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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1364]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Board is amending Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that are effective on August 20, 2009. These amendments are being issued in the form of an interim final rule and primarily pertain to advance notices of rate increases and changes in terms and the time consumers are given to make their payments.

DATES: This interim final rule is effective August 20, 2009. Comments must be received on or before September 21, 2009.

ADDRESSES: You may submit comments, identified by Docket No. R-1364, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

- *Facsimile:* (202) 452-3819 or (202) 452-3102.

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

Constitution Avenue, NW., Washington, DC 20551.

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

FOR FURTHER INFORMATION CONTACT:

Amy Burke or Benjamin K. Olson, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background and Implementation of the Credit Card Act

January 2009 Regulation Z and FTC Act Rules

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

On May 5, 2009, the Board published proposed clarifications and technical amendments to the January 2009 Regulation Z Rule in the **Federal Register**. See 74 FR 20784. The Board, the OTS, and the NCUA (collectively,

the Agencies) concurrently published proposed clarifications and technical amendments to the January 2009 FTC Act Rule. See 74 FR 20804. In both cases, as stated in the **Federal Register**, these proposals were intended to clarify and facilitate compliance with the consumer protections contained in the January 2009 final rules and not to reconsider the need for—or the extent of—those protections. The comment period on both of these proposed sets of amendments ended on June 4, 2009. Where relevant, the Board has considered the comments submitted in preparing this interim final rule. The Board is still considering other comments received in response to the proposed amendments and intends to finalize those amendments, with revisions as appropriate, in connection with its next final rulemaking regarding credit cards. The fact that certain proposed amendments are not addressed in this **Federal Register** notice does not mean that they have been withdrawn. Rather, such amendments are still under consideration by the Board.

The Credit Card Act

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law. Public Law 111-24, 123 Stat. 1734 (2009). The Credit Card Act primarily amends the Truth in Lending Act (TILA) and establishes a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans. Several of the provisions of the Credit Card Act are similar to provisions in the Board's January 2009 Regulation Z and FTC Act Rules, while other portions of the Credit Card Act address practices or mandate disclosures that were not addressed in the Board's rules.

The requirements of the Credit Card Act that pertain to credit cards or other open-end credit for which the Board has rulemaking authority become effective in three stages. First, provisions generally requiring that consumers receive 45 days' advance notice of interest rate increases and significant changes in terms (new TILA Section 127(i)) and provisions regarding the amount of time that consumers have to make payments (revised TILA Section 163) will become effective on August

20, 2009 (90 days after enactment of the Credit Card Act). A majority of the requirements under the Credit Card Act for which the Board has rulemaking authority, including, among other things, provisions regarding interest rate increases (revised TILA Section 171), over-the-limit transactions (new TILA Section 127(k)), and student cards (new TILA Sections 127(c)(8), 127(p), and 140(f)) become effective on February 22, 2010 (9 months after enactment).

Finally, two provisions of the Credit Card Act addressing the reasonableness and proportionality of penalty fees and charges (new TILA Section 149) and re-evaluation by creditors of rate increases (new TILA Section 148) are effective on August 22, 2010 (15 months after enactment). For these provisions that become effective on August 22, 2010, the statute requires the Board to issue final rules not later than February 22, 2010 (9 months after enactment). However, the Board notes that, while new TILA Section 148 is not effective until August 22, 2010, it applies to rate increases that have occurred since January 1, 2009. Specifically, new TILA Section 148 requires that, if a creditor has increased a rate on a credit card account since January 1, 2009 based on the credit risk of the consumer, market conditions, or other factors, the creditor must review the account at least once every six months and consider changes in such factors in subsequently determining whether to reduce that rate.¹

Implementation Plan

The Board intends to implement the provisions of the Credit Card Act in stages, consistent with the statutory timeline established by Congress. Accordingly, this interim final rule implements those provisions of the statute that are effective August 20, 2009, primarily addressing change-in-terms notice requirements and the amount of time that consumers have to make their payments. As discussed in more detail in II. Statutory Authority, the Board is issuing these rules in interim final form based on its determination that, given the short implementation period established by the Credit Card Act and the fact that similar rules were already the subject of notice-and-comment rulemaking, it would be impracticable and unnecessary to issue a proposal for public comment followed by a final rule. The Board intends to consider

¹ The Credit Card Act also requires the Board to conduct several studies and to make several reports to Congress, and sets forth differing time periods in which these studies and reports must be completed.

comments on this interim final rule in connection with its next rulemaking required by the Credit Card Act.

The Board intends to separately consider the remaining issues under the Credit Card Act and to finalize implementing regulations, in accordance with the timeline established by Congress, upon notice and after giving the public an opportunity to comment.

To the extent appropriate, the Board intends to use its January 2009 rules and the underlying rationale as the basis for its rulemakings under the Credit Card Act. The Board also intends to retain those portions of its January 2009 Regulation Z Rule that are unaffected by the Credit Card Act. The Board is not withdrawing any provisions of the January 2009 Regulation Z Rule or its January 2009 FTC Act Rule at this time. The Board anticipates that in connection with finalizing rules for those provisions of the Credit Card Act that are effective February 22, 2010, it will amend or withdraw those portions of the January 2009 rules that are inconsistent with the requirements of the Credit Card Act. In particular, the Board anticipates that all of the requirements in its January 2009 FTC Act Rule will be withdrawn from Regulation AA and moved into Regulation Z, consistent with Congress's approach of amending the Truth in Lending Act.² Finally, except as otherwise noted, the Board intends to consider comments received on the proposed clarifications and technical amendments that were published on May 5, 2009 and to incorporate final clarifications and amendments, to the extent appropriate, when it promulgates final rules in the second stage of its rulemaking.

II. Statutory Authority

General Rulemaking Authority

Section 2 of the Credit Card Act states that the Board "may issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act." This interim final rule implements §§ 101(a) and 106(b) of the Credit Card Act, which amend TILA. TILA mandates that the Board prescribe regulations to carry out its purposes and specifically authorizes the Board, among

² See also OTS Memorandum for Chief Executive Officers: Credit CARD Act: Interest Rate Increases and Rules on Unfair Practices (issued July 13, 2009) (available at <http://files.ots.treas.gov/25312.pdf>); NCUA Press Release: Working with Other Regulators on Credit CARD Act and UDAP Rule (issued July 1, 2009) (available at http://www.ncua.gov/news/press_releases/2009/MR09-0701.htm).

other things, to 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 TILA, or prevent circumvention or evasion of TILA. See 15 U.S.C. 1604(a).

Authority To Issue Interim Final Rules Without Notice and Comment

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) generally requires public notice before promulgation of regulations. See 5 U.S.C. 553(b). Unless notice or hearing is required by statute, however, the APA provides an exception "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). For the reasons discussed below, the Board finds that, with respect to this rulemaking, there is good cause to conclude that providing notice and an opportunity to comment is impracticable and unnecessary.

As an initial matter, neither the Credit Card Act nor TILA requires the Board to provide notice or a hearing with respect to this rulemaking. See Credit Card Act § 2; 15 U.S.C. 1604(a). TILA Section 105(c) does require notice and an opportunity for public comment with respect to the adoption of model disclosure forms and clauses but the Board is not adopting model disclosure forms or clauses in this interim final rule. 15 U.S.C. 1604(c). Moreover, even if the Board were adopting such forms or clauses, TILA Section 105(c) only requires notice and an opportunity to comment "in accordance with [5 U.S.C. 553]." Thus, the adoption of model disclosure forms and clauses is subject to the good cause exception in § 553(b)(B).

Furthermore, for purposes of implementing §§ 101(a) and 106(b) of the Credit Card Act, providing notice and an opportunity to comment within the timeframe mandated by Congress would be impracticable. Although most provisions of the Credit Card Act are effective 9 months after enactment, §§ 101(a) and 106(b) are effective in 90 days (*i.e.*, on August 20, 2009). This period does not provide sufficient time for the Board to:

- Prepare proposed regulations and publish them in the **Federal Register**;

- Provide a reasonable period for interested parties to review the proposal and prepare comments;

- Analyze the comments submitted; and

- Prepare the final regulations and publish them in the **Federal Register**.

Even if the Board were able to technically comply with § 553's notice-and-comment process within the allotted time, such a process would not comply with the purpose of the APA because interested parties would not have sufficient time to prepare well-researched comments and the Board would not have time to conduct a meaningful review and analysis of those comments. Furthermore, because the Board's regulations will provide creditors with guidance on how to comply with §§ 101(a) and 106(b) of the Credit Card Act, a notice-and-comment process would leave little or no time between the issuance of final regulations and the statutory effective date for creditors to adjust their procedures in order to comply. In contrast, the adoption of an interim final rule enables the Board to provide this guidance further in advance of the effective date, which provides creditors with more time to comply with the statutory provisions. As discussed in I. Background and Implementation of the Credit Card Act, interested parties will still have an opportunity to submit comments following issuance of the interim final rule, which the Board will consider when promulgating a non-interim final rule as part of a subsequent rulemaking implementing other provisions of the Credit Card Act.

Finally, notice and an opportunity to comment is unnecessary with respect to the implementation of §§ 101(a) and 106(b) of the Credit Card Act because these provisions are similar in most respects to rules recently adopted by the Board and other Agencies after notice and public comment. For example, as discussed in detail in III. Section-by-Section Analysis, § 101(a) of the Credit Card Act generally requires creditors to provide 45 days' advance notice of an increase in an annual percentage rate or other significant change in the terms of the cardholder agreement, a requirement that largely mirrors provisions in the January 2009 Regulation Z Rule recently adopted by the Board. *See* 12 CFR 226.9(c)(2) and (g),³ 74 FR 5244, 5413–

³ For convenience, this supplementary information refers to provisions in the January 2009 Regulation Z and FTC Act Rules by citing to the Code of Federal Regulations as well as the **Federal Register**. The Board notes that because these provisions are not yet effective, they have not been incorporated into the existing Code of Federal Regulations.

5415. Similarly, § 106(b) of the Credit Card Act requires creditors to mail or deliver periodic statements 21 days before payment is due, which is similar to a provision recently adopted by the Board and the other Agencies in the January 2009 FTC Act Rule. *See* 12 CFR 227.22, 74 FR 5498, 5560.⁴ Prior to adopting these rules, the Board and the other Agencies received and considered more than 60,000 comments. Although the statutory provisions are not identical to the regulations in all respects, interested parties have already had an opportunity to comment on the core issues.⁵ To the extent that the Board's interim final rule fails to anticipate new, material issues, interested parties will have the opportunity to raise those issues in their comments so that the Board can consider them in a subsequent rulemaking under the Credit Card Act.

Authority To Issue an Interim Final Rule With an Effective Date of August 20, 2009

Because §§ 101(a) and 106(b) of the Credit Card Act are effective on August 20, 2009,⁶ the Board's interim final rule implementing those provisions is also effective on that date. The APA generally requires that rules be published not less than 30 days before their effective date. *See* 5 U.S.C. 553(d). As with the notice requirement, however, the APA provides an exception when "otherwise provided by the agency for good cause found and published with the rule." *Id.* § 553(d)(3). Notwithstanding the time saved by issuing an interim final rule without advance notice and the similarity of the new statutory provisions to regulations previously issued by the Board, 60 days may not be sufficient time for the Board to review the legislation carefully, revise its regulations for consistency with the Credit Card Act, and ensure that the revised regulations are published in the **Federal Register** 30 days before the

⁴ Although the Board, OTS, and NCUA adopted substantively identical rules under the FTC Act, each agency placed its rules in its respective part of title 12 of the Code of Federal Regulations. Specifically, the Board placed its rules in part 227, the OTS in part 535, and the NCUA in part 706. For simplicity, this supplementary information cites to the Board's rules and official staff commentary.

⁵ The Board recognizes that there are two significant differences between the January 2009 rules and this interim final rule. First, the interim final rule permits a consumer to reject a rate increase or other significant change to the account terms in accordance with new TILA Section 127(i). Second, the mailing or delivery requirement for periodic statements in the interim final rule applies to all open-end consumer credit plans, while the analogous provision in the January 2009 FTC Act Rule applies only to credit card accounts.

⁶ *See* Credit Card Act § 3.

August 20, 2009 effective date.⁷ Accordingly, the Board finds that good cause exists to publish the interim final rule less than 30 days before the effective date.

Similarly, although 12 U.S.C. 4802(b)(1) generally requires that new regulations and amendments to existing regulations take effect on the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form (in this case, October 1, 2009), the Board has determined that—for the reasons discussed above—there is good cause for making the interim final rule effective on August 20. *See* 12 U.S.C. 4802(b)(1)(A) (providing an exception to the general requirement when "the agency determines, for good cause published with the regulation, that the regulations should become effective before such time"). Although the Credit Card Act does not expressly require the Board to issue regulations implementing §§ 101(a) and 106(b) before October 1, Congress clearly intended creditors to be in compliance with those provisions on August 20. Accordingly, the Board believes that providing creditors with guidance regarding compliance with §§ 101(a) and 106(b) before October 1 is consistent with 12 U.S.C. 4802(b)(1)(C), which provides an exception to the general requirement when "the regulation is required to take effect on a date other than the date determined under [12 U.S.C. 4802(b)(1)] pursuant to any other Act of Congress."

Finally, TILA Section 105(d) provides that any regulation of the Board (or any amendment or interpretation thereof) requiring any disclosure which differs from the disclosures previously required by Chapters 1, 4, or 5 of TILA (or by any regulation of the Board promulgated thereunder) shall have an effective date no earlier than "that October 1 which follows by at least six months the date of promulgation." However, even assuming that TILA Section 105(d) applies to the interim final rule, the Board believes that the specific provisions governing the effective dates for §§ 101(a) and 106(b) of the Credit Card Act override the general provision in TILA Section 105(d).

⁷ The date on which the Board's notice is published in the **Federal Register** depends on a number of variables that are outside the Board's control, including the number and size of other notices submitted to the **Federal Register** prior to the Board's notice.

III. Section-by-Section Analysis

Section 226.5 General Disclosure Requirements

5(b) Time of Disclosures

As amended by the Credit Card Act, TILA Section 163 generally prohibits a creditor from treating a payment as late or imposing additional finance charges unless the creditor mailed or delivered the periodic statement at least 21 days before the payment due date and the expiration of any period within which any credit extended may be repaid without incurring a finance charge (*i.e.*, a “grace period”). See Credit Card Act § 106(b). Unlike most of the Credit Card Act’s provisions, the amendments to TILA Section 163 apply to all open-end consumer credit plans rather than just credit card accounts.⁸ As discussed below, the Board has implemented amended TILA Section 163 by revising § 226.5(b)(2)(ii) and the accompanying official staff commentary.⁹

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

In the January 2009 FTC Act Rule, the Board and the other Agencies prohibited institutions from treating payments on consumer credit card accounts as late for any purpose unless the institution provided a reasonable amount of time for consumers to make payment. See 12

CFR 227.22(a), 74 FR 5560; *see also* 74 FR 5508–5512. This rule included a safe harbor for institutions that adopt reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date. See 12 CFR 227.22(b)(2), 74 FR 5560. The 21-day safe harbor was intended to allow seven days for the periodic statement to reach the consumer by mail, seven days for the consumer to review their statement and make payment, and seven days for that payment to reach the institution by mail. However, to avoid any potential conflict with the 14-day requirement in TILA Section 163(a), the rule expressly stated that it would not apply to any grace period provided by an institution. See 12 CFR 227.22(c), 74 FR 5560.

5(b)(2) Periodic Statements

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

The Credit Card Act’s amendments to TILA Section 163 codify aspects of current § 226.5(b)(2)(ii) as well as the provision in the January 2009 FTC Act Rule regarding the mailing or delivery of periodic statements. Specifically, like current § 226.5(b)(2)(ii), amended TILA Section 163 applies the mailing or delivery requirement to both the expiration of the grace period and the payment due date. In addition, similar to the January 2009 FTC Act Rule, amended TILA Section 163 adopts 21 days as the appropriate time period between the date on which the statement is mailed or delivered to the consumer and the date on which the consumer’s payment must be received by the creditor to avoid adverse consequences.

Rather than establishing an absolute requirement that periodic statements be mailed 21 days in advance of the payment due date, amended TILA Section 163(a) codifies the same standard adopted by the Board and the other Agencies in the January 2009 FTC Act Rule, which requires creditors to adopt “reasonable procedures designed to ensure” that statements are mailed or delivered at least 21 days before the payment due date. Notably, however, the 21-day requirement for grace periods in amended TILA Section 163(b) does not include similar language regarding “reasonable procedures.” Because the payment due date generally coincides with the expiration of the grace period, the Board believes that it will facilitate compliance to apply a single standard to both circumstances. The “reasonable procedures” standard recognizes that, for issuers mailing hundreds of

thousands of periodic statements each month, it would be difficult if not impossible to know whether a specific statement is mailed or delivered on a specific date. Furthermore, applying different standards could encourage creditors to establish a payment due date that is different from the date on which the grace period expires, which could lead to consumer confusion. Accordingly, the Board is amending § 226.5(b)(2)(ii) to require that creditors adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days before the payment due date *and* the expiration of the grace period. In doing so, the Board relies on its authority under TILA Section 105(a) to make adjustments that are necessary or proper to effectuate the purposes of TILA and to facilitate compliance therewith. See 15 U.S.C. 1604(a).

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

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

⁸ Specifically, while most provisions in the Credit Card Act apply to “credit card account[s] under an open end consumer credit plan” (*e.g.*, § 101(a)), amended TILA Section 163—like current TILA Section 163—applies to “open end consumer credit plan[s].”

⁹ The January 2009 Regulation Z Rule revised aspects of § 226.5(b)(2)(ii). However, because those revisions are not effective until July 1, 2010, this interim final rule amends the version of § 226.5(b)(2)(ii) that is currently in effect. Accordingly, when this supplementary information refers to “current” or “existing” paragraphs of §§ 226.5 or 226.9, it refers to the version that is currently in effect, not the version adopted in the Board’s January 2009 Regulation Z Rule, which is effective July 1, 2010.

¹⁰ Both current and amended TILA Section 163 require that the periodic statement include the date on which the grace period will expire and the amount on which the finance charge will be based if the consumer does not pay the balance in full prior to expiration of the grace period. The Board notes that current § 226.7(e) and (j) require disclosure of this information. In addition, the 21-

The Board is adopting a new comment 5(b)(2)(ii)-1, which clarifies that, under the “reasonable procedures” standard, a creditor is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. Instead, a creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period required by § 226.5(b)(2)(ii) when determining the payment due date and the date on which any grace period expires. For example, if a creditor has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date and the date on which any grace period expires must be no less than 24 days after the closing date of the billing cycle. The Board and the other Agencies adopted a similar comment in the January 2009 FTC Act Rule. *See* 12 CFR 227.22 comment 22(b)-1, 74 FR 5511, 5561.

The Board is deleting current comment 5(b)(2)(ii)-1 because it refers to the 14-day rule for grace periods and is therefore no longer consistent with § 226.5(b)(2)(ii). To the extent that current comment 5(b)(2)(ii)-1 clarifies that § 226.5(b)(2)(ii) applies in circumstances where the consumer is not eligible or ceases to be eligible for a grace period, it is no longer necessary because that requirement is reflected in amended § 226.5(b)(2)(ii) and elsewhere in the amended commentary.

The Board is also adopting a new comment 5(b)(2)(ii)-2, which clarifies that treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer’s failure to make a payment within a specified amount of time or by a specified date. However, because amended TILA Section 163 (like current TILA Section 163) does not require creditors to provide a grace period, the comment also clarifies that, when an

day mailing requirement in amended TILA Section 163(a) is tied to the provision of a periodic statement that includes “the information required by section 127(b).” Although §§ 201 and 202 of the Credit Card Act amend TILA Section 127(b), those provisions are not effective until February 22, 2010. Accordingly, until such time as the amendments to TILA Section 127(b) are effective, the Board interprets amended TILA Section 163(a) to refer to the current version of TILA Section 127(b).

account is not eligible or ceases to be eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late for purposes of § 226.5(b)(2)(ii).¹¹ The Board and the other Agencies adopted a similar comment in the January 2009 FTC Act Rule. *See* 12 CFR 227.22 comment 22(a)-1, 74 FR 5510, 5561.

The Board is deleting current comment 5(b)(2)(ii)-2, which clarifies that the emergency circumstances exception in footnote 10 does not extend to the failure to provide a periodic statement because of computer malfunction. As discussed above, footnote 10 is based on current TILA Section 163(b), which has been repealed.

The Board is adopting a new comment 5(b)(2)(ii)-3, which clarifies that, for purposes of § 226.5(b)(2)(ii), “payment due date” generally means the date by which the creditor requires the consumer to make the required minimum periodic payment in order to avoid that payment being treated as late for any purpose. However, the comment also addresses the meaning of payment due date in two circumstances where a late payment or other fee may not be assessed until a date that is later than the date on which payment is due.

First, the comment notes that some creditors provide an additional period of time after the contractual due date during which a late payment fee will not be assessed. This period—which is sometimes referred to as a “courtesy period”—may be set forth in the account agreement (as with some home equity plans subject to the requirements of § 226.5b) or may be provided as an informal policy or practice (as with some credit card accounts). Regardless of whether the courtesy period is mandated by state law, new comment 5(b)(2)(ii)-3 clarifies that, for purposes of § 226.5(b)(2)(ii), the payment due date is the due date according to the legal obligation between the parties, not the end of the additional “courtesy” period.

Second, the comment notes that some state or other laws require that a certain number of days must elapse following a due date before a late payment or other fee may be imposed. As with courtesy periods, the comment clarifies that in these circumstances the payment due

date for purposes of § 226.5(b)(2)(ii) is the due date according to the legal obligation between the parties, not the date before which state law prohibits imposition of a late payment or other fee.

The Board is adopting comment 5(b)(2)(ii)-4, which clarifies the definition of “grace period” in § 226.5(b)(2)(ii). Specifically, this comment clarifies that a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of § 226.5(b)(2)(ii). This comment also clarifies that a courtesy period is not a grace period for purposes of § 226.5(b)(2)(ii).

Current comment 5(b)(2)(ii)-3 provides that, when a consumer asks to pick up his or her periodic statements, the creditor may permit—but not require—the consumer to do so, provided that statements are made available 14 days before expiration of the grace period. For organizational purposes, the Board has redesignated this comment as comment 5(b)(2)(ii)-4. In addition, the Board has revised the comment for clarity and for consistency with the new 21-day requirement.

Finally, current comment 5(b)(2)(ii)-4 contains a cross-reference to comment 7-3.iv., which provides examples of grace periods in the context of a deferred interest transaction. For organizational purposes, the Board has redesignated this comment as comment 5(b)(2)(ii)-6. In addition, the Board has made a technical amendment to this comment without intended substantive change and revised comment 7-3.iv. for consistency with the new 21-day requirement.¹²

Implementation

As discussed in I. Background and Implementation of the Credit Card Act, the effective date for revised TILA Section 163 (as amended by the Credit Card Act) is August 20, 2009. In order to comply with revised § 226.5(b)(2)(ii) (which implements revised TILA Section 163), creditors must have in

¹² In the January 2009 FTC Act Rule, the Board and the other Agencies adopted comment 22(b)-3, which clarified that an institution that only provided periodic statements electronically and only accepted payments electronically could comply with the general requirement in 12 CFR 227.22(a) to provide a reasonable amount of time to make payment without providing periodic statements 21 days before the payment due date. *See* 74 FR 5561. Under amended TILA Section 163, however, the 21-day requirement applies regardless of how periodic statements are provided and payments are made.

¹¹ The Board notes, however, that § 102(a) of the Credit Card Act creates a new TILA Section 127(j), which addresses the ability of creditors to charge interest from the date of the transaction in certain circumstances. However, unlike the amendments to Section 163, this provision is effective 9 months after enactment and will be implemented by the Board in a separate rulemaking. *See* Credit Card Act § 3.

place on August 20 reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days before the payment due date and the date on which any grace period expires. That is, the relevant date for purposes of determining when a creditor must comply with revised § 226.5(b)(2)(ii) is the date on which the periodic statement is mailed or delivered, not the due date or grace period expiration date reflected on the statement. Thus, if a periodic statement is mailed or delivered on August 20, the creditor must have reasonable procedures designed to ensure that the payment due date and the grace period expiration date are not earlier than September 10. However, if a periodic statement is mailed or delivered on August 19, this new requirement does not apply to that statement.

The Board believes that this is the appropriate reading of the 90-day implementation period in the Credit Card Act. Although the Credit Card Act could be construed to require creditors to have reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days before any payment due date or grace period expiration date that falls on or after August 20, this reading would create uncertainty regarding compliance with the amendments to TILA Section 163 by requiring creditors to mail or deliver periodic statements in accordance with revised TILA Section 163 and § 226.5(b)(2)(ii) prior to the effective date for those provisions. Accordingly, for clarity and consistency, the Board believes the better reading of the Credit Card Act is that creditors must begin to comply with amended TILA Section 163 (as implemented in amended § 226.5(b)(2)(ii)) with respect to periodic statements mailed or delivered on or after August 20, 2009.

Revised § 226.5(b)(2)(ii) applies to credit card accounts as well as all other open-end consumer credit plans. The Board understands that, with respect to open-end consumer credit plans other than credit cards, it may be difficult for some creditors to update their systems to produce periodic statements by August 20, 2009 that disclose payment due dates and grace period expiration dates (if applicable) that are consistent with the 21-day requirement in revised § 226.5(b)(2)(ii). As a result, it is possible that, for a short period of time after August 20, some periodic statements for open-end consumer credit plans other than credit cards may disclose payment due dates and grace period expiration dates (if applicable) that are technically inconsistent with

the interim final rule. In these circumstances, the creditor may remedy this technical issue by prominently disclosing elsewhere on or with the periodic statement that the consumer's payment will not be treated as late for any purpose if received within 21 days after the statement was mailed or delivered. Under no circumstances does revised § 226.5(b)(2)(ii) permit a creditor to treat a payment as late for any purpose if that payment is received within 21 days after mailing or delivery of the periodic statement.

Section 226.7 Periodic Statement

As discussed above, the Board has revised comment 7–3.iv. for consistency with the amendments to § 226.5(b)(2)(ii), which require that periodic statements be mailed or delivered 21 days before the payment due date and the expiration of any grace period. The revisions to this comment in the January 2009 Regulation Z Rule and the revisions proposed in May 2009 will be addressed in a subsequent rulemaking. See 74 FR 5320, 5476; 74 FR 20786, 20798

Section 226.9 Subsequent Disclosure Requirements

The Board is adopting revisions to § 226.9(c) and is adopting new § 226.9(g) and (h) to implement new TILA Section 127(i), enacted as part of the Credit Card Act. New TILA Section 127(i) generally requires that creditors provide consumers with 45 days' advance notice of rate increases and other significant changes to the terms of their credit card account agreements. Credit Card Act § 101(a)(1). Section 127(i) also requires change-in-terms notices to contain a disclosure of a consumer's right to cancel the account, pursuant to the Board's rules, prior to the effective date of the rate increase or change. Section 127(i) is effective on August 20, 2009, 90 days after enactment of the Credit Card Act. As discussed below, the amendments to § 226.9(c) and (g) adopted in this interim final rule in large part parallel the requirements adopted in the Board's January 2009 Regulation Z Rule, with changes to conform to new TILA Section 127(i).

However, consistent with the staged approach to implementations outlined above in I. Background and Implementation of the Credit Card Act, several requirements that were included in § 226.9(c) and (g) of the Board's January 2009 Regulation Z Rule are not included in this interim final rule. Compliance with these requirements is not mandated by the Credit Card Act, and therefore this interim final rule does not require compliance with these

requirements on August 20, 2009. For example, this interim final rule does not require that advance notices of changes in terms or the imposition of penalty rates pursuant to § 226.9(c) and (g) comply with certain tabular formatting requirements contained in the January 2009 Regulation Z Rule. However, the Board is not withdrawing these or any other requirements of the January 2009 Regulation Z Rule at this time. The implementation of, and any changes to, the January 2009 Regulation Z Rule and January 2009 FTC Act Rule necessary to conform with the Credit Card Act will be addressed in connection with the next stage of the Board's implementing regulations.

Accordingly, because the January 2009 Regulation Z Rule is not effective until July 1, 2010, the Board has based the amendments to § 226.9(c) in this interim final rule on the text of existing § 226.9(c) rather than on the version of § 226.9(c) included in the January 2009 Regulation Z Rule. Similarly, new § 226.9(g) is based on the January 2009 Regulation Z Rule but does not implement all of the formatting and content requirements included in the January 2009 rulemaking.

In addition, the Board is not including model forms or model clauses for advance notices of rate increases or changes in terms in this interim final rule, for several reasons. First, the formatting and content requirements of the January 2009 Regulation Z Rule are not yet effective, and therefore any model clause or form included with this interim final rule would be subject to further revision for conformity with that rule. Second, as discussed below, the Credit Card Act also imposes additional content requirements for change-in-terms notices, several of which are not effective until February 22, 2010. The Board intends to finalize new model forms in the next stage of its rulemaking under the Credit Card Act that comply with all of these new requirements simultaneously.

226.9(c) Change in Terms

*Credit Card Act*¹³

New TILA Section 127(i)(1) generally requires creditors to provide consumers

¹³ For convenience, this section summarizes all of the provisions of the Credit Card Act related to advance notices of changes in terms and rate increases. Consistent with the approach it took in the January 2009 Regulation Z Rule, the Board is implementing the advance notice requirements applicable to contingent rate increases set forth in the cardholder agreement in a separate section (§ 226.9(g)) from those advance notice requirements applicable to changes in the cardholder agreement (§ 226.9(c)). The distinction between these types of changes is that § 226.9(g) addresses changes in a rate being applied to a consumer's account

with a written notice of an annual percentage rate increase at least 45 days prior to the effective date of the increase, for credit card accounts under an open-end consumer credit plan. Credit Card Act § 101(a)(1). The statute establishes several exceptions to this general requirement. Credit Card Act § 101(a)(1) and (b)(2). The first exception applies when the change is an increase in an annual percentage rate upon expiration of a specified period of time, provided that prior to commencement of that period, the creditor clearly and conspicuously disclosed to the consumer the length of the period and the rate that would apply after expiration of the period. The second exception applies to increases in variable annual percentage rates that change according to operation of a publicly available index that is not under the control of the creditor. Finally, a third exception applies to rate increases due to the completion of, or failure of a consumer to comply with, the terms of a workout or temporary hardship arrangement, provided that prior to the commencement of such arrangement the creditor clearly and conspicuously disclosed to the consumer the terms of the arrangement, including any increases due to completion or failure.

In addition to the rules in new TILA Section 127(i)(1) regarding rate increases, new TILA Section 127(i)(2) establishes an additional 45-day advance notice requirement for significant changes, as determined by rule of the Board, in the terms (including an increase in any fee or finance charge) of the cardholder agreement between the creditor and the consumer. Credit Card Act § 101(a)(1).

New TILA Section 127(i)(3) also establishes an additional content requirement for notices of interest rate increases or significant changes in terms provided pursuant to new TILA Section 127(i). Such notices are required to contain a brief statement of the consumer's right to cancel the account, pursuant to rules established by the Board, before the effective date of the rate increase or other change disclosed in the notice. In addition, new TILA Section 127(i)(4) states that closure or cancellation of an account pursuant to the consumer's right to cancel does not constitute a default under the existing cardholder agreement, and does not trigger an obligation to immediately repay the obligation in full or through a method less beneficial than those

listed in revised TILA Section 171(c)(2). (The disclosure associated with the right to cancel is discussed in the section-by-section analysis to § 226.9(c) and (g), while the substantive rules regarding this new right are discussed in the section-by-section analysis to § 226.9(h).)

The Board notes that there are additional provisions of the Credit Card Act that may impact the content of change-in-terms notices, and the types of changes that are permitted pursuant to a change-in-terms notice, that are not effective until February 22, 2010. For example, revised TILA Section 171(a) generally prohibits, subject to several exceptions, increases in annual percentage rates and other finance charges applicable to outstanding balances. In addition, revised TILA Section 171(b) and new TILA Section 148(b) will require, for certain types of rate increases, that the advance notice state the reason for a rate increase. Finally, for penalty rate increases applied to outstanding balances when the consumer fails to make a minimum payment within 60 days after the due date, as permitted by revised TILA Section 171(b)(4), a creditor will be required to terminate the penalty rate increase if the consumer makes the subsequent six minimum payments on time. Consistent with the Board's approach to implementing the changes contained in the Credit Card Act discussed in I. Background and Implementation of the Credit Card Act, these changes will be addressed in the next stage of the Board's rulemaking.

Scope of 45-Day Advance Notice Rules

The Board is using its authority under TILA Section 105(a) and § 2 of the Credit Card Act to interpret the term "credit card account under an open-end consumer credit plan," as that term is used in new TILA Section 127(i), not to include accounts that are home-equity lines of credit (HELOCs) subject to § 226.5b, even if those accounts may be accessed by a credit card device. Thus, the provisions in new TILA Section 127(i) would not apply to HELOC accounts. This is consistent with the Board's historical treatment of HELOC accounts accessible by a credit card under TILA; for example, the credit and charge card application and solicitation disclosure requirements under § 226.5a expressly do not apply to home-equity plans accessible by a credit card that are subject to § 226.5b. The Board is currently engaged in reviewing the rules applicable to HELOCs as part of its staged review of all of Regulation Z and will consider any appropriate revisions

to the change-in-terms requirements for HELOCs in connection with that review.

January 2009 Regulation Z Rule

The Board's interim final rule to implement the advance notice requirements of new TILA Section 127(i) draws upon information considered by the Board in adopting its January 2009 Regulation Z Rule. Section 226.9(c) of the Board's January 2009 Regulation Z Rule, similar to new TILA Section 127(i), requires 45 days' advance written notice of changes in key account terms. The terms for which 45 days' advance written notice of changes is required under the January 2009 Regulation Z Rule are the same terms that the Board required to be disclosed in the new account-opening table required for open-end (not home-secured) credit pursuant to § 226.6(b)(1) and (b)(2) of the January 2009 Regulation Z Rule. The terms for which advance notice of changes is required under the January 2009 Regulation Z Rule are those that the Board determined, in part based on its consumer testing, to be of the greatest importance to consumers, including annual percentage rates and other key charges, such as transaction fees and penalty fees.

As discussed in the supplementary information to § 226.9(g) in the January 2009 Regulation Z Rule, the Board also adopted a new § 226.9(g) to require 45 days' advance notice of increases in the rates applicable to a consumer's delinquency or default, or 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. New § 226.9(g) of the January 2009 Regulation Z Rule was intended to complement § 226.9(c) by requiring advance notice of rate increases that, while not technically changes in the terms of the consumer's account agreement, may still come as a costly surprise to the consumer.

9(c)(1) Rules Affecting Home-Equity Plans and Open-End Plans That Are Not Credit Card Accounts

The interim final rule preserves, in § 226.9(c)(1) and associated staff commentary, the existing change-in-terms notice requirements for home-equity plans and other open-end plans that are not credit card accounts. These rules are substantively identical to the current rules under § 226.9(c), except for several technical and renumbering changes.

The Board notes that open-end (not home-secured) lines of credit that are not credit card accounts will be subject

consistent with the existing terms of the cardholder agreement, while § 226.9(c) addresses changes in the underlying terms of the agreement.

to the revised change-in-terms notice requirements contained in the January 2009 Regulation Z Rule when that rule becomes effective. In particular, changes made in January 2009 to § 226.9(c) and (g) have not been withdrawn. However, the January 2009 Regulation Z Rule is not yet effective, and unsecured lines of credit that are not credit card accounts are not subject to the advance notice requirements in the Credit Card Act. Therefore the existing rules have been preserved for such lines of credit for the period between the effective date of this interim final rule and the date the January 2009 Regulation Z Rule becomes effective. Thus, creditors offering open-end (not home-secured) lines of credit that are not credit card accounts may continue to comply with the existing change-in-terms notice requirements, which have been adopted in this interim final rule as renumbered § 226.9(c)(1).

The Board notes that it also is currently reviewing those portions of Regulation Z that pertain to home-equity lines of credit, and the applicable notice requirements for such products may be amended in the course of that rulemaking.

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

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

Section § 226.9(c)(2) sets forth the change-in-terms notice requirements for credit card accounts that are not home-secured. Paragraph (c)(2)(i) sets forth the general rule for when change-in-terms notices must be provided, and states that a creditor must provide a written notice of a significant change to an account term as described in paragraph (c)(2)(ii) or an increase in the required minimum periodic payment, in each case at least 45 days' prior to the effective date of the change, unless an exception in paragraph (c)(2)(v) applies. Consistent with current § 226.9(c), however, the 45-day advance notice requirement does not apply if the consumer has agreed to the particular change; in that case, the notice need only be given before the effective date of the change.

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

Paragraph (c)(2)(ii) identifies significant changes in account terms for which 45 days' advance notice is required. This paragraph implements both new TILA Sections 127(i)(1) and (i)(2). Consistent with new TILA Section 127(i)(1), § 226.9(c)(2)(ii)(A) defines changes in annual percentage rates as

significant changes. Furthermore, § 226.9(c)(2)(ii)(A) is broad and includes the rates applicable to purchases, cash advances, and balance transfers, as well as any discounted initial rate, premium initial rate, or penalty rate that may apply to the account. Accordingly, § 226.9(c)(2)(ii)(A) is intended to cover changes in contract terms that result in increases in all types of annual percentage rates; notices of increases in applicable annual percentage rates due to the application of existing provisions in the cardholder agreement are covered by § 226.9(g), which is discussed elsewhere in this section-by-section analysis.

Paragraphs (c)(2)(ii)(B) through (c)(2)(ii)(L) set forth the remaining terms for which a change requires 45 days' advance notice, pursuant to the Board's authority under new TILA Section 127(i)(2) to determine by rule what constitutes a "significant change" in terms. The list in paragraphs (c)(2)(ii)(B) through (c)(2)(ii)(L) mirrors the list of terms required to be disclosed in the account-opening table required pursuant to § 226.6(b)(1) and (b)(2) of the January 2009 Regulation Z Rule. This list comprises those terms that, based on the Board's consumer testing, are those that are the most important to consumers. This list includes the types of fees that a consumer should be aware of prior to use of the account, such as key penalty fees, transaction fees, and fees imposed for the issuance or availability of an open-end credit plan, and of which the Board believes a consumer would most benefit from receiving 45 days' advance notice of a change. This list also includes additional terms, such as the grace period applicable to the account and the balance computation method, that are not fees but that can have a significant impact on the cost of credit to a consumer.

The Board notes that a broader interpretation of what constitutes a significant change in terms could result in anomalous results that would not necessarily benefit consumers. There are some fees, such as fees for expedited delivery of a replacement card, that it may not be useful to disclose long in advance of when they become relevant to the consumer. For such fees, the Board believes that a more flexible approach, consistent with that adopted in the January 2009 Regulation Z Rule is appropriate. Thus, if a consumer calls to request an expedited replacement card, the consumer could be informed of the amount of the fee in the telephone call in which the consumer requests the card. Otherwise, the consumer would have to wait 45 days from receipt of a

change-in-terms notice to be able to order an expedited replacement card, which would likely negate the benefit to the consumer of receiving the expedited delivery service.

9(c)(2)(iii) Changes Not Covered by § 226.9(c)(2)(i)

Accordingly, the Board is adopting § 226.9(c)(2)(iii) to clarify how issuers generally must disclose changes in terms that are not subject to the disclosure requirements in § 226.9(c)(2)(i), *i.e.*, that are not significant changes as described in § 226.9(c)(2)(ii) or an increase in the required minimum payment. New § 226.9(c)(2)(iii) generally mirrors the substance of § 226.9(c)(2)(ii) of the January 2009 Regulation Z Rule, and provides that creditors may disclose changes in those terms either by giving 45 days' advance written notice, or by providing notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure of the charge.

9(c)(2)(iv) Disclosure Requirements—Changes to Terms Described in Paragraph (c)(2)(i)

New § 226.9(c)(2)(iv) sets forth the disclosure requirements for change-in-terms notices required to be given pursuant to § 226.9(c)(2)(i). Paragraphs (c)(2)(iv)(A)–(c)(2)(iv)(C) require the notice to provide a description of the changes, state that changes are being made to the account, and state the date the changes will become effective. Except when the change is an increase in the required minimum payment, paragraph (c)(2)(iv)(D) generally requires the notice to inform the consumer of his or her right to reject a change in terms disclosed pursuant to § 226.9(c)(2) prior to the effective date of the change unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment. The notice also is required to disclose instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection. If applicable, issuers also are required to disclose that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

The Board is not requiring that consumers receive a notice of their right to reject the impending changes to the account when they are notified, pursuant to § 226.9(c)(2)(i), of an increase in the required minimum

payment. The right to reject minimum payment increases appears to be inconsistent with the intent of other portions of the Credit Card Act. In the Credit Card Act, Congress amended TILA Section 127(b)(11) to require enhanced disclosures regarding the impact of making only minimum payments, specifically to warn consumers that making only minimum payments can increase the amount of interest they pay and the time it takes to repay balances. Permitting a consumer to reject an increase in the minimum payment could potentially subject that consumer to increased interest charges and a longer amortization period, if the consumer continues to make only the minimum payment.

As discussed elsewhere in the section-by-section analysis to § 226.9(c), the Board notes that the January 2009 Regulation Z Rule imposes additional formatting and content requirements on change-in-terms notices. While those requirements are not included in this interim final rule, the Board will address them in a later stage of rulemaking required by the Credit Card Act, and intends to amend those requirements prior to their effective date to the extent necessary to conform with the requirements of the Credit Card Act.

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

The Board is adopting § 226.9(c)(2)(v) to set forth the exceptions to the general change-in-terms notice requirements for credit card accounts that are not home-secured. Paragraph (c)(2)(v)(A) retains several exceptions that are in current § 226.9(c), including charges for documentary evidence, reductions of finance charges, suspension of future credit privileges (except as provided in § 226.9(c)(vi), discussed below), termination of an account or plan, or when the change results from an agreement involving a court proceeding. The Board is not including these changes in the set of “significant changes” giving rise to notice requirements pursuant to new TILA Section 127(i)(2). The Board believes that 45 days’ advance notice is not necessary for these changes, which are not of the type that generally result in the imposition of a fee or other charge on a consumer’s account that could come as a costly surprise. In addition, the Board believes that for safety and soundness reasons, issuers generally have a legitimate interest in suspending credit privileges or terminating an account or plan when a consumer’s creditworthiness deteriorates, and that 45 days’ advance notice of these types

of changes therefore would not be appropriate.

New § 226.9(c)(2)(v)(B) sets forth an exception contained in the Credit Card Act for increases in annual percentage rates upon the expiration of a specified period of time, provided that prior to the commencement of that period, the creditor disclosed to the consumer clearly and conspicuously in writing the length of the period and the annual percentage rate that would apply after that period. In addition, in order to fall within this exception, the annual percentage rate that applies after the period ends may not exceed the rate previously disclosed. The exception generally mirrors the statutory language, except that the Board has expressly provided, consistent with the general standard for Regulation Z disclosures under Subpart B that the disclosure of the period and annual percentage rate that will apply after the period is required to be in writing. See § 226.5(a)(1).

The Board is adopting a new comment 9(c)(2)(v)–6 to clarify that an issuer offering a deferred interest or similar program may utilize the exception in § 226.9(c)(2)(v)(B). The comment also provides examples of how the required disclosures can be made for deferred interest or similar programs. The Board believes that the application of § 226.9(c)(2)(v)(B) to deferred interest arrangements is consistent with the Credit Card Act and that this clarification is necessary in order to ensure that this interim final rule does not have unintended adverse consequences for deferred interest promotions.

As discussed in the supplementary information to § 226.9(h), the Board is interpreting the consumer’s right to cancel referenced in new TILA Section 127(i)(3) as a right to reject the changes disclosed in the notice. If issuers that offer deferred interest plans were unable to use the exception in § 226.9(c)(2)(v)(B), they would be required to give consumers 45 days’ advance notice before the end of the deferred interest period, as well as the right to reject the imposition of interest charges on the deferred interest balance. For those consumers who rejected the change, the issuer would in effect be required to extend credit at a zero percent interest rate for the life of the balance. This would create a strong disincentive to offering deferred interest programs. The Board does not believe that this was the intent of the Credit Card Act, and specifically notes that amended TILA Section 164 (effective February 22, 2010) creates a special payment allocation rule to facilitate

deferred interest arrangements. The Board believes therefore, that the appropriate reading of the exception implemented in § 226.9(c)(2)(v)(B) is that it also applies to deferred interest or similar programs.

Similarly, § 226.9(c)(2)(v)(C) also sets forth an exception contained in the Credit Card Act, for increases in variable annual percentage rates in accordance with a credit card agreement that provides for a change in the rate according to operation of an index that is not under the control of the creditor and is available to the general public. The Board believes that even absent this express exception, such a rate increase would not generally be a change in the terms of the cardholder agreement that gives rise to the requirement to provide 45 days’ advance notice, because the index, margin, and frequency with which the annual percentage rate will vary will all be specified in the cardholder agreement in advance. However, in order to clarify that 45 days’ advance notice is not required for a rate increase that occurs due to adjustments in a variable rate tied to an index beyond the issuer’s control, the Board has expressly included § 226.9(c)(2)(v)(C) in this interim final rule.

Finally, § 226.9(c)(2)(v)(D) implements a statutory exception for increases in rates due to the completion of a workout or temporary hardship arrangement provided that the annual percentage rate applicable to a category of transactions following the increase does not exceed the rate that applied prior to the commencement of the workout or temporary hardship arrangement. The exception is also conditioned on the issuer’s having clearly and conspicuously disclosed, prior to the commencement of the arrangement, the terms of the arrangement (including any such increases due to such completion). The Board notes that the statutory exception applies in the event of either completion of, or failure to comply with, the terms of such a workout or temporary hardship arrangement. The exception that applies to completion of an arrangement is implemented in § 226.9(c)(2)(v)(D), while the exception applicable to failure to comply with a workout or temporary hardship arrangement is implemented in § 226.9(g) as discussed elsewhere in this **Federal Register**. This exception also generally mirrors the statutory language, except that the Board has expressly provided that the disclosures regarding the workout or temporary hardship arrangement are required to be in writing.

New comment 9(c)(2)(v)–5, which is applicable to the exceptions in both § 226.9(c)(2)(v)(B) and (c)(2)(v)(D), provides additional clarification regarding the disclosure of variable annual percentage rates. The comment provides that if the creditor is disclosing a variable rate, the notice must also state that the rate may vary and how the rate is determined. The comment sets forth an example of how a creditor may make this disclosure. The Board believes that the fact that a rate is variable is an important piece of information of which consumers should be aware prior to commencement of a deferred interest promotion, a promotional rate, or a stepped rate program.

New comment 9(c)(2)(v)–7 provides clarification as to what terms must be disclosed in connection with a workout or temporary hardship arrangement. The comment states that in order for the exception to apply, the creditor must disclose to the consumer the rate that will apply to balances subject to the workout or temporary hardship arrangement, as well as the rate that will apply if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement. The notice also must state, if applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement. The Board believes that it is important for a consumer to be notified of his or her payment obligations pursuant to a workout or similar arrangement, and that the rate may be increased if he or she fails to make timely payments.

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

Consistent with the January 2009 Regulation Z Rule, the Board is adopting § 226.9(c)(2)(vi) to address notices of changes in a consumer's credit limit. Section 226.9(c)(2)(vi) requires an issuer to provide a consumer with 45 days' advance notice that a credit limit is being decreased or will be decreased prior to the imposition of any over-the-limit fee or penalty rate imposed solely as the result of the balance exceeding the newly decreased credit limit. The Board is not including a decrease in a consumer's credit limit itself as a significant change in a term that requires 45 days' advance notice, for several reasons. First, the Board recognizes that creditors have a legitimate interest in mitigating the risk of a loss when a consumer's creditworthiness deteriorates, and believes there would be safety and soundness concerns with requiring creditors to wait 45 days to reduce a

credit limit. Second, the consumer's credit limit is not a term generally required to be disclosed under Regulation Z or TILA. Finally, the Board believes that § 226.9(c)(2)(vi), as adopted, adequately protects consumers against the two most costly surprises potentially associated with a reduction in the credit limit, namely, fees and rate increases, while giving a consumer adequate time to mitigate the effect of the credit line reduction.

The commentary to § 226.9(c)(2) generally is consistent with the commentary to § 226.9(c)(2) of the January 2009 Regulation Z Rule, except for changes necessary to reflect the fact that this interim final rule does not incorporate all of the requirements of § 226.9(c)(2) of the January 2009 Regulation Z Rule. In addition, as discussed above, the Board has adopted new comments 9(c)(2)(v)–5 through 9(c)(2)(v)–7.

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

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

The interim final rule adopts new § 226.9(g), which in combination with amendments to § 226.9(c), implements the 45-day advance notice requirements for rate increases in new TILA Section 127(i). This approach is consistent with the Board's January 2009 Regulation Z Rule, which included change-in-terms notice requirements in § 226.9(c) and increases in rates due to the consumer's default or delinquency or as a penalty for events specified in the account agreement in § 226.9(g). The general rule is set forth in § 226.9(g)(1) and provides that for credit cards under an open-end (not home-secured) consumer credit plan, a creditor must provide a written notice to each consumer who may be affected when a rate is increased due to a delinquency or default or as a penalty.

9(g)(2) Timing of Written Notice

Paragraph (g)(2) sets forth the timing requirements for the notice described in paragraph (g)(1), and states that the notice must be provided at least 45 days' prior to the effective date of the increase. The notice must, however, be provided after the occurrence of the event that gave rise to the rate increase. That is, a creditor must provide the notice after the occurrence of the event or events that trigger a specific impending rate increase and may not send a general notice reminding the consumer of the conditions that may give rise to penalty pricing.

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

Paragraph (g)(3) sets forth the required content for a notice provided pursuant to § 226.9(g). The notice must state that the delinquency, default, or penalty rate has been triggered, and the date on which the increased rate will apply. The notice also must state the circumstances under which the increased rate will cease to apply to the consumer's account or, if applicable, that the increased rate will remain in effect for a potentially indefinite time period. In addition, the notice must inform the consumer of his or her right to reject the application of the penalty rate prior to the effective date of the change, unless the consumer makes a payment that is more than 60 days late. The notice also must disclose instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection. If applicable, issuers are required to disclose that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended. These content requirements include a portion of the content required under § 226.9(g) of the January 2009 Regulation Z Rule and the new disclosure regarding the right to reject the changes included in the Credit Card Act (as implemented in § 226.9(h)). However, the Board is not implementing certain content requirements at this time that pertain to whether the rate applies to outstanding balances or only new transactions. The Board anticipates reviewing and revising these additional content requirements, as appropriate, for conformity with the Credit Card Act in the next stage of rulemaking.

9(g)(4) Exceptions

Paragraph (g)(4) sets forth two exceptions to the advance notice requirements of § 226.9(g), both of which are consistent with exceptions contained in the January 2009 Regulation Z Rule. First, consistent with the exception described in the supplementary information to § 226.9(c), § 226.9(g)(4)(i) contains an exception for rate increases due to a consumer's failure to comply with the terms of a workout or temporary hardship arrangement between the creditor and consumer. Second, § 226.9(g)(4)(ii) includes an exception that clarifies the relationship between the notice requirements in § 226.9(c)(vi) and (g)(1) when the creditor decreases a consumer's credit limit and under the terms of the credit agreement a penalty rate may be imposed for extensions of

credit that exceed the newly decreased credit limit. This exception is substantively identical to § 226.9(g)(4)(ii) of the January 2009 Regulation Z Rule, except that the Board is not implementing certain content requirements at this time that pertain to whether the rate applies to outstanding balances or only to new transactions. The Board anticipates reviewing and revising these additional content requirements, as appropriate, for conformity with the Credit Card Act in the next stage of rulemaking. *See* 74 FR 5355 for additional discussion of this exception.

The commentary to § 226.9(g) generally is consistent with the commentary to § 226.9(g) of the January 2009 Regulation Z Rule, except for changes necessary to reflect the fact that this interim final rule does not incorporate all of the requirements of § 226.9(g) of the January 2009 Regulation Z Rule.

9(h) Consumer Rejection of Significant Change in Terms or Increase in Annual Percentage Rate

Section 101(a)(1) of the Credit Card Act creates a new TILA Section 127(i)(3), which provides that, when consumers are notified of a rate increase or other significant change in the account terms, they must also receive notice of their right to cancel the account before the effective date of the increase or change. The Credit Card Act also creates a new TILA Section 127(i)(4), which states that a consumer's closure or cancellation of an account shall not constitute a default under the cardholder agreement and shall not trigger imposition of a penalty or fee. This provision further states that such a closure or cancellation shall not trigger an obligation to immediately repay the balance in full or through a method that is less beneficial to the consumer than a method described in revised TILA Section 171(c)(2). Revised Section 171(c)(2) lists two methods for repaying balances: First, an amortization period of not less than five years; and second, a required minimum periodic payment that includes a percentage of the balance that is not more than twice the prior percentage.

While the requirement in new Section 127(i)(3) that consumers be notified of the right to cancel is implemented in § 226.9(c)(2)(iv) and (g)(3) (as discussed above), the Board has implemented the substantive right and the protections in Section 127(i)(4) in a new § 226.9(h). Specifically, § 226.9(h)(1) provides that, if § 226.9(c)(2)(iv) or (g)(3) requires disclosure of the consumer's right to reject a significant change to an account

term or other increase in an annual percentage rate, the consumer may reject that change or other increase by notifying the creditor before the effective date. Section 226.9(h)(2) further provides that, if the consumer rejects the change or other increase before the effective date, the creditor may not apply that change or other rate increase to the account, may not impose a fee or charge or treat the account as in default solely as a result of the rejection, and may not require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the listed methods. Finally, § 226.9(h)(3) provides exceptions for accounts that are more than 60 days delinquent and for transactions that occur more than 14 days after provision of the § 226.9(c) or (g) notice.

9(h)(1) Right To Reject

New TILA Section 127(i)(3) requires that a notice of an increase in rate or other significant change in terms also contain "a brief statement of the right of the [consumer] to cancel the account pursuant to rules established by the Board before the effective date of the subject rate increase or other change." Credit Card Act § 101(a)(1). For the reasons discussed below, the Board interprets new TILA Section 127(i)(3) as generally establishing a substantive right for consumers who receive a notice of a rate increase or change in terms pursuant to § 226.9(c) or (g) to avoid the imposition of that increase or change by rejecting it before the effective date.

The Board understands that, as a general matter, creditors currently permit consumers to cancel their credit card accounts at any time. New TILA Section 127(i)(3), however, requires that creditors inform consumers of their right to cancel the account. This disclosure would be misleading if creditors were not required to honor a consumer's request to cancel. Furthermore, Section 127(i)(3) requires that the disclosure of the right to cancel be included in each notice informing a consumer of a forthcoming rate increase or change in terms. This information would be of little value to consumers at this point in time if exercising the right to cancel had no effect on the increase or change. Finally, Section 127(i)(3) specifically requires that consumers be informed that they have a right to cancel before the effective date of the rate increase or change in terms, which implies that—as is the case under certain state laws—canceling the account within this time period will

preclude the creditor from applying the increased rate or changed term.¹⁴

For these reasons, the Board believes that it is consistent with the purposes of the Credit Card Act and TILA to interpret the right to cancel in Section 127(i)(3) as a substantive right for a consumer to reject a rate increase or change in terms. Although the Credit Card Act contains other provisions that protect consumers from the application of increased rates, fees, and finance charges to outstanding balances, these provisions are not effective until February 22, 2010. *See* Credit Card Act §§ 3, 101(b). Furthermore, even when these provisions become effective, they may not cover every type of change in terms that could be costly to consumers. Accordingly, pursuant to Section 127(i)(3)'s specific grant of authority to establish rules implementing the right to cancel and the Board's general authority under TILA Section 105(a) (15 U.S.C. 1604(a)) to prescribe regulations to carry out the purposes of TILA, the Board is adopting § 226.9(h)(1), which provides that, if § 226.9(c)(2)(iv) or (g)(3) requires disclosure of the consumer's right to reject a significant change to an account term or other increase in an annual percentage rate, the consumer may generally reject that change or increase by notifying the creditor of the rejection before the effective date of the change or increase.¹⁵ As discussed below, however, this right is subject to limited exceptions, such as when the account is more than 60 days delinquent.

Comment 9(h)(1)–1 provides clarification regarding the procedures creditors may use for the submission of rejections. It states that a creditor may place requirements on the submission of rejections of a change in term or a rate increase but that such requirements must be reasonable. As an example, the comment states it would be reasonable

¹⁴ *See, e.g.,* Ala. Code § 5–20–5; 5 Del. Code § 952; Off. Code of Ga. § 7–5–4; S.D. Codified Laws § 54–11–10. Notably, these state law rights to reject generally do not apply when a rate is increased due to default or delinquency or as a penalty. However, as with the 45-day advance notice requirement, the right to cancel in new TILA Section 127(i) does not distinguish between penalty rate increases and other rate increases. Similarly, although some of these state laws apply only to rate increases and not other changes to account terms, Section 127(i) clearly contemplates that the right to cancel will apply to significant changes in terms.

¹⁵ Section 226.9(h) distinguishes between an increase in an annual percentage rate pursuant to a change to an account term (for which a § 226.9(c) notice is required) and "other increase[s] in an annual percentage rate" (for which a § 226.9(g) notice is required). When a creditor increases a rate due to delinquency or default or as a penalty, it generally does so by invoking a penalty provision in the account agreement rather than by changing the terms of the agreement. Thus, this type of rate increase is not technically a change in terms.

for a creditor to require that rejections be made by the primary account holder and that the consumer identify the account number. Similarly, it states that a creditor may designate channels for submitting rejections other than the toll-free telephone number required to be disclosed pursuant to § 226.9(c) or (g) (such as a mailing address), so long as the creditor does not require that rejections be submitted through such additional channels. Although some provisions of Regulation Z require consumers to submit requests in writing,¹⁶ the Board believes that imposing such a requirement in these circumstances would inhibit consumers' exercise of their right to reject impending rate increases and changes and is unnecessary because many issuers currently accept requests to close or cancel credit card accounts by telephone.

Comment 9(h)(1)–1 states that it would be reasonable for a creditor to require that rejections be received before the effective date disclosed pursuant to § 226.9(c) or (g) and to treat the account as not subject to § 226.9(h) if a rejection is received on or after that date. The comment states that it would not, however, be reasonable to require that rejections be received earlier than the day before the effective date. Instead, a creditor that is unable to process all rejections received before the effective date through the toll-free number and any other designated channel may delay implementation of the rate increase or change in terms until all rejections have been processed. In the alternative, the creditor could implement the increase or change on the effective date and then, on any account for which a timely rejection was received, return the account to the prior terms and ensure that the account is not assessed any additional interest or charges as a result of the increased rate or changed term or that the account is credited for such interest or charges. An example is provided in the commentary.

The Board is also adopting comment 9(h)(1)–2, which clarifies that a consumer does not waive or forfeit the right to reject a change in terms or a rate increase by using the account for transactions prior to the effective date of the change or increase. Similarly, the comment clarifies that a consumer does not revoke a rejection by using the account for transactions. Although under some state laws use of the account following notice of an increase or change constitutes acceptance of that increase or change, the Board has

previously rejected this approach with respect to the advance notice requirements in § 226.9(c). *See* comment 9(c)(1)–3.ii (redesignated as comment 9(c)(2)(i)–3.ii). A consumer may use the account for transactions after the notice has been sent but before it has been received and therefore be unaware of the change or increase. Similarly, a consumer may inadvertently use the account after receiving the § 226.9(c) or (g) notice or exercising the right to reject without intending to accept the change or increase (such as by inadvertently failing to cancel an automated recurring charge). As discussed below, however, if the account is used for a transaction more than 14 days after provision of the § 226.9(c) or (g) notice, § 226.9(h)(3)(ii) permits the creditor to apply the changed term or increased rate to that transaction even if the consumer rejects the change or increase before the effective date.

9(h)(2) Effect of Rejection

9(h)(2)(i) Prohibition on Applying Changed Term or Increased Rate

As discussed above, based on its analysis of new TILA Section 127(i), the Board concludes that the right to cancel set forth in Section 127(i)(3) entitles a consumer to avoid application of a rate increase or change in terms by rejecting that increase or change prior to its effective date. Accordingly, § 226.9(h)(2)(i) provides that, if a creditor is notified of such a rejection, the creditor must not apply the increased rate or changed term to the account.

The Board is adopting comment 9(h)(2)(i)–1, which clarifies the application of § 226.9(h)(2)(i) to accounts subject to a promotional rate or a deferred interest or similar program. Specifically, this comment clarifies that, although § 226.9(h)(2)(i) provides that the creditor must not apply the change or increase to the account if the consumer has rejected that change or increase, it does not prohibit a creditor from applying the terms of a pre-existing promotional rate or deferred interest or similar program. The comment also provides examples illustrating the application of § 226.9(h)(2)(i) in these circumstances.¹⁷

¹⁷ The Board notes that these and other examples in the commentary to § 226.9(h) reflect the amendments to TILA that go into effect on August 20, 2009. To the extent that these examples or any other aspect of the interim final rule and commentary are inconsistent with provisions of the Credit Card Act that take effect after August 20 (particularly the limitations in revised TILA Section 171 on the application of increased rates to existing balances), the Board will revise them in a subsequent rulemaking.

9(h)(2)(ii) Prohibition on Penalties

New TILA Section 127(i)(4) provides, among other things, that closure or cancellation of an account by a consumer “shall not constitute a default under an existing cardholder agreement” and “shall not trigger * * * the imposition of any other penalty or fee.” Credit Card Act § 101(a)(1). Accordingly, the Board is adopting § 226.9(h)(2)(ii), which provides that, if a consumer rejects a significant change in terms or an increased rate, the creditor must not impose a fee or charge or treat the account as in default solely as a result of the rejection. The Board and the other Agencies adopted a similar prohibition in the January 2009 FTC Act Rule. *See* 12 CFR 227.24(c)(2), 74 FR 5560.

The Board is also adopting comment 9(h)(2)(ii)–1, which provides as an example of the type of fee or charge prohibited by § 226.9(h)(2)(ii) a monthly maintenance fee that would be charged only if the consumer rejected the change or increase. The comment clarifies, however, that a creditor is not prohibited from continuing to charge a fee that was charged before the rejection. For example, a creditor that charged a periodic fee or a fee for late payment before a change or increase was rejected is not prohibited from charging those fees after rejection of the change or increase. This comment is based on a similar comment adopted by the Board and the other Agencies in the January 2009 FTC Act Rule as well as clarifications proposed by the Agencies in May 2009. *See* comment 24(c)(2)–1, 74 FR 5566; *see also* 74 FR 20820.

The Board is also adopting comment 9(h)(2)(ii)–2, which clarifies that § 226.9(h)(2)(ii) does not prohibit a creditor from terminating or suspending credit availability if the consumer rejects a rate increase or change in terms. Although the termination or suspension of credit availability could be construed as a penalty, the Board believes that permitting the creditor to terminate or suspend credit availability is consistent with the references in new TILA Section 127(i)(3) and (4) to the closure or cancellation of the account. This comment clarifies, however, that § 226.9(h) does not *require* a creditor to terminate or suspend credit availability for consumers who reject a rate increase or change in terms. Indeed, there may be circumstances where an issuer elects to continue extending credit to a consumer notwithstanding the rejection. As discussed below, in these circumstances, § 226.9(h)(3)(ii) permits the creditor to apply the increased rate or changed term to transactions that

¹⁶ *See, e.g.*, 12 CFR 226.13(b) (requiring that billing error notices be submitted in writing).

occur more than 14 days after provision of the § 226.9(c) or (g) notice.

9(h)(2)(iii) Repayment of Outstanding Balance

New TILA Section 127(i)(4) also provides that closure or cancellation of an account by a consumer “shall not trigger an obligation to repay the obligation in full or through a method that is less beneficial to the [consumer] than one of the methods described in section 171(c)(2). * * *” Credit Card Act § 101(a)(1). Amended TILA Section 171(c)(2) lists two methods of repaying an outstanding balance: First, an amortization period of not less than five years (beginning on the effective date of the increase set forth in the Section 127(i) notice); and, second, a required minimum periodic payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of the increase set forth in the Section 127(i) notice. *See id.*

Notably, however, these methods are prefaced by amended TILA Section 171(c)(1), which states “[t]he creditor shall not change the terms governing the repayment of any outstanding balance, except that the creditor may provide the [consumer] with one of the methods described in [Section 171(c)(2)] * * * or a method that is no less beneficial to the [consumer] than one of those methods.” *Id.* In certain circumstances, however, the repayment method used by the creditor prior to rejection may result in a higher payment than under one of the methods listed in amended TILA Section 171(c)(2). For example, assume that the required minimum periodic payment on a credit card account is the greater of: (1) Fees and accrued interest plus two percent of the outstanding balance; or (2) a “floor” amount of \$50. Assume also that, when the consumer rejects a rate increase or change in terms, the account has an outstanding balance of \$1,000 and the creditor doubles the percentage of the balance included in the minimum payment to four percent. As the outstanding balance decreases with each payment, the minimum payment will eventually reach the \$50 floor, which will be greater than four percent of the outstanding balance plus fees and accrued interest.

Although new TILA Section 127(i)(4) could be read to prohibit a creditor from using the pre-existing “floor” minimum payment in these circumstances, the Board believes that it is consistent with the purposes of TILA (as expressed in amended TILA Section 171(c)(1)) to apply the existing “floor” minimum payment. If the purpose of Section

127(i)(4) is to prevent the creditor from penalizing a consumer for closing or cancelling an account by requiring repayment of the outstanding balance on terms that are more onerous to the consumer, retention of an existing repayment method is consistent with that purpose. In addition, prohibiting application of the “floor” minimum payment would delay repayment of the balance in full and result in additional interest charges without providing any substantial benefit to the consumer.

Accordingly, the Board is using its general authority under TILA Section 105(a) to adopt § 226.9(h)(2)(iii), which provides that, if a consumer rejects a rate increase or change in terms, the creditor must not require repayment of the balance on the account using a method that is less beneficial to the consumer than one of three listed methods: First, the method of repayment for the account on the date on which the creditor was notified of the rejection; second, an amortization period of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection; or, third, a required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection.¹⁸ The Board and the other Agencies adopted a similar provision in the January 2009 FTC Act Rule. *See* 12 CFR 227.24(c)(1), 74 FR 5560; *see also* comment 24(c)-2, 74 FR 5565.

The Board is also adopting comment 9(h)(2)(iii)-1, which clarifies that a repayment method is no less beneficial to the consumer if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated using the method for the account prior to the date on which the creditor received the rejection. The comment further clarifies that a method is no less beneficial to the consumer if the method amortizes the balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 226.9(h)(2)(iii)(C).

In addition, the Board is adopting comment 9(h)(2)(iii)(B)-1, which clarifies that, although § 226.9(h)(2)(iii)(B) provides for an amortization period of no less than five years beginning no earlier than the date

on which the creditor was notified of the rejection, a creditor is not required to recalculate the required minimum periodic payment if, during the amortization period, the balance is reduced as a result of payments by the consumer in excess of that minimum payment.

Furthermore, the Board is adopting comment 9(h)(2)(iii)(B)-2, which clarifies that, if the annual percentage rate that applies to the balance subject to § 226.9(h)(2)(iii) varies with an index, the creditor may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the balance is amortized in five years. Finally, the Board is adopting comment 9(h)(2)(iii)(C)-1, which provides an example of how a creditor could adjust the required minimum periodic payment on a balance by no more than doubling the percentage of the balance included in that payment. The commentary to § 226.9(h)(2)(iii) is similar to commentary adopted by the Board and the other Agencies in the January 2009 FTC Act Rule. *See* comment 24(c)(1)-1, 74 FR 5565; comment 24(c)(1)(i)-1, 74 FR 5574; comment 24(c)(1)(i)-2, 74 FR 5574; comment 24(c)(1)(ii)-2, 74 FR 5574.

9(h)(3) Exceptions

Pursuant to new TILA Section 127(i)(3)’s express grant of authority to establish rules implementing the right to cancel and the Board’s general authority under TILA Section 105(a) (15 U.S.C. 1604(a)) to make adjustments and exceptions to carry out the purposes of TILA and to facilitate compliance therewith, the Board is establishing two exceptions to § 226.9(h), which are discussed below.

In addition, the Board is adopting comment 9(h)(3)-1, which clarifies that, in addition to the circumstances listed in § 226.9(h)(3), § 226.9(h) does not apply to home equity plans subject to the requirements of § 226.5b that are accessible by a credit or charge card because § 226.9(c)(2) and 226.9(g) do not apply to such plans. Similarly, the comment clarifies that § 226.9(h) does not apply when the required minimum periodic payment is increased because § 226.9(c)(2)(iv) does not require disclosure of the right to reject in those circumstances.

9(h)(3)(i) Delinquencies of More Than 60 Days

Section 226.9(h)(3)(i) provides that § 226.9(h) does not apply when the creditor has not received the consumer’s required minimum periodic payment within 60 days after the due date for

¹⁸ The repayment methods in § 226.9(h)(2)(iii) focus on the date on which the creditor is notified of the rejection rather than the effective date for the increased rate or change in terms because, once the consumer exercises the right to reject, the effective date will generally become irrelevant.

that payment. This exception is based on a similar exception to the Credit Card Act's general prohibition on applying increased annual percentage rates, fees, or finance charges to outstanding balances. See Credit Card Act § 101(b) (revised TILA Section 171(b)(4)). Although that prohibition is not effective until February 22, 2010,¹⁹ the Board believes that a parallel exception for delinquencies of more than 60 days is appropriate here. Otherwise, after February 22, 2010, a consumer who is more than 60 days delinquent could use the right to reject a rate increase to override the exception specifically created by the Credit Card Act for such circumstances. The Board does not believe that this was Congress's intent because the Credit Card Act's exception for delinquencies of more than 60 days contains its own remedy for consumers. Specifically, the exception provides that, if an increased rate, fee, or finance charge is applied to an outstanding balance based on a delinquency of more than 60 days, the creditor must "terminate such increase not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period." Credit Card Act § 101(b) (revised TILA Section 171(b)(4)(B)). Thus, based on its review of the Credit Card Act as a whole, the Board believes it would be inconsistent to extend the right to reject to circumstances where a consumer is more than 60 days delinquent.²⁰

9(h)(3)(ii) Transactions That Occur More Than 14 Days After Provision of Notice

Section 226.9(h)(3)(ii) provides that § 226.9(h) does not apply to transactions that occur more than 14 days after provision of the notice required by § 226.9(c) or (g). Like the exception for delinquencies of more than 60 days, this exception is based on the provisions of the Credit Card Act that generally prohibit creditors from applying increased rates, fees, and finance charges to outstanding balances. Specifically, those provisions address circumstances in which a consumer uses an account for transactions after receiving advance notice of an increase by defining the "outstanding balance" to which the increase may not be applied as "the amount owed * * * as of the end of the 14th day after the date on which the creditor provides [the] notice. * * *" Credit Card Act § 101(b) (revised TILA Section 171(d)). By

establishing separate timing rules for the notice requirement and the substantive limitations, the Credit Card Act balances the interests of consumers and creditors. On the one hand, the 14-day period ensures that the increased rate, fee, or finance charge will not apply to transactions that occur before the consumer has received the notice and had a reasonable amount of time to review it and to decide whether to use the account for additional transactions. On the other hand, by allowing creditors to apply the increase to transactions that occur more than 14 days after provision of the notice, the Credit Card Act reduces the potential that a consumer—having been notified of an increase in the rate for new transactions—will use the 45-day notice period to engage in transactions to which the increased rate cannot be applied.

In the FTC Act rulemaking, the Board and the other Agencies addressed this issue by proposing a similar 14-day period. See proposed 12 CFR 227.24(a)(2), 73 FR 28920, 28942. Like the Agencies' 21-day safe harbor for mailing periodic statements, 14 days was intended to allow seven days for the notice to reach the consumer and seven days for the consumer to review that notice and take appropriate action (*e.g.*, begin using a different credit account). The Agencies noted that, although institutions could address the concern that the 45-day notice period could be abused by denying additional extensions of credit after sending the notice, that outcome might not be beneficial to consumers who have received the notice and wish to use the account for new transactions. Based on the comments and further analysis, the Board and the other Agencies concluded that consumers did not require seven days to review the notice and take appropriate action and reduced the 14-day period to seven days in the January 2009 FTC Act Rule. See 12 CFR 227.24(b)(3), 74 FR 5560. Ultimately, however, Congress elected to address this issue using the 14-day period originally proposed by the Agencies.

Because the right to reject a rate increase or change in terms can raise concerns similar to those addressed by new TILA Section 171(d), the Board believes it is appropriate to apply the 14-day period here as well. As discussed above with respect to comment 9(h)(1)–2, a consumer's use of the account after receiving the § 226.9(c) or (g) notice should not result in a waiver or forfeiture of the right to reject (even if the consumer has already exercised that right). However, the Board believes it would be inconsistent with the purpose of the Credit Card Act

(as stated in revised TILA Section 171(d)) to permit a consumer to deliberately engage in transactions after receiving the notice and then exercise the right to reject shortly before the effective date in order to prevent the creditor from applying the increased rate or changed term to those transactions.²¹ Accordingly, based on its review of the Credit Card Act as a whole, the Board is using its authority under TILA Section 105(a) and new TILA Section 127(i)(3) to permit creditors to apply the increased rate or changed term to transactions that occur more than 14 days after provision of the § 226.9(c) or (g) notice even in circumstances where the consumer has exercised the right to reject.

The Board is adopting comment 9(h)(3)(ii)–1, which clarifies that, although § 226.9(h)(3)(ii) permits a creditor to apply a changed term or increased rate to transactions that occur more than 14 days after provision of the notice required by § 226.9(c) or (g), it does not permit a creditor to reach back to days before the effective date of the change in terms or rate increase when calculating interest charges. The comment also clarifies that, because the exception in § 226.9(h)(3)(ii) is limited to changed terms and increased rates that can be applied to *transactions*, it does not permit a creditor to apply a changed term to the entire account simply because the account was used for a transaction more than 14 days after provision of a § 226.9(c) or (g) notice. For example, if a consumer rejects an increase in a periodic fee or late payment fee, the creditor is prohibited from applying the increased fee to the account even if the account is used for a transaction more than 14 days after provision of the § 226.9(c) notice. In contrast, § 226.9(h)(3)(ii) does permit a creditor to apply an increased rate or a transaction fee to a transaction that occurred more than 14 days after provision of the § 226.9(c) or (g) notice so long as that increased rate or transaction fee is not applied to other transactions.

The Board is also adopting comment 9(h)(3)(ii)–2, which clarifies that whether a transaction occurred prior to provision of a notice or within 14 days after provision of a notice is generally determined by the date of the transaction. The Board notes that

²¹ Furthermore, although a creditor may terminate credit availability and decline to honor additional transactions after the consumer rejects an increase or change, there may be circumstances where a creditor is obligated to honor a particular transaction (such as when the transaction was authorized by the creditor before credit availability was terminated).

¹⁹ See Credit Card Act § 3.

²⁰ Comment 9(h)(3)(i)–1 provides illustrative examples of the application of this exception.

revised TILA Section 171(d) refers to “the amount owed” at the end of the fourteenth day after provision of the § 226.9(c) or (g) notice rather than to transactions that occur during that 14-day period. The Board is also aware that, for a variety of reasons (including a merchant’s delay in submitting a transaction to the creditor), a transaction may occur within the 14-day period but not be added to the consumer’s outstanding balance until after that period. Although such delays may present challenges for creditors when determining whether a transaction occurred within the 14-day period, these delays are generally unknown to consumers and outside of their control. A consumer who engages in a transaction on a particular date could reasonably expect the transaction to be added to their outstanding balance on that date. Accordingly, the Board believes that, as a general matter, it is consistent with the purposes of TILA to focus on the transaction date.

However, to facilitate compliance with § 226.9(h)(3)(ii), comment 9(h)(3)(ii)-2 states that, if a transaction that occurred within 14 days after provision of the notice is not charged to the account prior to the effective date of the change or increase, the creditor may treat the transaction as occurring more than 14 days after provision of the notice for purposes of § 226.9(h)(3)(ii). In addition, the comment states that, when a merchant places a “hold” on the available credit on an account for an estimated transaction amount when the actual transaction amount will not be known until a later date, the date of the transaction for purposes of § 226.9(h)(3)(ii) is the date on which the actual transaction amount is charged to the account.

This comment is based on a similar comment adopted by the Board and the other Agencies in the January 2009 FTC Act Rule as well as clarifications proposed by the agencies in May 2009 and the comments received in response. See comment 24(b)(3)-2, 74 FR 5564; see also 74 FR 20810, 20818. Examples illustrating the application of § 226.9(h)(3)(ii) and the guidance in comments 9(h)(3)(ii)-1 and -2 are provided in comment 9(h)(3)(ii)-3.

Implementation of Interim Final Rule for Subsequent Disclosure Requirements

Revised § 226.9(c) and new § 226.9(g) and (h) are effective, consistent with the Credit Card Act and the rest of this interim final rule, on August 20, 2009.

Notices required under § 226.9(c). The relevant date for determining whether a change-in-terms notice must comply with the new advance notice

requirements of revised § 226.9(c)(2) is generally the date on which the notice is provided, not the effective date of the change. The Board believes that this is the appropriate transition rule in order to provide clarity and certainty to issuers. Therefore, if a notice of a change in terms is provided pursuant to existing § 226.9(c) prior to August 20, 2009, the notice only need be given 15 days in advance of the effective date of the change, even if the change itself becomes effective after August 20. For example, a creditor may provide a notice in accordance with existing Regulation Z on August 10, 2009 disclosing a change-in-terms effective August 26, 2009. Accordingly, any such notice would not be required to comply with the content requirements of this interim final rule, including the disclosure of the consumer’s right to reject the change.

Any notice provided on or after August 20, 2009 would be subject to all of the content and other requirements of § 226.9(c)(2), as applicable. For example, assume a creditor mails a change-in-terms notice to a consumer on August 20, 2009 disclosing a rate increase effective on October 4, 2009, to which none of the exceptions in § 226.9(c)(2)(v) apply. That notice would be required to disclose all of the content set forth in § 226.9(c)(2)(iv), including required disclosures pertaining to the consumer’s right to reject the change.

The Board believes that this is the appropriate way to implement the August 20, 2009 effective date in order to ensure that institutions are provided the full 90-day implementation period provided under the Credit Card Act. In the alternative, the Credit Card Act could be construed to require creditors to provide notices, pursuant to new § 226.9(c)(2), 45 days in advance of changes occurring on or after August 20. However, this reading would create uncertainty regarding compliance with the rule by requiring creditors to begin providing change-in-terms notices in accordance with revised TILA Section 127(i) in some cases as much as 45 days prior to the August 20, 2009 effective date, and prior to the publication of this interim final rule. Accordingly, for clarity and consistency, the Board believes the better interpretation is that creditors must begin to comply with amended TILA Section 127(i) (as implemented in amended § 226.9(c)(2)) for change-in-terms notices provided on or after August 20, 2009.

Notices required under § 226.9(g). For rate increases due to the consumer’s default or delinquency or as a penalty, the 15-day timing requirement of

§ 226.9(c) currently does not apply. Current § 226.9(c)(1) states only that notice of the increase must be given before the effective date of the change. Therefore, the relevant date for purposes of penalty rate increases generally is the date on which the increase becomes effective. For example, if a consumer makes a late payment on August 10, 2009 that triggers penalty pricing, a creditor may increase the rate effective on or before August 19, 2009 in compliance with existing Regulation Z, and need not provide 45 days’ advance notice of the change.

The Board is aware that there may be some circumstances in which a consumer’s behavior prior to August 20, 2009 triggers a penalty rate, but a creditor may be unable to implement that rate increase prior to August 20, 2009. For example, a consumer may make a late payment on August 15, 2009 that triggers a penalty rate, but the creditor may not be able to implement that rate increase until August 25, 2009 for operational reasons. In these circumstances, the Board believes that requiring 45 days’ advance notice prior to the imposition of the penalty rate would not be appropriate, because it would in effect require compliance with new § 226.9(g) prior to the August 20 effective date. Therefore, for such penalty rate increases that are triggered, but cannot be implemented, prior to August 20, 2009, a creditor must either provide the consumer, prior to August 20, 2009, with a written notice disclosing the impending rate increase and its effective date, or must comply with new § 226.9(g). In the example described above, therefore, a creditor could mail to the consumer a notice on August 19, 2009 disclosing that the consumer has triggered a penalty rate increase that will be effective on August 25, 2009. If the creditor mailed such a notice, it would not be required to comply with new § 226.9(g). This transition guidance applies only to penalty rate increases triggered prior to August 20, 2009; if a consumer engages in behavior that triggers penalty pricing on August 20, 2009, the creditor must comply with new § 226.9(g) and, accordingly, must provide the consumer with a notice at least 45 days in advance of the effective date of the increase.

*Promotional rates.*²² Some creditors may have outstanding promotional rate programs that were in place before the effective date of this interim final rule, but under which the promotional rate

²² For simplicity, the Board refers in this subsection to “promotional rates.” However, pursuant to new comment 9(c)(2)(v)-6, this transition guidance is intended to apply equally to deferred interest or similar programs.

will not expire until after August 20, 2009. For example, a creditor may have offered its consumers a 5% promotional rate on purchases beginning on September 1, 2008 that will be increased to 15% effective as of September 1, 2009. Such creditors may have concerns about whether the disclosures that they have provided to consumers in accordance with these arrangements are sufficient to qualify for the exception in § 226.9(c)(2)(v)(B). The Board notes that § 226.9(c)(2)(v)(B) of this interim final rule requires only clear and conspicuous written disclosures of the term of the promotional rate and the rate that will apply when the promotional rate expires. The Board anticipates that many creditors offering such a promotional rate program already will have complied with these advance notice requirements in connection with offering the promotional program.

The Board is nonetheless aware that some other creditors may be uncertain whether written disclosures provided at the time an existing promotional rate program was offered are sufficient to comply with the exception in § 226.9(c)(2)(v)(B). For example, for promotional rate offers provided after August 20, 2009, the disclosure under § 226.9(c)(2)(v)(B)(1) must include the rate that will apply after the expiration of the promotional period. For an existing promotional rate program, a creditor might instead have disclosed this rate narratively, for example by stating that the rate that will apply after expiration of the promotional rate is the standard annual percentage rate applicable to purchases. The Board does not believe that it is appropriate to require a creditor that generally provided disclosures consistent with § 226.9(c)(2)(v)(B), but that are technically not compliant because they described the post-promotional rate narratively, to provide consumers with 45 days' advance notice and the right to reject the change, before expiration of the promotional period. This would have the impact of imposing the requirements of this interim final rule retroactively, to disclosures given prior to the August 20, 2009 effective date. Therefore, a creditor that generally made disclosures prior to August 20, 2009 complying with § 226.9(c)(2)(v)(B) but that describe the type of post-promotional rate rather than disclosing the actual rate is not required to provide an additional notice pursuant to § 226.9(c)(2) before expiration of the promotional rate in order to use the exception.

Similarly, the Board acknowledges that there may be some creditors with outstanding promotional rate programs

that did not make, or, without conducting extensive research, are not aware if they made, written disclosures of the length of the promotional period and the post-promotional rate. For example, some creditors may have made these disclosures orally. For the same reasons described in the foregoing paragraph, the Board believes that it would be inappropriate to preclude use of the § 226.9(c)(2)(v)(B) exception by creditors offering these promotional rate programs. That interpretation of the rule would in effect require creditors to have complied with the precise requirements of the exception before the August 20, 2009 effective date. However, the Board believes at the same time that it would be inconsistent with the intent of the Credit Card Act for creditors that provided no advance notice of the term of the promotion and the post-promotional rate to receive an exemption from the general notice requirements of § 229.9(c)(2).

Consequently, any creditor that provides a written disclosure to consumers subject to an existing promotional rate program, prior to August 20, 2009, stating the length of the promotional period and the rate or type of rate that will apply after that promotional rate expires is not required to provide an additional notice pursuant to § 226.9(c)(2) prior to applying the post-promotional rate. In addition, any creditor that can demonstrate that it provided, prior to August 20, 2009, oral disclosures of the length of the promotional period and the rate or type of rate that will apply after the promotional period also need not provide an additional notice under § 226.9(c)(2). However, any creditor subject to § 226.9(c)(2) that has not provided advance notice of the term of a promotion and the rate that will apply upon expiration of that promotion in the manner described above prior to August 20, 2009 will be required to provide 45 days' advance notice containing the content set forth in this interim final rule before raising the rate.

Right to reject. New § 226.9(h) is predicated on the provision of a notice containing a disclosure of the consumer's right to reject, which is required by new § 226.9(c) and (g) but is not required by current § 226.9. Thus, new § 226.9(h) applies to the same extent as revised § 226.9(c) and new § 226.9(g). For example, because a creditor providing a change-in-terms notice on August 15, 2009 is required to comply with the requirements of current § 226.9(c) rather than revised § 226.9(c), the creditor is not required to provide the consumer with the right to reject that change pursuant to new § 226.9(h).

If, however, that notice were provided on August 20 and new § 226.9(c)(2)(iv) required disclosure of the right to reject, the requirements in new § 226.9(h) would apply.

Similarly, because current § 226.9 permits a creditor to increase a rate due to the consumer's delinquency or default or as a penalty without providing 15 days' advance notice, a creditor that increases a rate for these reasons effective on or before August 19, 2009 or provides notice of such an increase on or before August 19, 2009 is not required to provide the consumer with the right to reject that increase pursuant to new § 226.9(h). If, however, new § 226.9(g)(3) applies to the increase, the requirements in new § 226.9(h) also would apply.

Finally, the exception in § 226.9(h)(3)(i) for accounts that are more than 60 days delinquent applies even if the delinquency began prior to the August 20, 2009 effective date. For example, if the required minimum periodic payment due on July 15, 2009 has not been received by September 14, 2009, the exception in § 226.9(h)(3)(i) applies.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an initial and final regulatory flexibility analysis only when 15 U.S.C. 553 requires publication of a notice of proposed rulemaking. *See* 5 U.S.C. 603(a), 604(a). As discussed in II. Statutory Authority, however, the Board has found good cause under 5 U.S.C. 553(b)(B) to conclude that, with respect to this interim final rule, publication of a notice of proposed rulemaking is impracticable and unnecessary. Accordingly, the Board is not required to perform an initial or final regulatory flexibility analysis. Nonetheless, in order to solicit additional information from small entities subject to the interim final rule, the Board is publishing an initial regulatory flexibility analysis relying, in large part, on the regulatory flexibility analyses conducted for the Board's January 2009 Regulation Z Rule and the January 2009 FTC Act Rule.

As discussed in III. Section-by-Section Analysis, the interim final rule is similar in most respects to rules adopted by the Board and the other Agencies in the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule. Prior to adopting those rules, the Board conducted initial and final regulatory flexibility analyses and ultimately concluded that the rules would have a significant economic impact on a substantial number of small entities. *See* 72 FR 32948, 33033-33034

(June 14, 2007); 73 FR 28866, 28887–28888 (May 19, 2008); 73 FR 28904, 28933–28934 (May 19, 2008); 74 FR 5390–5393; 74 FR 5548–5550. Because the interim final rule does not alter the substance of the analyses and determinations accompanying the January 2009 rules, the Board continues to rely on those analyses and determinations for purposes of this rulemaking.²³

In particular, the Board notes that, although the January 2009 rules did not include a right to reject increases in annual percentage rates and other significant changes to the terms of the account agreement, the requirements in new § 226.9(h) do not create significant new burdens that would alter the Board's prior regulatory flexibility analyses and determinations. To the extent that new § 226.9(h) prohibits creditors from applying an increased rate to a credit card account if the consumer rejects the increase, it is no more restrictive than 12 CFR 227.24 in the January 2009 FTC Act Rule, which generally prohibited such increases regardless of the consumer's acceptance or rejection. *See* 74 FR 5560. Furthermore, insofar as new § 226.9(h) prohibits creditors from applying rate increases and other significant changes in terms if the consumer exercises the right to reject, many creditors are already subject to similar requirements under existing state laws.²⁴

Reasons, statement of objectives and legal basis for the interim final rule. The interim final rule implements a number of new substantive and disclosure provisions required by the Credit Card Act, which establishes fair and transparent practices relating to the extension of open-end consumer credit plans. The supplementary information above describes in detail the reasons, objectives, and legal basis for each component of the proposed rules.

Description of small entities affected by the interim final rule. All creditors that offer open-end credit plans are

subject to the interim final rule. The Board is relying on its analysis in the January 2009 Regulation Z Rule, in which the Board provided data on the number of entities that may be affected because they offer open-end credit plans. The Board acknowledges, however, that the total number of small entities likely to be affected by the interim final rule is unknown, because the open-end credit provisions of the Credit Card Act and Regulation Z have broad applicability to individuals and businesses that extend even small amounts of consumer credit. (For a detailed description of the Board's analysis of small entities subject to the January 2009 Regulation Z Rule, *see* 74 FR 5391.) The Board invites comment on the effect of the interim final rule on small entities.

Projected reporting, recordkeeping and compliance requirements of the interim final rule. The compliance requirements of this interim final rule are described above in III. Section-by-Section Analysis. The Board notes that the precise costs to small entities to conform their open-end credit disclosures to the interim final rule and the costs of updating their systems to comply with the rule are difficult to predict. These costs will depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer open-end accounts, the complexity of the terms of the open-end credit products that they offer, and the range of such product offerings. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the interim final rule to small entities.

Other federal rules. As discussed in I. Background and Implementation of the Credit Card Act, although the Board previously issued similar rules in its January 2009 Regulation Z Rule and its January 2009 FTC Act Rule, the Board is not currently withdrawing any provisions of the January 2009 rules. Instead, the Board anticipates that in connection with finalizing rules for the provisions of the Credit Card Act that are effective February 22, 2010, it will amend or withdraw those portions of the January 2009 rules that are inconsistent with the requirements of the Credit Card Act.

Significant alternatives to the interim final rule. As noted above, the core provisions of this interim final rule implement the statutory requirements of the Credit Card Act that are effective on August 20, 2009. The Board has

implemented these requirements so as to minimize burden, while retaining benefits to consumers. In doing so, the Board was informed by consumer testing conducted and comments received in connection with the January 2009 rules. The Board welcomes comment on any significant alternatives, consistent with the Credit Card Act, that would minimize the impact of the interim final rule on small entities.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1) (PRA), the Board has reviewed the interim final rule under the authority delegated to the Board by the Office of Management and Budget. The collections of information that are required by the interim final rule are found in § 226.9(c) and (g). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions and small businesses. Since the Federal Reserve does not collect any information, no issue of confidentiality arises. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 734,127 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA.

As discussed in III. Section-by-Section Analysis, however, the amended § 226.9(c) and new § 226.9(g) in the interim final rule are substantially similar to the amended § 226.9(c) and new § 226.9(g) in the Board's January 2009 Regulation Z Rule. Although § 226.9(g) in the interim final rule includes a requirement that creditors disclose the consumer's right to reject an increased rate or changed term, the effect should be negligible since many creditors are already required to provide a similar disclosure under existing state laws.²⁵ Moreover, those creditors not currently subject to such state laws must simply include a brief statement of the consumer's right to reject in the existing

²³ The Board recognizes, however, that while the January 2009 FTC Act Rule applies only to consumer credit card accounts, the requirement in the Credit Card Act and the interim final rule that periodic statements be mailed or delivered at least 21 days before the payment due date and grace period expiration date applies to all open-end consumer credit plans (including home equity lines of credit accessed by a credit card). Although the Board does not have sufficient information to quantify the effect of this specific aspect of the rule on small entities, this additional requirement supports the Board's overall conclusion that the interim final rule will have a significant economic impact on a substantial number of small entities.

²⁴ *See, e.g.,* Ala. Code § 5–20–5; 5 Del. Code § 952; Off. Code of Ga. § 7–5–4; Nev. Rev. Stat. § 97A.140; S.D. Codified Laws § 54–11–10; Utah Code § 70C–4–102.

²⁵ *See, e.g.,* Ala. Code § 5–20–5; 5 Del. Code § 952; Off. Code of Ga. § 7–5–4; Nev. Rev. Stat. § 97A.140; S.D. Codified Laws § 54–11–10; Utah Code § 70C–4–102.

notice for an increased rate or changed term. The rule does not require that a separate, detached disclosure of the right to reject be provided to the consumer. Accordingly, because the interim final rule does not alter the substance of the Board's PRA analysis with respect to the January 2009 final rule (Docket No. R-1286), the Board continues to rely on that analysis, as reported in accordance with those estimates in documents filed with OMB, for purposes of this rulemaking. See 74 FR 5392-5393.

List of Subjects in 12 CFR Part 226

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

Text of Interim Final Revisions

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 is amended to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111-24 § 2, 123 Stat. 1734.

■ 2. Section 226.5 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 226.5 General disclosure requirements.

* * * * *

(b) * * *

(2) * * *

(ii) Creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires.¹⁰ A creditor that fails to meet this requirement shall not treat a payment as late for any purpose or collect any finance or other charge imposed as a result of such failure. For purposes of this paragraph, "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

■ 3. Section 226.9 is amended as follows:

■ A. Paragraph (c) is revised.

■ B. New paragraphs (g) and (h) are added.

§ 226.9 Subsequent disclosure requirements.

* * * * *

(c) *Change in terms*—(1) *Rules affecting home-equity plans and open-end plans that are not credit card accounts.* (i) *Written notice required.* For home-equity plans subject to the requirements of § 226.5b and other open-end plans that are not credit card accounts, whenever any term required to be disclosed under § 226.6 is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer, or if a periodic rate or other finance charge is increased because of the consumer's delinquency or default; the notice shall be given, however, before the effective date of the change.

(ii) *Notice not required.* For home-equity plans subject to the requirements of § 226.5b and other open-end plans that are not credit card accounts, no notice under this section is required when the change involves late payment charges, charges for documentary evidence, or over-the-limit charges; a reduction of any component of a finance or other charge; suspension of future credit privileges or termination of an account or plan; or when the change results from an agreement involving a court proceeding, or from the consumer's default or delinquency (other than an increase in the periodic rate or other finance charge).

(iii) *Notice for home equity plans.* If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home equity plan pursuant to § 226.5b(f)(3)(i) or § 226.5b(f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

(2) *Rules affecting credit card accounts that are not home-secured*—(i) *Changes where written advance notice is required.* For credit card accounts under an open-end (not home-secured) consumer credit plan, except as provided in paragraph (c)(2)(v) of this section, whenever a significant change to an account term as described in paragraph (c)(2)(ii) is made or the required minimum periodic payment is increased, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the

change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change.

(ii) *Significant changes in account terms.* The notice requirements of paragraph (c)(2)(i) of this section apply to changes in the following terms:

(A) *Annual percentage rates.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer. For purposes of this paragraph, such rates include any discounted initial rate, premium initial rate, or penalty rate that may be applied to the account.

(B) *Fees for issuance or availability.* Any annual or other periodic fee that may be imposed for the issuance or availability of a credit card account under an open-end (not home-secured) consumer credit plan, including any fee based on account activity or inactivity.

(C) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and any minimum interest charge if it exceeds \$1.00 that could be imposed during a billing cycle. The creditor may, at its option, provide notice in accordance with paragraph (c)(2)(i) of this section for changes in minimum interest charges below this threshold.

(D) *Transaction charges.* Any transaction charge imposed by the creditor for use of the credit card account under an open-end (not home-secured) consumer credit plan for purchases.

(E) *Grace period.* The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period.

(F) *Balance computation method.* The balance computation method that is used to determine the balance on which the finance charge is computed for each feature.

(G) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(H) *Late payment fee.* Any fee imposed for a late payment.

(I) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(J) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(K) *Returned-payment fee.* Any fee imposed by the creditor for a returned payment.

(L) *Required insurance, debt cancellation, or debt suspension coverage.* A fee for insurance described

¹⁰ Reserved.

in § 226.4(b)(7), debt cancellation coverage described in § 226.4(b)(10), or debt suspension coverage written in connection with a credit transaction, if the insurance, debt cancellation coverage, or debt suspension coverage is required as part of the plan.

(iii) *Charges not covered by § 226.9(c)(2)(i)*. Except as provided in paragraph (c)(2)(v) of this section, if a creditor increases any component of a charge on a credit card account under an open-end (not home-secured) consumer credit plan, or introduces a new charge, that is not subject to the disclosure requirements under § 226.9(c)(2)(i), a creditor may either, at its option:

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

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

(iv) *Disclosure requirements—changes to terms described in paragraph (c)(2)(i)*. If a creditor changes a term described in paragraph (c)(2)(ii) of this section or increases the required minimum periodic payment, the creditor must provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section:

(A) A description of the changes made to terms described in paragraph (c)(2)(ii) of this section or of any increase in the required minimum periodic payment;

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

(C) The date the changes will become effective; and

(D) Except in the case of an increase in the required minimum periodic payment:

(1) A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

(2) Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

(3) If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

(v) *Notice not required*. For credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor is not required to provide notice under this section:

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; or when the change results from an agreement involving a court proceeding;

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

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

(2) The annual percentage rate that applies after that period does not exceed the rate disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this paragraph.

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

(D) When the change is an increase in an annual percentage rate due to the completion of a workout or temporary hardship arrangement by the consumer, provided that:

(1) The annual percentage rate applicable to a category of transactions following any such increase does not exceed the rate that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

(2) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to such completion).

(vi) *Reduction of the credit limit*. For credit card accounts under an open-end (not home-secured) consumer credit plan, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45

days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.

* * * * *

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

(1) *Increases subject to this section*. For credit card accounts under an open-end (not home-secured) consumer credit plan, except as provided in paragraph (g)(4) of this section, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default; or

(ii) A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

(2) *Timing of written notice*.

Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, the creditor shall provide written notice of the increase in rate at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase.

(3) *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:

(i) A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

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

(iii) 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;

(iv) A statement that the consumer has the right to reject the increase in the annual percentage rate prior to the effective date of that increase, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

(v) Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

(vi) If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

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

(A) The rate following any such increase does not exceed the rate that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

(B) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to such failure).

(ii) *Decrease in credit limit.* A creditor is not required to provide, prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, a notice pursuant to paragraph (g)(1) of this section, provided that:

(A) The creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes:

(1) A statement that the credit limit on the account has been or will be decreased;

(2) A statement indicating the date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

(3) A statement that the penalty rate will not be imposed on the date specified in paragraph (g)(4)(ii)(A)(2) of this section, if the outstanding balance does not exceed the credit limit as of that date;

(4) The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite time period; and

(B) The creditor does not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice and described in paragraph (g)(4)(ii)(A)(2) of this section.

(h) *Consumer rejection of significant change in terms or increase in annual percentage rate*—(1) *Right to reject.* If paragraph (c)(2)(iv) or (g)(3) of this section requires disclosure of the consumer's right to reject a significant change to an account term or other increase in an annual percentage rate, the consumer may reject that change or increase by notifying the creditor of the rejection before the effective date of the change or increase.

(2) *Effect of rejection.* If a creditor is notified of a rejection of a significant change to an account term or other increase in an annual percentage rate as provided in paragraph (h)(1) of this section, the creditor must not:

(i) Apply the change or increase to the account;

(ii) Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

(iii) Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the following methods:

(A) The method of repayment for the account on the date on which the creditor was notified of the rejection;

(B) An amortization period of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection; or

(C) A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection.

(3) *Exceptions.* This section does not apply:

(i) When the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment; or

(ii) To transactions that occur more than 14 days after provision of the notice required by paragraphs (c) or (g) of this section.

■ 4. In Supplement I to Part 226 Subpart B:

■ A. Under *Section 226.5—General Disclosure Requirements, paragraph 5(b)(2)(ii)*:

■ i. Paragraphs 1., 2., and 3. are revised;

■ ii. Paragraphs 4., 5., and 6. are added.

■ B. Under *Section 226.7—Periodic Statement*, paragraphs 3.iv introductory text and 3.iv.D are revised.

■ C. Under *Section 226.9—Subsequent Disclosure Requirements*:

■ i. Paragraph 9(c) is revised;

■ ii. Paragraph 9(g) is added; and

■ iii. Paragraph 9(h) is added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart B—Open-End Credit

Section 226.5 General Disclosure Requirements.

* * * * *
5(b) Time of Disclosures.

* * * * *
5(b)(2) Periodic Statements.

* * * * *
Paragraph (b)(2)(ii).

1. *Reasonable procedures.* A creditor is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. A creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period required by § 226.5(b)(2)(ii) when determining the payment due date and the date on which any grace period expires. For example, if a creditor has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date and the date on which any grace period expires must be no less than 24 days after the closing date of the billing cycle.

2. *Treating a payment as late for any purpose.* Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within a specified amount of time or by a specified date. When an account is not eligible or ceases to be eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late for purposes of § 226.5(b)(2)(ii).

3. *Payment due date.* For purposes of § 226.5(b)(2)(ii), "payment due date" means the date by which the creditor requires the consumer to make the required minimum periodic payment in order to avoid being treated as late for any purpose, except as set forth in paragraphs i. and ii. below.

i. *Courtesy period following payment due date.* Although the terms of the account agreement may require that payment be made by a certain date, some creditors provide an additional period of time after that date during which a late payment fee will not be assessed. In some cases, this period is set forth in the account agreement while in others it is provided as an informal policy or practice. Regardless, for purposes of § 226.5(b)(2)(ii), the payment due date is the due date according to the legal obligation between the parties, not the end of the additional period of time. For example, if an account agreement for a home equity plan subject to the requirements of § 226.5b provides that payment is due on the first day of the month but a late payment fee will not be assessed if the payment is received by the fifteenth day of the month, the payment due date for purposes of § 226.5(b)(2)(ii) is the first day of the month. Similarly, if a

cardholder agreement provides that payment is due on the fifteenth day of the month but, under the creditor's informal "courtesy" period, a late payment fee will not be assessed if the payment is received by the eighteenth day of the month, the payment due date for purposes of § 226.5(b)(2)(ii) is the fifteenth day of the month.

ii. *Laws affecting assessment of late payment and other fees.* Some state or other laws require that a certain number of days must elapse following a due date before a late payment or other fee may be imposed. For example, assume that the account agreement provides that payment is due on the fifteenth day of the month but, under state law, the creditor is prohibited from assessing a late payment fee until the twenty-sixth day of the month. For purposes of § 226.5(b)(2)(ii), the payment due date is the due date according to the legal obligation between the parties (the fifteenth day of the month), not the date before which state law prohibits the imposition of a late payment fee (the twenty-sixth day of the month).

4. *Definition of grace period.* For purposes of § 226.5(b)(2)(ii), "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. A deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of § 226.5(b)(2)(ii). Similarly, a courtesy period following the payment due date is not a grace period for purposes of § 226.5(b)(2)(ii). See comment 5(b)(2)(ii)–3.i.

5. *Consumer request to pick up periodic statements.* When a consumer initiates a request, the creditor may permit, but may not require, the consumer to pick up periodic statements. If the consumer wishes to pick up a statement, the statement must be made available in accordance with § 226.5(b)(2)(ii).

6. *Deferred-payment transactions.* See comment 7–3.iv.

* * * * *

Section 226.7 Periodic Statement

* * * * *

3. * * *

iv. *Free-ride or grace period.* Assuming monthly billing cycles ending at month-end and a free-ride or grace period ending on the 25th of the following month, here are four examples illustrating how a creditor may comply with the requirement to disclose the free-ride or grace period applicable to a deferred payment balance (\$500 in this example) and with the 21-day rule for mailing or delivering periodic statements (see § 226.5):

* * * * *

D. If the due date for the deferred payment balance is March 7 (instead of March 31), the creditor could include the \$500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1, the most recent statement sent at least 21 days prior to the due date.

* * * * *

Section 226.9 Subsequent Disclosure Requirements

* * * * *

9(c) Change in terms.

9(c)(1) *Rules affecting home-equity plans and open-end plans that are not credit card accounts.*

1. *Changes initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase (for example, when an increase may occur under the creditor's contract reservation right to increase the periodic rate). The rules in § 226.5b(f) relating to home-equity plans, however, limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by § 226.9(c)(1) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (But see § 226.5b(f).)

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under § 226.6 or increases the minimum payment, unless an exception under § 226.9(c)(1)(ii) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day free-ride period on purchases and the consumer will have fewer days during the billing cycle change.

9(c)(1)(i) Written notice required.

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 15 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 15 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:

i. If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.

ii. If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of § 226.9(c)(1)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Form of change-in-terms notice.* A complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(1)(i) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Changes to home-equity plans entered into on or after November 7, 1989.* Section 226.9(c)(1) applies when, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home-equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

i. If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by § 226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by § 226.5b(d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.

ii. If the minimum payment requirement is changed, the creditor must include the disclosures required by § 226.5b(d)(5)(iii) (and, in variable-rate plans, the disclosures required by § 226.5b(d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. (See the commentary to § 226.5b(d)(5)(iii), (d)(12)(x) and (d)(12)(xi) for a discussion of representative examples.)

iii. When the terms are changed pursuant to a written agreement as described in § 226.5b(f)(3)(iii), the advance-notice requirement does not apply.

9(c)(1)(ii) Notice not required.

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

- i. A change in the consumer's credit limit.
- ii. A change in the name of the credit card or credit card plan.
- iii. The substitution of one insurer for another.
- iv. A termination or suspension of credit privileges. (But see § 226.5b(f).)
- v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip your October payment," or "We will waive your finance charges for January," may serve as the change-in-terms notice.

9(c)(1)(iii) *Notice for home-equity plans.*

1. *Written request for reinstatement.* If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under § 226.9(c)(1)(iii) must state that fact.

2. *Notice not required.* A creditor need not provide a notice under this paragraph if, pursuant to the commentary to § 226.5b(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.

9(c)(2) *Rules affecting credit card accounts that are not home-secured.*

1. *Changes initially disclosed.* Except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially, such as rate increases under a properly disclosed variable-rate plan. In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion.

2. *State law issues.* Some issues are not addressed by § 226.9(c)(2) because they are controlled by state or other applicable law. These issues include:

- i. The types of changes a creditor may make.
- ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change affects any of the terms described in § 226.9(c)(2)(i) and (c)(2)(ii), unless an exception under § 226.9(c)(2)(v) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 28-day grace period on purchases and the consumer will have fewer days during the billing cycle change.

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

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 45 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 45 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change, if the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of § 226.9(c)(2)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

9(c)(2)(iii) *Charges not covered by § 226.9(c)(2)(i).*

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, for a credit card account under an open-end (not home-secured) consumer credit plan that is not subject to the disclosure requirements under § 226.9(c)(2)(i), the creditor may either, at its

option (i) provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (ii) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. For example, a fee for expedited delivery of a credit card is a charge on a credit card account under an open-end (not home-secured) consumer credit plan but is not described in § 226.9(c)(2)(i). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure.

9(c)(2)(iv) *Disclosure requirements—changes to terms described in paragraph (c)(2)(i).*

1. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(2)(i).

2. *Form of change-in-terms notice.* A complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(2)(i) if the change is highlighted on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term being changed.

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

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

- i. A change in the consumer's credit limit except as otherwise required by § 226.9(c)(2)(vi).
- ii. A change in the name of the credit card or credit card plan.
- iii. The substitution of one insurer for another.
- iv. A termination or suspension of credit privileges.
- v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation.

Otherwise, the creditor must give notice prior to resuming the original schedule or rate even though no notice is required prior to the reduction, unless the creditor has previously provided notice of an increase in the annual percentage rate upon the expiration of a specified period of time in accordance with § 226.9(c)(v)(B).

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate.

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change.

5. *Disclosure of annual percentage rates.* If a rate disclosed pursuant to § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state "After October 1, 2009, your APR will be 14.99%. This APR will vary with the market based on the Prime Rate."

6. *Deferred interest or similar programs.* If the applicable conditions are met, the exception in § 226.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For such programs, a creditor must disclose pursuant to § 226.9(c)(2)(v)(B)(1) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under § 226.9(c)(2)(v)(B)(1) include:

i. "No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%."

ii. "No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%."

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

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

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

iii. If applicable, that the consumer must make timely minimum payments in order to

remain eligible for the workout or temporary hardship arrangement.

* * * * *

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

1. *Affected consumers.* If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Combining a notice described in § 226.9(g)(1) with a notice described in § 226.9(c)(2)(i).* If a creditor is required to provide notices pursuant to both § 226.9(c)(2)(i) and (g)(1) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

3. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(g).

9(g)(4) *Exceptions.*

9(g)(4)(i) *Workout or temporary hardship arrangements.* See comment 9(c)(2)(v)–6.

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

1. The following illustrates the requirements of § 226.9(g)(4)(ii). Assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to § 226.9(g)(4)(ii) on January 1, stating among other things that the penalty rate would apply if the consumer's balance exceeded the new credit limit as of February 16. If the consumer's balance exceeded the credit limit on February 16, the creditor could impose the penalty rate on that date. However, a creditor could not apply the penalty rate if the consumer's balance did not exceed the new credit limit on February 16, even if the consumer's balance had exceeded the new credit limit on several dates between January 1 and February 15. If the consumer's balance did not exceed the new credit limit on February 16 but the consumer conducted a transaction on February 17 that caused the balance to exceed the new credit limit, the general rule in § 226.9(g)(1)(ii) would apply and the creditor would be required to give an additional 45 days' notice prior to imposition of the penalty rate (but under these circumstances the consumer would have no ability to cure the over-the-limit balance in order to avoid penalty pricing).

9(h) *Consumer rejection of significant change in terms or increase in annual percentage rate.*

9(h)(1) *Right to reject.*

1. *Reasonable requirements for submission of rejections.* A creditor may establish reasonable requirements for the submission of rejections of a significant change in terms or other increase in an annual percentage rate for a credit card account. For example:

i. It would be reasonable for a creditor to require that rejections be made by the primary account holder and that the consumer identify the account number.

ii. It would be reasonable for a creditor to require that rejections be made only using the toll-free telephone number disclosed pursuant to § 226.9(c) or (g). It would also be reasonable for a creditor to designate additional channels for the submission of

rejections (such as an address for rejections submitted by mail) so long as the creditor does not require that rejections be submitted through such additional channels.

iii. It would be reasonable for a creditor to require that rejections be received before the effective date disclosed pursuant to § 226.9(c) or (g) and to treat the account as not subject to § 226.9(h) if a rejection is received on or after that date. It would not, however, be reasonable to require that rejections be submitted earlier than the day before the effective date. If a creditor is unable to process all rejections received before the effective date, the creditor may delay implementation of the change in terms or rate increase until all rejections have been processed. In the alternative, the creditor could implement the change or increase on the effective date and then, on any account for which a timely rejection was received, reverse the change or increase and remove or credit any interest charges or fees imposed as a result of the change or increase. For example, if the effective date for a rate increase is June 15 and the creditor cannot process all rejections received by telephone on June 14 until June 16, the creditor may delay imposition of the rate increase until June 17. Alternatively, the creditor could impose the increased rate on all affected accounts on June 15 and then, once all rejections have been processed, return any account for which a timely rejection was received to the prior rate and ensure that the account is not assessed any additional interest as a result of the increased rate or that the account is credited for such interest.

2. *Use of account following provision of notice.* A consumer does not waive or forfeit the right to reject a significant change in terms or a rate increase by using the account for transactions prior to the effective date of the change or increase. Similarly, a consumer does not revoke a rejection by using the account for transactions after the rejection is received. If, however, the account is used for a transaction more than 14 days after provision of the § 226.9(c) or (g) notice, § 226.9(h)(3)(ii) permits the creditor to apply the changed term or increased rate to that transaction even if the consumer rejects the change or increase before the effective date. See example in comment 9(h)(3)(ii)–3.i.

9(h)(2)(i) *Prohibition on applying changed term or increased rate.*

1. *Application to promotional rates and deferred interest and similar programs.* Section 226.9(h)(2)(i) provides that, when a creditor is notified of a rejection of a significant change to an account term or other increase in an annual percentage rate as provided in § 226.9(h)(1), the creditor must not apply the change or increase to the account. However, § 226.9(h)(2)(i) does not prohibit a creditor from applying the terms of a pre-existing promotional rate or deferred interest or similar program. The following examples illustrate the application of § 226.9(h)(2)(i) in these circumstances:

i. *Promotional rates.* Assume that a credit card account is opened on January 1 of year one and that, on December 31 of year one, the creditor notifies the consumer of the following promotional rate offer: A non-variable annual percentage rate of 5% will

apply to purchases for nine months (from January 1 through September 30 of year two) and, beginning on October 1, the rate for purchases will increase to a non-variable rate of 15%. The required minimum periodic payment due on July 5 is not received by the creditor until July 15. On July 15, the account has a purchase balance of \$1,000 at the 5% rate. On that same date, the creditor provides a notice pursuant to § 226.9(g) informing the consumer that, consistent with the terms of the cardholder agreement, the rate on the \$1,000 balance and for new purchases will increase to a 30% penalty rate on August 29. The notice further states that the consumer may reject the increase by calling a specified toll-free telephone number before August 29 but that, if the consumer does so, credit availability for the account will be terminated. On July 31, the consumer calls the toll-free telephone number and rejects the increase. Section 226.9(h)(2)(i) prohibits the creditor from increasing the rate applicable to the \$1,000 balance at this time. However, consistent with the terms of the promotional rate offer, § 226.9(h)(2)(i) does not prohibit the creditor from beginning to accrue interest on any remaining portion of the \$1,000 balance at 15% on October 1. Furthermore, pursuant to § 226.9(c)(2)(v)(B), the creditor is not required to provide advance notice of this increase.

ii. *Deferred interest and similar programs.* Assume that a credit card account is opened on January 1 of year one and that, on December 31 of year one, the creditor notifies the consumer of the following promotional program: Interest on purchases made during the months of January through June of year two will accrue at a non-variable annual percentage rate of 15% but the consumer will not be obligated to pay that accrued interest if all required minimum periodic payments are received by the creditor on or before the payment due date and all purchases made during the six-month period are paid in full by December 31 of year two. On January 15 of year two, the consumer uses the account for a \$1,000 purchase. The payment due on September 1 of year two is not received by the creditor until September 15. On that same date, the creditor provides a notice pursuant to § 226.9(g) informing the consumer that on October 30, consistent with the terms of the promotional program, interest accrued on the \$1,000 purchase at 15% since January 15 will be added to the outstanding balance account. The notice also states that the consumer may reject the addition of accrued interest to the outstanding balance by calling a specified toll-free telephone number before October 30 but that, if the consumer does so, credit availability for the account will be terminated. On October 1, the consumer calls the toll-free telephone number and exercises the right to reject. Section 226.9(h)(2)(i) prohibits the creditor from adding the accrued interest to the outstanding balance at this time. However, on January 1 of year three, § 226.9(h)(2)(i) does not prohibit the creditor from, consistent with the terms of the promotional program, adding interest accrued on the \$1,000 purchase at 15% since January 15 of year two to the outstanding balance if the \$1,000 purchase is not paid in full by December 31 of year two.

Furthermore, pursuant to § 226.9(c)(2)(v)(B), the creditor is not required to provide advance notice of this increase.

9(h)(2)(ii) Prohibition on penalties.

1. *Solely as a result of rejection.* A creditor is prohibited from imposing a fee or charge or treating an account as in default solely as a result of the consumer's rejection of a significant change in terms or a rate increase. For example, a creditor is prohibited from imposing a monthly maintenance fee that would be charged only if the consumer rejected the change or increase. A creditor is not, however, prohibited from continuing to charge a fee that was charged before the rejection. For example, a creditor that charged a periodic fee or a fee for late payment before a change or increase was rejected is not prohibited from charging those fees after rejection of the change or increase.

2. *Termination of credit availability.* Section 226.9(h)(2)(ii) does not prohibit a creditor from terminating or suspending credit availability if the consumer rejects a significant change in terms or a rate increase. If, however, the creditor elects not to terminate or suspend credit availability for consumers who reject a change or increase, § 226.9(h)(3)(ii) permits the creditor to apply the changed term or increased rate to transactions that occur more than 14 days after provision of the § 226.9(c) or (g) notice. See example in comment 9(h)(3)(ii)–3.ii.

9(h)(2)(iii) Repayment of outstanding balance.

1. *No less beneficial to the consumer.* A creditor may provide a method of repaying the balance subject to § 226.9(h)(2)(iii) that is different from the methods listed in § 226.9(h)(2)(iii) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated using the method for the account prior to the date on which the creditor received the rejection. Similarly, a method is no less beneficial to the consumer if the method amortizes the balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 226.9(h)(2)(iii)(C). For example:

i. If at account opening the cardholder agreement stated that the required minimum periodic payment would be either the total of fees and interest charges plus 1% of the total amount owed or \$20 (whichever is greater), the creditor may require the consumer to make a minimum payment of \$20 even if doing so would pay off the balance in less than five years or constitute more than 2% of the balance plus fees and interest charges.

ii. A creditor could increase the percentage of the balance included in the required minimum periodic payment from 2% to 5% so long as doing so would not result in amortization of the balance in less than five years.

iii. A creditor could require the consumer to make a required minimum periodic payment that amortizes the balance in four years so long as doing so would not more than double the percentage of the balance

included in the minimum payment prior to the date on which the creditor was notified of the rejection.

9(h)(2)(iii)(B) Five-year amortization period.

1. *Amortization period starting from date on which creditor was notified of rejection.* Section 226.9(h)(2)(iii)(B) provides for an amortization period for the balance subject to § 226.9(h)(2)(iii) of no less than five years, beginning no earlier than the date on which the creditor was notified of the rejection. A creditor is not required to recalculate the required minimum periodic payment for the balance if, during the amortization period, the balance is reduced as a result of payments by the consumer in excess of that minimum payment.

2. *Amortization when applicable rate is variable.* If the annual percentage rate that applies to the balance subject to § 226.9(h)(2)(iii) varies with an index, the creditor may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the balance is amortized in five years. For example, assume that a variable rate that is currently 15% applies to a balance subject to § 226.9(h)(2)(iii) and that, in order to amortize that balance in five years, the required minimum periodic payment must include a specific amount of principal plus all accrued interest charges. If the 15% variable rate increases due to an increase in the index, the creditor may increase the required minimum periodic payment to include the additional interest charges.

9(h)(2)(iii)(C) Doubling repayment rate.

1. *Example.* Assume that the method used by a creditor to calculate the required minimum periodic payment for a credit card account requires the consumer to pay either the total of fees and accrued interest charges plus 2% of the total amount owed or \$50, whichever is greater. Assume also that, on the date on which the creditor is notified of the rejection, the account has a balance subject to § 226.9(h)(2)(iii) of \$2,000. Following rejection, § 226.9(h)(2)(iii)(C) permits the creditor to require the consumer to pay fees and interest plus 4% of the \$2,000 balance or \$50, whichever is greater.

9(h)(3) Exceptions.

1. *Additional circumstances in which § 226.9(h) does not apply.* As a general matter, § 226.9(h) applies when § 226.9(c)(2)(iv) or (g)(3) require disclosure of the consumer's right to reject a significant change to an account term or other increase in an annual percentage rate. Accordingly, in addition to the circumstances listed in § 226.9(h)(3), § 226.9(h) does not apply to home equity plans subject to the requirements of § 226.5b that are accessible by a credit or charge card because § 226.9(c)(2) and 226.9(g) do not apply to such plans. Similarly, § 226.9(h) does not apply when the required minimum periodic payment is increased because § 226.9(c)(2)(iv) does not require disclosure of the right to reject in those circumstances.

9(h)(3)(i) Delinquencies of more than 60 days.

1. *Examples.* Section 226.9(h)(3)(i) provides that § 226.9(h) does not apply when

the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. The following examples illustrate the application of this exception:

i. *Account becomes more than 60 days delinquent before notice provided.* Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On June 20 of year two, the account has a purchase balance of \$5,000 at a non-variable annual percentage rate of 17% and the creditor has not received the required minimum periodic payments due on April 15, May 15, and June 15. On June 20, the creditor provides a notice pursuant to § 226.9(g) informing the consumer that, consistent with the terms of the cardholder agreement, the rate for the \$5,000 balance and for new purchases will increase to a non-variable penalty rate of 28% on August 4. Because the creditor has not received the April 15 minimum payment within 60 days after the due date, the exception in § 226.9(h)(3)(i) applies and the consumer may not reject the rate increase. Even if the consumer closes or cancels the account before August 4, the creditor may apply the increased rate to the \$5,000 balance.

ii. *Account becomes more than 60 days delinquent after rejection.* Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On April 20 of year two, the account has a purchase balance of \$2,000 at a non-variable annual percentage rate of 15% and the creditor has not received the required minimum periodic payment due on April 15. On April 20, the creditor provides a notice pursuant to § 226.9(g) informing the consumer that, consistent with the terms of the cardholder agreement, the rate for the \$2,000 balance and for new purchases will increase to a non-variable penalty rate of 28% on June 4. The notice further states that the consumer may reject the increase by calling a specified toll-free telephone number before June 4 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free telephone number and rejects the increase. On June 4, § 226.9(h) prohibits the creditor from applying the 28% rate to the \$2,000 balance. If, however, the creditor does not receive the minimum payments due on April 15 and May 15 by June 15, § 226.9(h)(3)(i) permits the creditor to increase the rate that applies to the \$2,000 balance. The creditor must comply with the notice requirements of § 226.9(g), but the consumer may not reject the increase. Similarly, the restrictions in § 226.9(h)(2)(ii) and (iii) no longer apply to the \$2,000 balance.

9(h)(3)(ii) *Transactions that occur more than 14 days after provision of notice.*

1. *Application of § 226.9(h)(3)(ii).* Section 226.9(h)(3)(ii) permits a creditor to apply a changed term or increased rate to transactions that occur more than 14 days after provision of the notice required by § 226.9(c) or (g). Section 226.9(h)(3)(ii) does not, however, permit a creditor to reach back to days before the effective date of the change

in terms or rate increase when calculating interest charges. See examples in comment 9(h)(3)(ii)-3. Furthermore, because the exception in § 226.9(h)(3)(ii) is limited to changed terms and increased rates that can be applied to transactions, it does not permit a creditor to apply a changed term to the entire account simply because the account was used for a transaction more than 14 days after provision of a § 226.9(c) or (g) notice. For example, if a consumer rejects an increase in a periodic fee or late payment fee, the creditor is prohibited from applying the increased fee to the account even if the account is used for a transaction more than 14 days after provision of the § 226.9(c) notice. In contrast, § 226.9(h)(3)(ii) does permit a creditor to apply an increased rate or a transaction fee to a transaction that occurred more than 14 days after provision of the § 226.9(c) or (g) notice so long as that increased rate or transaction fee is not applied to other transactions. See examples in comment 9(h)(3)(ii)-3.

2. *More than 14 days after provision of notice.* Whether a transaction occurred prior to provision of a notice or within 14 days after provision of a notice is generally determined by the date of the transaction. However, if a transaction that occurred within 14 days after provision of the notice is not charged to the account prior to the effective date of the change or increase, the creditor may treat the transaction as occurring more than 14 days after provision of the notice for purposes of § 226.9(h)(3)(ii). See example in comment 9(h)(3)(ii)-3.iv. In addition, when a merchant places a "hold" on the available credit on an account for an estimated transaction amount because the actual transaction amount will not be known until a later date, the date of the transaction for purposes of § 226.9(h)(3)(ii) is the date on which the actual transaction amount is charged to the account. See example in comment 9(h)(3)(ii)-3.iii.

3. *Examples.* The following examples illustrate the application of § 226.9(h)(3)(ii):

i. *Use of account after notice provided.* Assume that a credit card account is opened on January 1 of year one. On March 14 of year two, the account has a purchase balance of \$2,000 at a non-variable annual percentage rate of 15%. On March 15, the creditor provides a notice pursuant to § 226.9(c) informing the consumer that the rate for the \$2,000 balance and for new purchases will increase to a non-variable rate of 18% on April 30. The notice further states that the consumer may reject the increase by calling a specified toll-free telephone number before April 30 but that, if the consumer does so, credit availability for the account will be terminated. The fourteenth day after provision of the notice is March 29 and, on that date, the consumer makes a \$200 purchase. On March 30, the consumer makes a \$500 purchase. On April 1, the consumer calls the toll-free telephone number and rejects the increase. On April 5, a \$150 automated recurring charge is honored by the creditor. On April 30, § 226.9(h)(3)(ii) permits the creditor to begin accruing interest at 18% on the \$500 purchase made on March 30 and the \$150 transaction made on April 5. The creditor may not, however, apply the

18% rate to the \$2,200 purchase balance as of March 29 because that balance reflects transactions that occurred prior to or within 14 days of the provision of the § 226.9(c) notice. Similarly, the restrictions in § 226.9(h)(2)(ii) and (iii) apply to the \$2,200 purchase balance as of March 29 but not the \$500 purchase made on March 30 and the \$150 charge made on April 5.

ii. *Credit availability not terminated after rejection.* Same facts as paragraph i. above except that the § 226.9(c) notice does not state that the creditor will terminate credit availability if the consumer rejects the increase, which the consumer does on April 1. On April 30, § 226.9(h)(3)(ii) permits the creditor to begin accruing interest at 18% on the \$500 purchase made on March 30 and the \$150 transaction made on April 5. The creditor may not, however, apply the 18% rate to the \$2,200 purchase balance as of March 29 because that balance reflects transactions that occurred prior to or within 14 days of the provision of the § 226.9(c) notice. Similarly, the restrictions in § 226.9(h)(2)(ii) and (iii) apply to the \$2,200 purchase balance as of March 29 but not the \$500 purchase made on March 30 and the \$150 charge made on April 5.

iii. *Hold on available credit.* Assume that a credit card account is opened on January 1 of year one. On September 14 of year two, the account has a purchase balance of \$1,000 at a non-variable annual percentage rate of 17%. On September 15, the creditor provides a notice pursuant to § 226.9(c) informing the consumer that the rate for the \$1,000 balance and for new purchases will increase to a non-variable rate of 20% on October 30. The notice further states that the consumer may reject the increase by calling a specified toll-free telephone number before October 30 but that, if the consumer does so, credit availability for the account will be terminated. The fourteenth day after provision of the notice is September 29. On that date, the consumer uses the credit card to check into a hotel and the hotel obtains authorization for a \$750 hold on the account to ensure there is adequate available credit to cover the anticipated cost of the stay. On October 1, the consumer calls the toll-free telephone number and rejects the increase. When the consumer checks out of the hotel on October 2, the actual cost of the stay is \$850 because of additional incidental costs. On October 2, the \$850 transaction is charged to the account by the hotel and honored by the creditor. For purposes of § 226.9(h)(3)(ii), the transaction occurred on October 2.

iv. *Transaction charged to account after effective date.* Same facts as paragraph iii. above except that the \$850 transaction is not charged to the account by the hotel until November 1. For purposes of § 226.9(h)(3)(ii), the creditor may treat the transaction as occurring more than 14 days after provision of the § 226.9(c) notice (i.e., after September 29).

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 15, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9-17195 Filed 7-21-09; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

RIN 3133-AD57

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its Truth in Savings rule and official staff interpretation to remove the provisions regarding the electronic delivery of disclosures. The official staff interpretations are amended to include guidance on electronic disclosures. Additionally, NCUA is amending the rule to require all credit unions to disclose aggregate overdraft fees on periodic statements regardless of whether they promote the payment of overdrafts. The final rule also addresses account balance disclosures provided to members through automated systems.

DATES: This rule is effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Moissette Green, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA) requires NCUA to promulgate regulations substantially similar to those promulgated by the Federal Reserve Board (FRB). 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they pay dividends on member accounts. In March 2009, NCUA proposed amendments to its TISA rule to align it with recent changes the Federal Reserve Board made to Regulation DD. *See* 74 FR 13129 (March 26, 2009).

As required by the Truth in Savings Act (TISA), NCUA proposed to amend its TISA rule and official staff interpretation to align it with the Federal Reserve Board's Regulation DD. Specifically, the proposed rule contained the provisions and guidance on the electronic delivery of disclosures.

Additionally, NCUA proposed to amend the rule and the official staff commentary to require all credit unions to disclose aggregate overdraft fees on periodic statements. The proposed rule also addressed balance disclosures credit unions provide to members through automated systems.

II. Comments and the Final Rule

NCUA is adopting the rule as it was proposed with minor changes. Specifically, the final rule amends § 707.1 to include the Office of Management and Budget approval number for the information collections in the rule and includes a minor technical correction to the sample form in Appendix B-12 for formatting purposes.

NCUA received comments from two credit unions and two trade associations. One credit union supported the proposal to withdraw the provisions regulating electronic delivery of disclosures under TISA and to permit electronic disclosures in accordance with the E-Sign Act, but opposed the proposed amendments that would require all credit unions to disclose the aggregate periodic and year-to-date fees charged to a member account for overdraft services. The credit union commented the amendment would be burdensome and act as a disincentive to credit unions that do not advertise or market overdraft programs to their members. NCUA must issue TISA rules that are substantially similar to Regulation DD, 12 CFR Part 230, unless the unique nature of credit unions and their payment of dividends call for different regulations. *See* 12 U.S.C. 4311(b). The Board concludes the nature of credit unions and the payment of dividends do not give it reason to issue regulations regarding overdraft fees and the electronic delivery of disclosures that differ from Regulation DD.

The second credit union commenter requested a final rule become effective no earlier than January 1, 2010, to give credit unions sufficient time to make the necessary operational changes and educate members. The Board is aware that credit unions have anticipated amendments to Part 707 since the Federal Reserve Board issued amendments to Regulation DD in December 2008. Therefore, the Board is issuing this final rule with an effective date of January 1, 2010.

One trade association supported the proposed amendments regarding electronic disclosures, but had concerns with the provisions involving disclosure of overdraft fees. It does not believe the benefit of the rule would outweigh the burden. To mitigate the burden, the

trade association suggested permitting members to request the aggregate overdraft fee disclosures instead of requiring credit unions to provide them to all members. Additionally, it encouraged NCUA to differentiate between overdraft fees resulting from credit unions paying funds to cover an overdraft as a courtesy and fees that result from a credit union's contractual obligation to pay a transaction, such as under an agreement with VISA or MasterCard. The trade association believes credit unions should be required to disclose the fees resulting from a courtesy payment, but not the fees that stem from a contractual obligation. Another trade association supported the provisions that would exclude funds in an overdraft program from a member's available balance disclosed in response to a balance inquiry on an automated system and that address electronic disclosures, but questioned the need for the amendments to the overdraft fee disclosures.

The final rule requires all credit unions to disclose periodic and aggregate year-to-date overdraft fees on periodic statements, regardless of whether they advertise or promote member use of overdraft services. Under the current TISA regulation, credit unions that provide periodic statements must disclose fees or charges imposed on a member account during the statement period. 12 CFR 707.6(a)(3). Further, credit unions that promote the payment of overdrafts in an advertisement must also disclose the aggregate totals for overdraft fees and returned item fees for both the statement period and calendar year-to-date. 12 CFR 707.11(a). The rule eliminates the distinction between credit unions that promote overdraft services and those that do not, and requires all credit unions offering overdraft services to disclose the fees imposed for the payment of overdrafts for each statement period and the year-to-date aggregate. The amendment also eliminates the confusion surrounding the distinction between marketing and educational materials for purposes of determining when to disclose the year-to-date fees.

Additionally, credit unions are not required to offer overdraft services and may restrict the payment of overdrafts on debit card or point-of-sale transactions. Credit unions generally impose a fee for overdraft services regardless of whether the payment of an overdraft is a courtesy or results from a contractual obligation. To inform members about the fees charged for using discretionary overdraft services