FEDERAL RESERVE SYSTEM

12 CFR Part 226

Regulation Z; Docket No. R-1384

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that go into effect on August 22, 2010. In particular, the final rule requires that penalty fees imposed by card issuers be reasonable and proportional to the violation of the account terms. The final rule also requires credit card issuers to reevaluate at least every six months annual percentage rates increased on or after January 1, 2009. The final rule also requires that notices of rate increases for credit card accounts disclose the principal reasons for the increase.

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

Mandatory compliance dates. The mandatory compliance date for the amendments to §§ 226.9, 226.52, and 226.59 and the amendments to Model Forms G-20 and G-22 is August 22, 2010. The amendments to the change-in-terms disclosures in Model Forms G-18(F) and G-18(G) also have a mandatory compliance date of August 22, 2010. The mandatory compliance date for the amendments to the penalty fee disclosures in §§ 226.5a, 226.6, 226.7, and 226.56 and in Model Forms G-10(B), G-

10(C), G-10(E), G-17(B), G-17(C), G-18(B), G-18(D), G-18(F), G-18(G), G-21, G-25(A), and G-25(B) is December 1, 2010.

FOR FURTHER INFORMATION CONTACT: Stephen Shin, Attorney, or Amy Henderson 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

The Credit Card Act

This final rule represents the third stage of the Board's implementation of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act), which was signed into law on May 22, 2009. Pub. L. No. 111-24, 123 Stat. 1734 (2009). The Credit Card Act primarily amends the Truth in Lending Act (TILA) and establishes a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans.

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

Implementation of Credit Card Act

The Board has implemented the provisions of the Credit Card Act in stages, consistent with the statutory timeline established by Congress. On July 22, 2009, the Board published an interim final rule to implement the provisions of the Credit Card Act that became effective on August 20, 2009. See 74 FR 36077 (July 2009 Regulation Z Interim Final Rule). On February 22, 2010, the Board published a final rule adopting in final form the requirements of the July 2009 Regulation Z Interim Final Rule and implementing the provisions of the Credit Card Act that became effective on February 22, 2010. See 75 FR 7658 (February 2010 Regulation Z Rule).

On March 15, 2010, the Board published a proposed rule in the **Federal Register** to implement the provisions of the Credit Card Act that become effective on August 22, 2010. See 75 FR 12334 (March 2010 Regulation Z Proposal). The comment period on the March 2010 Regulation Z Proposal closed on April 14, 2010.[1] In response to the proposal, the Board received more than 22,000 comments from consumers, consumer groups, other government agencies, credit card issuers, industry trade associations, and others. As discussed in more detail elsewhere in this supplementary information, the Board has considered these comments in adopting this final rule.

II. Summary of Major Revisions

A. Reasonable and Proportional Penalty Fees

Statutory requirements. The Credit Card Act provides that "[t]he amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation." The Credit Card Act further directs the Board to issue rules that "establish standards for assessing whether the amount of any penalty fee or charge . . . is reasonable and proportional to the omission or violation to which the fee or charge relates."

In issuing these rules, the Credit Card Act requires the Board to consider: (1) the cost incurred by the creditor from an omission or violation; (2) the deterrence of omissions or violations by the cardholder; (3) the conduct of the cardholder; and (4) such other factors as the Board may deem necessary or appropriate. The Credit Card Act authorizes the Board to establish "different standards for different types of fees and charges, as appropriate." Finally, the Act authorizes the Board to "provide an amount for

[1] The comment period on the Paperwork Reduction Act analysis set forth in the March 2010 Regulation Z Proposal closed on May 14, 2010.

any penalty fee or charge . . . that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates."

Cost incurred as a result of violations. The final rule permits a credit card issuer to charge a penalty fee for a particular type of violation (such as a late payment) if it has determined that the amount of the fee represents a reasonable proportion of the costs incurred by the issuer as a result of that type of violation. Thus, the final rule permits issuers to use penalty fees to pass on the costs incurred as a result of violations while ensuring that those costs are spread evenly among consumers so that no individual consumer bears an unreasonable or disproportionate share.

The final rule provides guidance regarding the types of costs incurred by card issuers as a result of violations. For example, with respect to late payments, the final rule states that the costs incurred by a card issuer include collection costs, such as the cost of notifying consumers of delinquencies and resolving those delinquencies (including the establishment of workout and temporary hardship arrangements). Notably, the final rule also states that, although higher rates of loss may be associated with particular violations, those losses and related costs (such as the cost of holding reserves against losses) are excluded from the cost analysis. In order to ensure that penalty fees are based on relatively current cost information, the final rule requires card issuers to re-evaluate their costs at least annually.

Deterrence of violations. The Credit Card Act requires the Board to consider the deterrence of violations by the cardholder. As an alternative to basing penalty fees on costs, the Board's proposed rule would have permitted card issuers to base the amount of a penalty fee on a determination that the amount was reasonably necessary to deter that a particular type of violation. However, based on the comments and further analysis, the Board has determined that the proposed approach would not effectuate the purposes of the Credit Card Act. Instead, as discussed below, the Board has revised the safe harbors to better deter violations by generally allowing card issuers to impose higher fees for repeated violations during a particular period.

Consumer conduct. The Credit Card Act requires the Board to consider the conduct of the cardholder. The final rule does not require that each penalty fee be based on an assessment of the individual consumer conduct associated with the violation. Instead, the final rule takes consumer conduct into account in three ways. First, as discussed below, the Board has adopted safe harbors that generally allow card issuers to impose higher penalty fees when a consumer repeatedly engages in the same type of conduct during a particular period.

Second, the final rule prohibits issuers from imposing penalty fees that exceed the dollar amount associated with the violation. For example, under the final rule, a consumer who exceeds the credit limit by $5 cannot be charged an over-the-limit fee of more than $5. Similarly, a consumer who is late making a $20 minimum payment cannot be charged a late payment fee of more than $20.

Third, the final rule prohibits issuers from imposing multiple penalty fees based on a single event or transaction. For example, the final rule prohibits issuers from charging a late payment fee and a returned payment fee based on a single payment.

Safe harbors. Consistent with the safe harbor authority granted by the Credit Card Act, the final rule generally permits – as an alternative to the cost analysis discussed above – issuers to impose a $25 penalty fee for the first violation and a $35 fee for any additional violation of the same type during the next six billing cycles. For example, if a consumer paid late during the January billing cycle, a $25 late payment fee could be imposed. If one of the next six payments is late (i.e., the payments due during the February through July billing cycles), a $35 late payment fee could be imposed. As discussed in detail below, the Board believes that these amounts are generally consistent with the statutory factors of cost, deterrence, and consumer conduct. These amounts will be adjusted annually to the extent that changes in the Consumer Price Index would result in an increase or decrease of $1.[2]

Although the safe harbors discussed above apply to charge card accounts, the final rule provides an additional safe harbor when a charge card account becomes seriously delinquent.[3] Specifically, the final rule provides that, when a charge card issuer has not received the required payment for two or more consecutive billing cycles, it may impose a late payment fee that does not exceed 3% of the delinquent balance.

B. Reevaluation of Rate Increases

Statutory requirements. The Credit Card Act requires card issuers that increase an annual percentage rate applicable to a credit card account, based on the credit risk of the consumer, market conditions, or other factors, to periodically consider changes in such factors and determine whether to reduce the annual percentage rate. Card issuers are

[2] Notwithstanding these safe harbors, card issuers will be prohibited from imposing a fee that exceeds the dollar amount associated with the violation. For example, if a consumer does not make a $20 minimum payment by the due date, the late payment fee cannot exceed $20, even though the safe harbors would otherwise permit imposition of a higher fee.

[3] For purposes of Regulation Z, a charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. See § 226.2(a)(15)(iii). Charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable in full when the periodic statement is received or at the end of each billing cycle. See §§ 226.5a(b)(7), 226.7(b)(12)(v)(A).

required to perform this review no less frequently than once every six months, and must maintain reasonable methodologies for this evaluation. The Credit Card Act requires card issuers to reduce the annual percentage rate that was previously increased if a reduction is "indicated" by the review. However, the statute expressly provides that no specific amount of reduction in the rate is required. This provision is effective August 22, 2010 but requires that creditors review accounts on which an annual percentage rate has been increased since January 1, 2009.

General rule. Consistent with the Credit Card Act, the final rule applies to card issuers that increase an annual percentage rate applicable to a credit card account, based on the credit risk of the consumer, market conditions, or other factors. For any rate increase imposed on or after January 1, 2009, card issuers are required to review the account no less frequently than once each six months and, if appropriate based on that review, reduce the annual percentage rate. The requirement to reevaluate rate increases applies both to increases in annual percentage rates based on consumer-specific factors, such as changes in the consumer's creditworthiness, and to increases in annual percentage rates imposed based on factors that are not specific to the consumer, such as changes in market conditions or the issuer's cost of funds. If based on its review a card issuer is required to reduce the rate applicable to an account, the final rule requires that the rate be reduced within 45 days after completion of the evaluation.

Factors relevant to reevaluation of rate increases. The final rule generally permits a card issuer to review either the same factors on which the rate increase was originally based, or to review the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts. The Board believes that it is appropriate to permit card issuers to review the factors they currently consider in advancing credit to new consumers, because a review of these factors may result in existing cardholders receiving the benefit of any reduced rate that they would receive if applying for a new credit card with the card issuer.

The final rule contains a special provision for rate increases imposed between January 1, 2009 and February 21, 2010. For rates increased during this period, the final rule requires an issuer to conduct its first two reviews by using the factors that the issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts, unless the rate increase was based solely upon consumer-specific factors, such as a decline in the consumer's credit risk or the consumer's delinquency or default.

<u>Termination of obligation to reevaluate rate increases</u>. The final rule requires that a card issuer continue to review a consumer's account each six months unless the rate is reduced to the rate in effect prior to the increase. Accordingly, in some circumstances, the final rule requires card issuers to reevaluate rate increases each six months for an indefinite period. The proposed rule solicited comment on whether the obligation to review the rate applicable to a consumer's account should terminate after some specific time period elapses following the initial increase, as well as on whether there is significant benefit to consumers from requiring card issuers to continue reevaluating rate increases even after an extended period of time.

Based on the comments and further analysis, the Board declines to adopt a specific time limit on the obligation to reevaluate rate increases. The Credit Card Act does not expressly create such a time limit, and it may be beneficial to a consumer to have his or her rate reevaluated when market conditions change or the consumer's creditworthiness improves, even if a number of years have elapsed since the rate increase giving rise to the review requirement.

III. Statutory Authority

General Rulemaking Authority

Section 2 of the Credit Card Act states that the Board "may issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act." In addition, the provisions of the Credit Card Act implemented by this rule direct the Board to issue implementing regulations. See Credit Card Act § 101(c) (new TILA § 148) and § 102(b) (new TILA § 149). Furthermore, these provisions of the Credit Card Act amend TILA, which mandates that the Board prescribe regulations to carry out its purposes and specifically authorizes the Board, among other things, to do the following:

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

- Add or modify information required to be disclosed with credit and charge card applications or solicitations if the Board determines the action is necessary to carry out the purposes of, or prevent evasions of, the application and solicitation disclosure rules. 15 U.S.C. 1637(c)(5).
- Require disclosures in advertisements of open-end plans. 15 U.S.C. 1663.

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

Authority to Issue Final Rule With an Effective Date of August 22, 2010

Because the provisions of the Credit Card Act implemented by this final rule are effective on August 22, 2010,[4] this final rule is also effective on August 22, 2010. In order to provide an adequate transition period, 12 U.S.C. 4802(b)(1) generally requires that new regulations and amendments take effect no earlier than the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form. The date on which the Board's final rule 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 rule.[5] If this final rule is not published in the **Federal Register** on or before

[4] See new TILA Sections 148(d) and 149(b).

[5] The Board notes that, although the Administrative Procedure Act (5 U.S.C. 551 et seq.) generally requires that rules be published not less than 30 days before their effective date, it also provides an exception when "otherwise provided by the agency for good cause found and published with the rule." 15 U.S.C. § 553(d)(3). Although the Board is issuing this final rule more than 30 days before August 22, 2010, it is possible that – for the reasons discussed above – the rule may not be published in the Federal Register more than 30 days before that date. Accordingly, to the extent applicable, the Board finds that good cause exists to publish the final rule less than 30 days before the effective date.

July 1, 2010, the effective date for purposes of 12 U.S.C. 4802(b)(1) would be October 1, 2010. However, the Board has determined that – under those circumstances – the statutory effective date of August 22, 2010 establishes good cause for making this final rule effective prior to October 1. 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 regulation should become effective before such time"). Furthermore, 12 U.S.C. 4802(b)(1)(C) provides an exception to the general requirement when "the regulation is required to take effect on a date other than the date determined under [12 U.S.C. 4802(b)(1)] pursuant to any other Act of Congress."

Finally, TILA Section 105(d) provides that any regulation of the Board (or any amendment or interpretation thereof) requiring any disclosure which differs from the disclosures previously required by Chapters 1, 4, or 5 of TILA (or by any regulation of the Board promulgated thereunder) shall have an effective date no earlier than "that October 1 which follows by at least six months the date of promulgation." However, even assuming that TILA Section 105(d) applies to this final rule, the Board believes that the specific provisions in new TILA Sections 148 and 149 governing effective dates override the general provision in TILA Section 105(d).

IV. Section-by-Section Analysis

Section 226.5a Credit and Charge Card Applications and Solicitations

Section 226.6 Account-Opening Disclosures

Sections 226.5a(a)(2)(iv) and 226.6(b)(1)(i) address the use of bold text in, respectively, the application and solicitation table and the account-opening table. Under the February 2010 Regulation Z Rule, these provisions require that any fee or percentage amounts for late payment, returned payment, and over-the-limit fees be disclosed in bold text. However, these provisions also state that bold text shall not be used for any maximum limits on fee amounts unless the fee varies by state.

As discussed in detail below with respect to the amendments to the model forms in Appendix G-10 and G-17, disclosure of a maximum limit (or "up to" amount) may be necessary to accurately describe penalty fees that are consistent with the new substantive restrictions in § 226.52(b). While the Board previously restricted the use of bold text for maximum fee limits in order to focus consumers' attention on the fee or percentage amounts, the Board believes that – because the maximum limit may be the only amount disclosed for penalty fees – it is important to highlight that amount.

Accordingly, the Board is amending §§ 226.5a(a)(2)(iv) and 226.6(b)(1)(i) to require the use of bold text when disclosing maximum limits on fees. For consistency and to facilitate compliance, these amendments would apply to maximum limits for all fees required to be disclosed in the §§ 226.5a and 226.6 tables (including maximum limits for cash advance and balance transfer fees). The Board is also making conforming amendments to comment 5a(a)(2)-5.ii.

<u>Section 226.7 Periodic Statement</u>

Section 226.7(b)(11)(i)(B) currently requires card issuers to disclose the amount of any late payment fee and any increased rate that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, the card issuer may state the range of fees, or the highest fee and at the issuer's option with the highest fee an indication that the fee imposed could be lower. Comment 7(b)(11)-4 clarifies that disclosing a late payment fee as “up to $29” complies with this requirement. Model language is provided in Samples G-18(B), G-18(D), G-18(F), and G-18(G).

As discussed in greater detail below with respect to the amendments to Appendix G, an “up to” disclosure may be necessary to accurately describe a late payment fee that is consistent with the substantive restrictions in § 226.52(b). Accordingly, the Board is amending § 226.7(b)(11)(i)(B) to clarify that, in these circumstances, it is no longer optional to disclose an indication that the late payment fee may be lower than the disclosed amount.

However, the Board notes that, consistent with § 226.52(b), a card issuer could disclose a range of late payment fees in certain circumstances. As discussed in detail below, § 226.52(b)(2)(i) prohibits a card issuer from imposing a late payment fee that exceeds the amount of the delinquent required minimum periodic payment. However, while credit card minimum payments are generally a percentage of the outstanding balance (plus, in some cases, accrued interest and fees), many card issuers include a specific minimum amount in their minimum payment formulas. For example, a formula might state that the required minimum periodic payment will be the greater of 2% of the outstanding balance or $25. In these circumstances, the card issuer could disclose the late payment fee as a range from $25 to $35, which is the maximum fee amount under the safe harbors in § 226.52(b)(1)(ii)(A)-(B).

Section 226.9 Subsequent Disclosure Requirements

9(c) Change in Terms

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

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

Notice of Reasons for Rate Increase

The Credit Card Act added new TILA Section 148, which requires creditors that increase an annual percentage rate applicable to a credit card account under an open-end consumer credit plan, based on factors including the credit risk of the consumer, market conditions, or other factors, to consider changes in such factors in subsequently determining whether to reduce the annual percentage rate. New TILA Section 148 requires creditors to maintain reasonable methodologies for assessing these factors. The statute also sets forth a timing requirement for this review. Specifically, creditors are required to review, no less frequently than once every six months, accounts for which the annual percentage rate has been increased to assess whether these factors have changed. New TILA Section 148 is effective August 22, 2010 but requires that creditors review accounts on which the annual percentage rate has been increased since January 1, 2009.[6]

New TILA Section 148 requires creditors to reduce the annual percentage rate that was previously increased if a reduction is "indicated" by the review. However, new TILA Section 148(c) expressly provides that no specific amount of reduction in the rate is required. The Board is implementing the substantive requirements of new TILA Section 148 in a new § 226.59, discussed elsewhere in this supplementary information.

In addition to these substantive requirements, TILA Section 148 also requires creditors to disclose the reasons for an annual percentage rate increase applicable to a credit card under an open-end consumer credit plan in the notice required to be provided 45 days in advance of that increase. The Board is implementing the notice requirements in § 226.9(c) and (g), which are discussed in this section. As discussed in the February 2010 Regulation Z Rule, card issuers are required to provide 45 days' advance notice of

[6] As discussed in the supplementary information to § 226.59, the rule requires that rate increases imposed between January 1, 2009 and August 21, 2010 first be reviewed prior to February 22, 2011 (six months after the effective date of new § 226.59).

rate increases due to a change in contractual terms pursuant to § 226.9(c)(2) and of rate increases due to delinquency, default, or as a penalty not due to a change in contractual terms of the consumer's account pursuant to § 226.9(g). The additional notice requirements included in new TILA Section 148 are the same regardless of whether the rate increase is due to a change in contractual terms or the exercise of a penalty pricing provision already in the contract; therefore for ease of reference the notice requirements under § 226.9(c)(2) and (g) are discussed in a single section of this supplementary information.

Consistent with the approach that the Board has taken in implementing other provisions of the Credit Card Act that apply to credit card accounts under an open-end consumer credit plan, the changes to § 226.9(c)(2) and (g) apply to "credit card accounts under an open-end (not home-secured) consumer credit plan" as defined in § 226.2(a)(15). Therefore, home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by a debit card are not subject to the new requirements to disclose the reasons for a rate increase implemented in § 226.9(c)(2) and (g).

Section 226.9(c)(2)(iv) sets forth the content requirements for significant changes in account terms, including rate increases that are due to a change in the contractual terms of the consumer's account. In the March 2010 Regulation Z Proposal, the Board proposed to add a new § 226.9(c)(2)(iv)(A)(8) to require a card issuer to disclose no more than four principal reasons for the rate increase for a credit card account under an open-end (not home-secured) consumer credit plan, listed in their order of importance, in order to implement the notice requirements of new TILA Section 148. Proposed comment 9(c)(2)(iv)-11 set forth additional guidance on the disclosure. Specifically, proposed comment 9(c)(2)(iv)-11 stated that there is no minimum number of reasons that are required to be disclosed under § 226.9(c)(2)(iv)(A)(8), but that the reasons disclosed are required to relate to and accurately describe the principal factors actually considered by the credit card issuer.

Proposed comment 9(c)(2)(iv)-11 would have permitted a card issuer to describe the reasons for the increase in general terms, by disclosing for example that a rate increase is due to "a decline in your creditworthiness" or "a decline in your credit score," if the rate increase is triggered by a decrease of 100 points in a consumer's credit score. Similarly, the comment noted that a notice of a rate increase triggered by a 10% increase in the card issuer's cost of funds may be disclosed as "a change in market conditions." Finally, the proposed comment noted that in some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement.

Consumer groups and a federal agency urged the Board to require more specificity in the disclosure of reasons for a rate increase. These commenters indicated that more specificity would assist consumers in determining whether they could take action to improve the rates applicable to their credit card accounts. Several of these commenters stated that the Board should require the same level of specificity as is required in adverse action notices under the Equal Credit Opportunity Act, as implemented in Regulation B, and the Fair Credit Reporting Act (FCRA). 15 U.S.C. 1691 et seq., 12 CFR part 202, and 15 U.S.C. 1681 et seq. In addition, one city consumer protection agency urged the Board to require more detailed information if the rate increase results from a decline in the consumer's credit score. In this case, the commenter stated that the Board should require issuers to disclose the consumer's current credit score as well as the previous score on record with the issuer.

Industry commenters generally supported the Board's approach. Several commenters noted, however, that there would be significant burden associated with updating their systems in order to provide the disclosure of reasons for the increase and questioned whether the disclosure was necessary. Two credit union commenters asked the Board not to limit the disclosure to four reasons, while one other industry commenter stated that limiting the number of reasons in this manner was appropriate and should be retained.

The Board is adopting new § 226.9(c)(2)(iv)(A)(8) and new comment 9(c)(2)(iv)-11 generally as proposed. The Board continues to believe that this approach strikes the appropriate balance between providing consumers with useful information regarding the reasons for a rate increase while limiting "information overload" and unnecessary burden. Under the final rule, a consumer will be informed whether the rate increase is due to changes in his or her creditworthiness or behavior on the account, which the consumer may be able to take actions to mitigate, or whether the increase is due to more general factors such as changes in market conditions. The Board believes that consumers may find more detailed information confusing, and that, accordingly, the benefit to consumers of more detailed information would not outweigh the operational burden associated with providing such additional information.

The Board acknowledges that there may be a distinction between rate increases based on changes in a consumer's creditworthiness and portfolio-wide rate increases based on broader factors such as market conditions or the issuer's cost of funds. For individual rate increases, a consumer may be better able to take action to mitigate the change than for market-based rate increases. The Board has amended comment 9(c)(2)(iv)-11, as adopted, to clarify that the notice must specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase. Accordingly, the notice required by § 226.9(c)(2)(iv)(A)(8) will inform consumers of any specific on-account behavior in which they have engaged that gave rise to the rate increase. The notice required by § 226.9(c)(2)(iv)(A)(8) will also inform consumers if the rate increase resulted from a decline in their creditworthiness.

The Board notes that, in many cases, consumers also will receive other notices under federal law that are more specifically intended to educate consumers about the relationship between their consumer reports and the terms of credit they receive. In particular, the Federal Trade Commission and Board's rules implementing section 615(h) of the FCRA require issuers to provide a risk-based pricing notice if a consumer's annual percentage rate on purchases is increased based in whole or in part on information in a consumer report. See 15 U.S.C. 1681m, 12 CFR part 222, and 16 CFR part 640. The risk-based pricing notice must inform the consumer that the rate is being increased based on information in a consumer report. In addition, a consumer who receives a risk-based pricing notice is entitled to obtain a free consumer report in order to check for errors. Accordingly, the Board believes that a more specific disclosure under § 226.9(c)(2) is unnecessary.

As discussed above, proposed comment 9(c)(2)(iv)-11 set forth several examples of how the reasons for a rate increase must be disclosed. The examples described a rate increase triggered by a decrease of 100 points in a consumer's credit score and a rate increase triggered by a 10% increase in an issuer's cost of funds. Two credit union commenters urged the Board to clarify that the examples in proposed comment 9(c)(2)(iv)-11 were not intended as guidance on acceptable reasons for rate increases. The Board notes that § 226.9(c)(2)(iv)(A)(8) and the associated commentary do not set forth, and are not intended to impose, any substantive limitations on when a rate increase may occur. The examples included in comment 9(c)(2)(iv)-11 are included for illustrative purposes only and are being adopted as proposed.

The Board proposed to add a new § 226.9(g)(3)(i)(A)(6), which mirrored proposed § 226.9(c)(2)(iv)(A)(8), for rate increases due to delinquency, default, or as a penalty not due to a change in contractual terms of the consumer's account. Proposed § 226.9(g)(3)(i)(A)(6) required a card issuer to disclose no more than four reasons for the rate increase, listed in their order of importance, for a credit card account under an open-end (not home-secured) consumer credit plan. Proposed comment 9(g)-7 cross-referenced comment 9(c)(2)(iv)-11 for guidance on disclosure of the reasons for a rate increase. For the reasons discussed above, § 226.9(g)(3)(i)(A)(6) and comment 9(g)-7 are adopted as proposed.

The Board also proposed to amend Samples G-18(F), G-18(G), G-20, and G-22 to incorporate examples of disclosures of the reasons for a rate increase as required by § 226.9(c)(2)(iv)(A)(8) and (g)(3)(i)(A)(6). One issuer commented in support of the proposed amendments to these model forms, which are adopted as proposed. In addition, the Board has made one technical change to comment 9(c)(2)(iv)-8, for consistency with changes to Sample G-21 that are discussed elsewhere in this **Federal Register** notice.

Finally, the Board is amending § 226.9(c)(2)(iv)(C) and (g)(3)(i)(B) for clarity and to eliminate redundancy with new § 226.9(c)(2)(iv)(A)(8) and (g)(3)(i)(A)(6). As adopted in the February 2010 Regulation Z Rule, § 226.9(c)(2)(iv)(C) and (g)(3)(i)(B) required a creditor to include a statement of the reasons for the rate increase in any notice disclosing a rate increase based on a delinquency of more than 60 days. New § 226.9(c)(2)(iv)(A)(8) and (g)(3)(i)(A)(6) require all § 226.9(c) and (g) notices disclosing rate increases applicable to credit card accounts under an open-end (not home-secured) consumer credit plan to state the principal reasons for rate increases. Accordingly, the requirement to state the reasons for rate increases under § 226.9(c)(2)(iv)(C) and (g)(3)(i)(B) has been deleted as unnecessary, because such notice is now required under § 226.9(c)(2)(iv)(A)(8) and (g)(3)(i)(A)(6).

Other Amendments to § 226.9(c)(2)

For the reasons discussed in the supplementary information to § 226.52(b), the Board is amending § 226.9(c)(2)(iv)(B) to clarify that the right to reject does not apply to an increase in a fee as a result of a reevaluation of a determination made under § 226.52(b)(1)(i) or an adjustment to the safe harbors in § 226.52(b)(1)(ii) to reflect changes in the Consumer Price Index.

For the reasons discussed in the supplementary information to § 226.59(f), the Board also is adopting a new comment 9(c)(2)(v)-12 that clarifies the relationship between § 226.9(c)(2)(v)(B) and § 226.59 in the circumstances where a rate is increased due to loss of a temporary rate but is subsequently decreased pursuant to the review required by § 226.59.

Section 226.52 Limitations on Fees

52(b) Limitations on Penalty Fees

Most credit card issuers will assess a penalty fee if a consumer engages in activity that violates the terms of the cardholder agreement or other requirements imposed by the issuer with respect to the account. For example, most agreements provide that a fee will be assessed if the required minimum periodic payment is not received on or before the payment due date or if a payment is returned for insufficient funds or for other reasons. Similarly, some agreements provide that a fee will be assessed if amounts are charged to the account that exceed the account's credit limit.[7] These fees have increased significantly over the past fifteen years. A 2006 report by the Government Accountability Office (GAO) found that late payment and over-the-limit fees increased from an average of approximately $13 in 1995 to an average of approximately $30 in 2005.[8] The GAO also found that, over the same period, the percentage of issuer revenue derived from penalty fees increased to approximately 10%.[9]

According to data obtained by the Board from Mintel Comperemedia, the average late payment fee has increased to approximately $38 as of March 2010, while the average

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[7] The Board notes that some card issuers have recently announced that they will cease imposing fees for exceeding the credit limit. In addition, § 226.56 prohibits card issuers from imposing such fees unless the consumer has consented to the issuer's payment of transactions that exceed the credit limit.

[8] U.S. Gov't Accountability Office, Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers (Sept. 2006) (GAO Credit Card Report) at 5, 18-22, 33, 72 (available at http://www.gao.gov/new.items/d06929.pdf).

[9] See GAO Credit Card Report at 72-73.

over-the-limit fee has increased to approximately $36.[10] In addition, a July 2009 review of credit card application disclosures by the Pew Charitable Trusts found that the median late payment and over-the-limit fees charged by the twelve largest bank card issuers were $39.[11]

However, it appears that smaller credit card issuers generally charge significantly lower late payment and over-the-limit fees. For example, the Board understands that some community bank issuers charge late payment and over-the-limit fees that average between $17 and $25. In addition, the Board understands that many credit unions charge late payment and over-the-limit fees of $20 on average.[12] Similarly, the Pew Credit Card Report found that the median late payment and over-the-limit fees charged by the twelve largest credit union card issuers were $20.[13]

The Credit Card Act creates a new TILA Section 149. Section 149(a) provides that "[t]he amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any

[10] The Mintel data, which is derived from a representative sample of credit card solicitations, indicates that the average late payment fee was approximately $37 in January 2007 and increased to approximately $38 by March 2010. During the same period, the average over-the-limit fee increased from approximately $35 to approximately $36. In addition, the average returned payment fee during this period increased from approximately $30 to approximately $37.

[11] See The Pew Charitable Trusts, Still Waiting: "Unfair or Deceptive" Credit Card Practices Continue as Americans Wait for New Reforms to Take Effect (Oct. 2009) (Pew Credit Card Report) at 3, 12-13, 31-33 (available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Credit_Cards/Pew_Credit_Cards_Oct09_Final.pdf). As noted in the Pew Credit Card Report, the largest bank card issuers generally tier late payment fees based on the account balance (with a median fee of $39 applying when the account balance is $250 or more). Similarly, some bank card issuers tier over-the-limit fees (with the median fee of $39 applying when the account balance is $1,000 or more). In both cases, the balance necessary to trigger the highest penalty fee is significantly less than the average outstanding balance on active credit card accounts. See id. at 12-13, 31.

[12] Data submitted during the comment period by a trade association representing federal and state credit unions supported the Board's understanding with respect to credit union penalty fees.

[13] See Pew Credit Card Report at 3, 31-33.

omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation." Section 149(b) further provides that the Board, in consultation with the other federal banking agencies[14] and the National Credit Union Administration (NCUA), shall issue rules that "establish standards for assessing whether the amount of any penalty fee or charge . . . is reasonable and proportional to the omission or violation to which the fee or charge relates."

In issuing these rules, new TILA Section 149(c) requires the Board to consider: (1) the cost incurred by the creditor from such omission or violation; (2) the deterrence of such omission or violation by the cardholder; (3) the conduct of the cardholder; and (4) such other factors as the Board may deem necessary or appropriate. Section 149(d) authorizes the Board to establish "different standards for different types of fees and charges, as appropriate." Finally, Section 149(e) authorizes the Board – in consultation with the other federal banking agencies and the NCUA – to "provide an amount for any penalty fee or charge . . . that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates."

As discussed below, the Board is implementing new TILA Section 149 in § 226.52(b). In developing § 226.52(b), the Board consulted with the other federal banking agencies and the NCUA.

Reasonable and Proportional Standard and Consideration of Statutory Factors

As noted above, the Board is responsible for establishing standards for assessing whether a credit card penalty fee is reasonable and proportional to the violation for which

[14] The Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS).

it is imposed. New TILA Section 149 does not define "reasonable and proportional," nor is the Board aware of any generally accepted definition for those terms when used in conjunction with one another. As a separate legal term, "reasonable" has been defined as "fair, proper, or moderate."[15] Congress often uses a reasonableness standard to provide agencies or courts with broad discretion in implementing or interpreting a statutory requirement.[16] The term "proportional" is seldom used by Congress and does not have a generally-accepted legal definition. However, it is commonly defined as meaning "corresponding in size, degree, or intensity" or as "having the same or a constant ratio."[17] Thus, it appears that Congress intended the words "reasonable and proportional" in new TILA Section 149(a) to require that there be a reasonable and generally consistent relationship between the dollar amounts of credit card penalty fees and the violations for which those fees are imposed, while providing the Board with substantial discretion in implementing that requirement.

However, in Section 149(c), Congress also set forth certain factors that the Board is required to consider when establishing standards for determining whether penalty fees are reasonable and proportional. Although Section 149(c) only requires consideration of these factors, the Board believes that they are indicative of Congressional intent with

[15] E.g., Black's Law Dictionary at 1272 (7th ed. 1999); see also id. ("It is extremely difficult to state what lawyers mean when they speak of 'reasonableness.'" (quoting John Salmond, Jurisprudence 183 n.(u) (Glanville L. Williams ed., 10th ed. 1947)).

[16] See, e.g., 42 U.S.C. 12112(b)(5) (defining the term "discriminate" to include "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee"); 28 U.S.C. 2412(b) ("Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys…to the prevailing party in any civil action brought by or against the United States or any agency."); 43 U.S.C. 1734(a) ("Notwithstanding any other provision of law, the Secretary may establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands and may change and abolish such fees, charges, and commissions.").

[17] E.g., Merriam-Webster's Collegiate Dictionary at 936 (10th ed. 1995).

respect to the implementation of Section 149(a) and therefore provide useful measures for determining whether penalty fees are "reasonable and proportional." Accordingly, when implementing the reasonable and proportional requirement, the Board has been guided by these factors.[18]

In addition, pursuant to its authority under Section 149(c)(4) to consider "such other factors as the Board may deem necessary or appropriate," the Board has considered the need for general regulations that can be consistently applied by card issuers and enforced by the federal banking agencies, the NCUA, and the Federal Trade Commission. The Board has also considered the need for regulations that result in fees that can be effectively disclosed to consumers in solicitations, account-opening disclosures, and elsewhere. Finally, the Board has considered other relevant factors, as discussed below.

Section 226.52(b) reflects the Board's careful consideration of the statutory factors. However, when those factors were in conflict, the Board found it necessary to give more weight to a particular factor or factors. For example, as discussed below with respect to § 226.52(b)(2)(i), the Board has determined that – if a fee based on the card issuer's costs would be disproportionate to the consumer conduct that caused the violation – it is consistent with the intent of Section 149 to give greater weight to the

[18] Several commenters asserted that Section 149 requires the Board to base the standards for penalty fees on one or more of the factors listed in Section 149(c). In particular, several industry commenters argued that proposed § 226.52(b)(1) was inconsistent with Section 149 insofar as it required issuers to choose between basing penalty fees on costs or deterrence, noting that Section 149(c) uses the conjunctive "and" rather than the disjunctive "or" when listing the factors. Such arguments misread Section 149(c), which – as noted above – only requires the Board to consider the listed factors. Thus, while these factors provide valuable guidance, the Board does not believe that Congress intended to limit the Board's discretion in the manner suggested by these commenters. Furthermore, as discussed below, there are circumstances where – in the Board's view – the statutory factors point to conflicting results, leaving it to the Board to resolve those conflicts.

consumer conduct factor. The Board has made these determinations pursuant to the authority granted by new TILA Section 149 and existing TILA Section 105(a).

Cost Incurred as a Result of Violations

New TILA Section 149(c)(1) requires the Board to consider the costs incurred by the creditor from the violation. The Board believes that, for purposes of new TILA Section 149(a), the dollar amount of a penalty fee is generally reasonable and proportional to a violation if it represents a reasonable proportion of the total costs incurred by the issuer as a result of all violations of the same type. Accordingly, the Board has adopted this standard in § 226.52(b)(1)(i). This application of Section 149 appears to be consistent with Congress' intent insofar as it permits card issuers to use penalty fees to pass on the costs incurred as a result of violations, while also ensuring that those costs are spread evenly among consumers and that no individual consumer bears an unreasonable or disproportionate share.[19] As discussed below, the Board has also adopted safe harbor amounts in § 226.52(b)(1)(ii) that the Board believes will be generally sufficient to cover issuers' costs.

The Board notes that § 226.52(b)(1)(i) does not require that a penalty fee be reasonable and proportional to the costs incurred as a result of a specific violation on a specific account. Such a requirement would force card issuers to wait until after a violation has been resolved to determine the associated costs. In addition to being inefficient and overly burdensome for card issuers, this type of requirement would be

[19] One commenter argued that the Board's "reasonable proportion" standard does not satisfy the requirement in Section 149(a) that penalty fees be "reasonable and proportional." (Emphasis added.) Specifically, the commenter argued that, while a fee that represents a reasonable proportion of an issuer's costs might be proportional, it was not necessarily reasonable. The Board disagrees. By listing costs incurred from a violation as one of the factors in Section 149(c), Congress indicated that a penalty fee based on such costs will generally be reasonable for purposes of Section 149(a). Furthermore, the limitations in § 226.52(b)(2) impose additional reasonableness requirements on penalty fees that are based on costs.

difficult for regulators to enforce and would result in fees that could not be disclosed to consumers in advance. The Board does not believe that Congress intended this result. Instead, as discussed in greater detail below, § 226.52(b)(1)(i) requires card issuers to determine that their penalty fees represent a reasonable proportion of the total costs incurred by the issuer as a result of the type of violation (for example, late payments).

Deterrence of Violations

New TILA Section 149(c)(2) requires the Board to consider the deterrence of violations by the cardholder. Under proposed § 226.52(b)(1)(ii), a penalty fee would have been deemed reasonable and proportional to a violation if the card issuer had determined that the dollar amount of the fee was reasonably necessary to deter that type of violation using an empirically derived, demonstrably and statistically sound model that reasonably estimated the effect of the amount of the fee on the frequency of violations. This proposed standard was intended to encourage issuers to develop an empirical basis for the relationship between penalty fee amounts and deterrence and to prevent consumers from being charged fees that unreasonably exceeded – or were out of proportion to – their deterrent effect.[20]

However, commenters generally expressed strong reservations regarding the deterrence standard in proposed § 226.52(b)(1)(ii). Some industry commenters argued that, in order to develop the data necessary to comply with the proposed standard, the Board would have to permit card issuers to test – after the statutory effective date of

[20] Like § 226.52(b)(1)(i), proposed § 226.52(b)(1)(ii) would not have required that penalty fees be calibrated to deter individual consumers from engaging in specific violations. The Board noted that this type of requirement would be unworkable because the amount necessary to deter a particular consumer from, for example, paying late may depend on the individual characteristics of that consumer (such as the consumer's disposable income or other obligations) and other highly specific factors. Imposing such a requirement would create compliance, enforcement, and disclosure difficulties similar to those discussed above with respect to costs.

August 22, 2010 – the deterrent effect of fee amounts that would otherwise be inconsistent with § 226.52(b).[21] Other industry commenters urged the Board to adopt a less stringent standard, stating that it would be impossible for card issuers – particularly smaller institutions with limited resources – to develop the data and models necessary to satisfy proposed § 226.52(b)(1)(i). In contrast, consumer groups and a municipal consumer protection agency expressed concern that the proposed standard was not sufficiently stringent and would allow card issuers to use marginal changes in the frequency of violations to justify unreasonably high fee amounts.[22]

Based on its review of the comments and its own reevaluation of the proposed deterrence standard, the Board has determined that the standard in proposed § 226.52(b)(1)(ii) would not provide card issuers with a meaningful ability to base penalty fees on deterrence. Furthermore, the Board is concerned that adopting a less stringent standard could lead to penalty fees that are substantially higher than current levels, which would undermine the purpose of new TILA Section 149. Accordingly, the Board has not adopted proposed § 226.52(b)(1)(ii).

Instead, the Board has revised the safe harbors in proposed § 226.52(b)(3) to better address concerns regarding deterrence and adopted those safe harbors in

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[21] Notably, some of these commenters stated that, even if such testing were permitted, they would not test high fee amounts on their consumers because of the risks involved. One industry commenter submitted the results of models based on issuer data estimating the deterrent effect of different penalty fee amounts. However, because the Board does not have access to the data and assumptions used to produce these results, the Board is unable to determine whether these models satisfy the proposed standard.

[22] Some consumer groups argued that deterrence was not an appropriate consideration because, for example, a penalty fee is unlikely to have a deterrent effect in circumstances where consumers cannot avoid the violation of the account terms. The Board acknowledged this possibility in the proposal. However, the Board also noted that deterrence is a required factor for the Board to consider under new TILA Section 149(c) and that there is evidence indicating that, as a general matter, penalty fees may deter future violations of the account terms. See Agarwal et al., Learning in the Credit Card Market (Feb. 8, 2008) (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1091623&download=yes).

§ 226.52(b)(1)(ii). Specifically, § 226.52(b)(1)(ii) would permit card issuers to impose a $25 fee for the first violation of a particular type and a $35 fee for each additional violation of the same type during the next six billing cycles. For example, if a consumer pays late for the first time in January, § 226.52(b)(1)(ii) would limit the late payment fee to $25. If the consumer pays late again during February, March, April, May, June, or July, the card issuer would be permitted to impose a $35 late payment fee. However, if after paying late in January the consumer makes the next six payments on time, the fee for the next late payment would be limited to $25. The Board believes that § 226.52(b)(1)(ii) is consistent with new TILA 149(c)(2) insofar as – after a violation has occurred – the amount of the fee increases to deter additional violations of the same type during the next six billing cycles.

Although the application and solicitation disclosures in § 226.5a and the account opening disclosures in § 226.6 provide consumers with advance notice of the amount of credit card penalty fees,[23] the Board is concerned that some consumers may discount these disclosures because they overestimate their ability to avoid paying late and engaging in other conduct that violates the terms or other requirements of the account. However, as noted in the proposal, there is some evidence that the experience of incurring a late payment fee makes consumers less likely to pay late for a period of time.[24] Accordingly, although upfront disclosure of a penalty fee may be sufficient to

[23] In addition, § 226.7(b)(11) requires card issuers to disclose on each periodic statement the amount of the late payment fee that will be imposed if payment is not received by the due date.

[24] For example, one study of four million credit card statements found that a consumer who incurs a late payment fee is 40% less likely to incur a late payment fee during the next month, although this effect depreciates approximately 10% each month. See Agarwal, Learning in the Credit Card Market. Although this study indicates that the imposition of a penalty fee may cease to have a deterrent effect on future violations after four months, the Board has concluded – as discussed in greater detail below – that imposing

deter some consumers from engaging in certain conduct, other consumers may be deterred by the imposition of the fee itself. For these consumers, the Board believes that imposition of a higher fee when multiple violations occur will have a significant deterrent effect on future violations. In addition, as discussed below, the Board believes that multiple violations during a relatively short period can be associated with increased costs and credit risk and reflect a more serious form of consumer conduct than a single violation.

In the proposal, the Board solicited comment on this tiered approach to the safe harbor, which was supported by some industry commenters as being consistent with the statutory factors of cost, deterrence, and consumer conduct. However, consumer groups and some industry commenters opposed a tiered safe harbor on the grounds that it would be overly complex. Although the Board agrees that, for these reasons, it would not be appropriate to establish numerous fee amounts, it does not appear that the two-tiered safe harbor in § 226.52(b)(1)(ii) is overly complex.[25]

Consumer Conduct

New TILA Section 149(c)(3) requires the Board to consider the conduct of the cardholder. As discussed above, the Board does not believe that Congress intended to require that each penalty fee be based on an assessment of the individual characteristics of the violation. Thus, § 226.52(b) does not require card issuers to examine the conduct

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an increased fee for additional violations of the same type during the next six billing cycles is consistent with the intent of the Credit Card Act.

[25] The Board also solicited comment on whether penalty fees should be imposed in increments based on the consumer's conduct. For example, the Board suggested that card issuers could be permitted to impose a late payment fee of $5 each day after the payment due date until the required payment is received. However, the Board has not adopted this cumulative approach in the final rule because of concerns about complexity and the need to establish an upper limit for the total fee.

of the individual consumer before imposing a penalty fee.[26] Instead, § 226.52(b) ensures that penalty fees will reflect consumer conduct in a number of ways.

As an initial matter, to the extent certain consumer conduct that violates the terms or other requirements of an account has the effect of increasing the costs incurred by the card issuer, fees imposed pursuant to § 226.52(b)(1)(i) will reflect that conduct because the issuer is permitted to recover those costs. Furthermore, as discussed above, the safe harbors in § 226.52(b)(1)(ii) address consumer conduct by allowing issuers to impose higher penalty fees on consumers who violate the terms or other requirements of an account multiple times, while limiting the amount of the penalty fee for a consumer who engages in a single violation and does not repeat that conduct for the next six billing cycles.

The Board notes that, based on data submitted by a large credit card issuer, consumers who pay late multiple times over a six-month period generally present a significantly greater credit risk than consumers who pay late a single time. Although this data also indicates that consumers who pay late two or more times over longer periods (such as twelve or twenty-four months) are significantly more risky than consumers who pay late a single time, the Board believes that, when evaluating the conduct of consumers who have violated the terms or other requirements of an account, it is consistent with other provisions of the Credit Card Act to distinguish between those who repeat that conduct during the next six billing cycles and those who do not. Specifically, new TILA Section 171(b)(4) provides that, if the annual percentage rate that applies to a consumer's existing balance is increased because the account is more than 60 days delinquent, the

[26] Although some industry commenters argued that consumer conduct should serve as an independent basis for penalty fees, none suggested a specific method of basing the dollar amount of a penalty fee on consumer conduct.

increase must be terminated if the consumer makes the next six payments on time. See § 226.55(b)(4). Furthermore, as discussed below with respect to § 226.59, new TILA Section 148 provides that, when an annual percentage rate is increased based on the credit risk of the consumer or other factors, the card issuer must review the account at least once every six months to assess whether those factors have changed (including whether the consumer's credit risk has declined).

In addition, § 226.52(b)(2)(i) takes consumer conduct into account by prohibiting issuers from imposing penalty fees that exceed the dollar amount associated with the violation. The Board believes that, in enacting new TILA Section 149, Congress intended the amount of a penalty fee to bear a reasonable relationship to the magnitude of the violation. For example, a consumer who exceeds the credit limit by $5 should not be penalized to the same degree as a consumer who exceeds the limit by $500. Accordingly, under § 226.52(b)(2)(i), a consumer who exceeds the credit limit by $5 could not be charged an over-the-limit fee of more than $5.

Finally, § 226.52(b)(2)(ii) prohibits issuers from imposing multiple penalty fees based on a single event or transaction. The Board believes that imposing multiple fees in these circumstances would be unreasonable and disproportionate to the conduct of the consumer because the same conduct may result in a single or multiple violations, depending on circumstances that may not be in the control of the consumer. For example, § 226.52(b)(2)(ii) would prohibit issuers from charging a late payment fee and a returned payment fee based on a single payment.

52(b)(1) General Rule

Section 226.52(b) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with § 226.52(b)(1) and (b)(2). Section 226.52(b)(1) states that, subject to the limitations in § 226.52(b)(2), a card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee is consistent with either the cost analysis in § 226.52(b)(1)(i) or the safe harbors in § 226.52(b)(1)(ii). These alternatives are discussed in detail below.

Proposed comment 52(b)-1 clarified that, for purposes of § 226.52(b), a fee is any charge imposed by a card issuer based on an act or omission that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account, other than charges attributable to periodic interest rates. This comment provided the following examples of fees that are subject to the limitations in – or prohibited by – § 226.52(b): (1) late payment fees and any other fees imposed by a card issuer if an account becomes delinquent or if a payment is not received by a particular date; (2) returned payment fees and any other fees imposed by a card issuer if a payment received via check, automated clearing house, or other payment method is returned; (3) any fee or charge for an over-the-limit transaction as defined in § 226.56(a), to the extent the imposition of such a fee or charge is permitted by § 226.56;[27] (4) any fee or

[27] Some industry commenters argued that over-the-limit fees should be exempt from § 226.52(b) because, once a consumer has consented to the payment of transactions that exceed the credit limit consistent with new TILA Section 127(k) and § 226.56, the fee for exceeding the limit is a fee for a service affirmatively requested by the consumer rather than a fee for violating the terms or other requirements of the account. On the other hand, a municipal consumer protection agency requested that the Board ban over-the-limit fees in all circumstances, arguing that such fees are never reasonable because the issuer controls whether to allow the account to exceed the credit limit. As noted in the proposal, it appears that Congress intended new TILA Section 149 to apply to over-the-limit fees. See new TILA § 149(a) (listing over-the-limit fees as an example of a penalty fee or charge). Furthermore, the Board has previously determined that the

charge for a transaction that the card issuer declines to authorize; and (5) any fee imposed by a card issuer based on account inactivity (including the consumer's failure to use the account for a particular number or amount of transactions or a particular type of transaction) or the closure or termination of an account.[28]

Proposed comment 52(b)-1 also provided the following examples of fees to which § 226.52(b) does not apply: (1) balance transfer fees; (2) cash advance fees; (3) foreign transaction fees; (4) annual fees and other fees for the issuance or availability of credit described in § 226.5a(b)(2), except to the extent that such fees are based on account inactivity; (4) fees for insurance described in § 226.4(b)(7) or debt cancellation or debt suspension coverage described in § 226.4(b)(10) written in connection with a credit transaction, provided that such fees are not imposed as a result of a violation of the terms or other requirements of an account; (5) fees for making an expedited payment (to the extent permitted by § 226.10(e)); (6) fees for optional services (such as travel insurance); and (7) fees for reissuing a lost or stolen card.

Credit Card Act's restrictions on fees for over-the-limit transactions apply regardless of whether the card issuer characterizes the fee as a fee for a service or a fee for a violation of the account terms. See comment 56(j)-1. Thus, the Board believes it would be inconsistent with Congress' intent to exempt over-the-limit fees from the application of Section 149. Similarly, because Section 127(k) specifically addresses the circumstances in which an over-the-limit fee may be charged, the Board believes that it would be inconsistent with Congress' intent to ban such fees entirely.

[28] As discussed below, § 226.52(b)(2)(i)(B) would prohibit the imposition of fees for declined transactions, fees based on account inactivity, and fees based on the closure or termination of an account. Several industry commenters objected to the treatment of inactivity and account closure fees as penalty fees for purposes of Section 149, arguing that a consumer who does not use an account for transactions or who closes an account generally has not violated an express term of the cardholder agreement. However, the Board believes that it would be inconsistent with the purpose of Section 149 to permit card issuers to exempt a fee from § 226.52(b) by placing the requirement on which that fee is based outside the account agreement. For example, if a card issuer charges a fee when a consumer fails to use an account for transactions, the card issuer is requiring consumers to use the account for transactions, even if that requirement does not appear in the cardholder agreement. Accordingly, § 226.52(b) applies to fees imposed for violating the terms or other requirements of a credit card account.

The examples in comment 52(b)-1 are adopted as proposed, although the Board has made non-substantive revisions and added fees imposed for declined access checks as an additional example of a fee subject to § 226.52(b). Consumer group commenters noted that many card issuers cancel redeemable rewards points or similar benefits if a consumer pays late or otherwise violates the account terms and that, in those circumstances, some issuers require consumers to pay a fee to reinstate those rewards or benefits. These commenters requested that the Board treat both the cancellation and the reinstatement fee as penalty fees subject to new TILA Section 149. In contrast, one industry commenter requested that the Board clarify that any loss of a benefit as a result of a violation is not a fee for purposes of Section 149.

As discussed above, new TILA Section 149 applies to "any penalty fee or charge" imposed in connection with a violation. As a general matter, the Board believes that the loss of rewards points or other benefits as a result of a violation is not a "fee or charge" and therefore is not subject to Section 149. Furthermore, because a consumer can choose not to pay the reinstatement fee if the consumer decides that the rewards or benefits are not sufficiently valuable, the Board does not believe it would be appropriate to treat that fee as a penalty fee. However, as discussed in detail below with respect to inactivity fees, there are circumstances in which the loss of a benefit as a result of a violation cannot be meaningfully distinguished from the imposition of a penalty fee. See comment 52(b)(2)(i)-5. Accordingly, although losses of rewards points or other benefits are generally not subject to § 226.52(b), the Board does not believe that such losses can be categorically excluded. Instead, whether the loss of a benefit as a result of a violation of the terms or other requirements is subject to § 226.52(b) depends on the relevant facts and circumstances.

Proposed comment 52(b)-1 also clarified that § 226.52(b) does not apply to charges attributable to an increase in an annual percentage rate based on an act or omission that violates the terms or other requirements of an account. Currently, many credit card issuers apply an increased annual percentage rate (or penalty rate) based on certain violations of the account terms. Application of this increased rate can result in increased interest charges. However, the Board does not believe that Congress intended the words "any penalty fee or charge" in new TILA Section 149(a) to apply to penalty rate increases.

In the proposal, the Board noted that, elsewhere in the Credit Card Act, Congress expressly referred to increases in annual percentage rates when it intended to address them.[29] In fact, the Credit Card Act contains several provisions that specifically limit the ability of card issuers to apply penalty rates. Revised TILA Section 171 prohibits application of penalty rates to existing credit card balances unless the account is more than 60 days delinquent. See revised TILA § 171(b)(4); see also § 226.55(b)(4). Furthermore, if an account becomes more than 60 days delinquent and a penalty rate is applied to an existing balance, the card issuer must terminate the penalty rate if it receives the required minimum payments on time for the next six months. See revised TILA § 171(b)(4)(B); § 226.55(b)(4)(ii). With respect to new transactions, new TILA § 172(a) generally prohibits card issuers from applying penalty rates during the first year after account opening. See also § 226.55(b)(3)(iii). Subsequently, the card issuer must

[29] For example, revised TILA Section 171(a) and (b) and new TILA Section 172 explicitly distinguish between annual percentage rates, fees, and finance charges.

provide 45 days advance notice before applying a penalty rate to new transactions. See new TILA § 127(i); § 226.9(g). Finally, beginning on August 22, 2010, once a penalty rate is in effect, the card issuer generally must review the account at least once every six months thereafter and reduce the rate if appropriate. See new TILA § 148; § 226.59. These protections – in combination with the lack of any express reference to penalty rate increases in new TILA Section 149 – indicate that Congress did not intend to apply the "reasonable and proportional" standard to increases in annual percentage rates.[30]

Comments from individual consumers, consumer groups, state attorneys general, and state and municipal consumer protection agencies disagreed with the Board's interpretation. Some of these commenters argued that the Board was not giving effect to the reference in Section 149 to a penalty "charge" (as opposed to a penalty "fee"). However, as discussed above, the Board has expressly stated in comment 52(b)-1 that § 226.52(b) applies to "any charge imposed by a card issuer based on an act or omission that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account, other than charges attributable to periodic interest rates." Comment 52(b)-1 (emphasis added). Thus, the Board has given effect to the words "any penalty fee or charge" in Section 149.

These commenters further argued that, even if new TILA Section 149 does not expressly apply to penalty rate increases, the Board should use its authority under TILA Section 105(a) to apply § 226.52(b) to such rate increases because doing so would

[30] The Board also noted that prior versions of the Credit Card Act contained language that would have limited the amount of penalty rate increases, but that language was removed prior to enactment. See S. 414 § 103 (introduced Feb. 11, 2009) (proposing to create a new TILA § 127(o) requiring that "[t]he amount of any fee or charge that a card issuer may impose in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over the limit fee, increase in the applicable annual percentage rate, or any similar fee or charge, shall be reasonably related to the cost to the card issuer of such omission or violation") (emphasis added) (available at http://thomas.loc.gov).

effectuate the purposes of the Credit Card Act. However, the Board does not believe that this would be an appropriate use of its authority because, for the reasons discussed above, Congress has provided other protections that specifically apply to penalty rate increases.[31]

Proposed comment 52(b)-2 clarified that a card issuer may round any fee that complies with § 226.52(b) to the nearest whole dollar. For example, if § 226.52(b) permits a card issuer to impose a late payment fee of $21.50, the card issuer may round that amount up to the nearest whole dollar and impose a late payment fee of $22. However, if the permissible late payment fee were $21.49, the card issuer is not permitted to round that amount up to $22, although the card issuer could round that amount down and impose a late payment fee of $21. The Board did not receive any significant comment on this aspect of the proposal, which is adopted as proposed.

Finally, a state and a municipal consumer protection agency expressed concern that providing card issuers with the flexibility to choose between different methods for calculating penalty fees would lead issuers to switch back and forth between methods in order to charge the highest possible fee in all circumstances. As a general matter, the Board believes that card issuers should be permitted to choose between basing the amount of a penalty fee on a cost analysis that is consistent with § 226.52(b)(1)(i) or on the safe harbors in § 226.52(b)(1)(ii) because both methods result in fees that are consistent with new TILA Section 149. Accordingly, the Board has adopted comment 52(b)(1)-1, which clarifies that a card issuer may impose a fee for one type of violation

[31] One commenter argued that the Board should apply Section 149 to prohibit the assessment of deferred interest when a consumer pays late during a deferred interest period. For the reasons discussed above with respect to the assessment of additional interest charges as a result of a penalty rate increase, the Board believes that it would not be appropriate to apply Section 149 to the assessment of deferred interest. However, the Board notes that, effective February 22, 2010, card issuers were generally prohibited from assessing deferred interest as a result of a late payment. See comment 55(b)(1)-3.

pursuant to § 226.52(b)(1)(i) and may impose a fee for a different type of violation pursuant to § 226.52(b)(1)(ii). For example, a card issuer may impose a late payment fee of $30 based on a cost determination pursuant to § 226.52(b)(1)(i) but impose returned payment and over-the-limit fees of $25 or $35 pursuant to the safe harbors in § 226.52(b)(1)(ii).

In addition, the Board believes that card issuers should be permitted to shift from charging fees based on a cost analysis consistent with § 226.52(b)(1)(i) to charging fees that are consistent with the safe harbors in § 226.52(b)(1)(ii) (and vice versa). However, because the applicability of the safe harbors in § 226.52(b)(1)(ii)(A) and (B) depends on whether the consumer has engaged in multiple violations of the same type during the specified period, it would be inconsistent with the intent of § 226.52(b)(1)(ii) to permit a card issuer to charge the higher safe harbor amount in § 226.52(b)(1)(ii)(B) without having previously charged the lower amount in § 226.52(b)(1)(ii)(A). Accordingly, comment 52(b)(1)-1 clarifies that this practice is inconsistent with § 226.52(b)(1) and provides an illustrative example.

Finally, the Board has incorporated into this comment the guidance proposed in comment 52(b)(3)-1, which clarified that a card issuer that complies with the safe harbors is not required to determine that its fees represent a reasonable proportion of the total costs incurred by the card issuer as a result of a type of violation under § 226.52(b)(1)(i). However, this guidance also clarifies that § 226.52(b)(1) does not permit a card issuer to impose a fee that is inconsistent with the prohibitions in § 226.52(b)(2). For example, if § 226.52(b)(2)(i) prohibits the card issuer from imposing a late payment fee that exceeds

$15, the safe harbors in § 226.52(b)(1)(ii) do not permit the card issuer to impose a higher late payment fee.

52(b)(1)(i) Fees Based on Costs

Section 226.52(b)(1)(i) permits a card issuer to impose a fee for violating the terms or other requirements of an account if the card issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation. As discussed above, § 226.52(b)(1)(i) does not require card issuers to make individualized determinations with respect to the costs incurred as a result of each violation. Instead, card issuers would be required to make these determinations with respect to the type of violation (for example, late payments), rather than a specific violation or an individual consumer.

Because a card issuer is in the best position to determine the costs it incurs as a result of violations, the Board believes that, as a general matter, it is appropriate to make card issuers responsible for determining that their fees comply with § 226.52(b)(1)(i). As discussed below, to reduce the burden of making these determinations, § 226.52(b)(1)(ii) contains safe harbors that are intended to generally reflect issuers' costs. However, a card issuer that chooses to base its penalty fees on its own determination (rather than on the safe harbors) must be able to demonstrate to the regulator responsible for enforcing compliance with TILA and Regulation Z that its determination is consistent with § 226.52(b)(1)(i).[32]

[32] Consumer groups objected to this approach, arguing that – in order to prevent manipulation of the cost determinations required by § 226.52(b)(1)(i) – card issuers should be required to submit all data supporting those determinations to the Board for publication on an anonymous basis. The Board believes that such a requirement would be inefficient and overly burdensome and is not necessary to effectuate the purpose of Section 149. An issuer's principal regulator is most familiar with its operations and is in the best position to evaluate its cost analysis under § 226.52(b)(1)(i).

Industry commenters generally supported proposed § 226.52(b)(1)(i), while consumer group commenters expressed a general concern that – by allowing card issuers with higher costs to collect higher fees – the proposed rule could have the unintended consequence of rewarding the issuers that are least efficient in managing their costs. The Board understands this concern. However, because Regulation Z requires card issuers to disclose the amounts of their penalty fees in the application and solicitation table (§ 226.5a(b)(9), (10), and (12)) and in the account-opening table (§ 226.6(b)(2)(viii), (ix), and (xi)) as well as the amount of their late payment fee on each periodic statement (§ 226.7(b)(11)(B)), the Board believes that – for competitive and other reasons – card issuers will have incentives to manage their costs efficiently. Accordingly, § 226.52(b)(1)(i) is adopted as proposed.

A. Reevaluation of Cost Determinations

Proposed § 226.52(b)(1) would have required card issuers that base their penalty fees on costs to reevaluate their cost determination at least once every twelve months. If as a result of the reevaluation the card issuer determined that a lower fee represented a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the proposed rule would have required the card issuer to begin imposing the lower fee within 30 days after completing the reevaluation. If as a result of the reevaluation the card issuer determined that a higher fee represented a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the proposed rule clarified that the card issuer cannot begin imposing the higher fee until it has complied with the notice requirements in § 226.9.

This reevaluation requirement was intended to ensure that card issuers impose penalty fees based on relatively current cost information. However, because the Board did not wish to encourage frequent changes in penalty fees, it solicited comment on whether twelve months was an appropriate interval for the reevaluation. Generally, consumer groups supported the proposal while industry commenters requested less frequent reevaluation, citing the cost of reviewing their analyses annually and revising disclosures and account agreements. Based on its review of the comments and further analysis, the Board believes that an annual reevaluation requirement is appropriate. Although the Board understands that there will be costs involved in preparing a § 226.52(b)(1)(i) analysis, an issuer that determines that those costs outweigh the benefits of utilizing § 226.52(b)(1)(i) can instead comply with the safe harbors in § 226.52(b)(1)(ii).

However, because the Board understands that it may take some card issuers more than 30 days to implement a fee reduction, the Board has revised the reevaluation requirement to provide issuers with 45 days to do so. This period parallels the amount of time issuers are required to delay imposition of an increased fee under § 226.9. Furthermore, because it would be inconsistent with the intent of § 226.52(b)(1)(i) to prohibit issuers from increasing a fee to reflect increased costs, the Board has revised § 226.9(c)(2)(iv)(B) to provide that the right to reject an increase in a fee does not apply in these circumstances.

B. Factors Relevant to Cost Determination

Proposed comment 52(b)(1)(i)-1 would have clarified that a card issuer is not required to base its fees on the costs incurred as a result of a specific violation. Instead, for purposes of § 226.52(b)(1)(i), a card issuer must have determined that a fee for violating the terms or other requirements of an account represents a reasonable proportion of the costs incurred by the card issuer as a result of that type of violation. As proposed, the factors relevant to this determination included: (1) the number of violations of a particular type experienced by the card issuer during a prior period; and (2) the costs incurred by the card issuer during that period as a result of those violations. In addition, a card issuer was permitted, at its option, to base its fees on a reasonable estimate of changes in the number of violations of that type and the resulting costs during an upcoming period. For example, under the proposal, a card issuer could satisfy § 226.52(b)(1)(i) by determining that its late payment fee represented a reasonable proportion of the total costs incurred by the card issuer as a result of late payments based on the number of delinquencies it experienced in the past twelve months, the costs incurred as a result of those delinquencies, and a reasonable estimate about changes in delinquency rates and the costs incurred as a result of delinquencies during a subsequent period of time (such as the next twelve months).

The Board has revised several aspects of comment 52(b)(1)(i)-1 based on the comments and further analysis. First, the Board has clarified that card issuers must evaluate their costs based on a prior period of reasonable length (such as a period of twelve months). The Board believes that this clarification is necessary to ensure that any cost analysis is based on a period that accurately reflects the number of violations an issuer typically experiences and the costs incurred as a result of those violations.

One public interest group expressed a general concern that card issuers could manipulate estimates regarding future changes in the frequency of violations and the resulting costs. However, because the burden is on the card issuer to demonstrate that its estimates have a reasonable basis, the Board believes that any manipulation will be detected.

Industry commenters requested that the cost analysis reflect the fact that not all violations result in the collection of a penalty fee. These commenters noted that a penalty fee might not be collected because, for example, the account has charged off or because the card issuer has waived the fee as a courtesy to the consumer or as part of a workout or temporary hardship arrangement. The Board agrees that – to the extent a card issuer is unable to collect a penalty fee (for example, because the account has been charged off or discharged in bankruptcy) – that fee should not be considered when determining the amount needed to cover an issuer's costs.[33] However, the Board draws a distinction between fees the card issuer is unable to collect and those the card issuer chooses not to collect (such as fees the card issuer waives). Although the waiver of penalty fees is beneficial to consumers whose fees are waived, those waivers should not result in higher fees for other consumers. Several industry commenters warned that card issuers may be less willing to offer workout or temporary hardship arrangements if the cost analysis cannot be adjusted to reflect fees waived pursuant to such arrangements; however, the Board believes the effect on workout and temporary hardship arrangements is

[33] The Board notes that this treatment is not inconsistent with its determination that – as discussed below – losses are not costs for purposes of the cost analysis, which is discussed below. Card issuers are not permitted to include losses in the costs incurred as a result of violations. However, when dividing those costs among the violations, the Board believes that card issuers should be permitted to exclude violations that resulted in fees the card issuer cannot collect. For example, assume that a card issuer experiences 5 million late payments and $100 million in costs as a result of those late payments (not including losses). Dividing the $100 million in costs by the 5 million late payments results in a $20 late payment fee. However, if the card issuer cannot collect 25% of the late payment fees it imposes, the card issuer will be unable to recover 25% of the costs incurred as a result of late payments. Accordingly, the $100 million in costs should be divided by the 3.75 million delinquencies for which the card issuer could have collected a fee, which results in a late payment fee of approximately $27.

unlikely to be substantial because those arrangements are generally used by card issuers to prevent the entire account balance from becoming a loss.[34]

Accordingly, the Board has revised comment 52(b)(1)(i)-1 to clarify that, when determining the appropriate fee amount under § 226.52(b)(1)(i), a card issuer may, at its option, consider the number of fees imposed during the relevant period that it reasonably estimates it will be unable to collect. In addition, the Board has adopted a new comment 52(b)(1)(i)-5, which clarifies that, for purposes of § 226.52(b)(1)(i), a card issuer may consider fees that it is unable to collect when determining the appropriate fee amount. Fees that the card issuer is unable to collect include fees imposed on accounts that have been charged off or discharged in bankruptcy and fees that the card issuer is required to waive in order to comply with a legal requirement – such as the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 et seq., which limits the charges a card issuer may impose on an account while the accountholder is in active military service. See 50 U.S.C. app. 527. However, the comment also clarifies that fees that the card issuer chooses not to impose or chooses not to collect (such as fees that the card issuer chooses to waive) are not relevant for purposes of this determination.

[34] The Board notes that this approach is consistent with the conclusions reached by the United Kingdom's Office of Fair Trading in its statement of the principles that credit card issuers must follow in setting default charges. See Office of Fair Trading (United Kingdom), Calculating Fair Default Charges in Credit Card Contracts: A Statement of the OFT's Position (April 2006) (OFT Credit Card Statement) at 25-26 (available at http://www.oft.gov.uk/shared_oft/reports/financial_products/oft842.pdf). The Board is aware that a recent opinion by the Supreme Court of the United Kingdom has called into question aspects of the OFT's legal authority to regulate prices paid by consumers for banking services. See Office of Fair Trading v. Abbey Nat'l Plc and Others (Nov. 25, 2009) (available at http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2009_0070_Judgment.pdf). However, this opinion does not appear to affect the OFT's authority to regulate default charges, which was the basis for the Credit Card Statement. See OFT Credit Card Statement at 10-17. And regardless, this question does not affect the Board's legal authority (and mandate) to regulate credit card penalty fees under new TILA Section 149. As discussed in greater detail below, the Board also believes that – notwithstanding important distinctions between the laws of the United States and the United Kingdom – the OFT's findings warrant consideration along with other relevant information. However, the Board does not find the OFT's analysis to be dispositive on any particular point.

Finally, in response to industry comments, the Board has revised comment 52(b)(1)(i)-1 to clarify that a card issuer may make a single cost determination pursuant to § 226.52(b)(1)(i) for all of its credit card portfolios or may make separate determinations for each portfolio. The Board believes that it is appropriate to provide this flexibility because violations may be more or less frequent and may result in greater or lesser costs depending on the composition of the portfolio. For example, a card issuer with a retail credit card portfolio and a general purpose credit card portfolio might experience more frequent violations or greater costs on one portfolio than on the other. Although the Board does not believe it is necessary to specifically define the term "credit card portfolio," the Board notes that, for purposes of § 226.52(b)(1)(i), this term is generally intended to encompass a broader range of credit card accounts than the term "type of credit card plan," which is used in the commentary to § 226.59(d). The Board understands that, for example, a general purpose credit card portfolio may contain several different types of credit card plans (such as plans that provide rewards and plans that do not). However, the Board acknowledges that there may be circumstances in which a credit card portfolio contains only one type of credit card plan (such as certain retail credit card portfolios).

C. Exclusion of Losses From Cost Analysis

Proposed comment 52(b)(1)(i)-2 clarified that, although higher rates of loss may be associated with particular violations of the terms or other requirements of an account, those losses and associated costs (such as the cost of holding reserves against losses) are excluded from the § 226.52(b)(1)(i) cost analysis. In the proposal, the Board observed that, although an account generally cannot become a loss without first becoming delinquent, delinquencies and associated losses may be caused by a variety of factors (such unemployment, illness, and divorce). The Board also stated that, based on available data, it appeared that most violations did not actually result in losses.[35] Finally, the Board expressed concern that – if card issuers were permitted to begin recovering losses and associated costs through penalty fees rather than upfront rates – transparency in credit card pricing would be reduced because, as discussed above, some consumers overestimate their ability to avoid violations and therefore may discount upfront penalty fee disclosures.

A federal agency, a municipal consumer protection agency, and consumer groups supported the proposed exclusion of losses and associated costs from the cost analysis. However, industry commenters challenged several aspects of the Board's rationale.

First, while industry commenters generally conceded that most violations do not result in losses, they argued that the cost associated with those that do is extremely high. They further argued that, if card issuers are not permitted to recover losses through penalty fees, those losses will cause issuers to reduce credit availability or will be reflected in the upfront annual percentage rates and annual fees charged to consumers who do not pay late. The Board does not dispute that losses impose substantial costs on card issuers. However, the Board understands that, historically, most card issuers have

[35] Specifically, data submitted to the Board during the comment period for the January 2009 FTC Act Rule indicated that more than 93% of accounts that were over the credit limit or delinquent twice in a twelve month period did not charge off during the subsequent twelve months. See Federal Reserve Board Docket No. R-1314: Exhibit 5, Table 1a to Comment from Oliver I. Ireland, Morrison Foerster LLP (Aug 7, 2008) (Argus Analysis) (presenting results of analysis by Argus Information & Advisory Services, LLC of historical data for consumer credit card accounts believed to represent approximately 70% of all outstanding consumer credit card balances). Furthermore, because collections generally continue after the account has been charged off, an account that has been charged off is not necessarily a total loss (although the Board understands that recoveries after an account has been charged off are generally a small fraction of the account balance). The January 2009 FTC Act Rule was issued jointly with the OTS and NCUA under the Federal Trade Commission Act to protect consumers from unfair acts or practices with respect to consumer credit card accounts. See 74 FR 5498 (Jan. 29, 2009).

not priced for the risk of loss through penalty fees; instead, issuers have generally priced for risk through upfront annual percentage rates and penalty rate increases.[36] Although the Credit Card Act has restricted card issuers' ability to impose penalty rate increases on existing balances, the Board believes that these restrictions were based, in part, on an understanding that pricing for risk using upfront rates rather than penalty rate increases will promote transparency and protect consumers from unanticipated increases in the cost of credit.[37] Thus, the Board believes that it would be inconsistent with the purpose of the Credit Card Act to permit card issuers to begin recovering losses and associated costs through penalty fees rather than through upfront rates.[38] Furthermore, issuers generally acknowledged that – if losses were included in the cost analysis – § 226.52(b)(1)(i) would permit the imposition of penalty fees that are dramatically higher than those imposed today, a result which appears directly contrary to the intent of Section 149.[39]

Finally, some industry commenters argued that Congress intended to include losses in the cost analysis. One commenter noted that the reference in new TILA Section

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[36] The Board notes that industry commenters generally agreed with or did not dispute the Board's understanding. However, some industry commenters suggested that some issuers may currently use penalty fees to recover losses. Also, the Board recognizes that charge card accounts generally impose an annual fee but not interest charges because the balance must be paid in full each billing cycle. As discussed below, the Board had adopted a safe harbor in § 226.52(b)(1)(ii)(C) that specifically addresses charge cards.

[37] The relevant provisions of the Credit Card Act (which are codified in TILA §§ 171 and 172) appear to be based on similar limitations imposed by the Board in the January 2009 FTC Act Rule. In that final rule, the Board reasoned that pricing for risk using upfront rates rather than penalty rate increases would promote transparency and protect consumers from unanticipated increases in the cost of credit. See 74 FR 5521-5528.

[38] The Board notes that the OFT reached a similar conclusion with respect to losses. See OFT Credit Card Statement at 1, 19-22, 25. The Board reiterates that it does not find the OFT's analysis to be dispositive. However, notwithstanding the important distinctions between the laws of the United States and the United Kingdom, the Board believes this analysis warrants consideration.

[39] Although some industry commenters suggested that only a portion of losses be included in the cost analysis, they did not provide any meaningful way to distinguish between types of losses (nor is the Board aware of any).

149(c)(1) to "costs incurred by the creditor from [an] omission or violation" does not expressly exclude losses and that definitions of "cost" typically include "loss."[40] However, as discussed above, the factors in Section 149(c) are considerations to be taken into account by the Board when establishing standards, not the standards themselves. Furthermore, the Board notes that Section 149(c)(1) refers to "costs incurred by the creditor from [an] omission or violation," which could be construed to mean that it is appropriate to exclude losses where – as here – card issuers do not incur losses as a result of the overwhelming majority of violations.[41]

For the reasons discussed above, comment 52(b)(1)(i)-2 is adopted as proposed, with two revisions. First, several industry commenters suggested that, even if losses were generally excluded from the cost analysis, card issuers should be permitted to include the cost of funding delinquent balances before the account becomes a loss. However, as a general matter, the Board does not believe that such costs can be meaningfully distinguished from losses. Accordingly, comment 52(b)(1)(i)-2 has been revised to clarify that the cost of funding delinquent accounts is considered a loss and is therefore excluded from the cost analysis.

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[40] See e.g., Merriam-Webster's Collegiate Dictionary at 262 (10th ed. 1995) (defining cost as, among other things, "loss or penalty incurred esp. in gaining something").

[41] Another commenter referred to language in a report issued by the Senate Committee on Banking, Housing, and Urban Affairs stating the Committee's understanding that "the Federal Reserve Board, in determining reasonable relation to cost, will take into account a number of factors, including . . . credit risk associated with both portfolio and the individual. . . ." See S. Rep. No. 111-16, at 7 (2009). However, this report refers to a prior version of the Credit Card Act, which would have required that fees be based solely on costs. See id. at 10 ("This section requires that penalty fees assessed to cardholders be reasonably related to the cost incurred by the card issuer.") In contrast, under the final version of the legislation, costs are one of the several considerations. See new TILA Section 149(c). Nevertheless, the Board notes that it has taken credit risk into consideration when implementing Section 149. Specifically, the Board believes that the safe harbors in § 226.52(b)(1)(ii) address concerns that accounts that experience multiple violations over a particular period pose a greater credit risk than accounts that experience a single violation over the same period.

Second, several industry commenters suggested that all risk management costs should be included in the cost analysis, including the cost of underwriting new accounts in order to determine the likelihood that credit extended to an applicant will result in a loss. However, while the Board agrees that, for example, costs associated with managing risk on delinquent accounts should be included in the cost analysis, the Board also believes that upfront underwriting costs cannot be categorized as costs incurred by the card issuer <u>from</u> or <u>as a result of</u> violations. Accordingly, the Board has revised comment 52(b)(1)(i)-2 to clarify that a card issuer may not include in the cost analysis costs associated with evaluating whether consumers who have not violated the terms or other requirements of an account are likely to do so in the future (such as the costs associated with underwriting new accounts). However, the comment also clarifies that, once a violation of the account terms or other requirements has occurred, the costs associated with preventing additional violations for a reasonable period of time may be included in the cost analysis.

D. Additional Guidance and Examples

Proposed comment 52(b)(1)(i)-3 clarified that, as a general matter, amounts charged to the card issuer by a third party as a result of a violation of the terms or other requirements of an account are costs incurred by the card issuer for purposes of § 226.52(b)(1)(i). For example, if a card issuer is charged a specific amount by a third party for each returned payment, that amount is a cost incurred by the card issuer as a result of returned payments. However, if the amount is charged to the card issuer by an affiliate or subsidiary of the card issuer, the card issuer must have determined for purposes of § 226.52(b)(1)(i) that the amount represents a reasonable proportion of the costs incurred by the affiliate or subsidiary as a result of the type of violation. For example, if an affiliate of a card issuer provides collection services to the card issuer for delinquent accounts, the card issuer must determine that the amount charged to the card issuer by the affiliate for such services represents a reasonable proportion of the costs incurred by the affiliate as a result of late payments. The Board did not receive significant comment on this aspect of the proposal, which is adopted as proposed (with non-substantive clarifications).

Proposed comment 52(b)(1)-1 clarified that the fact that a card issuer's penalty fees are comparable to fees assessed by other card issuers is not sufficient to satisfy the requirements of § 226.52(b)(1)(i). Instead, a card issuer must make its own determinations whether the amounts of its fees represent a reasonable proportion of the total costs incurred by the issuer. Consumer groups generally supported this clarification. Some industry commenters argued that card issuers should be permitted to rely on general industry cost data or any other reliable information for purposes of § 226.52(b)(1)(i). However, the Board believes that this would be inconsistent with new TILA Section 149(c)(1), which refers to the "costs incurred by the creditor from [an] omission or violation." Accordingly, this comment has been revised for clarity and redesignated as comment 52(b)(1)(i)-4 for organizational reasons but otherwise adopted as proposed.

Proposed comment 52(b)(1)(i)-4 clarified the application of § 226.52(b)(1)(i) to late payment fees. In addition to providing illustrative examples, the comment stated that, for purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of late payments include the costs associated with the collection of late payments, such as the costs associated with notifying consumers of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements). Although industry commenters requested that the Board specify that a variety of costs are costs incurred as a result of late payments, those costs generally appear to be addressed by the commentary discussed above.

Consumer group commenters requested that the Board exclude from the cost analysis any collection costs unless the issuer has actually begun collection activity. However, this approach would require examining individual violations, which – for the reasons discussed above – the Board generally does not believe to be warranted.

Consumer group commenters also requested that the Board exclude from the cost analysis time spent by a customer service representative speaking with a consumer who has been charged a fee. However, the Board believes that this is a cost incurred by the card issuer as a result of a violation. Accordingly, this comment has been redesignated as comment 52(b)(1)(i)-6 for organizational purposes and adopted as proposed, except for the provision of an additional illustrative example.

Proposed comment 52(b)(1)(i)-5 clarified the application of § 226.52(b)(1)(i) to returned payment fees. The comment stated that, for purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of returned payments include the costs associated with processing returned payments and reconciling the card issuer's systems and accounts to reflect returned payments as well as the costs associated with notifying the consumer of the returned payment and arranging for a new payment. The comment also provided illustrative examples. An industry commenter noted that, in some cases, payments are intentionally made with checks written on accounts with insufficient funds in order to fraudulently increase the available credit or to fraudulently create a credit balance that will be refunded to the accountholder. Accordingly, the Board has revised this comment to clarify that the costs associated with investigating potential fraud with respect to returned payments are costs incurred by the issuer as a result of returned payments. The Board did not receive any other significant comment on this aspect of the proposal. Accordingly, this comment has been redesignated as comment 52(b)(1)(i)-7 for organizational purposes and adopted as proposed, except for the provision of an additional illustrative example.

Proposed comment 52(b)(1)(i)-6 clarified the application of § 226.52(b)(1)(i) to over-the-limit fees. In addition to providing illustrative examples, the comment stated that, for purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of over-the-limit transactions include the costs associated with determining whether to authorize over-the-limit transactions and the costs associated with notifying the consumer that the credit limit has been exceeded and arranging for payments to reduce the balance below the credit limit. Consumer group commenters argued that any costs associated with the card issuer's authorization system should be excluded from the cost analysis because card issuers need this system for their general business operations. However, the Board does not believe it is possible to meaningfully distinguish between the cost of authorizing and declining transactions.

Consumer groups also argued that any costs incurred by the card issuer obtaining the affirmative consent of consumers to the payment of over-the-limit transactions consistent with § 226.56 are not costs incurred by a card issuer as a result of over-the-limit transactions. The Board agrees and has revised the proposed comment accordingly.

The Board has also added an additional illustrative example. Otherwise, this comment has been redesignated as comment 52(b)(1)(i)-8 for organizational purposes and adopted as proposed.

The Board has adopted a new comment 52(b)(1)(i)-9 clarifying the application of § 226.52(b)(1)(i) to fees charged when the card issuer declines payment on checks that access a credit card account. In addition to providing an illustrative example, the comment clarifies that the costs incurred by a card issuer as a result of a declined access check include costs associated with determining whether to decline access checks, costs associated with processing declined access checks and reconciling the card issuer's systems and accounts to reflect declined access checks, costs associated with investigating potential fraud with respect to declined access checks, and costs associated with notifying the consumer and the merchant that accepted the access check that the check has been declined.

Finally, the Board notes that consumer group commenters requested that all overhead costs be excluded from the cost analysis. Although the Board agrees that not all overhead costs are costs incurred as a result of a violation, it would not be feasible to develop a meaningful definition of "overhead" for purposes of this regulation. Instead, the Board believes that the determination of whether certain costs are incurred as a result of violations of the account terms or other requirements should be made based on all the relevant facts and circumstances.

52(b)(1)(ii) Safe Harbors

As discussed above, new TILA Section 149(e) authorizes the Board to provide amounts for penalty fees that are presumed to be reasonable and proportional to the violation. The Board acknowledges that specific safe harbor amounts cannot perfectly reflect the factors listed in new TILA Section 149(c) insofar as the costs incurred as a result of violations, the amount necessary to deter violations, and the consumer conduct associated with violations will vary depending on the issuer, the consumer, the type of violation, and other circumstances. However, as discussed above, it would not be feasible to implement new TILA Section 149 based on individualized determinations. Instead, the Board believes that establishing generally applicable safe harbors will facilitate compliance by issuers and increase consistency and predictability for consumers.

Commenters generally supported the adoption of safe harbors. Some industry commenters noted that safe harbors were necessary for smaller institutions that may lack the resources to perform the cost analysis required by § 226.52(b)(1)(i). However, comments from credit unions, small banks, a state consumer protection agency, and a municipal consumer protection agency expressed concern that, while larger issuers with the resources to conduct a cost analysis would be able to choose between relying on that analysis or on the safe harbors, smaller issuers would be forced to use the safe harbors, which would create inconsistency and bifurcate the market. However, some risk of inconsistency is inevitable because new TILA 149 does not authorize the Board to establish a single fee amount that must be used by all issuers. Furthermore, as discussed below, the Board does not believe that smaller issuers will be significantly disadvantaged by the safe harbor amounts in § 226.52(b)(1)(ii) because those amounts are generally consistent with the fees currently charged by smaller issuers.

Some industry commenters argued that, in order to promote consistency and reduce compliance burden, the Board should apply the safe harbors to all of the requirements in § 226.52(b). Specifically, these commenters argued that an issuer that complies with the safe harbors should not be required to comply with the limitations in § 226.52(b)(2) on fees that exceed the dollar amount associated with the violation and on the imposition of multiple fees based on a single event or occurrence. However, as discussed below, the Board believes that the limitations in § 226.52(b)(2) provide important protections for consumers and will not be overly burdensome for card issuers.

Accordingly, for the reasons discussed below, § 226.52(b)(1)(ii) states that, except as provided in § 226.52(b)(2), a card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee generally does not exceed one of two amounts. For the first violation of a particular type, the card issuer may impose a fee of $25. For a subsequent violation of the same type during the next six billing cycles (for example, a second late payment), the card issuer may impose a fee of $35. Both amounts may be adjusted annually by the Board to reflect changes in the Consumer Price Index. Finally, for the reasons discussed below, when a charge card issuer has not received the required payment for two or more consecutive billing cycles, the issuer may impose a fee that does not exceed 3% of the delinquent balance.

52(b)(1)(ii)(A)-(B) First and Subsequent Violations

The Board believes that, as a general matter, the safe harbor amounts in § 226.52(b)(1)(ii)(A) and (B) are reasonable and proportional to violations of the terms and other requirements of an account. As discussed below, these amounts are based on the statutory factors listed in new TILA Section 149(c) and on the Board's analysis of the data and other information discussed in the proposal and submitted by commenters. Specifically, the safe harbor amount in § 226.52(b)(1)(ii)(A) is generally intended to represent a reasonable proportion of the costs incurred by most card issuers as a result of a single violation of the terms or other requirements of an account. In contrast, the higher safe harbor amount in § 226.52(b)(1)(ii)(B) is intended to represent the increased costs incurred as a result of additional violations of the same type during the next six billing cycles as well as to address the consumer conduct that leads to such violations and to deter subsequent violations.

A. Safe Harbor Amounts

1. Penalty Fees for Credit Card Accounts

As an initial matter, the Board considered the dollar amounts of penalty fees currently charged by credit card issuers. Although credit card penalty fees appear to be approximately \$36 to \$38 on average, many smaller card issuers (such as credit unions and community banks) charge penalty fees of \$20 to \$25. As discussed above, the Board understands that – rather than basing penalty fees solely on costs and deterrence – most card issuers currently consider a number of additional factors, including the need to maintain or increase overall revenue. Nevertheless, the Board noted in the proposal that the discrepancy between the fees charged by large and small issuers suggested that – although violations of the terms or other requirements of an account likely impact different types of card issuers to different degrees – fees that are substantially lower than the current average may be sufficient to cover the costs incurred as a result of those violations and to deter such violations.

The Board requested that commenters submit relevant information that would assist the Board in establishing a safe harbor amount or amounts for credit card penalty fees. In particular, the Board asked commenters to provide, for each type of violation of the terms or other requirements of a credit card account, data regarding the costs incurred as a result of that type of violation (itemized by the type of cost). In addition, commenters were asked to provide, if known, the dollar amounts reasonably necessary to deter violations and the methods used to determine those amounts.

In response, commenters suggested a wide variety of safe harbor amounts but relatively few provided any data supporting those suggestions. Consumer groups, a state consumer protection agency, and a municipal consumer protection agency suggested amounts ranging from $10 to $20 based on state laws (which are discussed in detail below) and the fees charged by credit unions and community banks. Credit unions, community banks, and a state attorney general suggested fees of $20 to $25. However, large issuers argued that comparisons with the fees charged by credit unions and community banks were not valid because smaller institutions have a less risky customer base and therefore incur fewer costs as a result of violations. Most large issuers declined to suggest a specific safe harbor amount, but those that did generally suggested amounts between $29 and $34 (although two large issuers suggested fees as high as $40 or $50).

The Board did not receive any data regarding the costs incurred as a result of – or the amounts necessary to deter – returned payments, over-the-limit transactions, or declined access checks. However, the Board did receive a comment providing the results of a study of the costs associated with late payments on credit card accounts issued by ten of the largest credit card issuers. According to the comment, issuers participating in the study were asked to identify operating expenses associated with handling late payments and delinquent accounts and with recovering those costs via late fee assessments. The comment stated that, based on this information, a late payment costs the participating issuers $28.40 on average.[42] The comment also provided a second figure of $32.45, which was represented as an adjusted cost estimate based on the number of assessed fees that are not recovered by the issuer.

Although these figures are generally useful in understanding the costs incurred by large issuers as a result of violations, the Board has significant concerns about aspects of this study. As an initial matter, the Board is unable to determine whether the cost information collected from the participants was accurate or consistent from issuer to issuer. Although the comment states that the cost methodologies used by the participants were reasonable, the participants presumably do not track their costs in a uniform fashion. Furthermore, it appears that some of the costs included in the study are not – in the view of the Board – costs incurred as a result of violations for purposes of § 226.52(b)(1)(i). In particular, although the comment states that losses were excluded from the study, it also states that the cost of funding balances that were eventually charged off was included. The Board believes that most or all of these funding costs should be categorized as losses for purposes of § 226.52(b)(1)(i). Finally, although it is not clear precisely how the study determined the amount of assessed fees that were not recovered for purposes of the $32.45 figure, it does appear that this amount included fees

[42] The comment emphasized that – because $28.40 is the average cost – a safe harbor based on that amount would force many issuers to perform their own cost analysis under § 226.52(b)(1)(i) or incur losses. One large issuer commented that smaller institutions would have higher costs as a result of violations because they lack economies of scale. However, comments from small institutions stated that their current fees of $20 to $25 were sufficient to cover their costs.

that the participating issuers chose to waive, which – as discussed above – the Board has excluded from the cost analysis. For all of these reasons, the Board believes that this study significantly overstates the fee amounts necessary to cover the costs incurred by large issuers as a result of violations, although the exact extent of the overstatement is unclear.

The same commenter also submitted the results of applying two deterrence modeling methods to data gathered from all leading credit card issuers in the United States. According to the commenter, these models estimated that fees of $28 or less have relatively little deterrent effect on late payments but that higher fees are a statistically significant contributor to sustaining lower levels of delinquent behavior. Although the Board does not have access to the data underlying these results, the significance of the $28 figure appears to be questionable based on the information provided. In addition, the Board is concerned that the results submitted by this commenter could – if accepted at face value – be used to justify late payment fees in excess of $100, which would be contrary to the intent of new TILA Section 149. While the Board questions the assumptions used to arrive at these results, they give additional support to some of the concerns that – as discussed above – prompted the Board to remove deterrence as an independent basis for setting penalty fee amounts. Nevertheless, the Board does accept that – as generally illustrated by these models – increases in the amount of penalty fees can affect the frequency of violations.[43]

[43] This commenter also submitted the results of an online survey of consumers who were asked what fee amounts would or would not deter them from paying late. According to the commenter, the survey indicated that a fee of $30 to $34 was necessary to deter the majority of participants and that a fee of $50 to $54 was necessary deter 80% of participants. Although surveys of this type are sometimes used to gauge the prices consumers may be willing to pay for retail products, the Board understands that their accuracy is limited even in that context. Furthermore, the Board is not aware of this type of survey being used to

2. Penalty Fees for Other Types of Accounts

The Board has also considered the dollar amounts of penalty fees charged with respect to deposit accounts and consumer credit accounts other than credit cards. As a general matter, these fees appear to be significantly lower than average credit card penalty fees, which further supports the conclusion that lower credit card penalty fees may adequately reflect the cost of violations and deter future violations. For example, according to a January 2008 report by the GAO, the average overdraft and insufficient funds fee charged by depository institutions was just over $26 per item in 2007.[44] Notably, the GAO also reported that large institutions on average charged between $4 and $5 more for overdraft and insufficient funds fees compared to smaller institutions.[45] Similarly, the Board understands that, for many home-equity lines of credit, the late payment fee, returned payment fee, and over-the-limit fee is $25 (although in some cases those fees may be set by state law). However, for most closed-end mortgage loans and some home-equity lines of credit and automobile installment loans, the late payment fee is 5% of the overdue payment. This information was discussed in the proposal but was not the subject of significant comment.

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measure the deterrent effect of fees. Accordingly, the Board does not believe that it would be appropriate to give significant weight to the results of this survey.

[44] See Bank Fees: Federal Banking Regulators Could Better Ensure That Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts, GAO Report 08-281, at 14 (January 2008) (GAO Bank Fees Report); see also "Consumer Overdraft Fees Increase During Recession: First-Time Phenomenon," Press release, Moebs $ervices (July 15, 2009) (Moebs 2009 Pricing Survey Press Release) (available at: http://www.moebs.com/AboutUs/Pressreleases/tabid/58/ctl/Details/mid/380/ItemID/65/Default.aspx) (reporting an average overdraft fee of $26).

[45] See GAO Bank Fees Report at 16. Another recent survey suggests that the cost difference in overdraft fees between small and large institutions may be larger than reported by the GAO. See Moebs 2009 Pricing Survey Press Release (reporting that banks with more than $50 billion in assets charged on average $35 per overdrawn check compared to $26 for all institutions).

3. State and Local Laws Regulating Penalty Fees

The Board has also considered state and local laws regulating penalty fees. As above, except in the case of late payment fees that are a percentage of the overdue amount, it appears that state and local laws that specifically address penalty fees generally limit those fees to amounts that are significantly lower than the current average for credit card penalty fees. For example, California law does not permit credit and charge card late payment fees unless the account is at least five days' past due and then limits the fee to an amount between $7 and $15, depending on the number of days the account is past due and whether the account was previously past due.[46] In addition, California law does not permit over-the-limit fees unless the credit limit is exceeded by the lesser of $500 or 20% of the limit and then restricts the fee to $10.[47] Massachusetts law limits delinquency charges for all open-end credit plans to the lesser of $10 or 10% of the outstanding balance and permits such fees only when the account is more than 15 days past due.[48] Maine law generally limits delinquency charges for consumer credit transactions and open-end credit plans to the lesser of $10 or 5% of the unpaid amount.[49] Finally, the Board understands some state and local laws governing late payment fees for utilities permit only fixed fee amounts (ranging between $5 and $25), while others limit

[46] See Cal. Fin. Code § 4001(a)(1)-(2).

[47] See id. § 4001(a)(3).

[48] See Mass. Ann. Laws ch. 140 § 114B.

[49] See Me. Rev. Stat. Ann. tit. 9-A, § 2-502(1); see also Minn. Stat. §§ 48.185(d), 53C.08(1)(c), and 604.113(2)(a) (generally limiting late payment fees on open-end credit plans to the greater of $5 or 5% of the amount past due if the account is more than 10 days past due and limiting returned-payment and over-the-limit fees to $30).

the fee to a percentage of the amount past due (ranging from 1% to 10%) or some combination of the two (for example, the greater of $20 or 5% of the amount past due).

Consumer groups and a municipal consumer protection agency urged the Board to consider these types of statutes when setting safe harbor amounts. Industry commenters generally did not address these provisions. However, industry commenters did note that the Internal Revenue Service imposes penalty fees that are a percentage of the amount owed by the taxpayer. Industry commenters also noted that some state and local governments impose substantial penalty fees for speeding and other traffic infractions.

4. Safe Harbor Established by the United Kingdom

The Board has also considered the safe harbor threshold for credit card default charges established by the United Kingdom's Office of Fair Trading (OFT) in 2006. As a general matter, the OFT concluded that – under the laws and regulations of the United Kingdom – provisions in credit card agreements authorizing default charges "are open to challenge on grounds of unfairness if they have the object of raising more in revenue than is reasonably expected to be necessary to recover certain limited administrative costs incurred by the credit card issuer."[50] In order to "help encourage a swift change in market practice," the OFT stated that it would regard charges set below a monetary threshold of £12 as "either not unfair, or insufficiently detrimental to the economic interests of consumers in all the circumstances to warrant regulatory intervention at this time."[51] The OFT explained that, in establishing its threshold, it took into account "information . . . on the banks' recoverable costs includ[ing] not only direct costs but also

[50] OFT Credit Card Statement at 1.

[51] OFT Credit Card Statement at 27-28.

indirect costs that have to be allocated on the basis of judgment."[52] The OFT did not, however, disclose this cost information, nor does it appear that the OFT considered the need to deter violations of the account terms or the relationship between the amount of the fee and the conduct of the cardholder (which the Board is required to do). Based on average annual exchange rates, £12 has been equivalent to approximately $18 to $24 (based on annual averages) since the OFT announced its monetary threshold in April 2006.

The Board is aware that – as noted by many industry commenters – a different regulator in the United Kingdom announced in March 2010 that it would not impose restrictions on rate increases similar to those in the Credit Card Act.[53] These commenters also noted numerous other differences between the laws of the United Kingdom and those of the United States. The Board recognizes these distinctions and does not find the OFT Credit Card Statement to be dispositive on any particular point. Indeed, the safe harbors established by the Board are substantially different than the safe harbor established by the OFT. Nevertheless, the Board believes that the OFT's findings with respect to credit card penalty fees warrant consideration, along with other factors.

5. Conclusion

Although it is not possible based on the available information to set safe harbor amounts that precisely reflect the costs incurred by a widely diverse group of card issuers and that deter the optimal number of consumers from future violations, the Board

[52] OFT Credit Card Statement at 29.

[53] See Dep't for Business Innovation & Skills, A Better Deal for Consumers: Review of the Regulation of Credit and Store Cards: Gov't Response to Consultation (Mar. 2010) 33-35 (available at http://www.bis.gov.uk/assets/biscore/corporate/docs/c/10-768-consumer-credit-card-consultation-response.pdf).

believes that, for the reasons discussed above, the safe harbor amounts in § 226.52(b)(1)(ii)(A) and (B) are generally sufficient to cover issuers' costs and to deter future violations. Based on the comments, the $25 safe harbor in § 226.52(b)(1)(ii)(A) for the first violation is sufficient to cover the costs incurred by most small issuers as a result of violations. Furthermore, the Board did not receive any information indicating that this amount would not be sufficient to cover the costs incurred by large issuers as a result of returned payments, transactions that exceed the credit limit, and declined access checks. With respect to late payments, the Board believes that large issuers generally incur fewer collection and other costs on accounts that experience a single late payment and then pay on time for the next six billing cycles than on accounts that experience multiple late payments during that period. Even if $25 is not sufficient to offset all of the costs incurred by some large issuers as a result of a single late payment, those issuers will be able to recoup any unrecovered costs through upfront annual percentage rates and other pricing strategies.

When an account experiences additional violations during the six billing cycles following the initial violation, the Board believes that the $35 safe harbor in § 226.52(b)(1)(ii)(B) will generally be sufficient to cover any increase in the costs incurred by the card issuer and will have a reasonable deterrent effect on additional violations. Furthermore, the Board believes that allowing the imposition of an increased fee in these circumstances appropriately distinguishes between consumers who engage in conduct that results in a single violation during a period and consumers who repeatedly engage in such conduct during the same period. Indeed, data submitted on behalf of a large credit card issuer indicates that consumers who pay late multiple times over six months generally are significantly more likely to charge off than consumers who only pay late once during the same period.

Comment 52(b)(1)(ii)-1 provides guidance regarding the application of the safe harbors in § 226.52(b)(1)(ii)(A) and (B). In addition to providing several illustrative examples, the comment clarifies that, for purposes of § 226.52(b)(1)(ii), a $35 fee may be imposed pursuant to § 226.52(b)(1)(ii)(B) if, during the six billing cycles following the billing cycle in which a violation occurred, another violation of the same type occurs. The comment further clarifies the billing cycle in which various types of violations occur for purposes of § 226.52(b)(1)(ii). For late payments, the violation occurs during the billing cycle in which the payment may first be treated as late consistent with the requirements of 12 CFR Part 226 and the terms or other requirements of the account. For returned payments, the violation occurs during the billing cycle in which the payment is returned to the card issuer. For transactions that exceed the credit limit, the violation occurs during the billing cycle in which the transaction occurs or is authorized by the card issuer. Finally, a check that accesses a credit card account is declined during the billing cycle in the card issuer declines payment on the check.

This comment also clarifies the relationship between the safe harbors in § 226.52(b)(1)(ii)(A) and (B) and the substantive limitations in §§ 226.52(b)(2)(ii) and 226.56(j)(1)(i). Specifically, it clarifies that, if multiple violations are based on the same event or transaction such that § 226.52(b)(2)(ii) prohibits the card issuer from imposing more than one fee, the event or transaction constitutes a single violation for purposes of § 226.52(b)(1)(ii). Furthermore, the comment clarifies that, consistent with the limitations in § 226.56(j)(1)(i) on imposing more than one over-the-limit fee during a billing cycle, no more than one violation for exceeding an account's credit limit can occur during a single billing cycle for purposes of § 226.52(b)(1)(ii).

B. Consumer Price Index Adjustments

Section 226.52(b)(1)(i) provides for annual adjustments to the safe harbor amounts in § 226.52(b)(1)(ii)(A) and (B) to reflect changes in the Consumer Price Index. Comment 52(b)(1)(ii)-2 states that the Board will calculate each year a price level adjusted safe harbor fee using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current safe harbor fee amount has risen by a whole dollar, the safe harbor fee amount will be increased by $1.00. Similarly, when the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current safe harbor fee amount has decreased by a whole dollar, the safe harbor fee amount will be decreased by $1.00. The comment also states that the Board will publish adjustments to the safe harbor fee.[54]

The proposed rule provided for annual adjustments based on the Consumer Price Index in § 226.52(b)(3) and comment 53(b)(3)-2. Consumer group commenters generally opposed such adjustments, arguing that changes in the Consumer Price Index will not necessarily correspond with changes in the costs incurred by issuers as a result of violations or the amount necessary to deter violations. These commenters argued that the Board should instead adjust the safe harbor amounts as appropriate through rulemaking. The Board believes that this approach would be inefficient. While the

[54] The approach set forth in this comment is similar to § 226.5a(b)(3), which sets a $1.00 threshold for disclosure of the minimum interest charge but provides that the threshold will be adjusted periodically to reflect changes in the Consumer Price Index.

Consumer Price Index is not a perfect substitute, the Board believes that changes in the Consumer Price Index will be sufficiently similar to changes in issuers' costs and the deterrent effect of the safe harbor amounts that additional rulemaking generally will not be necessary.

Industry commenters did not object to adjustments based on the Consumer Price Index but requested that such adjustments be exempted from the right to reject in § 226.9(h). The Board agrees that, to the extent that a change in the amount of a penalty fee results from a change in the Consumer Price Index, the right to reject should not apply. The Board has revised § 226.9(c)(2)(iv)(B) accordingly.

C. Proposed Safe Harbor of 5% of Dollar Amount Associated With Violation

As an alternative to the proposed safe harbor amount, proposed § 226.52(b)(3) would have permitted card issuers to impose a penalty fee that did not exceed 5% of the dollar amount associated with the violation (up to a specific dollar amount). This approach was based on certain state laws that – as discussed above – permit penalty fees to be the greater of a dollar amount or a percentage of the amount past due. The Board intended that the specific safe harbor amount would be imposed for most violations but that card issuers could use the 5% safe harbor to impose a higher fee when the dollar amount associated with the violation was large, although that fee could not exceed a specified upper limit.[55]

[55] For example, if the specific safe harbor amount were $25, the safe harbor would not have permitted a card issuer to impose a fee that exceeded $25 unless the dollar amount associated with the violation was more than $500. In addition, if the upper limit were $40, a card issuer could not have imposed a fee that exceeded $40 under the proposed safe harbor even if the dollar amount associated with the violation was more than $800.

However, industry commenters opposed the 5% safe harbor on the grounds that it made fee amounts difficult to predict and disclose, which would be confusing for consumers. These commenters also argued that this safe harbor was not useful because the dollar amount associated with a violation would have to be extremely high for 5% of that amount to exceed a reasonable safe harbor amount. Based on these comments and the revisions to the safe harbor discussed above, the Board agrees that the 5% safe harbor would not be sufficiently useful to justify the added complexity of including it in the final rule.

52(b)(1)(ii)(C) Charge Cards

For purposes of Regulation Z, a charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. See § 226.2(a)(15)(iii). Charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable in full when the periodic statement is received or at the end of each billing cycle. See §§ 226.5a(b)(7), 226.7(b)(12)(v)(A). In the proposal, the Board acknowledged that – in contrast to conventional credit card accounts – issuers do not use annual percentage rates to manage the risk of loss on charge card accounts. For that reason, the Board solicited comment on whether any adjustments to proposed § 226.52(b) were necessary with respect to charge card accounts.

In response, one industry commenter stated that, for charge card accounts, late payment fees play an important role in deterring further delinquency by encouraging consumers to pay delinquent balances. Because charge card issuers cannot use rate increases for this purpose, this commenter urged the Board to exempt charge cards from § 226.52(b) entirely.

The Board does not believe that it would be consistent with the purpose of new TILA Section 149 to exempt charge cards entirely. However, the Board does believe that additional flexibility is appropriate to permit charge card issuers to deter consumers that become seriously delinquent from remaining delinquent. While the Credit Card Act generally prohibits the application of increased rates to existing credit card balances, it provides an exception when an account becomes more than 60 days delinquent. See TILA § 171(b)(4); § 226.55(b)(4). This exception appears to recognize that it is appropriate to provide card issuers with more flexibility when an account becomes seriously delinquent. Because charge card issuers do not apply an annual percentage rate to the account balance and therefore cannot respond to serious delinquencies by increasing that rate, the Board believes that it is appropriate to provide additional flexibility for charge cards with respect to late payment fees. The Board is concerned that, without such flexibility, charge card issuers may not be able to effectively manage risk, which could affect the cost and availability of charge card accounts.

Accordingly, § 226.52(b)(1)(ii)(C) provides that, when a card issuer has not received the required payment for two or more consecutive billing cycles for a charge card account that requires payment of outstanding balances in full at the end of each billing cycle, the card issuer may impose a late payment fee that does not exceed three percent of the delinquent balance. Like § 226.55(b)(4), § 226.52(b)(1)(ii)(C) measures delinquency from the date on which the required payment is due. However, because charge card payments are generally due upon receipt of the periodic statement but no later than the end of the billing cycle during which the statement is received, § 226.52(b)(1)(ii)(C) applies when the required payment has not been received for two or more consecutive billing cycles (rather than 60 days from the payment due date). In these circumstances, the delinquency is unlikely to be inadvertent because the consumer will have received multiple periodic statements disclosing the amount due. The Board believes that § 226.52(b)(1)(ii)(C) generally provides charge card issuers with flexibility in managing seriously delinquent accounts that is similar to that provided in new TILA Section 171(b)(4) and § 226.55(b)(4) for traditional credit card accounts.

However, the Board believes that, even in these circumstances, it is necessary to place limits on the late payment fee in order to ensure that the amount of the fee is reasonable and proportional to the violation. As discussed above, the Board has not adopted the proposed safe harbor that would have permitted all card issuers to impose penalty fees that did not exceed 5% of the dollar amount associated with the violation. However, the Board believes that a similar approach is appropriate with respect to charge cards that are seriously delinquent. Although a late payment fee equal to 5% of the delinquent amount generally would not have been meaningful for conventional credit cards because the required payments for such accounts are typically a small percentage of the account balance, charge cards typically require payment of the full balance each billing cycle. Thus, for charge card accounts, a fee that equals a percentage of the delinquent amount would be meaningful. However, the Board is concerned that a late payment fee that equals 5% of the delinquent balance would exceed the amount necessary for charge card issuers to effectively manage accounts that becomes seriously delinquent. Accordingly, because the Board understands that a late payment fee of 3% of the delinquent amount is currently sufficient for this purpose, the Board has adopted that standard in § 226.52(b)(1)(ii)(C).

Comment 52(b)(1)(ii)-3 clarifies that, for purposes of § 226.52(b)(1)(ii)(C), the delinquent balance is any previously billed amount that remains unpaid at the time the late payment fee is imposed pursuant to § 226.52(b)(1)(ii)(C). For example, assume that a charge card issuer requires payment of outstanding balances in full at the end of each billing cycle and that the billing cycles for the account begin on the first day of the month and end on the last day of the month. At the end of the June billing cycle, the account has a balance of $1,000. On July 5, the card issuer provides a periodic statement disclosing the $1,000 balance consistent with § 226.7. During the July billing cycle, the account is used for $300 in transactions, increasing the balance to $1,300. At the end of the July billing cycle, no payment has been received and the card issuer imposes a $25 late payment fee consistent with § 226.52(b)(1)(ii)(A). On August 5, the card issuer provides a periodic statement disclosing the $1,325 balance consistent with § 226.7. During the August billing cycle, the account is used for $200 in transactions, increasing the balance to $1,525. At the end of the August billing cycle, no payment has been received. Consistent with § 226.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $40, which is 3% of the $1,325 balance that was due at the end of the August billing cycle. However, § 226.52(b)(1)(ii)(C) does not permit the card issuer to include the $200 in transactions that occurred during the August billing cycle.

Comment 52(b)(1)(ii)-3 also clarifies that, consistent with § 226.52(b)(2)(ii), a charge card issuer that imposes a fee pursuant to § 226.52(b)(1)(ii)(C) with respect to a late payment may not impose a fee pursuant to § 226.52(b)(1)(ii)(B) with respect to the same late payment. Thus, in the example discussed above, the charge card issuer would be prohibited from imposing the $40 fee pursuant to § 226.52(b)(1)(ii)(C) and a $35 fee pursuant to § 226.52(b)(1)(ii)(B) based on the consumer's failure to pay the $1,325 balance by the end of the August billing cycle.

52(b)(2) Prohibited Fees

Section 226.52(b)(2) prohibits credit card penalty fees that the Board believes to be inconsistent with new TILA Section 149. In particular, these prohibitions are intended to ensure that – consistent with new TILA Section 149(c)(3) – penalty fees are generally reasonable and proportional to the conduct of the cardholder.

52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation

Section 226.52(b)(2)(i)(A) prohibits fees based on violations of the terms or other requirements of an account that exceed the dollar amount associated with the violation. In the proposal, the Board stated that this prohibition would be consistent with Congress' intent to prohibit penalty fees that are not reasonable and proportional to the violation. Specifically, the Board observed that penalty fees that exceed the dollar amount associated with the violation do not appear to be proportional to the consumer conduct that resulted in the violation. For example, the Board stated its belief that Congress did not intend to permit issuers to impose a $35 over-the-limit fee when a consumer has exceeded the credit limit by $5.

Comments from individual consumers, consumer groups, and a state attorney general supported the proposed limitation, although some consumer groups suggested that a more stringent limitation – such as 50% of the dollar amount associated with the violation – was warranted for violations involving substantial dollar amounts. These commenters noted that, if the dollar amount associated with a violation was $100, § 226.52(b)(2)(i)(A) would permit a card issuer to impose a penalty fee of $100.

However, the proposed limitation was intended to address fees imposed for violations involving relatively small dollar amounts. To the extent that a violation involves a dollar amount that exceeds the applicable safe harbor in § 226.52(b)(1)(ii), § 226.52(b)(1) would prevent card issuers from imposing unreasonable and disproportionate fees by requiring that a fee that exceeds the applicable safe harbor represent a reasonable proportion of the issuer's costs.

Industry commenters opposed this aspect of the proposed rule on the grounds that, when the dollar amount associated with a violation is small, it could limit the penalty fee to an amount that is neither sufficient to cover the issuer's costs nor to deter future violations. The Board acknowledges that a card issuer could incur costs as a result of a violation that exceed the dollar amount associated with that violation. However, as noted in the proposal, the Board does not believe this will be the case for most violations. Furthermore, to the extent card issuers cannot recover all of their costs when a violation involves a small dollar amount, this limitation will encourage them either to undertake efforts to reduce the costs incurred as a result of violations that involve small dollar amounts or to build those costs into upfront rates, which will result in greater transparency for consumers regarding the cost of using their credit card accounts.

Furthermore, the Board believes that violations involving small dollar amounts are more likely to be inadvertent and therefore the need for deterrence is less pronounced. In addition, the Board believes that consumers are unlikely to change their behavior in reliance on this limitation. Penalty fees will still have a deterrent effect when violations involve small dollar amounts because a card issuer will be permitted to impose a fee that equals the dollar amount associated with the violation (so long as that fee is otherwise consistent with § 226.52(b)). See examples in comment 52(b)(2)(i)-1 through -3.

Industry commenters also argued that the proposed rule would require card issuers to charge individualized penalty fees because the amount of the fee is tied to the dollar amount associated with the particular violation. However, unlike individualized consideration of cost, deterrence, or consumer conduct, § 226.52(b)(2)(i)(A) requires a mathematical determination that issuers should generally be able to program their systems to perform automatically. Thus, although § 226.52(b)(2)(i)(A) may require card issuers to incur substantial programming costs at the outset, the Board does not believe that – once this programming is complete – compliance with § 226.52(b)(2)(i)(A) will be overly burdensome. For these reasons, the Board has adopted § 226.52(b)(2)(i)(A) as proposed.

As discussed below, § 226.52(b)(2)(i)(B) and the commentary to § 226.52(b)(2)(i) provide guidance regarding the dollar amounts associated with specific violations. Consistent with the intent of § 226.52(b)(2)(i), the Board generally defines the dollar amount associated with a violation in terms of the consumer conduct that resulted in the violation, rather than the cost to the issuer or the need for deterrence.

A. Dollar Amount Associated With Late Payments

As proposed, comment 52(b)(2)(i)-1 clarified that that the dollar amount associated with a late payment is the amount of the required minimum periodic payment that was not received on or before the payment due date. Thus, for example, a card issuer would be prohibited from charging a late payment fee of $39 based on a consumer’s failure to make a $15 required minimum periodic payment by the payment due date.

Instead, the maximum late payment fee permitted under § 226.52(b)(2)(i)(A) would be $15.

Consumer group commenters supported the proposed comment. In contrast, industry commenters argued that the dollar amount associated with a late payment is the outstanding balance on the account because that is the amount the issuer stands to lose if the delinquency continues and the account eventually becomes a loss. However, as discussed above, relatively few delinquencies result in losses. Furthermore, the violation giving rise to a late payment fee is the consumer's failure to make the required minimum periodic payment by the applicable payment due date. Accordingly, the Board continues to believe that, for purposes of § 226.52(b)(2)(i), the dollar amount associated with a late payment is the amount of the required minimum periodic payment on which the late payment fee is based.

Industry commenters also requested clarification regarding the application of proposed comment 52(b)(2)(i)-1 in circumstances where a payment that is less than the required minimum periodic payment is received on or prior to the payment due date. The Board has revised the proposed comment in order to clarify that, in these circumstances, the dollar amount associated with the late payment is the full amount of the required minimum periodic payment, rather than the unpaid portion. An illustrative example is provided in comment 52(b)(2)(i)-1.ii.

One industry commenter requested that issuers be provided with flexibility to base the late payment fee on either the required minimum payment for the billing cycle in which the late payment fee is imposed or the required minimum periodic payment for the prior cycle. The Board is concerned that this approach could enable issuers to maximize the amount of the late payment fee by delaying imposition of the fee until a new billing cycle has begun and a larger minimum payment is due.[56] The Board does not believe this outcome would be consistent with the purpose of new TILA Section 149 and § 226.52(b)(2)(i). However, the Board understands that, because of the requirement in § 226.5(b)(2)(ii)(A) that credit card periodic statements be mailed or delivered at least 21 days prior to the payment due date, issuers must set payment due dates near the end of the billing cycle. As a result, there may circumstances where a late payment fee is not imposed until after a new billing cycle has begun. Accordingly, the Board has revised comment 52(b)(2)(i)-1 to clarify that, in such cases, the card issuer must base the late payment fee on the required minimum periodic payment due immediately prior to assessment of the late payment fee. An illustrative example is provided in comment 52(b)(2)(i)-1.iii.

B. Dollar Amount Associated With Returned Payments

Proposed comment 52(b)(2)(i)-2 clarified that, for purposes of § 226.52(b)(2)(i)(A), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due during the billing cycle in which the payment is returned to the card issuer. Consumer group commenters supported the proposed comment. In contrast, industry commenters stated that the dollar amount associated with a returned payment should be the amount of the returned payment. The Board considered this approach in the proposed rule. However, the Board was concerned

[56] For example, assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the required minimum periodic payment is due on the twenty-eighth day of each month. A $15 minimum payment is due on September 28. If, on September 29, no payment has been received, the card issuer could have an incentive to wait until the November billing cycle has begun and the minimum payment for the November cycle has been calculated. Because – under the minimum payment formulas used by some issuers – the minimum payment for the November cycle would include the $15 payment for the September cycle as well as the amount due for November, a late payment fee based on the November minimum payment would be higher than a fee based on the September payment.

that some returned payments may substantially exceed the amount of the required minimum periodic payment, which would result in § 226.52(b)(2)(i)(A) permitting a returned payment fee that substantially exceeds the late payment fee. For example, if the required minimum periodic payment is $20 and the consumer makes a $100 payment that is returned, this application of § 226.52(b)(2)(i)(A) would have limited the late payment fee to $20 but permitted a $100 returned payment fee. In addition to being anomalous, this result would be inconsistent with the intent of new TILA Section 149. Accordingly, the Board continues to believe that the better approach is to define the dollar amount associated with a returned payment as the required minimum periodic payment due when the payment is returned.

In the proposal, the Board recognized that there may be circumstances in which a payment that is received shortly after a payment due date is not returned until the following billing cycle. In those circumstances, proposed comment 52(b)(2)(i)-2 clarified that the issuer was permitted to base the returned payment fee on the minimum payment due during the billing cycle in which the fee was imposed. For example, assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $20 is due on March 25. The card issuer receives a check for $100 on March 31, which is returned to the card issuer for insufficient funds on April 2. The minimum payment due on April 25 is $30. Proposed comment 226.52(b)(2)(i)-2 clarified that, for purposes of § 226.52(b)(2)(i), the dollar amount associated with the returned payment was the minimum payment for the April billing cycle ($30), rather than the minimum payment for the March cycle ($20).

However, one industry commenter noted that the Board's proposed approach could result in consumer confusion because – as illustrated in the prior example – consumers could receive significantly different returned payment fees depending on whether the payment was returned on the last day of a billing cycle or on the first day of the next billing cycle. Furthermore, the Board's proposed guidance regarding the dollar amount associated with returned payment fees is inconsistent with the final guidance in comment 226.52(b)(2)(i)-1, which ties the amount of the late payment fee to the required minimum payment due immediately prior to assessment of the fee. Accordingly, consistent with comment 226.52(b)(2)(i)-1, the Board has revised comment 226.52(b)(2)(i)-2 to clarify that, for purposes of § 226.52(b)(2)(i), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due immediately prior to the date on which the payment is returned to the card issuer.

Proposed comment 52(b)(2)(i)-2 also clarified that, if a payment has been returned and is submitted again for payment by the card issuer, there is no separate or additional dollar amount associated with a subsequent return of that payment. Thus, § 226.52(b)(2)(i)(B) would prohibit a card issuer from imposing an additional returned payment fee in these circumstances. The Board stated that it would be inconsistent with the consumer conduct factor in new TILA Section 149(c)(3) to permit a card issuer to generate additional returned payment fees by resubmitting a returned payment because resubmission does not involve any additional conduct by the consumer.[57] Commenters generally supported this aspect of the proposal, which is adopted as proposed.

[57] Although this concern could also be addressed under the prohibition on multiple fees based on a single event or transaction in § 226.52(b)(2)(ii), that provision permits issuers to comply by imposing no more

Industry commenters requested guidance regarding a variety of other circumstances involving returned payments. Accordingly, the Board has revised comment 52(b)(2)(i)-2 to provide additional examples illustrating the application of § 226.52(b)(2)(i).

C. Dollar Amount Associated With Extensions of Credit In Excess of Credit Limit

Proposed comment 52(b)(2)(i)-3 clarified that the dollar amount associated with extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of that limit as of the date on which the over-the-limit fee is imposed. The comment further clarified that, although § 226.56(j)(1)(i) prohibits a card issuer from imposing more than one over-the-limit fee per billing cycle, the card issuer may choose the date during the billing cycle on which to impose an over-the-limit fee.[58]

A consumer group commenter expressed concern that permitting issuers to choose the date on which an over-the-limit fee is imposed would lead to manipulation.
In contrast, an industry commenter requested that card issuers be provided with the flexibility to impose an over-the-limit fee at the end of a billing cycle based on the amount the account was over the credit limit on any day during that cycle. The Board understands that, for operational reasons, some issuers may prefer to wait until the end of the billing cycle to impose an over-the-limit fee. Furthermore, the Board believes that, in these circumstances, it is consistent with the intent of § 226.52(b)(2)(i) to permit the card

than one penalty fee per billing cycle. Thus, if imposition of an additional returned payment fee were not prohibited under § 226.52(b)(2)(i), the card issuer could impose that fee by resubmitting a payment that is returned late in a billing cycle immediately after the start of the next cycle.

[58] The Board considered whether the dollar amount associated with extensions of credit in excess of the credit limit should be the total amount of credit extended by the card issuer in excess of that limit as of the last day of the billing cycle. However, in the February 2010 Regulation Z Rule, the Board determined with respect to § 226.56(j)(1) that this approach could delay the generation and mailing of the periodic statement, thereby impeding issuers' ability to comply with the 21-day requirement for mailing statements in advance of the payment due date.

issuer to base the amount of the over-the-limit fee on the total amount by which the account balance exceed the credit limit during the billing cycle (subject to the limitations in § 226.52(b)(1)). The Board has revised comment 52(b)(2)(i)-3 accordingly.

D. Dollar Amounts Associated With Other Types of Violations

Section 226.52(b)(2)(i)(B) prohibits the imposition of penalty fees in circumstances where there is no dollar amount associated with the violation. As discussed below, proposed § 226.52(b)(2)(i)(B) listed specific circumstances in which a fee would be prohibited because there was no dollar amount associated with the violation.

1. Declined Transaction Fees

Proposed § 226.52(b)(2)(i)(B)(1) specifically prohibited a card issuer from imposing a fee based on a transaction that the issuer declined to authorize. Although the imposition of fees based on declined transactions does not appear to be widespread at present, the Board believes that – given the restrictions on the imposition of over-the-limit fees in §§ 226.52(b) and 226.56 – it is important to address this issue in this rulemaking. A card issuer may decline to authorize a transaction because, for example, the transaction would have exceeded the credit limit for the account. Unlike over-the-limit transactions, however, declined transactions do not result in an extension of credit. Thus, there does not appear to be any dollar amount associated with a declined transaction.

In addition, it does not appear that the imposition of a fee for a declined transaction can be justified based on the costs incurred by the card issuer. Unlike returned payments, it is not necessary for a card issuer to incur costs reconciling its systems or arranging for a new payment when a transaction is declined. Furthermore, the

Board understands that card issuers generally use a single automated system for determining whether transactions should be authorized or declined. Thus, to the extent that card issuers incur costs designing and administering such systems, they are permitted to recover those costs through over-the-limit fees.

Comments from a federal agency, individual consumers, consumer groups, and a municipal consumer protection agency supported the proposed prohibition on declined transaction fees. As one commenter noted, permitting a card issuer to impose a declined transaction fee would undermine the limitations in new TILA Section 127(k) and § 226.56 by allowing a card issuer to charge a consumer who has declined to authorize the payment of transactions that exceed the credit limit a fee when such transactions are declined.

Some industry commenters opposed § 226.52(b)(2)(i)(B)(1), arguing that card issuers incur some costs every time a credit card purchase is submitted for authorization. However, as discussed above, these costs are not unique to declined transactions. Furthermore, one industry commenter conceded that these costs were minimal. Accordingly, § 226.52(b)(2)(i)(B)(1) is adopted as proposed.

Several industry commenters requested clarification regarding the dollar amount associated with returning or declining payment of a check that accesses a credit card account because, for example, the transaction would have exceeded the account's credit limit, the account had charged off, or another valid reason.[59] Although the imposition of a fee for a declined access check is similar in some respects to the imposition of a fee for a transaction that the issuer declines to authorize, the Board understands that, unlike other

[59] The Board understands that, in these circumstances, an access check may described as "returned" or "declined." For clarity and consistency, the Board has used the term "declined access check." However, no substantive distinction is intended.

declined transactions, card issuers incur significant costs as a direct result of declining payment on an access check, including the cost of communicating with the merchant or other party that received the check from the consumer. Accordingly, comment 52(b)(2)(i)-4 clarifies that, for purposes of § 226.52(b)(2)(i), the dollar amount associated with a declined access check is the amount of the check. Thus, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a fee for a declined access check that exceeds the amount of that check. For example, assume that an access check is used as payment for a $50 transaction, but payment on the check is declined by the card issuer because the transaction would have exceeded the credit limit for the account. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the declined access check is the amount of the check ($50). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a fee that exceeds $50. However, the amount of this fee must also comply with the cost standard in § 226.52(b)(1)(i) or the safe harbors in § 226.52(b)(1)(ii).

2. Inactivity and Closed Account Fees

Proposed § 226.52(b)(2)(i)(B)(2) and (3) specifically prohibited card issuers from imposing a penalty fee based on, respectively, account inactivity and the closure or termination of an account. The Board believes that these prohibitions are warranted because there does not appear to be any dollar amount associated with this consumer conduct.

As with the prohibition on declined transaction fees, proposed § 226.52(b)(2)(i)(B)(2) and (3) were supported by a federal agency, individual consumers, consumer groups, and a municipal consumer protection agency but opposed by industry commenters. Industry commenters argued that card issuers receive less revenue from accounts that are not used for a significant number of transactions or are inactive or closed and that these fees cover the cost of administering such accounts (such as providing periodic statements and other required disclosures). However, because card issuers incur these costs with respect to all accounts, the Board does not believe that they constitute a dollar amount associated with a violation. Furthermore, to the extent that an inactive or closed account has a balance, these costs may be recovered through application of an annual percentage rate.[60] Accordingly, § 226.52(b)(2)(i)(B)(2) and (3) are adopted as proposed.

In response to requests from commenters, the Board has adopted comments 52(b)(2)(i)-5 and -6, which clarify the application of § 226.52(b)(2)(i)(B)(2) and (3). Comment 52(b)(2)(i)-5 clarifies that § 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a fee based on account inactivity (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, § 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a $50 fee when a consumer fails to use the account for $2,000 in purchases over the course of a year.

Consumer groups and individual consumers requested that the Board clarify that a card issuer cannot circumvent this prohibition by, for example, imposing a $50 annual fee on all accounts but waiving the fee if the consumer uses the account for $2,000 in purchases over the course of a year. In contrast, industry commenters argued that such arrangements should be permitted because they are no different than "cash back" rewards

[60] Industry commenters also argued that inactivity and closed account fees should not be treated as penalty fees because the consumer has not violated the terms of the cardholder agreement by failing to use the account for a certain amount of transactions or by closing the account. However, as discussed above with respect to comment 52(b)-1, the Board believes that these fees are properly subject to § 226.52(b) because they are fees imposed for violating other requirements of the account.

and other incentives provided to encourage consumers to use their accounts. Unlike other types of incentives, however, this arrangement is inconsistent with the intent of § 226.52(b)(2)(i)(B)(2) because only consumers who do not engage in the requisite level of account activity are ultimately responsible for the fee. Thus, in these circumstances, there is no meaningful distinction between the annual fee and an inactivity fee. Accordingly, comment 52(b)(2)(i)-5 clarifies that this type of arrangement is prohibited. The Board notes that this guidance should not be construed as prohibiting "cash back" rewards or similar incentives commonly offered by card issuers to encourage account usage.

The Board has also adopted comment 52(b)(2)(i)-6, which clarifies the application of § 226.52(b)(2)(i)(B)(3). Specifically, this comment clarifies that § 226.52(b)(2)(i)(B)(3) prohibits card issuers from imposing a one-time fee on a consumer who closes his or her account or from imposing a periodic fee – such as an annual fee, a monthly maintenance fee, or a closed account fee – after an account is closed if that fee was not imposed prior to the closure or termination (even if the fee was disclosed prior to closure or termination). The comment further clarifies that card issuers are prohibited from increasing a periodic fee after an account is closed or terminated but may continue to impose a periodic fee that was imposed before closure or termination.

52(b)(2)(ii) Multiple Fees Based On a Single Event or Transaction

As proposed, § 226.52(b)(2)(ii) prohibited card issuers from imposing more than one penalty fee based on a single event or transaction, although issuers were permitted to comply with this requirement by imposing no more than one penalty fee during a billing cycle. The Board believes that imposing multiple fees based on a single event or transaction is unreasonable and disproportionate to the conduct of the consumer because the same conduct may result in a single violation or multiple violations, depending on how the card issuer categorizes the conduct or on circumstances that may not be in the control of the consumer. For example, if a consumer submits a payment that is returned for insufficient funds or for other reasons, the consumer should not be charged both a returned payment fee and a late payment fee. Similarly, in these circumstances, it does not appear that multiple fees are reasonably necessary to deter the single event or transaction.

Individual consumers, consumer groups, and a state attorney general supported this aspect of the proposal, as did one credit union. However, industry commenters generally opposed this limitation, arguing that it would prevent full recovery of costs, undermine deterrence, and create operational difficulties. As discussed in the proposal, the Board understands that a card issuer may incur greater costs as a result of an event or transaction that causes multiple violations than an event or transaction that causes a single violation. Using the example above, assume that the card issuer incurs costs as a result of the late payment and costs as a result of the returned payment. If the card issuer imposes a late payment fee, § 226.52(b)(2)(ii) prohibits the issuer from recovering the costs incurred as a result of the returned payment by also charging a returned payment fee. However, the Board believes that § 226.52(b)(2)(ii) will only apply in a relatively limited number of circumstances. Furthermore, as discussed above with respect to § 226.52(b)(2)(i), any costs that are not recovered as a result of the application of § 226.52(b)(2)(ii) can instead be recovered through upfront rates or other pricing strategies.

Furthermore, because § 226.52(b)(2)(ii) generally addresses circumstances in which a single act or omission by a consumer results in multiple violations, the Board believes that imposition of a single fee will generally be sufficient to deter such consumer conduct in the future. Finally, in order to reduce the operational burden on card issuers of determining whether multiple violations are caused by a single event or transaction, § 226.52(b)(2)(ii) permits a card issuer to comply by charging no more than one penalty fee per billing cycle. The Board believes that this approach generally provides at least the same degree of protection for consumers as prohibiting multiple fees based on a single event or transaction because fees imposed in different billing cycles will generally be caused by different events or transactions. Accordingly, § 226.52(b)(2)(ii) is adopted as proposed.

Comment 52(b)(2)(ii)-1 provides additional examples of circumstances where multiple penalty fees would be prohibited, as well as examples of circumstances where multiple fees would be permitted. For example, assume that the required minimum periodic payment due on March 25 is $20. On March 25, the card issuer receives a check for $50, but the check is returned for insufficient funds on March 27. The comment clarifies that, consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25. However, the comment also clarifies that § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

The comment provides another example based on the same facts, except that the card issuer receives the $50 check on March 27 and the check is returned for insufficient funds on March 29. The comment clarifies that, as above, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. Industry commenters objected to this example, arguing that – because the payment was late before it was returned – the violations were not based on the same event or transaction. However, as discussed above, § 226.52(b)(2)(ii) is intended to prevent the imposition of multiple fees based on a single act or omission by a consumer. In light of this purpose, the Board believes it would be anomalous for a consumer whose payment is received on the payment due date and then returned to be charged a single fee, while a consumer whose payment is received the following day and then returned to be charged two fees.

Industry commenters also requested that the Board clarify the application of § 226.52(b)(2)(ii) in a number of additional scenarios. Accordingly, the Board has revised comment 52(b)(2)(ii)-1 to provide additional illustrative examples. Otherwise, the comment is adopted as proposed.

Section 226.56 Requirements for Over-the-Limit Transactions

Section 226.56(e)(1)(i) provides that, in the notice informing consumers that their affirmative consent (or opt-in) is required for the card issuer to pay over-the-limit transactions, the issuer must disclose the dollar amount of any fees or charges assessed by the issuer on a consumer's account for an over-the-limit transaction. Model language is provided in Model Forms G-25(A) and G-25(B).

Comment 56(e)-1 states that, if the amount of an over-the-limit fee may vary, such as based on the amount of the over-the-limit transaction, the card issuer may indicate that the consumer may be assessed a fee "up to" the maximum fee. For the reasons discussed below with respect to Model Forms G-25(A) and G-25(B), the Board has amended comment 56(e)-1 to refer to those model forms for guidance on how to disclose the amount of the over-the-limit fee consistent with the substantive restrictions in proposed § 226.52(b).

In addition, because § 226.52(b) imposes additional substantive limitations on over-the-limit fees, the Board has adopted a new comment 56(j)-6, which provides a cross-reference to § 226.52(b). The Board did not receive any significant comment on these aspects of the proposal.

Section 226.59 Reevaluation of Rate Increases

As discussed in the supplementary information to § 226.9(c)(2) and (g), the Credit Card Act added new TILA Section 148, which requires creditors that increase an annual percentage rate applicable to a credit card account under an open-end consumer credit plan, based on factors including the credit risk of the consumer, market conditions, or other factors, to consider changes in such factors in subsequently determining whether to reduce the annual percentage rate. Creditors are required to maintain reasonable methodologies for assessing these factors. The statute also sets forth a timing requirement for this review. Specifically, at least once every six months, creditors are required to review accounts as to which the annual percentage rate has been increased to assess whether these factors have changed. New TILA Section 148 is effective August 22, 2010 but requires that creditors review accounts on which an annual percentage rate has been increased since January 1, 2009.

New TILA Section 148 requires creditors to reduce the annual percentage rate that was previously increased if a reduction is "indicated" by the review. However, new TILA Section 148(c) expressly provides that no specific amount of reduction in the rate is required. The Board is implementing the substantive requirements of new TILA Section 148 in new § 226.59.

As discussed above, in addition to these substantive requirements, TILA Section 148 also requires creditors to disclose the reasons for an annual percentage rate increase applicable to a credit card under an open-end consumer credit plan in the notice required to be provided 45 days in advance of that increase. The Board is implementing the notice requirements of new TILA Section 148 in § 226.9(c)(2) and (g), which are discussed in the supplementary information to § 226.9.

The Board proposed to apply § 226.59 to "credit card accounts under an open-end (not home-secured) consumer credit plan" as defined in § 226.2(a)(15), consistent with the approach the Board has taken to other provisions of the Credit Card Act that apply to credit card accounts. The Board received no comments on this aspect of the proposal and therefore § 226.59 as adopted applies to credit card accounts under an open-end (not home-secured) consumer credit plan. Therefore, home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by a debit card are not subject to the new substantive requirements regarding reevaluation of rate increases.

59(a) General Rule

59(a)(1) Evaluation of Increased Rate

Section 226.59(a) of the March 2010 Regulation Z Proposal set forth the general rule regarding the reevaluation of rate increases. Proposed § 226.59(a)(1) generally mirrored the statutory language of TILA Section 148 and stated that if a card issuer increases an annual percentage rate that applies to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, or increased such a rate on or after January 1, 2009, the card issuer must review changes in such factors and, if appropriate based on its review of such factors, reduce the annual percentage rate applicable to the account.

As discussed below, in other portions of proposed § 226.59 the Board set forth more specific guidance on the factors that must be considered when conducting the review required under § 226.59(a)(1), as well as on the policies and procedures that an issuer must maintain for conducting this evaluation. The Board received a number of comments on these specific aspects of the proposal, but no significant comment on the general rule set forth in § 226.59(a)(1). Accordingly, the Board is adopting § 226.59(a)(1) generally as proposed, with two technical revisions for clarity. As adopted, § 226.59(a)(1)(i) expressly cross-references the guidance regarding factors set forth in paragraph § 226.59(d). In addition, the Board has made one technical amendment to the title of the paragraph.

Proposed § 226.59(a)(1) would have limited the obligation to reevaluate rate increases to those increases for which 45 days' advance notice is required under § 226.9(c)(2) or (g). This limitation was proposed using the Board's authority under TILA Section 105(a) to provide for adjustments and exceptions for any class of transactions as necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). In the proposal, the Board noted that this limitation is consistent with the approach Congress adopted in new TILA Section 171(b), which sets forth the exceptions to the 45-day notice requirement for rate increases and significant changes in terms. Several industry commenters stated that this limitation was appropriate and should be retained in the final rule, while the Board received no comments opposing this aspect of the proposal.

The Board believes that Congress did not intend for card issuers to have to reevaluate rate increases in those circumstances where no advance notice is required, for example, rate increases due to fluctuations in the index for a properly-disclosed variable rate plan or rate increases due to the expiration of a properly-disclosed introductory or promotional rate. The Board also notes that creditors do not consider factors in connection with the expiration of a promotional rate or an increase in a variable rate due to fluctuations in the index on which that rate is based. Thus, the Board continues to believe that coverage of such rate increases by § 226.59 would be inconsistent with the purposes of new TILA Section 148. Therefore, the requirements of § 226.59 do not apply to rate increases for which 45 days' advance notice is not required.

The proposal included several comments intended to clarify the scope of proposed § 226.59(a)(1). Proposed comment 59(a)-1 clarified that § 226.59(a) applies both to increases in annual percentage rates imposed on a consumer's account based on circumstances specific to that consumer, such as changes in the consumer's creditworthiness, and to increases in annual percentage rates applied to the account due to factors such as changes in market conditions or the issuer's cost of funds. The Board noted that this is consistent with the intent of TILA Section 148, which is broad in scope and specifically notes "market conditions" as a factor for which rate increases need to be reevaluated. The Board received no comments on proposed comment 59(a)-1.

Accordingly, the Board is adopting proposed comment 59(a)-1 as new comment 59(a)(1)-1. The Board has revised comment 59(a)(1)-1 from the proposal to clarify the applicability of § 226.59(a) to increases in annual percentage rates imposed due to factors that are not specific to the consumer. The comment as adopted states in part that

§ 226.59(a) applies to increases in annual percentage rates imposed based on factors that are not specific to the consumer, and includes changes in market conditions or the issuer's cost of funds as examples of such factors that are not consumer-specific. This list of examples is not intended to be exhaustive and there may be other factors that are not consumer-specific on which rate increases that would trigger the requirements of § 226.59 could be based.

Proposed comment 59(a)-2 clarified that a card issuer must review changes in factors under § 226.59(a) only if the increased rate is actually imposed on the consumer's account. For example, the proposed comment provided that if a card issuer increases the penalty rate applicable to a consumer's credit card but the consumer's account has no balances that are currently subject to the penalty rate, the card issuer is required to provide a notice pursuant to § 226.9(c)(2) of the change in terms, but the requirements of § 226.59 do not apply. If the consumer's actions later trigger application of the penalty rate, the card issuer must provide 45 days' advance notice pursuant to § 226.9(g) and must, upon imposition of the penalty rate, begin to periodically review and consider factors to determine whether a rate reduction is appropriate under § 226.59. The Board noted that, until an increased rate is imposed on the consumer's account, the consumer incurs no costs associated with that increased rate. In addition, the Credit Card Act and Regulation Z contain additional protections for consumers against prospective rate increases, including the general prohibition on increasing the rate applicable to an outstanding balance set forth in § 226.55 and the 45-day advance notice requirements in § 226.9(c)(2) and (g). Finally, once an increased rate is imposed on the consumer's account, the card issuer would then be subject to the requirements of § 226.59. The

Board received no significant comment on proposed comment 59(a)-2, which is adopted as comment 59(a)(1)-2.

Proposed comment 59(a)-3 clarified how § 226.59(a) applies to certain rate increases imposed prior to the effective date of the rule. Section 226.59(a) and new TILA Section 148 require that card issuers reevaluate rate increases that occurred between January 1, 2009 and August 21, 2010. Proposed comment 59(a)-3 stated that for increases in annual percentage rates on or after January 1, 2009 and prior to August 22, 2010, § 226.59(a) requires a card issuer to review changes in factors and reduce the rate, as appropriate, if the rate increase is of a type for which 45 days' advance notice would currently be required under § 226.9(c)(2) or (g). The requirements of § 226.9(c)(2) and (g), which were first effective on August 20, 2009 and modified by the February 2010 Regulation Z Rule were not applicable during the entire period from January 1, 2009 to August 21, 2010. Therefore, the relevant test for purposes of proposed § 226.59(a)(1) and comment 59(a)-3 is whether the rate increase is or was of a type for which 45 days' advance notice pursuant to § 226.9(c)(2) or (g) would currently be required.

Proposed comment 59(a)-3 further illustrated this requirement by stating, for example, that the requirements of § 226.59 would not apply to a rate increase due to an increase in the index by which a properly-disclosed variable rate is determined in accordance with § 226.9(c)(2)(v)(C) or if the increase occurs upon expiration of a specified period of time and disclosures complying with § 226.9(c)(2)(v)(B) have been provided. The Board received no comments on proposed comment 59(a)-3, which is adopted as comment 59(a)(1)-3.

In the March 2010 Regulation Z Proposal, the Board proposed comment 59(b)-1, which noted, consistent with TILA Section 148, that even in circumstances where a rate reduction is required, § 226.59 does not require that a card issuer decrease the rate to the annual percentage rate that was in effect prior to the rate increase giving rise to the obligation to periodically review the consumer's account. The comment stated that the amount of the rate decrease that is required must be determined based upon the issuer's reasonable policies and procedures. Proposed comment 59(b)-1 set forth an illustrative example, which assumes that a consumer's rate on new purchases is increased from a variable rate of 15.99% to a variable rate of 23.99% based on the consumer's making a required minimum periodic payment five days late. The consumer then makes all of the payments required on the account on time for the six months following the rate increase. The proposed comment noted that the card issuer is not required to decrease the consumer's rate to the 15.99% that applied prior to the rate increase, but that the card issuer's policies and procedures for performing the review required by § 226.59(a) must be reasonable and should take into account any reduction in the consumer's credit risk based upon the consumer's timely payments.

The Board believes that this proposed comment, which primarily focuses on the amount of a required rate decrease, is more properly placed in the commentary to § 226.59(a)(1), which is the paragraph establishing the obligation to reduce the rate. Accordingly, the Board is adopting proposed comment 59(b)-1 as comment 59(a)(1)-4, with several technical changes for clarity. The example set forth in the comment has also been amended for consistency with § 226.59(d)'s guidance on the factors required to be considered in the review. Section 226.59(d) is discussed below in more detail.

Regarding the scope of § 226.59, one issuer asked the Board to clarify whether the reevaluation requirements in § 226.59 apply only to increases in purchase rates or to rates applicable to all types of balances, such as cash advances, balance transfers, or balances subject to penalty rates. The Board believes that it was clear in the proposal, and continues to be clear in the final rule, that § 226.59 generally applies to all types of interest rate increases, not just penalty rate increases. The rule refers broadly to "an increase in an annual percentage rate that applies to a credit card account under an open-end (not home-secured) consumer credit plan," not only to increases in purchase annual percentage rates. Accordingly, examples in the commentary to § 226.59 refer to cash advance rates, penalty rates, balance transfer rates, and temporary rates, in addition to purchase rates.

Another issuer asked the Board to expressly clarify that the obligation to reevaluate rate increases pursuant to § 226.59 does not apply to accounts for which variable rate floors were removed in order to comply with § 226.55(b)(2). The Board believes that no clarification is necessary in the regulation or commentary. The removal of a variable rate floor can only result in a decrease in the interest rate imposed on a consumer's account and therefore would not be a rate increase for purposes of § 226.59.

Finally, one industry trade association urged the Board to limit the scope of § 226.59 to require reviews only of those rate increases that occurred between January 1, 2009 and February 22, 2010, when the majority of the substantive protections in the Credit Card Act became effective. The Board believes that this interpretation would be inconsistent with new TILA Section 148, which imposes an ongoing review requirement when a creditor increases the annual percentage rate applicable to a credit card account.

If Congress had intended to limit the review requirement to those rate increases that occurred prior to February 22, 2010, the Board believes that it would have so provided.

59(a)(2) Rate Reductions

Proposed § 226.59(a)(2) addressed the timing requirements for rate reductions required under § 226.59. Proposed § 226.59(a)(2) stated that if a card issuer is required to reduce the rate applicable to an account pursuant to § 226.59(a)(1), the card issuer must reduce the rate not later than 30 days after completion of the evaluation. The Board solicited comment on the operational issues associated with reducing the rate applicable to a consumer's account and whether a different timing standard for how promptly rate changes must be implemented should apply.

A number of issuers and industry trade associations urged the Board to give issuers additional time to implement rate decreases, for operational reasons. Several commenters specifically noted that the 30 day time period would require issuers to make mid-cycle changes, which may be difficult and costly depending on the issuer's processing platforms. Several commenters suggested that the time period for implementing a rate reduction should be 60 days or two billing cycles after completion of the evaluation. Other commenters indicated that the appropriate time period is 90 days. Finally, several other commenters stated that a 45-day time period would be appropriate. These commenters also noted that a 45-day time period would be consistent with the time period for advance notice of rate increases under § 226.9(c) and (g).

Section 226.59(a)(2)(i) of the final rule provides that if a card issuer is required to reduce the rate applicable to an account pursuant to § 226.59(a)(1), the card issuer must reduce the rate not later than 45 days after completion of the evaluation. The Board believes that intent of new TILA Section 148 is to ensure that the rates on consumers' accounts are reduced promptly when the card issuer's review of factors indicates that a rate reduction is required. Therefore, the Board believes that a longer time period, such as 60 days or 90 days, would not best effectuate the intent of the statute. The Board believes that § 226.59(a)(2)(i), as adopted, strikes the appropriate balance between burden on issuers and benefit to consumers. The 45-day time period may enable issuers to avoid operationally difficult mid-cycle changes, while ensuring that consumers promptly receive the benefit of any rate reduction required by § 226.59.

The March 2010 Regulation Z Proposal did not specify to which balances a rate reduction required by § 226.59(a) must apply. Several commenters requested that the Board provide express guidance regarding the applicability of any required rate reduction, in particular as to whether the reduction is required to apply to existing balances or only to new transactions. One industry commenter stated that issuers should be required to apply the reduced rate only to the outstanding balances that were subject to the rate increase reevaluation rather than to all outstanding balances. Another industry commenter urged the Board to provide flexibility for issuers to apply the reduced rate to: (1) new transactions only; (2) outstanding balances that were subject to the rate increase reevaluation; or (3) new transactions and outstanding balances that were subject to the rate increase reevaluation. This commenter noted that it would be operationally burdensome if issuers were required to reduce the rate applicable to all outstanding balances that were subject to the rate increase. Finally, one issuer stated that creditors should be permitted to implement rate decreases through other means, such as through balance transfer or consolidation offers, which would reduce the consumer's cost of borrowing without changing the annual percentage rate.

The Board is adopting new § 226.59(a)(2)(ii) to clarify to which balances a rate reduction pursuant to § 226.59(a)(1) must apply. Section 226.59(a)(2)(ii) states that any reduction in an annual percentage rate required pursuant to § 226.59(a)(1) shall apply to: (1) any outstanding balances to which the increased rate described in § 226.59(a)(1) has been applied; and (2) new transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate. The Board believes the most appropriate reading of new TILA Section 148 is that it is intended to require rate reductions on outstanding balances that were subject to the rate increase, as well as on new transactions. TILA Section 148 expressly requires issuers to reevaluate rate increases that have occurred since January 1, 2009. The Board believes that a rule that permitted issuers to apply reduced rates only to new transactions would not effectuate this "look back" provision, because it would permit rate increases that occurred after January 1, 2009 to remain in effect for the life of any balance already subject to the increased rate. Prior to February 22, 2010, card issuers were permitted to increase rates applicable to outstanding balances as well as new transactions, which is no longer permitted under § 226.55 except in limited circumstances. It would be an anomalous result for the "look back" provision to permit creditors to maintain increased rates on existing balances given that the Credit Card Act prospectively limited the circumstances in which a rate increase can be applied to an outstanding balance. Accordingly, the Board believes that the inclusion of the "look back" provision in TILA Section 148 suggests that Congress intended for any rate reductions apply to outstanding balances that were subject to the rate increase.

Similarly, the Board believes that for rates increased on or after February 22, 2010, the most appropriate reading of new TILA Section 148 is that it requires an issuer to apply any required rate decrease both to any outstanding balances that were subject to the increased rate and to any new transactions that would have been subject to the increased rate. New TILA Section 148 does not distinguish between rate increases imposed prior to February 22, 2010, which could have applied both to outstanding balances and new transactions, and rate increases imposed after February 22, 2010, which in most cases may apply only to new transactions. The Board believes, therefore, that one uniform rule regarding the applicability of rate decreases is appropriate and consistent with the intent of TILA Section 148. A rule that required rate reductions only on new transactions would in effect permit an increased rate to apply to balances subject to the increased rate until they are paid in full. The Board does not believe that this outcome would be consistent with the intent of TILA Section 148.

However, the Board does not believe that the statute requires an issuer to decrease the rates applicable to balances that were not subject to the rate increase giving rise to the review obligation under § 226.59(a). The requirement to reevaluate the rates applicable to a consumer's account is only triggered when a rate increase occurs. If Congress had intended for all issuers to periodically review the rates applicable to consumer credit card accounts, regardless of whether a rate increase occurred, it could have so provided. Given that the review requirement only applies if there is a rate increase, the Board believes the best interpretation of the statute is that any required reduction in rate need only apply to the balances that were subject to that increased rate. Therefore, the final rule does not require that the rate reduction apply to all outstanding balances, but just to those outstanding balances that were subject to the increased rate.

For example, assume that a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan on January 1 of year one. The rate on purchases is 18%. The consumer makes a $1000 purchase on June 1 of year one. On January 1 of year two, after providing 45 days' advance notice in accordance with § 226.9(c), the card issuer raises the rate applicable to new purchase transactions to 20%. The consumer makes a $300 purchase on May 1 of year two, which is subject to the 20% rate. On July 1 of year two, the issuer conducts a review of the account in accordance with § 226.59(a) and, based on that review, decreases the rate on purchases from 20% to 17% effective as of August 15 of year two. The consumer makes a $500 purchase on September 1 of year two. Section 226.59(a)(2)(ii) requires the issuer to apply the 17% rate to the $300 purchase and the $500 purchase. The issuer is not required to apply the 17% rate to the $1000 purchase, which may remain subject to the original 18% rate.

The Board believes that permitting issuers to reduce the interest charges imposed on a consumer's account through other means, such as balance transfer or other promotional offers, without reducing the annual percentage rate would be inconsistent with the statute, which requires a creditor to consider factors in "determining whether to reduce the annual percentage rate" applicable to a consumer's account. Furthermore, the Board believes that permitting issuers to reduce the interest charges imposed on a consumer's account in such a manner would lack transparency and would make it difficult for an issuer's regulator to assess whether that issuer is in compliance with the rule. For example, it would be difficult to ascertain whether a given promotional rate offer is as beneficial to a consumer as a rate reduction would be, given that it would depend on facts, circumstances, and account usage patterns specific to that consumer.

Section 226.59(a)(2)(ii) requires, in part, that any reduction in rate required pursuant to § 226.59(a)(1) must apply to new transactions that occur after the effective date of the rate reduction, if those transactions would otherwise have been subject to the increased rate described in § 226.59(a)(1). The Board is adopting a new comment 59(a)(2)(ii)-1 to clarify to which new transactions any rate reduction required by § 226.59(a) must apply. A credit card account may have multiple types of balances, for example, purchases, cash advances, and balance transfers, to which different rates apply. The comment sets forth an illustrative example that assumes a new credit card account opened on January 1 of year one has a rate applicable to purchases of 15% and a rate applicable to cash advances and balance transfers of 20%. Effective March 1 of year two, consistent with the limitations in § 226.55 and upon giving notice required by § 226.9(c)(2), the card issuer raises the rate applicable to new purchases to 18% based on market conditions. The only transaction in which the consumer engages in year two is a $1,000 purchase made on July 1. The rate for cash advances remains at 20%. Based on a subsequent review required by § 226.59(a)(1), the card issuer determines that the rate on purchases must be reduced to 16%. Section 226.59(a)(2)(ii) requires that the 16% rate be applied to the $1,000 purchase made on July 1 and to all new purchases. The rate for new cash advances and balance transfers may remain at 20%, because there was no rate increase applicable to those types of transactions and, therefore, the requirements of § 226.59(a) do not apply.

59(b) Policies and Procedures

Proposed § 226.59(b) provided, consistent with new TILA Section 148, that a card issuer must have reasonable written policies and procedures in place to review the factors described in § 226.59. The proposal did not prescribe specific policies and procedures that issuers must use in order to conduct this analysis. The Board stated that requiring such policies and procedures to be reasonable would ensure that issuers undertake due consideration of these factors in order to determine whether a rate reduction is required on a consumer's account. However, the proposal solicited comment on whether more guidance was necessary regarding whether a card issuer's policies and procedures are "reasonable."

Consumer groups and a federal agency stated that the proposal did not set forth sufficiently specific guidance regarding whether an issuer's policies and procedures are reasonable. These commenters suggested that the Board's rules should provide more rigorous compliance standards regarding the methodologies that issuers must use to reevaluate rate increases. In particular, these commenters urged the Board to require issuers to use an "empirically derived, demonstrably and statistically sound model" or to identify other specific reasonable methodologies to be used in conducting the reevaluation of rate increases. Consumer groups noted that the statutory provision requires issuers to "maintain reasonable methodologies for assessing the factors" used in the reevaluation, and accordingly that the statute prohibits unreasonable methodologies. One consumer group supported the requirement that policies and procedures be written, but stated that the policies and procedures should specify how factors are measured and weighted.

Two state attorneys general also commented on this aspect of the proposal. One expressed concern that the Board's proposed rules would permit banks to perform perfunctory reviews, manipulate the factors used in the reevaluation to justify rate increases, and otherwise deny rate reductions even when there has been a decline in consumer credit risk. This commenter stated that the final rules should expressly require banks to reduce interest rates when justified by the consumer's credit risk, and stated that a review that does not result in interest rate reductions when consumers' credit profiles improve and bank costs decline cannot be considered "reasonable." The second state attorney general expressed concern that the flexible reevaluation standard set forth in the proposal would result in very few interest rate increases being reversed. This commenter urged the Board to adopt clear and transparent reevaluation standards and to rigorously supervise card issuers for compliance with § 226.59.

Several trade associations representing community banks and credit unions indicated that additional guidance regarding the requirement to have reasonable policies and procedures would be helpful to institutions complying with the rule. These commenters urged the Board to publish such guidance for additional public comment.

Other commenters supported the flexible approach in the proposal. One public interest group stated that requiring issuers to maintain written policies and procedures will likely result in greater accountability for financial institutions and more equitable repricing of accounts. Several issuers stated that no additional guidance is necessary regarding "reasonable" policies and procedures and opposed a more prescriptive approach. One of these commenters noted that the concept of "reasonable policies and procedures” is well established in Regulation Z and that issuers do not require additional guidance.

The Board is adopting § 226.59(b) generally as proposed, with one nonsubstantive change for clarity. The Board continues to believe that more prescriptive rules regarding reasonable policies and procedures could unduly burden creditors and raise safety and soundness concerns for financial institutions. Because the particular factors that are the most predictive of the credit risk of a particular consumer or portfolio of consumers may change over time, the appropriate manner in which to weigh those factors may also change. Moreover, the appropriate manner in which to consider or review underwriting factors can vary greatly among institutions. For example, underwriting standards – and thus the appropriate policies and procedures to use when reviewing rate increases – for private label or retail credit cards will differ from the standards used for general purpose credit card accounts.

The Board agrees with commenters that TILA Section 148 requires issuers to perform a meaningful review of rate increases and to decrease rates when appropriate. The Board further agrees with consumer groups that new TILA Section 148 requires that an issuer use reasonable methodologies, and accordingly would not permit an issuer to use methodologies for the review of rate increases that are unreasonable. However, the Board believes that the requirement that an issuer’s policies and procedures be reasonable effectuates this portion of the statute. This requirement will ensure that, although issuers have flexibility to design their own reasonable policies and procedures, they must conduct a meaningful review of factors and reduce the rate in an appropriate manner when required.

The Board is not requiring issuers to utilize a “empirically derived, demonstrably and statistically sound model” for the reevaluation of rate increases. Regulation Z does require the use of such models in other contexts, such as when an issuer uses an estimate of income under § 226.51 as an alternative to obtaining this information directly from a consumer. As noted in the supplementary information to the February 2010 Regulation Z Rule, the Board is aware of various models that have been developed to estimate a consumer’s income or assets. In the case of estimating a consumer’s income, a third party could develop a model that would meet the “empirically derived, demonstrably and statistically sound” standard that could be used by all, or a large number of, issuers. However, given the issuer and product-specific nature of underwriting, the Board believes that it would not be possible to develop and use a single model for evaluating factors that would be appropriate for all issuers. Accordingly, each issuer would have to develop and test its own model, which would create significant burden, especially for small issuers.

In addition, unlike a model for estimating a consumer’s income, which is designed to estimate a single piece of objective data, it is unclear how an “empirically derived, demonstrably and statistically sound model” would operate in the context of the reevaluation of rate increases. The Board believes that to make such a standard feasible, the rule would have to be far more prescriptive regarding permissible assumptions for the model. For the reasons discussed above, the Board is not adopting a prescriptive rule about how an issuer must weigh the factors it considers; for the same reasons, the Board also declines to adopt a prescriptive rule about how an issuer may construct its underwriting models. Furthermore, as discussed in the supplementary information to

§ 226.52(b) in the context of the proposed deterrence method for determining permissible penalty fees, developing a model for an individual issuer would require testing and periodic verification. In the course of gathering the data necessary to test or periodically verify its model, an issuer may at times need to test a model that is not "empirically derived, demonstrably and statistically sound," which would create the anomalous result that issuers would need to test policies and procedures that are not permitted under the rule.

In addition to the general requirement that an issuer have reasonable policies and procedures, other portions of the final rule address specific practices to further ensure that issuers conduct a meaningful review of rate increases and appropriately implement any required rate decreases. For example, as discussed above, § 226.59(a)(2)(ii) of the final rule expressly requires that a rate reduction be applied both to outstanding balances that were subject to the increased rate and new transactions that would have been subject to the increased rate. In addition, as discussed below, § 226.59(d) of the final rule requires an issuer to consider either: (1) the factors on which it originally based the rate increase; or (2) the factors that the card issuer currently uses when determining the annual percentage rates applicable to similar new credit card accounts. As discussed below, the Board believes that this will ensure that an issuer may not selectively choose to evaluate only those factors that would continue to justify a rate increase for existing consumers.

Several consumer group commenters and one state attorney general urged the Board to establish a data collection requirement for § 226.59. These commenters stated that banks should be required to publicly disclose their review policies and procedures and issue periodic reports on the total number of accounts reviewed, the total number of accounts on which the rate was reduced, and the starting and ending rates of accounts reviewed. The Board believes that such a requirement would be inefficient and overly burdensome and is not necessary to effectuate the purposes of Section 148. In addition, the Board has concerns that public reporting of underwriting factors would require issuers to disclose proprietary information, particularly given that public reporting is not an express requirement of TILA Section 148. An issuer's principal regulator is most familiar with its operations and is in the best position to evaluate its policies and procedures under § 226.59(b).

59(c) Timing

Proposed § 226.59(c) clarified the timing requirements for the reevaluation of rate increases pursuant to § 226.59(a). Consistent with new TILA Section 148(b)(2), proposed § 226.59(c) required a card issuer that is subject to § 226.59(a) to review changes in factors in accordance with § 226.59(a) and (d) not less frequently than once every six months after the initial rate increase. Proposed comment 59(c)-1 would clarify that an issuer has flexibility in determining exactly when to engage in this review for its accounts. Specifically, proposed comment 59(c)-1 stated that an issuer may review all of its accounts at the same time once every six months, may review each account once each six months on a rolling basis based on the date on which the rate was increased for that account, or may otherwise review each account not less frequently than once every six months. The supplementary information to the March 2010 Regulation Z Proposal stated that as long as the consideration of factors required for each account subject to § 226.59 is performed at least once every six months, the Board believes that it is appropriate to provide flexibility to card issuers to decide upon a schedule for reviewing their accounts.

Section 226.59(c) is adopted as proposed, with one nonsubstantive change for clarity. The Board received only two comments on this aspect of the proposal; one issuer stated that the rule should require a review once every six billing cycles rather than once every six months, while another issuer stated that the final rule should require reviews annually rather than biannually. Consistent with the proposal, the final rule requires an issuer to conduct the review described in § 226.59(a) not less frequently than once every six months after the rate increase. New TILA Section 148(b)(2) is clear that the review is required "not less frequently than once every 6 months." A requirement that the review occur not less frequently than once every six billing cycles would mean, for consumers whose billing cycles are two or three months long, that the review only occurs once every 12 or 18 months. The Board does not believe this is consistent with Congress's intent. The Board received no comments on comment 59(c)-1, which also is adopted as proposed.

Proposed comment 59(c)-2 set forth an example of the timing requirements in § 226.59(c). The proposed example assumed that a card issuer increases the rates applicable to one half of its credit card accounts on June 1, 2010, and increases the rates applicable to the other half of its credit card accounts on September 1, 2010. The proposed comment stated that the card issuer may review the rate increases for all of its credit card accounts on or before December 1, 2010, and at least every six months thereafter. In the alternative, the card issuer may first review the rate increases for the accounts that were repriced on June 1, 2010 on or before December 1, 2010, and may first review the rate increases for the accounts that were repriced on September 1, 2010 on or before March 1, 2011.

The Board received only one comment on proposed comment 59(c)-2. The commenter noted that the dates used in the example in proposed comment 59(c)-2 were inconsistent with comment 59(c)-3, which is discussed below. Comment 59(c)-2 is adopted as proposed, except that the dates in the example have been adjusted to correct this technical error.

Proposed comment 59(c)-3 clarified the timing requirement for increases in annual percentage rates applicable to a credit card account under an open-end (not home-secured) consumer credit plan on or after January 1, 2009 and prior to August 22, 2010. Proposed comment 59(c)-3 stated that § 226.59(c) requires that the first review for such rate increases be conducted prior to February 22, 2011.

Consumer groups and a state attorney general stated that issuers should be required to conduct their first review of rate increases on August 22. These commenters expressed particular concern regarding rate increases imposed between January 1, 2009 and February 22, 2010, the date when the majority of the substantive protections contained in the Credit Card Act went into effect. A federal agency stated that the Board should provide an implementation period of no more than three months from issuance of final rules. In contrast, industry commenters supported proposed comment 59(c)-3, noting that the guidance in the comment is necessary to give creditors the time to develop and implement review policies and procedures based on the final rule prior to conducting their first reevaluations.

The Board is adopting comment 59(c)-3 as proposed. The Board believes that it will take issuers several months to develop and implement their policies and procedures for conducting reviews of rate increases. Accordingly, the Board believes that requiring issuers to complete their first review under § 226.59 on August 22, 2010 would be overly burdensome. For issuers with large or complex credit card portfolios, a requirement that the first review be completed on August 22, 2010 could in effect require those issuers to have implemented procedures to comply with this final rule before it is issued. The Board also believes that this clarification is consistent with the general timing standard under new TILA Section 148, which requires that rate increases generally be reevaluated at least once every six months. Accordingly, the Board believes that six months from the effective date of TILA Section 148, or February 22, 2011, is the appropriate date by which the initial review of rate increases that occurred prior to the effective date of the final rule must take place.

59(d) Factors

Proposed 226.59(d) provided clarification on the factors that a credit card issuer must consider when performing the evaluation of a consumer's account under § 226.59(a). Proposed § 226.59(d) provided that a card issuer is not required to base its review under § 226.59(a) on the same factors on which a rate increase was based. Rather, the proposal would have permitted a card issuer to review either the same factors on which the rate increase was originally based, or to review the factors that it currently uses when determining the annual percentage rates applicable to its consumers' credit card accounts.

The Board explained in the supplementary information to the proposal that it believes it is appropriate to permit card issuers to review the factors they currently consider in advancing credit to new consumers, because a review of these factors may result in the consumer receiving any reduced rate that he or she would receive if applying for a new credit card with the same card issuer. The Board also noted that competition for new consumers is an incentive that may lead an issuer to lower its rates, and if the rates on existing consumers' accounts are assessed using the same factors used for new consumers, existing customers of a card issuer may also benefit from competition in the market.

Proposed § 226.59(d) did not mandate any specific factors that card issuers must consider. Similarly, proposed § 226.59(d) would not have prohibited the consideration of other factors. The Board noted that a prescriptive rule that sets forth certain factors or excludes other factors could inadvertently harm consumers, in part by constraining card issuers' ability to design or utilize new underwriting models and products that could potentially benefit consumers.

Industry commenters strongly supported the approach in § 226.59(d) that would permit a card issuer to either consider the factors on which the rate increase was based or the issuer's current factors. These commenters stated that proposed § 226.59(d) provides appropriate flexibility and urged the Board to avoid mandating the consideration of outdated factors that are no longer relevant. Issuers noted that they already have an incentive to provide the best rates they can justify to their existing cardholders, because if they do not the cardholder may elect to use a different credit card or source of financing. Issuers also indicated that the costs associated with developing and maintaining systems to track and apply factors used in the past to existing reviews would be extremely burdensome.

Several industry commenters urged the Board to clarify that § 226.59(d) permits issuers to review the current factors that apply to similarly situated existing cardholders, not just new consumers. One commenter indicated, for example, that an issuer may have one scorecard that it uses for new applicants and another scorecard that it uses for account reviews. This commenter suggested that an issuer should be permitted to use the account review scorecard when conducting the review under § 226.59. Other industry commenters stated that a card issuer that considers the factors it uses for new accounts in conducting the review under § 226.59 should be permitted to take into account an existing cardholder's payment and performance history on the account, even if the issuer is not able to consider that data when evaluating an application for a new account.

Consumer groups indicated that proposed § 226.59(d) did not adequately limit an issuer's discretion to manipulate and "cherry pick" factors. Consumer groups stated that it is not objectionable to permit an issuer to evaluate old accounts consistently with the manner in which it evaluates new applicants, but that the rule should clarify that issuers do not have the discretion to selectively consider only those factors that would justify maintaining a rate increase. In addition, one city consumer protection agency stated that issuers should be required to take into account all appropriate factors, rather than just factors that are favorable to the issuer.

Consumer groups also urged the Board to adopt more specific guidance identifying factors that are permitted to be used and prohibited from being used in the evaluation. These commenters stated that the rule should expressly distinguish between rate increases imposed on an individual consumer and rate increases applied on a portfolio-wide basis. Consumer groups stated that appropriate factors for consideration for portfolio-wide rate increases include: (1) cost of funds, to the extent not reflected in a variable rate; and (2) the issuer's loss rate for that product. Consumer groups indicated that impermissible factors for portfolio-wide rate increases should include: (1) loss rates for other products; (2) revenue maximization; and (3) the inability to charge increased rates or fees resulting from legal reforms. Consumer groups stated that the only permissible factor for rate increases imposed on an individual consumer's account should be empirically-tested risk factors related to the ability to repay. In addition, one state consumer protection agency stated that, for rate increases based on changes in a consumer's creditworthiness, issuers should be required to evaluate the consumer's credit score, recent payment history, and other factors that indicate whether a consumer's creditworthiness has improved.

Section 226.59(d)(1) of the final rule sets forth the general rule and states that, except as provided in § 226.59(d)(2) (which is discussed below), a card issuer must review either: (1) the factors on which the increase in an annual percentage rate was originally based; or (2) the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan. The Board believes that this rule strikes the appropriate balance between providing flexibility for changing underwriting standards and ensuring that consumers receive the benefit of meaningful reviews of rate increases on their accounts. The Board believes that requiring a card issuer to consider the factors that it considers when setting the rates applicable to similar new accounts addresses concerns regarding issuers selectively identifying those factors that would permit them to maintain increased rates on existing accounts. In addition, the Board believes that this rule will permit consumers to benefit from competition among issuers in the market for new customers. Accordingly, the final rule would not permit an issuer that complies with § 226.59 by considering its current factors to use a separate set of factors for existing accounts than it does for new accounts.

Proposed comment 59(d)-3 provided additional clarification on how an issuer should identify the factors to consider when evaluating whether a rate reduction is required. Proposed comment 59(d)-3 stated that if a card issuer evaluates different factors in determining the applicable annual percentage rates for different types of credit card plans, it must review those factors that it considers in determining annual percentage rates for the consumer's type of credit card plan.

Proposed comment 59(d)-3 also set forth several examples to illustrate what constitute "types" of credit card plans. For example, the proposed comment noted that a card issuer may review different factors in determining the annual percentage rate that applies to credit card plans for which the consumer pays an annual fee and receives rewards points than it reviews in determining the rates for credit card plans with no annual fee and no rewards points. Similarly, the comment noted that a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards than it reviews in determining the rates applicable to credit cards that can be used at a wider variety of merchants. However, the proposed comment stated that a card issuer must review the same factors for credit card accounts with similar features that are offered for similar purposes and may not consider different factors for each of its individual credit card accounts.

One consumer group commenter supported proposed comment 59(d)-3. Three industry commenters urged the Board to withdraw the proposed comment. These commenters noted that issuers may offer many different varieties of private label credit card programs and general purpose credit card programs and that they should be permitted to review different factors with respect to each type of program. One of these commenters specifically asked the Board to confirm that a private label card issuer with multiple card portfolios may comply with the reevaluation requirements based on the terms and conditions of each portfolio independently.

The Board is adopting proposed comment 59(d)-3 generally as proposed, with several technical and wording changes for clarity. The Board continues to believe that this clarification is appropriate to ensure that a credit card issuer considers factors for new accounts that are similar to the existing credit card accounts subject to § 226.59, rather than factors for a dissimilar product that may be underwritten based on different information. However, the Board has included an additional example stating that a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards usable only at Merchant A than it may review for private label credit cards usable only at Merchant B. The Board believes that this additional example is appropriate to give guidance to issuers that offer several different private label credit card plans with different merchants.

The Board also is adopting a new comment 59(d)-4 to clarify a card issuer's obligations for existing accounts that are not similar to any new accounts offered by the issuer. The comment notes that in some circumstances, a card issuer that complies with § 226.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may not be able to identify a class of new accounts that are similar to the existing accounts on which a rate increase has been imposed. For example, consumers may have existing credit card accounts under an open-end (not home-secured) consumer credit plan but the card issuer may no longer offer a product to new consumers with similar characteristics, such as the availability of rewards, size of credit line, or other features. Similarly, some consumers' accounts may have been closed and therefore cannot be used for new transactions, while all new accounts can be used for new transactions. In those circumstances, the comment notes that the card issuer must nonetheless perform a review of the rate increase on the existing customers' accounts. A card issuer does not comply with § 226.59 by maintaining an increased rate without performing such an evaluation. In such circumstances, § 226.59(d)(1)(ii) requires that the card issuer compare the existing accounts to the most closely comparable new accounts that it offers.

The Board understands that, for existing accounts, issuers may possess information about the consumer's payment history or performance that they would not have for all applicants for new credit. For example, a consumer may have made a late payment on a credit card account with the issuer, but the delinquency may not have been reported to a consumer reporting agency, for example because the payment was less than 30 days late. The Board is adopting a new comment 59(d)-5 to clarify that a card issuer that complies with § 226.59(a) by reviewing the factors that it currently considers in determining the rates applicable to similar new accounts may consider the consumer's payment or other account behavior on the existing account only to the same extent and in the same manner that the issuer considers such information when one of its current cardholders applies for a new account with the card issuer. For example, the comment notes that a card issuer might obtain consumer reports for all of its applicants. The consumer reports contain certain information regarding the applicant's past performance on existing credit card accounts. However, the card issuer may have additional information about an existing cardholder's payment history or account usage that does not appear in the consumer report and that, accordingly, it would not generally have for all new applicants. For example, a consumer may have made a payment that is five days late on his or her account with the card issuer, but this information does not appear on the consumer report. The card issuer may consider this additional information in performing its review under § 226.59(a), but only to the extent and in the manner that it considers such information when a current cardholder applies for a new account with the issuer.

Consistent with the approach in the proposal, the final rule does not mandate or prohibit the consideration of any specific factors. The Board continues to believe that a prescriptive rule would unduly burden issuers, could create safety and soundness issues, and could inadvertently harm consumers, by limiting card issuers' ability to design or utilize new underwriting models and products that could benefit consumers. For issuers that consider the factors they currently use in setting the rates that apply to new accounts, the Board believes that competition for new accounts will create an incentive for issuers to keep rates as low as possible.

In addition to commenting on the Board's general approach to identifying factors relevant to the review under § 226.59, several commenters urged the Board to adopt special provisions for certain types or classes of rate increases. First, consumer groups and one state attorney general urged the Board to adopt a more stringent approach for rate increases imposed between January 1, 2009 and February 22, 2010. Consumer groups noted their concern about these rate increases, which were imposed before many of the substantive protections in the Credit Card Act became effective. Consumer groups stated that, for portfolio-wide rate increases made between January 1, 2009 and February 22, 2010, the rule should include a presumption that the rate must be reduced unless the issuer can demonstrate that the same economic conditions that gave rise to the rate increase still apply. For accounts on which the rate was increased due to an individual consumer's risk profile, consumer groups stated that the rate should be reduced to the original rate if the consumer's credit score exceeds a certain threshold. The state attorney general urged the Board to require issuers to reduce rates that were increased between January 1, 2009 and February 22, 2010, if the review pursuant to § 226.59 indicates that the cardholder has not violated the account terms and has not experienced a decline in creditworthiness.

In contrast, one issuer commented that the review requirement should be applied only to accounts where the rate was increased between January 1, 2009 and February 22, 2010. This issuer stated that the protections of the Credit Card Act render review of accounts on which a rate increase was imposed after February 22, 2010 unnecessary, because a consumer can stop using his or her card for new transactions if the increased rate does not reflect market conditions or the consumer's creditworthiness. In contrast, one other issuer urged the Board to limit the review requirement to rate increases that occurred after February 22, 2010.

The Board agrees with consumer group commenters that a more prescriptive approach is appropriate for some rate increases imposed prior to the February 22, 2010 effective date of the Credit Card Act's substantive limitations on repricing. Accordingly, new § 226.59(d)(2) sets forth a special rule for certain rate increases imposed between January 1, 2009 and February 21, 2010. Section 226.59(d)(2) provides that, when conducting the first two reviews required under § 226.59(a) for rate increases imposed between January 1, 2009 and February 21, 2010, an issuer must consider the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts, unless the rate increase was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account.

The Board understands that many card issuers raised rates across their credit card portfolios following the enactment of the Credit Card Act but prior to the effective date of many of the substantive protections contained in the statute. Some of these rate increases that occurred prior to February 22, 2010 resulted from issuers adjusting their pricing practices to take into account the limitations that the Credit Card Act imposed on rate increases on existing balances. The Board is concerned that permitting card issuers to review the factors on which the rate increase was based may not result in a meaningful review in these circumstances, because the legal restrictions imposed by the Credit Card Act have continuing application. In other words, if a card issuer were to consider the factors on which the rate increase was based – i.e., the enactment of the Credit Card Act's legal restrictions regarding rate increases – it might determine that a rate decrease is not required.

Accordingly, the Board believes that it is appropriate to require card issuers to consider, for a brief transition period, the factors that they use when setting the rates applicable to similar new accounts for rate increases imposed prior to February 22, 2010, if the rate increase was not based on consumer-specific factors. The Board believes that this will permit existing cardholders whose rates were raised based on general factors, including adjustments to reflect the new limitations on repricing contained in the Credit Card Act, to benefit from competition in the market for new customers. The Board further believes that this rule will help to ensure that a meaningful review is conducted for accounts repriced during the period from January 1, 2009 to February 21, 2010, and that rate increases are not maintained on such accounts if new consumers with comparable characteristics would qualify for an account with a lower rate or rates.

This requirement to consider the factors that an issuer evaluates when setting the rates applicable to similar new accounts applies only during the first two review periods following the effective date of § 226.59 and only for rate increases imposed between January 1, 2009 and February 21, 2010. The Board believes that it is generally consistent with new TILA Section 148 to permit a card issuer to evaluate the same factors on which it originally based the rate increase that triggered the review requirement under § 226.59. Therefore, the Board is not requiring card issuers to indefinitely review rate increases imposed between January 1, 2009 and February 21, 2010 that are not based solely on consumer-specific factors by comparing the account to similar new credit card accounts. However, the Board believes, for the reasons described above, that it is appropriate, for the first two review periods, to require issuers to consider the factors that they use when setting the rates applicable to similar new accounts.

For rate increases that were based solely on consumer behavior or other consumer-specific factors, the final rule applies one uniform standard to rate increases imposed since January 1, 2009 and does not distinguish between rate increases imposed prior to or after February 22, 2010. The Board does not believe that the concerns articulated above regarding portfolio-wide rate increases apply when the rate increase was based solely upon the consumer's specific behavior on the account or consumer-specific factors such as creditworthiness. Consumer-specific factors, such as a consumer's credit score or payment history on the account, can and do change over time. Accordingly, the Board believes that a consideration of the consumer-specific factors that the issuer considered when imposing the rate increase would result in a meaningful review and, where appropriate, rate decreases. In addition, this approach is consistent with new TILA Section 148, which applies the same review obligations to all rate increases imposed after January 1, 2009. The statute does not distinguish between rate increases that occurred prior to February 22, 2010 and rate increases that occurred after the majority of the substantive protections in the Credit Card Act took effect. Accordingly, the Board believes that absent the special concerns raised by portfolio-wide rate increases described above, it is not appropriate to impose either more or less stringent requirements to rate increases based on the date on which they were imposed.

Second, several commenters stated that the Board should adopt special provisions for rate increases that were imposed as a penalty for violations of the account terms. One consumer group commenter and one state attorney general urged the Board to adopt special rules regarding the removal of penalty rate increases. These commenters indicated that the Board should require issuers to reduce any penalty interest rate to a non-penalty rate if the account has experienced no violations of terms for a period of six months. Two issuers commented that the reevaluation requirement should not apply to accounts that are subject to delinquency pricing for prospective purchases if those accounts receive the benefit of a cure after a certain specified number of on-time payments.

The final rule does not mandate that issuers reduce a penalty rate to a non-penalty rate if there have been no violations of account terms for six months. The Board notes that § 226.55(b)(4) specifically addresses a consumer's right to cure the application of an increased rate, by making the first six minimum payments on time after the effective date of the increase, only for rate increases that are the result of a delinquency of more than 60 days. The Board acknowledged in the supplementary information to the March 2010 Regulation Z Proposal that it may appear to be an anomalous result that a consumer whose rate is increased based on a payment received five days late cannot automatically cure the application of the increased rate by making six timely minimum payments, while a consumer whose account is more than 60 days delinquent has that right under § 226.55(b)(4).

However, the Board continues to believe that this is the appropriate reading of TILA Sections 148 and 171(b)(4), for two reasons. First, a rate increase based on a consumer making a payment that is five days late can only apply to new transactions. Therefore, a consumer has the ability to mitigate the impact of the rate increase by reducing the number of new transactions in which he or she engages. In contrast, a creditor may increase the rate on both existing balances and new transactions when a consumer makes a payment that is more than 60 days late. Second, new TILA Section 171(b)(4) expressly provides the cure right implemented in § 226.55(b)(4) only for payments that are more than 60 days late. Congress could have, but did not, adopt an analogous cure provision for delinquencies of less than 60 days. The Board believes that for other violations of the account terms, Congress intended for the review of factors in

TILA Section 148 to be the means by which rate decreases, when appropriate, are required.

Similarly, the Board is not adopting an exception to the review requirements of § 226.59 for an issuer that provides a cure after a specified number of on-time payments or a specified number of months without a violation of the account terms. The Board understands that many issuers do provide such cure periods, even though it is not generally required for penalty rates triggered by delinquencies of less than 60 days or other contractual defaults. While the Board encourages card issuers to offer or continue offering such cure periods, which have a benefit to consumers, the Board believes that it would be inconsistent with TILA Section 148 to provide an exception to § 226.59 in those circumstances. The Board is concerned that providing such an exception would permit issuers to maintain penalty rates on the accounts of consumers whose creditworthiness improves, but who occasionally commit minor violations of the account terms, such as a payment that is one day late or a small over-the-limit transaction, when in some cases those consumers might be eligible for a rate decrease if the issuer reviewed the account in accordance with § 226.59(a).

Proposed comment 59(d)-1 clarified the requirements of § 226.59(d) in the circumstances where a creditor has recently changed the factors that it evaluates in determining annual percentage rates applicable to its credit card accounts. Proposed comment 59(d)-1 noted that a creditor that complies with § 226.59(a) by reviewing the factors it currently considers in determining the annual percentage rates applicable to its credit card accounts may change those factors from time to time. The proposed comment clarified that when a creditor changes the factors it considers in determining the annual percentage rates applicable to its credit card accounts from time to time, it may comply with § 226.59(a) for a brief transition period by reviewing the set of factors it considered immediately prior to the change in factors, or may consider the new factors. The Board noted in the supplementary information to the March 2010 Regulation Z Proposal that this provision is intended to permit a card issuer to consider its prior set of factors only for a brief period after it changes the factors it uses to determine the rates applicable to new accounts, for operational reasons.

The proposed comment set forth an example in which a creditor changes the factors it uses to determine the rates applicable to new credit card accounts on January 1, 2011. The creditor reviews the rates applicable to its existing accounts that have been subject to a rate increase pursuant to § 226.59(a) on January 25, 2011. The proposed comment stated that the creditor complies with § 226.59(a) by reviewing, at its option, either the factors that it considered on December 31, 2010 when determining the rates applicable to its new credit card accounts or the factors that it considers as of January 25, 2011.

In the proposal, the Board solicited comment on whether the rule should establish an express safe harbor regarding what constitutes "a brief transition period" following a change in factors. Issuers who commented on the proposal suggested safe harbors of 60 or 90 days, to provide issuers with adequate time to revise their written policies and procedures and implement the new policy, while conducting ongoing rate evaluations.

The Board believes that a transition period of 60 days following a change in factors is appropriate and has revised comment 59(d)-1 to expressly state that, for purposes of compliance with § 226.59(d), a transition period of 60 days from the change of factors constitutes a brief transition period. The Board believes that it is important that the transition period be brief, to ensure that consumers' accounts are evaluated by using up-to-date factors. The Board is otherwise adopting comment 59(d)-1 as proposed, with several technical changes to conform to the requirement in § 226.59(d) that an issuer that considers its current factors must consider the factors applicable to similar new accounts. In addition, the dates used in the example in comment 59(d)-1 have been adjusted for consistency with comment 59(c)-3.

Proposed comment 59(d)-2 clarified that the review of factors need not result in existing accounts being subject to the same rates and rate structure as a creditor imposes on new accounts, even if a creditor evaluates the same factors for both types of accounts. For example, the proposed comment noted that a creditor may offer variable rates on new accounts that are computed by adding a margin that depends on various factors to the value of the LIBOR index. The account that the creditor is required to review pursuant to § 226.59(a) may have variable rates that were determined by adding a different margin, depending on different factors, to a prime rate. In performing the review required by § 226.59(a), a creditor may review the factors it uses to determine the rates applicable to its new accounts. If a rate reduction is required, however, the proposed comment stated that the creditor need not base the variable rate for the existing account on the LIBOR index but may continue to use the prime rate. The amount of the rate on the existing account after the reduction, however, as determined by adding the prime rate and margin, must be comparable to the rate, as determined by adding the margin and LIBOR, charged on a new account (except for any promotional rate) for which the factors are comparable. The Board received no significant comments on proposed comment 59(d)-2, which is adopted generally as proposed, with several technical amendments for clarity. In addition, for consistency with the requirements of § 226.55(b)(2), the reference to the prime rate has been changed to refer to a published prime rate. See comment 55(b)(2)-2 for additional guidance on when an index is deemed to be outside the card issuer's control.

59(e) Rate Increases Subject to § 226.55(b)(4)

Proposed § 226.59(e) set forth a special timing rule for card issuers that increase a rate pursuant to § 226.55(b)(4) based on the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment. In such circumstances, § 226.55(b)(4)(ii) requires a card issuer to reduce the annual percentage rate to the rate that applied prior to the increase if the consumer makes the first six consecutive required minimum periodic payments on time after the effective date of the increase.

Proposed § 226.59(e) provided that a card issuer is not required to review factors in accordance with § 226.59(a) prior to the sixth payment due date following the effective date of the rate increase when the rate increase results from a consumer's account becoming more than 60 days delinquent. At that time, if the rate has not been decreased based on the consumer making six consecutive timely minimum payments, proposed § 226.59(e) required an issuer to begin performing a review of factors for subsequent six-month periods.

Three issuers stated that the review requirement should not apply to rate increases imposed due to the consumer's failure to make a minimum payment within 60 days of the due date for that payment. These issuers suggested that new TILA Section 171(b)(4)(B), as implemented in § 226.55(b)(4)(ii), is the exclusive mechanism provided by Congress for obtaining a rate decrease if the increase is based on a default of more than 60 days. Consumer groups, on the other hand, supported proposed § 226.59(e) and the requirement that if the consumer fails to qualify for the cure under § 226.55(b)(4)(ii) by making six months of on-time payments, the reevaluation requirements in § 226.59 begin to apply.

The Board is adopting § 226.59(e) generally as proposed, with several technical changes for clarity. The Board believes that it is appropriate that a creditor review a consumer's account under § 226.59(a) after the statutory cure right expires if the consumer's rate has not been reduced. A consumer's credit risk or other factors might change after the cure period expires, warranting a rate reduction at that time. The Board further notes that it would create an anomalous result if new TILA Section 148 provided less protection in respect of a rate increase applicable to both existing balances and new transactions than for rate increases that are applicable only to new transactions.

59(f) Termination of Obligation to Review Factors

TILA Section 148 does not expressly state when the obligation to review factors and determine whether to reduce the annual percentage rate applicable to a consumer's credit card account terminates. Proposed § 226.59(f)(1) and (f)(2) provided that the obligation to review factors under § 226.59(a) ceases to apply if the issuer reduces the annual percentage rate to a rate equal to or less than the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a rate equal to or less than a variable rate determined by the same index and margin that applied prior the increase. Commenters generally supported this aspect of the proposal. Accordingly, § 226.59(f)(1) and (f)(2) are adopted as proposed.

In the supplementary information to the March 2010 Regulation Z Proposal, the Board noted that proposed § 226.59 could require card issuers to review the annual percentage rates applicable to certain credit card accounts for an extended period of time. Under the proposed rule, an issuer would be required to continue to review a consumer's account each six months unless and until the rate is reduced to the rate in effect prior to the increase. In some circumstances, this could mean that the review required by § 226.59(a) would need to occur each six months for an indefinite period. The Board solicited comment on whether the obligation to review the rate applicable to a consumer's account should terminate after some specific time period elapses following the initial increase, for example after five years. The Board also solicited comment on whether there is significant benefit to consumers from requiring card issuers to continue reviewing factors under § 226.59 even after an extended period of time.

Many issuers and several industry trade associations commented on proposed § 226.59(f). Industry commenters stated that the Board should not require that rate increases be reviewed indefinitely, and indicated that requiring periodic reviews for an indefinite period would increase the cost and complexity associated with compliance and compliance examinations. Industry commenters also indicated that the consumer benefit of requiring rate reviews to continue indefinitely is questionable, particularly given that the costs associated with ongoing reviews would be passed on to consumers in the form of higher fees and rates and more closed accounts. Most issuers requested a specific time limit for the review process. The time periods suggested by commenters ranged from one year to five years after the rate increase. Most issuers advocated a review period of two or three years. Other industry commenters stated that the obligation to review the account should terminate on the date when the account is at the same pricing offered to new accounts with comparable risk profiles.

Consumer groups, on the other hand, urged the Board not to limit the review obligation under § 226.59 to five years or any other time frame. These commenters noted that accounts are constantly reviewed as a matter of business practice to determine whether to increase a consumer's rate. These commenters also noted that changes in economic conditions or a consumer's creditworthiness can occur over an extended period, in some cases greater than five years, and that the Credit Card Act intended for consumers' accounts to be reevaluated when such factors change regardless of how much time has elapsed since the initial rate increase.

The Board is not adopting a specific time limit for the review obligation under § 226.59. New TILA Section 148 does not expressly create such a time limit. The Board believes that creating such a time limit is not appropriate, because in some cases it may be beneficial to a consumer to have his or her rate reevaluated when market conditions change or the consumer's creditworthiness improves, even if a number of years have elapsed since the rate increase initially giving rise to the review requirement. The Board also believes that many issuers will implement automated systems to perform the periodic reevaluation of rate increases and, accordingly, once these systems are in place, there should not be undue burden associated with the ongoing review of accounts subject to § 226.59.

The Board also believes that it is inappropriate for the review requirement to automatically terminate when the account is at the same pricing offered to new accounts with comparable risk profiles. Issuers that perform the review under § 226.59(a) by considering the factors they use to determine the rates applicable to new accounts under § 226.59(d) will generally be required to adjust the rate based on the review so that it is comparable to the rate offered to similarly situated new consumers. Therefore, if § 226.59(f) permitted the review requirement to terminate when the account is at the same pricing offered to new accounts with comparable risk profiles, a consumer would only receive one six-month review before the requirement terminated. The Board does not believe that this is consistent with the intent of new TILA Section 148, which contemplates ongoing reviews.

The Board acknowledges that this may create seemingly anomalous results. For example, in year one Consumer A may open a credit card account with a rate applicable to purchases of 10%. Due to a change in market conditions, that consumer's rate may be increased in year three to 15%, to the extent permitted by § 226.55. A similarly situated consumer, Consumer B, who applies for credit in year three may also receive a rate on purchases of 15%. The issuer would be required to perform periodic reviews of the rate increase on Consumer A's account. However, Consumer B's account, which also has a 15% rate on purchases, would not be subject to the review requirement. However, the Board believes that this is consistent with new TILA Section 148, which requires that periodic reviews be conducted only if there is a rate increase. Consumer A applied for an account with a 10% rate, so the rate of 15% represents an increase over the initial terms to which the consumer agreed, notwithstanding the fact that Consumer A would receive a

15% rate if applying for a new credit card with the issuer. Consumer B, on the other hand, applied for and received a card with a rate of 15%.

One issuer asked the Board for clarification regarding the applicability of §226.59(f) to promotional rates that are increased due to a consumer's violation of the account terms. This commenter stated that if a promotional rate has been increased to a penalty rate[61] and the promotional period has subsequently expired, a card issuer should be required to review the penalty rate increase only until the rate is reduced to the standard rate that would have applied upon expiration of the promotion. Other commenters asked the Board more generally to exempt the loss of promotional rates due to violations of the account terms from the requirements of § 226.59. Some of these commenters noted particular concern regarding loss of long-term promotional rates between January 1, 2009 and February 22, 2010, which occurred before the limitations in § 226.55 on the loss of a promotional rate became effective.

The final rule does not exempt the loss of a promotional rate from the requirements of § 226.59. The Board believes that such an exemption would be inappropriate, for several reasons. First, new TILA Section 148 covers all rate increases, including those due to changes in the consumer's creditworthiness or other factors. The Board believes that a loss of a promotional rate due to a violation of the contract terms is properly characterized as a rate increase based on the consumer's creditworthiness or other factors relevant to that individual consumer and therefore is covered by the statute. In addition, it would be difficult to distinguish by regulation between promotional rates and other types of stepped-rate arrangements. For example, an issuer might offer a consumer a 5% rate on purchases for 18 months, after which the rate on purchases will

[61] See § 226.55 for limitations on the revocation of promotional rates.

increase to 15%. In contrast, an issuer might offer a consumer a 10% rate on purchases for year one, a 15% rate for year two, and a 20% rate thereafter. It is difficult to identify a principled rationale for distinguishing between these scenarios, and the Board believes that it is appropriate for a review requirement to apply whenever a temporary reduced rate is increased due to a consumer's violation of the contract terms.

The Board also believes that coverage of the loss of a promotional rate is consistent with the purposes of new TILA Section 148. In the case of a long-term promotional rate lasting several years, a consumer might commit a minor violation of the account terms, such as a payment that is one day late or a transaction that exceeds the credit limit by a small amount, resulting in the revocation of that promotional rate to the extent permitted by § 226.55. However, the consumer's creditworthiness might improve over the course of the remaining promotional period, such that it is appropriate to reinstate the promotional rate or otherwise decrease the rate applicable to the consumer's account for the remainder of the promotional period.

However, the Board does believe that it is appropriate to clarify the duration of the review requirement for temporary rates that have expired. Accordingly, the Board is adopting new comment 59(f)-1.i to clarify when the review requirement terminates under § 226.59(f). New comment 59(f)-1.i states that if an annual percentage rate is increased due to revocation of a temporary rate, § 226.59(a) requires that the card issuer periodically review the increased rate. The comment clarifies that in contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with § 226.9(c)(2)(v)(B), the review requirements in § 226.59(a) do not apply. If a temporary rate is revoked such that the requirements of § 226.59(a) apply,

§ 226.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred. Comment 59(f)-1.ii sets forth several illustrative examples.

The Board also is adopting a new comment 9(c)(2)(v)-12 to clarify the relationship between § 226.9(c)(2)(v)(B) and § 226.59 when a temporary rate has been revoked but subsequently is reinstated based on an issuer's review. The comment notes that § 226.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, § 226.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by § 226.59, a creditor reinstates a temporary rate that had been revoked, the comment states that a card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by § 226.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. The comment sets forth an illustrative example.

The Board believes that a card issuer that has provided disclosures of a temporary rate pursuant to § 226.9(c)(2)(v)(B) prior to commencement of the promotion has already notified the consumer of the length of the promotional period and the rate that will apply at the end of the promotional period. Accordingly, the Board does not believe that an additional notice is necessary.

59(g) Acquired Accounts

Proposed § 226.59(g) addressed existing credit card accounts acquired by a card issuer. Proposed § 226.59(g)(1) set forth the general rule that, except as provided in § 226.59(g)(2), the obligation to review changes in factors in § 226.59(a) applies even to such acquired accounts. Consistent with the rule in § 226.59(d), the proposal for acquired accounts permitted a card issuer to review either the factors that the original issuer considered when imposing the rate increase or the factors that the acquiring card issuer currently considers in determining the annual percentage rates applicable to its credit card accounts. The Board noted that in some cases, a card issuer may not know whether accounts that it acquired were subject to a rate increase by the prior issuer. In these cases, the proposal permitted a card issuer complying with § 226.59(g)(1) to review factors in accordance with § 226.59(a) for all of its acquired accounts rather than seeking to identify just those accounts to which a rate increase was applied.

Proposed § 226.59(g)(2) set forth an alternate means for compliance with § 226.59 for acquired accounts. Proposed § 226.59(g)(2) applied if a card issuer reviews all of the credit card accounts it acquires, as soon as reasonably practicable after the acquisition of such accounts, in accordance with the factors that it currently uses in determining the rates applicable to its credit card accounts. Following the card issuer's initial review of its acquired accounts, proposed § 226.59(g)(2)(i) provided that the card issuer generally must review changes in factors for those acquired accounts in accordance with § 226.59(a) only for rate increases imposed as a result of that review. Similarly, proposed § 226.59(g)(2)(ii) provided that the card issuer generally is not required to review changes in factors in accordance with § 226.59(a) for any rate increases made prior to the card issuer's acquisition of such accounts.

Consumer groups supported the coverage of acquired accounts in § 226.59(g)(1), but opposed the alternate means of compliance set forth in proposed § 226.59(g)(2). These commenters stated that an issuer should be able to obtain information regarding past rate increases when it acquires a portfolio of accounts. These commenters believe that the rule should encourage the retention of information about rate increases rather than creating an alternative means of compliance.

One issuer opposed the coverage of acquired accounts in § 226.59(g)(1). This commenter stated that imposing requirements to reevaluate the rates on acquired accounts could have the unintended consequence of chilling the market for portfolio acquisitions. The commenter noted that disclosure of the information necessary to enable an acquiring issuer to conduct reevaluations of rate increases in accordance with § 226.59 could require the selling issuer to reveal proprietary information to a competitor. This commenter stated that the alternative means of compliance in proposed § 226.59(g)(2) is not sufficient to address the issue, because it could result in rate decrease after acquisition. The issuer urged the Board to clarify that accounts acquired from an unaffiliated issuer may be treated like new accounts and rates do not need to be evaluated unless and until the acquiring issuer increases the rate.

Other industry commenters supported the alternative means of compliance in proposed § 226.59(g)(2). These commenters stated that it is unlikely that issuers will have sufficient information about the selling issuer's pricing practices to perform the evaluation based on the factors used by the seller. These commenters noted that in many cases, accounts are being sold because of problems with the selling issuer's underwriting. In addition to being burdensome, these commenters stated that compelling the acquirer to rely on the same factors used by the seller could have the anomalous result of requiring the acquirer to rely on flawed underwriting models or factors.

In addition to the general rule for the alternate means of compliance set forth in § 226.59(g)(2)(i) and (g)(2)(ii), the Board proposed a new § 226.59(g)(2)(iii), which stated that if as a result of the card issuer's review, an account is subject to, or continues to be subject to, an increased rate as a penalty or due to the consumer's delinquency or default, the requirements to review the account under § 226.59(a) would apply. The Board noted that penalty rates are often much higher than the standard rates that apply to consumers' credit card accounts and that the imposition of a penalty rate for an extended period of time can be very costly to a consumer. Accordingly, the requirements to review accounts under proposed § 226.59(a) applied if a card issuer imposes, or continues to impose, a penalty rate on an acquired account. Proposed comment 59(g)(2)-2 set forth an example of the application of § 226.59(g)(2)(iii) when a penalty rate is imposed on an acquired account. The Board received no comments on this aspect of the proposal.

The Board is adopting § 226.59(g) generally as proposed, with several technical and wording changes to conform to the requirements of § 226.59(a) and for clarity. Section 226.59(g)(1) has been revised from the proposal to state that, except as provided in § 226.59(g)(2), § 226.59 applies to credit card accounts that have been acquired by the card issuer from another card issuer. Accordingly, an issuer that complies with § 226.59(g)(1) is subject to the guidance regarding factors in § 226.59(d). Section 226.59(g)(1) clarifies, consistent with the proposal, that a card issuer that complies with § 226.59 by reviewing the factors described in paragraph (d)(1)(i) must review the factors considered by the card issuer from which it acquired the accounts in connection with the rate increase. However, consistent with § 226.59(d)(1)(ii), an issuer may, in the alternative, consider the factors that the issuer currently considers when determining the rates applicable to similar new credit card accounts. The Board continues to believe that permitting an issuer to reevaluate acquired accounts using its own factors is appropriate because a card issuer may not have full information regarding rate increases imposed by the prior issuer.

The Board notes that the special rule for certain rate increases imposed between January 1, 2009 and February 21, 2010, which is set forth in § 226.59(d)(2), generally applies to acquired accounts. Accordingly, the Board is adopting a new comment 59(g)(1)-1 to clarify the application of § 226.59(d)(2) to acquired accounts. The comment states that if a card issuer acquires accounts on which a rate increase was imposed between January 1, 2009 and February 21, 2010 that was not based solely upon consumer-specific factors, the acquiring card issuer must consider the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts, if it conducts either or both of the first two reviews of such accounts that are required after August 22, 2010 under § 226.59(a).

For example, assume that card issuer A increased the rates applicable to all of its credit card accounts from 15% to 20%, not due to consumer-specific factors, on June 1, 2009. Assume further that card issuer B acquired card issuer A's portfolio of accounts on January 1, 2010. When conducting the first two reviews of such accounts after August 22, 2010, card issuer B must consider the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts.

In the alternative, assume that card issuer A increased the rates applicable to all of its credit card accounts under an open-end (not home-secured) consumer credit plan, not due to consumer-specific factors, on June 1, 2009. Assume that card issuer A conducts the first two reviews of such accounts in accordance with § 226.59(a) and (d)(2) on January 1, 2011 and July 1, 2011 but, based on those reviews, is not required to decrease the rate. Assume that card issuer B acquires card issuer A's portfolio of accounts on August 1, 2011. Because the first two reviews of the acquired accounts were completed by card issuer A, § 226.59(d)(2) does not apply to subsequent rate reevaluations conducted by card issuer B.

The final rule retains the alternative means of compliance for acquired accounts in § 226.59(g)(2). The Board believes that this alternative means of compliance is more appropriate than an exception for acquired accounts, because coverage of acquired accounts is consistent with the purposes of new TILA Section 148. If a card issuer reviews all of the accounts that it acquires in accordance with the factors that it currently uses in determining the rates applicable to its new credit card accounts, this will ensure that acquired accounts are subject to the same rates that would apply if the consumer opened a new credit card account with the acquiring issuer. The Board believes that this will promote fair pricing of acquired accounts. If the card issuer raises the rate applicable to a consumer's account as a result of that review, it will have full information about the rate that applied prior to that increase and therefore the requirements of § 226.59(a) would apply with regard to that rate increase.

The Board notes that any rate increases the acquiring card issuer makes as a result of its review pursuant to § 226.59(g)(2) are subject to the substantive and notice requirements regarding rate increases in §§ 226.9 and 226.55. Consistent with the proposal, § 226.59(g)(2) of the final rule contains an express cross-reference to those sections.

Proposed comments 59(g)(2)-1 and 59(g)(2)-2 set forth examples of the alternative means of compliance in § 226.59(g)(2). The Board received no significant comment on these examples, which are adopted generally as proposed, with several technical changes to conform to the requirements of § 226.59(a) of the final rule.

In the proposal, the Board solicited comment on whether additional guidance is necessary regarding the requirement in § 226.59(g)(2) that the review of acquired accounts occur "as soon as reasonably practicable" after the acquisition of those accounts. One issuer commented that "as soon as reasonably practicable" should permit for a transition period of up to one year. This issuer stated that acquired accounts often have differences in systems, must be migrated to new vendors and processors, and must be adapted to the acquiring issuer's underwriting policies. One other issuer stated that the time in which the acquirer must conduct a reevaluation should be measured from the date of conversion to the acquiring issuer's platform, not the date of acquisition.

The Board understands that converting newly acquired accounts to the acquiring issuer's platform may be a time-consuming process, for the reasons noted by commenters. However, the Board believes that for consistency with new TILA Section 148, issuers using the alternate means of compliance must conduct their initial review no later than six months after the acquisition of a new portfolio. If this were not the case, the alternative means of compliance could in effect delay the review of a consumer's account for longer than the period established by statute. Accordingly, § 226.59(g)(2) of the final rule requires that an issuer using the alternative means of compliance review the accounts it acquires not later than six months after their acquisition.

59(h) Exceptions

March 2010 Regulation Z Proposal

The Board proposed two exceptions to the requirements of § 226.59, using its authority under TILA Section 105(a), which were set forth in proposed § 226.59(h). The first proposed exception applied to rate increases imposed when the requirement to reduce rates pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 et seq., ceases to apply. Specifically, 50 U.S.C. app. 527(a)(1) provides that "[a]n obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent. * * *" With respect to credit card accounts, this restriction applies during the period of military service. See 50 U.S.C. app. 527(a)(1)(B).[62] Proposed § 226.59(h)(1) stated that the requirements of § 226.59 do not apply to increases in an annual percentage rate that was previously decreased pursuant to 50 U.S.C. app. 527, provided that such a rate increase is made in accordance with § 226.55(b)(6). Section 226.55(b)(6) provides that the rate may be increased when the SCRA ceases to apply, but that the increased rate may not exceed the rate that applied prior to the decrease.

The second proposed exception applied to charged off accounts. Proposed § 226.59(h)(2) provided that the requirements of § 226.59 do not apply to accounts that the card issuer has charged off in accordance with loan-loss provisions. For safety and soundness reasons, card issuers charge off accounts that have serious delinquencies, typically of 180 days or six months. For such accounts, full payment is generally due immediately.

[62] 50 U.S.C. app. 527(a)(1)(B) applies to obligations or liabilities that do not consist of a mortgage, trust deed, or other security in the nature of a mortgage.

Commenters that addressed proposed § 226.59(h), including several issuers and a consumer group, supported these exceptions. Accordingly, the Board is adopting § 226.59(h)(1) and (h)(2) as proposed.

Other Exceptions

Industry commenters suggested that the Board adopt several additional exceptions to the reevaluation requirements of § 226.59. For example, one commenter urged the Board to adopt an exception from the review requirements for accounts with zero balances, even if there is subsequent use of the account. A second commenter requested an exception for rate increases that were not applied to outstanding balances or where the cardholder was given a right to opt out of the increase. A third comment letter stated that the final rule should include an exception for rate increases that were made for market conditions if a subsequent rate increase has been imposed on the account due to a violation of the account terms by the consumer.

The Board does not believe that these exceptions would be appropriate. The Board notes that new TILA Section 148 is intended to have a broad scope and to require periodic reviews of all types of rate increases, regardless of whether those increases can apply only to new transactions or to existing balances. Furthermore, the Board believes that TILA Section 148 requires that periodic reviews occur even if a consumer's account is subject to multiple or successive rate increases. In this case, the Board notes that an issuer could comply with § 226.59(a) and (d) by performing combined reviews of the increased rate or rates based on the factors it considers when determining the rates applicable to its new credit card accounts (subject to the timing rule in § 226.59(c)).

Appendix G – Open-End Model Forms and Clauses

For consistency with the substantive limitations in proposed § 226.52(b), the Board has amended the model language in Appendix G for the disclosure of late payment fees, over-the-limit fees, and returned payment fees.

Samples G-10(B) & G-10(C) – Applications and Solicitations Samples (Credit Cards) (§ 226.5a(b))

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

Samples G-17(B) & G-17(C) – Account-Opening Samples (§ 226.6(b)(2))

Sections 226.5a and 226.6 require creditors to disclose late payment fees, over-the-limit fees, and returned payment fees in, respectively, the application and solicitation disclosures and the account-opening disclosures. See §§ 226.5a(b)(9), (b)(10), (b)(12); §§ 226.6(b)(2)(viii), (b)(2)(ix), (b)(2)(xi). Model language is provided in Samples G-10(B), G-10(C), and G-10(E) and in G-17(B) and G-17(C). The model language generally reflects current fee practices by disclosing specific amounts for over-the-limit and returned payment fees, while disclosing a lower late payment fee if the account balance is less than or equal to a specified amount ($1,000 in the model forms) and a higher fee if the account balance is more than that amount.[63]

As discussed above, § 226.52(b) establishes new substantive restrictions on the amount of credit card penalty fees, including late payment fees, over-the-limit fees, and returned payment fees. Accordingly, for consistency with § 226.52(b), the Board has amended the model language in Samples G-10(B) and G-10(C) and in G-17(B) and G-17(C) to disclose late payment fees, over-the-limit fees, and returned payment fees as "up to $35." In this model language, $35 represents the maximum fee under the safe harbors

[63] Specifically, the model language in Samples G-10(B), G-10(C), G-17(B), and G-17(C) disclosed the late payment fee as follows: "$29 if balance is less than or equal to $1,000; $35 if balance is more than $1,000."

in § 226.52(b)(1)(ii)(A)-(B). Card issuers that set their fees based on a cost analysis pursuant to § 226.52(b)(1)(i) would instead disclose the dollar amount that represents a reasonable proportion of the total costs incurred by the issuer as a result of the type of violation. However, consistent with the safe harbor for charge cards in § 226.52(b)(1)(ii)(C), the Board has amended G-10(E) to disclose the late payment fee as: "Up to $35. If you do not pay for two consecutive billing cycles, your fee will be $35 or 3% of the past due amount, whichever is greater."

The Board recognizes that, because the maximum safe harbor fee in § 226.52(b)(1)(ii)(B) only applies when a violation occurs again during the six billing cycles following the initial violation, this disclosure overstates the amount of the penalty fee that will be imposed for the initial violation. For example, an issuer utilizing the safe harbors in § 226.52(b)(1)(ii)(A)-(B) would disclose its late payment fee as "up to $35," even though § 226.52(b)(1)(i)(A) would only permit the card issuer to impose a $25 fee for the first late payment. Nevertheless, a consumer who incorrectly assumes that a $35 penalty fee will be imposed for all violations will not be harmed if – when a violation actually occurs – a lower penalty fee is imposed. Furthermore, disclosing the highest possible penalty fee under the safe harbors in § 226.52(b)(1)(ii)(A)-(B) may deter some consumers from violating the terms or other requirements of an account, which would be consistent with new TILA Section 149(c)(2).

Commenters generally supported this approach, although some expressed concern that consumers would receive incomplete information about how penalty fees are calculated. The Board shares this concern. However, it is unclear whether providing additional detail would increase the possibility of consumer confusion without substantially improving the accuracy of the model disclosures. Nevertheless, the Board notes that an "up to" disclosure is not the only means of accurately disclosing penalty fees in a manner that is substantially similar to the applicable tables in G-10 or G-17 of appendix G.

For example, as discussed above with respect to § 226.7, penalty fees may be accurately disclosed as a range under certain circumstances. Specifically, disclosing the late payment fee as a range from $25 to $35 would be accurate if the issuer utilizes the safe harbors in § 226.52(b)(1)(ii)(A)-(B) and the issuer's minimum payment formula set a minimum payment amount of $25 or higher. Furthermore, because the dollar amount associated with a returned payment for purposes of § 226.52(b)(2)(i) is also the relevant minimum payment, the same range could also accurately describe the returned payment fee in these circumstances. Similarly, a card issuer that complies with the safe harbors in § 226.52(b)(1)(ii)(A)-(B) could accurately disclose its over-the-limit fee as a range from $25 to $35 if the issuer chooses not to impose an over-the-limit fee when the total amount of credit extended in excess of the credit limit is less than $25. In addition, a card issuer could use the same range to accurately describe a declined access check fee if the issuer chose not to impose a fee unless the amount of the access check is $25 or higher.

The Board also notes that, for purposes of §§ 226.5a and 226.6, a card issuer is not precluded from disclosing both the $25 and $35 safe harbor amounts in § 226.52(b)(1)(ii)(A)-(B), provided the disclosure accurately describes the circumstances under which each amount may be imposed. Furthermore, as noted above, the Board previously adopted model language disclosing a lower late payment fee if the account balance is less than or equal to a specified amount and a higher fee if the account balance is more than that amount. This model language reflected the Board's understanding of fee practices prior to enactment of the Credit Card Act in general and new TILA § 149 in particular. The Board has not included similar model language in this final rule because it is unclear whether card issuers will continue to impose different penalty fee amounts based on the account balance. However, a card issuer that does so consistent with the limitations in § 226.52(b) may disclose the amounts in the applicable tables consistent with §§ 226.5a and 226.6.

Samples G-18(B), G-18(D), G-18(F), and G-18(G) – Periodic Statement Forms (§ 226.7(b))

As noted above, § 226.7(b)(11)(i)(B) requires cards issuers to disclose the amount of any late payment fee and any increased rate that may be imposed on the account as a result of a late payment. Currently, the model language in Sample G-18(B) states: "Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%." This language is restated in Samples G-18(D), G-18(F), and G-18(G). Consistent with the amendments to Samples G-10(B), G-10(C), G-17(B), and G-17(C), the Board is amending the late payment warning in Samples G-18(B), G-18(D), G-18(F), and G-18(G) to read as follows: "If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $35 and your APRs may be increased up to the Penalty APR of 28.99%."[64]

[64] The Board notes that no model language is required for charge card accounts because § 226.7(b)(11) does not apply to such accounts. See § 226.7(b)(11)(ii)(A).

Sample G-21 – Change-in-Terms Sample (Increase in Fees) (§ 226.9(c)(2))

The Board is amending the model language in Sample G-21 disclosing a change in a late payment fee for consistency with the amendments to Samples G-10(B), G-10(C), G-17(B), and G-17(C).

Model Form G-25(A) – Consent Form for Over-the-Limit Transactions (§ 226.56)

Model Form G-25(B) – Revocation Notice for Periodic Statement Regarding Over-the-Limit Transactions (§ 226.56)

As noted above, § 226.56(e)(1)(i) provides that, in the notice informing consumers that they must affirmatively consent (or opt in) to the card issuer's payment of over-the-limit transactions, the card issuer must disclose the dollar amount of any fees or charges assessed by the issuer on a consumer's account for an over-the-limit transaction. Model language is provided in Model Forms G-25(A) and G-25(B). For consistency with § 226.52(b) and the amendments to Samples G-10(B), G-10(C), G-17(B), and G-17(C) discussed above, the Board is revising Model Forms G-25(A) and G-25(B) to disclose the amount of the over-the-limit fee as "up to $35."

V. Mandatory Compliance Dates

A. General mandatory compliance date. The consumer protections in new TILA Sections 148 and 149 go into effect on August 22, 2010. See new TILA Section 148(d); new TILA Section 149(b). Accordingly, the final rule is effective August 22, 2010. In addition, the mandatory compliance date for the amendments to §§ 226.9, 226.52, and 226.59 and the amendments to Model Forms G-20 and G-22 is August 22, 2010. The amendments to the change-in-terms disclosures in Model Forms G-18(F) and G-18(G) also have a mandatory compliance date of August 22, 2010. These amendments implement the statutory requirements in new TILA Sections 148 and 149.

B. Prospective application of new rules. The final rule is prospective in application. The following paragraphs set forth additional guidance and examples as to how a creditor must comply with the final rule by the relevant mandatory compliance date.

C. Special mandatory compliance date for amendments to penalty fee disclosures. The mandatory compliance date for the amendments to the penalty fee disclosures in §§ 226.5a, 226.6, 226.7, and 226.56 and in Model Forms G-10(B), G-10(C), G-10(E), G-17(B), G-17(C), G-18(B), G-18(D), G-18(F), G-18(G), G-21, G-25(A), and G-25(B) is December 1, 2010. Although card issuers may not charge late payment fees, returned payment fees, or over-the-limit fees that are inconsistent with § 226.52(b) after August 22, 2010, the Board understands that it may not be possible for some card issuers to revise the disclosures for such fees prior to August 22. Accordingly, the Board has established a mandatory compliance date of December 1, 2010 for the amendments to the penalty fee disclosure requirements.

Until December 1, 2010, a card issuer complies with §§ 226.5a, 226.6, 226.7, and 226.56 if it discloses an amount for a late payment fee, returned payment fee, over-the-limit fee, or other penalty fee that exceeds the amount permitted by § 226.52(b). For example, a card issuer that imposed a late payment fee of $39 prior to August 22, 2010 may continue to disclose the amount of its late payment fee as $39 until December 1, 2010, even if – consistent with the safe harbors in § 226.52(b)(1)(ii) – the card issuer does not actually impose a fee that exceeds $35. However, the card issuer may begin to disclose the amount of the late payment fee as “up to $35” or otherwise comply with the amendments to §§ 226.5a, 226.6, 226.7, and 226.56 prior to December 1, 2010. Additional guidance and examples as to how a creditor must comply with the final rule are provided below.

The Board recognizes that, for a period of time, some consumers may receive disclosures containing fee amounts that are inconsistent with § 226.52(b). However, a consumer who is told, for example, that a $39 penalty fee will be imposed for late payments will not be harmed if – when he or she pays late – a lower penalty fee is imposed.

D. Tabular summaries that accompany applications or solicitations (§ 226.5a). Credit and charge card applications provided or made available to consumers on or after December 1, 2010 must comply with the final rule. For example, if a direct-mail application or solicitation is mailed to a consumer on November 30, 2010, it is not required to comply with the new requirements, even if the consumer does not receive it until December 7, 2010. If a direct-mail application or solicitation is mailed to consumers on or after December 1, 2010, however, it must comply with the final rule. If a card issuer makes an application or solicitation available to the general public, such as "take-one" applications, any new applications or solicitations issued by the card issuer on or after December 1, 2010 must comply with the new rule. However, if a card issuer issues an application or solicitation by making it available to the public prior to December 1, 2010, for example by restocking an in-store display of "take-one" applications on November 15, 2010, those applications need not comply with the new rule, even if a consumer may pick up one of the applications from the display on or after

December 1, 2010. Any "take-one" applications that the card issuer uses to restock the display on or after December 1, 2010, however, must comply with the final rule.

E. Account-opening disclosures (§ 226.6). Account-opening disclosures furnished on or after December 1, 2010 must comply with the final rule. The relevant date for purposes of this requirement is the date on which the disclosures are furnished, not when the consumer applies for the account. For example, if a consumer applies for an account on November 30, 2010, but the account-opening disclosures are not mailed until December 2, 2010, those disclosures must comply with the final rule. In addition, if the disclosures are furnished by mail, the relevant date is the day on which the disclosures were sent, not the date on which the consumer receives the disclosures. Thus, if a creditor mails the account-opening disclosures on November 30, 2010, even if the consumer receives those disclosures on December 7, 2010, the disclosures are not required to comply with the final rule.

F. Periodic statements (§ 226.7). Periodic statements mailed or delivered on or after December 1, 2010 must comply with the final rule's revised penalty fee disclosures. For example, if a card issuer mails a periodic statement to the consumer on November 30, 2010, that statement is not required to comply with the final rule's revised penalty fee disclosures, even if the consumer does not receive the statement until December 7, 2010. However, as discussed below, if the periodic statement contains a notice of a rate increase, the requirements of § 226.9(c)(2)(iv)(A)(8) and (g)(3)(i)(A)(6) of the final rule apply to that notice if the periodic statement is mailed on or after August 22, 2010.

G. Subsequent disclosure requirements (§ 226.9).

Notice of rate increases (§ 226.9(c) and (g)). Sections § 226.9(c)(2)(iv)(A)(8) and (g)(3)(i)(A)(6) of the final rule require that notices disclosing rate increases for credit card accounts under an open-end (not home-secured) consumer credit plan state no more than four principal reasons for the increase. The requirements of § 226.9(c)(2)(iv)(A)(8) and (g)(3)(i)(A)(6) apply to notices of rate increases mailed or delivered on or after August 22, 2010.

Changes necessary to comply with final rule (§ 226.9(c)). The Board understands that, in order to comply with §§ 226.52(b) and 226.59 by August 22, 2010, card issuers may have to make changes to the account terms set forth in a consumer's credit card agreement or similar legal documents. Card issuers should notify consumers of such changes as soon as reasonably practicable. However, the Board understands that, given the amount of time between issuance of this final rule and the statutory effective date, it may not be possible for some card issuers to comply with the provision in § 226.9(c)(2) stating that any required notice must be provided 45 days in advance of a change that is effective August 22. In these circumstances, the card issuer must comply with the applicable substantive provisions set forth in §§ 226.52(b) and 226.59 on August 22, even if the terms of the account have not been amended consistent with § 226.9(c)(2). Otherwise, the notice requirements in § 226.9(c)(2) could permit card issuers to continue to engage in practices that are inconsistent with §§ 226.52(b) and 226.59 after August 22, which would not be consistent with Congress' intent.

For example, in order to comply with § 226.52(b), card issuers may have to change the terms governing the imposition of fees for violating those terms or other requirements of the account. If the change involves a reduction in the amount of the fee, § 226.9(c)(2)(v)(A) provides that no notice is required under § 226.9(c) (although, as discussed below, notice may be required under § 226.9(e)). However, if a change does not involve a reduction in a fee and a card issuer provides a notice of the change on July 10, 2010, § 226.9(c)(2) technically prohibits the issuer from applying those changes to the account until August 24, 2010. In these circumstances, notwithstanding the 45-day notice requirement in § 226.9(c)(2), the card issuer cannot impose a penalty fee that is inconsistent with § 226.52(b) on or after August 22, 2010.

For these reasons, if § 226.9(c)(2) requires a card issuer to provide notice of a change that is necessary to comply with this final rule, the card issuer is not required to provide that notice 45 days before the effective date of the change. Furthermore, because it would not be appropriate to permit consumers to reject a change that is necessary to comply with this final rule, card issuers are not required to provide consumers with the right to reject pursuant to § 226.9(h) in these circumstances. Additional guidance regarding changes necessary to comply with § 226.52(b) is provided below.

Renewal notices (§ 226.9(e)). As amended by the February 2010 Regulation Z Rule, § 226.9(e), in part, requires card issuers to provide a notice at least 30 days prior to renewal of a credit or charge card if the card issuer has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the cardholder. The Board is aware that as creditors implement changes to their systems and pricing structures to comply with §§ 226.52(b) and 226.59, they may make changes to terms required to be disclosed under § 226.6(b)(1) and (b)(2) for which advance notice is not required under § 226.9(c)(2) or (g). For example, a creditor may decrease its penalty fees to comply with § 226.52(b) or may change its contractual provisions regarding penalty pricing in order to facilitate compliance with § 226.59. To the extent that these changes result in the reduction of finance or other charges, § 226.9(c)(2)(v)(A) provides that advance notice is not required. However, such changes may give rise to the requirement to provide disclosures under § 226.9(e) prior to the scheduled renewal of the card.

The Board understands that an issuer's credit or charge card accounts may renew on a rolling basis, and that, given the short compliance period for this final rule, providing the notice under § 226.9(e) 30 days in advance of renewal may pose significant operational issues for issuers that are making changes to comply or facilitate compliance with new §§ 226.52(b) or 226.59. Accordingly, for a brief transition period after the effective date of this final rule, a card issuer that makes changes to terms required to be disclosed under § 226.6(b)(1) and (b)(2) that are not otherwise required to be disclosed in advance under § 226.9(c) or (g) in order to comply or facilitate compliance with 226.52(b) or 226.59 may provide the notice under § 226.9(e) as soon as reasonably practicable after such changes become effective. The Board understands that in some cases this will mean that a consumer will receive the notice required under § 226.9(e) less than 30 days before, or even shortly after, the renewal of the account.

This transition guidance is intended to apply only in those circumstances where the renewal notice is required because of changes to terms required to be disclosed under § 226.6(b)(1) or (b)(2) that have not previously been disclosed to the consumer. If the card issuer imposes an annual or other periodic fee for renewal, § 226.9(e) requires that the renewal notice be mailed or delivered at least 30 days or one billing cycle, whichever is less, before the mailing or delivery of the periodic statement on which any renewal fee is initially charged to the account.

The Board understands that some card issuers may both (1) impose an annual or other periodic fee for renewal and (2) make changes to terms required to be disclosed under § 226.6(b)(1) or (b)(2), in order to comply or facilitate compliance with §§ 226.52(b) or 226.59, that have not previously been disclosed to the consumer. In these circumstances, the notice required by § 226.9(e) must be mailed or delivered at least 30 days or one billing cycle, whichever is less, before the mailing or delivery of the periodic statement on which any renewal fee is initially charged to the account. The Board understands that, for a brief transition period, it may be operationally difficult or impossible for issuers to disclose changes to terms that were made to comply or facilitate compliance with §§ 226.52(b) or 226.59 in such a § 226.9(e) notice. In these circumstances, a card issuer may disclose the changes made to comply with or facilitate compliance with §§ 226.52(b) or 226.59 in the next § 226.9(e) notice that it provides for a subsequent renewal of the account.

H. Limitations on credit card penalty fees (§ 226.52(b)).

Generally. The effective date for new TILA Section 149 is August 22, 2010. Accordingly, card issuers must comply with § 226.52(b) beginning on August 22, 2010. However, unlike new TILA Section 148 (which expressly applies to rate increases that occurred prior to its statutory effective date), nothing in new TILA Section 149 indicates that Congress intended the “reasonable and proportional” standard to apply retroactively. Accordingly, § 226.52(b) does not apply to fees imposed prior to August 22, 2010.

Furthermore, the Board notes that this final rule should not be construed as suggesting that penalty fees imposed prior to August 22, 2010 were unreasonable.

Fees based on costs (§ 226.52(b)(1)(i)). A card issuer that begins imposing penalty fees pursuant to § 226.52(b)(1)(i) on August 22, 2010 must have previously determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation.

Safe harbors (§ 226.52(b)(1)(ii)). The Board understands that some card issuers will not be able to perform the cost analysis required by § 226.52(b)(1)(i) prior to August 22, 2010 and will therefore be required to comply with the safe harbors in § 226.52(b)(1)(ii) for a period of time. In these circumstances, the card issuer may impose penalty fees that are consistent with the safe harbors in § 226.52(b)(1)(ii) beginning on August 22, 2010, even if corresponding amendments to the terms of the account have not yet been made consistent with the advance notice requirements in § 226.9(c)(2) (as applicable). Furthermore, because it would not be appropriate to permit consumers to reject changes to account terms that are consistent with the safe harbors in § 226.52(b)(1)(ii), card issuers are not required to provide consumers with the right to reject pursuant to § 226.9(h) in these circumstances.

If a card issuer utilizes the safe harbors in § 226.52(b)(1)(ii), the first penalty fee imposed on or after August 22, 2010 generally must comply with the $25 safe harbor in § 226.52(b)(1)(ii)(A). For example, if the required minimum periodic payment due on August 25 is late, the amount of the late payment fee cannot exceed $25, even if the payment due on July 25 was also late. As discussed above, the safe harbors in § 226.52(b)(1)(ii)(A)-(B) are designed to balance the statutory factors of cost, deterrence, and consumer conduct by limiting the fee for an initial violation to $25 while permitting an increased fee of $35 for additional violations of the same type during the next six billing cycles. Thus, it would be inconsistent with this purpose to permit a card issuer to impose a $35 penalty fee after August 22 based on a violation that occurred prior to August 22.

However, the safe harbor in § 226.52(b)(1)(ii)(C) is intended to permit charge card issuers to effectively manage seriously delinquent accounts. Thus, § 226.52(b)(1)(ii)(C) applies once the required payment for a charge card account has not been received for two or more consecutive billing cycles, even if the delinquency began prior to August 22, 2010. For example, assume that a charge card issuer requires payment of outstanding balances in full at the end of each billing cycle and that the billing cycles for the account begin on the first day of the month and end on the last day of the month. If the required payment due at the end of the July 2010 billing cycle has not been received by the end of the August 2010 billing cycle, § 226.52(b)(1)(ii)(C) permits the charge card issuer to impose a late payment fee that does not exceed 3% of the delinquent balance.

Closed account fees (§ 226.52(b)(2)(i)(B)(3)). Section 226.52(b)(2)(i)(B)(3) prohibits a card issuer from imposing a fee based on the closure or termination of an account. Comment 226.52(b)(2)(i)-6 clarifies that § 226.52(b)(2)(i)(B)(3) does not prohibit a card issuer from continuing to impose a periodic fee that was imposed before the account was closed or terminated. Similarly, to the extent that a permissible periodic fee was charged on a closed account prior to August 22, 2010, § 226.52(b)(2)(i)(B)(3) does not prohibit a card issuer from continuing to impose that fee with respect to that account after August 22 (although the card issuer is not permitted to increase the amount of the fee).

The Board notes that, effective February 22, 2010, § 226.55(d)(1) prohibited card issuers from imposing a periodic fee based solely on the balance on a closed account (such as a closed account fee) if that fee was not charged before the account was closed. See comment 55(d)-1. In other words, beginning on February 22, card issuers were no longer permitted to begin charging a periodic fee when an account with a balance was closed.

Accordingly, § 226.52(b)(2)(i)(B)(3) does not, for example, prohibit a card issuer that imposed a $10 monthly closed account fee on a specific account prior to August 22 from continuing to charge that $10 monthly fee after August 22. However, consistent with § 226.55(d)(1), the card issuer must have begin charging the $10 monthly fee to the account prior to February 22.

Multiple fees based on a single event or transaction (§ 226.52(b)(2)(ii)). Beginning on August 22, 2010, § 226.52(b)(2)(ii) prohibits card issuers from imposing more than one penalty fee based on a single event or transaction. However, § 226.52(b)(2)(ii) permits card issuers to comply with this prohibition by imposing no more than one penalty fee during a billing cycle. A card issuer that uses this method to comply with § 226.52(b)(2)(ii) is not required to determine whether multiple penalty fees were imposed during a billing cycle that begins prior to August 22, 2010.

I. Requirements for over-the-limit transactions (§ 226.56). Notices provided pursuant to § 226.56 on or after December 1, 2010 must comply with the final rule. For example, if a creditor mails an opt-in notice to a consumer on November 30, 2010, that notice is not required to comply with the final rule, even if the consumer does not receive the notice until December 7, 2010. However, if a card issuer mails an opt-in notice to a consumer on December 1, that notice must comply with the final rule.

J. Reevaluation of rate increases (§ 226.59). Section 226.59 generally requires that rate increases be reviewed in accordance with that section no less frequently than once every six months. As discussed in comment 59(c)-3, the review of annual percentage rates increased on or after January 1, 2009 and prior to August 22, 2010 must be completed prior to February 22, 2011. For annual percentage rates increased on or after August 22, 2010, any review required by § 226.59 must be completed within six months of the effective date of the increase.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) requires an agency to perform an initial and final regulatory flexibility analysis on the impact a rule is expected to have on small entities.

The Board received no significant comments addressing the initial regulatory flexibility analysis. Therefore, based on its analysis and for the reasons stated below, the Board has concluded that this final rule will have a significant economic impact on a substantial number of small entities. Accordingly, the Board has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

1. Statement of the need for, and objectives of, the final rule. The final rule implements new substantive requirements and updates to disclosure provisions in 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 final rule.

2. Summary of the significant issues raised by public comment in response to the Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments. As discussed above, the Board' initial regulatory flexibility analysis reached the preliminary conclusion that the proposed rule would have a significant economic impact on a substantial number of small entities. See 75 FR 12354-12355 (Mar. 15, 2010) The Board received no comments specifically addressing this analysis.

3. Small entities affected by the final rule. All creditors that offer credit card accounts under open-end (not home-secured) consumer credit plans are subject to the final rule. The Board is relying on the analysis in the January 2009 FTC Act Rule, in which the Board, the OTS, and the NCUA estimated that approximately 3,500 small entities offer credit card accounts. See 74 FR 5549-5550 (January 29, 2009). The Board acknowledges, however, that the total number of small entities likely to be affected by the final rule is unknown, in part because the estimate in the January 2009 FTC Act Rule does not include card issuers that are not banks, savings associations, or credit unions.

4. Recordkeeping, reporting, and compliance requirements. The final rule does not impose any new recordkeeping or reporting requirements. The final rule, however, imposes new compliance requirements. The compliance requirements of this final rule are described above in **IV. Section-by-Section Analysis**. The Board notes that the precise costs to small entities to conform their open-end credit disclosures to the final rule and the costs of updating their systems to comply with the rule are difficult to predict.

These costs 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 credit card accounts, the complexity of the terms of the credit card products that they offer, and the range of such product offerings.

Provisions Regarding Consumer Credit Card Accounts

This subsection summarizes several of the amendments to Regulation Z and their likely impact on small entities that offer open-end credit. More information regarding these and other changes can be found in **IV. Section-by-Section Analysis**.

Sections 226.5a and 226.6 require creditors to disclose late payment fees, over-the-limit fees, and returned payment fees in, respectively, the application and solicitation disclosures and the account-opening disclosures. For consistency with § 226.52(b) (discussed below), the final rule amends §§ 226.5a(a)(2)(iv) and 226.6(b)(1)(i) to require creditors (including creditors that are small entities) to use bold text when disclosing maximum limits on fees in the application and solicitation table and the account-opening table, respectively. Creditors that are small entities are already required to provide this information so the Board does not anticipate any significant additional burden on small entities by requiring the use of bold text. In order to reduce the burden on small entities, the Board has provided model forms which can be used to comply with the final rule.

Section 226.7(b)(11)(i)(B) generally requires card issuers (including issuers that are small entities) to disclose the amount of any late payment fee and any increased rate that may be imposed on the account as a result of a late payment. Previously, if a range of late payment fees could be assessed, § 226.7(b)(11)(i)(B) permitted card issuers to disclose the highest fee and, at the card issuer's option, an indication that the fee imposed could be lower (such as a disclosure that the late payment fee is "up to $35"). For consistency with § 226.52(b) (discussed below), the final rule amends § 226.7(b)(11)(i)(B) to clarify that it is no longer optional to disclose an indication that the late payment fee may be lower than the disclosed amount. However, § 226.7(b)(11)(i)(B) already requires card issuers to disclose late payment fee information on the periodic statement so the Board does not anticipate any significant additional burden on small entities. The Board also seeks to reduce the burden on small entities by providing model forms which can be used to ease compliance with the final rule.

Under the final rule, §§ 226.9(c)(2)(iv)(A)(8) and 226.9(g)(3)(i)(A)(6) generally require card issuers (including issuers that are small entities) to disclose no more than four reasons for an annual percentage rate increase in the notice required to be provided 45 days in advance of that increase. Although §§ 226.9(c) and (g) already require card issuers to provide 45 days' notice prior to an annual percentage rate increase, §§ 226.9(c)(2)(iv)(A)(8) and 226.9(g)(3)(i)(A)(6) may require some small entities to establish processes and alter their systems in order to comply with the provision. The cost of such change will depend on the size of the institution and the composition of its portfolio. In order to reduce the burden on small entities, the Board has provided model forms which can be used to comply with the final rule.

The final rule amends § 226.52 by creating a new § 226.52(b), which generally limits the dollar amount of penalty fees imposed by card issuers (including issuers that are small entities). Specifically, credit card penalty fees must be based on an analysis of the costs incurred by the issuer as a result of violations of the terms or other requirements of an account or on one of the safe harbors established by the final rule. In addition, § 226.52(b) prohibits penalty fees that exceed the dollar amount associated with the violation and certain types of penalty fees without an associated dollar amount. As discussed above, compliance with § 226.52(b) will require card issuers that are small entities to conform certain penalty fee disclosures already required under §§ 226.5a, 226.6, and 226.7.[65]

The final rule creates a new § 226.59, which generally requires card issuers (including issuers that are small entities) to reevaluate an increased annual percentage rates no less than every six months. In addition, § 226.59 requires card issuers (including issuers that are small entities) to reduce the annual percentage rate, if appropriate based on such reevaluation. Section 226.59 will require some small entities to establish processes and alter their systems in order to comply with the provision. The cost of such change will depend on the size of the institution and the composition of its portfolio. In addition, this provision will reduce revenue that some small entities derive from finance charges.

Accordingly, the Board believes that, in the aggregate, the provisions of its final rule will have a significant economic impact on a substantial number of small entities.

5. Other federal rules. The Board has not identified any federal rules that duplicate, overlap, or conflict with the Board's revisions to Regulation Z.

6. Significant alternatives to the final revisions. The provisions of the final rule implement the statutory requirements of the Credit Card Act that go into effect on

[65] In addition, compliance with § 226.52(b) will require card issuers that are small entities to revise the disclosure of over-the-limit fees in the notice provided pursuant to 226.56. In order to assist card issuers in complying with the final rule, the Board has revised the model language for these disclosures.

August 22, 2010. The Board sought to avoid imposing additional burden, while effectuating the statute in a manner that is beneficial to consumers. In particular, in order to reduce the burden of revising penalty fee disclosures, the Board has established a mandatory compliance date of December 1, 2010 for the amendments to §§ 226.5a, 226.6, 226.7, and 226.56. The Board did not receive any comment on any significant alternatives, consistent with the Credit Card Act, which would minimize impact of the final rule on small entities.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this final rule is found in 12 CFR part 226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100-0199.[66]

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. TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required, among other things, to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning

[66] In 2009, the information collection was re-titled - Reporting, Recordkeeping and Disclosure Requirements associated with Regulation Z (Truth in Lending) and Regulation AA (Unfair or Deceptive Acts or Practices).

billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home-equity plans. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other entities subject to Regulation Z. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation.

As discussed in **I. Background**, a notice of proposed rulemaking (NPR) was published in the **Federal Register** on March 15, 2010 (75 FR 12334). The comment period for the Board's preliminary PRA analysis expired on May 14, 2010. No comments specifically addressing the paperwork burden estimates were received; therefore, the estimates will remain unchanged as published in the NPR.

Under sections §§ 226.5a(a)(2)(iv) and 226.6(b)(1)(i), the use of bold text is required when disclosing maximum limits on fees in the application and solicitation table and the account-opening table, respectively. The Board anticipates that creditors will incorporate, with little change, the formatting change with the disclosures already required under §§ 226.5a(a)(2)(iv) and 226.6(b)(1)(i). In an effort to reduce burden, the Board has amended Appendix G-18 to provide guidance on complying with the final rule.

Under § 226.7(b)(11)(i)(B), a card issuer is required to disclose the amount of any late payment fee and any increased rate that may be imposed on the account as a result of a late payment. Previously, if a range of late payment fees could be assessed, § 226.7(b)(11)(i)(B) permitted card issuers to disclose the highest fee and, at the card issuer's option, an indication that the fee imposed could be lower (such as a disclosure that the late payment fee is "up to $35"). For consistency with § 226.52(b) (discussed below), the final rule amends § 226.7(b)(11)(i)(B) to clarify that it is no longer optional to disclose an indication that the late payment fee may be lower than the disclosed amount. The Board anticipates that card issuers, with little additional burden, will incorporate the final rule's disclosure requirement with the disclosures already required under § 226.7(b)(11)(i)(B). In an effort to reduce burden, the Board amends Appendix G-18 to provide guidance on an "up to" disclosure.

Under §§ 226.9(c)(2)(iv)(A)(8) and 226.9(g)(3)(i)(A)(6), a card issuer is required to disclose no more than four reasons for an annual percentage rate increase in the notice required to be provided 45 days in advance of that increase. The Board anticipates that card issuers, with little additional burden, will incorporate the final rule's disclosure requirement with the disclosures already required under § 226.9(c) and § 226.9(g). In an effort to reduce burden, the Board has amended Appendix G-18 to provide guidance on complying with the final rule.

Section 226.52(b) generally limits the dollar amount of penalty fees imposed by card issuers. Specifically, credit card penalty fees must be based on an analysis of the costs incurred by the issuer as a result of violations of the terms or other requirements of an account or on one of the safe harbors established by the final rule. In addition, § 226.52(b) prohibits penalty fees that exceed the dollar amount associated with the violation and certain types of penalty fees without an associated dollar amount. As discussed above, compliance with § 226.52(b) will require card issuers to conform certain penalty fee disclosures already required under §§ 226.5a, 226.6, and 226.7.[67]

The Board estimates that the final rule will impose a one-time increase in the total annual burden under Regulation Z. The 1,138 respondents will take, on average, 40 hours to update their systems to comply with the disclosure requirements addressed in this final rule. The total annual burden is estimated to increase by 45,520 hours, from 1,442,594 to 1,488,114 hours.[68]

The total one-time burden increase represents averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time

[67] In addition, compliance with § 226.52(b) will require card issuers that are small entities to revise the disclosure of over-the-limit fees in the notice provided pursuant to 226.56. In order to assist card issuers in complying with the final rule, the Board has revised the model language in Appendix G-18 for these disclosures.

[68] The burden estimate for this rulemaking does **not** include the burden addressing changes to implement the following provisions announced in separate rulemakings:

1. Closed-End Mortgages (Docket No. R-1366) (74 FR 43232).
2. Home-Equity Lines of Credit (Docket No. R-1367) (74 FR 43428).
3. Notification of the sale or transfer of mortgage loans (Docket No. R-1378) (74 FR 60143).

required to implement the changes adopted by the final rule for a given financial institution or entity may vary based on the size and complexity of the respondent.

The other federal financial agencies: the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15 U.S.C. 1607(a). These agencies are permitted, but are not required, to use the Board's burden estimation methodology. Using the Board's method, the total current estimated annual burden for the approximately 16,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA will be approximately 18,962,245 hours. The final rule will impose a one-time increase in the estimated annual burden for such institutions by 648,000 hours to 19,610,245 hours. The above estimates represent an average across all respondents; the Board expects variations between institutions based on their size, complexity, and practices.

The Board has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95-A, Board of Governors of the Federal Reserve System, Washington, DC

20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

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

Text of Interim Final Revisions

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

PART 226—TRUTH IN LENDING (REGULATION Z)

1. In § 226.5a, revise paragraph (a)(2)(iv) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) ***

(2) ***

(iv) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section, any introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section, any rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13) of this section must be disclosed in bold text. However, bold text shall not be used for: The amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

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2. In § 226.6, revise paragraph (b)(1)(i) to read as follows:

§ 226.6 Account-opening disclosures.

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(b) ***

(1) ***

(i) Highlighting. In the table, any annual percentage rate required to be disclosed pursuant to paragraph (b)(2)(i) of this section; any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section, any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F), and any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii) of this section must be disclosed in bold text. However, bold text shall not be used for: The amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

*****

3. In § 226.7, revise paragraph (b)(11)(i)(B) to read as follows:

§ 226.7 Periodic statement.

*****

(b) ***

(11) ***

(i) ***

(B) The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, the card issuer may state the range of fees, or the highest fee and an indication that the fee imposed could be lower. If the rate may be increased for more than one feature or balance, the card issuer may state the range of rates or the highest rate that could apply and at the issuer's option an indication that the rate imposed could be lower.

*****

4. In § 226.9, revise paragraphs (c)(2) and (g) to read as follows:

§ 226.9 Subsequent disclosure requirements.

*****

(c) ***

(2) <u>Rules affecting open-end (not home-secured) plans</u>. (i) <u>Changes where written advance notice is required</u>. (A) <u>General</u>. For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v) of this section, when a significant change in account terms as described in paragraph (c)(2)(ii) of this section is made to a term required to be disclosed under § 226.6(b)(3), (b)(4) or (b)(5) or the required minimum periodic payment is increased, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change. Increases in the

rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

(B) Changes agreed to by the consumer. 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 paragraph (c)(2)(i)(B) applies only 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. The following are not considered agreements between the consumer and the creditor for purposes of this paragraph (c)(2)(i)(B): 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); the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and the consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features.

(ii) Significant changes in account terms. For purposes of this section, a "significant change in account terms" means a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, or the acquisition of a security interest.

(iii) Charges not covered by § 226.6(b)(1) and (b)(2). Except as provided in paragraph (c)(2)(vi) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, 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. (A) Significant changes in account terms. If a creditor makes a significant change in account terms as described in paragraph (c)(2)(ii) of this section, the notice provided pursuant to paragraph (c)(2)(i) of this section must provide the following information:

(1) A summary of the changes made to terms required by § 226.6(b)(1) and (b)(2), a description of any increase in the required minimum periodic payment, and a description of any security interest being acquired by the creditor;

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

(3) For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to § 226.9(c)(2)(iv)(B), a statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(4) The date the changes will become effective;

(5) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice;

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

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

(8) If the change in terms being disclosed is an increase in an annual percentage rate for a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

(B) Right to reject for credit card accounts under an open-end (not home-secured) consumer credit plan. In addition to the disclosures in paragraph (c)(2)(iv)(A) of this section, if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must generally provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section. This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under § 226.52(b)(1)(i) or an adjustment to the safe harbors in § 226.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, a change in the balance computation method applicable to consumer's account necessary to comply with § 226.54, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that 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.

(C) Changes resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan. For a credit card account under an open-end (not home-secured) consumer credit plan:

(1) If the significant change required to be disclosed pursuant to paragraph (c)(2)(i) of this section is an increase in an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (c)(2)(i) of this section must state that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required

minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

(2) If the significant change required to be disclosed pursuant to paragraph (c)(2)(i) of this section is an increase in a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (c)(2)(i) of this section must also state the reason for the increase.

(D) Format requirements. (1) Tabular format. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must be in a tabular format (except for a summary of any increase in the required minimum periodic payment), with headings and format substantially similar to any of the account-opening tables found in G-17 in appendix G to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 226.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under § 226.6(b)(2).

(2) Notice included with periodic statement. If a notice required by paragraph (c)(2)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(1) of this section must be disclosed on the front of any page of the statement. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(2) through (c)(2)(iv)(A)(7) and, if applicable, paragraphs

(c)(2)(iv)(A)(8), (c)(2)(iv)(B), and (c)(2)(iv)(C) of this section, and be substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part.

(3) Notice provided separately from periodic statement. If a notice required by paragraph (c)(2)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(1) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(1) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(2) through (c)(2)(iv)(A)(7) and, if applicable, paragraphs (c)(2)(iv)(A)(8), (c)(2)(iv)(B), and (c)(2)(iv)(C), of this section, substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part.

(v) Notice not required. For open-end plans (other than home equity plans subject to the requirements of § 226.5b) a creditor is not required to provide notice under this section:

(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; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with paragraph (b)(3) of this section;

(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;

(2) The disclosure of the length of the period and the annual percentage rate that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate that applies during the specified period of time; and

(3) 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 or, if the rate disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this section was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to paragraph (c)(2)(v)(B)(1);

(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, a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii), or the required minimum periodic payment due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that:

(1) The annual percentage rate or fee or charge applicable to a category of transactions or the required minimum periodic payment following any such increase does not exceed the rate or fee or charge or required minimum periodic payment 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 disclosure of the terms of the arrangement (including any increases due to such completion or failure). This disclosure must generally be provided in writing. However, a creditor may provide the disclosure of the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.

(vi) Reduction of the credit limit. For open-end plans that are not subject to the requirements of § 226.5b, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit.

Notice shall be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.

*****

(g) Increase in rates due to delinquency or default or as a penalty. (1) Increases subject to this section. For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraph (g)(4) of this section, a creditor must provide a written notice to each consumer who may be affected when:

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

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

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

(3)(i) Disclosure requirements for rate increases. (A) General. 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:

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

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

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

(4) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied;

(5) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(6) For a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

(B) Rate increases resulting from failure to make minimum periodic payment within 60 days from due date. For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to § 226.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (g)(1) of this section must also state that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

(ii) Format requirements. (A) If a notice required by paragraph (g)(1) of this section is included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement.

(B) If a notice required by paragraph (g)(1) of this section is not included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(4) of this section.

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

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

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

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

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

(D) 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;

(E) A statement indicating to which balances the penalty rate may be applied; and

(F) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(ii) 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)(i)(B) of this section.

(iii) (A) If a notice provided pursuant to paragraph (g)(4)(i) of this section is included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement; or

(B) If a notice required by paragraph (g)(4)(i) of this section is not included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the reduction in credit limit may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(1) of this section.

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5. Section 226.52(b) is added to read as follows:

§ 226.52 Limitations on fees.

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(b) Limitations on penalty fees. A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with paragraphs (b)(1) and (b)(2) of this section.

(1) General rule. Except as provided in paragraph (b)(2) of this section, a card issuer may impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan if the dollar amount of the fee is consistent with either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) Fees based on costs. A card issuer may impose a fee for violating the terms or other requirements of an account if the card issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation. A card issuer must reevaluate this determination at least once every twelve months. If as a result of the reevaluation the card issuer determines that a lower fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer must begin imposing the lower fee within 45 days after completing the reevaluation. If as a result of the reevaluation the card issuer determines that a higher fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer may begin imposing the higher fee after complying with the notice requirements in § 226.9.

(ii) Safe harbors. A card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee does not exceed:

(A) For the first violation of a particular type, $25.00, adjusted annually by the Board to reflect changes in the Consumer Price Index;

(B) For an additional violation of the same type during the next six billing cycles, $35.00, adjusted annually by the Board to reflect changes in the Consumer Price Index; or

(C) When a card issuer has not received the required payment for two or more consecutive billing cycles for a charge card account that requires payment of outstanding balances in full at the end of each billing cycle, three percent of the delinquent balance.

(2) Prohibited fees. (i) Fees that exceed dollar amount associated with violation. (A) Generally. A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan that exceeds the dollar amount associated with the violation.

(B) No dollar amount associated with violation. A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. For purposes of paragraph (b)(2)(i) of this section, there is no dollar amount associated with the following violations:

(1) Transactions that the card issuer declines to authorize;

(2) Account inactivity; and

(3) The closure or termination of an account.

(ii) Multiple fees based on a single event or transaction. A card issuer must not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction. A card issuer may, at its option, comply with this prohibition by imposing no more than one fee for violating the terms or other requirements of an account during a billing cycle.

6. Section 226.59 is added to read as follows:

§ 226.59 Reevaluation of rate increases

(a) General rule. (1) Evaluation of increased rate. If a card issuer increases an annual percentage rate that applies to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, or increased such a rate on or after January 1, 2009, and 45 days' advance notice of the rate increase is required pursuant to § 226.9(c)(2) or (g), the card issuer must:

(i) Evaluate the factors described in paragraph (d) of this section; and

(ii) Based on its review of such factors, reduce the annual percentage rate applicable to the consumer's account, as appropriate.

(2) Rate reductions. (i) Timing. If a card issuer is required to reduce the rate applicable to an account pursuant to paragraph (a)(1) of this section, the card issuer must reduce the rate not later than 45 days after completion of the evaluation described in paragraph (a)(1).

(ii) Applicability of rate reduction. Any reduction in an annual percentage rate required pursuant to paragraph (a)(1) of this section shall apply to:

(A) Any outstanding balances to which the increased rate described in paragraph (a)(1) of this section has been applied; and

(B) New transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate.

(b) Policies and procedures. A card issuer must have reasonable written policies and procedures in place to conduct the review described in paragraph (a) of this section.

(c) Timing. A card issuer that is subject to paragraph (a) of this section must conduct the review described in paragraph (a)(1) of this section not less frequently than once every six months after the rate increase.

(d) Factors. (1) In general. Except as provided in paragraph (d)(2) of this section, a card issuer must review either:

(i) The factors on which the increase in an annual percentage rate was originally based; or

(ii) The factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan.

(2) Rate increases imposed between January 1, 2009 and February 21, 2010. For rate increases imposed between January 1, 2009 and February 21, 2010, an issuer must consider the factors described in paragraph (d)(1)(ii) when conducting the first two reviews required under paragraph (a) of this section, unless the rate increase subject to paragraph (a) of this section was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account.

(e) Rate increases subject to § 226.55(b)(4). If an issuer increases a rate applicable to a consumer's account pursuant to § 226.55(b)(4) based on the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date, the issuer is not required to perform the review described in paragraph (a) of this section prior to the sixth payment due date after the effective date of the increase. However, if the annual percentage rate applicable to the consumer's account is not reduced pursuant to § 226.55(b)(4)(ii), the card issuer must perform the review described in paragraph (a) of this section. The first such review must occur no later than six months after the sixth payment due following the effective date of the rate increase.

(f) Termination of obligation to review factors. The obligation to review factors described in paragraph (a) and (d) of this section ceases to apply:

(1) If the issuer reduces the annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase; or

(2) If the issuer reduces the annual percentage rate to a rate that is lower than the rate described in paragraph (f)(1) of this section.

(g) Acquired accounts. (1) General. Except as provided in paragraph (g)(2) of this section, this section applies to credit card accounts that have been acquired by the card issuer from another card issuer. A card issuer that complies with this section by reviewing the factors described in paragraph (d)(1)(i) must review the factors considered by the card issuer from which it acquired the accounts in connection with the rate increase.

(2) Review of acquired portfolio. If, not later than six months after the acquisition of such accounts, a card issuer reviews all of the credit card accounts it acquires in accordance with the factors that it currently considers in determining the rates applicable to its similar new credit card accounts:

(i) Except as provided in paragraph (g)(2)(iii), the card issuer is required to conduct reviews described in paragraph (a) of this section only for rate increases that are imposed as a result of its review under this paragraph. See §§ 226.9 and 226.55 for additional requirements regarding rate increases on acquired accounts.

(ii) Except as provided in paragraph (g)(2)(iii) of this section, the card issuer is not required to conduct reviews in accordance with paragraph (a) of this section for any rate increases made prior to the card issuer's acquisition of such accounts.

(iii) If as a result of the card issuer's review, an account is subject to, or continues to be subject to, an increased rate as a penalty, or due to the consumer's delinquency or default, the requirements of paragraph (a) of this section apply.

(h) Exceptions. (1) Servicemembers Civil Relief Act exception. The requirements of this section do not apply to increases in an annual percentage rate that was previously decreased pursuant to 50 U.S.C. app. 527, provided that such a rate increase is made in accordance with § 226.55(b)(6).

(2) Charged off accounts. The requirements of this section do not apply to accounts that the card issuer has charged off in accordance with loan-loss provisions.

7. Appendix G to part 226 is amended by revising Forms G-10(B), G-10(C), G-10(E), G-17(B), G-17(C), G-18(B), G-18(D), G-18(F), G-18(G), G-20, G-21, G-22, G-25(A), and G-25(B).

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

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G-10(B) Applications and Solicitations Sample (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** to **19.99%** when you open your account, based on your creditworthiness. After that, your APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
How to Avoid Paying Interest on Purchases	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to **$35**.
• Over-the-Credit Limit	Up to **$35**.
• Returned Payment	Up to **$35**.
Other Fees	
• Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See back for details.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)."

G-10(C) Applications and Solicitations (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%, 10.99%, or 12.99%** introductory APR for one year, based on your creditworthiness. After that, your APR will be **14.99%**. This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
How to Avoid Paying Interest on Purchases	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Set-up and Maintenance Fees	NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. For example, if you are assigned the minimum credit limit of $250, your initial available credit will be only about $209 (or about $204 if you choose to have an additional card).
• Annual Fee	**$20**
• Account Set-up Fee	**$20** (one-time fee)
• Participation Fee	**$12** annually ($1 per month)
• Additional Card Fee	**$5** annually (if applicable)
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to **$35**.
• Over-the-Credit Limit	Up to **$35**.
• Returned Payment	Up to **$35**.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)."

Loss of Introductory APR: We may end your introductory APR and apply the Penalty APR if you make a late payment.

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G-10(E) Applications and Solicitations Sample (Charge Cards)

Payment Information
All charges made on this charge card are due and payable when you receive your periodic statement.

Fees	
Annual Fee	**$50**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
Penalty Fees	
• Late Payment	Up to **$35**. If you do not pay for two consecutive billing cycles, your fee will be **$35** or **3%** of the past due amount, whichever is greater.
• Over-the-Credit Limit	Up to **$35**.
• Returned Payment	Up to **$35**.

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G-17(B) Account-Opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
Paying Interest	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to **$35**.
• Over-the-Credit Limit	Up to **$35**.
• Returned Payment	Up to **$35**.
Other Fees	
• Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See back for details.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G-17(C) Account-Opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** introductory APR for one year. After that, your APR will be **14.99%**. This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
Paying Interest	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Set-up and Maintenance Fees	NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. Based on your initial credit limit of $250, your initial available credit will be only about $209 (or about $204 if you choose to have an additional card). You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges.
• Annual Fee	**$20**
• Account Set-up Fee	**$20** (one-time fee)
• Participation Fee	**$12** annually ($1 per month)
• Additional Card Fee	**$5** annually (if applicable)
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to **$35**.
• Over-the-Credit Limit	Up to **$35**.
• Returned Payment	Up to **$35**.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Loss of Introductory APR: We may end your introductory APR and apply the Penalty APR if you make a late payment.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

* * * * *

G-18(B)—Late Payment Fee Sample

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $35 and your APRs may be increased up to the Penalty APR of 28.99%.

* * * * *

G-18(D) Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit Cards)

Payment Information

New Balance	$1,784.53
Minimum Payment Due	$53.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to **$35** and your APRs may be increased up to the Penalty APR of 28.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay…	You will pay off the balance shown on this statement in about…	And you will end up paying an estimated total of…
Only the minimum payment	10 years	$3,284
$62	3 years	$2,232 *(Savings=$1,052)*

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

* * * * *

G-18(F) Periodic Statement Form

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Summary of Account Activity

Previous Balance	$535.07
Payments	-$450.00
Other Credits	-$13.45
Purchases	+$529.57
Balance Transfers	+$785.00
Cash Advances	+$318.00
Past Due Amount	+$0.00
Fees Charged	**+$69.45**
Interest Charged	**+$10.89**
New Balance	$1,784.53
Credit limit	$2,000.00
Available credit	$215.47
Statement closing date	3/22/2012
Days in billing cycle	30

QUESTIONS?

Call Customer Service	1-XXX-XXX-XXXX
Lost or Stolen Credit Card	1-XXX-XXX-XXXX

Payment Information

New Balance	$1,784.53
Minimum Payment Due	$53.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $35 and your APRs may be increased up to the Penalty APR of 28.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay…	You will pay off the balance shown on this statement in about…	And you will end up paying an estimated total of…
Only the minimum payment	10 years	$3,284
$62	3 years	$2,232 *(Savings=$1,052)*

If you would like information about credit counseling services, call 1-800-XXX-XXXX.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. Changes to APRs described below are due to changes in market conditions. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, changes to APRs described below will apply to these transactions.

Transactions made before 4/9/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

Revised Terms, as of 5/10/12	
APR for Purchases	16.99%

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$12.11
55541860705RDYD0X	2/24	2/25	Store #3	$4.63
554328608008W90M0	2/24	2/25	Store #4	$114.95
054830709LYMRPT4L	2/24	2/25	Store #5	$7.35
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$450.00–

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

Account Number:	**XXXX XXXX XXXX XXXX**
New Balance	**$1,784.53**
Minimum Payment Due	**$53.00**
Payment Due Date	**4/20/12**

AMOUNT ENCLOSED: $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

G-18(F) Periodic Statement Form (contd.)

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
564891561545KOSHD	2/25	2/26	Store #6	$14.35
841517877845AKOJIO	2/25	2/26	Store #7	$40.35
895848561561894KOH	2/26	2/27	Store #8	$27.68
1871556189456SAMKL	2/26	2/27	Store #9	$124.76
1542202074TWWZV48	2/26	2/26	Cash Advance	$121.50
2564894185189LKDFID	2/27	2/28	Store #10	$32.87
4545754784KOHUIOS	2/27	3/1	Balance Transfer	$785.00
14547847586KDDL564	2/28	2/28	Cash Advance	$196.50
2564561023184102315	2/28	3/1	Store #11	$14.76
55542818705RASD0X	3/1	3/2	Store #12	$3.76
289189194ASDS8744	3/1	3/3	Store #13	$13.45
178105417841045784	3/2	3/6	Store #14	$2.35
045148714518979874	3/4	3/5	Store #13	$13.45–
8456152156181SDSA	3/5	3/12	Store #15	$25.00
31289105205648AWD	3/11	3/12	Store #16	$7.34
04518478415615ASD	3/11	3/16	Store #17	$10.56
0547810544898718AF	3/15	3/17	Store #18	$24.50
056489413216848OP	3/16	3/17	Store #19	$8.76
054894561564ASDW	3/17	3/18	Store #20	$14.23
5648974891AD98156	3/19	3/20	Store #21	$23.76
Fees				
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	2/26	2/26	Cash Advance Fee	$5.00
84151564SADS8745H	2/27	2/27	Balance Transfer Fee	$23.55
256489156189451516L	2/28	2/28	Cash Advance Fee	$5.90
			TOTAL FEES FOR THIS PERIOD	**$69.45**
Interest Charged				
			Interest Charge on Purchases	$6.31
			Interest Charge on Cash Advances	$4.58
			TOTAL INTEREST FOR THIS PERIOD	**$10.89**

2012 Totals Year-to-Date	
Total fees charged in 2012	$90.14
Total interest charged in 2012	$18.27

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	14.99% (v)	$512.14	$6.31
Cash Advances	21.99% (v)	$253.50	$4.58
Balance Transfers	0.00%	$637.50	$0.00

(v) = Variable Rate

G-18(G) Periodic Statement Form

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Summary of Account Activity

Previous Balance	$80.52
Payments	-$50.00
Other Credits	+$0.00
Purchases	+$52.13
Balance Transfers	+$0.00
Cash Advances	+$0.00
Past Due Amount	+$0.00
Fees Charged	**+$37.00**
Interest Charged	**+$0.00**
New Balance	$119.65
Credit limit	$2,000.00
Available credit	$1,880.35
Statement closing date	3/22/2012
Days in billing cycle	30

QUESTIONS?

Call Customer Service	1-XXX-XXX-XXXX
Lost or Stolen Credit Card	1-XXX-XXX-XXXX

Payment Information

New Balance	$119.65
Minimum Payment Due	$10.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $35 and your APRs may be increased up to the Penalty APR of 28.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	14 months	$130

If you would like information about credit counseling services, call 1-800-XXX-XXXX.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99% by making a late payment.

Transactions made on or after 4/9/12: As of 5/10/12, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Transactions made before 4/9/12: Current rates will continue to apply to these transactions. However, if you become more than 60 days late on your account, the Penalty APR will apply to those transactions as well.

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Payments and Other Credits	
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$50.00–
			Purchases	
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$2.11
55541860705RDYD0X	2/24	2/25	Store #3	$4.63
554328608008W90M0	2/24	2/25	Store #4	$4.95
054830709LYMRPT4L	2/24	2/25	Store #5	$7.35
564891561545KOSHD	2/25	2/26	Store #6	$4.35
841517877845AKOJIO	2/25	2/26	Store #7	$2.35
895848561561894KOH	2/26	2/27	Store #8	$7.68
1871556189456SAMKL	2/26	2/27	Store #9	$4.76
2564894185189LKDFID	2/27	2/28	Store #10	$2.87
55542818705RASD0X	3/1	3/2	Store #11	$3.76
178105417841045784	3/2	3/6	Store #12	$2.35
8456152156181SDSA	3/5	3/12	Store #13	$2.92

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Page 1 of 2

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

Account Number:	**XXXX XXXX XXXX XXXX**
New Balance	**$119.65**
Minimum Payment Due	**$10.00**
Payment Due Date	**4/20/12**

AMOUNT ENCLOSED: $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

G-18(G) Periodic Statement Form (contd.)

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	3/22	3/22	Minimum Charge	$2.00
			TOTAL FEES FOR THIS PERIOD	**$37.00**
			Interest Charged	
			Interest Charge on Purchases	$0.00
			Interest Charge on Cash Advances	$0.00
			TOTAL INTEREST FOR THIS PERIOD	**$0.00**

2012 Totals Year-to-Date	
Total fees charged in 2012	$90.14
Total interest charged in 2012	$18.27

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	14.99% (v)	$113.80	$0.00
Cash Advances	21.99% (v)	$0.00	$0.00
Balance Transfers	0.00%	$0.00	$0.00

(v) = Variable Rate

* * * * *

G-20 Change-in-Terms Sample (Increase in Annual Percentage Rate)

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. Changes to APRs described below are due to changes in market conditions. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, changes to APRs described below will apply to these transactions.

Transactions made before 4/9/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

Revised Terms, as of 5/10/12	
APR for Purchases	16.99%

G-21 Change-in-Terms Sample (Increase in Fees)

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. These changes will take effect on 5/10/12. For more detailed information, please refer to the booklet enclosed with this statement.

You have the right to reject these changes, unless you become more than 60 days late on your account. However, if you do reject these changes you will not be able to use your account for new transactions. You can reject the changes by calling us at 1-800-xxx-xxxx.

Revised Terms, as of 5/10/12	
Late Payment Fee	Up to **$35**.
Returned Payment Fee	Up to **$35**.

<u>**G-22 Penalty Rate Increase Sample (Payment 60 or Fewer Days Late)**</u>

Notice of Changes to Your Interest Rates
You have triggered the Penalty APR of 28.99% by making a late payment. This change will impact your account as follows: <u>Transactions made on or after 4/9/12</u>: As of 5/10/12, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely. <u>Transactions made before 4/9/12</u>: Current rates will continue to apply to these transactions. However, if you become more than 60 days late on your account, the Penalty APR will apply to those transactions as well.

* * * * *

G-25(A)—Consent Form for Over-the-Credit Limit Transactions

<u>Your choice regarding over-the-credit limit coverage</u>

Unless you tell us otherwise, we will decline any transaction that causes you to go over your credit limit. If you want us to authorize these transactions, you can request over-the-credit limit coverage.

If you have over-the-credit limit coverage and you go over your credit limit, we will charge you a fee of up to $35. We may also increase your APRs to the Penalty APR of XX.XX%. You will only pay one fee per billing cycle, even if you go over your limit multiple times in the same cycle.

Even if you request over-the-credit limit coverage, in some cases we may still decline a transaction that would cause you to go over your limit, such as if you are past due or significantly over your credit limit.

If you want over-the-limit coverage and to allow us to authorize transactions that go over your credit limit, please:

- Call us at [telephone number];
- Visit [Web site]; or
- Check or initial the box below, and return the form to us at [address].

__ I want over-the-limit coverage. I understand that if I go over my credit limit, my APRs may be increased and I will be charged a fee of up to $35. [I have the right to cancel this coverage at any time.]

[__ I <u>do not</u> want over-the-limit coverage. I understand that transactions that exceed my credit limit will not be authorized.]

Printed Name: ____________________

Date: ______________________

[Account Number]: ______________________

G-25(B) – Revocation Notice for Periodic Statement Regarding Over-the-Credit Limit Transactions

You currently have over-the-credit limit coverage on your account, which means that we pay transactions that cause you go to over your credit limit. If you do go over your credit limit, we will charge you a fee of up to $35. We may also increase your APRs. To remove over-the-credit-limit coverage from your account, call us at 1-800-xxxxxxx or visit [insert web site]. [You may also write us at: [insert address].]

[You may also check or initial the box below and return this form to us at: [insert address].

__ I want to cancel over-the-limit coverage for my account.

Printed Name: ______________________

Date: __________________________

[Account Number]: _______________________]

8. In Supplement I to Part 226:

A. Under Section 226.5a—Credit and Charge Card Applications and Solicitations, under 5a(a) General rules, under 5a(a)(2) Form of disclosures; tabular format, paragraph 5.ii. is revised.

B. Under Section 226.9–Subsequent Disclosure Requirements:

(i) Under 9(c) Change in terms, under 9(c)(2)(iv) Disclosure requirements, paragraphs 1. through 11. are revised; and

(ii) Under 9(g) Increase in rates due to delinquency or default or as a penalty, paragraphs 1. through 7. are revised.

C. Under Section 226.52—Limitations on Fees, 52(b) Limitations on penalty fees is added.

D. Under Section 226.56—Requirements for over-the-limit transactions:

(i) Under 56(e) Content, paragraph 1. is revised; and

(ii) Under 56(j) Prohibited practices, paragraph 6. is added.

E. Section 226.59–Reevaluation of Rate Increases is added.

Supplement I to Part 226—Official Staff Interpretations

*****

Section 226.5a—Credit and Charge Card Applications and Solicitations

*****

5a(a) General rules.

*****

5a(a)(2) Form of disclosures; tabular format.

*****

5. ***

ii. Maximum limits on fees. Section 226.5a(a)(2)(iv) provides that any maximum limits on fee amounts must be disclosed in bold text. For example, assume that, consistent with § 226.52(b)(1)(ii), a card issuer's late payment fee will not exceed $35. The maximum limit of $35 for the late payment fee must be highlighted in bold. Similarly, assume an issuer will charge a cash advance fee of $5 or 3 percent of the cash advance transaction amount, whichever is greater, but the fee will not exceed $100. The maximum limit of $100 for the cash advance fee must be highlighted in bold.

* * * * *

Section 226.9–Subsequent Disclosure Requirements

*****

9(c) Change in terms.

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9(c)(2)(iv) Disclosure requirements.

1. Changing margin for calculating a variable rate. If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 226.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must

disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. <u>Changing index for calculating a variable rate</u>. If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 226.6(b)(2)(i)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.

3. <u>Changing from a variable rate to a non-variable rate</u>. 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. <u>Changing from a non-variable rate to a variable rate</u>. 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. <u>Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies</u>. If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is

changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. Changes in fees. If a creditor is changing part of how a fee that is disclosed in a tabular format under § 226.6(b)(1) and (b)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of "Either $5 or 3% of the transaction amount, whichever is greater. (Max: $100)," and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: "Either $10 or 3% of the transaction amount, whichever is greater. (Max: $100)."

7. Combining a notice described in § 226.9(c)(2)(iv) with a notice described in § 226.9(g)(3). If a creditor is required to provide a notice described in § 226.9(c)(2)(iv) and a notice described in § 226.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. Content. Sample G-20 contains an example of how to comply with the requirements in § 226.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G-21 contains an example of how to comply with the requirements in § 226.9(c)(2)(iv) when (i) the late payment fee on a credit card account is being increased, and (ii) the returned

payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with § 226.9(h).

9. Clear and conspicuous standard. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(2)(iv)(A)(1).

10. Terminology. See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(c)(2)(iv)(A)(1).

11. Reasons for increase. i. In general. Section 226.9(c)(2)(iv)(A)(8) requires card issuers to disclose the principal reason(s) for increasing an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. The regulation does not mandate a minimum number of reasons that must be disclosed. However, the specific reasons disclosed under § 226.9(c)(2)(iv)(A)(8) are required to relate to and accurately describe the principal factors actually considered by the card issuer in increasing the rate. A card issuer may describe the reasons for the increase in general terms. For example, the notice of a rate increase triggered by a decrease of 100 points in a consumer's credit score may state that the increase is due to "a decline in your creditworthiness" or "a decline in your credit score." Similarly, a notice of a rate increase triggered by a 10% increase in the card issuer's cost of funds may be disclosed as "a change in market conditions." In some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. However, § 226.9(c)(2)(iv)(A)(8) requires that the notice specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase.

ii. Example. Assume that a consumer made a late payment on the credit card account on which the rate increase is being imposed, made a late payment on a credit card account with another card issuer, and the consumer's credit score decreased, in part due to such late payments. The card issuer may disclose the reasons for the rate increase as a decline in the consumer's credit score and the consumer's late payment on the account subject to the increase. Because the late payment on the credit card account with the other issuer also likely contributed to the decline in the consumer's credit score, it is not required to be separately disclosed. However, the late payment on the credit card account on which the rate increase is being imposed must be specifically disclosed even if that late payment also contributed to the decline in the consumer's credit score.

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

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12. Temporary rates – relationship to § 226.59. i. General. Section 226.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, § 226.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by § 226.59, a creditor reinstates a temporary rate that had been revoked, the card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by § 226.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. See § 226.55 and the associated commentary for guidance on the permissibility and applicability of rate increases.

ii. Example. A consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan on January 1, 2011. The annual percentage rate applicable to purchases is 18%. The card issuer offers the consumer a 15% rate on purchases made between January 1, 2012 and January 1, 2014. Prior to January 1, 2012, the card issuer discloses, in accordance with § 226.9(c)(2)(v)(B), that the rate on purchases made during that period will increase to the standard 18% rate on January 1, 2014. In March 2012, the consumer makes a payment that is ten days late. The card issuer, upon providing 45 days' advance notice of the change under § 226.9(g), increases the rate on new purchases to 18% effective as of June 1, 2012. On December 1, 2012, the issuer performs a review of the consumer's account in accordance with § 226.59. Based on that review, the card issuer is required to reduce the rate to the original 15% temporary rate as of January 15, 2013. On January 1, 2014, the card issuer may increase the rate on purchases to 18%, as previously disclosed prior to January 1, 2012, without providing an additional notice to the consumer.

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

1. Relationship between § 226.9(c) and (g) and § 226.55– examples. Card issuers subject to § 226.55 are prohibited from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in § 226.55(b). See comments 55(a)-1 and 55(b)-3 and the commentary to § 226.55(b)(4) for examples that illustrate the relationship between the notice requirements of § 226.9(c) and (g) and § 226.55.

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

3. Combining a notice described in § 226.9(g)(3) with a notice described in § 226.9(c)(2)(iv). If a creditor is required to provide notices pursuant to both § 226.9(c)(2)(iv) and (g)(3) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

4. Content. Sample G-22 contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate on a consumer's credit card account is being increased to a penalty rate as described in § 226.9(g)(1)(ii), based on a late payment that is not more than 60 days late. Sample G-23 contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate increase is triggered by a delinquency of more than 60 days.

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

6. Terminology. See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(g).

7. Reasons for increase. See comment 9(c)(2)(iv)-11 for guidance on disclosure of the reasons for a rate increase for a credit card account under an open-end (not home-secured) consumer credit plan.

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Section 226.52—Limitations on Fees

52(a) Limitations during first year after account opening.

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52(b) Limitations on penalty fees.

1. Fees for violating the account terms or other requirements. For purposes of § 226.52(b), a fee includes any charge imposed by a card issuer based on an act or omission that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account, other than charges attributable to periodic interest rates. Accordingly, for purposes of § 226.52(b), a fee does not include charges attributable to an increase in an annual percentage rate based on an act or omission that violates the terms or other requirements of an account.

i. The following are examples of fees that are subject to the limitations in § 226.52(b) or are prohibited by § 226.52(b):

A. Late payment fees and any other fees imposed by a card issuer if an account becomes delinquent or if a payment is not received by a particular date.

B. Returned payment fees and any other fees imposed by a card issuer if a payment received via check, automated clearing house, or other payment method is returned.

C. Any fee or charge for an over-the-limit transaction as defined in § 226.56(a), to the extent the imposition of such a fee or charge is permitted by § 226.56.

D. Any fee imposed by a card issuer if payment on a check that accesses a credit card account is declined.

E. Any fee or charge for a transaction that the card issuer declines to authorize. See § 226.52(b)(2)(i)(B).

F. Any fee imposed by a card issuer based on account inactivity (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). See § 226.52(b)(2)(i)(B).

G. Any fee imposed by a card issuer based on the closure or termination of an account. See § 226.52(b)(2)(i)(B).

ii. The following are examples of fees to which § 226.52(b) does not apply:

A. Balance transfer fees.

B. Cash advance fees.

C. Foreign transaction fees.

D. Annual fees and other fees for the issuance or availability of credit described in § 226.5a(b)(2), except to the extent that such fees are based on account inactivity. See § 226.52(b)(2)(i)(B).

E. Fees for insurance described in § 226.4(b)(7) or debt cancellation or debt suspension coverage described in § 226.4(b)(10) written in connection with a credit transaction, provided that such fees are not imposed as a result of a violation of the account terms or other requirements of an account.

F. Fees for making an expedited payment (to the extent permitted by § 226.10(e)).

G. Fees for optional services (such as travel insurance).

H. Fees for reissuing a lost or stolen card.

2. Rounding to nearest whole dollar. A card issuer may round any fee that complies with § 226.52(b) to the nearest whole dollar. For example, if § 226.52(b) permits a card issuer to impose a late payment fee of $21.50, the card issuer may round that amount up to the nearest whole dollar and impose a late payment fee of $22. However, if the late payment fee permitted by § 226.52(b) were $21.49, the card issuer

would not be permitted to round that amount up to $22, although the card issuer could round that amount down and impose a late payment fee of $21.

52(b)(1) General rule.

1. Relationship between § 226.52(b)(1)(i), (b)(1)(ii), and (b)(2).

i. Relationship between § 226.52(b)(1)(i) and (b)(1)(ii). A card issuer may impose a fee for violating the terms or other requirements of an account pursuant to either § 226.52(b)(1)(i) or (b)(1)(ii).

A. A card issuer that complies with the safe harbors in § 226.52(b)(1)(ii) is not required to determine that its fees represent a reasonable proportion of the total costs incurred by the card issuer as a result of a type of violation under § 226.52(b)(1)(i).

B. A card issuer may impose a fee for one type of violation pursuant to § 226.52(b)(1)(i) and may impose a fee for a different type of violation pursuant to § 226.52(b)(1)(ii). For example, a card issuer may impose a late payment fee of $30 based on a cost determination pursuant to § 226.52(b)(1)(i) but impose returned payment and over-the-limit fees of $25 or $35 pursuant to the safe harbors in § 226.52(b)(1)(ii).

C. A card issuer that previously based the amount of a penalty fee for a particular type of violation on a cost determination pursuant to § 226.52(b)(1)(i) may begin to impose a penalty fee for that type of violation that is consistent with § 226.52(b)(1)(ii) at any time (subject to the notice requirements in § 226.9), provided that the first fee imposed pursuant to § 226.52(b)(1)(ii) is consistent with § 226.52(b)(1)(ii)(A). For example, assume that a late payment occurs on January 15 and that, based on a cost determination pursuant to § 226.52(b)(1)(i), the card issuer imposes a $30 late payment fee. Another late payment occurs on July 15. The card issuer may impose another $30 late payment fee pursuant to § 226.52(b)(1)(i) or may impose a $25 late payment fee pursuant to § 226.52(b)(1)(ii)(A). However, the card issuer may not impose a $35 late payment fee pursuant to § 226.52(b)(1)(ii)(B). If the card issuer imposes a $25 fee pursuant to § 226.52(b)(1)(ii)(A) for the July 15 late payment and another late payment occurs on September 15, the card issuer may impose a $35 fee for the September 15 late payment pursuant to § 226.52(b)(1)(ii)(B).

ii. Relationship between § 226.52(b)(1) and (b)(2). Section 226.52(b)(1) does not permit a card issuer to impose a fee that is inconsistent with the prohibitions in § 226.52(b)(2). For example, if § 226.52(b)(2)(i) prohibits the card issuer from imposing a late payment fee that exceeds $15, § 226.52(b)(1)(ii) does not permit the card issuer to impose a higher late payment fee.

52(b)(1)(i) Fees based on costs.

1. Costs incurred as a result of violations. Section 226.52(b)(1)(i) does not require a card issuer to base a fee on the costs incurred as a result of a specific violation of the terms or other requirements of an account. Instead, for purposes of § 226.52(b)(1)(i), a card issuer must have determined that a fee for violating the terms or other requirements of an account represents a reasonable proportion of the costs incurred by the card issuer as a result of that type of violation. A card issuer may make a single determination for all of its credit card portfolios or may make separate determinations for each portfolio. The factors relevant to this determination include:

A. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (for example, a period of twelve months).

B. The costs incurred by the card issuer during that period as a result of those violations.

C. At the card issuer's option, the number of fees imposed by the card issuer as a result of those violations during that period that the card issuer reasonably estimates it will be unable to collect. See comment 52(b)(1)(i)-5.

D. At the card issuer's option, reasonable estimates for an upcoming period of changes in the number of violations of that type, the resulting costs, and the number of fees that the card issuer will be unable to collect. See illustrative examples in comments 52(b)(1)(i)-6 through -9.

2. Amounts excluded from cost analysis. The following amounts are not costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of § 226.52(b)(1)(i):

i. Losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts).

ii. Costs associated with evaluating whether consumers who have not violated the terms or other requirements of an account are likely to do so in the future (such as the costs associated with underwriting new accounts). However, once a violation of the terms or other requirements of an account has occurred, the costs associated with preventing additional violations for a reasonable period of time are costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of § 226.52(b)(1)(i).

3. Third party charges. As a general matter, amounts charged to the card issuer by a third party as a result of a violation of the terms or other requirements of an account

are costs incurred by the card issuer for purposes of § 226.52(b)(1)(i). For example, if a card issuer is charged a specific amount by a third party for each returned payment, that amount is a cost incurred by the card issuer as a result of returned payments. However, if the amount is charged to the card issuer by an affiliate or subsidiary of the card issuer, the card issuer must have determined that the charge represents a reasonable proportion of the costs incurred by the affiliate or subsidiary as a result of the type of violation. For example, if an affiliate of a card issuer provides collection services to the card issuer on delinquent accounts, the card issuer must have determined that the amounts charged to the card issuer by the affiliate for such services represent a reasonable proportion of the costs incurred by the affiliate as a result of late payments.

4. Amounts charged by other card issuers. The fact that a card issuer's fees for violating the terms or other requirements of an account are comparable to fees assessed by other card issuers does not satisfy the requirements of § 226.52(b)(1)(i).

5. Uncollected fees. For purposes of § 226.52(b)(1)(i), a card issuer may consider fees that it is unable to collect when determining the appropriate fee amount. Fees that the card issuer is unable to collect include fees imposed on accounts that have been charged off by the card issuer, fees that have been discharged in bankruptcy, and fees that the card issuer is required to waive in order to comply with a legal requirement (such as a requirement imposed by 12 CFR Part 226 or 50 U.S.C. app. 527). However, fees that the card issuer chooses not to impose or chooses not to collect (such as fees the card issuer chooses to waive at the request of the consumer or under a workout or temporary hardship arrangement) are not relevant for purposes of this determination. See illustrative examples in comments 52(b)(2)(i)-6 through -9.

6. Late payment fees.

i. Costs incurred as a result of late payments. For purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of late payments include the costs associated with the collection of late payments, such as the costs associated with notifying consumers of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements).

ii. Examples.

A. Late payment fee based on past delinquencies and costs. Assume that, during year one, a card issuer experienced 1 million delinquencies and incurred $26 million in costs as a result of those delinquencies. For purposes of § 226.52(b)(1)(i), a $26 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

B. Adjustment based on fees card issuer is unable to collect. Same facts as above except that the card issuer imposed a late payment fee for each of the 1 million delinquencies experienced during year one but was unable to collect 25% of those fees (in other words, the card issuer was unable to collect 250,000 fees, leaving a total of 750,000 late payments for which the card issuer did collect or could have collected a fee). For purposes of § 226.52(b)(2)(i), a late payment fee of $35 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

C. Adjustment based on reasonable estimate of future changes. Same facts as paragraphs A. and B. above except the card issuer reasonably estimates that – based on past delinquency rates and other factors relevant to potential delinquency rates for year two – it will experience a 2% decrease in delinquencies during year two (in other words, 20,000 fewer delinquencies for a total of 980,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (25%) during year two as during year one (in other words, the card issuer will be unable to collect 245,000 fees, leaving a total of 735,000 late payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that – based on past changes in costs incurred as a result of delinquencies and other factors relevant to potential costs for year two – it will experience a 5% increase in costs during year two (in other words, $1.3 million in additional costs for a total of $27.3 million). For purposes of § 226.52(b)(1)(i), a $37 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

7. Returned payment fees.

i. Costs incurred as a result of returned payments. For purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of returned payments include:

A. Costs associated with processing returned payments and reconciling the card issuer's systems and accounts to reflect returned payments;

B. Costs associated with investigating potential fraud with respect to returned payments; and

C. Costs associated with notifying the consumer of the returned payment and arranging for a new payment.

ii. Examples.

A. Returned payment fee based on past returns and costs. Assume that, during year one, a card issuer experienced 150,000 returned payments and incurred $3.1 million in costs as a result of those returned payments. For purposes of § 226.52(b)(1)(i), a $21 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

B. Adjustment based on fees card issuer is unable to collect. Same facts as above except that the card issuer imposed a returned payment fee for each of the 150,000 returned payments experienced during year one but was unable to collect 15% of those fees (in other words, the card issuer was unable to collect 22,500 fees, leaving a total of 127,500 returned payments for which the card issuer did collect or could have collected a fee). For purposes of § 226.52(b)(2)(i), a returned payment fee of $24 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

C. Adjustment based on reasonable estimate of future changes. Same facts as paragraphs A. and B. above except the card issuer reasonably estimates that – based on past returned payment rates and other factors relevant to potential returned payment rates for year two – it will experience a 2% increase in returned payments during year two (in other words, 3,000 additional returned payments for a total of 153,000). The card issuer also reasonably estimates that it will be unable to collect 25% of returned payment fees during year two (in other words, the card issuer will be unable to collect 38,250 fees, leaving a total of 114,750 returned payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that – based on past changes in costs incurred as a result of returned payments and other factors relevant to potential costs for year two – it will experience a 1% decrease in costs during year two (in other words, a $31,000 reduction in costs for a total of $3.069 million). For purposes of § 226.52(b)(1)(i), a $27 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

8. Over-the-limit fees.

i. Costs incurred as a result of over-the-limit transactions. For purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of over-the-limit transactions include:

A. Costs associated with determining whether to authorize over-the-limit transactions; and

B. Costs associated with notifying the consumer that the credit limit has been exceeded and arranging for payments to reduce the balance below the credit limit.

ii. Costs not incurred as a result of over-the-limit transactions. For purposes of § 226.52(b)(1)(i), costs associated with obtaining the affirmative consent of consumers to the card issuer's payment of transactions that exceed the credit limit consistent with § 226.56 are not costs incurred by a card issuer as a result of over-the-limit transactions.

iii. Examples.

A. Over-the-limit fee based on past fees and costs. Assume that, during year one, a card issuer authorized 600,000 over-the-limit transactions and incurred $4.5 million in costs as a result of those over-the-limit transactions. However, because of the affirmative consent requirements in § 226.56, the card issuer was only permitted to impose 200,000 over-the-limit fees during year one. For purposes of § 226.52(b)(1)(i), a $23 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

B. Adjustment based on fees card issuer is unable to collect. Same facts as above except that the card issuer was unable to collect 30% of the 200,000 over-the-limit fees imposed during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer did collect or could have collected a fee). For purposes of § 226.52(b)(2)(i), an over-the-limit fee of $32 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

C. Adjustment based on reasonable estimate of future changes. Same facts as paragraphs A. and B. above except the card issuer reasonably estimates that – based on past over-the-limit transaction rates, the percentages of over-the-limit transactions that resulted in an over-the-limit fee in the past (consistent with § 226.56), and factors relevant to potential changes in those rates and percentages for year two – it will authorize approximately the same number of over-the-limit transactions during year two (600,000) and impose approximately the same number of over-the-limit fees (200,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (30%) during year two as during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that – based on past changes in costs incurred as a result of over-the-limit transactions and other factors relevant to potential costs for year two – it will experience a 6% decrease in costs during year two (in other words, a $270,000 reduction in costs for a total of $4.23 million). For purposes of § 226.52(b)(1)(i), a $30 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

9. Declined access check fees.

i. Costs incurred as a result of declined access checks. For purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of declining payment on a check that accesses a credit card account include:

A. Costs associated with determining whether to decline payment on access checks;

B. Costs associated with processing declined access checks and reconciling the card issuer's systems and accounts to reflect declined access checks;

C. Costs associated with investigating potential fraud with respect to declined access checks; and

D. Costs associated with notifying the consumer and the merchant or other party that accepted the access check that payment on the check has been declined.

ii. Example. Assume that, during year one, a card issuer declined 100,000 access checks and incurred $2 million in costs as a result of those declined checks. The card issuer imposed a fee for each declined access check but was unable to collect 10% of those fees (in other words, the card issuer was unable to collect 10,000 fees, leaving a total of 90,000 declined access checks for which the card issuer did collect or could have collected a fee). For purposes of § 226.52(b)(1)(i), a $22 declined access check fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of declined access checks during year two.

52(b)(1)(ii) Safe harbors.

1. Multiple violations of same type. Section 226.52(b)(1)(ii)(A) permits a card issuer to impose a fee that does not exceed $25 for the first violation of a particular type. For a subsequent violation of the same type during the next six billing cycles, § 226.52(b)(1)(ii)(B) permits the card issuer to impose a fee that does not exceed $35.

i. Next six billing cycles. A fee may be imposed pursuant to § 226.52(b)(1)(ii)(B) if, during the six billing cycles following the billing cycle in which a violation occurred, another violation of the same type occurs.

A. Late payments. For purposes of § 226.52(b)(1)(ii), a late payment occurs during the billing cycle in which the payment may first be treated as late consistent with the requirements of 12 CFR Part 226 and the terms or other requirements of the account.

B. Returned payments. For purposes of § 226.52(b)(1)(ii), a returned payment occurs during the billing cycle in which the payment is returned to the card issuer.

C. Transactions that exceed the credit limit. For purposes of § 226.52(b)(1)(ii), a transaction that exceeds the credit limit for an account occurs during the billing cycle in which the transaction occurs or is authorized by the card issuer.

D. Declined access checks. For purposes of § 226.52(b)(1)(ii), a check that accesses a credit card account is declined during the billing cycle in which the card issuer declines payment on the check.

ii. Relationship to §§ 226.52(b)(2)(ii) and 226.56(j)(1)(i). If multiple violations are based on the same event or transaction such that § 226.52(b)(2)(ii) prohibits the card issuer from imposing more than one fee, the event or transaction constitutes a single violation for purposes of § 226.52(b)(1)(ii). Furthermore, consistent with § 226.56(j)(1)(i), no more than one violation for exceeding an account's credit limit can occur during a single billing cycle for purposes of § 226.52(b)(1)(ii).

iii. Examples: The following examples illustrate the application of § 226.52(b)(1)(ii)(A) and (b)(1)(ii)(B) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan that are not charge card accounts. For purposes of these examples, assume that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

A. Violations of same type (late payments). A required minimum periodic payment of $50 is due on March 25. On March 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 226.52(b)(1)(ii)(A), the card issuer imposes a $25 late payment fee on March 26. In order for the card issuer to impose a $35 late payment fee pursuant to § 226.52(b)(1)(ii)(B), a second late payment must occur during the April, May, June, July, August, or September billing cycles.

(1) The card issuer does not receive any payment during the March billing cycle. A required minimum periodic payment of $100 is due on April 25. On April 20, the card issuer receives a $50 payment. No further payment is received during the April billing cycle. Accordingly, consistent with § 226.52(b)(1)(ii)(B), the card issuer may impose a $35 late payment fee on April 26. Furthermore, the card issuer may impose a $35 late payment fee for any late payment that occurs during the May, June, July, August, September, or October billing cycles.

(2) Same facts as in paragraph A. above. On March 30, the card issuer receives a $50 payment and the required minimum periodic payments for the April, May, June, July, August, and September billing cycles are received on or before the payment due date. A required minimum periodic payment of $60 is due on October 25. On October 26, a late payment has occurred because the required minimum periodic payment due on October 25 has not been received. However, because this late payment did not occur during the six billing cycles following the March billing cycle, § 226.52(b)(1)(ii) only permits the card issuer to impose a late payment fee of $25.

B. <u>Violations of different types (late payment and over the credit limit)</u>. The credit limit for an account is $1,000. Consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. A required minimum periodic payment of $30 is due on August 25. On August 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 226.52(b)(1)(ii)(A), the card issuer imposes a $25 late payment fee on August 26. On August 30, the card issuer receives a $30 payment. On September 10, a transaction causes the account balance to increase to $1,150, which exceeds the account's $1,000 credit limit. On September 11, a second transaction increases the account balance to $1,350. On September 23, the card issuer receives the $50 required minimum periodic payment due on September 25, which reduces the account balance to $1,300. On September 30, the card issuer imposes a $25 over-the-limit fee, consistent with § 226.52(b)(1)(ii)(A). On October 26, a late payment has occurred because the $60 required minimum periodic payment due on October 25 has not been received.

Accordingly, consistent with § 226.52(b)(1)(ii)(B), the card issuer imposes a $35 late payment fee on October 26.

C. Violations of different types (late payment and returned payment). A required minimum periodic payment of $50 is due on July 25. On July 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 226.52(b)(1)(ii)(A), the card issuer imposes a $25 late payment fee on July 26. On July 30, the card issuer receives a $50 payment. A required minimum periodic payment of $50 is due on August 25. On August 24, a $50 payment is received. On August 27, the $50 payment is returned to the card issuer for insufficient funds. In these circumstances, § 226.52(b)(2)(ii) permits the card issuer to impose either a late payment fee or a returned payment fee but not both because the late payment and the returned payment result from the same event or transaction. Accordingly, for purposes of § 226.52(b)(1)(ii), the event or transaction constitutes a single violation. However, if the card issuer imposes a late payment fee, § 226.52(b)(1)(ii)(B) permits the issuer to impose a fee of $35 because the late payment occurred during the six billing cycles following the July billing cycle. In contrast, if the card issuer imposes a returned payment fee, the amount of the fee may be no more than $25 pursuant to § 226.52(b)(1)(ii)(A).

2. Adjustments based on Consumer Price Index. For purposes of § 226.52(b)(1)(ii)(A) and (b)(1)(ii)(B), the Board shall calculate each year price level adjusted amounts using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in § 226.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has risen by a whole dollar, those amounts will be increased by $1.00. Similarly, when the

cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in § 226.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has decreased by a whole dollar, those amounts will be decreased by $1.00. The Board will publish adjustments to the amounts in § 226.52(b)(1)(ii)(A) and (b)(1)(ii)(B).

3. Delinquent balance for charge card accounts. Section 226.52(b)(1)(ii)(C) provides that, when a charge card issuer that requires payment of outstanding balances in full at the end of each billing cycle has not received the required payment for two or more consecutive billing cycles, the card issuer may impose a late payment fee that does not exceed three percent of the delinquent balance. For purposes of § 226.52(b)(1)(ii)(C), the delinquent balance is any previously billed amount that remains unpaid at the time the late payment fee is imposed pursuant to § 226.52(b)(1)(ii)(C). Consistent with § 226.52(b)(2)(ii), a charge card issuer that imposes a fee pursuant to § 226.52(b)(1)(ii)(C) with respect to a late payment may not impose a fee pursuant to § 226.52(b)(1)(ii)(B) with respect to the same late payment. The following examples illustrate the application of § 226.52(b)(1)(ii)(C):

i. Assume that a charge card issuer requires payment of outstanding balances in full at the end of each billing cycle and that the billing cycles for the account begin on the first day of the month and end on the last day of the month. At the end of the June billing cycle, the account has a balance of $1,000. On July 5, the card issuer provides a periodic statement disclosing the $1,000 balance consistent with § 226.7. During the July billing cycle, the account is used for $300 in transactions, increasing the balance to $1,300. At the end of the July billing cycle, no payment has been received and the card issuer imposes a $25 late payment fee consistent with § 226.52(b)(1)(ii)(A). On August 5, the card issuer provides a periodic statement disclosing the $1,325 balance consistent with § 226.7. During the August billing cycle, the account is used for $200 in transactions, increasing the balance to $1,525. At the end of the August billing cycle, no payment has been received. Consistent with § 226.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $40, which is 3% of the $1,325 balance that was due at the end of the August billing cycle. Section 226.52(b)(1)(ii)(C) does not permit the card issuer to include the $200 in transactions that occurred during the August billing cycle.

ii. Same facts as above except that, on August 25, a $100 payment is received. Consistent with § 226.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $37, which is 3% of the unpaid portion of the $1,325 balance that was due at the end of the August billing cycle ($1,225).

iii. Same facts as in paragraph A. above except that, on August 25, a $200 payment is received. Consistent with § 226.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $34, which is 3% of the unpaid portion of the $1,325 balance that was due at the end of the August billing cycle ($1,125). In the alternative, the card issuer may impose a late payment fee of $35 consistent with § 226.52(b)(1)(ii)(B). However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees.

52(b)(2) Prohibited fees.

1. Relationship to § 226.52(b)(1). A card issuer does not comply with § 226.52(b) if it imposes a fee that is inconsistent with the prohibitions in § 226.52(b)(2). Thus, the prohibitions in § 226.52(b)(2) apply even if a fee is consistent with § 226.52(b)(1)(i) or (b)(1)(ii). For example, even if a card issuer has determined for purposes of § 226.52(b)(1)(i) that a $27 fee represents a reasonable proportion of the total

costs incurred by the card issuer as a result of a particular type of violation, § 226.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than $27. Similarly, even if § 226.52(b)(1)(ii) permits a card issuer to impose a $25 fee, § 226.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than $25.

52(b)(2)(i) Fees that exceed dollar amount associated with violation.

1. Late payment fees. For purposes of § 226.52(b)(2)(i), the dollar amount associated with a late payment is the amount of the required minimum periodic payment due immediately prior to assessment of the late payment fee. Thus, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of that required minimum periodic payment. For example:

i. Assume that a $15 required minimum periodic payment is due on September 25. The card issuer does not receive any payment on or before September 25. On September 26, the card issuer imposes a late payment fee. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on September 25 ($15). Thus, under § 226.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under § 226.52(b)(1)).

ii. Same facts as above except that, on September 25, the card issuer receives a $10 payment. No further payments are received. On September 26, the card issuer imposes a late payment fee. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the late payment is the full amount of the required minimum periodic payment due on September 25 ($15), rather than the unpaid portion of that payment ($5).

Thus, under § 226.52(b)(2)(i)(A), the amount of the late payment fee cannot exceed $15 (even if a higher fee would be permitted under § 226.52(b)(1)).

iii. Assume that a $15 required minimum periodic payment is due on October 28 and the billing cycle for the account closes on October 31. The card issuer does not receive any payment on or before November 3. On November 3, the card issuer determines that the required minimum periodic payment due on November 28 is $50. On November 5, the card issuer imposes a late payment fee. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on October 28 ($15), rather than the amount of the required minimum periodic payment due on November 28 ($50). Thus, under § 226.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under § 226.52(b)(1)).

2. Returned payment fees. For purposes of § 226.52(b)(2)(i), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due immediately prior to the date on which the payment is returned to the card issuer. Thus, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a returned payment fee that exceeds the amount of that required minimum periodic payment. However, if a payment has been returned and is submitted again for payment by the card issuer, there is no additional dollar amount associated with a subsequent return of that payment and § 226.52(b)(2)(i)(B) prohibits the card issuer from imposing an additional returned payment fee. For example:

i. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on March 25. The card issuer receives a check for $100 on March 23, which is returned to the card issuer for insufficient funds on March 26. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 226.52(b)(1)). Furthermore, § 226.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. See comment 52(b)(2)(ii)-1.

ii. Same facts as above except that the card issuer receives the $100 check on March 31 and the check is returned for insufficient funds on April 2. The minimum payment due on April 25 is $30. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15), rather than the amount of the required minimum periodic payment due on April 25 ($30). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 226.52(b)(1)). Furthermore, § 226.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. See comment 52(b)(2)(ii)-1.

iii. Same facts as paragraph i. above except that, on March 28, the card issuer presents the $100 check for payment a second time. On April 1, the check is again returned for insufficient funds. Section 226.52(b)(2)(i)(B) prohibits the card issuer from imposing a returned payment fee based on the return of the payment on April 1.

iv. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on August 25. The card issuer receives a check for $15 on August 23, which is not returned. The card issuer receives a check for $50 on September 5, which is returned to the card issuer for insufficient funds on September 7. Section 226.52(b)(2)(i)(B) does not prohibit the card issuer from imposing a returned payment fee in these circumstances. Instead, for purposes of § 226.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on August 25 ($15). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 226.52(b)(1)).

3. <u>Over-the-limit fees</u>. For purposes of § 226.52(b)(2)(i), the dollar amount associated with extensions of credit in excess of the credit limit for an account is the total amount of credit extended by the card issuer in excess of the credit limit during the billing cycle in which the over-the-limit fee is imposed. Thus, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing an over-the-limit fee that exceeds that amount. Nothing in § 226.52(b) permits a card issuer to impose an over-the-limit fee if imposition of the fee is inconsistent with § 226.56. The following examples illustrate the application of § 226.52(b)(2)(i)(A) to over-the-limit fees:

i. Assume that the billing cycles for a credit card account with a credit limit of $5,000 begin on the first day of the month and end on the last day of the month. Assume also that, consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 1, the account has a

$4,950 balance. On March 6, a $60 transaction is charged to the account, increasing the balance to $5,010. On March 25, a $5 transaction is charged to the account, increasing the balance to $5,015. On the last day of the billing cycle (March 31), the card issuer imposes an over-the-limit fee. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing an over-the-limit fee that exceeds $15 (even if a higher fee would be permitted under § 226.52(b)(1)).

ii. Same facts as above except that, on March 26, the card issuer receives a payment of $20, reducing the balance below the credit limit to $4,995. Nevertheless, for purposes of § 226.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, consistent with § 226.52(b)(2)(i)(A), the card issuer may impose an over-the-limit fee of $15.

4. Declined access check fees. For purposes of § 226.52(b)(2)(i), the dollar amount associated with declining payment on a check that accesses a credit card account is the amount of the check. Thus, when a check that accesses a credit card account is declined, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a fee that exceeds the amount of that check. For example, assume that a check that accesses a credit card account is used as payment for a $50 transaction, but payment on the check is declined by the card issuer because the transaction would have exceeded the credit limit for the

account. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the declined check is the amount of the check ($50). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a fee that exceeds $50. However, the amount of this fee must also comply with § 226.52(b)(1)(i) or (b)(1)(ii).

5. Inactivity fees. Section 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a fee based on account inactivity (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, § 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a $50 fee when a consumer fails to use the account for $2,000 in purchases over the course of a year. Similarly, § 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a $50 annual fee on all accounts but waiving the fee if the consumer uses the account for $2,000 in purchases over the course of a year.

6. Closed account fees. Section 226.52(b)(2)(i)(B)(3) prohibits a card issuer from imposing a fee based on the closure or termination of an account. For example, 226.52(b)(2)(i)(B)(3) prohibits a card issuer from:

i. Imposing a one-time fee to consumers who close their accounts.

ii. Imposing a periodic fee (such as an annual fee, a monthly maintenance fee, or a closed account fee) after an account is closed or terminated if that fee was not imposed prior to closure or termination. This prohibition applies even if the fee was disclosed prior to closure or termination. See also comment 55(d)-1.

iii. Increasing a periodic fee (such as an annual fee or a monthly maintenance fee) after an account is closed or terminated. However, a card issuer is not prohibited from continuing to impose a periodic fee that was imposed before the account was closed or terminated.

52(b)(2)(ii) Multiple fees based on single event or transaction.

1. Single event or transaction. Section 226.52(b)(2)(ii) prohibits a card issuer from imposing more than one fee for violating the terms or other requirements of an account based on a single event or transaction. The following examples illustrate the application of § 226.52(b)(2)(ii). Assume for purposes of these examples that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

i. Assume that the required minimum periodic payment due on March 25 is $20. On March 26, the card issuer has not received any payment and imposes a late payment fee. Section 226.52(b)(2)(ii) prohibits the card issuer from imposing an additional late payment fee if the $20 minimum payment has not been received by a subsequent date (such as March 31). However, § 226.52(b)(2)(ii) does not prohibit the card issuer from imposing an additional late payment fee if the required minimum periodic payment due on April 25 (which may include the $20 due on March 25) is not received on or before that date.

ii. Assume that the required minimum periodic payment due on March 25 is $30.

A. On March 25, the card issuer receives a check for $50, but the check is returned for insufficient funds on March 27. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

B. Same facts as paragraph ii.A. above except that that card issuer receives the $50 check on March 27 and the check is returned for insufficient funds on March 29. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. If no payment is received on or before the next payment due date (April 25), § 226.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee.

iii. Assume that the required minimum periodic payment due on July 25 is $30. On July 10, the card issuer receives a $50 payment, which is not returned. On July 20, the card issuer receives a $100 payment, which is returned for insufficient funds on July 24. Consistent with § 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25. Nothing in § 226.52(b)(2)(ii) prohibits the imposition of this fee.

iv. Assume that the credit limit for an account is $1,000 and that, consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 31, the balance on the account is $970 and the card issuer has not received the $35 required minimum periodic payment due on March 25. On that same date (March 31), a $70 transaction is charged to the account, which increases the balance to $1,040. Consistent with § 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 and an over-the-limit fee of $25.

Section 226.52(b)(2)(ii) does not prohibit the imposition of both fees because those fees are based on different events or transactions.

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Section 226.56—Requirements for over-the-limit transactions.

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56(e) Content.

1. Amount of over-the-limit fee. See Model Forms G-25(A) and G-25(B) for guidance on how to disclose the amount of the over-the-limit fee.

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56(j) Prohibited practices.

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6. Additional restrictions on over-the-limit fees. See § 226.52(b).

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Section 226.59–Reevaluation of Rate Increases

59(a) General rule.

59(a)(1) Evaluation of increased rate.

1. Types of rate increases covered. Section 226.59(a) applies both to increases in annual percentage rates imposed on a consumer's account based on that consumer's credit risk or other circumstances specific to that consumer and to increases in annual percentage rates imposed based on factors that are not specific to the consumer, such as changes in market conditions or the issuer's cost of funds.

2. Rate increases actually imposed. Under § 226.59(a), a card issuer must review changes in factors only if the increased rate is actually imposed on the consumer's account. For example, if a card issuer increases the penalty rate for a credit card account under an open-end (not home-secured) consumer credit plan and the consumer's account has no balances that are currently subject to the penalty rate, the card issuer is required to provide a notice pursuant to § 226.9(c) of the change in terms, but the requirements of § 226.59 do not apply. However, if the consumer's account later becomes subject to the penalty rate, the card issuer is required to provide a notice pursuant to § 226.9(g) and the requirements of § 226.59 begin to apply upon imposition of the penalty rate. Similarly, if a card issuer raises the cash advance rate applicable to a consumer's account but the consumer engages in no cash advance transactions to which that increased rate is applied, the card issuer is required to provide a notice pursuant to § 226.9(c) of the change in terms, but the requirements of § 226.59 do not apply. If the consumer subsequently engages in a cash advance transaction, the requirements of § 226.59 begin to apply at that time.

3. Rate increases prior to effective date of rule. For increases in annual percentage rates made on or after January 1, 2009 and prior to August 22, 2010, § 226.59(a) requires the card issuer to review the factors described in § 226.59(d) and reduce the rate, as appropriate, if the rate increase is of a type for which 45 days' advance notice would currently be required under § 226.9(c)(2) or (g). For example, 45 days' notice is not required under § 226.9(c)(2) if the rate increase results from the increase in the index by which a properly-disclosed variable rate is determined in accordance with § 226.9(c)(2)(v)(C) or if the increase occurs upon expiration of a specified period of time

and disclosures complying with § 226.9(c)(2)(v)(B) have been provided. The requirements of § 226.59 do not apply to such rate increases.

4. Amount of rate decrease. Even in circumstances where a rate reduction is required, § 226.59 does not require that a card issuer decrease the rate that applies to a credit card account to the rate that was in effect prior to the rate increase subject to § 226.59(a). The amount of the rate decrease that is required must be determined based upon the card issuer's reasonable policies and procedures under § 226.59(b) for consideration of factors described in § 226.59(a) and (d). For example, assume a consumer's rate on new purchases is increased from a variable rate of 15.99% to a variable rate of 23.99% based on the consumer's making a required minimum periodic payment five days late. The consumer makes all of the payments required on the account on time for the six months following the rate increase. Assume that the card issuer evaluates the account by reviewing the factors on which the increase in an annual percentage rate was originally based, in accordance with § 226.59(d)(1)(i). The card issuer is not required to decrease the consumer's rate to the 15.99% that applied prior to the rate increase. However, the card issuer's policies and procedures for performing the review required by § 226.59(a) must be reasonable, as required by § 226.59(b), and must take into account any reduction in the consumer's credit risk based upon the consumer's timely payments.

59(a)(2) Rate reductions.

59(a)(2)(ii) Applicability of rate reduction.

1. Applicability of reduced rate to new transactions. Section 226.59(a)(2)(ii) requires, in part, that any reduction in rate required pursuant to § 226.59(a)(1) must apply

to new transactions that occur after the effective date of the rate reduction, if those transactions would otherwise have been subject to the increased rate described in § 226.59(a)(1). A credit card account may have multiple types of balances, for example, purchases, cash advances, and balance transfers, to which different rates apply. For example, assume a new credit card account opened on January 1 of year one has a rate applicable to purchases of 15% and a rate applicable to cash advances and balance transfers of 20%. Effective March 1 of year two, consistent with the limitations in § 226.55 and upon giving notice required by § 226.9(c)(2), the card issuer raises the rate applicable to new purchases to 18% based on market conditions. The only transaction in which the consumer engages in year two is a $1,000 purchase made on July 1. The rate for cash advances and balance transfers remains at 20%. Based on a subsequent review required by § 226.59(a)(1), the card issuer determines that the rate on purchases must be reduced to 16%. Section 226.59(a)(2)(ii) requires that the 16% rate be applied to the $1,000 purchase made on July 1 and to all new purchases. The rate for new cash advances and balance transfers may remain at 20%, because there was no rate increase applicable to those types of transactions and, therefore, the requirements of § 226.59(a) do not apply.

59(c) Timing.

1. In general. The issuer may review all of its accounts subject to § 226.59(a) at the same time once every six months, may review each account once each six months on a rolling basis based on the date on which the rate was increased for that account, or may otherwise review each account not less frequently than once every six months.

2. Example. A card issuer increases the rates applicable to one half of its credit card accounts on June 1, 2011. The card issuer increases the rates applicable to the other half of its credit card accounts on September 1, 2011. The card issuer may review the rate increases for all of its credit card accounts on or before December 1, 2011, and at least every six months thereafter. In the alternative, the card issuer may first review the rate increases for the accounts that were repriced on June 1, 2011 on or before December 1, 2011, and may first review the rate increases for the accounts that were repriced on September 1, 2011 on or before March 1, 2012.

3. Rate increases prior to effective date of rule. For increases in annual percentage rates applicable to a credit card account under an open-end (not home-secured) consumer credit plan on or after January 1, 2009 and prior to August 22, 2010, § 226.59(c) requires that the first review for such rate increases be conducted prior to February 22, 2011.

59(d) Factors.

1. Change in factors. A creditor that complies with § 226.59(a) by reviewing the factors it currently considers in determining the annual percentage rates applicable to similar new credit card accounts may change those factors from time to time. When a creditor changes the factors it considers in determining the annual percentage rates applicable to similar new credit card accounts from time to time, it may comply with § 226.59(a) by reviewing the set of factors it considered immediately prior to the change in factors for a brief transition period, or may consider the new factors. For example, a creditor changes the factors it uses to determine the rates applicable to similar new credit card accounts on January 1, 2012. The creditor reviews the rates applicable to its existing

accounts that have been subject to a rate increase pursuant to § 226.59(a) on January 25, 2012. The creditor complies with § 226.59(a) by reviewing, at its option, either the factors that it considered on December 31, 2011 when determining the rates applicable to similar new credit card accounts or the factors that it considers as of January 25, 2012. For purposes of compliance with § 226.59(d), a transition period of 60 days from the change of factors constitutes a brief transition period.

2. Comparison of existing account to factors used for similar new accounts. Under § 226.59(a), if a creditor evaluates an existing account using the same factors that it considers in determining the rates applicable to similar new accounts, the review of factors need not result in existing accounts being subject to exactly the same rates and rate structure as a creditor imposes on similar new accounts. For example, a creditor may offer variable rates on similar new accounts that are computed by adding a margin that depends on various factors to the value of the LIBOR index. The account that the creditor is required to review pursuant to § 226.59(a) may have variable rates that were determined by adding a different margin, depending on different factors, to a published prime rate. In performing the review required by § 226.59(a), the creditor may review the factors it uses to determine the rates applicable to similar new accounts. If a rate reduction is required, however, the creditor need not base the variable rate for the existing account on the LIBOR index but may continue to use the published prime rate. Section 226.59(a) requires, however, that the rate on the existing account after the reduction, as determined by adding the published prime rate and margin, be comparable to the rate, as determined by adding the margin and LIBOR, charged on a new account for which the factors are comparable.

3. Similar new credit card accounts. A card issuer complying with § 226.59(d)(1)(ii) is required to consider the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan. For example, a card issuer may review different factors in determining the annual percentage rate that applies to credit card plans for which the consumer pays an annual fee and receives rewards points than it reviews in determining the rates for credit card plans with no annual fee and no rewards points. Similarly, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards than it reviews in determining the rates applicable to credit cards that can be used at a wider variety of merchants. In addition, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards usable only at Merchant A than it may review for private label credit cards usable only at Merchant B. However, § 226.59(d)(1)(ii) requires a card issuer to review the factors it considers when determining the rates for new credit card accounts with similar features that are offered for similar purposes.

4. No similar new credit card accounts. In some circumstances, a card issuer that complies with § 226.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may not be able to identify a class of new accounts that are similar to the existing accounts on which a rate increase has been imposed. For example, consumers may have existing credit card accounts under an open-end (not home-secured) consumer credit plan but the card issuer may no longer offer a product to new consumers with similar characteristics, such as the

availability of rewards, size of credit line, or other features. Similarly, some consumers' accounts may have been closed and therefore cannot be used for new transactions, while all new accounts can be used for new transactions. In those circumstances, § 226.59 requires that the card issuer nonetheless perform a review of the rate increase on the existing customers' accounts. A card issuer does not comply with § 226.59 by maintaining an increased rate without performing such an evaluation. In such circumstances, § 226.59(d)(1)(ii) requires that the card issuer compare the existing accounts to the most closely comparable new accounts that it offers.

5. Consideration of consumer's conduct on existing account. A card issuer that complies with § 226.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may consider the consumer's payment or other account behavior on the existing account only to the same extent and in the same manner that the issuer considers such information when one of its current cardholders applies for a new account with the card issuer. For example, a card issuer might obtain consumer reports for all of its applicants. The consumer reports contain certain information regarding the applicant's past performance on existing credit card accounts. However, the card issuer may have additional information about an existing cardholder's payment history or account usage that does not appear in the consumer report and that, accordingly, it would not generally have for all new applicants. For example, a consumer may have made a payment that is five days late on his or her account with the card issuer, but this information does not appear on the consumer report. The card issuer may consider this additional information in performing its review under

§ 226.59(a), but only to the extent and in the manner that it considers such information if a current cardholder applies for a new account with the issuer.

59(f) Termination of obligation to review factors.

1. Revocation of temporary rates. i. In general. If an annual percentage rate is increased due to revocation of a temporary rate, § 226.59(a) requires that the card issuer periodically review the increased rate. In contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with § 226.9(c)(2)(v)(B), the review requirements in § 226.59(a) do not apply. If a temporary rate is revoked such that the requirements of § 226.59(a) apply, § 226.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred.

ii. Examples. Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. The card issuer offers the consumer a 10% rate on purchases made between February 1, 2012 and August 1, 2013 and discloses pursuant to § 226.9(c)(2)(v)(B) that on August 1, 2013 the rate on purchases will revert to the original 15% rate. The consumer makes a payment that is five days late in July 2012.

A. Upon providing 45 days' advance notice and to the extent permitted under § 226.55, the card issuer increases the rate applicable to new purchases to 15%, effective on September 1, 2012. The card issuer must review that rate increase under § 226.59(a) at least once each six months during the period from September 1, 2012 to August 1, 2013, unless and until the card issuer reduces the rate to 10%. The card issuer performs reviews of the rate increase on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 15%. Beginning on August 1, 2013, the card issuer is not required to continue periodically reviewing the rate increase, because if the temporary rate had expired in accordance with its previously disclosed terms, the 15% rate would have applied to purchase balances as of August 1, 2013 even if the rate increase had not occurred on September 1, 2012.

B. Same facts as above except that the review conducted on July 1, 2013 indicates that a reduction to the original temporary rate of 10% is appropriate. Section 226.59(a)(2)(i) requires that the rate be reduced no later than 45 days after completion of the review, or no later than August 15, 2013. Because the temporary rate would have expired prior to the date on which the rate decrease is required to take effect, the card issuer may, at its option, reduce the rate to 10% for any portion of the period from July 1, 2013 to August 1, 2013, or may continue to impose the 15% rate for that entire period. The card issuer is not required to conduct further reviews of the 15% rate on purchases.

C. Same facts as above except that on September 1, 2012 the card issuer increases the rate applicable to new purchases to the penalty rate on the consumer's account, which is 25%. The card issuer conducts reviews of the increased rate in accordance with § 226.59 on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 25%. The card issuer's obligation to review the rate increase continues to apply after August 1, 2013, because the 25% penalty rate exceeds the 15% rate that would have applied if the temporary rate expired in accordance with its previously disclosed terms. The card issuer's obligation to review the rate terminates if and when the annual percentage rate applicable to purchases is reduced to the 15% rate.

59(g) Acquired accounts.

59(g)(1) General.

1. Relationship to § 226.59(d)(2) for rate increases imposed between January 1, 2009 and February 21, 2010. Section 226.59(d)(2) applies to acquired accounts. Accordingly, if a card issuer acquires accounts on which a rate increase was imposed between January 1, 2009 and February 21, 2010 that was not based solely upon consumer-specific factors, that acquiring card issuer must consider the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts, if it conducts either or both of the first two reviews of such accounts that are required after August 22, 2010 under § 226.59(a).

59(g)(2) Review of acquired portfolio.

1. Example - general. A card issuer acquires a portfolio of accounts that currently are subject to annual percentage rates of 12%, 15%, and 18%. Not later than six months after the acquisition of such accounts, the card issuer reviews all of these accounts in accordance with the factors that it currently uses in determining the rates applicable to similar new credit card accounts. As a result of that review, the card issuer decreases the rate on the accounts that are currently subject to a 12% annual percentage rate to 10%, leaves the rate applicable to the accounts currently subject to a 15% annual percentage rate at 15%, and increases the rate applicable to the accounts currently subject to a rate of 18% to 20%. Section 226.59(g)(2) requires the card issuer to review, no less frequently than once every six months, the accounts for which the rate has been increased to 20%. The card issuer is not required to review the accounts subject to 10% and 15%

rates pursuant to § 226.59(a), unless and until the card issuer makes a subsequent rate increase applicable to those accounts.

2. Example – penalty rates. A card issuer acquires a portfolio of accounts that currently are subject to standard annual percentage rates of 12% and 15%. In addition, several acquired accounts are subject to a penalty rate of 24%. Not later than six months after the acquisition of such accounts, the card issuer reviews all of these accounts in accordance with the factors that it currently uses in determining the rates applicable to similar new credit card accounts. As a result of that review, the card issuer leaves the standard rates applicable to the accounts at 12% and 15%, respectively. The card issuer decreases the rate applicable to the accounts currently at 24% to its penalty rate of 23%. Section 226.59(g)(2) requires the card issuer to review, no less frequently than once every six months, the accounts that are subject to a penalty rate of 23%. The card issuer is not required to review the accounts subject to 12% and 15% rates pursuant to § 226.59(a), unless and until the card issuer makes a subsequent rate increase applicable to those accounts.

By order of the Board of Governors of the Federal Reserve System, June 14, 2010.

Jennifer J. Johnson (signed)
Jennifer J. Johnson
Secretary of the Board