◄The following illustrates the requirements of § 226.9(g)(4)(ii). Assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to § 226.9(g)(4)(ii) on January 1, stating among other things that the penalty rate would apply if the consumer's balance exceeded the new credit limit as of February 16. If the consumer's balance exceeded the credit limit on February 16, the creditor could impose the penalty rate on that date. However, a creditor could not apply the penalty rate if the consumer's balance did not exceed the new credit limit on February 16, even if the consumer's balance had exceeded the new credit limit on several dates between January 1 and February 15. If the consumer's balance did not exceed the new credit limit on February 16 but the consumer conducted a transaction on February 17 that caused the balance to exceed the new credit limit, the general rule in § 226.9(g)(1)(ii) would apply and the creditor would be required to give an additional 45 days' notice

prior to imposition of the penalty rate (but under these circumstances the consumer would have no ability to cure the over-the-limit balance in order to avoid penalty pricing).

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Section 226.12–Special Credit Card Provisions

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12(b) Liability of cardholder for unauthorized use.

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3. Reasonable investigation. If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

vi. ►Requiring◄**[**Requesting**]** a written, signed statement from the cardholder or authorized user. For example, the creditor may include a signature line on a billing rights form that the cardholder may send in to provide notice of the claim. However, a creditor may not require the cardholder to provide an affidavit or signed statement under penalty of perjury as part of a reasonable investigation.

vii. Requesting a copy of a police report, if one was filed.

viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

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Section 226.13—Billing Error Resolution

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13(f) Procedures if different billing error or no billing error occurred.

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3. Reasonable investigation. A creditor must conduct a reasonable investigation before it determines that no billing error occurred or that a different billing error occurred from that asserted. In conducting its investigation of an allegation of a billing error, the creditor may reasonably request the consumer's cooperation. The creditor may not

automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report. However, if the creditor otherwise has no knowledge of facts confirming the billing error, the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the creditor reasonably to terminate the investigation. The procedures involved in investigating alleged billing errors may differ depending on the billing error type.

i. Unauthorized transaction. In conducting an investigation of a notice of billing error alleging an unauthorized transaction under § 226.13(a)(1), actions such as the following represent steps that a creditor may take, as appropriate, in conducting a reasonable investigation:

A. Reviewing the types or amounts of purchases made in relation to the consumer's previous purchasing pattern.

B. Reviewing where the purchases were delivered in relation to the consumer's residence or place of business.

C. Reviewing where the purchases were made in relation to where the consumer resides or has normally shopped.

D. Comparing any signature on credit slips for the purchases to the signature of the consumer (or an authorized user in the case of a credit card account) in the creditor's records, including other credit slips.

E. Requesting documentation to assist in the verification of the claim.

F. ►Requiring◄**[**Requesting**]** a written, signed statement from the consumer (or authorized user, in the case of a credit card account). For example, the creditor may

include a signature line on a billing rights form that the consumer may send in to provide notice of the claim. However, a creditor may not require the consumer to provide an affidavit or signed statement under penalty of perjury as a part of a reasonable investigation.

G. Requesting a copy of a police report, if one was filed.

H. Requesting information regarding the consumer's knowledge of the person who allegedly obtained an extension of credit on the account or of that person's authority to do so.

ii. Nondelivery of property or services. In conducting an investigation of a billing error notice alleging the nondelivery of property or services under § 226.13(a)(3), the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed.

iii. Incorrect information. In conducting an investigation of a billing error notice alleging that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card or otherwise accepting an access device for an open-end plan has made an incorrect report to the creditor, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the information was correct.

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Section 226.16—Advertising

1. Clear and conspicuous standard—general. Section 226.16 is subject to the general "clear and conspicuous" standard for subpart B (see § 226.5(a)(1)) but prescribes

no specific rules for the format of the necessary disclosures, other than the format requirements related to the disclosure of a promotional rate or payment under § 226.16(d)(6) ►,◄**[**or**]** a promotional rate under § 226.16(g) ►or a deferred or waived interest offer under § 226.16(h)◄. Other than the disclosure of certain terms described in §§ 226.16(d)(6)►,◄**[**or**]** (g) ►or (h)◄, the credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

2. Clear and conspicuous standard—promotional rates or payments►; deferred or waived interest offers◄.

i. For purposes of § 226.16(d)(6), a clear and conspicuous disclosure means that the required information in § 226.16(d)(6)(ii)(A)-(C) is disclosed with equal prominence and in close proximity to the promotional rate or payment to which it applies. If the information in § 226.16(d)(6)(ii)(A)-(C) is the same type size and is located immediately next to or directly above or below the promotional rate or payment to which it applies, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. Notwithstanding the above, for electronic advertisements that disclose promotional rates or payments, compliance with the requirements of § 226.16(c) is deemed to satisfy the clear and conspicuous standard.

ii. For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(g)(4)(i) and (g)(4)(ii) must be equally prominent to the promotional rate to which it applies. If the information in § 226.16(g)(4)(i) and (g)(4)(ii) is the same type size as the promotional rate to which it applies, the disclosures would be deemed to be equally prominent. ►For purposes of § 226.16(h)(3) as it applies to written or electronic

advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(h)(3) must be equally prominent to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred or waived interest period. If the information required to be disclosed under § 226.16(h)(3) is the same type size as the statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred or waived interest period, the disclosure would be deemed to be equally prominent.◄

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►16(h) Deferred or waived interest offers.

1. Deferred or waived interest clarified. Deferred or waived interest offers do not include offers that allow a consumer to skip payments during a specified period of time, and under which the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. Deferred or waived interest offers also do not include 0% annual percentage rate offers where a consumer is not obligated under any circumstances for interest attributable to the time period the 0% annual percentage rate was in effect, though such offers may be considered promotional rates under § 226.16(e)(2)(i). Deferred or waived interest offers also do not include skip payment programs that have no required minimum payment for one or more billing cycles but where interest continues to accrue and be imposed during that period.

2. Deferred or waived interest period clarified. Although the terms of an advertised deferred or waived interest offer may provide that a creditor may charge the accrued interest if a full payment is not received by a certain date, creditors sometimes

have an informal policy or practice that delays charging the accrued interest for payment received a brief period of time after the date upon which a creditor has the contractual right to charge the accrued interest. The advertisement need not include the end of an informal "courtesy period" in disclosing the deferred or waived interest period under § 226.16(h)(3).

3. Immediate proximity. For written or electronic advertisements, including the deferred or waived interest period in the same phrase as the statement of "no interest," "no payments," "deferred interest," or "same as cash" or similar term regarding interest or payments during the deferred or waived interest period is deemed to be in immediate proximity of the statement.

4. Prominent location closely proximate. For written or electronic advertisements, information required to be disclosed in § 226.16(h)(4)(i) and (ii) that is in the same paragraph as the first statement of "no interest," "no payments," "deferred interest," or "same as cash" or similar term regarding interest or payments during the deferred or waived interest period is deemed to be in a prominent location closely proximate to the statement. Information disclosed in a footnote is not considered in a prominent location closely proximate to the statement.

5. First listing. For purposes of § 226.16(h)(4) as it applies to written or electronic advertisements, the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred or waived interest period is the most prominent listing of one of these statements on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a

mailing, such as a cover letter or solicitation letter. If one of the statements does not appear on the front side of the first page of the principal promotional document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the principal promotional document. If one of the statements is not listed on the principal promotional document or there is no principal promotional document, the first listing of one of these statements is the most prominent listing of the statement on the front side of the first page of each document containing one of these statements. If one of the statements does not appear on the front side of the first page of a document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the document. If the listing of one of these statements with the largest type size on the front side of the first page (or subsequent pages if one of these statements is not listed on the front side of the first page) of the principal promotional document (or each document listing one of these statements if a statement is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)-1, a catalog or multiple-page advertisement is considered one document for purposes of § 226.16(h)(4).

6. Additional information. Consistent with comment 5(a)-2, the information required under § 226.16(h)(4) need not be segregated from other information regarding the deferred or waived interest offer. Advertisements may also be required to provide additional information pursuant to § 226.16(b) though such information need not be integrated with the information required under § 226.16(h)(4).

7. Examples. Examples of disclosures that could be used to comply with the requirements of § 226.16(h)(3) include: "no interest if paid in full within 6 months" and "no interest if paid in full by December 31, 2010."◄

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Appendix G – Open-End Model Forms and Clauses

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5. Model G–10(A), samples G–10(B) and G–10(C), model G-10(D), sample G-10(E), model G-17(A), and samples G-17(B), 17(C) and 17(D).

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v. Although creditors are not required to use a certain paper size in disclosing the §§ 226.5a or 226.6(b)(1) and (2) disclosures, samples G-10(B), G-10(C), G-17(B), G-17(C) and G-17(D) are designed to be printed on an 8 ½ x 14 inch sheet of paper. A creditor may use a smaller sheet of paper, such as 8 ½ x 11 inch sheet of paper. If the table is not provided on a single side of a sheet of paper, the creditor must include a reference or references, such as "SEE BACK OF PAGE for more important information about your account." at the bottom of each page indicating that the table continues onto an additional page or pages. A creditor that splits the table onto two or more pages must disclose the table on consecutive pages and may not include any intervening information between portions of the table. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

* * * * *

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. **[**For example, in the samples in the row of the tables with the heading "APR for Balance Transfers," the forms disclose two components: the applicable balance transfer rate and a cross reference to the balance transfer fee. The samples show these two components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late-payment fee, the forms disclose two components: the late-payment fee, and the cross reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the tables.**]**

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►12. Sample G-22. Sample G-22 includes two model clauses for use in complying with § 226.16(h)(4). Model clause (a) is for use by credit card issuers subject to 12 CFR 227.24 or similar law. Model clause (b) is for use in connection with open-end credit plans that are not subject to 12 CFR 227.24 or similar law, such as open-end credit plans with no credit card.◄

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By order of the Board of Governors of the Federal Reserve System, April 21, 2009.

Jennifer J. Johnson (signed)

Jennifer J. Johnson
Secretary of the Board