



# Federal Register

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**Monday,  
May 19, 2008**

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**Part II**

## **Federal Reserve System**

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**12 CFR Part 226  
Truth in Lending; Proposed Rule**

**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 June 14, 2007, the Board published proposed amendments to Regulation Z, which implements the Truth in Lending Act (TILA), and to the staff commentary to the regulation, following a comprehensive review of TILA's rules for open-end (revolving) credit that is not home-secured. The proposed revisions addressed disclosures provided with credit card applications and solicitations, at account-opening, on periodic statements, when terms are changed on an account, and in advertisements.

The Board is seeking comment on a limited number of additional revisions to the regulation and commentary. New proposed amendments address creditors' responsibilities to establish reasonable instructions for receiving timely payments and when a due date falls on a weekend or holiday. Creditors' responsibilities when investigating a claim of unauthorized transactions or an allegation of a billing error are also addressed. Advertisements for deferred interest plans would be required to provide additional information about how interest could be imposed. Comments submitted to the Board in response to the June 2007 proposed revisions remain under consideration by the Board and need not be submitted a second time.

**DATES:** Comments must be received on or before July 18, 2008.**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](mailto:regs.comments@federalreserve.gov).

Include the docket number in the subject line of the message.

- FAX: (202) 452-3819 or (202) 452-3102.

- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and

Constitution Avenue, NW., Washington, DC 20551.

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

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:****I. Background on TILA and Regulation Z**

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. The purposes of TILA are (1) to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit; and (2) to protect consumers against inaccurate and unfair credit billing and credit card practices.

TILA's disclosures differ depending on whether consumer credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, or administrative sanction.

**II. Review of Regulation Z's Rules for Open-End (Not Home-Secured) Plans**

The Board published proposed amendments to Regulation Z's rules for open-end plans that are not home-secured in June 2007 (June 2007

Proposal). 72 FR 32948, June 14, 2007.

The goal of the amendments is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account. The proposed changes affect the format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-term notices; and (5) advertisements.

The June 2007 Proposal was preceded by two advance notices of proposed rulemaking (ANPR). In December 2004, the Board announced its intent to conduct a review of Regulation Z in stages, starting with the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retail credit card plans (December 2004 ANPR). 69 FR 70925, December 8, 2004. The December 2004 ANPR sought public comment on a variety of specific issues relating to three broad categories: the format of open-end credit disclosures, the content of those disclosures, and the substantive protections provided for open-end credit under the regulation.

In October 2005, the Board published a second ANPR (October 2005 ANPR). 70 FR 60235, October 17, 2005. The October 2005 ANPR solicited comment on implementing amendments to TILA contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Act"). Public Law 109-8, 119 Stat. 23. The Bankruptcy Act's TILA amendments principally affect open-end credit accounts and require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements. In the October 2005 ANPR, the Board stated its intent to implement the Bankruptcy Act amendments as part of the Board's ongoing review of Regulation Z's open-end credit rules.

In developing the June 2007 Proposal, the Board conducted consumer research, in addition to considering comments received on the two ANPRs. Specifically, the Board retained a research and consulting firm (Macro International) to assist the Board in using consumer testing to develop proposed model forms for the summary table disclosures provided in direct-mail solicitations and applications; disclosures provided at account opening; periodic statement disclosures; and subsequent disclosures, such as notices provided when key account

terms are changed, and notices on checks provided to access credit card accounts. A report summarizing the results of the Board's testing efforts is available on the Board's Web site: <http://www.federalreserve.gov>.

The Board received over 2,500 comments on the June 2007 Proposal. About 85% of these were from consumers and consumer groups, and of those, nearly all (99%) were from individuals. Regarding comments from industry representatives, about 10% were from financial institutions or their trade associations. The vast majority (90%) of the industry letters were from credit unions and their trade associations. Those latter comments were mainly about a proposed revision to the definition of open-end credit that could affect how many credit unions currently structure their consumer loan products.

A summary of comments received in response to the June 2007 Proposal and this rulemaking (May 2008 Proposal) will be included in the Board's final revisions to Regulation Z's open-end credit rules. In general, commenters generally supported the June 2007 Proposal and the Board's use of consumer testing to develop revisions to disclosure requirements. There was opposition to some aspects of the proposal. For example, industry representatives opposed many of the format requirements for periodic statements, as being overly prescriptive. They also opposed the Board's proposal to require creditors to provide at least 45 days' advance notice before certain key terms change or interest rates are increased due to default or delinquency. Consumer groups opposed the Board's proposed alternative that would eliminate the effective annual percentage rate (APR) as a periodic statement disclosure. Consumers and consumer groups also believe the Board's proposal was too limited in scope and urged the Board to provide more substantive protections and prohibit certain card issuer practices.

In early 2008, the Board worked with its testing consultant, Macro International, to revise model disclosures in response to comments received, and in March 2008, the Board conducted an additional round of one-on-one cognitive interviews on revised disclosures provided with applications and solicitations, on periodic statements, and with checks that access a credit card account. The results of these interviews are discussed throughout the section-by-section analysis below, to the extent the March 2008 testing influenced the matters

being proposed in this May 2008 Proposal.

The Board will continue to work with its consultant to revise the model disclosures, based on comments received on the June 2007 and May 2008 Proposals. Macro International then will conduct additional rounds of cognitive interviews to test the revised disclosures. After the cognitive interviews, quantitative testing will be conducted. The goal of the quantitative testing is to measure consumers' comprehension and the usability of the newly-developed disclosures relative to existing disclosures and formats.

### III. Effect of Additional Rulemaking on June 2007 Proposal

The Board is publishing additional proposed revisions to a limited number of provisions affecting Regulation Z's rules for open-end credit (May 2008 Proposal). Proposed amendments to Regulation Z that were published in June 2007 and are not addressed in VI. Section-by-section Analysis below remain under the Board's consideration as proposed. Comments submitted to the Board in response to those June 2007 proposed revisions to Regulation Z need not be submitted a second time.

The Board, along with the Office of Thrift Supervision and the National Credit Union Administration, is also publishing elsewhere in today's **Federal Register** a proposal to adopt rules prohibiting specific unfair acts or practices with respect to consumer credit card accounts under their authority under the Federal Trade Commission Act (FTC Act).<sup>1</sup> See 15 U.S.C. 57a(f)(1). The Board's proposal would add a new Subpart C to the Board's Regulation AA, Unfair or Deceptive Acts or Practices (2008 Regulation AA Proposal). 12 CFR part 227. The proposal would, among others, (1) prohibit banks from treating payments on a consumer credit card account as late unless the consumer is provided with a reasonable amount of time to make a payment, (2) establish rules governing the allocation of payments on outstanding balances, (3) limit banks' ability to increase the rate of interest applicable to any outstanding balance, and (4) prohibit banks from computing finance charges based on balances for days in billing cycles preceding the most recent billing cycle.

At the end of the period for public comment for the May 2008 Proposal and the 2008 Regulation AA Proposal, the Board will review the comments received and continue to conduct

<sup>1</sup> For simplicity, this notice will refer only to the Board's proposal.

additional consumer tests on revised disclosures to consider any appropriate changes. The comment period for this May 2008 Proposal is 60 days (rather than 75 days, as provided in the Regulation AA Proposal) after this notice is published in the **Federal Register**, to facilitate a timely resumption and completion of the Board's consumer testing efforts. Following the Board's analysis of the comments (including comments from the June 2007 Proposal) and the results of consumer testing, the Board anticipates adopting at the same time final rules for these related proposals. The Board will provide creditors and processors with an adequate time to implement the necessary changes.

### IV. Summary of Proposed Revisions

*Applications and Solicitations.* The June 2007 Proposal contained changes to the format and content of credit and charge card application and solicitation disclosures to make them more meaningful and easier for consumers to use. The May 2008 Proposal would revise the content requirements on several disclosures, as follows:

- *Grace period labels.* The June 2007 proposed requirement to use the term "grace period" as a heading in the summary table provided at application (and elsewhere such as at account opening or with checks that access credit card accounts) would be eliminated. The phrase "how to avoid interest" (or "paying interest" if no grace period exists) or substantially similar terminology would be required instead.

- *Minimum interest charge.* The May 2008 Proposal would add a *de minimis* dollar amount trigger of \$1.00 for disclosing minimum interest or finance charges. Currently, card issuers must disclose in the summary table at application and account opening any minimum interest or finance charge. The \$1.00 trigger would be adjusted when cumulative percentage changes to the Consumer Price Index added to the \$1.00 trigger equals or exceeds the next whole dollar.

- *Foreign transaction fees.* The May 2008 Proposal would require issuers to disclose fees for purchase transactions in a foreign currency or conducted outside the United States in the table provided at application or solicitation. The June 2007 Proposal required creditors to disclose these fees in the summary table provided at account-opening but not in the table provided at application or solicitation.

- *Penalty rate when credit privileges are terminated.* Currently, card issuers are not required to disclose in the

application summary table increased rates that apply when credit privileges are terminated. The May 2008 Proposal would eliminate the exception.

- *Oral disclosures.* Card issuers generally must provide cost disclosures in oral applications or solicitations initiated by the issuer. The May 2008 Proposal would require additional oral disclosures for issuers that require fees or a security deposit to issue the card that are 25 percent or more of the minimum credit limit offered for the account. These issuers would be required to orally provide the amount of available credit the consumer would have after paying the fees or security deposit, assuming the consumer receives the minimum credit limit.

*Account-opening Disclosures.* The May 2008 Proposal would require creditors assessing fees at account opening that are 25 % or more of the minimum credit limit to provide a notice of the consumer's right to reject the plan after receiving disclosures if the consumer has not used the account or paid a fee (other than certain application fees). Changes regarding "grace period" terminology and minimum interest charge disclosure requirements are proposed to conform the disclosure requirements for the account-opening table to the requirements for the table required with applications or solicitations. Model forms are proposed to ease compliance for creditors offering open-end (not home-secured) plans that are not accessed by credit cards, such as lines of credit or overdraft plans.

*Checks that Access Credit Card Accounts.* The June 2007 Proposal required creditors to disclose on the front of the page containing the checks that access credit card accounts information such as the rates that will apply if the checks are used, any transaction fees, and whether or not a grace period exists. The May 2008 Proposal would add a requirement to disclose any date by which consumers must use the check to receive the disclosed rates.

*Changes in Consumer's Interest Rate and Other Account Terms.* The June 2007 Proposal required that when a change-in-terms notice accompanies a periodic statement, creditors provide a tabular disclosure on the front of the periodic statement of the key terms being changed. Consistent with the 2008 Regulation AA Proposal that restricts creditors' ability to apply increased rates to certain existing balances, creditors would be required to clarify how existing or new balances would be affected by any rate increase.

*Crediting Payments.* Currently, creditors may require consumers to comply with reasonable payment instructions, including a cut-off hour for receiving payments. The May 2008 Proposal deems a cut-off hour for mailed payments before 5 p.m. on the due date to be an unreasonable instruction. Creditors that set due dates on a weekend or holiday but do not accept mailed payments on those days would not be able to consider a payment received on the next business day as late for any reason.

*Investigating Claims of Unauthorized Transactions or Allegations of Billing Errors.* Currently, creditors must conduct a reasonable investigation before imposing liability for an unauthorized transaction, and may reasonably request a consumer's cooperation. The May 2008 Proposal clarifies that a creditor may not, however, deny a claim solely if the consumer does not comply with a request to sign a written affidavit or file a police report, and for consistency extends guidance for reasonably investigating claims of unauthorized transactions to allegations of billing errors.

*Advertising Provisions.* For deferred interest plans that advertise "no interest" or similar terms, the May 2008 Proposal would add notice and proximity requirements to require advertisements to state the circumstances under which interest is charged from the date of purchase and, if applicable, that the minimum payments required will not pay off the balance in full by the end of the deferral period. Model clauses are proposed to ease compliance.

## V. The Board's Rulemaking Authority

TILA mandates that the Board prescribe regulations to carry out the purposes of the act. TILA also specifically authorizes the Board, among other things, to do the following:

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

applications or solicitations if the Board determines the action is necessary to carry out the purposes of, or prevent evasions of, the application and solicitation disclosure rules. 15 U.S.C. 1637(c)(5).

- Require disclosures in advertisements of open-end plans. 15 U.S.C. 1663.

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

## VI. Section-By-Section Analysis

### Section 226.5 General Disclosure Requirements

#### 5(a) Form of Disclosures

##### 5(a)(1) General

##### Paragraph 5(a)(1)(ii)(A)

Under § 226.5(a)(1)(ii)(A) in the June 2007 Proposal, certain disclosures need not be written, including disclosures under § 226.6(b)(1) of charges that are imposed as part of the plan and may be provided at any time before the consumer agrees to pay or becomes obligated to pay for the charge, pursuant to the disclosure timing requirements of § 226.5(b)(1)(ii). 72 FR 32948, 33043, June 14, 2007. Under proposed § 226.5(b)(1)(ii), these charges are charges that are imposed as part of the plan but that are not required to be disclosed in a tabular format under § 226.6(b)(4). 72 FR 32948, 33044, June 14, 2007. Such charges would include, for example, a charge to make an on-line payment on the account. In addition, under proposed § 226.5(a)(1)(ii)(A), change-in-terms disclosures, under § 226.9(c)(2)(ii)(B), related to the disclosures discussed above (for example, an increase in the amount of an on-line payment charge) also need not be provided in writing.

Commenters on the June 2007 Proposal suggested that creditors should be permitted to provide disclosures in electronic form, without having to comply with the consumer notice and consent procedures of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.*, at the time an on-line or other electronic service is used. For example, commenters suggested, if a consumer wishes to make an on-line payment on the account, for which the creditor imposes a fee (which has not previously been disclosed), the creditor should be allowed to disclose the fee electronically, without E-Sign notice and consent, at the time the on-line payment service is requested.

Commenters contended that such a provision would not harm consumers and would expedite transactions, and also that it would be consistent with the Board's proposal to permit oral disclosure of such fees.

Under section 101(c) of the E-Sign Act, if a statute or regulation requires that consumer disclosures be provided in writing, certain notice and consent procedures must be followed in order to provide the disclosures in electronic form. Since, under the Board's June 2007 Proposal, the disclosures discussed above are not required to be provided in writing, the Board believes that the E-Sign notice and consent requirements do not apply when the consumer requests the service in electronic form. The Board proposes to add comment 5(a)(1)(ii)(A)-1 to clarify this matter.

#### Paragraph 5(a)(1)(iii)

Under § 226.5(a)(1)(iii) in the June 2007 Proposal, certain disclosures may be provided in electronic form without regard to the consumer notice and consent provisions of the E-Sign Act. The Board proposes to add comment 5(a)(1)(iii)-1 to clarify that the disclosures specified in § 226.5(a)(1)(ii)(A) also may be provided in electronic form without regard to the E-Sign Act when the consumer requests the service in electronic form, such as on a creditor's Web site.

#### 5(a)(2) Terminology

*Use of the term "grace period".* Under § 226.5(a)(2)(iii) in the June 2007 Proposal, the term "grace period" would be required to be used, as applicable, in any disclosure that must be in tabular format under proposed § 226.5(a)(3). 72 FR 32948, 33044, June 14, 2007. TILA Section 122(c)(2)(C), which is implemented currently in § 226.5a(a)(2)(ii), requires credit card applications and solicitations under § 226.5a to use the term "grace period" to describe the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. 15 U.S.C. 1632(c)(2)(C). The Board's proposal was meant to promote uniformity in the use of this term across other disclosures and thereby improve consumer understanding of the concept.

Some industry commenters argued, however, that the Board should reconsider requiring use of the term "grace period." One industry commenter noted that research conducted by the Board and by the United States Government Accountability Office (GAO), as well as the commenter's own research,

demonstrated that the term is confusing as a descriptor of the interest-free period between the purchase and the due date for customers who pay their balances in full.<sup>2</sup> This commenter suggested that the Board revise the disclosure of the grace period in the credit card application and solicitation table to use the heading "interest-free period" instead of "grace period."

The Board further tested alternative disclosures for the grace period in March 2008. Based on the results from consumer testing, as discussed in greater detail in the section-by-section analysis to § 226.5a(b)(5) below, the Board is using its authority under TILA Sections 105(a) and (f), and TILA Section 127(c)(5) to delete the requirement to use the term "grace period" in the table required by § 226.5a. 15 U.S.C. 1604(a) and (f), 1637(c)(5). To maintain consistent terminology across other disclosures, the Board is also withdrawing its proposal under § 226.5(a)(2)(iii) to require the term "grace period" to be used, as applicable, in any disclosure that must be in tabular format under proposed § 226.5(a)(3). If this approach is adopted as proposed, conforming changes will also be made to remove the term "grace period" from all model forms and associated commentary when the Board adopts revisions to the Regulation Z rules for open-end (not home-secured) plans.

The Board also notes that with the removal of the term "grace period" from the table required by § 226.5a, use of the term "grace period" in subsequent disclosures to the consumer would not be appropriate pursuant to the proposed requirement that creditors use consistent terminology under proposed § 226.5(a)(2)(i). While the use of identical language is not required under proposed comment 5(a)(2)-4, creditors are still required to use terms close enough in meaning to enable the consumer to relate the different disclosures. As discussed further below with respect to the proposed revisions to § 226.5a(b)(5), the Board proposes to require using language focused on the terms "how to avoid paying interest" or "paying interest." Consequently, subsequent disclosures to consumers should also use similar terms.

<sup>2</sup> United States Government Accountability Office, *Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers*, 06-929 (September 2006) (GAO Report on Credit Card Rates and Fees).

#### 5(b) Time of Disclosures

##### 5(b)(1) Account-Opening Disclosures

##### 5(b)(1)(ii) Charges Imposed as Part of an Open-End (Not Home-Secured) Plan

Comment 5(b)(1)(ii)-1, under the June 2007 Proposal, states that charges that are imposed as part of an open-end (not home-secured) plan, other than those specified in § 226.6(b)(4), may be disclosed orally or in writing at any time before a consumer agrees to pay the charge or becomes obligated for the charge. 72 FR 32948, 33104, June 14, 2007. The Board proposes to revise the comment to clarify that electronic disclosure of these charges, without regard to the E-Sign Act notice and consent requirements, is also permissible as an alternative to oral or written disclosure, when a consumer requests a service in electronic form, such as on a creditor's Web site.

##### 5(b)(1)(iv) Membership Fees

TILA Section 127(a) requires creditors to provide specified disclosures "before opening any account." 15 U.S.C. 1637(a). Section 226.5(b)(1) requires these disclosures (identified in § 226.6) to be furnished before the first transaction is made under the plan. In the June 2007 Proposal, guidance currently in comment 5(b)(1)-1 about creditors' ability to assess certain membership fees before consumers receive the account-opening disclosures was moved to § 226.5(b)(1)(iv). Currently and under the June 2007 Proposal, creditors may collect or obtain the consumer's promise to pay, a membership fee before the disclosures are provided, if the consumer can reject the plan after receiving the disclosures. If a consumer rejects the plan, the creditor must promptly refund the fee if it has been paid or take other action necessary to ensure the consumer is not obligated to pay the fee. 72 FR 32948, 33044, June 14, 2007.

Comment 5(b)(1)-1 currently provides that if after receiving the account-opening disclosures, the consumer uses the account, pays a fee or negotiates a cash advance check, the creditor may consider the account not rejected. The comment, renumbered as comment 5(b)(1)(i)-1 in the June 2007 Proposal, was amended to clarify that if the only activity on account is the creditor's assessment of fees (such as start-up fees), the consumer is not considered to have accepted the account until the consumer is provided with a billing statement and makes a payment. 72 FR 32948, 33103, June 14, 2007. The June 2007 proposed clarification was intended to address concerns about some subprime card accounts that

assess a large number of fees at account opening. Consumers who have not made purchases or otherwise obtained credit on the account would have an opportunity to review their account-opening disclosures and decide whether to reject the account and decline to pay the fees.

Few comments were received on the June 2007 proposed interpretation regarding when a consumer is considered to have accepted an account. Consumer groups supported the proposal but urged the Board to require a disclosure on periodic statements that would inform consumers about their right to reject the plan and not pay fees agreed to prior to receiving account-opening disclosures. An industry commenter also supported the proposal but suggested the Board provide a safe harbor for considering the account as accepted, such as 30 days after a consumer received a new credit card and account-opening disclosures.

The Board proposes additional clarifications to ease compliance and to address further the concerns raised in the June 2007 Proposal. Comment 5(b)(1)–1, renumbered as comment 5(b)(1)(i)–1 in the June 2007 Proposal, addresses a creditor's general duty to provide account-opening disclosures "before the first transaction." The comment is reorganized for clarity to provide existing examples of "first transactions."

The Board further clarifies consumers' right not to pay fees that were assessed or agreed to be paid before the consumer received account-opening disclosures, if a consumer rejects a plan after receiving the disclosures, as stated in § 226.5(b)(1)(iv) of the June 2007 Proposal. Currently and under the June 2007 Proposal, creditors may collect or obtain the consumer's agreement to pay "membership fees" before providing account-opening disclosures if the consumer may reject the plan after receiving the disclosures, but the term "membership fee" is not defined. The Board proposes in revised § 226.5(b)(1)(iv) and new comment 5(b)(1)(iv)–1 that "membership fee" has the same meaning as fees for issuance or availability of a credit or charge card under § 226.5a(b)(2), for consistency and ease of compliance. Such fees include annual or other periodic fees, or "start-up" fees such as account-opening fees. 72 FR 32948, 33046, 33108, June 14, 2007.

Comment 5(b)(1)–1, renumbered as comment 5(b)(1)(i)–1 in the June 2007 Proposal, currently provides that home equity lines of credit (HELOCs) are not subject to the prohibition on the payment of fees other than application

or refundable membership fees before account-opening disclosures are provided. See § 226.5b(h) regarding limitations on the collection of fees. This existing guidance is moved to revised § 226.5(b)(1)(iv) and a new comment 5(b)(1)(iv)–4 for clarity.

Also, under revised § 226.5(b)(1)(iv), the Board proposes to clarify that if a consumer rejects an open-end (not home-secured) plan as permitted under that provision (i.e., if the creditor collects or obtains the consumer's agreement to pay "membership fees" before providing account-opening disclosures), consumers are not obligated to pay any membership fee, or any other fee or charge (other than an application fee that is charged to all applicants whether or not they receive the credit). The revision is intended to remove ambiguity that if a consumer rejects a plan under § 226.5(b)(1)(iv), the consumer could nevertheless be obligated for fees or charges (including interest on unpaid fee balances) other than a "membership fee" or certain application fees.

Comments 5(b)(1)(iv)–2 and –3 are proposed to provide guidance on when a consumer is considered to have rejected the plan. Comment 5(b)(1)(iv)–2 provides guidance currently in comment 5(b)(1)–1, renumbered as comment 5(b)(1)(i)–1 in the June 2007 Proposal, that a consumer who has received account-opening disclosures and uses the account or makes a payment on the account after receiving a billing statement is deemed not to have rejected the plan. The Board proposes to provide a safe harbor: A creditor may deem the plan to be rejected if, 60 days after the creditor mailed the account-opening disclosures, the consumer has not used the account or made a payment on the account. The Board requests comment on whether another time period would be more appropriate.

New comment 5(b)(1)(iv)–3 provides guidance currently in comment 5(b)(1)–1, renumbered as comment 5(b)(1)(i)–1 in the June 2007 Proposal, regarding when a consumer is considered to have "used" the account. The Board proposes to add that a consumer is not considered to use an account when, for example, a consumer receives a credit card in the mail and calls to activate the card for security purposes. This is added in response to requests for Board staff to provide guidance on the issue. The Board also proposes additional guidance about the assessment of creditors' fees, as a further response to concerns raised in the June 2007 Proposal. The comment would clarify that a consumer does not "use" an account when the creditor

assesses fees (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures) to the account. Similarly, the consumer does not "use" an account when, for example, a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances.

As discussed in the section-by-section analysis to § 226.6(b)(4)(vii), the Board also proposes a disclosure requirement for creditors that require substantial fees at account opening and leave consumers with a limited amount of available credit. Those creditors would be required to provide a notice of the consumer's right to reject the plan and not pay fees unless the consumer uses the account or pays the fees. The proposed revision to the timing rules in § 226.5(b)(1)(iv) regarding the collection of fees prior to the delivery of account-opening disclosures would apply to all open-end (not home-secured) plans, although the Board believes the impact of the proposal would primarily affect some subprime credit card issuers. The Board solicits comment on the appropriate scope.

#### *Section 226.5a Credit and Charge Card Applications and Solicitations*

TILA Section 127(c), implemented by § 226.5a, requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.<sup>3</sup> 15 U.S.C. 1637(c). The format and content requirements differ for cost disclosures in card applications or solicitations, depending on whether the applications or solicitations are given through direct mail, provided electronically, provided orally, or made available to the general public such as in "take-one" applications and in catalogs or magazines. Disclosures in applications and solicitations provided by direct mail or electronically must be presented in a table. For oral applications and solicitations, certain cost disclosures must be provided orally, except that issuers in some cases are allowed to provide the disclosures later in a written form. Applications and solicitations made available to the general public, such as in a take-one application, must contain one of the

<sup>3</sup> Charge cards are a type of credit card for which full payment is typically expected upon receipt of the billing statement. To ease discussion, this memorandum will refer simply to "credit cards."

following: (1) The same disclosures as for direct mail presented in a table; (2) a narrative description of how finance charges and other charges are assessed, or (3) a statement that costs are involved, along with a toll-free telephone number to call for further information.<sup>4</sup>

#### 5a(b) Required Disclosures

##### 5a(b)(1) Annual Percentage Rate

Currently, § 226.5a(b)(1), which implements TILA Section 127(c)(1)(A)(i)(I), requires issuers to disclose each APR that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer. Comment 5a(b)(1)–7 requires that if a rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose the increased penalty rate that may apply and the specific event or events that may result in the increased rate. The specific event or events must be described outside the table with an asterisk or other means to direct the consumer to the additional information. Comment 5a(b)(1)–7 also specifies that an issuer need not disclose an increased rate that would be imposed if credit privileges are permanently terminated.

In the June 2007 Proposal, the Board proposed a number of changes to how penalty rates are disclosed in the table to enhance consumers' awareness of these rates and the specific event or events that may result in the increase of rates. See proposed § 226.5a(b)(1)(iv) and new comment 5a(b)(1)–4 (previously comment 5a(b)(1)–7). 72 FR 32948, 33046, June 14, 2007. For example, the Board proposed to require card issuers to briefly disclose in the table the specific event or events that may result in the penalty rate. In addition, the Board proposed that the penalty rate and the specific events that cause the penalty rate to be imposed must be disclosed in the same row of the table. See proposed Model Form G–10(A), 72 FR 32948, 33069, June 14, 2007. The Board proposed to retain the current provision that an issuer need not disclose an increased rate that would be imposed if credit privileges are permanently terminated, but proposed to move this provision from

current comment 5a(b)(1)–7 to proposed § 226.5a(b)(1)(iv).

In response to the June 2007 Proposal, some consumer groups requested that the Board delete the statement that the card issuer need not disclose the increased rate that would be imposed if credit privileges are permanently terminated. They viewed this provision as inconsistent with the Board's other efforts to ensure that consumers are aware of penalty rates. They believed card issuers should be required to disclose this information in the table if the rate is different than the penalty rate that otherwise applies.

The Board proposes to delete the current provision that an issuer need not disclose an increased rate that would be imposed if credit privileges are permanently terminated. The provision may be unnecessary. The Board is not aware of any issuers that are imposing an increased rate when credit privileges are permanently terminated that is different from the penalty rate. Moreover, the Board agrees that to the extent an issuer is charging a different rate when credit is permanently terminated than the penalty rate, this different rate should be disclosed along with the penalty rate.

Elsewhere in today's **Federal Register** the Board proposes under Regulation AA that card issuers making firm offers of credit and offering a range of APRs or credit limits must also disclose clearly and conspicuously that if the consumer is approved for the credit, the APR and credit limit on the account will depend on the specific criteria bearing on creditworthiness. Model language is proposed that issuers may use to comply with the requirements. Under the June 2007 Proposal, card issuers offering APRs that will depend on a later determination of the consumer's creditworthiness must disclose in the table provided with applications or solicitations, within prescribed format requirements, either specific rates or a range of rates, and a statement that the rate for which the consumer may qualify at account opening depends on the creditor's creditworthiness. 72 FR 32948, 33045, 33046, June 14, 2007. If the approach under Regulation AA is adopted as proposed, appropriate conforming changes will be made to ensure consistency among the regulatory requirements and to facilitate compliance when the Board adopts revisions to the Regulation Z rules for open-end (not home-secured) credit.

##### 5a(b)(3) Minimum Finance Charge

Currently, § 226.5a(b)(3), which implements TILA Section 127(c)(1)(A)(ii)(II), requires that card

issuers must disclose any minimum or fixed finance charge that could be imposed during a billing cycle. Card issuers typically impose a minimum charge (e.g., \$.50) in lieu of interest in those months where a consumer would otherwise incur an interest charge that is less than the minimum charge (a so-called "minimum interest charge"). In response to the December 2004 ANPR, one industry commenter suggested that the Board no longer require that the minimum finance charge be disclosed in the table because these fees are typically small and consumers do not shop on them. Another industry commenter suggested that the Board only require that the minimum finance charge be included in the table if the charge is a significant amount. On the other hand, some consumer groups urged the Board to continue to include the minimum finance charge in the table because this charge can have a significant effect on the cost of credit.

In the June 2007 Proposal, the Board proposed to retain the minimum finance charge disclosure in the table. Although minimum charges currently may be small, the Board was concerned that card issuers may increase these charges in the future. Also, the Board noted that it was aware of at least one credit card product for which no APR is charged, but each month a fixed charge is imposed based on the outstanding balance (for example, \$6 charge per \$1,000 balance). If the minimum finance charge disclosure was eliminated from the table, card issuers that offer this type of pricing would no longer be required to disclose the fixed charge in the table. The Board also did not propose to require the minimum finance charge only if it is a significant amount. The Board was concerned that this approach could undercut the uniformity of the table, and could be misleading to consumers. The Board also proposed to amend § 226.5a(b)(3) to require card issuers to disclose in the table a brief description of the minimum finance charge, to give consumers context for when this charge will be imposed. 72 FR 32948, 33046, June 14, 2007.

In response to the June 2007 Proposal, several industry commenters again recommended that the Board delete this disclosure from the table unless the minimum finance charge is over a certain nominal amount. They indicated that in most cases, the minimum interest charge is so small as to be irrelevant to consumers. They believed that it should only be in the table if the minimum finance charge is a significant amount. Also, they believed that the purpose of the summary table is to highlight the most relevant terms that

<sup>4</sup>In the June 2007 Proposal, the Board proposed revising the rule applicable to take-ones to delete the option to satisfy the provisions of § 226.5a by including a narrative description of how finance charge and other charges are assessed. See proposed § 226.5a(e), 72 FR 32948, 33048, June 14, 2007.



consumers use in evaluating credit card applications. They suggested that it is unlikely that consumers would choose a card based on a minimal charge. Also, they believed that the retention of an irrelevant fee clutters the summary table, detracting from other more important terms. One commenter recommended that minimum interest charges under \$2.00 should be excluded from disclosure in the table, and another commenter recommended a cut off of \$1.00. Consumer groups agreed with the Board's proposal to require the disclosure of the minimum interest charge in all cases and not to allow issuers to exclude the minimum interest charge from the table if the charge was under a certain specific amount.

The Board proposes to revise proposed § 226.5a(b)(3) to provide that an issuer must disclose in the table any minimum or fixed finance charge in excess of \$1.00 that could be imposed during a billing cycle and a brief description of the charge, pursuant to its authority under TILA Section 127(c)(5). 15 U.S.C. 1637(c)(5). The \$1.00 amount would be adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on the June 1 of previous years equals or exceeds \$1.00. See proposed comment 5a(b)(3)–2. This approach in adjusting the dollar amount that triggers the disclosure of a minimum or fixed finance charge is similar to TILA's rules for adjusting a dollar amount of fees that trigger additional protections for certain home-secured loans. TILA 103(aa), 15 U.S.C. 1602(aa). At the issuer's option, the issuer may disclose in the table any minimum or fixed finance charge below the threshold. This flexibility is intended to facilitate compliance when adjustments are made to the dollar threshold. For example, if an issuer has disclosed a \$1.50 minimum finance charge in its application and solicitation table at the time the threshold is increased to \$2.00, the issuer could continue to use forms with the minimum finance charge disclosed, even though the issuer would no longer be required to do so.

The Board recognizes that most issuers currently charge a minimum interest charge of \$1.00 or less. In consumer testing conducted by the Board in March 2008, participants were asked to compare disclosure tables for two credit card accounts and decide which account they would choose. In one of the disclosure tables, a small minimum interest charge was disclosed. In the other disclosure table, no minimum interest charge was disclosed. None of the participants indicated that

they would choose the account where no minimum interest charge was disclosed because of this fact. Thus, the Board agrees that when the minimum interest charge is a *de minimis* amount (*i.e.*, \$1.00 or less, as adjusted for inflation), disclosure of the minimum interest charge is not information that consumers will use to shop for a card. The rule would continue to require disclosure in the table if the minimum interest charge is over this *de minimis* amount to ensure that consumers are aware of significant minimum interest charges that might impact them. The Board requests comment on whether \$1.00 is the appropriate initial threshold amount.

#### 5a(b)(4) Transaction Charges

Section 226.5a(b)(4), which implements TILA Section 127(c)(1)(A)(ii)(III), requires that card issuers disclose any transaction charge imposed on purchases. In the June 2007 Proposal, the Board proposed to amend § 226.5a(b)(4) to explicitly exclude from the table fees charged for transactions in a foreign currency or that take place in a foreign country. 72 FR 32948, 33046, June 14, 2007. In an effort to streamline the contents of the table, the Board proposed to highlight only those fees that may be important for a significant number of consumers. In consumer testing for the Board, participants did not tend to mention foreign transaction fees as important fees they use to shop. In addition, there are few consumers who may pay these fees with any frequency. Thus, the Board proposed to except foreign transaction fees from disclosure of transaction fees. The Board proposed to *include* foreign transaction fees in the account-opening summary table that is required under proposed § 226.6(b)(4), so that interested consumers can learn of the fees before using the card.

In response to the June 2007 Proposal, some consumer groups recommended that the Board require foreign transaction fees in the table required under § 226.5a. They questioned the utility of the Board requiring foreign transaction fees in the account-opening table required under § 226.6, but prohibiting those fees to be disclosed in the table under § 226.5a. They believed that consumers as well as the industry would be better served by eliminating the few differences between the disclosures required at the two stages. In addition, one industry commenter recommended that the table required under § 226.5a include foreign transaction fees. This commenter believed that the foreign transaction fee is relevant to any consumer who travels

in other countries, and the ability to choose a credit card based on the presence of the fee is important. In addition, the commenter noted that the large amount of press attention that the issue has received suggests that the presence or absence of the fee is now of interest to a significant number of consumers.

The Board proposes to require that foreign transaction fees must be disclosed in the table required under § 226.5a. Specifically, the Board proposes to withdraw proposed § 226.5a(b)(4)(ii) that would have prevented a card issuer from disclosing a foreign transaction fee in the table required by § 226.5a. In addition, the Board proposes to add comment 5a(b)(4)–2 to indicate that foreign transaction fees charged by the card issuer are considered transaction charges for the use of a card for purchases, and thus must be disclosed in the table required under § 226.5a. The Board is concerned about the inconsistency in requiring foreign transaction fees in the account-opening table required by § 226.6, but prohibiting that fee in the table required by § 226.5a. In the June 2007 Proposal, the Board proposed that issuers may substitute the account-opening table for the table required by § 226.5a. See proposed comment 5a–2, 72 FR 32948, 33105, June 14, 2007. The Board is concerned about those cases where one issuer substitutes the account-opening table for the table required under § 226.5a (and thus is required to disclose the foreign transaction fee) but another issuer provides the table required under § 226.5a (and thus is prohibited from disclosing the foreign transaction fee). If a consumer was comparing the disclosures for these two offers, it may appear to the consumer that the issuer providing the account-opening table charges a foreign transaction fee and the issuer providing the table required under § 226.5a does not, even though the second issuer may charge the same or higher foreign transaction fee than the first issuer. Thus, to promote uniformity, the Board proposes to require issuers to disclose the foreign transaction fee in both the account-opening table required by § 226.6 and the table required by § 226.5a. See proposed comment 5a(b)(4)–2. The Board also proposes that foreign transaction fees would be disclosed in the table required by § 226.5a similar to how those fees are disclosed in the proposed account-opening tables published in the June 2007 Proposal. See Model Forms and Samples G–17(A), (B) and (C) 72 FR



32948, 33074, 33075, 33076, June 14, 2007.

#### 5a(b)(5) Grace Period

Currently, § 226.5a(b)(5), which implements TILA Section 127(c)(A)(iii)(I), requires that card issuers disclose in the table required by § 226.5a, the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. Section 226.5a(a)(2)(ii), which implements TILA Section 122(c)(2)(C), requires credit card applications and solicitation under § 226.5a to use the term “grace period” to describe the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. 15 U.S.C. 1632(c)(2)(C). In the June 2007 Proposal, the Board proposed new § 226.5(a)(2)(iii) to extend this requirement to use the term “grace period” to all references to such a term for the disclosures required to be in the form of a table, such as the account-opening table. 72 FR 32948, 33044, June 14, 2007.

In response to the June 2007 Proposal, one industry commenter recommended that the Board no longer mandate the use of the term “grace period” in the table. Although TILA specifically requires use of the term “grace period,” this commenter urged the Board to use its exception authority to choose a term that is more understandable to consumers. This commenter pointed out that research conducted by the Board, by the GAO and by that commenter demonstrated that the term is confusing as a descriptor of the interest-free period between the purchase and the due date for customers who pay their balances in full. This commenter suggested that the Board revise the disclosure of the grace period in the table to use the heading “interest-free period” instead of “grace period.”

As discussed in the section-by-section analysis to § 226.5(a)(2), the Board proposes to use its exemption authority to delete the requirement to use the term “grace period” in the table required by § 226.5a. 15 U.S.C. §§ 1604(a) and (f) and 1637(c)(5). As the Board discussed in the June 2007 Proposal, consumer testing conducted for the Board prior to that proposal indicated that some participants misunderstood the word “grace period” to mean the time after the payment due date that an issuer may give the consumer to pay the bill without charging a late-payment fee. The GAO in its Report on Credit Card Rates and Fees found similar misunderstandings by consumers in its consumer testing. Furthermore, many

participants in the GAO testing incorrectly indicated that the grace period was the period of time promotional interest rates applied. Nonetheless, in consumer testing conducted for the Board prior to the June 2007 Proposal, the Board found that participants tended to understand the term grace period more clearly when additional context was added, such as describing that if the consumer paid the bill in full each month, the consumer would have some period of time (e.g., 25 days) to pay the new purchase balance in full to avoid interest. Thus, the Board proposed to retain the term “grace period.”

As discussed above, in response to the June 2007 Proposal, one commenter performed its own testing with consumers on the grace period disclosure proposed by the Board. This commenter found that the term “grace period” was still confusing to the consumers it tested, even with the additional context given in the grace period disclosure proposed by the Board. The commenter found that consumers understood the term “interest-free period” to more accurately describe the interest-free period between the purchase and the due date for customers who pay their balances in full.

In consumer testing conducted by the Board prior to issuing the June 2007 Proposal, the Board tested the phrase “interest-free period.” The Board found that some consumers believed the phrase “interest-free period” referred to the period of time that a 0% introductory rate would be in effect, instead of the grace period. In consumer testing conducted by the Board in March 2008, the Board tested disclosure tables for a credit card solicitation that used the phrase “How to Avoid Paying Interest on Purchases” as the heading for the row containing the information on the grace period. Participants in this testing generally seemed to understand this phrase to describe the grace period. In addition, in the March 2008 consumer testing, the Board also tested the phrase “Paying Interest” in the context of a disclosure relating to a check that accesses a credit card account, where a grace period was not offered on this access check. Specifically, the phrase “Paying Interest” was used as the heading for the row containing information that no grace period was offered on the access check. Likewise, participants seemed to understand this phrase to mean that no grace period was being offered on the use of the access check. Thus, the Board proposes to revise proposed § 226.5a(b)(5) to require that issuers use

the phrase “How to Avoid Paying Interest on Purchases,” or a substantially similar phrase, as the heading for the row describing the grace period. If no grace period on purchases is offered, when an issuer is disclosing this fact in the table, the issuer must use the phrase “Paying Interest,” or a substantially similar phrase, as the heading for the row describing that no grace period is offered.

As discussed above, § 226.5a(b)(5) requires that card issuers disclose in the table required by § 226.5a, the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. Comment 5a(b)(5)–1 provides that a card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read “30 days” or “30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date).”

In the June 2007 Proposal, the Board proposed to amend § 226.5a(b)(5) to require card issuers to disclose briefly any conditions on the applicability of the grace period. 15 U.S.C. 1637(c)(5). 72 FR 32948, 33046, June 14, 2007. The Board also proposed to amend comment 5a(b)(5)–1 to provide guidance for how issuers may meet the requirements in proposed § 226.5a(b)(5). Specifically, proposed comment 5a(b)(5)–1 provided that an issuer that conditions the grace period on the consumer paying his or her balance in full by the due date each month, or on the consumer paying the previous balance in full by the due date the prior month will be deemed to meet requirements in disclosing the grace period by providing the following disclosure: “If you pay your entire balance in full each month, you have [at least] \_\_\_ days after the close of each period to pay your balance on purchases without being charged interest.” 72 FR 32948, 33109, June 14, 2007.

In response to the June 2007 Proposal, several commenters suggested that the Board revise the model language provided in proposed comment 5a(b)(5)–1 to describe the grace period. One commenter suggested the following language: “Your due date is [at least] 25 days after your bill is totaled each month. If you don’t pay your bill in full by your due date, you will be charged interest on the remaining balance.” Other commenters also recommended that the Board revise the disclosure of the grace period to make clearer that the consumer must pay the total balance in full each month by the due date to avoid

paying interest on purchases. In addition, some consumer groups commented that if the issuer does not provide a grace period, the Board should mandate specific language that draws the consumer's attention to this fact.

In the March 2008 consumer testing, the Board tested the following language to describe a grace period: "Your due date is [at least] \_\_\_\_ days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance (excluding promotional balances) by the due date each month." Participants that read this language appeared to understand it correctly. Thus, the Board proposes to amend comment 5a(b)(5)-1 to provide this language as guidance to issuers on how to disclose a grace period. The Board notes that currently issuers typically require consumers to pay their entire balance in full each month to qualify for a grace period on purchases. Nonetheless, the Board proposes elsewhere in today's **Federal Register** to prohibit most issuers from requiring consumers to pay off promotional balances in order to receive any grace period offered on purchases. Thus, consistent with this proposed prohibition, the language in proposed comment 5a(b)(5)-1 indicates that the entire balance (excluding promotional balances) must be paid each month to avoid interest charges on purchases.

Also, in the March 2008 consumer testing, the Board tested language to describe that no grace period was being offered. Specifically, in the context of testing a disclosure related to an access check where a grace period was not offered on this access check, the Board tested the following language: "We will begin charging interest on these check transactions on the transaction date." Most participants that read this language understood there was no way to avoid paying interest on this check transaction, and therefore, that no grace period was being offered on this check transaction. Thus, the Board proposes to add comment 5a(b)(5)-2 to provide guidance on how to disclose the fact that no grace period on purchases is offered on the account. Specifically, proposed comment 5a(b)(5)-2 would provide that issuers may use the following language to describe that no grace period on purchases is offered, as applicable: "We will begin charging interest on purchases on the transaction date."

#### 5a(b)(6) Balance Computation Method

TILA Section 127(c)(1)(A)(iv) calls for the Board to name not more than five of the most common balance computation

methods used by credit card issuers to calculate the balance on which finance charges are computed. 15 U.S.C. 1637(c)(1)(A)(iv). If issuers use one of the balance computation methods named by the Board, § 226.5a(b)(6) requires that issuers must disclose the name of that balance computation method in the table as part of the disclosures required by § 226.5a, and issuers are not required to provide a description of the balance computation method. If the issuer uses a balance computation method that is not named by the Board, the issuer must disclose a detailed explanation of the balance computation method. *See* current § 226.5a(b)(6); § 226.5a(a)(2)(i). In the June 2007 Proposal, the Board proposed to retain a brief reference to the balance computation method, but move the disclosure from the table to directly below the table. *See* June 2007 proposed § 226.5a(a)(2)(iii), 72 FR 32948, 33045, June 14, 2007.

Currently, the Board in § 226.5a(g) has named four balance computation methods: (1) Average daily balance (including new purchases) or (excluding new purchases); (2) two-cycle average daily balance (including new purchases) or (excluding new purchases); (3) adjusted balance; and (4) previous balance. In the June 2007 Proposal, the Board proposed to retain these four balance computation methods.

Elsewhere in today's **Federal Register**, the Board proposes to prohibit some issuers from using a balance computation method commonly referred to as the "two-cycle" balance method. Nonetheless, the Board does not propose deleting the two-cycle average daily balance method from the list in § 226.5(g) because the prohibition, if adopted, would not apply to all issuers, such as state chartered credit unions that are not subject to National Credit Union Association rules.

#### 5a(b)(15) Payment Allocation

Some credit card issuers will allocate payments in excess of the minimum payment first to balances that are subject to the lowest APR. For example, if a cardholder made purchases using a credit card account and then initiated a balance transfer, the card issuer might allocate a payment (less than the amount of the balances) to the transferred balance portion of the account if that balance was subject to a lower APR than the purchases. Card issuers often will offer a discounted initial rate on balance transfers (such as 0 percent for an introductory period) with a credit card solicitation, but not offer the same discounted rate for purchases. In addition, the Board is

aware of at least one issuer that offers the same discounted initial rate for balance transfers and purchases for a specified period of time, where the discounted rate for balance transfers (but not the discounted rate for purchases) may be extended until the balance transfer is paid off if the consumer makes a certain number of purchases each billing cycle. At the same time, issuers typically offer a grace period for purchases if a consumer pays his or her bill in full each month. Card issuers, however, do not typically offer a grace period on balance transfers or cash advances. Thus, on the offers described above, a consumer cannot take advantage of both the grace period on purchases and the discounted rate on balance transfers. The only way for a consumer to avoid paying interest on purchases—and thus have the benefit of the grace period—is to pay off the entire balance, including the balance transfer subject to the discounted rate.

In the consumer testing conducted for the Board prior to the June 2007 Proposal, many participants did not understand that they could not take advantage of the grace period on purchases and the discounted rate on balance transfers at the same time. Model forms were tested that included a disclosure notice attempting to explain this to consumers. Nonetheless, testing showed that a significant percentage of participants still did not fully understand how payment allocation can affect their interest charges, even after reading the disclosure tested. In the supplementary information accompanying the June 2007 Proposal, the Board indicated its plans to conduct further testing of the disclosure to determine whether the disclosure can be improved to more effectively communicate to consumers how payment allocation can affect their interest charges.

In the June 2007 Proposal, the Board proposed to add § 226.5a(b)(15) to require card issuers to explain payment allocation to consumers. Specifically, the Board proposed that issuers explain how payment allocation would affect consumers, if an initial discounted rate was offered on balance transfers or cash advances but not purchases. The Board proposed that issuers must disclose to consumers that (1) the initial discounted rate applies only to balance transfers or cash advances, as applicable, and not to purchases; (2) that payments will be allocated to the balance transfer or cash advance balance, as applicable, before being allocated to any purchase balance during the time the discounted initial rate is in effect; and (3) that the consumer will incur interest on the

purchase balance until the entire balance is paid, including the transferred balance or cash advance balance, as applicable. 72 FR 32948, 33047, June 14, 2007.

In response to the June 2007 Proposal, several commenters recommended the Board test a simplified payment allocation disclosure that covers cases other than low rate balance transfers offered with a credit card. In consumer testing conducted for the Board in March 2008, the Board tested the following payment allocation disclosure: "Payments may be applied to balances with lower APRs first. If you have balances at higher APRs, you may pay more in interest because these balances cannot be paid off until all lower-APR balances are paid in full (including balance transfers you make at the introductory rate)." Some participants understood from prior experience that issuers typically will apply payments to lower APR balances first and the fact that this method causes them to incur higher interest charges. For those participants that did not know about payment allocation methods from prior experience, the disclosure tested was not effective in explaining payment allocation to them.

Elsewhere in today's **Federal Register**, the Board proposes substantive provisions on how issuers may allocate payments. To the extent these substantive provisions are adopted, the Board would withdraw its proposal to require a card issuer to explain payment allocation to consumers in the table.

#### 5a(b)(16) Available Credit

Elsewhere in today's **Federal Register**, the Board proposes under Regulation AA to address concerns regarding subprime credit cards by prohibiting institutions from financing security deposits and fees for credit availability (such as account-opening fees or membership fees) if those charges would exceed 50 percent of the credit limit during the first twelve months and from collecting at account opening fees that are 25 percent or more of the credit limit. Under the June 2007 Proposal, card issuers that require fees or a security deposit to issue a card that are 25 percent or more of the minimum credit limit offered on the account must offer an example in the table provided with applications and solicitations of the amount of available credit the consumer would have after paying the fees or security deposit, assuming the creditor receives the minimum credit limit. 72 FR 32948, 33047, June 14, 2007. If the approach under Regulation AA is adopted as proposed, appropriate revisions will be made to ensure

consistency among the regulatory requirements and to facilitate compliance when the Board adopts revisions to the Regulation Z rules for open-end (not home-secured) credit.

#### 5a(d) Telephone Applications and Solicitations

##### 5a(d)(1) Oral Disclosure

Section 226.5a(d) specifies rules for providing cost disclosures in oral applications and solicitations initiated by a card issuer. Pursuant to TILA 127(c)(2), card issuers generally must provide certain cost disclosures during the oral conversation in which the application or solicitation is given. Alternatively, an issuer is not required to give the oral disclosures if the card issuer either does not impose a fee for the issuance or availability of a credit card (as described in § 226.5a(b)(2)) or does not impose such a fee unless the consumer uses the card, provided that the card issuer provides the disclosures later in a written form. 15 U.S.C. 1637(c)(2).

Currently, under § 226.5a(d)(1), if the issuer provides the oral disclosures, the issuer must provide information required to be disclosed under § 226.5a(b)(1) through § 226.5a(b)(7). This includes information about (1) APRs; (2) fees for issuance or availability of credit; (3) minimum interest charges; (4) transaction charges for purchases; (5) grace period on purchases; (6) balance computation method; and (7) as applicable, a statement that charges incurred by use of the charge card are due when the periodic statement is received.

In the June 2007 Proposal, the Board did not propose to revise § 226.5a(d)(1). In response to the June 2007 Proposal, some consumer groups suggested that the Board revise § 226.5a(d)(1) to require issuers that are marketing credit cards by telephone, to disclose additional information to consumers at the time of the phone call, such as the cash advance fee, the late payment fee, the over-limit fee, the balance transfer fee, information about penalty rates, any fees for required insurance, or the disclosure about available credit in proposed § 226.5a(b)(16). 72 FR 32948, 33047, June 14, 2007.

The Board proposes to amend § 226.5a(d)(1) to require that if an issuer provides the oral disclosures, the issuer must also disclose orally the information about available credit in proposed § 226.5a(b)(16) if required to do so, pursuant to its authority under TILA Section 127(c)(5). 15 U.S.C. 1637(c)(5). Proposed § 226.5a(b)(16) provides that if (1) a card issuer imposes

required fees for the issuance or availability of credit, or a security deposit, that will be charged against the card when the account is opened, and (2) the total of those fees and/or security deposit equal 25 percent or more of the minimum credit limit applicable to the card, the card issuer must disclose in the table an example of the amount of the available credit that a consumer would have remaining after these required fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit offered on the relevant account. The issuer also must disclose the available credit remaining after including any optional fees for issuance or availability of credit that may be debited to the account.

Currently, issuers that provide the oral disclosures must inform consumers about the fees for issuance and availability of credit that are applicable to the card. The Board believes that the information about available credit would complement this disclosure, by disclosing to consumers the impact of these fees on the available credit. The Board does not propose to require issuers to provide orally other fees applicable to the account, such as the cash advance fee, the late payment fee, the over-limit fee, the balance transfer fee or fees for required insurance. The Board is concerned that providing this information in oral conversations about credit cards would lead to information overload for consumers. The Board notes that issuers providing oral disclosures currently would be required to provide information about the penalty rate to consumers because this information is required to be disclosed pursuant to § 226.5a(b)(1).

#### Section 226.6 Account-Opening Disclosures

TILA Section 127(a), implemented in § 226.6, requires creditors to provide information about key credit terms before an open-end plan is opened, such as rates and fees that may be assessed on the account. Consumers' rights and responsibilities in the case of unauthorized use or billing disputes are also explained. 15 U.S.C. 1637(a). See also Model Forms G-2 and G-3 in Appendix G.

*Descriptions of balance computation methods.* Creditors are required, under § 226.6(a)(1)(iii) and § 226.6(b)(2)(i)(D) of the June 2007 Proposal, to explain the method used to determine the balance upon which rates are applied. 72 FR 32948, 33049, June 14, 2007. Model Clauses that explain commonly used methods, such as the average daily balance method, are at Appendix G-1.

The Model Clauses at Appendix G–1 were republished without change in the June 2007 Proposal. 72 FR 32948, 33066, June 14, 2007. The Board requested comment on whether model clauses for methods such as the “previous balance” or “adjusted balance” method should be eliminated because they are no longer used. Few commenters addressed the issue. Commenters recommended retaining the existing clauses, and two commenters asked the Board to add a model clause explaining the daily balance method. The Board proposes to add a new paragraph (f) to describe a daily balance method in G–1 and in a new G–1A. In addition, a new Appendix G–1A is proposed for open-end (not home-secured) plans. The clauses in G–1A refer to “interest charges” rather than “finance charges” to explain balance computation methods. The Board’s consumer testing prior to the June 2007 Proposal indicated that consumers generally had a better understanding of “interest charge” than “finance charge,” which is reflected in the Board’s use of “interest” (rather than “finance charge”) in proposed Account-opening Samples and to describe costs other than fees on periodic statements. See proposed Samples G–17(B) and G–17(C) and § 226.7(b)(6)(iii). 72 FR 32948, 33075, 33076, and 33052, June 14, 2007. Comment App. G–1 is revised to clarify that for HELOCs subject to § 226.5b, creditors may properly use the model clauses in either Appendix G–1 or G–1A. References throughout the regulation and commentary to Model Clauses in G–1 will be updated to reflect the addition of G–1A when the Board adopts revisions to the rules for open-end credit (not home-secured) plans.

#### 6(b)(2) Rules Relating to Rates for Open-End (Not Home-Secured) Plans

The June 2007 Proposal sets forth in § 226.6(b)(2) rules related to disclosing rates for open-end (not home-secured) plans. 72 FR 32948, 33049, June 14, 2007. Creditors must disclose information about any rates that initially apply, and about rates that may apply after the initial rate ends. Under current rules, comment 6(a)(2)–11 provides that creditors need not disclose increased rates that may apply if credit privileges are permanently terminated. That rule was retained in the June 2007 Proposal, but was moved to § 226.6(b)(4)(ii)(C) and comment 6(b)(2)(iii)–2.iii., to be consistent with § 226.5a(b)(1)(iv) in the June 2007 Proposal. 72 FR 32948, 33050, 33115, June 14, 2007. As discussed in the section-by-section analysis to § 226.5a(b)(1), the Board proposes to eliminate that exception;

accordingly, the references to increased rates upon permanently terminated credit privileges in § 226.6(b)(4)(ii)(C) and in paragraph iii. to comment 6(b)(2)(iii)–2 are removed in this May 2008 Proposal.

#### 6(b)(4) Tabular Format Requirements for Open-End (Not Home-Secured) Plans

In June 2007, the Board proposed in § 226.6(b)(4) to introduce format requirements for account-opening disclosures for open-end (not home-secured) plans. The proposed summary of account-opening disclosures is based on the format and content requirements for the tabular disclosures provided with direct mail applications for credit and charge cards under § 226.5a, as it would be revised under the June 2007 Proposal. Proposed forms under G–17 in Appendix G illustrate the account-opening tables. 72 FR 32948, 33049, 33074, 33075, 33076, June 14, 2007.

#### *Lines of credit without credit cards.*

The June 2007 Proposal to require a tabular summary of key terms to be provided before an account is opened applies to all open-end loan products, except HELOCs. This would include products such as credit card accounts, traditional overdraft credit plans, personal lines of credit, and revolving plans offered by retailers without a credit card.

Some industry commenters asked the Board to limit any new disclosure rules to credit card accounts. They acknowledged that credit card accounts typically have complex terms, and a tabular summary is an effective way to present key disclosures. In contrast, these commenters noted that other open-end (not home-secured) products such as personal lines of credit or overdraft plans have very few of the cost terms required to be disclosed. Alternatively, if the Board continued to apply the new requirements to open-end plans other than HELOCs, commenters asked that the Board consider publishing model forms to ease compliance.

The Board continues to believe that even for non-credit card accounts the benefit to consumers from receiving a concise summary of rates and important fees appears to outweigh the costs, such as developing the new disclosures and revising them as needed. To ease compliance and address commenters’ concerns, the Board is publishing proposed Sample G–17(D) for open-end plans such as lines of credit or overdraft plans.

#### 6(b)(4)(iii) Fees

#### 6(b)(4)(iii)(D) Minimum Finance Charge

TILA Section 127(a)(3), which is currently implemented in § 226.6(a)(4), requires creditors to disclose in account-opening disclosures the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge. 15 U.S.C. 1637(a)(3). In the June 2007 Proposal, the Board required creditors to disclose in account-opening disclosures the amount of any finance charges in § 226.6(b)(1)(A), and further required creditors to disclose any minimum finance charge in the account-opening table in § 226.6(b)(4)(iii)(D). 72 FR 32948, 33049, 33050, June 14, 2007.

In this May 2008 Proposal, the Board would require card issuers to disclose in the table provided with applications or solicitations minimum or fixed finance charges in excess of \$1 that could be imposed during a billing cycle (along with a formula for adjusting the threshold over time) and a brief description of the charge, for the reasons discussed in the section-by-section analysis to § 226.5a(b)(3). At the card issuer’s option, the card issuer may disclose in the table any minimum or fixed finance charge below the threshold. The Board proposes the same disclosure requirements to apply to the account-opening table for the same reasons. Section 226.6(b)(4)(iii)(D) would be revised and new comments 6(b)(4)(iii)–1 and –2 would be added, accordingly. As noted in the section-by-section analysis to § 226.5a(b)(4), under the June 2007 Proposal, card issuers may substitute the account-opening table for the table required by § 226.5a. Conforming the minimum finance charge disclosure requirement for the two tables promotes consistency and uniformity.

Under proposed § 226.5(b)(1)(ii) of the June 2007 Proposal, charges that are imposed as part of the plan may be provided at any time before the consumer agrees to pay or becomes obligated to pay for the charge, pursuant to the disclosure timing requirements of § 226.5(b)(1)(ii). 72 FR 32948, 33044, June 14, 2007. Creditors may provide disclosures of these charges in writing but creditors are not required to do so. 72 FR 32948, 33043, June 14, 2007. See section-by-section analysis to § 226.5(a)(1) above. If creditors are required to disclose in the account-opening table minimum finance charges in excess of \$1, minimum or fixed finance charges of \$1 or less would no longer be required to be disclosed in writing at account-opening. The Board believes creditors will continue to do so, to meet the timing requirement to

disclose the fee before the consumer becomes obligated for the charge. And creditors that choose to charge more than \$1 would be required to include the cost in the account-opening table.

#### 6(b)(4)(iv) Grace Period

Under TILA, creditors providing disclosures with applications and solicitations must discuss grace periods on purchases; at account opening, creditors must explain grace periods more generally. 15 U.S.C. 1637(c)(1)(A)(iii); 15 U.S.C. 1637(a)(1). Section 226.6(b)(4)(iv) in the June 2007 Proposal required creditors to state for all balances on the account, whether or not a period exists in which consumers may avoid the imposition of finance charges, and if so, the length of the period. 72 FR 32948, 33050, June 14, 2007. As discussed in the section-by-section analysis to § 226.5(a)(2) and to § 226.5a(b)(5), the Board is revising provisions relating to the description of grace periods. Section § 226.6(b)(4)(iv) is revised and comment 6(b)(4)(iv)-1 is added, consistent with the proposed revisions to § 226.5a(b)(5) and commentary. A reference to required use of the phrase “grace period” in comment 6(b)(4)-3 of the June 2007 Proposal is withdrawn. 72 FR 32948, 33115, June 14, 2007.

#### 6(b)(4)(vi) Payment Allocation

Section 226.6(b)(4)(vi) of the June 2007 Proposal required creditors to disclose in the account-opening tabular summary, if applicable, the information regarding how payments will be allocated if the consumer transfers balances at a low rate and then makes purchases on the account. 72 FR 32948, 33050, June 14, 2007. The payment allocation disclosure requirements proposed for the account-opening table mirror the proposed requirements in § 226.5a(b)(15) to be provided in the table given at application or solicitation. 72 FR 32948, 33047, June 14, 2007. Elsewhere in today’s **Federal Register**, the Board proposes limitations on how creditors may allocate payments on outstanding credit card balances. For the reasons discussed in the section-by-section analysis to § 226.5a(b)(15), the Board would withdraw proposed § 226.6(b)(4)(vi) to the extent the substantive rule is adopted.

#### 6(b)(4)(vii) Available Credit

The Board proposed in June 2007 a disclosure targeted at subprime card accounts that assess substantial fees at account opening and leave consumers with a limited amount of available credit. Proposed § 226.6(b)(4)(vii) applied to creditors that require fees for

the availability or issuance of credit, or a security deposit, that equals 25 percent or more of the minimum credit limit offered on the account. If that threshold is met, card issuers must disclose in the table an example of the amount of available credit the consumer would have after the fees or security deposit are debited to the account, assuming the consumer receives the minimum credit limit. 72 FR 32948, 33050, June 14, 2007. The account-opening disclosures regarding available credit are also required for credit and charge card applications or solicitations. See proposed § 226.5a(b)(16), 72 FR 32948, 33047, June 14, 2007.

The Board proposes an additional disclosure to inform consumers about their right to reject a plan when fees have been charged and the consumer receives account-opening disclosures but has not used the account or paid a fee after receiving a billing statement (other than an application fee that is charged to all consumers who apply for the account whether or not they are accepted for the credit). Creditors must provide consumers with notice about the right to reject the plan in such circumstances. The Board believes that tailoring the disclosure to impact creditors offering subprime credit card accounts is appropriately narrow, but seeks comment on the scope of the proposed disclosure. The Board proposes a new comment 6(b)(4)(vii)-1 to provide creditors with model language to comply with the disclosure requirement, and conforming changes would be made to account-opening model forms and samples, if the revision to § 226.6(b)(4)(vii) is adopted.

As discussed in the section-by-section analysis to § 226.5a(b)(16), elsewhere in today’s **Federal Register**, the Board proposes rules under Regulation AA regarding card issuers’ ability to finance certain fee amounts, and when start-up fees may be collected during the first twelve months after the account is opened. If the approach under Regulation AA is adopted as proposed, appropriate revisions will be made to ensure consistency among the regulatory requirements and to facilitate compliance when the Board adopts revisions to the Regulation Z rules for open-end (not home-secured) credit.

#### Section 226.7 Periodic Statements

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

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

In the June 2007 Proposal, the Board added § 226.7(b)(11) to implement TILA amendments in the Bankruptcy Act that require creditors that charge a late-

payment fee to disclose on the periodic statement (1) the payment due date or, if different, the earliest date on which the late-payment fee may be charged, and (2) the amount of the late-payment fee. 15 U.S.C. 1637(b)(12). The Board also proposed to require that creditors disclose on the periodic statement any cut-off hour for receiving payments closely proximate to each reference of the due date, if the cut-off hour is before 5 p.m. on the due date. If the cut-off hours prior to 5 p.m. differ depending on the method of payment (such as by check or via the Internet), creditors would have been required to state the earliest time without specifying the method to which the cut-off hour applies, to avoid information overload. See proposed § 226.7(b)(11)(i)(B), § 226.7(b)(13). Under the June 2007 Proposal, cut-off hours of 5 p.m. or later could continue to be disclosed under the existing rule (including on the reverse side of periodic statements). 72 FR 32948, 33053, June 14, 2007.

Comments were divided on the proposed cut-off hour disclosure for periodic statements. Industry representatives that have a cut-off hour earlier than 5 p.m. for an infrequently used payment means expressed concern about consumer confusion if the more commonly used payment method is later than 5 p.m. Consumer groups urged the Board also to adopt a “postmark” date on which consumers could rely to demonstrate their payment was mailed sufficiently in advance for the payment to be timely received, or to eliminate cut-off hours altogether. Both consumer groups and industry representatives asked the Board to clarify what time zone by which the cut-off hour should be measured.

As discussed in the section-by-section analysis to § 226.10(b), the Board proposes that to comply with the requirement in § 226.10 to provide reasonable payment instructions, a creditor’s cut-off hour for receiving payments *by mail* can be no earlier than 5 p.m. in the location where the creditor has designated the payment to be sent. Comment is requested on whether there continues to be a need for creditors to disclose cut-off hours before 5 p.m. for payments made by telephone or electronically.

#### Section 226.9 Subsequent Disclosure Requirements

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

Section 226.9(b) currently requires certain disclosures when a creditor adds a credit device or feature to an existing

open-end plan. When a creditor adds a credit feature or delivers a credit device to the consumer within 30 days of mailing or delivering the account-opening disclosures under current § 226.6(a), and the device or feature is subject to the same finance charge terms previously disclosed, the creditor is not required to provide additional disclosures. If the credit feature or credit device is added more than 30 days after mailing or delivering the account-opening disclosures, and is subject to the same finance charge terms previously disclosed in the account-opening agreement, the creditor must disclose that the feature or device is for use in obtaining credit under the terms previously disclosed. However, if the added credit device or feature has finance charge terms that differ from the disclosures previously given at account opening, then disclosure of the differing terms must be given before the consumer uses the new feature or device.

The June 2007 Proposal addressed disclosures that must be provided with checks that access credit card accounts (that are not home-secured). A new § 226.9(b)(3) would require certain information to be disclosed each time that such checks are mailed to a consumer, for checks mailed more than 30 days following the delivery of the account-opening disclosures. Specifically, the June 2007 Proposal would require that the following key terms be disclosed on the front of the page containing the checks: (1) Any discounted initial rate, and when that rate will expire, if applicable; (2) the type of rate that will apply to the checks after expiration of any discounted initial rate (such as whether the purchase or cash advance rate applies) and the applicable APR; (3) any transaction fees applicable to the checks; and (4) whether a grace period applies to the checks, and if one does not apply, a statement that interest will be charged immediately. Proposed § 226.9(b)(3) would require that these key terms be disclosed in a tabular format substantially similar to Sample G–19 in Appendix G. 72 FR 32948, 33056, 33082, June 14, 2007.

The Board proposes to add a disclosure to the summary table required by § 226.9(b)(3) in the June 2007 Proposal, pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). The additional disclosure is set forth in proposed § 226.9(b)(3)(C) and would require additional information regarding the expiration date of any offer of a discounted initial rate. If a discounted initial rate applies to the checks, the creditor would be required

to disclose any date by which the consumer must use the checks in order to receive the discounted initial rate. If the creditor will honor the checks if they are used after the disclosed date but will apply to the advance an APR other than the discounted initial rate, the creditor must disclose that fact and the type of APR that will apply under those circumstances.

The Board believes that it is important that consumers receive clear disclosures regarding the expiration date of any offer of a promotional rate that would be applicable to checks that access a credit card account. This disclosure is particularly important if the creditor will honor the checks, but at a higher interest rate, after the expiration date of the promotional rate offer. A consumer who is unaware of the expiration date for the offer of a promotional rate may use the check with the expectation of receiving the promotional rate, only to later discover, after he or she is contractually bound on the advance, that the check was subject to a higher interest rate than expected. This disclosure is designed to enable a consumer to better evaluate what the cost of using the check will be, and to make an informed decision whether to use the check or an alternative source of credit.

In consumer testing conducted for the Board in March 2008, the Board tested a disclosure of the date by which a consumer must use checks that access a credit card account in order to qualify for a discounted initial rate offer. This disclosure was labeled “Use by Date” and stated “You must use this check by 4/1/08 for the promotional APR to apply. If you use the check after that date, we may still honor the check but you will not receive the promotional APR. Instead, the standard APR for Cash Advances will apply.” The responses given by testing participants indicated that they generally did not understand prior to the testing that there may be a use-by date applicable to an offer of a promotional rate for a check that accesses a credit card account. However, the participants that read the tested language understood that the standard cash advance rate, not the promotional rate, would apply if the check was used after April 1, 2008. Thus, the Board believes that this disclosure may improve consumer understanding of the terms applicable to these checks. In addition to proposed § 226.9(b)(3)(C), the Board also proposes a corresponding change to Sample G–19 to include the language that was tested in March 2008.

#### Paragraph 9(b)(3)(E)

Section 226.9(b)(3)(D) in the June 2007 Proposal required creditors offering access checks to disclose, among other information, whether or not a period exists in which consumers may avoid the imposition of finance charges and, if so, the length of the period. 72 FR 32948, 33056, June 14, 2007. As discussed in the section-by-section analysis to § 226.5(a)(2), § 226.5a(b)(5) and § 226.6(b)(4)(iv), the Board is revising provisions relating to the description of grace periods. Section 226.9(b)(3)(E), as renumbered in the May 2008 Proposal, is revised and comment 9(b)(3)(E)–1 is added, consistent with the proposed revisions to § 226.5a(b)(5) and § 226.6(b)(4)(iv) and related commentary. The Board also proposes to revise Sample G–19 for conformity with the proposed revisions.

Finally, the Board also is deleting from § 226.9(b)(3)(A), as proposed in June 2007, the requirement that a creditor use the term “introductory” or “intro” in immediate proximity to the listing of the discounted initial rate for checks that access a credit card account. This change is proposed for consistency with proposed revisions to § 226.16(e)(2), which is discussed in more detail in the section-by-section analysis below and creates a new definition of “promotional rate” to be used to describe offers of discounted initial interest rates that are made in connection with existing accounts. The Board is aware that checks that access a credit card account are provided to consumers that already have an existing credit card account, so the term “promotional rate” may be a more appropriate term than “introductory rate” for describing any discounted initial rate applicable to such checks. Sample G–19 is revised accordingly.

#### 9(c) Change in Terms

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

##### 9(c)(2)(ii) Charges Not Covered by § 226.6(b)(4)

In the June 2007 Proposal, the Board proposed § 226.9(c)(2)(ii), which stated that if a creditor increases a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(1) but not covered by § 226.6(b)(4), the creditor may provide notice to the consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge, and may provide the notice orally or in writing. 72 FR 32948, 33056, June 14, 2007. The Board proposes to amend comment 9(c)(2)(ii)–1 to reflect the permissibility of electronic notice and to clarify (by a cross-reference to

comment 5(a)(1)(ii)(A)–1 that electronic notice may be provided without regard to the notice and consent requirements of the E-Sign Act when a consumer requests a service in electronic form.

#### 9(c)(2)(iii) Disclosure Requirements

As discussed elsewhere in today's **Federal Register**, subject to certain exceptions, the Board proposes to prohibit increasing the APR applicable to balances outstanding at the end of the fourteenth day after a notice disclosing the change in the APR is provided to the consumer. A creditor would, however, be permitted to apply a rate increase to such outstanding balances when the rate increase is due to: the operation of an index or formula; the expiration of a promotional rate; the loss of a promotional rate due to one or more events specified in the account agreement, provided that the bank increases the rate to the rate that would have applied after expiration of the promotional rate; or the consumer's failure to make the required minimum periodic payment within 30 days from the due date for that payment.

For consistency with the proposed substantive restrictions regarding the application of increased APRs to pre-existing balances, the Board proposes a new § 226.9(c)(2)(iii)(A)(7) to clarify that a creditor that provides a change in terms notice in connection with an increase in an APR must disclose the balances to which the increased rate will be applied, pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). If the creditor is subject to restrictions on rate increases to existing balances proposed elsewhere in today's **Federal Register** or other applicable law, the creditor would also identify the balances to which the current rate will continue to apply.

The Board believes that it is important for consumers to be clearly notified when the current rate, rather than the increased rate, will continue to apply to balances already outstanding on their accounts. This disclosure could assist consumers to make better-informed decisions regarding usage of their accounts. For example, if a consumer erroneously believed that a rate increase would be applicable to the outstanding balance on the account, that consumer might seek an alternative source of credit with which to pay off the outstanding balance, even if the cost of such alternative credit may be higher than the rate that is in fact applicable to such balance.

The Board proposes to revise Sample G–20 in Appendix G in order to include a disclosure that would comply with the new proposed requirement. Comment

9(c)(2)(iii)(A)–8, which discusses the content of Sample G–20, is revised accordingly.

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

In the June 2007 Proposal, the Board proposed to add a new section 226.9(g), which would require that a creditor provide a consumer with 45 days' advance notice when a rate is increased due to the consumer's delinquency or default, or if a rate is increased as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit. 72 FR 32948, 33058, June 14, 2007. As discussed elsewhere in today's **Federal Register**, the Board also proposes to prohibit the application of a penalty rate to balances that are outstanding at the end of the fourteenth day after a notice disclosing the change in the APR is provided to the consumer, except in the event that a consumer fails to make the required minimum periodic payment within 30 days from the due date for that payment.

The Board proposes to add new illustrations to comment 9(g)–1, to provide guidance on the impact of substantive protections regarding the application of increased APRs to pre-existing balances on the timing requirements of 45 days' advance notice before delinquency or default rates or penalty rates may be imposed.

The Board also proposes to revise § 226.9(g)(3)(i)(D) of the June 2007 Proposal, which required creditors to disclose the balances to which a delinquency or default rate or penalty rate would be applied, and a new § 226.9(g)(3)(i)(E), for conformity with the proposed substantive restriction regarding increased APRs on pre-existing balances. Section 9(g)(3)(i)(D) would be revised to require creditors subject to the proposed substantive restrictions to disclose how balances may be affected if the consumer fails to make the required minimum periodic payment within 30 days from the due date for that payment. New § 226.9(g)(3)(i)(E) would require a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment. Conforming changes are also made to Sample G–21 in Appendix G.

#### Section 226.10 Prompt Crediting of Payments

Section 226.10, which implements TILA Section 164, generally requires a

creditor to credit to a consumer's account a payment that conforms to the creditor's instructions (also known as a conforming payment) as of the date of receipt, except when a delay in crediting the account will not result in a finance or other charge. 15 U.S.C. 1666c; § 226.10(a). Section 226.10 also requires a creditor that accepts a non-conforming payment to credit the payment within five days of receipt. See § 226.10(b). The Board has previously interpreted § 226.10 to permit creditors to specify cut-off times indicating the time when a payment is due, provided that the requirements for making payments are reasonable, to allow most consumers to make conforming payments without difficulty. See comments 10(b)–1 and –2. Pursuant to § 226.10(b) and comment 10(b)–1, if a creditor imposes a cut-off time, it currently must be disclosed on the periodic statement; many creditors put the cut-off time on the back of statements.

#### 10(b) Specific Requirements for Payments

*Reasonable requirements for cut-off times.* In the June 2007 Proposal, the Board sought to address concerns that cut-off times may effectively result in a due date that is one day earlier in practice than the due date disclosed. The Board did not propose to require a minimum cut-off time. Rather, the Board proposed a disclosure-based approach, which would have created a new § 226.7(b)(11) to require that for open-end (not home-secured) plans, creditors must disclose the earliest of their cut-off times for payments in close proximity to the due date on the front page of the periodic statement, if that earliest cut-off time is before 5 p.m. on the due date. In recognition of the fact that creditors may have different cut-off times depending on the type of payment (e.g., mail, Internet, or telephone), the Board's proposal would have required that creditors disclose only the earliest cut-off time, if earlier than 5 p.m. on the due date. 72 FR 32948, 33053, 33054, June 14, 2007.

Although some consumers supported the proposed cut-off time disclosure, other consumers and consumer groups thought that the proposed disclosure would provide only a minimal benefit to consumers. These commenters recommended that the Board consider other approaches to more effectively address cut-off times. Consumer groups recommended that the Board adopt a postmark rule, under which the timeliness of a consumer's payment would be evaluated based on the date on which the payment was postmarked.



Some consumers commented that cut-off times are unfair and should be abolished, while other consumers suggested that the Board establish minimum cut-off times, for example, 4:00 p.m. in the time zone in which the billing center is located.

Industry commenters expressed concern that the proposed disclosure would prove confusing to consumers. They noted that many creditors vary their cut-off times by payment channel and that disclosure of only the earliest cut-off hour would be inaccurate and misleading. They suggested that, if the Board retains this requirement, a creditor should be permitted to identify to which payment method the cut-off time relates, disclose the cut-off hours for all payment channels, or to disclose the cut-off hour for the payment method used by the consumer, if known. Industry commenters also asked that the Board relax the location requirement for the cut-off time disclosure on the periodic statement.

Both consumer groups and industry commenters urged the Board to clarify which time zone should be considered when determining if the cut-off time is prior to 5 p.m.

In light of feedback received on the June 2007 Proposal, the Board proposes to address cut-off times for mailed payments by providing guidance as to the types of requirements that would be reasonable for creditors to impose for payment received by mail. In part, the Board proposed to move guidance currently contained in the commentary to the regulation. Currently, comment 10(b)-1 provides examples of specific payment requirements creditors may impose, and comment 10(b)-2 states that payment requirements must be reasonable, in particular that it should not be difficult for most consumers to make conforming payments. The Board proposes to move the substance of comments 10(b)-1 and 10(b)-2 to §§ 226.10(b)(1) and (2) of the regulation. Under the May 2008 Proposal, § 226.10(b)(1) would state the general rule, namely that a creditor may specify reasonable requirements that enable most consumers to make conforming payments. The Board would expand upon the example in current comment 10(b)-1(i)(B) in new § 226.10(b)(2)(ii), which would state that it would not be reasonable for a creditor to set a cut-off time for payments by mail that is earlier than 5 p.m. at the location specified by the creditor for receipt of such payments.

The language in current comment 10(b)-2 stating that it should not be difficult for most consumers to make conforming payments would not be

included in the proposed regulatory text. The Board believes that this language is unnecessary and that in substance is duplicative of the requirement that any payment requirements be reasonable and enable most consumers to make conforming payments.

The Board believes that it is important that the requirements that a creditor sets for payments be reasonable, so that most consumers will be able to make payments that conform with those requirements. If the creditor's requirements make it unduly burdensome for a consumer to make a conforming payment, then a consumer may become subject to the fees and other penalties associated with late payments, without having a reasonable opportunity to avoid those adverse consequences. With regard to cut-off times, any cut-off time specified by a creditor on the due date for payments should afford consumers a reasonable opportunity to make payment on that date.

At the same time, the Board is mindful of the burden that specifying a particular cut-off time or times by regulation could have on creditors. Each creditor may have different internal processes and systems, and may work with different vendors and service providers, so a one-size-fits-all approach may not be feasible. As a result, while the proposed regulation would contain one example of an unreasonable cut-off time for payments made by mail, it would not impose a single cut-off time on all creditors for all methods of payment. The Board requests comment on the operational burden that the proposed rule would impose on creditors.

The Board has not proposed a postmark rule as suggested by consumer group commenters. In part, this is because the Board proposes elsewhere in today's **Federal Register** a rule that would require a creditor to provide consumers with a reasonable time to make payments. The Board believes this substantive protection effectively addresses the concerns expressed by consumer groups regarding insufficient time to make payments. The Board also believes that it would be difficult for consumers to retain proof of when their payments were postmarked, in order to challenge the prompt crediting of payments under such a rule. A consumer generally is not given proof of the postmark date at the time that he or she mails a payment; to effectively retain evidence of the postmark date, a consumer would in many cases need to pay extra postage charges in order to receive a proof of mailing. In addition,

a mailed payment may not have a legible postmark date when it reaches the creditor or creditor's service provider. Finally, the Board believes there would be significant operational costs and burdens associated with capturing and recording the postmark dates for payments.

Under the June 2007 Proposal, § 226.10(b) contained a cross-reference to § 226.7(b)(11), regarding the disclosure of cut-off hours on periodic statements. In the section-by-section analysis to § 226.7(b)(11), the Board solicits comment on whether disclosure of cut-off hours near the due date for payment methods other than mail (e.g., telephone or internet) should be retained. If the Board adopts revisions to § 226.7 that do not require disclosure of any cut-off hour closely proximate to the due date, the proposed cross-reference would be withdrawn.

June 2007 proposed revisions to comment 10(b)-2, regarding payments made via a creditor's Web site, remain unchanged.

#### 10(d) Crediting of Payments When Creditor Does Not Receive or Accept Payments on Due Date

*Holiday and weekend due dates.* The Board's June 2007 Proposal did not address the practice of setting due dates on dates on which a creditor does not accept payments, such as weekends or holidays. A weekend or holiday due date might occur, for example, if a creditor sets its payment due date on the same day (the 25th, for example) of each month. While in most months the 25th would fall on a business day, in other months the 25th might be a weekend day or holiday, due to fluctuations in the calendar. However, the Board received a number of comments from consumer groups, individual consumers, and a United States Senator criticizing weekend or holiday due dates. The comment letters expressed concern that a consumer whose due date falls on a date on which the creditor does not accept payments must pay one or several days early in order to avoid the imposition of fees or other penalties that are associated with a late payment. Comment letters from consumers indicated that, for many consumers, weekend and holiday due dates are a common occurrence. Some of these commenters suggested that the Board mandate an automatic grace period until the next business day for any such weekend or holiday due dates. Other commenters recommended that the Board prohibit weekend or holiday due dates.

In response to these comments, the Board proposes a new § 226.10(d) that

would require a creditor to treat a payment received by mail the next business day as timely, if the due date for the payment is a day on which the creditor does not receive or accept payment by mail, such a day on which the U.S. Postal Service does not deliver mail. Thus, a consumer whose due date falls on a Sunday on which a creditor does not accept payment by mail would not be subject to late payment fees or increases in the interest rate applicable to the account due to late payment if the consumer's payment were received by mail on the next day that the creditor does accept payment by mail. The Board proposes this rule using its authority to regulate the prompt posting of payments under TILA section 164, which states that "[p]ayments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board." 15 U.S.C. 1666c.

The Board acknowledges that this proposal may require creditors to modify their systems to ensure that payment due dates do not fall on dates when they do not receive mail or to backdate payments or waive fees and interest, which would impose some degree of burden on creditors. The Board solicits comment on the extent of the burden associated with any system modification that would be required to comply with the proposed rule.

The proposed rule in § 226.10(d) would be limited to payments made by mail. The Board is particularly concerned about payments by mail because the consumer's time to pay, as a practical matter, is the most limited for those payments, since a consumer paying by mail must account for the time that it takes the payment to reach the creditor. The Board solicits comment as to whether this rule also should address payments made by other means, such as telephone payments or payments made via the internet.

The Board notes that it also received a large number of comment letters from consumers who expressed concern more generally that the amount of time consumers are given to pay their bills is continually decreasing. The Board believes that its proposal under Regulation Z regarding weekend or holiday due dates will complement the Board's proposal to require banks to provide a consumer with a reasonable amount of time to make payments.

### *Section 226.12 Special Credit Card Provisions*

#### 12(a) Issuance of Credit Card

TILA Section 132, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. 15 U.S.C. 1642.

The Board has been asked over the years to provide guidance on actions card issuers may take to "substitute" on an unsolicited basis a new card for an accepted credit card. *See* Comment 12(a)(2)-2. For example, the Board has provided guidance that card issuers may, on an unsolicited basis, substitute a new card that reflects a change in the card issuer's name, or that can be used to access new account features such as when the card originally accepted could be used only for purchases and the creditor substitutes a new card that can also be used to obtain cash advances.

The Board has also provided guidance on limitations on an issuer's ability to issue a new card as a substitute for an accepted card. For example, if the originally accepted card is honored only at Merchant A, the issuer cannot substitute a new card that is honored only at Merchant B. To be a permissible substitution in this example, the new card must continue to be honored by Merchant A, even though the card may also be used at Merchant B or other merchants. Card issuers rely on this interpretation to substitute on an unsolicited basis a general-purpose bank card that is honored at many merchants for a card originally honored by a single merchant.

Over the years, consumers have expressed their confusion, and in some cases frustration, when they receive on an unsolicited basis a new general-purpose card (which may be honored at multiple merchants) that is sent in substitution for a card originally honored by a single merchant. They express concern about potential identity theft when cards are sent out without warning or notice, and frustration about the issuer's unilateral decision to change fundamentally the potential uses of the card from that originally requested.

The June 2007 Proposal did not propose changes to the Board's current guidance on issuing credit cards in renewal of or substitution for an accepted credit card. Consumer groups urged the Board to limit the ability of card issuers to issue on an unsolicited

basis a new card for an accepted card, for example, if the credit features differ greatly or if the accepted card has not been used for an extended period of time. Industry commenters, on the other hand, generally supported the Board's proposal to retain the existing guidance on permissible renewals and substitutions.

The Board has become aware of issuances in which general-purpose cards were sent on an unsolicited basis as a substitute for the merchant card where the accounts for the originally accepted card had not been active with the merchant for a long period of time. This practice is permitted under current rules. Some consumers who responded to the June 2007 Proposal urged the Board to limit issuers' ability to send cards without consent or warning in these circumstances, due to concerns of cardholder security and identity theft.

The Board proposes a narrow response to address concerns about the unsolicited issuance of new cards for accepted cards on accounts that have been inactive for a long period of time. Under the proposed revision to comment 12(a)(2)-2.v., a card issuer that proposes to change the merchant base that will honor the card, such as from a card that is honored by a single merchant to a general-purpose card, may not properly substitute the new card for the accepted card without a specific request or application if the account has been inactive for a 24 month period preceding the issuance of the substitute card. Changing the merchant base to enable the card holder to use an accepted card at a new affiliate of the merchant is not affected by the proposal. Under the proposal, an account is considered inactive if no credit has been extended and the account has no outstanding balance. *See* proposed § 226.11(b)(2), which implements TILA amendments in the Bankruptcy Act affecting accounts that are "inactive" for three consecutive months. 72 FR 32948, 33058, June 14, 2007. The Board requests comment on whether a longer time period, such as 36 months, would be more appropriate.

The proposal would not affect the renewal or substitution of cards by the original card issuer when, for example, a consumer opens a credit card account with a merchant to take advantage of a discounted purchase price or a low introductory rate, and does not use the card for a number of years. In that case, the issuer could send a new card on an unsolicited basis in renewal of or substitution for the originally accepted card, even if the new card could be used to obtain additional credit features with the retailer. Nor does the proposal limit

creditors' ability to send a general-purpose card in place of an inactive retail card if the consumer specifically requests or applies for the general-purpose card. The proposal would, however, address consumers' confusion when a card issued by a creditor with whom the consumer may have no previous relationship arrives in the mail on an unsolicited basis, as a substitute for a retail card account the consumer has not used in some time.

#### 12(b) Liability of Cardholder for Unauthorized Use

TILA and Regulation Z provide protections to consumers against losses due to unauthorized transactions on open-end plans. See TILA Section 133; 15 U.S.C. 1643, § 226.12(b); TILA Section 161(b)(1); 15 U.S.C. 1666(b)(1), § 226.13(a)(1). Comment 12(b)-2 and -3 address a card issuer's rights and responsibilities in responding to a claim of unauthorized use under § 226.12. Comment 12(b)-2 clarifies that a card issuer is not required to impose any liability. Comment 12(b)-3 clarifies that the card issuer wishing to impose liability must investigate claims in a reasonable manner and provides guidance on conducting an investigation of a claim. As discussed in the section-by-section analysis to § 226.13(f), which requires creditors to conduct a reasonable investigation of an allegation of a billing error, the Board proposes to include guidance currently provided in the context of a claim of unauthorized transactions under § 226.12(b) in proposed comment 13(f)-3.

Comment 12(b)-3 provides that a card issuer may reasonably request the consumer's cooperation. A card issuer may not, however, automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request. The Board proposes to add, by way of example, that such requests would include any card issuer requirement that the consumer submit a signed statement or affidavit or file a police report. See 59 FR 64351, 64352, December 14, 1994; 60 FR 16771, 16774, April 3, 1995. The Board is concerned that such card issuer requests could cause a chilling effect on a consumer's ability to assert his or her right to avoid liability for an unauthorized transaction. However, if the card issuer otherwise has no knowledge of facts confirming the billing error, comment 12(b)-3 states that the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation.

#### Section 226.13 Billing Error Resolution

##### 13(f) Procedures if Different Billing Error or No Billing Error Occurred

Section 226.13(f) sets forth procedures for resolving billing error claims if the creditor determines that no error or a different error occurred. A creditor must first conduct a reasonable investigation before the creditor may deny a consumer's claim or conclude that the billing error occurred differently than as asserted by the consumer. See TILA Section 161(a)(3)(B)(ii); 15 U.S.C. 1666(a)(3)(B)(ii). Footnote 31 was proposed to be deleted as unnecessary, in light of the general obligation under § 226.13(f). The footnote provides that to resolve allegations of nondelivery of property or services, creditors must determine whether property or services were actually delivered, mailed, or sent as agreed. To resolve allegations of incorrect information on a periodic statement due to an incorrect report, creditors must determine that the information was correct. See § 226.13(f), footnote 31.

Consumer advocates urged the Board to retain the substance of footnote 31. They noted that the current guidance in footnote 31 requires issuers to take concrete steps for resolving claims of nondelivery such as obtaining delivery records or contacting merchants, to consumers' detriment. Without this guidance, advocates expressed concern that issuers would conduct more perfunctory investigations as, in their view, has been the case by some creditors applying the same "reasonable investigation" standard for investigations into allegations of errors on credit reports under the Fair Credit Reporting Act. 15 U.S.C. 1681 *et seq.* In light of the commenters' concerns, the Board proposes to reinstate the substance of footnote 31 in a new comment 13(f)-3.

TILA and Regulation Z provide protections to consumers against losses due to unauthorized transactions on open-end plans. See TILA Section 133; 15 U.S.C. 1643, § 226.12(b); TILA Section 161(b)(1); 15 U.S.C. 1666(b)(1), § 226.13(a)(1). In reviewing its guidance on conducting a reasonable investigation under § 226.13(f), the Board notes that card issuers have express guidance on conducting a reasonable investigation of a claim of unauthorized transaction under § 226.12(b) but there is no similar guidance for creditors under § 226.13. See comment 12(b)-3. To harmonize the standards under the two provisions and address inquiries Board staff has received over the years on this issue, the Board proposes to include applicable

guidance currently provided in the context of a claim of unauthorized transactions under § 226.12(b) in proposed comment 13(f)-3.

In contrast to comment 12(b)-3, which applies to the unauthorized use of a credit card, the corresponding guidance in comment 13(f)-3 would apply to all creditors offering an open-end plan. The comment would provide that in conducting an investigation of an allegation of a billing error, a creditor may reasonably request the consumer's cooperation. A creditor may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request. Consistent with the proposed revision to comment 12(b)-3, discussed in the section-by-section analysis to § 226.12(b), the proposed comment further states, by way of example, that such requests include any creditor requirement that the consumer submit a signed statement or affidavit or file a police report. See 59 FR 64351, 64352, December 14, 1994; 60 FR 16771, 16774, April 3, 1995. The Board is concerned that such creditor requests could cause a chilling effect on a consumer's ability to assert his or her billing error rights. However, consistent with the guidance in comment 12(b)-3, if the creditor otherwise has no knowledge of facts confirming the billing error, comment 13(f)-3 would provide that 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, as illustrated in the proposed comment.

#### Section 226.14 Determination of Annual Percentage Rate

TILA Section 127(b)(6) requires disclosure of an APR calculated as the quotient of the total finance charge for the period to which the charge relates divided by the amount on which the finance charge is based, multiplied by the number of periods in the year. 15 U.S.C. 1637(b)(6). This rate has come to be known as the "historical APR" or "effective APR." Section 226.14(c) contains the rules for determining the effective APR. Comment 14(c)-10 provides guidance on how to determine the effective APR when the finance charges imposed during the billing cycle relate to activity in a prior cycle, such as for adjustments relating to error resolution, when transactions occur late in a billing cycle and are impracticable to post until the following billing cycle, or when a consumer fails to pay a purchase balance under a deferred

interest feature by the payment due date and interest is imposed from the date of purchase.

In the June 2007 Proposal, the Board proposed two alternative approaches for disclosing an effective APR. 72 FR 32948, 33052, June 14, 2007. In discussing the proposal, the Board noted that there has been a longstanding controversy about the extent to which the effective APR disclosure requirement advances TILA's purposes to provide consumers with information about the cost of credit that helps consumers compare credit costs and make informed credit decisions, and to strengthen competition in the consumer credit markets, or undermines them. 15 U.S.C. 1601(a). The first alternative was designed to improve the disclosure and consumer understanding and reduce creditor uncertainty about the effective APR computation. The second approach would eliminate the requirement to disclose the effective APR. 72 FR 32948, 32998, 32999, June 14, 2007. Comments to the June 2007 were sharply divided on the matter.

Elsewhere in today's **Federal Register**, the Board proposes to prohibit banks from computing finance charges based on balances for days in billing cycles that precede the most recent billing cycle (so called two-cycle billing method). Interest adjustments due to error resolutions or in connection with deferred interest plans are not intended to be affected by the substantive ban. If, after additional consumer testing and analysis of the comments received, the Board determines to retain the effective APR disclosure requirement and the substantive prohibition on computing finance charges based on previous billing cycles is adopted, the Board will conform comment 14(c)-10 to the extent appropriate.

#### Section 226.16 Advertising

##### 16(e) Promotional Rates

In the June 2007 Proposal, the Board proposed to implement TILA Section 127(c)(6), as added by Section 1303(a) of the Bankruptcy Act, and TILA Section 127(c)(7), as added by Section 1304(a) of the Bankruptcy Act, in § 226.16(e). TILA Section 127(c)(6) requires that if a credit card issuer states an introductory rate in applications, solicitations, and all accompanying promotional materials, the issuer must use the term "introductory" clearly and conspicuously in immediate proximity to each mention of the introductory rate. 15 U.S.C. 1637(c)(6). In addition, TILA Section 127(c)(6) requires credit card issuers to disclose, in a prominent location closely proximate to the first

mention of the introductory rate, other than the listing of the rate in the table required for credit card applications and solicitations, the time period when the introductory rate expires and the rate that will apply after the introductory rate expires. TILA Section 127(c)(7) further applies these requirements to "any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service." 15 U.S.C. 1637(c)(7).

In implementing these sections of the Bankruptcy Act, the Board proposed in the June 2007 Proposal to expand the types of disclosures to which these rules would apply. See proposed § 226.5a(a)(2)(v), 72 FR 32948, 33045, June 14, 2007. The Board also proposed to extend these requirements for the presentation of introductory rates to other written or electronic advertisements for open-end credit plans that may not accompany an application or solicitation (other than advertisements of HELOCs subject to § 226.5b, which were addressed in the Board's proposed rule regarding new regulatory protections for consumers in the residential mortgage market, 73 FR 1672, 1721, January 9, 2008). 72 FR 32948, 33064, June 14, 2007.

Several industry commenters stated that the Board's proposed use of the term "introductory rate" and required use of the word "introductory" or "intro" was overly broad in some cases. In particular, industry commenters were critical of the use of these terms as applied to special rates offered to consumers with an existing account. These commenters noted that in the marketplace, the phrase "introductory rates" refers to promotional rates offered in connection with the opening of a new account. In contrast, special rates offered by card issuers to consumers with existing accounts are typically called "promotional rates." These commenters believed that consumers would be confused by the word "introductory" or "intro" associated with a special rate offered on a consumer's already-opened account.

In light of these concerns, the Board proposes to revise § 226.16(e)(2) as proposed in June 2007, to define separately "promotional" and "introductory" rates. For consistency, the Board proposes the same definition of promotional rates in connection with proposed substantive protections under the FTC Act, published elsewhere in today's **Federal Register**. As a result of these revisions, the requirement to state the term "introductory" under § 226.16(e)(3) of the June 2007 Proposal will be limited to promotional rates that

are considered "introductory rates" under the revised § 226.16(e)(2). Conforming revisions to § 226.16(e)(4) and to commentary provisions to § 226.16(e) are also proposed. If revisions to § 226.16(e)(2) are adopted as proposed, conforming changes will also be made throughout Regulation Z and associated commentary to be consistent with these new definitions when the Board adopts revisions to the Regulation Z rules for open-end (not home-secured) plans.

##### 16(e)(1) Scope

As discussed in the June 2007 Proposal, the Bankruptcy Act amendments regarding "introductory rates" apply to direct-mail applications and solicitations, and accompanying promotional materials, as well as Internet-based credit card solicitations. The Board proposed to extend these requirements not only to publicly available applications and solicitations to open a credit card account, and all accompanying materials, but also to electronic applications. See proposed § 226.5a(a)(2)(v), 72 FR 32948, 33045, June 14, 2007. In addition, in the interest of consistency and to promote the informed use of credit, the Board proposed to extend the requirements of § 226.16(e) to other written and electronic advertisements for open-end credit plans that may not accompany an application or solicitation, other than advertisements of HELOCs subject to § 226.5(b). 72 FR 32948, 33064, June 14, 2007.

The Board solicits comment on whether all or any of the information required under § 226.16(e) to be provided with the disclosure of a promotional rate would be helpful in advertisements that are not in written or electronic form such as in telephone, radio, or television advertisements. Furthermore, the current proposed guidance on complying with § 226.16(e) is directed towards written and electronic advertisements. If these requirements are extended to advertisements that are not in written or electronic form, additional guidance regarding how advertisers may comply with the requirements may be needed, for example, to apply proximity requirements in an oral context. Therefore, the Board also solicits comment on appropriate additional guidance if the requirements are extended to advertisements that are not in written or electronic form.

##### 16(e)(2) Definitions

In the June 2007 Proposal, the Board proposed to define the term "introductory rate" as any rate of

interest applicable to an open-end plan for an introductory period if that rate is less than the advertised APR that will apply at the end of the introductory period. 72 FR 32948, 33064, June 14, 2007. As discussed above, since this proposed definition for “introductory rate” would have encompassed special rates that may be offered to consumers with existing accounts, the Board proposes to modify the definition and to refer to these rates as “promotional rates.” A new definition for “introductory rate” is also proposed, which would define them as promotional rates that are offered in connection with the opening of an account.

Specifically, the Board would modify the June 2007 proposed definition of “introductory rate” for the new definition of “promotional rate” to apply more generally to any APR applicable to one or more balances or transactions on a consumer credit card account for a specified period of time that is lower than the APR that will be in effect at the end of that period. In addition to removing the reference to “introductory period,” the new proposed definition of “promotional rate” also recognizes that special rate offers may not apply to the entire account but may only apply to a specific balance or transaction. Furthermore, the new definition removes the term “advertised,” which commenters asserted would imply that the APR in effect after the introductory period had to have been “advertised” before the requirements under proposed §§ 226.16(e)(3) and (4) would have applied. This was not the Board’s intention. The Board’s proposed use of the term “advertised” in the definition was intended to refer to the advertising requirements regarding variable rates and the accuracy requirements for such rates. The Board will instead address these requirements in a new comment 16(e)–1.

New proposed comment 16(e)–1 provides that if a variable rate will apply at the end of the promotional period, the promotional rate must be compared to the APR that would have been advertised had such rate applied instead of the promotional rate. In direct-mail credit card applications and solicitations (and accompanying promotional materials), this rate is one that must have been in effect within 60 days before the date of mailing, as required under proposed § 226.5a(c)(2)(i) (and currently under § 226.5a(b)(1)(ii)). For variable-rate disclosures provided by electronic communication, this rate is one that was in effect within 30 days before mailing

the disclosures to a consumer’s electronic mail address, or within the last 30 days of making it available at another location such as a card issuer’s web site, as required under proposed § 226.5a(c)(2)(ii) (and currently under § 226.5a(b)(1)(iii)).

Elsewhere in today’s **Federal Register**, the Board proposes to establish rules regarding the allocation of payments on outstanding credit card balances, and proposes to define “promotional rate” as a part of the proposal. Consistent with the 2008 Regulation AA Proposal, the proposed definition under § 226.16(e) would also include any APR applicable to one or more transactions on a consumer credit card account that is lower than the APR that applies to other transactions of the same type. This definition is meant to capture “life of balance” offers where a special rate is offered on a particular balance for as long as any portion of that balance exists. A new proposed comment 16(e)–2 provides an illustrative example of a “life of balance” offer and is similar to a comment proposed in the 2008 Regulation AA Proposal. The new proposed comment 16(e)–2 will result in the renumbering of current proposed comments 16(e)–2 through 16(e)–5 under the June 2007 Proposal.

The Board also proposes a new definition for “introductory rate” to conform more closely to how the term is most commonly used. Proposed § 226.16(e)(2)(ii) would define “introductory rate” as a promotional rate that is offered in connection with the opening of an account.

Finally, the Board also proposes to define “promotional period” in § 226.16(e)(2)(iii). The definition is similar to one previously proposed for “introductory period” in the June 2007 Proposal, which in turn was consistent with the definition in TILA Section 127(c)(6)(D)(ii).

16(e)(3) Stating the Term “Introductory”

The Board proposed in the June 2007 Proposal to implement TILA Section 127(c)(6)(A), as added by section 1303(a) of the Bankruptcy Act, in § 226.16(e)(3). 72 FR 32948, 33064, June 14, 2007. TILA Section 127(c)(6)(A) requires the term “introductory” to be used in immediate proximity to each listing of the temporary APR in the application, solicitation, or promotional materials accompanying such application or solicitation. 15 U.S.C. 1637(c)(6)(A).

Section 226.16(e)(3) remains unchanged from the June 2007 Proposal. The Board notes, however, with the proposed revision to the definition of “introductory rate” in § 226.16(e)(2), as

discussed above, § 226.16(e)(3) would not apply to all promotional rates. Instead, only promotional rates offered in connection with the opening of an account (i.e., introductory rates) would be covered under § 226.16(e)(3). Proposed comment 16(e)–1 under the June 2007 Proposal has been deleted as unnecessary since the clarification is already included in the regulation.

16(e)(4) Stating the Promotional Period and Post-Promotional Rate

The Board proposed § 226.16(e)(4) in the June 2007 Proposal to implement TILA Section 127(c)(6)(A), as added by Section 1303(a) of the Bankruptcy Act. 72 FR 32948, 33064, June 14, 2007. TILA Section 127(c)(6)(A) requires that the time period in which the introductory period will end and the APR that will apply after the end of the introductory period be listed in a clear and conspicuous manner in a “prominent location closely proximate to the first listing” of the introductory APR (excluding disclosures in the application and solicitation table). 15 U.S.C. 1637(c)(6)(A).

As discussed above, the Board proposes changes to the definition of “introductory rate” in response to comments received on the June 2007 Proposal. In order to be consistent with the proposed changes to § 226.16(e)(2), the Board proposes to replace the term “introductory” with the term “promotional” in proposed § 226.16(e)(4). Furthermore, while the Board is broadening the types of rates covered under the term “promotional rates” to special life-of-balance-type offers under proposed § 226.16(e)(2)(i)(B), the Board recognizes that requiring disclosure of when the promotional rate will end and the post-promotional rate that will apply after the end of the promotional period would not make sense for these types of offers since the rate in effect for such offers last as long as the balance is in existence. Therefore, the Board proposes that the requirements of § 226.16(e)(4) apply only to promotional rates under § 226.16(e)(2)(i)(A). Similar changes are proposed for proposed comments 16(e)–4, 16(e)–5, and 16(e)–6 (previously proposed comments 16(e)–3, 16(e)–4, and 16(e)–5). 72 FR 32948, 33143, 33144, June 14, 2007.

16(h) Deferred Interest Offers

Many creditors offer deferred interest plans where consumers may avoid paying interest on purchases if the outstanding balance is paid in full by the end of the deferred interest period. If the outstanding balance is not paid in full when the deferred interest period

ends, these deferred interest plans often require the consumer to pay interest that has accrued during the deferred interest period. Moreover, these plans typically begin charging interest accrued from the date of purchase if the consumer defaults on the credit agreement. Some deferred interest plans define default under the card agreement to include failure to make a minimum payment during the deferred interest period while other plans do not. Advertisements often prominently disclose the possibility of financing the purchase of goods or services at no interest.

The Board proposes to use its authority under TILA Section 143(3) to add a new § 226.16(h) to address the Board's concern that the disclosures currently required under Regulation Z may not adequately inform consumers of the terms of deferred interest offers. 15 U.S.C. 1663(3). It is not clear that many of these types of offers would be covered under the requirements regarding promotional rates under proposed § 226.16(e), nor that such requirements would be particularly helpful to consumers in understanding deferred interest offers. Separately, the allocation of payments for deferred interest offers is addressed in the Board's Regulation AA Proposal published elsewhere in today's **Federal Register**.

The Board's proposed rules regarding deferred interest offers would incorporate many of the concepts currently proposed for promotional rates under § 226.16(e). Specifically, the Board proposes to require that the deferred interest period be disclosed in immediate proximity to each statement regarding interest or payments during the deferred interest period. The Board also proposes that certain information about the terms of the deferred interest offer be disclosed in close proximity to the first statement regarding interest or payments during the deferred interest period. These proposals are discussed in more detail below.

Conforming changes have been proposed for proposed comment 16(b)-4, which is current comment 16(b)-9. The Board also notes that guidance in comment 7(b)-1 as proposed in June 2007 (renumbered from current 7-3) refers to "deferred payment" transactions rather than "deferred interest" offers. 72 FR 32948, 33120, June 14, 2007. The Board will conform terminology when the revisions to the rules for open-end (not home-secured) plans are adopted.

#### 16(h)(1) Scope

Similar to the rules applicable to promotional rates under proposed § 226.16(e), the Board proposes that the rules related to deferred interest offers under proposed § 226.16(h) be applicable to all written and electronic advertisements, including accompanying promotional materials for direct mail applications or solicitations and accompanying promotional materials for publicly available applications or solicitations.

As discussed above in the section-by-section analysis to § 226.16(e)(1), the Board solicits comment on whether the proposed requirements relating to promotional rates should be extended to advertisements that are not in written or electronic form, such as telephone, radio, and television advertisements, and if so, what additional guidance would be appropriate. Similarly, the Board requests comment on whether the proposed requirements for deferred interest offers under § 226.16(h) should be applicable to advertisements that are not in written or electronic form, and if so, what additional guidance would be appropriate to help advertisers comply with these requirements.

#### 16(h)(2) Definitions

The Board proposes to define "deferred 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 does 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). This definition is similar to the definition proposed in the 2008 Regulation AA Proposal, published elsewhere in today's **Federal Register**. In proposed comment 16(h)-1, the Board notes that deferred interest offers do not include offers that allow a consumer to defer payments during a specified time period, but where the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. Furthermore, deferred interest offers do not include 0% APR offers where a consumer is not obligated under any circumstances for interest attributable to the time period the 0% APR was in effect, though such offers may be

considered promotional rates under proposed § 226.16(e)(2)(i).

Furthermore, the Board proposes to define the "deferred 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.

#### 16(h)(3) Stating the Deferred Interest Period

The Board proposes to add new § 226.16(h)(3) to require that the deferred interest period or the date by which the consumer must pay the balance or transaction in full to avoid finance charges on such balance or transaction be disclosed clearly and conspicuously in immediate proximity to each statement of "no interest," "no payments," or "deferred interest" or similar term regarding interest or payments during the deferred interest period. Proposed comment 16(h)-2 would provide guidance on the meaning of "immediate proximity" by providing a safe harbor similar to the one provided in comment 16(e)-3 of this May 2008 Proposal (renumbered from comment 16(e)-2 under the June 2007 Proposal). Therefore, under proposed comment 16(h)-2, if the deferred interest period is disclosed in the same phrase as each statement of "no interest," "no payments," or "deferred interest" or similar term regarding interest or payments during the deferred interest period (for example, "no interest for 12 months," "no payments until December 2008", or "12 months of deferred interest"), the deferred interest period or date will be deemed to be in immediate proximity to the statement. Furthermore, the Board proposes that these terms must be equally prominent in order to be considered "clear and conspicuous" and proposes to amend comment 16-2 to reflect this.

The proposal will better ensure clear disclosure of the time period in which the consumer has to pay the balance or transaction amount in order to avoid being charged interest by requiring both a proximity and prominence requirement for the disclosure of the deferred interest period or date. This information combined with the information that the Board proposes to require in § 226.16(h)(4), as discussed below, will help consumers to understand these offers when statements of "no interest," "no payments," or other similar terms are used in advertisements.

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

In order to ensure that consumers notice and fully understand certain terms related to a deferred interest offer, the Board proposes that certain disclosures be required in a prominent location closely proximate to the first listing of a statement of “no interest,” “no payments,” “deferred interest,” or a similar term regarding interest or payments during the deferred interest period. In particular, the Board proposes to require a statement that if the balance or transaction is not paid within the deferred interest period, interest will be charged from the date the consumer became obligated for the balance or transaction. The Board also proposes to require a statement that interest can also be charged from the date the consumer became obligated for the balance or transaction if the account is otherwise in default. If the minimum monthly payments on the account do not fully amortize the balance or transaction within the deferred interest period, the advertisement also must state that making only the minimum monthly payments will not pay off the balance or transaction in time to avoid interest charges. To facilitate compliance with this provision, the Board proposes model language in Sample G–22 in Appendix G.

While most advertisements of deferred interest offers describe the conditions required to take advantage of the offer, the conditions are often placed in a location that is not easily noticed or stated in terms that are not easily understood. The Board believes that by requiring this information to be in a prominent location closely proximate to the first listing of a statement of “no interest,” “no payments,” “deferred interest,” or a similar term regarding interest and payments under the deferred interest period, and by providing model language for this information, disclosure of this information will be more noticeable and understandable to consumers.

Under proposed § 226.16(e)(4), the promotional period and post-promotional rate must be in a prominent location closely proximate to the first listing of the promotional rate, in accordance with the requirements of TILA Section 127(c)(6), as added by Section 1303(a) of the Bankruptcy Act. In the June 2007 Proposal, the Board provided proposed guidance on the meaning of “prominent location closely proximate” and “first listing.” See proposed comment 16(e)–3 and 16(e)–4, 72 FR 32948, 33143, 33144, June 14, 2007, renumbered as 16(e)–4 and 16(e)–

5 in this May 2008 Proposal. To be consistent with the guidance proposed for these terms under § 226.16(e)(4), the Board also proposes similar guidance in comments 16(h)–3 and 16(h)–4. As a result, proposed comment 16(h)–3 would provide that the information required under proposed § 226.16(h)(4) that is in the same paragraph as the first listing of a statement of “no interest,” “no payments,” “deferred interest” or similar term regarding interest or payments during the deferred interest period would be deemed to be in a prominent location closely proximate to the statement. Similar to proposed comment 16(e)–4, information appearing in a footnote would not be deemed to be in a prominent location closely proximate to the statement.

Proposed comment 16(h)–4 further provides that the first listing of a statement of “no interest,” “no payments,” or deferred interest or similar term regarding interest or payments during the deferred 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. Consistent with proposed comment 16(e)–5 in this May 2008 Proposal (renumbered from comment 16e–4 under the June 2007 TILA Proposal), the comment borrows the concept of “principal promotional document” from the Federal Trade Commission’s definition of the term under the Fair Credit Reporting Act. 16 CFR 642.2(b). If one of these 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. The Board also proposes that the listing with the largest type size be a safe harbor for determining which listing is the most prominent. In the proposed comment, the Board also notes that consistent with comment 16(c)–1, a catalog or other multiple-page advertisement is considered one document for these purposes.

The Board also proposes comment 16(h)–5 to clarify that the information the Board proposes to require under § 226.16(h)(4) does not need to be segregated from other information the advertisement discloses about the deferred 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 interest offer.

#### 16(h)(5) Envelope Excluded

The Board proposed § 226.16(e)(5) to implement TILA Section 127(c)(6)(B), as added by Section 1303(a) of the Bankruptcy Act. 15 U.S.C. 1637(c)(6)(B). TILA Section 127(c)(6)(B) specifically excludes envelopes or other enclosures in which an application or solicitation to open a credit card account is mailed from the requirements of TILA Section 127(c)(6)(A)(ii) and (iii). Under the June 2007 Proposal, the Board also proposed to exclude banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation. 72 FR 32948, 33064, June 14, 2007.

Similarly, 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). Interested consumers generally look at the contents of an envelope or click on the link in the 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 to become informed about an offer. Furthermore, given the limited space that envelopes, banner advertisements, and pop-up advertisements have to convey information, the Board believes there is little need to impose the burden of providing the information proposed under § 226.16(h)(4) on these types of communications.

#### Appendix G—Open-End Model Forms and Clauses; Appendix H—Closed-End Model Forms and Clauses

Appendices G and H set forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z. Appendix G contains model forms, model clauses and sample forms applicable to open-end plans.

The Board proposes to add a sample form to illustrate, in the tabular format, the disclosures required under § 226.6(b)(4) for account-opening disclosures for open-end plans such as lines of credit or an overdraft plan. See proposed Sample G–17(D).

The Board also proposes to revise Sample G–19 that may be used when access checks are provided on a credit



card account, as discussed in the section-by-section analysis to § 226.9(b)(3), and Samples G–20 and G–21 that may be used when terms change or rates are increased, as discussed in the section-by-section analysis to § 226.9(c)(2) and § 226.9(g).

Finally, the Board proposes new model clauses G–22 that creditors offering deferred interest plans may use in advertisements.

## VII. Initial Regulatory Flexibility Act Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z.

The Board believes that the amendments to Regulation Z in this May 2008 Proposal would not, standing alone, have a significant economic impact on a substantial number of small entities. However, based on its analysis and for the reasons stated in the June 2007 Proposal, the Board believes that, in the aggregate, the amendments to Regulation Z contained in the June 2007 Proposal and in this May 2008 Proposal would have a significant economic impact on a substantial number of small entities. 72 FR 32948, 33033, 33034, June 14, 2007. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period for this May 2008 Proposal and further consideration of comments received on the June 2007 Proposal. The Board requests public comment in the following areas.

1. *Reasons, statement of objectives and legal basis for the proposed rule.* The purpose of the Truth in Lending Act is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. In this regard, the goal of the proposed amendments to Regulation Z in this May 2008 Proposal and the June 2007 Proposal is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end account. Accordingly, the Board is proposing changes to format, timing, and content requirements for the five main types of disclosures governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

The **SUPPLEMENTARY INFORMATION** above and the **SUPPLEMENTARY INFORMATION** for the June 2007 Proposal

describe in detail the reasons, objectives, and legal basis for each component of the proposed rules. 72 FR 32948 through 33036, June 14, 2007.

2. *Description of small entities to which the proposed rule would apply.* The total number of small entities likely to be affected by the proposal is unknown, because the open-end credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that extend even small amounts of consumer credit. See § 226.1(c)(1).<sup>5</sup> Based on December 31, 2007 call report data, there are approximately 12,479 depository institutions in the United States that have assets of \$165 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act. Of them, there were 2,159 banks, 3,445 insured credit unions, and 26 other thrift institutions with credit card assets (or securitizations), and total assets of \$165 million or less. The number of small non-depository institutions that are subject to Regulation Z's open-end credit provisions cannot be determined from information in call reports, but recent congressional testimony by an industry trade group indicated that 200 retailers, 40 oil companies, and 40 third-party private label credit card issuers of various sizes also issue credit cards.<sup>6</sup> There is no comprehensive listing of small consumer finance companies that may be affected by the proposed rules or of small merchants that offer their own credit plans for the purchase of goods or services. Furthermore, it is unknown how many of these small entities offer open-end credit plans as opposed to closed-end credit products, which would not be affected by the proposed rule.

The effect of the proposed revisions to Regulation Z on small entities also is unknown. Small entities would be required to, among other things, conform their open-end credit disclosures, including those in solicitations, account opening materials, periodic statements, and change-in-terms notices, and advertisements to the

<sup>5</sup> Regulation Z generally applies to "each individual or business that offers or extends credit when four conditions are met: (i) the credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly; (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes." § 226.1(c)(1).

<sup>6</sup> Testimony of Edward L. Yingling for the American Bankers' Association before the Subcommittee on Financial Institutions and Consumer Credit, Financial Services Committee, United States House of Representatives, April 26, 2007, fn. 1, p. 3.

revised rules. The Board has sought to reduce the burden on small entities, where possible, by proposing model forms that can be used to ease compliance with the proposed rules. Small entities also would be required to update their systems to comply with the proposed rules regarding reasonable cut-off times for payments and weekend or holiday payment due dates.

The precise costs to small entities of updating their systems are difficult to predict. These costs will depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer open-end accounts, the complexity of the terms of the open-end credit products that they offer, and the range of such product offerings. Nevertheless, the Board believes that these costs, in the aggregate for the June 2007 and May 2008 Proposals, will have a significant economic effect on small entities. The Board seeks information and comment on the effects of the proposed rules on small entities.

3. *Projected reporting, recordkeeping and other compliance requirements of the proposed rule.* The compliance requirements of the proposed revisions to Regulation Z included in this May 2008 Proposal are described above in VI. Section-by-Section Analysis. The compliance requirements of the proposed revisions to Regulation Z in the June 2007 Proposal are described in the section-by-section analysis included with those proposals. 72 FR 32948, 32958 through 33033, June 14, 2007. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

4. *Other federal rules.* As noted in the section-by-section analysis in the June 2007 Proposal for § 226.13(i), there is a potential conflict between Regulation Z and Regulation E with respect to error resolution procedures when a transaction involves both an extension of credit and an electronic fund transfer. 72 FR 32948, 33019, June 14, 2007. The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation Z in this May 2008 Proposal. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule. The Board also seeks comment regarding any duplication, overlap, or conflict between the proposed revisions to

Regulation Z in this May 2008 Proposal and the 2008 Regulation AA Proposal discussed elsewhere in today's **Federal Register**.

5. *Significant alternatives to the proposed revisions.* As previously noted, the June 2007 Proposal and the May 2008 Proposal implement the Board's mandate to prescribe regulations that carry out the purposes of TILA. In addition, portions of the June 2007 Proposal are intended to implement certain provisions of the Bankruptcy Act that require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements. The Board seeks with both the June 2007 Proposal and the May 2008 Proposal to balance the benefits to consumers arising out of more effective TILA disclosures against the additional burdens on creditors and other entities subject to TILA. To that end, and as discussed above in VI. Section-by-section Analysis and in the section-by-section analysis accompanying the June 2007 Proposal, consumer testing was conducted for the Board in order to assess the effectiveness of the proposed revisions to Regulation Z. 72 FR 32948, 32958 through 33033, June 14, 2007. In this manner, the Board has sought to avoid imposing additional regulatory requirements without evidence that these proposed revisions may be beneficial to consumer understanding regarding open-end credit products.

The Board welcomes comments on any significant alternatives, consistent with TILA and the Bankruptcy Act, that would minimize the impact of the proposed rule on small entities.

### VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the 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, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other creditors. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 552,398 hours for the 1,172 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.

As mentioned in the preamble the Federal Reserve is seeking comment on additional revisions to the June 2007 Proposal. The Federal Reserve believes the proposed additional revisions would not increase the burden estimates published in the June 2007 Proposal. 72

FR 32948, 33034, 33035, June 14, 2007. However, at this time the Federal Reserve is restating a portion of its burden estimates published in the June 2007 Proposal to correct minor mathematical errors. In addition, the Federal Reserve will address respondent burden associated with a Regulation AA proposed rule and previously implemented notice to cosigners.

In the June 2007 Proposal, the Federal Reserve estimated that the proposed revisions would increase the total annual burden on a one-time basis from 552,398 to 625,638 hours, an increase of 73,240 hours. 72 FR 32948, 33035, June 14, 2007. The Federal Reserve affirms its methodology; however, due to a mathematical error, the annual onetime burden for the proposed revisions to the rules governing periodic statements was understated by 4,000 hours. The correct annual onetime burden for this disclosure requirement is 46,880 hours (not 42,800); therefore, the total annual onetime burden for all requirements would increase by 77,240 hours. This one-time burden estimate does not include the burden addressing the Home Ownership and Equity Protection Act disclosures as announced in a separate proposed rulemaking (Docket No. R-1305, 73 FR 1672, January 9, 2008).

The Federal Reserve estimated in the June 2007 Proposal that the proposed total annual burden on a continuing basis would increase from 552,398 to 607,759 hours, an increase of 55,361 hours. However, the burden for revisions to the change-in-terms notices was incorrectly calculated as 55,361 hours. The correct annual burden for the proposed revision on a continuing basis would be 18,454 hours, a difference of 36,907 hours. Thus, the total burden on a continuing basis would increase from 552,398 to 570,852 hours.

Elsewhere in today's **Federal Register**, the Federal Reserve, along with the Office of Thrift Supervision (OTS) and the National Credit Union Association, are proposing to adopt substantive protections using their authority under the Federal Trade Commission Act (FTC Act) to address unfair and deceptive acts or practices. The proposed rule would prohibit institutions from engaging in certain acts or practices in connection with credit cards. This proposal evolved from the Federal Reserve's June 2007 Proposal and the OTS August 2007 Advance Notice of Proposed Rulemaking under the FTC Act. 72 FR 43570, August 6, 2007. The Federal Reserve's proposed rule under Regulation AA is coordinated with its June 2007 Proposal amending Regulation Z's rules for open-end credit.

Under Regulation AA's proposed § 227.28, creditors would be prohibited from certain marketing practices in relation to prescreened firm offers for consumer credit card accounts unless a disclaimer sufficiently explains the limitations of the offers. The Federal Reserve anticipates that creditors would, with no additional burden, incorporate the proposed disclosure requirement under § 227.28 with the existing disclosure requirements for credit and charge card applications and solicitations under § 226.5a. Thus in order to avoid double-counting the Federal Reserve will account for the PRA burden associated with proposed Regulation AA § 227.28 under Regulation Z § 226.5a.

Under current § 227.14(b), creditors must provide a clear and conspicuous disclosure statement shall be given in writing to a cosigner prior to being obligated on credit transactions subject to § 227.14(b). The disclosure statement shall be substantively similar to the example provided in § 227.14(b). This disclosure is standardized and does not change from one individual to another; thus, the cost and burden to the industry is low. The Federal Reserve proposes to account for the burden associated with Regulation AA's § 227.14(b) under Regulation Z. The proposed annual burden associated with § 227.14(b) is estimated to be 16,943 hours. The proposed total annual burden for the Regulation Z information collection, including the revisions in the June 2007 Proposal, in this May 2008 Proposal, and the Regulation AA disclosure requirements is estimated to be 665,035 hours, an increase of 112,637 hours.

The title of the Regulation Z information collection will be updated to account for these sections of Regulation AA.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimates. Using the Federal Reserve's method, the total current estimated annual burden for all financial institutions subject to Regulation Z, including Federal Reserve-supervised institutions, would be approximately 12,324,037 hours. The proposed rule would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation Z by 1,271,944 hours to 13,595,981 hours. On a continuing basis, the proposed revisions to the change-in-terms notices would increase the

estimated annual frequency, thus increasing the total annual burden on a continuing basis from 12,324,037 to 13,230,534 hours. The inclusion of the Regulation AA requirements would increase the total annual burden from 12,324,037 to 16,679,157 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including card issuers, retailers, and depository institutions (of which there are approximately 19,300) 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),<sup>7</sup> Washington, DC 20503.

#### Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets. If a provision in the regulation or commentary was also proposed to be revised in the June 2007 Proposal, in addition to this rulemaking, bold-faced arrows or brackets, as appropriate, also reflect the June 2007 proposed revisions.

#### List of Subjects in 12 CFR Part 226

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

<sup>7</sup> The Paperwork Reduction Project number (7100-0200) published in the June 14, 2007, notice was incorrect.

#### Authority and Issuance

For the reasons set forth in the preamble, the Board further proposes to amend 12 CFR part 226, as proposed to be amended at 71 FR 32948, June 14, 2007, as follows:

#### PART 226—TRUTH IN LENDING (REGULATION Z)

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

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

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

#### Subpart B—Open-End Credit

##### § 226.5 General disclosure requirements.

(a) *Form of disclosures.*

\* \* \* \* \*  
▶(2) *Terminology.*◀  
\* \* \* \* \*

▶(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term *penalty APR* shall be used, as applicable. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed*, or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.◀

\* \* \* \* \*  
(b) *Time of disclosures.*

(1) **[Initial]** ▶ *Account-opening disclosures.*◀

\* \* \* \* \*  
▶(iv) *Membership fees.*

A. *General.* In general, a creditor may not collect any fee (other than application fees excludable from the finance charge under § 226.4(c)(1)) before account-opening disclosures are provided. However, a creditor may collect, or obtain the consumer's agreement to pay, a membership fee before providing account-opening disclosures if, after receiving the disclosures the consumer may reject the plan and have no obligation to pay any fee that was assessed or agreed to be paid before the consumer received account-opening disclosures, or any other fee or charge. A membership fee

for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in § 226.5a(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge. Application fees permitted by paragraph (b)(1)(v) of this section are not affected by this requirement.

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

\* \* \* \* \*

3. Section 226.5a is amended by revising paragraph (b)(1)(iv), paragraph (b)(3), paragraph (b)(4), paragraph (b)(5), and paragraph (d)(1) to read as follows:

**§ 226.5a Credit and charge card applications and solicitations.**

\* \* \* \* \*

(b) Required disclosures. \* \* \*  
(1) \* \* \*

►(iv) *Penalty rates.* If a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, pursuant to paragraph (b)(1) of this section the card issuer must disclose the increased rate that would apply, a description of the types of balances to which the increased rate will apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. Issuers must briefly disclose the circumstances under which any discounted initial rate may be revoked, and the rate that will apply after the revocation.

\* \* \* \* \*

(3) *Minimum finance charge.* Any minimum or fixed finance charge ►if it exceeds \$1.00◄ that could be imposed during a billing cycle►, and a brief description of the charge. The \$1.00 threshold amount shall be adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on the June 1 of previous years equals or exceeds \$1.00. The card issuer may, at its option, disclose in the table minimum or fixed finance charges below the dollar threshold.

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

(5) *Grace period.* The date by which or the period within which any credit extended for purchases may be repaid

without incurring a finance charge ►due to a periodic interest rate and any conditions on the availability of the grace period.◄ If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. ►When an issuer is disclosing a grace period in the tabular format, the phrase “How to Avoid Paying Interest on Purchases,” or a substantially similar phrase, shall be used as the heading for the row describing the grace period. If no grace period on purchases is offered, when an issuer is disclosing this fact in the tabular format, the phrase “Paying Interest,” or a substantially similar phrase, shall be used as the heading for the row describing that no grace period is offered.◄

\* \* \* \* \*

(d) *Telephone applications and solicitations—(1) Oral disclosure.* The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) ►and (b)(16)◄ of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

\* \* \* \* \*

4. Section 226.6 is amended by revising paragraph (b)(4)(ii)(C), paragraph (b)(4)(iii)(D), paragraph (b)(4)(iv), and paragraph (b)(4)(vii), as follows:

**§ 226.6 ►Account-opening disclosures [Initial disclosure statement].**

\* \* \* \* \*

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

\* \* \* \* \*

►(4) *Tabular format requirements for open-end (not home-secured) plans.*◄

\* \* \* \* \*

►(ii) *Annual percentage rate.*◄

\* \* \* \* \*

►(C) *Increased penalty rates.* If a rate may increase upon the occurrence of one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(4)(ii) of this section the increased penalty rate that may apply, a description of the types of balances to which the increased rate will apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If a temporary initial rate is lower than the rate that will apply after the temporary

rate expires, the creditor must briefly disclose the circumstances under which any initial discounted rates may be revoked, and the rate that will apply after the initial discounted rate is revoked.◄

\* \* \* \* \*

►(iii) *Fees.*

\* \* \* \* \*

(D) *Minimum finance charge.* Any minimum or fixed finance charge if it exceeds \$1.00 that could be imposed during a billing cycle, and a brief description of the charge. The \$1.00 threshold amount shall be adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on the June 1 of previous years equals or exceeds \$1.00. The creditor may, at its option, disclose in the table minimum or fixed finance charges below the dollar threshold

(iv) *Grace period.* An explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring a finance charge. When disclosing in the tabular format whether or not there is a grace period, the phrase “How to Avoid Paying Interest on [the applicable feature]” or a substantially similar phrase, shall be used as the row heading when a feature on the account has a grace period. When disclosing in the tabular format the fact that no grace period exists for any feature of the account, the phrase “Paying Interest” or a substantially similar phrase shall be used as the row heading.◄

\* \* \* \* \*

►(vii) *Available credit.* If a creditor requires fees for the issuance or availability of an open-end plan described in paragraph (b)(4)(iii)(A) of this section, or a security deposit, and the total amount of those required fees or security deposit that will be imposed when the account is opened and charged to the account equal 25 percent or more of the minimum credit limit offered with the plan, a creditor must disclose the amount of the available credit that a consumer will have remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 25 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, that is required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 25 percent threshold test is met, the creditor in providing the disclosure

must disclose the amount of available credit excluding those optional fees, and the available credit including those optional fees. The creditor shall also disclose that the consumer has the right to reject the plan and not be obligated to pay those fees or any other fee or charges until the consumer has used the account or made a payment on the account after receiving a billing statement. ◀

\* \* \* \* \*

5. Section 226.9 is amended by revising paragraph (b)(3), paragraph (c)(2)(iii), and paragraph (g)(3) to read as follows:

**§ 226.9 Subsequent disclosure requirements.**

\* \* \* \* \*

(b) *Disclosures for supplemental credit ▶ access ◀ devices and additional features.*

\* \* \* \* \*

▶(3) *Checks that access a credit card account.* (i) *Disclosures.* For open-end plans not subject to the requirements of § 226.5b, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under § 226.6(b)(1) are given, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from disclosures previously given, the creditor shall disclose on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in appendix G:

(A) If an initial rate that applies to the checks is temporary and is lower than the rate that will apply after the temporary rate expires, the discounted initial rate and the time period during which the discounted initial rate will remain in effect;

(B) The type of rate that will apply to the checks (such as whether the purchase or cash advance rate applies) and the applicable annual percentage rate. If a discounted initial rate applies, a creditor must disclose the type of rate that will apply after the discounted initial rate expires, and the annual percentage rate that will apply after the discounted initial rate expires. In a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section;

(C) If a discounted initial rate applies to the checks, the date, if any, by which the consumer must use the checks in order to qualify for the discounted

initial rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the discounted initial rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date;

(D) Any transaction fees applicable to the checks disclosed under § 226.6(b)(1); and

(E) Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase “How to Avoid Paying Interest on Check Transactions” or a substantially similar phrase, shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing in the tabular format the fact that no grace period exists for credit extended by use of the checks, the phrase “Paying Interest” or a substantially similar phrase shall be used as the row heading.

(ii) *Accuracy.* The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are given. A variable annual percentage rate is accurate if it was in effect within 30 days of when the disclosures are given. ◀

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\* \* \* \* \*

(c) *Change in terms.*

\* \* \* \* \*

▶(2) *Rules affecting open-end (not home-secured) plans.* ◀

\* \* \* \* \*

\* \* \* \* \*

▶(iii) *Disclosure requirements.*

(A) *Changes to terms described in account-opening table.* If a creditor changes a term required to be disclosed pursuant under § 226.6(b)(4), the creditor must provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section:

(1) A summary of the changes made to terms described in § 226.6(b)(4);

(2) A statement that changes are being made to the account;

(3) A statement indicating the consumer has the right to opt-out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(4) The date the changes will become effective;

(5) If applicable, a statement that the consumer may find additional information about the summarized

changes, and other changes to the account, in the notice;

(6) If the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer’s account, the new rate described in the notice will not apply to the consumer’s account until the consumer’s account balances are no longer subject to the penalty rate, and

(7) If the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied. If applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms. ◀

\* \* \* \* \*

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

\* \* \* \* \*

▶(3)(i) *Disclosure requirements for rate increases.* If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

(A) A statement that the consumer’s actions have triggered the delinquency or default rate or penalty rate, as applicable;

(B) The date on which the delinquency or default rate or penalty rate will apply;

(C) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer’s account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

(D) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied, including if applicable, the balances that would be affected if a consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment; and

(E) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment. ◀

\* \* \* \* \*

6. Section 226.10 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

**§ 226.10 Prompt crediting of payments.**

\* \* \* \* \*

(b) *Specific requirements for payments.*

►(1) *General rule.* A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.

(2) *Examples of reasonable requirements for payments.* Reasonable requirements for making payment may include:

- (i) Requiring that payments be accompanied by the account number or payment stub;
- (ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person, provided that it would not be reasonable for a creditor to set a cut-off time for payments by mail that is earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;
- (iii) Specifying that only checks or money orders should be sent by mail;
- (iv) Specifying that payment is to be made in U.S. dollars;
- (v) Specifying one particular address for receiving payments, such as a post office box.

(3) *Nonconforming payments.* ◀ If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

\* \* \* \* \*

►(d) *Crediting of payments when creditor does not receive or accept payments on due date.* If the due date for payments is a day on which the creditor does not receive or accept payments by mail, for example if the U.S. Postal Service does not deliver mail on that date, the creditor may not treat a payment received by mail the next business day as late for any purpose. ◀

\* \* \* \* \*

7. Section 226.16 is amended by revising paragraph (e) and adding paragraph (h) to read as follows:

**§ 226.16 Advertising.**

\* \* \* \* \*

►(e) *Promotional rates.*

(1) *Scope.* The requirements of this paragraph apply to any written or electronic advertisement of a consumer credit card account, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions.*

(i) *Promotional rate* means:

(A) Any annual percentage rate applicable to one or more balances or transactions on a consumer credit card

account for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period; or

(B) Any annual percentage rate applicable to one or more transactions on a consumer credit card account that is lower than the annual percentage rate that applies to other transactions of the same type.

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

(iii) *Promotional period* means the maximum time period for which the promotional rate may be applicable.

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

(4) *Stating the promotional period and post-promotional rate.* If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (e)(2)(i)(A) of this section, the following must be stated in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the promotional rate:

(i) The date the promotional rate will end or the promotional period; and

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

(5) *Envelope excluded.* The requirements in paragraph (e)(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. ◀

\* \* \* \* \*

►(h) *Deferred interest offers.*

(1) *Scope.* The requirements of this paragraph apply to any written or electronic advertisement of a consumer credit card account, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions.* (i) "Deferred interest" means 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. "Deferred interest" does not mean any finance charges the creditor allows a consumer to avoid in connection with any recurring grace period.

(ii) The maximum period from the date the consumer becomes obligated for the balance or transaction until the date that the consumer must pay the balance or transaction in full in order to avoid finance charges on such balance or transaction is the "deferred interest period."

(3) *Stating the deferred interest period.* If a deferred interest offer is advertised, the deferred interest period or the date by which the consumer must pay the balance or transaction in full to avoid finance charges on such balance or transaction must be stated in a clear and conspicuous manner in immediate proximity to each statement of "no interest," "no payments," or "deferred interest" or similar term regarding interest or payments during the deferred interest period.

(4) *Stating the terms of the deferred interest offer.* If any deferred interest offer is advertised, the following must be stated in a prominent location closely proximate to the first statement of "no interest," "no payments," or "deferred interest" or similar term regarding interest or payments during the deferred interest period, in language similar to Sample G–22 in Appendix G:

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

(ii) A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred interest offer if the account is otherwise in default; and

(iii) If the minimum monthly payments do not fully amortize the balance or transaction during the deferred interest period, a statement that making only the minimum monthly payments will not pay off the balance or transaction in time to avoid interest charges.

(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. ◀

\* \* \* \* \*

8. In Part 226, Appendix G is amended by:

A. Revising the table of contents at the beginning of the appendix;

B. Add paragraph (g) to Form (G-1)

C. Revising Forms G-19, G-20, and G-21; and

D. Adding new Forms G-1A, G-17(D), and G-22 in numerical order.

#### Appendix G to Part 226—Open-end Model Forms and Clauses

G-1 Balance Computation Methods Model Clauses ►(Home Equity Plans)◄ (§§ 226.6 and 226.7)

►G-1A Balance Computation Methods Model Clauses (Plans other than Home Equity Plans) (§§ 226.6 and 226.7)◄

G-2 Liability for Unauthorized Use Model Clause ►(Home Equity Plans)◄ (§ 226.12)

►G-2(A) Liability for Unauthorized Use Model Clause ►(Plans Other Than Home Equity Plans) (§ 226.12)◄

G-3 Long-Form Billing-Error Rights Model Form ►(Home Equity Plans)◄ (§§ 226.6 and 226.9)

►G-3(A) Long-Form Billing-Error Rights Model Form ►(Plans Other Than Home Equity Plans)◄ (§§ 226.6 and 226.9)◄

G-4 Alternative Billing-Error Rights Model Form ►(Home Equity Plans)◄ (§ 226.9)

►G-4(A) Alternative Billing-Error Rights Model Form (Plans Other Than Home Equity Plans) (§ 226.9)◄

G-5 Rescission Model Form (When Opening an Account) (§ 226.15)

G-6 Rescission Model Form (For Each Transaction) (§ 226.15)

G-7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)

G-8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)

G-9 Rescission Model Form (When Increasing the Security) (§ 226.15)

G-10(A) Applications and Solicitations Model Form (Credit Cards) (§ 226.5a(b))

G-10(B) Applications and Solicitations Sample (Credit Cards) (§ 226.5a(b))

G-10(C) Applications and Solicitations ►Sample (Credit Cards)◄ [Model Form (Charge Cards)] (§ 226.5a(b))

►G-10(D) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))◄

►G-10(E) Applications and Solicitations Sample (Charge Cards) (§ 226.5a(b))◄

G-11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))

G-12 ►Reserved◄ [Charge Card Model Clause (When Access to Plan Offered by Another)] (§ 226.5a(f))

G-13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))

G-13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))

G-14A Home Equity Sample

G-14B Home Equity Sample

G-15 Home Equity Model Clauses

►G-16(A) Debt Suspension Model Clause (§ 226.4(d)(3))◄

►G-16(B) Debt Suspension Sample (§ 226.4(d)(3))◄

►G-17(A) Account-opening Model Form (§ 226.6(b)(4))◄

►G-17(B) Account-opening Sample (§ 226.6(b)(4))◄

►G-17(C) Account-opening Sample (§ 226.6(b)(4))◄

►G-17(D) Account-opening Sample (§ 226.6(b)(4))◄

►G-18(A) Transactions; Interest Charges; Fees Sample (§ 226.7(b))◄

►G-18(B) Fee-inclusive APR Sample (§ 226.7(b))◄

►G-18(C) Late Payment Fee Sample (§ 226.7(b))◄

►G-18(D) Actual Repayment Period Sample Disclosure on Periodic Statement (§ 226.7(b))◄

►G-18(E) New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit cards) (§ 226.7(b))◄

►G-18(F) New Balance, Due Date, and Late Payment Sample (Open-end Plans (Non-credit-card Accounts)) (§ 226.7(b))◄

►G-18(G) Periodic Statement Form◄

►G-18(H) Periodic Statement Form◄

►G-19 Checks Accessing a Credit Card Account Sample (§ 226.9(b)(3))◄

►G-20 Change-in-Terms Sample (§ 226.9(c)(2))◄

►G-21 Penalty Rate Increase Sample (§ 226.9(g)(3))◄

►G-22 Deferred Interest Offer Clauses (§ 226.16(h))◄ XXX

G-1 Balance Computation Methods Model Clauses ►(Home Equity Plans)◄

\* \* \* \* \*

►(f) Daily Balance Method (Including Current Transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the “daily balance” of your account for each day in the billing cycle. To get the “daily balance” we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid finance charges and] any payments or credits. This gives us the daily balance.◄

►G-1(A) Balance Computation Methods Model Clauses (Plans Other Than Home Equity Plans)

(a) Adjusted Balance Method

We figure the interest charge on your account by applying the periodic rate to the “adjusted balance” of your account. We get the “adjusted balance” by taking the balance you owed at the end of the previous billing

cycle and subtracting [any unpaid interest or other finance charges and] any payments and credits received during the present billing cycle.

(b) Previous Balance Method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle. We do not subtract any payments or credits received during the billing cycle.

(c) Average Daily Balance Method (Excluding Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the “average daily balance” of your account. To get the “average daily balance” we take the beginning balance of your account each day and subtract [any unpaid interest or other finance charges and] any payments or credits. We do not add in any new [purchases/advances/fees]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the “average daily balance.”

(d) Average Daily Balance Method (Including Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the “average daily balance” of your account. To get the “average daily balance” we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the “average daily balance.”

(e) Ending Balance Method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new [purchases/advances/fees] and deducting payments and credits made during the billing cycle).

(f) Daily Balance Method (Including Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the “daily balance” of your account for each day in the billing cycle. To get the “daily balance” we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance.◄

\* \* \* \* \*



**G-17(D) Account-opening Sample (Line of Credit)**

<b>Interest Rate and Interest Charges</b>	
<b>APR for Cash Advances</b>	<b>18.00%.</b>
<b>Minimum Interest Charge</b>	If you are charged interest, the charge will be no less than \$1.50.
<b>Paying Interest</b>	You will be charged interest from the transaction date.

<b>Fees</b>	
<b>Annual Fee</b>	<b>\$20</b>
<b>Penalty Fees</b>	
• Late Payment	<b>\$10</b>
• Over-the-Credit Limit	<b>\$29</b>

**G-19 Checks Accessing a Credit Card Sample**

<b>Interest and Fee Information</b>	
<b>APR for Check Transactions</b>	1.7% (Promotional APR through your November 2008 billing cycle) After November 2008, you will be charged the APR for Cash Advances, currently 21.99%.
<b>Use by Date</b>	You must use the check by 4/1/08 for the promotional APR to apply. If you use the check after that date, we may still honor the check but you will not receive the promotional APR. Instead, the standard APR for Cash Advances will apply.
<b>Fee</b>	Either \$5 or 3% of the amount of each transaction, whichever is greater.
<b>Paying Interest</b>	We will begin charging interest on these checks on the transaction date.

**G-20 Change-in-Terms Sample****Important Changes to Your Account Terms**

The following is a summary of changes that are being made to your account terms effective 2/15/08. You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement.

Beginning 2/15/08, any rate increases described below will apply to transactions made on or after 1/15/08. Current rates will continue to apply to transactions made before 1/15/08.

Note: The change to your APR for purchases described below will not go into effect at this time if you are already being charged a higher Penalty APR on purchases. This change will go into effect when the Penalty APR no longer applies.

Revised Terms, as of 2/15/08	
APR for Purchases	16.99%
Late Payment Fee	\$32 if your balance is less than or equal to \$1,000; \$39 if your balance is more than \$1,000

**G-21 Penalty Rate Increase Sample****Notice of Changes to Your Interest Rates**

You have triggered the Penalty APR of 28.99%. Beginning 2/15/08, we will apply this Penalty APR to any transactions made on or after 1/15/08 and may keep the APR at that level indefinitely. Current rates will continue to apply to transactions made before 1/15/08. However, if you become 30 days late on your account, the Penalty APR will apply to those balances as well.

If you have any low promotional APRs, you will lose them on 2/15/08. At that time, we will apply standard rates to any existing promotional balances.

**► G-22 Deferred Interest Offer Clauses**

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 the account is otherwise in default. [Making only the minimum monthly payments on your account will not pay off the purchase in time to avoid interest.] ◀

**9. In Supplement I to Part 226:****A. Under Section 226.5—General Disclosure Requirements:**

i. Under 5(a) Form of disclosures, under revised heading 5(a)(1)—General., under new heading 5(a)(1)(ii)A. paragraph 1. is added, and under new heading Paragraph 5(a)(1)(iii)., paragraph 1 is added.

ii. Under 5(b) Time of disclosures, under revised heading 5(b)(1) Account-opening disclosures., under revised heading 5(b)(1)(i) General rule., paragraph 1. is revised, under revised heading 5(b)(1)(ii) Charges imposed as part of an open-end (not home-secured)

plan., paragraph 1. is revised, and under new heading 5(b)(1)(iv) Membership fees., paragraphs 1., 2., 3. and 4. are added.

B. Under Section 226.5a—Credit and Charge Card Applications and Solicitations, under 5a(b) Required Disclosures, under revised heading 5a(b)(3) Minimum Finance Charge, paragraph 2. is added, under 5a(b)(4) Transaction Charges, paragraph 2. is added, and under 5a(b)(5) Grace Period, paragraph 1. is revised and paragraph 2. is added.

C. Under revised heading Section 226.6—Account-opening Disclosures, under revised heading 6(b) Rules affecting open-end (not home-secured) plans., under revised heading 6(b)(2) Rules relating to rates for open-end (not home-secured) plans., under revised heading Paragraph 6(b)(2)(iii)., paragraph 2. is revised, under revised heading 6(b)(4) Tabular Format

requirements for open-end (not home-secured) plans., paragraph 3. is revised, under new headings 6(b)(4)(iii) Fees. and 6(b)(4)(iii)(D) Minimum finance charge., paragraphs 1. and 2. are added, under new heading 6(b)(4)(iv) Grace period., paragraph 1. is added, and under new heading 6(b)(4)(vii) Available credit., paragraph 1. is added.

**D. Under Section 226.9 Subsequent Disclosure Requirements:**

i. Under revised heading 9(b) Disclosures for Supplemental Credit Access Devices and Additional Features., the heading for Paragraph 9(b)(3) is revised, under the new heading Paragraph 9(b)(3)(E)., paragraph 1. is added.

ii. Under 9(c) Change in Terms., under revised heading 9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans, under revised heading 9(c)(2)(ii) Charges Not Covered by § 226.6(b)(4), paragraph 1. is revised,

and under revised headings 9(c)(2)(iii) Disclosure Requirements and 9(c)(2)(iii)(A) Changes to Terms Described in § 226.6(b)(4), paragraph 8. is revised.

iii. Under revised heading 9(g) Increase in Rates Due to Delinquency or Default or as a Penalty, paragraph 1. is revised.

E. Under Section 226.10—Prompt Crediting of Payments, under 10(b) Specific requirements for payments., paragraphs 1. and 2. are revised.

F. Under Section 226.12—Special Credit Card Provisions:

i. Under 12(a) Issuance of credit cards., under Paragraph 12(a)(2), paragraph 2. is revised.

ii. Under 12(b) Liability of cardholder for unauthorized use., paragraph 3. is revised.

G. Under Section 226.13—Billing-Error Resolution, under 13(f) Procedures if different billing error or no billing error occurred., paragraph 3. is added.

H. Under Section 226.16—Advertising:

i. Paragraph 2. is revised.

ii. Under heading 16(b) Actually available terms., paragraph 4. is revised.

iii. Under revised heading 16(e) Promotional rates., paragraphs 1., 2., 3., 4. and 5. are revised and paragraph 6. is added.

iv. Under new heading 16(h) Deferred interest offers., paragraphs 1., 2., 3., 4. and 5. are added.

I. Under revised heading APPENDICES G AND H—OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES, under heading APPENDIX G—OPEN-END MODEL FORMS AND CLAUSES, paragraphs 1. and 5. are revised.

Supplement I to Part 226—Official Staff Interpretations

\* \* \* \* \*

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of disclosures.

Paragraph 5(a)(1) General.

\* \* \* \* \*

Paragraph 5(a)(1)(ii)(A).

1. Electronic disclosures. Disclosures that need not be provided in writing under § 226.5(a)(1)(ii)(A) may be provided in writing, orally, or in electronic form. If the consumer requests the service in electric form, such as on the creditor's Web site, the specified disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

Paragraph 5(a)(1)(iii).

1. Disclosures not subject to E-Sign Act. See the commentary to § 226.5(a)(1)(ii)(A) regarding disclosures (in addition to those specified under § 226.5(a)(1)(iii)) that may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

\* \* \* \* \*

5(b) Time of disclosures.

5(b)(1) Initial Account-opening disclosures.

5(b)(1)(i) General rule.

1. Disclosure before the first transaction. When disclosures must be furnished "before the first transaction," account-opening disclosures must be delivered before the consumer becomes obligated on the plan. Examples include:

i. Purchases. The consumer makes the first purchase, such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store, except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously (see commentary to paragraph 5(b)(1)(iii) below).

ii. Advances. The consumer receives the first advance. If the consumer receives a cash advance check at the same time the account-opening disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges). [The rule that the initial disclosure statement must be furnished "before the first transaction" requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan. For example, the initial disclosures must be given before the consumer makes the first purchase (such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store) receives the first advance, or pays any fees or charges under the plan other than an application fee or refundable membership fee (see below). The prohibition on the payment of fees other than application or refundable membership fees before initial disclosures are provided does not apply to home equity plans subject to § 226.5b. See the commentary to § 226.5b(h) regarding the collection of fees for home equity plans covered by § 226.5b.

• If the consumer pays a membership fee before receiving the Truth in Lending account-opening disclosures, or the consumer agrees to the imposition of a membership fee at the time of application and the Truth in Lending disclosure statement is not given at that time, disclosures are timely as long as the consumer, after receiving the disclosures, can reject the plan. The creditor must refund the membership fee if it has been paid, or clear the account if it has been debited to the consumer's account.

• If the consumer receives a cash advance check at the same time the Truth in Lending disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

• Initial disclosures need not be given before the imposition of an application fee under § 226.4(c)(1).

• If, after receiving the disclosures, the consumer uses the account, pays a fee, or negotiates a cash advance check, the creditor may consider the account not rejected for purposes of this section.

\* \* \* \* \*

5(b)(1)(ii) Charges imposed as part of an open-end (not home-secured) plan.

1. Disclosing charges before the fee is imposed. Creditors may disclose charges imposed as part of an open-end (not home-secured) plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under § 226.6(b)(4). (Such charges may alternatively be disclosed in electronic form; see the commentary to § 226.5(a)(1)(ii)(A).) Creditors meet the standard to provide disclosures at a relevant time if the oral, written, or electronic disclosure of such a charge is given when a consumer would likely notice it, such as when deciding whether to purchase the service that would trigger the charge. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call.

\* \* \* \* \*

5(b)(1)(iv) Membership fees.

1. Membership fees. See § 226.5a(b)(2) and related commentary for guidance on fees for issuance or availability of a credit or charge card.

2. Rejecting the plan. If a consumer has paid or promised to pay a membership fee (other than an application fee excludable from the finance charge under § 226.4(c)(1)) before receiving account-opening disclosures, the consumer may, after receiving the disclosures, reject the plan and not be obligated for the membership fee or any other fee or charge (other than an application fee excludable from the finance charge under § 226.4(c)(1)). A consumer who has received the disclosures and uses the account, or makes a payment on the account after receiving a billing statement, is deemed not to have rejected the plan. A creditor may deem a plan to be rejected if, 60 days after the creditor mailed the account-opening disclosures, the consumer has not used the account or made a payment on the account.

3. Using the account. A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not "use" the account by activating the account, such as for security purposes. A consumer also does not "use" the account when the creditor assesses fees (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures) on the account. This includes, for example, when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances.

4. *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b are subject to the requirements of § 226.5b(h) regarding the collection of fees.

\* \* \* \* \*

**Section 226.5a—Credit and Charge Card Applications and Solicitations**

\* \* \* \* \*

►5a(b)(3) *Minimum Finance Charge.*

\* \* \* \* \*

2. *Adjustment of \$1.00 threshold amount.* The \$1.00 threshold amount will be adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on the June 1 of previous years equals or exceeds \$1.00. The Board will publish adjustments, as appropriate.◀

►5a(b)(4) *Transaction Charges.*

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►2. *Foreign transaction fees.* A transaction charge imposed by the card issuer for the use of the card for purchases includes any fee imposed by the issuer for purchases in a foreign currency or that take place in a foreign country.◀

5a(b)(5) *Grace Period.*

1. *How grace period disclosure is made.*►The card issuer must state any conditions on the applicability of the grace period. An issuer that conditions the grace period on the consumer paying his or her balance in full by the due date each month, or on the consumer paying the previous balance in full by the due date the prior month will be deemed to meet these requirements by providing the following disclosure: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance (excluding promotional balances) by the due date each month.”◀[The card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read “30 days” or “30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date).”]

►2. *No grace period.* The issuer may use the following language to describe that no grace period is offered, as applicable: “We will begin charging interest on purchases on the transaction date.”◀

\* \* \* \* \*

**Section 226.6—Account-Opening Disclosures**◀ [Initial Disclosure Statement]

\* \* \* \* \*

►6(b) *Rules affecting open-end (not home-secured) plans*◀ [Other charges].

\* \* \* \* \*

►6(b)(2) *Rules relating to rates for open-end (not home-secured) plans.*◀

\* \* \* \* \*

►Paragraph 6(b)(2)(iii).◀

\* \* \* \* \*

►2. *Rate that will apply after initial rate changes.*

i. *Increased margins.* If the initial rate is based on an index and the rate may increase

due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.

ii. *Risk-based pricing.* In some plans, the amount of the rate change depends on how the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. Creditors must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or by stating the highest rate that could be assessed. The creditor must disclose the period for which the increased rate will remain in effect, such as “until you make three timely payments,” or if there is no limitation, the fact that the increased rate may remain indefinitely.◀

\* \* \* \* \*

►6(b)(4) *Tabular format requirements for open-end (not home-secured) plans.*◀

\* \* \* \* \*

►3. *Terminology.* Section 226.6(b)(4)(i) generally requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the tables in Appendix G; but see § 226.5(a)(2) for special rules that apply to the penalty rate disclosure required by § 226.6(b)(4)(ii)(C), and to the disclosure of required insurance products or debt cancellation or suspension products pursuant to § 226.6(b)(4)(v).◀

\* \* \* \* \*

►6(b)(4)(iii) *Fees.*

6(b)(4)(iii)(D) *Minimum finance charge.*

1. *Example of brief statement.* See Samples G–17(B), G–17(C), and G–17(D) for guidance on how to provide a brief description of a minimum interest charge.

2. *Adjustment of \$1.00 threshold amount.* The \$1.00 threshold amount will be adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on the June 1 of previous years equals or exceeds \$1.00. The Board will publish adjustments, as appropriate.

6(b)(4)(iv) *Grace period.*

1. *Grace period.* Creditors may use the following language to describe a grace period: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you interest on [applicable transactions] if you pay your entire balance (excluding promotional balances) by the due date each month.” Creditors may use the following language to describe that no grace period is offered, as applicable: “We will begin charging interest on [applicable transactions] on the transaction date.”◀

\* \* \* \* \*

6(b)(4)(vii) *Available credit.*

1. *Right to reject the plan.* Creditors may use the following language to describe consumers' right to reject a plan after receiving account-opening disclosures: “You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges (other than [name of fee

that is excludable from the finance charge under § 226.4(c)(1)].”

\* \* \* \* \*

**Section 226.9—Subsequent Disclosure Requirements**

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

\* \* \* \* \*

►9(b)(3) *Checks That Access a Credit Card Account.*◀

\* \* \* \* \*

►Paragraph 9(b)(3)(E).

1. *Grace period.* Creditors may use the following language to describe a grace period: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you interest when you use these checks if you pay your entire balance (excluding promotional balances) by the due date each month.” Creditors may use the following language to describe that no grace period is offered, as applicable: “We will begin charging interest on these checks on the transaction date.”◀

\* \* \* \* \*

9(c) *Change in Terms.*

\* \* \* \* \*

►9(c)(2) *Rules Affecting Open-End (Not Home-Secured) Plans.*◀

\* \* \* \* \*

►9(c)(2)(ii) *Charges Not Covered by § 226.6(b)(4).*◀

\* \* \* \* \*

►1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(1) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(4), the creditor may either, at its option (1) provide at least 45 days written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (2) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer any time before the consumer agrees to or becomes obligated to pay the charge. (See the commentary under § 226.5(a)(1)(ii)(A) regarding disclosure of such charges in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(1) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(4). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer any time before the consumer agrees to or becomes obligated to pay the charge.◀

\* \* \* \* \*

►9(c)(2)(iii) *Disclosure Requirements.*

9(c)(2)(iii)(A) Changes to Terms Described in § 226.6(b)(4).

\* \* \* \* \*

►8. *Content.* Sample G–20 contains an example of how to comply with the requirements in § 226.9(c)(2)(iii) when the following terms are being changed: (1) A variable rate is being changed to a non-variable rate of 16.99%; and (2) the late payment fee is being increased to \$32 if the consumer's balance is less than or equal to \$1,000 and \$39 if the consumer's balance is more than \$1,000. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. ◀

\* \* \* \* \*

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

1. *Applicability.* i. *General.* Section 226.9(g) requires a creditor to provide written notice to a consumer when (1) a rate is increased due to the consumer's delinquency or default, or (2) a rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit. This notice must be provided after the occurrence of the event that triggered the imposition of the rate increase and at least 45 days prior to the effective date of the increase. For example, assume a credit card account agreement provides that the annual percentage rates on the account may increase to 28 percent if the consumer pays late once, and assume that the consumer pays late one month. If the creditor will increase the rates on the account because of this late payment, the creditor must provide the consumer written notice of the increase at least 45 days before the increase becomes effective.

ii. *Illustrations.* Under this section, creditors must provide written notice to a consumer when rates are increased due to the consumer's delinquency or default or as a penalty. The notice must be provided after the occurrence of the event that triggers the rate increase and at least 45 days prior to the effective date of the increase. Creditors subject to Regulation AA, 12 CFR 227.24 or similar law are generally prohibited from increasing the APR, as of the effective date of the increase, for balances outstanding at the end of 14 days after the date the notice of increased rates was provided, with certain exceptions, including, specifically, if the creditor fails to receive the consumer's minimum periodic payment within 30 days from the due date of that payment. For a creditor that is subject to Regulation AA, 12 CFR 227.24 or similar law that provides a notice of a rate increase due to the consumer's delinquency or default or as a penalty, and the creditor does not receive the consumer's minimum periodic payment within 30 days from the due date of the payment before the increased rate goes into effect, the creditor may apply the increased rate to all balances when the increased rate goes into effect. If, however, the consumer does not become 30 days late before the effective date of the rate increase, the creditor may only apply the increased rate to transactions made after the end of 14 days after the date the notice of increased rates

was provided. Also, if the consumer becomes 30 days late after the increased rate becomes effective, the creditor must provide the consumer a written notice that the increased rate will now apply to all balances, and that notice must be given an least 45 days prior to the effective date of the increased rate applying to all balances. The following illustrate the timing requirements for rate increases under § 226.9(g) for creditors that are also subject to Regulation AA, 12 CFR 227.24 or similar law:

A. A credit card account agreement provides that the annual percentage rates on the account may increase to 28 percent if the consumer pays late once. The consumer's minimum periodic payment is due June 15 and the consumer pays late. On June 24 the creditor provides written notice of the increase. The notice provides that the penalty rate of 28 percent has been triggered and will apply as of August 9 to transactions made on or after July 9. The consumer's minimum periodic payment for June is received on June 30. On August 9, an increased rate of 28 percent may be applied to transactions made on or after July 9. The current rate will apply to balances existing on July 8.

B. Same facts as in paragraph 9(g) 1. ii.A., except the consumer fails to make any payment until July 20. On August 9, the increased rate of 28 percent may be applied to transactions made on or after that date, and to existing balances, as provided in Regulation AA, 12 CFR 227.24 or similar law.

C. The same result would apply if under the credit card agreement, the annual percentage rates on the account may increase to 28 percent if the consumer exceeds the credit limit once, the consumer exceeded his credit limit on June 5 and the creditor provides written notice of the increase on June 9. As in ii.B. above, the consumer fails to make the minimum periodic payment due June 15 until July 20. On July 25, the increased rate of 28 percent may be applied to transactions made on or after that date, and to existing balances, as provided in Regulation AA, 12 CFR 227.24 or similar law. See G–21 in Appendix G for language that complies with the requirements of § 226.9(g).

D. Same facts as in paragraph 9(g) 1. ii.A., except the following October, the consumer fails to make the minimum periodic payment due October 15 until November 20. The increased rate of 28 percent that has applied since August 9 continues to apply to transactions made on or after July 9. To apply the rate of 28 percent to the remaining outstanding balances that existed on July 8, the creditor would be required to send a new notice under § 226.9(g) after the consumer triggered the penalty rate for all balances. That is, if the creditor provides a written notice of the increase on November 26, the creditor could apply the penalty rate of 28% to all balances on January 11 of the following year.

E. A creditor currently assesses a non-variable annual percentage rate of 12.99 percent on purchases, and provides written notice on May 31 that a non-variable annual percentage rate will be increased to 15.99 percent as of July 16 for all purchase transactions on the account on or after June 15. Purchase balances existing on June 14

will remain at the current rate. The credit card account agreement indicates that the annual percentage rates on the account may increase to 28 percent if the consumer pays late once. The consumer's minimum periodic payment is due June 15 and the consumer pays late. On June 24 the creditor provides written notice of the increase to the penalty rate as a consequence of the consumer's late payment. The notice provides that the penalty rate of 28 percent has been triggered and will apply on August 9 to transactions made on or after July 9. The consumer's minimum periodic payment for June is received on June 30. On July 16, the new purchase annual percentage rate of 15.99 percent becomes effective for new purchases made on or after June 15. The current rate of 12.99 percent will apply to balances existing on June 14. On August 9, the 28 percent annual percentage rate will apply to transactions made on or after July 9. A rate of 12.99 percent will apply to the balances existing on June 14, and a rate of 15.99 percent will apply to purchases between June 15 and July 8.

F. Same facts as paragraph 9(g) 1. ii.E., except the consumer fails to make any payment until July 20. On July 15, the new purchase annual percentage rate of 15.99 percent becomes effective for new purchases made on or after June 15. The current rate of 12.99 percent will continue to apply to balances existing on June 14. On August 9, the increased rate of 28 percent may be applied to transactions that occur on or after July 9, and to existing balances, as provided in Regulation AA, 12 CFR 227.24 or similar law. ◀

\* \* \* \* \*

#### Section 226.10—Prompt Crediting of Payments

\* \* \* \* \*

##### 10(b) Specific requirements for payments.

1. **[Payment requirements.** The creditor may specify requirements for making payments, such as:

- Requiring that payments be accompanied by the account number or the payment stub
- Setting a cutoff hour for payment to be received, or set different hours for payments by mail and payments made in person
- Specifying that only checks or money orders should be sent by mail
- Specifying that payment is to be made in U.S. dollars
- Specifying one particular address for receiving payments, such as a post office box]

##### ► **Payment by electronic fund transfer.** ◀

A creditor may be prohibited[, however,] from specifying payment for preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act.)

2. ► **Payment via creditor's web site.** If a creditor promotes electronic payment via its web site (such as by disclosing on the web site itself that payments may be made via the web site), any payments made via the creditor's web site would generally be conforming payments for purposes of § 226.10(b). ◀ **[Payment requirements—limitations.** Requirements for making payments must be reasonable; it should not be difficult for most consumers to make

conforming payments. For example, it would not be reasonable to require that all payments be made in person between 10 a.m. and 11 a.m., since this would require consumers to take time off from their jobs to deliver payments.】

\* \* \* \* \*

*Section 226.12—Special Credit Card Provisions*

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*12(a) Issuance of credit cards.*

\* \* \* \* \*

*Paragraph 12(a)(2).*

\* \* \* \* \*

2. *Substitution—examples.* Substitution encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:

- i. Changed its name.
- ii. Changed the name of the card.
- iii. Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The substitution of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.
- iv. Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.
- v. Changed the merchant base, provided that the new card is [must be] honored by at least one of the persons that honored the original card. However, unless the change in the merchant base is the addition of an affiliate of the existing merchant base, the substitution of a new card for another on an unsolicited basis is not permissible where the account is inactive and the consumer has not obtained an extension of credit with the existing merchant base within 24 months prior to the issuance of the new card. A credit card cannot be issued in these circumstances without a request or application. For purposes of § 226.12(a), an account is inactive if no credit has been extended and if the account has no outstanding balance for 24 months. See § 226.11(b)(2). ◀

\* \* \* \* \*

12(b) *Liability of cardholder for unauthorized use.*

\* \* \* \* \*

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:

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

4. 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 creditor's records, including other credit slips.

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

6. Requesting a written, signed statement from the consumer (or authorized user, in the case of a credit card account). However, a creditor may not require an affidavit as a part of a reasonable investigation.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

alleging an unauthorized transaction under paragraph (a)(1) of this section, 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 creditor's records, including other credit slips.

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

F. Requesting a written, signed statement from the consumer (or authorized user, in the case of a credit card account). However, a creditor may not require an affidavit 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 paragraph (a)(3) of this section, 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 226.13—Billing-Error Resolution*

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

\* \* \* \* \*

▶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.

i. *Unauthorized transaction.* In conducting an investigation of a billing error notice

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*Section 226.16—Advertising*

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▶2. *Clear and conspicuous standard—promotional rates and deferred interest offers.* For purposes of § 226.16(e), a clear and conspicuous disclosure means the required information in §§ 226.16(e)(4)(i) and (ii) must be equally prominent to the promotional rate to which it applies. If the information in §§ 226.16(e)(4)(i) and (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), 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,” or “deferred interest” or similar term regarding interest or payments during the deferred interest period. If the disclosure of the deferred interest period

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required in §§ 226.16(h)(3) is the same type size as the statement of "no interest", "no payments," or "deferred interest" or similar term regarding interest or payments during the deferred interest period, the disclosure would be deemed to be equally prominent. ◀

\* \* \* \* \*

16(b) Advertisement of terms that require additional disclosures.

\* \* \* \* \*

▶4. Deferred interest programs or other similar deferment programs. Statements such as "Charge it—you won't be billed until May" or "You may skip your January payment" are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under § 226.6. However, a statement such as "No interest charges until May" or any other statement regarding when interest or finance charges begin to accrue or are charged to the consumer is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing, deferred payment, or deferred interest program such as the examples above. ◀

▶16(e) Promotional rates.

1. Rate in effect at the end of the promotional period. If the annual percentage rate that will be in effect at the end of the promotional period (i.e., the post-promotional rate) is a variable rate, the post-promotional rate for purposes of § 226.16(e)(2)(i) is the rate that would have applied at the time the promotional rate was advertised if the promotional rate was not offered, consistent with the accuracy requirements in § 226.5a(c)(2) and § 226.5a(e)(4), as applicable.

2. Example of promotional rate under § 226.16(e)(2)(i)(B). A creditor generally offers a 15% rate of interest for purchases on a consumer credit card account. For purchases made during a particular month, however, the creditor offers a rate of 5% that will apply until the consumer pays those purchases in full. Under § 226.16(e)(2)(i)(B), the 5% rate is a "promotional rate" because it is lower than the 15% rate that applies to other purchases.

3. Immediate proximity. Including the term "introductory" or "intro" in the same phrase as the listing of the introductory rate is deemed to be in immediate proximity of the listing.

4. Prominent location closely proximate. Information required to be disclosed in §§ 226.16(e)(4)(i) and (ii) that is in the same paragraph as the first listing of the promotional rate is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the listing.

5. First listing. For purposes of § 226.16(e)(4), the first listing of the promotional rate is the most prominent listing of the rate on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the promotional rate is not listed on the principal promotional document or there is no principal promotional document, the first listing is the

most prominent listing of the rate on the front side of the first page of each document listing the promotional rate. If the listing of the promotional rate with the largest type size on the front side of the first page of the principal promotional document (or each document listing the promotional rate if the promotional rate is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing.

6. Post-promotional rate depends on consumer's creditworthiness. For purposes of disclosing the rate that may apply after the end of the promotional rate period, at the advertiser's option, the advertisement may disclose the rates that may apply as either specific rates, or a range of rates. For example, if there are three rates that may apply (9.99%, 12.99% or 17.99%), an issuer may disclose these three rates as specific rates (9.99%, 12.99% or 17.99%) or as a range of rates (9.99%–17.99%). ◀

\* \* \* \* \*

▶16(h) Deferred interest offers.

1. Deferred interest clarified. Deferred interest offers do not include offers that allow a consumer to defer payments during a specified period of time, and the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. Deferred 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 is in effect, though such offers may be considered promotional rates under § 226.16(e)(2)(i).

2. Immediate proximity. Including the deferred interest period in the same phrase as the statement of "no interest," "no payments," or "deferred interest" or similar term regarding interest or payments during the deferred interest period is deemed to be in immediate proximity of the statement.

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

4. First listing. For purposes of § 226.16(h)(4), the first statement of "no interest," "no payments," or "deferred interest" or similar term regarding interest or payments during the deferred 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 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 the listing of one of these statements with the largest type size 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).

5. 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 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). ◀

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▶Appendices ◀ [Appendixes] G and H—Open-End and Closed-End Model Forms and Clauses

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Appendix G—Open-End Model Forms and Clauses

1. Model ▶s ◀ G–1 ▶ and G–1A ◀. The model disclosures in G–1 ▶ and G–1A ◀ (different balance computation methods) may be used in both the ▶account-opening ◀ [initial] disclosures under § 226.6 and the periodic disclosures under § 226.7. As is clear from the models given, "shorthand" descriptions of the balance computation methods are not sufficient ▶, except where § 226.7(b)(5) applies. For creditors using model G–1, ◀ the phrase "a portion of" the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate. [In addition,] If unpaid ▶ interest or ◀ finance charges are subtracted in calculating the balance, that fact must be stated so that the disclosure of the computation method is accurate. Only model G–1(b) contains a final sentence appearing in brackets which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in model G–1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in model G–1(b).) (See the commentary to section 226.7 ▶(a)(5) and 226.7(b)(5) ◀ [e].) ▶ For open-end plans subject to the requirements of § 226.5b, creditors may, at their option, use the clauses in G–1 or G–1A. ◀

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

i. Model G-10(A) and sample G-10(B) and G-10(C) illustrate, in the tabular format, [all of] the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. [Model G-10(B) is a sample disclosure illustrating an account with a lower introductory rate and penalty rate.] Model G-10(D) and sample G-10(E) illustrate [s] the tabular format disclosure for charge card applications and solicitations and reflects [all of] the disclosures in the table. Model G-17(A) and samples G-17(B), G-17(C) and G-17(D) illustrate, in the tabular format, the disclosures required under § 226.6(b)(4) for account-opening disclosures.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms G-10(A), G-10(D) and G-17(A). [The disclosures may, however, be arranged vertically or horizontally and need not be highlighted aside from being included in the table.] While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use headings [and disclosures] other than those in the forms (with an exception relating to the use of ["grace period"] "penalty APR", and in relation to required insurance, or debt cancellation or suspension coverage, the term "required" and the name of the product) if they are clear and concise and are substantially similar to the headings [and disclosures] contained in model forms.

iii. Models G-10(A) and G-17(A) contain two alternative headings ("Minimum Interest Charge" and "Minimum Charge") for disclosing a minimum finance charge under § 226.5a(b)(3) and § 226.6(b)(4)(iii)(D). If a creditor imposes a minimum finance charge

in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor should disclose this charge under the heading "Minimum Interest Charge." Other minimum finance charges should be disclosed under the heading "Minimum Charge."

iv. Models G-10(A), G-10(D) and G-17(A) contain two alternative headings ("Annual Fees" and "Set-up and Maintenance Fees") for disclosing fees for issuance or availability of credit under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A). If the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) is an annual fee, a creditor should use the heading "Annual Fee" to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) other than, or in addition to, an annual fee, the creditor should use the heading "Set-up and Maintenance Fees" to disclose fees for issuance or availability of credit, including the annual fee.

v. Although creditors are not required to use a certain paper size in disclosing the §§ 226.5a or 226.6(b)(4) disclosures, samples G-10(B), G-10(C), G-17(B) and G-17(C) are designed to be printed on an 8½ x 14 sheet of paper. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Ariel font style, except for the purchase annual percentage rate which is shown in 16-point type)

B. Sufficient spacing between lines of the text;

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. For example, in the samples in

the row of the tables with the heading "APR for Balance Transfers," the forms disclose three components: The applicable balance transfer rate, a cross reference to the balance transfer fee, and a notice about payment allocation. The samples show these three components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late payment fee, the forms disclose two components: The late-payment fee, and the cross reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the tables.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type;

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text; and

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

vi. While the Board is not requiring creditors to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font requirement), the Board encourages creditors to consider these techniques when deciding how to disclose information in the table, to ensure that the information is presented in a readable format.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, May 2, 2008.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

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