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Office of Thrift Supervision **April 26, 2010**

Department of the Treasury

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TR-448

Federal Register, Vol. 75, No. 49, pp. 12334-12375 **Number TR-448**

On March 15, 2010 the Board of Governors of the Federal Reserve System issued a proposed rule to amend Regulation Z 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.

Federal Register

Monday,
March 15, 2010

Part II

Federal Reserve System

12 CFR Part 226
Truth in Lending; Proposed Rule

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: Proposed rule; request for public comment.

SUMMARY: The Board proposes to amend 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 proposed rule would require that penalty fees imposed by card issuers be reasonable and proportional to the violation of the account terms. The proposed rule would also require credit card issuers to reevaluate at least every six months annual percentage rates increased on or after January 1, 2009.

DATES: Comments must be received on or before April 14, 2010. Comments on the Paperwork Reduction Act analysis set forth in Section VII of this **Federal Register** notice must be received on or before May 14, 2010.

ADDRESSES: You may submit comments, identified by Docket No. R–1384, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

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

FOR FURTHER INFORMATION CONTACT: 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 proposed 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. Public Law 111–24, 123 Stat. 1734 (2009). The Credit Card Act primarily amends the Truth in Lending Act (TILA) and establishes a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans.

The requirements of the Credit Card Act that pertain to credit cards or other open-end credit for which the Board has rulemaking authority become effective in three stages. First, provisions generally requiring that consumers receive 45 days' advance notice of interest rate increases and significant changes in terms (new TILA Section 127(i)) and provisions regarding the amount of time that consumers have to make payments (revised TILA Section 163) became effective on August 20, 2009 (90 days after enactment of the Credit Card Act). A majority of the requirements under the Credit Card Act for which the Board has rulemaking authority, including, among other things, provisions regarding interest rate increases (revised TILA Section 171), over-the-limit transactions (new TILA Section 127(k)), and student cards (new TILA Sections 127(c)(8), 127(p), and 140(f)) become effective on February 22, 2010 (9 months after enactment). Finally, two provisions of the Credit Card Act addressing the reasonableness and proportionality of penalty fees and charges (new TILA Section 149) and re-evaluation by creditors of rate increases (new TILA Section 148) 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 is implementing 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 January 12, 2010, the Board issued 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 become effective on February 22, 2010. *See* 75 FR 7658 (February 2010 Regulation Z Rule). This proposed rule implements the provisions of the Credit Card Act that become effective on August 22, 2010.

II. Summary of Major Proposed 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 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 proposed rule permits an 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 proposed 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 proposed 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 proposed 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). In order to ensure that penalty fees are based on relatively current cost information, the proposed rule would require card issuers to re-evaluate their costs at least annually.

Notably, the proposed rule 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.

Deterrence of violations. The Credit Card Act requires the Board to consider the deterrence of violations by the cardholder. Accordingly, as an alternative to basing penalty fees on costs, the proposed rule permits a card issuer to charge a penalty fee for a particular type of violation if it has determined that the amount of the fee is reasonably necessary to deter that type of violation.

Because it would not be feasible to determine the specific amount necessary to deter a particular consumer, the proposed rule requires issuers that base their penalty fees on deterrence to use an empirically derived, demonstrably and statistically sound model that reasonably estimates the effect of the amount of the fee on the frequency of violations. In order to support a determination that the dollar amount of a fee is reasonably necessary to deter a particular type of violation, a model must reasonably estimate that, independent of other variables, the imposition of a lower fee amount would result in a substantial increase in the frequency of that type of violation.

Consumer conduct. The Credit Card Act requires the Board to consider the conduct of the cardholder. The proposed rule does not require that each penalty fee be based on an assessment of the individual consumer conduct associated with the violation. Instead, the proposed rule takes consumer conduct into account in other ways.

The proposed rule contains provisions specifically based on consumer conduct. First, the proposed rule prohibits issuers from imposing penalty fees that exceed the dollar amount associated with the violation. Thus, for example, a consumer who exceeds the credit limit by $5 could not be charged an over-the-limit fee of more than $5. Second, the proposed rule prohibits issuers from imposing multiple penalty fees based on a single event or transaction.

Safe harbor. Consistent with the authority granted by the Credit Card Act, the proposed rule contains a safe harbor that provides a single penalty fee amount that will generally be sufficient to cover an issuer's costs and to deter violations. Because the Board does not have sufficient information to determine the appropriate safe harbor amount at this time, the proposed rule does not provide a specific amount. Instead, the proposed rule requests that credit card issuers and other interested parties submit data regarding costs incurred as a result of violations and the deterrent effect of different fee amounts on violations.

Because violations involving large dollar amounts may impose greater costs on the card issuer and require greater deterrence, the proposed safe harbor would also permit an issuer to impose a penalty fee that exceeds the specific safe harbor amount in certain circumstances. Specifically, the proposed safe harbor would permit an issuer to impose a penalty that does not exceed 5% of the dollar amount associated with the violation (up to a specific dollar limit). Thus, for example, if a $500 minimum payment was delinquent, the safe harbor would permit the card issuer to impose a $25 late payment fee.

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. Creditors are required to perform this review no less frequently than once every six months, and must maintain reasonable methodologies for this evaluation. The statute 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 proposed 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, the proposed rule requires card issuers to review changes in such factors no less frequently than once each six months and, if appropriate based on their review, reduce the annual percentage rate applicable to the account. The requirement to reevaluate rate increases applies both to increases in annual percentage rates based on factors specific to a particular consumer, such as changes in the consumer's creditworthiness, and to increases in annual percentage rates imposed due to factors 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 proposed rule requires that the rate be reduced within 30 days after completion of the evaluation.

Factors relevant to reevaluation of rate increases. The proposed rule sets forth guidance on the factors that a credit card issuer must consider when performing the reevaluation of a rate increase. Credit card underwriting standards can change over time and for various reasons. In some cases, the proposed rule would require card issuers to review a consumer's account every six months for several years, and the issuer's underwriting standards for its new and existing cardholders may change significantly during that time. Accordingly, the proposed rule would permit 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 its credit card accounts.

Termination of obligation to reevaluate rate increases. The proposed 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. In some circumstances, the proposed rule may require card issuers to reevaluate rate increases each six months for an indefinite period. The proposal solicits 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, 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.

III. Statutory 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 proposal 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.

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. Currently, 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 proposed amendments to Appendix G–18, disclosure of a maximum limit (or "up to" amount) will generally be necessary to accurately describe penalty fees that are consistent with the new substantive restrictions in proposed § 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 will generally be the only amount disclosed for penalty fees—it is important to highlight that amount.

Accordingly, the Board is proposing to amend §§ 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 would also make conforming amendments to comment 5a(a)(2)–5.ii.

Section 226.7 Periodic Statement

Section 226.7(b)(11)(i)(B) 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 proposed amendments to Appendix G, an "up to" disclosure will generally be necessary to accurately describe a late payment fee that is consistent with the substantive restrictions in proposed § 226.52(b). Accordingly, the Board is proposing to amend § 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, the Board notes that, consistent with § 226.52(b), a card issuer could disclose a range of late payment fees if, for example, the issuer chose not to impose a fee when a required minimum periodic payment below a certain amount is not received by the payment due date. As discussed in detail below, proposed § 226.52(b)(2)(i) would prohibit a card issuer from imposing a late payment fee that exceeds the amount of the delinquent minimum payment. A card issuer could choose to comply with this prohibition by only charging a late payment fee when the delinquent payment is above a certain amount. In these circumstances, the card issuer could disclose the late payment fee as a range. For example, if a card issuer chose not to impose a late payment fee when a payment that is less than $5 is late, the issuer could disclose its fee as a range from $5 to the maximum fee amount under the safe harbor in proposed § 226.52(b)(3).

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

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.[1]

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 proposing to implement 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 proposes to implement 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 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 the contractual terms or the exercise of a penalty pricing provision already in the contract; therefore for ease of reference the proposed 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 proposed changes to § 226.9(c)(2) and (g) would 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 would not be 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. The Board is proposing to add a new § 226.9(c)(2)(iv)(A)(*8*) that requires 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) credit plan, listed in their order of importance, in order to implement the notice requirements of new TILA Section 148. Comment 9(c)(2)(iv)–11 would provide additional guidance on the required disclosure. Specifically comment 9(c)(2)(iv)–11 states 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. The Board does not believe that it is appropriate to mandate disclosure of a minimum number of reasons, because rate increases may occur in different circumstances and the number of principal factors considered by the issuer could vary. For example, the rate increase could be the result of the consumer's behavior on the account, such as making a late payment, and in that case there would be only one principal reason for the rate increase. In contrast, a card issuer could base a rate increase on several different reasons, for example, a decrease in the consumer's credit score and changes in market conditions. In those circumstances, the card issuer would be required to disclose both principal reasons. However, as noted above, in order to avoid information overload, the regulation would limit the number of principal reasons to a maximum of four.

The comment further notes that a card issuer may 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 notes 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." The Board believes that this is the appropriate level of detail for this disclosure, because it would inform the consumer whether the rate increase is due to changes in the consumer's 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 such detailed information would not outweigh the operational burden associated with providing additional detail.

The disclosure requirements of new § 226.9(c)(2)(iv)(A)(*8*) are intended to be flexible, to reflect the Board's understanding that different card issuers may consider different reasons, or may weigh similar reasons differently, in determining whether to raise the rate applicable to a consumer's account. Proposed comment 9(c)(2)(iv)–11 notes that in some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. For example, assume that the rate applicable to a consumer's account is being increased because 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.

Similarly, the Board proposes to add a new § 226.9(g)(3)(i)(A)(*6*) for 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). Proposed § 226.9(g)(3)(i)(A)(*6*) would require 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) credit plan. New comment 9(g)–7 would cross-reference comment 9(c)(2)(iv)–11 for guidance on disclosure of the reasons for a rate increase.

The Board proposes 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 proposed § 226.9(c)(2)(iv)(A)(*8*) and (g)(3)(i)(A)(*6*).

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

[1] As discussed in the supplementary information to § 226.59, the proposed rule would require 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).

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, many agreements provide that a fee will be assessed if amounts are charged to the account that exceed the account's credit limit.[2] 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.[3] The GAO also found that, over the same period, the percentage of issuer revenue derived from penalty fees increased to approximately 10%.[4]

According to data obtained by the Board from Mintel Comperemedia, the average late payment fee has increased to approximately $37 as of May 2009, while the average over-the-limit fee has increased to approximately $36.[5] 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.[6]

However, it appears that many smaller credit card issuers 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 to $25. In addition, the Board understands that many credit unions charge late-payment and over-the-limit fees of $20 on average. 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.[7]

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 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[8] 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 proposes to implement new TILA Section 149 in proposed § 226.52(b). In developing this proposal, 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 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." [9] Congress often uses a reasonableness standard to provide agencies or courts with broad discretion in implementing or interpreting a statutory requirement.[10] 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." [11] 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, 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

[2] 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.

[3] 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*).

[4] *See* GAO Credit Card Report at 72–73.

[5] 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 remained at that level through May 2009. 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 $32.

[6] *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.

[7] *See* Pew Credit Card Report at 3, 31–33.

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

[9] *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)).

[10] *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.").

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

factors, the Board believes that they reflect Congressional intent with 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. 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.

As discussed below, when the statutory factors in Section 149(c) were in conflict, the Board found it necessary to give more weight to a particular factor or factors. In addition, while the Board has generally attempted to establish consistent relationships between the dollar amounts of penalty fees and the violations for which they are imposed, there are certain circumstances in which the Board believes that a particular factor or factors may warrant modifications to those relationships that could produce some degree of inconsistency. The Board is making these determinations pursuant to the authority granted by new TILA Section 149 and existing TILA Section 105(a). In particular, as noted above, new TILA Section 149(d) provides that "the Board may establish different standards for different types of fees and charges, as appropriate."

Cost Incurred as a Result of Violations

New TILA Section 149(c)(1) requires the Board to consider the cost 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 reasonable and proportional to a violation if it represents a reasonable proportion of the total costs incurred by the issuer as a result of that type of violation across all consumers. This interpretation 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 ensuring that those costs are spread evenly among consumers and that no individual consumer bears an unreasonable or disproportionate share. As discussed below, the Board also intends to adopt a safe harbor amount for penalty fees that the Board believes would be generally sufficient to cover issuers' costs.

The Board notes that the proposed rule would 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 occurred to determine the associated costs. In addition to being inefficient and overly burdensome for card issuers, this type of requirement would be 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, the proposed rule would require 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. The Board believes that a penalty fee is reasonable and proportional to a violation under new TILA Section 149(a) if the dollar amount of the fee is reasonably necessary to deter that type of violation. The Board believes that this interpretation is consistent with Congress' intent because it will prevent consumers from being charged fees that unreasonably exceed—or are out of proportion to—their deterrent effect. As discussed below, the Board would also adopt a safe harbor amount for penalty fees that the Board believes would be generally sufficient to deter violations.

The proposed rule does not require that penalty fees be calibrated to deter individual consumers from engaging in specific violations. The Board believes 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. Accordingly, as discussed in more detail below, the proposed rule would require that penalty fees be reasonably necessary to deter the type of violation, rather than a specific violation or an individual consumer.[12]

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, the proposed rule would not require card issuers to examine the conduct of the individual consumer before imposing a penalty fee. The Board believes that—to the extent certain consumer conduct that violates the account terms or other requirements has the effect of increasing the costs incurred by the card issuer—fees imposed pursuant to the proposed rule would reflect that conduct because the issuer would be permitted to recover the increased cost. Similarly, the proposed rule takes consumer conduct into account by permitting issuers to charge penalty fees that are reasonably necessary to deter certain types of conduct that result in violations. Thus, because consideration of individual consumer conduct is not feasible and because general consumer conduct would be reflected in the cost and deterrence analyses, the Board's general rule would not permit penalty fees to be based exclusively on consumer conduct.

However, the Board considered consumer conduct when developing other provisions of the proposed rule. These provisions reflect the Board's belief that 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, the proposed rule would prohibit issuers from imposing penalty fees that exceed the dollar amount associated with the violation of the account terms or other requirements. Thus, a consumer who exceeds the

[12] The Board acknowledges that a penalty fee is unlikely to have a deterrent effect in circumstances where consumers cannot avoid the violation of the account terms. However, deterrence is a required factor under new TILA Section 149(c), and 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) (finding that, based on a study of four million credit card statements, 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) (available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1091623&download=yes*).

credit limit by $5 could not be charged an over-the-limit fee of more than $5.

The proposed rule would also establish a safe harbor permitting higher penalty fees when a large dollar amount is associated with the violation. Specifically, issuers would be permitted to impose penalty fees that do not exceed 5% of the dollar amount associated with the violation (up to a maximum amount). Thus, a consumer who exceeds the credit limit by $500 could be charged an over-the-limit fee of $25.

Furthermore, the proposed rule would prohibit issuers from imposing multiple penalty fees based on a single event or transaction. The Board believes that imposing multiple fees in these circumstances could 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, the proposed rule would prohibit issuers from charging a late payment fee and a returned payment fee based on a single payment.

Finally, the Board solicits comment on whether there are additional methods for regulating the amount of credit card penalty fees based on the conduct of the consumer. In particular, the Board solicits comment on whether the safe harbor in § 226.52(b)(3) should permit issuers to base penalty fees on consumer conduct by:

- Tiering the dollar amount of penalty fees based on the number of times a consumer engages in particular conduct during a specified period. For example, card issuers could be permitted to charge a fee for the second late payment during a 12-month period that is higher than the fee charged for the first late payment.
- Imposing penalty fees in increments based on the consumer's conduct. For example, card issuers could be permitted to charge a late payment fee of $5 each day after the payment due date until the required minimum periodic payment is received. Thus, a consumer who is only a day late would be charged $5 in late payment fees, while a consumer who is five days late would be charged $25.

52(b)(1) General Rule

Proposed § 226.52(b)(1) implements the general rule in new TILA Section 149(a) by providing 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 card issuer has determined that either: (1) 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; or (2) the dollar amount of the fee is reasonably necessary to deter that type of violation.

Because a card issuer is in the best position to determine the costs it incurs as a result of violations and the deterrent effect of its penalty fees, the Board believes that, as a general matter, it is appropriate to make card issuers responsible for determining that their fees comply with new TILA Section 149(a) and § 226.52(b)(1). As discussed below, proposed § 226.52(b)(3) contains a safe harbor that is intended to reduce the burden of making these determinations. The Board notes that a card issuer that chooses to base its penalty fees on its own determinations (rather than on the safe harbor) must be able to demonstrate to the regulator responsible for enforcing compliance with TILA and Regulation Z that its determinations are consistent with § 226.52(b)(1).

As discussed above, it would be inefficient and overly burdensome to require card issuers to make individualized determinations with respect to the costs incurred as a result of each violation or the amount necessary to deter 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. Although "the conduct of the cardholder" is a relevant consideration under new TILA Section 149(c)(3), proposed § 226.52(b)(1) would not require a card issuer to examine the conduct of the individual consumer with respect to a particular violation before imposing a penalty fee, nor would it permit an issuer to base the amount of a penalty fee solely on a consumer's conduct. Instead, the Board believes that this factor supports the prohibitions in proposed § 226.52(b)(2) on penalty fees that exceed the dollar amount associated with the violation and the imposition of multiple penalty fees based on a single event or transaction.

Proposed comment 52(b)–1 would clarify 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 provides 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; [13] (4) any fee or 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.[14]

Proposed comment 52(b)–1 would also provide 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 account terms or other requirements; (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.

In addition, proposed comment 52(b)–1 would clarify 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 account terms. Currently, many credit card issuers apply an increased

[13] It appears that Congress intended new TILA Section 149 to apply to all over-the-limit fees, even if the consumer has affirmatively consented to the payment of over-the-limit transactions pursuant to new TILA Section 127(k) and § 226.56. *See* new TILA § 149(a) (listing over-the-limit fees as an example of a penalty fee or charge). Furthermore, the Board has determined that the 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.

[14] 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.

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.

Elsewhere in the Credit Card Act, Congress expressly referred to increases in annual percentage rates when it intended to address them.[15] 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 provide 45 days advance notice before applying a penalty rate to new transactions. *See* new TILA § 127(i); § 226.9(g). Finally, 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; proposed § 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.[16]

Proposed comment 52(b)–2 would clarify that a card issuer may round any fee that complies with § 226.52(b) to the nearest whole dollar. For example, if the proposed rule 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 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.

Proposed comment 52(b)(1)–1 would clarify that the fact that a card issuer's fees for violating the account terms are comparable to fees assessed by other card issuers is not sufficient to satisfy the requirements of § 226.52(b)(1). 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 or are reasonably necessary to deter violations.

A. Fees Based on Costs

Proposed comment 52(b)(1)(i)–1 would clarify that a card issuer is not required to base its fees on the costs incurred as a result of a specific violation of the account terms or other requirements. Instead, for purposes of § 226.52(b)(1)(i), a card issuer must have determined that a fee for violating the account terms or other requirements represents a reasonable proportion of the costs incurred by the card issuer as a result of that type of violation. The factors relevant to this determination include: (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, the card issuer may, at its option, 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, a card issuer could satisfy § 226.52(b)(1)(i) by determining that its late payment fee represents 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). As discussed below, proposed comments 52(b)(1)(i)–4 through –6 would provide more detailed examples of the types of costs that a card issuer may incur as a result of late payments, returned payments, and transactions that exceed the credit limit as well as examples of fees that would represent a reasonable proportion of those costs.

Proposed comment 52(b)(1)(i)–2 would clarify that, although higher rates of loss may be associated with particular violations of the account terms, 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. Although an account 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). Furthermore, it appears that most violations of the account terms do not actually result in losses.[17]

In addition, the Board understands that, as a general matter, card issuers currently do not price for the risk of loss through penalty fees; instead, issuers generally price for risk through upfront annual percentage rates and penalty rate increases.[18] However, the Credit Card Act generally prohibits penalty rate increases during the first year after account opening and with respect to existing balances.[19] The Board imposed similar limitations in January 2009, reasoning 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.[20] For these same reasons, the Board is concerned that—if card issuers

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

[16] The Board also notes 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*).

[17] For example, 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.

[18] The Board recognizes that this is not necessarily the case for charge card accounts, which 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 solicits comment on whether a different approach should be taken with these types of accounts.

[19] *See* revised TILA § 171; new TILA § 172; *see also* § 226.55.

[20] This 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 5521–5528.

were permitted to begin recovering losses and associated costs through penalty fees rather than upfront rates—transparency in credit card pricing would be reduced.[21] Nevertheless, the Board solicits comment on whether card issuers should be permitted to include losses and associated costs in the § 226.52(b)(1)(i) determination.

Proposed comment 52(b)(1)(i)–3 would clarify that, as a general matter, amounts charged to the card issuer by a third party as a result of a violation of the account terms 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.

Proposed comment 52(b)(1)(i)–4 would clarify the application of proposed § 226.52(b)(1)(i) to late payment fees. In addition to providing illustrative examples, the comment would state 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). The Board solicits comment on whether card issuers incur other costs as a result of late payments.

Proposed comment 52(b)(1)(i)–5 would clarify the application of proposed § 226.52(b)(1)(i) to returned-payment fees. The comment would state 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 would also provide illustrative examples. As above, the Board solicits comment on whether card issuers incur other costs as a result of returned payments.

Proposed comment 52(b)(1)(i)–6 would clarify the application of proposed § 226.52(b)(1)(i) to over-the-limit fees. In addition to providing illustrative examples, the comment would state 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. The Board solicits comment on whether card issuers incur other costs as a result of over-the-limit transactions.

B. Fees Based on Deterrence

Proposed comment 52(b)(1)(ii)–1 would clarify that § 226.52(b)(1)(ii) does not require a card issuer to determine that a fee for violating the account terms or other requirements is necessary to deter violations by a specific consumer or with respect to a specific account. Instead, for purposes of § 226.52(b)(1)(ii), a card issuer must determine that a fee is reasonably necessary to deter the type of violation for which the fee is imposed.

Because it would not be feasible to determine the specific amount necessary to deter a particular consumer from violating the account terms or other requirements, § 226.52(b)(1)(ii) would require issuers that base their penalty fees on deterrence to use an empirically derived, demonstrably and statistically sound model that reasonably estimates the effect of the amount of the fee on the frequency of violations. Proposed comment 52(b)(1)(ii)–2 clarifies that a model that reasonably estimates a statistical correlation between the imposition of a fee and the frequency of a type of violation is not sufficient to satisfy the requirements of § 226.52(b)(1)(ii). The Board acknowledges that, as a general matter, the imposition of a fee for particular behavior (such as paying late) can reduce the frequency of that behavior. However, the frequency of violations may also be influenced by other factors (such as unemployment rates). In addition, consistent with the intent of new TILA Section 149, proposed § 226.52(b)(1)(ii) requires the issuer to determine that the *dollar amount* of the fee is reasonably necessary to deter violations.

Thus, the proposed comment clarifies that, in order to support a determination that the dollar amount of a fee is reasonably necessary to deter a particular type of violation, a model must reasonably estimate that, independent of other variables, the imposition of a lower fee amount would result in a substantial increase in the frequency of that type of violation. In addition, the parameterization of the model must be sufficiently flexible to allow for the identification of a lower fee level above which additional fee increases have no marginal effect on the frequency of violations. In other words, a card issuer that currently charges a $35 late payment fee could not satisfy the requirements in § 226.52(b)(1)(ii) by developing a model that estimates that delinquencies will increase if *no* late payment fee is charged. Instead, the issuer's model must be able to reasonably estimate that delinquencies

[21] The Board notes that this proposed 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 1, 19–22 ("[W]e fail to see how [losses] can legitimately be said to have been caused in any legally relevant sense by a particular default of the consumer given that * * * most defaulters do not default again in any given year, let alone are their accounts written off at a later stage."); *see also id.* at 25 ("[I]t is preferable for credit card providers' costs to be covered * * * by the overall interest rate charged for using the card. That rate is most likely to be in the forefront of the minds of consumers when entering contracts, and the figure is one which readily enables the consumer to compare the advantages (or otherwise) of signing up for one credit card rather than another. The transparency of core terms such as the interest rate payable on the card enhances the ability of consumers to compare and contrast the various credit cards on offer in the market and is therefore likely to bring about competitive downward pressure on the rates, and hence costs involved. It is therefore preferable, from the point of view of making markets work well that if credit card companies want to recover costs associated with default from their customers, they should do so by virtue of the overall interest rate payable for credit on the card.") (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. Regardless, this question does not affect the Board's legal authority (and mandate) to regulate credit card penalty fees under new TILA Section 149. Accordingly, while the Board does not find the OFT Credit Card Statement to be dispositive on any particular point, the Board believes that the OFT's findings with respect to credit card penalty fees warrant consideration, along with other factors.

will increase substantially if a late payment fee of less than $35 is charged.

The Board understands that, in order to develop the empirically-derived estimates required by § 226.52(b)(1)(ii), card issuers must have data regarding the effect of different fee amounts on the frequency of violations. Specifically, in order to comply with § 226.52(b)(1)(ii), it will be necessary for a card issuer to test the effect of fee amounts that are lower and higher than the amount ultimately found to be reasonably necessary to deter a type of violation. For example, in the process of determining that a $20 fee is reasonably necessary to deter a particular type of violation, a card issuer may need to test the deterrent effect of an $15 fee and a $25 fee.

Some card issuers may be able to gather the necessary data by testing the deterrent effect of different fee amounts prior to the August 22, 2010 effective date for new TILA Section 149. Issuers that cannot do so would be required to base their penalty fees on costs consistent with § 226.52(b)(1)(i) or to use the safe harbor in § 226.52(b)(3). However, the Board does not believe that these issuers should be permanently foreclosed from gathering the data necessary to base their penalty fees on deterrence. Furthermore, as discussed below with respect to § 226.52(b)(1)(iii), card issuers that base their fees on deterrence will be required to reevaluate those fees annually and will therefore need to gather updated data.

Accordingly, the Board solicits comment on whether it is appropriate to permit card issuers to test the effect of penalty fee amounts that exceed the amounts otherwise permitted by § 226.52(b)(1). In addition, the Board solicits comment on whether limitations are necessary to ensure that such testing is legitimate. For example, testing of higher fee amounts could be limited to a representative sample of accounts that is no larger than reasonably necessary to make statistically-sound estimates regarding the effect of the amount of the fee on the frequency of violations. Similarly, testing could be limited to a period of time that is no longer than reasonably necessary to make such estimates.

C. Reevaluation of Fees

Proposed § 226.52(b)(1)(iii) provides that a card issuer must reevaluate its determination under § 226.52(b)(1)(i) or (b)(1)(ii) at least once every twelve months. If as a result of the reevaluation the card issuer determines that a lower fee is consistent with § 226.52(b)(1)(i) or (b)(1)(ii), the card issuer must begin imposing the lower fee within 30 days after completing the reevaluation. If the card issuer instead determines that a higher fee is consistent with § 226.52(b)(1)(i) or (b)(1)(ii), the card issuer may begin imposing the higher fee after complying with the notice requirements in § 226.9. This provision is intended to ensure that card issuers impose penalty fees based on relatively current cost or deterrence information. However, the Board does not wish to encourage frequent changes in penalty fees, which could reduce predictability for consumers. Accordingly, the Board solicits comment on whether twelve months is an appropriate interval for the reevaluation.

52(b)(2) Prohibited Fees

Section 226.52(b)(2) would prohibit 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.

A. Fees That Exceed Dollar Amount Associated With Violation

Section 226.52(b)(2)(i)(A) would prohibit fees based on violations of the account terms that exceed the dollar amount associated with the violation at the time the fee is imposed. The Board believes that this prohibition is consistent with Congress' intent to prohibit penalty fees that are not reasonable and proportional to the violation. Specifically, 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 believes 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.

The Board recognizes the possibility that a card issuer could incur costs as a result of a violation that exceed the dollar amount associated with that violation. However, the Board does not believe this will be the case in most circumstances. Furthermore, to the extent an issuer cannot recover all of its costs from violations involving small dollar amounts, proposed § 226.52(b)(1) permits the issuer to recover those costs by spreading them evenly among all other consumers who engage in that type of violation. In addition, the proposed limitation may encourage card issuers 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 and fees, which will result in greater transparency for consumers regarding the cost of using their credit card accounts.

An argument could be made that prohibiting penalty fees from exceeding the dollar amount associated with the violation will result in fees that are not sufficient to deter violations. However, the need for deterrence may be less pronounced with respect to violations involving small dollar amounts. Furthermore, the Board believes that consumers may be unlikely to change their behavior in reliance on this limitation. Penalty fees will still have a deterrent effect in these circumstances because a card issuer would 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 proposed comment 52(b)(2)(i)–1 through –3.

Finally, the Board recognizes that proposed § 226.52(b)(2)(i)(A) would require card issuers to charge individualized penalty fees insofar as 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) would require a mathematical determination that issuers should generally be able to program their systems to perform automatically. Thus, it does not appear that compliance with § 226.52(b)(2)(i)(A) would be overly burdensome. Nevertheless, the Board solicits comment on the compliance burden associated with this provision.

As discussed below, the proposed commentary and § 226.52(b)(2)(i)(B) provide guidance regarding the dollar amounts associated with specific violations of the account terms or other requirements. Consistent with the intent of proposed § 226.52(b)(2)(i), the Board generally clarifies the dollar amount associated with a violation in terms of the consumer conduct that resulted in the violation. The Board requests comment on whether additional guidance is needed regarding the dollar amounts associated with other types of violations.

1. Dollar Amount Associated With Late Payments

Proposed comment 52(b)(2)(i)–1 would clarify 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, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of the required minimum periodic payment on which that fee is based. 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 $20 required minimum periodic payment by the payment due date.

2. Dollar Amount Associated With Returned Payments

Proposed comment 52(b)(2)(i)–2 would clarify 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. 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.

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 23, which is returned to the card issuer for insufficient funds on March 26. Section 226.52(b)(2)(i)(A) would prohibit the card issuer from imposing a returned-payment fee that exceeds $20. However, assume instead 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. Section 226.52(b)(2)(i)(A) would prohibit the card issuer from imposing a returned-payment fee that exceeds $30.

The Board considered whether the dollar amount associated with the required minimum periodic payment should be the amount of the returned payment itself. However, 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, § 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 believes 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.

As a general matter, a card issuer should be readily able to determine the required minimum periodic payment due during the billing cycle in which the payment is returned because that payment must be disclosed on the periodic statement provided shortly after the start of each cycle. However, it is possible that, in certain circumstances, this approach could result in a short delay in the imposition of a returned-payment fee. 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, that periodic statements are mailed on the third day of the month, and that the required minimum periodic payment is due on the twenty-fifth day of the month. If a payment is returned on March 1, the card issuer may not yet have determined the required minimum periodic payment due on March 25. However, the card issuer must determine the amount of the payment prior to sending the periodic statement on March 3. Furthermore, regardless of whether the fee is imposed on March 1 or March 3, it will be reflected on the periodic statement sent on April 3. Thus, in these circumstances, it does not appear that the short delay in the imposition of the fee would be significantly detrimental to the issuer or the consumer.

Proposed comment 52(b)(2)(i)–2 would also clarify 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, as discussed below, § 226.52(b)(2)(i)(B) prohibits a card issuer imposing an additional returned-payment fee in these circumstances. It would be inconsistent with the Board's understanding of 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.[22]

[22] 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 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.

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

Proposed comment 52(b)(2)(i)–3 would clarify 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 would further clarify 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.[23]

For example, 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. If the card issuer chooses to impose an over-the-limit fee on March 6, § 226.52(b)(2)(i)(A) would prohibit the card issuer from imposing an over-the-limit fee that exceeds $10.

However, assume instead that the card issuer chooses not to impose an over-the-limit fee on March 6. On March 25, a $5 transaction is charged to the account, increasing the balance to $5,015. If the card issuer chooses to impose an over-the-limit fee on March 25, § 226.52(b)(2)(i)(A) would prohibit the card issuer from imposing an over-the-limit fee that exceeds $15.

4. Dollar Amounts Associated With Other Types of Violations

Section 226.52(b)(2)(i)(B) would prohibit the imposition of penalty fees in circumstances where there is no dollar amount associated with the violation. In particular, § 226.52(b)(2)(i)(B) would specifically prohibit a card issuer from imposing a fee based on a transaction that the issuer declines to authorize. Although the imposition of fees based on declined transactions does not appear to be

[23] 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.

widespread at present, the Board believes that 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. *See* proposed comment 52(b)(1)(i)–6. However, the Board solicits comment on whether a prohibition on penalty fees in these circumstances is appropriate.

In addition, proposed § 226.52(b)(2)(i)(B) specifically prohibits a card issuer from imposing a penalty fee based on account inactivity or the closure or termination of an account. The Board believes that this prohibition is warranted because there does not appear to be any dollar amount associated with this consumer conduct. The Board understands that card issuers may receive less revenue from accounts that are not used for a significant number of transactions or are inactive or closed. The Board also understands that card issuers incur costs associated with the administration of such accounts (such as providing periodic statements or 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. As above, however, the Board solicits comment on whether it is appropriate to prohibit penalty fees in these circumstances.

B. Multiple Fees Based On a Single Event or Transaction

Section 226.52(b)(2)(ii) would prohibit card issuers from imposing more than one penalty fee based on a single event or transaction, although issuers would be permitted to comply with this requirement by imposing no more than one penalty fee during a billing cycle. As discussed above, 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 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 that caused the violations.

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) would prohibit the issuer from recovering the costs incurred as a result of the returned payment by also charging a returned-payment fee. However, in these circumstances, § 226.52(b)(1)(i) permits the issuer to recover those costs by spreading them evenly among all other consumers whose payments are returned.

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 instance, assume that the credit limit for an account is $1,000. On March 31, the balance on the account is $975 and the card issuer has not received the $20 required minimum periodic payment due on March 25. On that same date (March 31), a $50 transaction is charged to the account, which increases the balance to $1,025. Section 226.52(b)(2)(i)(A) would permit the card issuer to impose a late payment fee of $20 and an over-the-limit fee of $25 (assuming that these amounts comply with the requirements of § 226.52(b)(1) or the safe harbor in § 226.52(b)(3)). Section 226.52(b)(2)(ii) would not prohibit the imposition of both fees because those fees are based on different events or transactions (payment not being received on or before the payment due date and the $25 extension of credit in excess of the credit limit).

Notwithstanding this guidance, the Board understands that determining whether multiple violations are caused by a single event or transaction will be operationally difficult for card issuers. Accordingly, in order to facilitate compliance, § 226.52(b)(2)(ii) permits a card issuer to avoid the burden associated with making such determinations by charging no more than one penalty fee per billing cycle. The Board believes that this approach will generally provide 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.

52(b)(3) Safe Harbor

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 be entirely consistent with 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 a generally applicable safe harbor will facilitate compliance by issuers and increase consistency and predictability for consumers.

Accordingly, § 226.52(b)(3) would provide a safe harbor that may be used to comply with the requirement in § 226.52(b)(1) that a card issuer determine that its penalty fees either represent a reasonable proportion of the total costs incurred by the card issuer as a result of violations or are reasonably necessary to deter violations. However, the Board does not have sufficient information to determine the appropriate amount at this time. Accordingly, rather than proposing a specific dollar amount, the Board is requesting comment regarding an amount that is generally consistent with the requirements in § 226.52(b)(1).

A. Information Considered by the Board

As discussed below, in developing the proposed safe harbor approach, the Board considered a variety of relevant information. First, the Board considered the dollar amounts of penalty fees currently charged by card issuers. Although credit card penalty fees appear to be approximately $32 to $37 on average, many smaller card issuers (such as community banks and credit unions) charge penalty fees of approximately $20. The Board understands that—rather than basing penalty fees solely on costs and deterrence—card issuers currently consider a number of additional factors, including the need to maintain or increase overall revenue. Nevertheless, the discrepancy between the fees charged by large and small issuers suggests that—although violations of the account terms or other requirements 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.

Second, the Board 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 also indicates that lower credit card penalty fees may adequately reflect the cost of violations and deter future violations. For example, according to a recent report by the GAO, the average overdraft and insufficient funds fee charged by depository institutions was just over $26 per item in 2007.[24] 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.[25] 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.

Third, the Board 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.[26] 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.[27] 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.[28] 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.[29] 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 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).

Fourth, the Board 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."[30] 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."[31] 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 indirect costs that have to be allocated on the basis of judgment."[32] 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 requests that commenters submit additional relevant information that will assist the Board in establishing a safe harbor amount or amounts for credit card penalty fees. In particular, to the extent possible, commenters are asked 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 are asked to provide, if known, the dollar amounts reasonably necessary to deter violations and the methods used to determine those amounts.

B. Proposed Safe Harbor

If a card issuer imposes a penalty fee pursuant to the safe harbor in proposed § 226.52(b)(3), that fee would be limited to the greater of: (1) A specific dollar amount; or (2) 5% of the dollar amount associated with the violation of the account terms or other requirements (up to a specific dollar amount). This approach is generally consistent with state laws that permit penalty fees to be the greater of a dollar amount or a percentage of the amount past due.

Proposed § 226.52(b)(3) is intended to provide a single penalty fee amount that is generally consistent with the requirements of § 226.52(b)(1) and would be imposed for most violations. Card issuers would be permitted to use the 5% safe harbor to impose a higher fee when the dollar amount associated

[24] *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).

[25] *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).

[26] *See* Cal. Fin. Code § 4001(a)(1)–(2).

[27] *See id.* § 4001(a)(3).

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

[29] *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).

[30] OFT Credit Card Statement at 1.

[31] OFT Credit Card Statement at 27–28.

[32] OFT Credit Card Statement at 29.

with the violation is large, although that fee could not exceed a specified upper limit. For example, if the specific safe harbor amount were $20, the safe harbor would not permit a card issuer to impose a fee that exceeds $20 unless the dollar amount associated with the violation was more than $400. In addition, if the upper limit were $40, a card issuer could not impose a fee that exceeds $40 under the safe harbor even if the dollar amount associated with the violation was more than $800.[33]

Section 226.52(b)(3)(i) would provide that a card issuer generally complies with the requirements of § 226.52(b)(1) if the amount of the fee does not exceed a specific amount. As noted above, the Board is requesting comment on the appropriate amount. This amount would be adjusted annually by the Board to reflect changes in the Consumer Price Index. Proposed comment 52(b)(3)–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. In contrast, 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.[34]

Section 226.52(b)(3)(ii) would generally permit a card issuer to impose a penalty fee that does not exceed 5% of the dollar amount associated with the violation.[35] Because violations involving substantial dollar amounts may impose greater costs on card issuers, require greater deterrence, and involve more serious conduct by the consumer, § 226.52(b)(3)(ii) would generally permit a card issuer to impose a penalty fee in excess of the specific safe harbor amount in § 226.52(b)(3)(i), so long as that fee does not exceed 5% of the dollar amount associated with the violation.

However, the Board is concerned that—even when a substantial dollar amount is associated with a violation—a penalty fee over a certain dollar amount could generally be inconsistent with the factors in new TILA Section 149(c) because the fee could substantially exceed the costs incurred by the card issuer as a result of that type of violation and the amount reasonably necessary to deter such violations. Furthermore, the Board does not believe that Congress intended new TILA Section 149 to authorize the imposition of penalty fees that are significantly higher than those currently charged by credit card issuers. Accordingly, a fee imposed pursuant to § 226.52(b)(3)(ii) could not exceed a specific dollar amount. The Board requests comment on the appropriate upper limit.[36]

The Board solicits comment on the general safe harbor approach in proposed § 226.52(b)(3). The Board also solicits comment on the appropriate dollar amounts for proposed § 226.52(b)(3)(i) and the upper limit in proposed § 226.52(b)(3)(ii). Finally, the Board solicits comment on whether 5% is the appropriate percentage for proposed § 226.52(b)(3)(ii). As noted above, the Board encourages commenters to provide data supporting their submissions.

Application of Proposed § 226.52(b) to Charge Card Accounts

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 when the periodic statement is received. *See* § 226.5a(b)(7). The Board understands that—unlike conventional credit card accounts—issuers do not use upfront annual percentage rates to manage risk on charge card accounts. Charge card accounts typically require payment of an annual fee, although it is unclear whether these fees are based on the risk.

The Board solicits comment on the methods used by issuers to manage risk with respect to charge card accounts. The Board also solicits comment on whether any adjustments to proposed § 226.52(b) are necessary to permit charge card issuers to manage risk.

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 proposes to amend 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 proposed § 226.52(b) would impose additional substantive limitations on over-the-limit fees, the Board proposes to add a cross-reference to § 226.52(b) in new comment 56(j)–6.

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

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[33] Proposed comments 52(b)(2)–1 and 52(b)(3)–1 would clarify that the safe harbor in § 226.52(b)(3) would not permit a card issuer to impose a fee that is prohibited by § 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 card issuer could not use the safe harbor in § 226.52(b)(3) to impose a higher fee.

[34] The approach set forth in this proposed 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.

[35] Consistent with proposed § 226.52(b)(2)(i), proposed comment 52(b)(3)–3 clarifies the meaning of "dollar amount associated with the violation" with respect to late payments, returned payments, and extensions of credit in excess of the credit limit. As above, the Board requests comment on whether guidance is needed regarding the dollar amount associated with other type of violations.

[36] As discussed in proposed comment 52(b)(3)–2, this upper limit would also be adjusted annually based on changes in the Consumer Price Index.

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 proposing to implement the substantive requirements of new TILA Section 148 in new § 226.59.

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 proposes to implement 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.

Proposed § 226.59 would apply 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. Therefore, home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by a debit card would not be subject to the new substantive requirements regarding reevaluation of rate increases.

59(a) General Rule

Proposed § 226.59(a) sets forth the general rule regarding the reevaluation of rate increases. Proposed § 226.59(a)(1) generally mirrors the statutory language of TILA Section 148 and states 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. Proposed § 226.59(a)(1) would limit this obligation to rate increases for which 45 days' advance notice is required under § 226.9(c)(2) or (g). The Board believes that this limitation is appropriate and necessary for consistency 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. 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 believes that coverage of such rate increases by § 226.59 would be inconsistent with the purposes of new TILA Section 148. Accordingly, the Board is proposing this limitation to the scope of § 226.59(a) using its 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).

Proposed comment 59(a)–1 would clarify 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 believes 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 believes that Congress intended for new TILA Section 148 to apply broadly to most types of rate increases, and is not limited to those rate increases based on an individual consumer's conduct on the account or creditworthiness. The Board notes that as discussed below in the supplementary information to § 226.59(d), a card issuer is not required under § 226.59(a) to evaluate the same factors it considered in connection with the rate increase, but may evaluate those factors that it currently uses in determining the annual percentage rates applicable to its accounts. For example, if a card issuer raised a rate based on market conditions, the card issuer may review all relevant factors, including the credit risk of the consumer, current market conditions, the card issuer's cost of funds, and other factors, in determining whether a rate reduction is required for the account.

Proposed comment 59(a)–2 clarifies 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, 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 believes that this approach is appropriate because until an increased rate is imposed on the consumer's account, the consumer incurs no costs associated with that increased rate. For example, requiring a review of a consumer's account if the penalty rate was increased but the consumer's account has no balance subject to the penalty rate would have no benefit to the consumer but would place a continuing burden on the card issuer. 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.

Proposed § 226.59(a)(2) states 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 described in § 226.59(a)(1). The Board believes that the intent of new TILA Section 148 is to ensure that the rates on consumers' accounts be reduced promptly when the card issuer's review of factors indicates that a rate reduction is appropriate. The Board solicits 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.

Proposed comment 59(a)–3 clarifies 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 states 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 would be 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.

Comment 59(a)–3 would further illustrate 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 understands that the requirement to review changes in factors in connection with rate increases that occurred prior to the effective date of this rule may impose a substantial burden on card issuers that raised interest rates applicable to consumers' accounts prior to the enactment of the Credit Card Act or prior to the effective date of this rule. However, the Board believes that this requirement is necessary to effectuate the intent of new TILA Section 148, which expressly requires a review of rate increases imposed on or after January 1, 2009. As discussed further in this supplementary information, the Board's proposal would permit a card issuer to review either the factors that it used in increasing the rate applicable to the consumer's account or the factors that the card issuer currently uses in determining the annual percentage rates applicable to its credit card accounts. The Board solicits comment on appropriate transition guidance for card issuers in conducting reviews of rate increases imposed prior to August 22, 2010.

59(b) Policies and Procedures

Proposed § 226.59(b) provides, consistent with new TILA Section 148, that a card issuer must have reasonable policies and procedures in place to review the factors described in § 226.59. Section 226.59(b) would further require that these policies and procedures be written. The Board is not proposing to prescribe specific policies and procedures that issuers must use in order to conduct this analysis. The Board believes that a requirement that such policies and procedures be reasonable will ensure that issuers undertake due consideration of these factors in order to determine whether a rate reduction is required on a consumer's account. The Board believes that a more prescriptive rule could unduly burden creditors and raise safety and soundness concerns for financial institutions. In addition, the particular factors that are the most predictive of the credit risk of a particular consumer or portfolio of consumers, and the appropriate manner in which to weigh those factors, may change over time. Moreover, the factors can vary greatly among institutions. For example, underwriting standards for private label or retail credit cards will differ from the standards used for general purpose credit card accounts. The Board solicits comment on whether more guidance is necessary regarding whether a card issuer's policies and procedures are "reasonable."

Proposed comment 59(b)–1 notes, 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 notes 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 sets 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 comment notes 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 notes that the requirements of proposed § 226.59 are different from, and operate in addition to, the requirements of § 226.55(b)(4). Section 226.55(b)(4) 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, when the rate increase is the result of a delinquency of more than 60 days. The Board notes 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).

The Board believes 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's 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 for 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 in circumstances other than delinquencies of more than 60 days.

59(c) Timing

Proposed § 226.59(c) clarifies the timing requirements for the reevaluation of rate increases pursuant to § 226.59(a). Consistent with new TILA Section 148(b)(2), a card issuer that is subject to § 226.59(a) must 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, comment 59(c)–1 would provide that an issuer may review all of its accounts at the same time 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 Board believes that as long as the consideration of factors required for each account subject to § 226.59 is performed at least once every six months, it is appropriate to provide flexibility to card issuers to decide upon a schedule for reviewing their accounts.

Proposed comment 59(c)–2 sets forth an example of the timing requirements in § 226.59(c). The example assumes 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 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.

Proposed comment 59(c)–3 clarifies 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 states that § 226.59(c) requires that the first review for such rate increases be conducted prior to February 22, 2011. The Board 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. The Board believes, therefore, 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) provides clarification on the factors that a credit card issuer must consider when performing the consideration of a consumer's account under § 226.59(a). The Board is aware that credit card underwriting standards can change over time and for a number of reasons. Under some circumstances, a card issuer may be required to continue to review a consumer's account each six months for several years, and the issuer's underwriting standards for its new and existing cardholders may change significantly during that time. As a result, proposed § 226.59(d) would provide 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. A card issuer would be permitted 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 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 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 believes 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 comment 59(d)–1 clarifies 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. The proposed comment notes 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 comment clarifies 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.

For example, 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 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 may consider the factors that it considers as of January 25, 2011. The Board notes 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. Accordingly, the Board solicits comment on whether the rule should establish an express safe harbor for what constitutes a brief transition period following a change in factors, for example, 30 days or 60 days.

The Board is not proposing a list of particular factors that card issuers must consider. Similarly, the Board is not proposing to prohibit the consideration of other factors. The Board believes 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. The Board believes that the requirement that a card issuer consider either the factors it currently uses in determining the annual percentage rate to apply to its credit card accounts or the factors that it originally used to increase the annual percentage rate will ensure that the factors considered in connection with the reduction of rates will parallel the factors an issuer considers when determining whether to increase a rate.

Proposed comment 59(d)–2 clarifies 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 comment notes 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 the 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 its 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 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.

Proposed comment 59(d)–3 provides additional clarification on how an issuer should identify the factors to consider when evaluating whether a rate reduction is required. Comment 59(d)–3 states 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 specific type of credit card plan. The Board believes that this clarification is appropriate to ensure that a credit card issuer considers only those factors that are relevant to the consumer's specific type of credit card account rather than factors for a different product that may be underwritten based on different information. Proposed comment 59(d)–3 sets forth several examples to illustrate what constitute "types" of credit card plans. 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. However, 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.

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

Proposed § 226.59(e) sets 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. The Board believes that new TILA Section 171(b)(4)(B), as implemented in § 226.55(b)(4)(ii), provides the appropriate mechanism for lenders to use in determining whether to reduce the rate on an account that has become more than 60 days delinquent, during the period immediately following the effective date of the increase. The Board understands that consumers whose accounts are more than 60 days delinquent pose a significantly greater risk of nonpayment than consumers who make timely payments or payments that are, for example, one day late. The statute therefore sets forth one clear method that establishes consumers' rights for a rate increase caused by the consumer's failure to make a minimum payment within 60 days of the due date for that payment. The Board believes that in light of the statutory cure mechanism, as implemented in § 226.55(b)(4)(ii), the requirement to review an account under § 226.59(a) should not apply during the first six billing periods following a rate increase based on a delinquency of more than 60 days. The Board notes that the cure mechanism implemented in § 226.55(b)(4)(ii) is a stronger right than the requirement that card issuers review consumers' accounts pursuant to § 226.59. Section 226.55(b)(4)(ii) requires that the rate be reduced to the rate that was in effect prior to the rate increase, if the consumer makes the next six required minimum periodic payments on time. In contrast, new TILA Section 148 and proposed § 226.59 do not require in all circumstances that the rate be reduced to the rate that was in effect prior to the rate increase.

Accordingly, § 226.59(e) would provide 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, the issuer would be required to begin performing a review of factors for subsequent six-month periods. The Board believes that it is appropriate that a creditor review a consumer's account after the cure right expires under § 226.59(a) if the consumer's rate has not been reduced, because a consumer's credit risk or other factors might change after the cure period expires, warranting a rate reduction at that time.

59(f) Termination of Obligation to Review Factors

TILA Section 148 does not expressly state when the obligation to review changes in factors and determine whether to reduce the annual percentage rate applicable to a consumer's credit card account terminates. The Board believes that the intent of TILA Section 148 is not to impose a permanent requirement on card issuers to review changes in factors for a consumer's account even after the annual percentage rate applicable to the account has been reduced to the original rate. The statutory requirement applies once the card issuer has increased an annual percentage rate applicable to a consumer's account but does not apply to accounts on which an annual percentage rate has not been increased. The Board believes that if Congress had intended for all card issuers to review the annual percentage rates applicable to all of their accounts indefinitely, this would be expressly provided for in TILA Section 148. Therefore, proposed § 226.59(f) would state 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.

The Board is aware 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 is concerned that an obligation to continue to review the rate applicable to a consumer's account many years after the rate increase occurred would impose significant burden on issuers, and might not have a significant benefit to consumers. For example, a card issuer might increase the rate applicable to a consumer's account based on market conditions in year one. If those market conditions do not change and the review of factors each six months pursuant to § 226.59(a) does not otherwise require that the consumer's rate be decreased, an issuer could be required to continue reviewing the consumer's account ten or even twenty years after the initial increase. The Board solicits 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 solicits 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.

59(g) Acquired Accounts

Proposed § 226.59(g) addresses existing credit card accounts acquired by a card issuer. Section 226.59(g)(1) sets 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), a card issuer may review either the factors that the original issuer considered when imposing the rate increase, or may review the factors that the acquiring card issuer currently considers in determining the annual percentage rates applicable to its credit card accounts. The Board notes 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, a card issuer complying with § 226.59(g)(1) may choose 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) sets forth an alternate means for compliance with § 226.59 for accounts acquired by a card issuer. The Board is proposing § 226.59(g)(2) using its 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). Proposed § 226.59(g)(2) applies 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) provides that the card issuer generally is required to review changes in factors for those acquired accounts in accordance with § 226.59(a) only for rate increases that are imposed as a result of that review. Similarly, § 226.59(g)(2)(ii) provides 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.

The Board believes that this alternative means of compliance is important because, as noted above, card issuers may not have full information regarding rate increases imposed by the prior issuer, when it acquires a new portfolio of accounts. If a card issuer does not know the rate that initially applied to the accounts it acquires, it would be required to continue to review its accounts indefinitely, without the opportunity to cease reviewing those accounts under § 226.59(f) once the rate is reduced to the rate that initially applied. The Board is proposing an alternative means of compliance rather than an exception for acquired accounts, because it believes that coverage of these accounts is consistent with the purposes of new TILA Section 148. However, the Board believes that 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 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 (except for any promotional rates). The Board believes that this will promote fair pricing of consumers' accounts when they are acquired by a new card issuer. 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 solicits comment on whether § 226.59(g) appropriately addresses acquired accounts and on any alternatives that would balance the burden on card issuers against consumer benefit. The Board also solicits comment on whether additional guidance is necessary regarding the requirement that the review of acquired accounts occur "as soon as reasonably practicable" after the acquisition of those accounts.

Comment 59(g)(2)–1 sets forth an example of the alternative means of compliance in § 226.59(g)(2). The example assumes that a card issuer acquires a portfolio of accounts that currently are subject to annual percentage rates of 12%, 15%, and 18%. As soon as reasonably practicable 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 its 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%. Proposed § 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, unless and until the card issuer makes a subsequent rate increase applicable to those accounts.

In addition to the general rule in § 226.59(g)(2)(i) and (g)(2)(ii), the Board is proposing § 226.59(g)(2)(iii), which provides 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 is aware 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. The Board believes that the requirements to review accounts under § 226.59(a) should apply if a card issuer imposes, or continues to impose, a penalty rate on an acquired account. The Board believes that this treatment is consistent with the purposes of new TILA Section 148, which specifically mentions the credit risk of the consumer as a factor giving rise to the obligation to review the rate on an account.

Comment 59(g)(2)–2 sets forth an example of the requirements of proposed § 226.59(g)(2)(iii) for acquired accounts. 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%. As soon as reasonably practicable 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 its 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.

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. Proposed § 226.59(g)(2) contains an express cross-reference to those sections.

59(h) Exceptions

The Board is proposing two exceptions to the requirements of § 226.59, using its authority under TILA Section 105(a), which are set forth in § 226.59(h). The first exception applies 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).[37]

The Board believes that it is not appropriate to require a card issuer to perform an ongoing review of the rates on an account, when the rate increase is a reinstatement of a prior rate that was temporarily reduced to comply with the SCRA. Proposed § 226.59(h)(1) provides 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 applies to charged off accounts. Proposed § 226.59(h)(2) provides that the requirements of § 226.59 do not apply to accounts that the card issuer has charged off in accordance with loan-loss provisions. The Board understands that 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 due immediately. The Board understands, therefore, that there should be no further activity on these accounts, and therefore believes that the requirement to review the rate every six months should not apply.

Appendix G—Open-End Model Forms and Clauses

For consistency with the substantive limitations in proposed § 226.52(b), the Board is proposing to amend 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))

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) and G–10(C) and 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.

As discussed above, proposed § 226.52(b) would establish new substantive restrictions on the amount of credit card penalty fees, including late payment fees, over-the-limit fees, and returned-payment fees. If adopted, these restrictions would change the way penalty fees are disclosed. Accordingly, for consistency with § 226.52(b), the Board is proposing to amend the model language in Samples G–10(B) and G–10(C) and G–17(B) and G–17(C) to disclose late payment fees, over-the-limit fees, and returned-payment fees as "up to $XX." In this model language, $XX represents the maximum fee under the safe harbor in proposed § 226.52(b)(3)(ii).

The Board recognizes that, because the maximum safe harbor fee only applies when a large dollar amount is associated with the violation, this disclosure will generally overstate the amount of the penalty fee. For example, if the maximum fee were $40, the card issuer would disclose the amount of its penalty fees as "up to $40." However, § 226.52(b)(3)(ii) would not actually permit the issuer to impose a $40 penalty fee unless 5% of the dollar amount associated with the violation was greater than or equal to $40—in other words, the dollar amount associated with the violation would have to be $800 or more. Nevertheless, a consumer who incorrectly assumes that a $40 penalty fee will be imposed for all violations of the account terms or other requirements 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 harbor in § 226.52(b)(3) may deter consumers from violating the account terms or other requirements, which would be consistent with the intent of new TILA Section 149 (as stated in Section 149(c)(2)).

The Board is also concerned that providing additional detail could increase consumer confusion and would not substantially improve the accuracy of the model disclosure. In particular, the Board considered whether the method used in Samples G–10(B) and G–10(C) and G–17(B) and G–17(C) for disclosing cash advance and balance transfer fees should be applied to penalty fees. For example, Sample G–10(C) discloses the balance transfer fee as "[e]ither $5 or 3% of the amount of each transfer, whichever is greater (maximum fee: $100)." Similarly, using as examples a safe harbor amount of $20 and a maximum safe harbor fee of $40, late payment fees could be disclosed as "either $20 or 5% of the minimum payment, which is greater (maximum fee: $40)." However, although this disclosure would provide more detail than a disclosure of "up to $40," it would not inform consumers that, consistent with $ 226.52(b)(2)(i), a $20 late payment fee could not be imposed if the delinquent minimum payment is $15. Thus, a more detailed disclosure could create an appearance of accuracy that is not justified.[38] Nevertheless, the Board solicits comment on the proposed model language as well as alternative methods for disclosing penalty fees.

[37] 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.

[38] The Board also considered combining the "up to" disclosure with the method currently used for disclosing cash advance and balance transfer fees. For example, late payment fees would be disclosed as "either up to $20 or 5% of the minimum payment, whichever is greater (maximum fee: $40)." However, the Board is concerned that this disclosure would be too complex to provide consumers with useful information about the amount of penalty fees.

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. 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 proposed amendments to Samples G–10(B), G–10(C), G–17(B), and G–17(C), the Board is proposing to amend 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 $XX and your APRs may be increased up to the Penalty APR of 28.99%."

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

The Board proposes to amend the model language in Sample G–21 disclosing a change in a late payment fee for consistency with the proposed 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 proposed § 226.52(b) and the proposed amendments to Samples G–10(B), G–10(C), G–17(B), and G–17 (C) discussed above, the Board proposes to revise Model Forms G–25(A) and G–25(B) to disclose the amount of the over-the-limit fee as "up to $XX."

V. Comment Period

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 Board must issue the final rule implementing those provisions sufficiently in advance of August 22 to permit card issuers to make the necessary changes to bring their systems and practices into compliance. Thus, in order to ensure that the Board has adequate time to analyze the comments received on the proposed rule, the Board is requiring that those comments be submitted no later than 30 days after publication of the proposal in the **Federal Register.** Because the proposal is limited to the implementation of two statutory provisions, the Board believes that interested parties will have sufficient time to review the proposed rule and prepare their comments.

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.

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule would have a significant economic impact on a substantial number of small entities. Accordingly, the Board has prepared the following initial regulatory flexibility analysis pursuant to section 604 of the RFA. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The proposed rule would implement 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 proposed rule.

2. *Small entities affected by the proposed rule.* All creditors that offer credit card accounts under open-end (not home-secured) consumer credit plans are subject to the proposed 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 proposed 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. The Board invites comment on the effect of the proposed rule on small entities.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule does not impose any new recordkeeping or reporting requirements. The proposed rule would, however, impose new compliance requirements. The compliance requirements of this proposed 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 proposed rule and the costs of updating their systems to comply with the rule are difficult to predict. These costs would 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. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small entities.

Proposed Amendments

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

Proposed §§ 226.5a(a)(2)(iv) and 226.6(b)(1)(i) would generally require 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.

Proposed § 226.7(b)(11)(i)(B) would generally require card 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. In addition, proposed § 226.7(b)(11)(i)(B) would permit the use of the term "up to" to disclose the highest fee if a range of late payment fees may be assessed. However, § 226.7(b)(11)(i)(B) already requires card issuers to disclose late payment fee information 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 proposing model forms which can be used to ease compliance with the proposed rule.

Proposed §§ 226.9(c)(2)(iv)(A)(*8*) and 226.9(g)(3)(i)(A)(*6*) would generally require card 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, proposed §§ 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 would depend on the size of the institution and the composition of its portfolio.

Proposed § 226.52(b) would generally limit the dollar amount of penalty fees imposed by card issuers that are small entities. Specifically, credit card penalty fees must be based on certain permitted determinations or on a proposed safe harbor. In addition, proposed § 226.52(b) prohibits penalty fees that exceed the dollar amount associated with the violation and certain types of penalty fees. As discussed in IV. Section-by-Section Analysis, in 2006 the GAO found that the percentage of issuer revenue derived from penalty fees had increased to approximately 10%.[39] Compliance with this provision may reduce revenue that some entities derive from fees. Compliance with proposed § 226.52(b) would also require card issuers that are small entities to conform certain penalty fee disclosures already required under §§ 226.5a, 226.6, 226.7, and 226.56.

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

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

4. *Other Federal rules.* The Board has not identified any Federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation Z.

5. *Significant alternatives to the proposed revisions.* The provisions of the proposed rule would implement the statutory requirements of the Credit Card Act that go into effect on August 22, 2010. The Board has sought to avoid imposing additional burden, while effectuating the statute in a manner that is beneficial to consumers. The Board welcomes comment on any significant alternatives, consistent with the Credit Card Act, which would minimize impact of the proposed 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 proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.[40]

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

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden on other 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.

Under proposed §§ 226.5a(a)(2)(iv) and 226.6(b)(1)(i), the use of bold text would be required when disclosing maximum limits on fees in the application and solicitation table and the account-opening table, respectively. The Board anticipates that creditors would incorporate, with little change, the proposed formatting change with the disclosure already required under §§ 226.5a(a)(2)(iv) and 226.6(b)(1)(i).

Under proposed § 226.7(b)(11)(i)(B), a card issuer would be 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. In addition, proposed § 226.7(b)(11)(i)(B) would permit the use of the term "up to" to disclose the highest fee if a range of late payment fees may be assessed. The Board anticipates that card issuers, with little additional burden, would incorporate the proposed disclosure requirement with the disclosures already required under § 226.7(b)(11)(i)(B). In an effort to reduce burden the Board is amending Appendix G–18 to provide guidance on an "up to" disclosure.

Under proposed §§ 226.9(c)(2)(iv)(A)(*8*) and

[39] *See* GAO Credit Card Report at 72–73.

[40] 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).

226.9(g)(3)(i)(A)(*6*), a card issuer would be 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, would incorporate the proposed disclosure requirement with the disclosure already required under § 226.9(c) and § 226.9(g).

Proposed § 226.52(b) would generally limit the dollar amount of penalty fees imposed by card issuers. Specifically, credit card penalty fees must be based on certain permitted determinations or on a proposed safe harbor. In addition, proposed § 226.52(b) prohibits penalty fees that exceed the dollar amount associated with the violation and certain types of penalty fees. Compliance with proposed § 226.52(b) would require card issuers to conform certain penalty fee disclosures already required under §§ 226.5a, 226.6, 226.7, and 226.56. As mentioned in IV. Section-by-Section Analysis, in an effort to reduce burden the Board is proposing to amend guidance in Appendix G to provide model language for the disclosure of late-payment fees, over-the-limit fees, and returned-payment fees.

The Board anticipates that creditors would incorporate the proposed disclosure requirement with the disclosures already required under §§ 226.5a(a)(2)(iv), 226.6(b)(1)(i), 226.7(b)(11)(i)(B), 226.9(c)(2)(iv)(A)(*8*), 226.9(g)(3)(i)(A)(*6*), and 226.52(b). The Board estimates that the proposed rule would impose a one-time increase in the total annual burden under Regulation Z. The 1,138 respondents would take, on average, 40 hours to update their systems to comply with the disclosure requirements addressed in this proposed rule. The total annual burden is estimated to increase by 45,520 hours, from 1,654,814 to 1,700,334 hours.[41]

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 required to implement each of the proposed changes 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 17,200 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 would be approximately 13,706,325 hours. The proposed rule would impose a one-time increase in the estimated annual burden for such institutions by 688,000 hours to 14,394,325 hours. The above estimates represent an average across all respondents; the Board expects variations between institutions based on their size, complexity, and practices.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 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 proposes to amend 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.

* * * * *

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

§ 226.6 Account-opening disclosures.

* * * * *

(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. Section 226.7(b)(11)(i)(B) is revised to read as follows:

[41] The burden estimate for this rulemaking does not include the burden addressing changes to implement provisions of Closed-End Mortgages (Docket No. R–1366), the Home-Equity Lines of Credit (Docket No. R–1367), or Notification of Sale or transfer of Mortgage Loans (Docket No. R–1378), as announced in separate proposed rulemakings. *See* 74 FR 43232, 74 FR 43428, and 74 FR 60143.

§ 226.7 Periodic statement.

(11) Due date; late payment costs.

(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. Section 226.9(c)(2) and (g) are revised to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

(c) * * *

(2) *Rules affecting open-end (not home-secured) plans.* (i) *Changes where written advance notice is required.* (A) *General.* 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, 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, 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 also contain the following information:

(*1*) A statement of the reason for the increase; and

(*2*) 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.

(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 contain the following information:

(*1*) A statement of the reason for the increase; and

(*2*) 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.

* * * * *

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

§ 226.52 Limitations on fees.

* * * * *

(b) *Limitations on penalty fees.* (1) *General rule.* 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 based on one of the determinations set forth in this paragraph.

(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.

(ii) *Fees based on deterrence.* 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 is reasonably necessary to deter that type of violation using an empirically derived, demonstrably and statistically sound model that reasonably estimates the effect of the amount of the fee on the frequency of violations.

(iii) *Reevaluation of determinations.* A card issuer must reevaluate a determination made under paragraph (b)(1)(i) or (b)(1)(ii) of this section at least once every twelve months. If as a result of the reevaluation the card issuer determines that a lower fee is consistent with paragraph (b)(1)(i) or (b)(1)(ii) of this section, the card issuer must begin imposing the lower fee within 30 days after completing the reevaluation. If as a result of the reevaluation the card issuer determines that a higher fee is consistent with paragraph (b)(1)(i) or (b)(1)(ii) of this section, the card issuer may begin imposing the higher fee after complying with the notice requirements in § 226.9.

(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 at the time the fee is imposed.

(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 account terms or other requirements during a billing cycle.

(3) *Safe harbor.* Except as provided in paragraph (b)(2) of this section, a card issuer complies with paragraph (b)(1) of this section if the dollar amount of a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan does not exceed the greater of:

(i) $[XX.XX], adjusted annually by the Board to reflect changes in the Consumer Price Index; or

(ii) Five percent of the dollar amount associated with the violation, provided that the dollar amount of the fee does not exceed $[XX.XX], adjusted annually by the Board to reflect changes in the Consumer Price Index.

6. Section 226.59 is added to read as follows:

§ 226.59 Reevaluation of rate increases.

(a) *General rule.* (1) *Reevaluation of rate increases.* 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 whether such factors have changed; 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—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 30 days after completion of the evaluation described in paragraph (a)(1).

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

(c) *Timing.* A card issuer that is subject to paragraph (a) of this section must review changes in factors in accordance with paragraphs (a) and (d) of this section not less frequently than once every six months after the initial rate increase.

(d) *Factors.* A card issuer is not required to base its review under paragraph (a) of this section on the same factors on which an increase in an annual percentage rate was based. The card issuer may, at its option, review the factors on which the rate increase was originally based, or may review the factors that it currently considers when determining the annual percentage rates applicable to its credit card accounts under an open-end (not home-secured) consumer credit plan.

(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 review factors pursuant to 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 review factors in accordance with paragraph (a) of this section 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 if:

(1) 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 prior to the increase; or

(2) 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, the obligation to review changes in factors in paragraph (a) of this section applies to credit card accounts that have been acquired by the card issuer from another card issuer. A card issuer may review either the factors that the card issuer from which it acquired the accounts considered in connection with the rate increase, or may review the factors that it currently considers in determining the annual percentage rates applicable to its credit card accounts.

(2) *Review of acquired portfolio.* 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:

(i) Except as provided in paragraph (g)(2)(iii), the card issuer is required to review changes in factors in accordance with paragraph (a) of this section only for rate increases that are imposed as a result of that review. 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 review changes in factors 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 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–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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BILLING CODE 6210–01–P

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 **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to **$XX**.
• Over-the-Credit Limit	Up to **$XX**.
• Returned Payment	Up to **$XX**.
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 **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to **$XX**.
• Over-the-Credit Limit	Up to **$XX**.
• Returned Payment	Up to **$XX**.

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.

* * * * *

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 **$5** or **3%** of the amount of each cash advance, whichever is greater.
Penalty Fees	
• Late Payment	Up to **$XX**.
• Over-the-Credit Limit	Up to **$XX**.
• Returned Payment	Up to **$XX**.

* * * * *

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 **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to **$XX**.
• Over-the-Credit Limit	Up to **$XX**.
• Returned Payment	Up to **$XX**.
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 **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to **$XX**.
• Over-the-Credit Limit	Up to **$XX**.
• Returned Payment	Up to **$XX**

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 $XX 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 $XX 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 $XX 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:

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

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

<u>If you are already being charged a higher Penalty APR for purchases</u>: 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
5564186070SROYD0X	2/24	2/25	Store #3	$4.03
5543286080SWX9M0	2/24	2/25	Store #4	$114.95
0543070SLYMRPT4L	2/24	2/25	Store #5	$7.35
8543382039FS8OD025	2/25	2/25	Pymt Thank You	$450.00-

(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	**$1,784.53**
Minimum Payment Due	**$53.00**
Payment Due Date	**4/20/12**
AMOUNT ENCLOSED:	**$**

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

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

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	$90.52
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 $XX 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	
6543392O3F58OOOZ5	2/25	2/25	Pymt Thank You	$50.00-
			Purchases	
5984186PS0380W5YM	2/22	2/23	Store #1	$2.05
0544400080ZLV72VL	2/24	2/25	Store #2	$2.11
5584186070SRDYDOX	2/24	2/25	Store #3	$4.63
5543286080O8W90M0	2/24	2/25	Store #4	$4.95
05493070QLYMRPT4L	2/24	2/25	Store #5	$7.35
56489156154SKQSHD	2/25	2/26	Store #6	$4.35
841517377945AKGJ8Q	2/25	2/26	Store #7	$2.35
895848561561694KOH	2/26	2/27	Store #8	$7.68
1071556189406SAMKL	2/26	2/27	Store #9	$4.76
2564894185189LKDFIO	2/27	2/28	Store #10	$2.87
5554281870SRASDOX	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

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

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	
9525156489BFD1545G	2/23	2/23	Late Fee	$35.00
5641581564 7OJSNDS	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)	$113.90	$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 $XX.
Returned Payment Fee	Up to $XX.

G-22 Penalty Rate Increase Sample (Payment 60 or Fewer Days Late)

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:

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.

BILLING CODE 6210–01–C

* * * * *

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

Your Choice Regarding Over-the-Credit Limit Coverage

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 $XX. 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 $XX. [I have the right to cancel this coverage at any time.]

[__I *do not* 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 $XX. 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)(3), a card issuer's late payment fee will not exceed $XX.XX. The maximum limit of $XX.XX 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.

* * * * *

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

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

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* 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 in accordance with a formula that depends on the outstanding balance on the account, 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.* 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. For 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.

* * * * *

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.

* * * * *

Section 226.52—Limitations on Fees

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

* * * * *

52(b) Limitations on penalty fees.

1. *Fees for violating the account terms or other requirements.* 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. Accordingly, § 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 account terms.

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

E. 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) or 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.

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.

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

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

1. *Costs incurred as a result of violations of the account terms.* 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 account terms or other requirements. Instead, for purposes of § 226.52(b)(1)(i), a card issuer must have determined that a fee for violating the account terms or other requirements represents a reasonable proportion of the costs incurred by the card issuer as a result of that type of violation. 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;

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

C. At the card issuer's option, reasonable estimates of changes in the number of violations of that type and the resulting costs during an upcoming period. *See* illustrative examples in comments 52(b)(1)(i)–4 through–6.

2. *Losses and associated costs.* Losses and associated costs (including the cost of holding reserves against potential losses) are not costs incurred by a card issuer as a result of violations of the account terms or other requirements 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 account terms or other requirements 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. *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 $23 million in costs as a result of those delinquencies. For purposes of § 226.52(b)(1)(i), a $23 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 reasonable estimate of future changes.* Same facts as 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 1% decrease in delinquencies during year two (in other words, 10,000 fewer delinquencies for a total of 990,000). 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 3% increase in costs during year two (in other words, $690,000 in additional costs for a total of $23.69 million). For purposes of § 226.52(b)(1)(i), a $24 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.

5. *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; and

B. 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 reasonable estimate of future changes.* Same facts as 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—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 3% decrease in costs during year two (in other words, a $93,000 reduction in costs for a total of $3.007 million). For purposes of § 226.52(b)(1)(i), a $20 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.

6. *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. *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 reasonable estimate of future changes.* Same facts as 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—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 $21 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.

52(b)(1)(ii) Fees based on deterrence.

1. *Deterrence of violations.* Section 226.52(b)(1)(ii) does not require a card issuer to determine that a fee for violating the account terms or other requirements is reasonably necessary to deter violations by a specific consumer or with respect to a specific account. Instead, for purposes of § 226.52(b)(1)(ii), a card issuer must have determined that the dollar amount of a fee for violating the account terms or other requirements is reasonably necessary to deter the type of violation for which the fee is imposed.

2. *Use of models.* Section 226.52(b)(2)(ii) provides that, in order to determine that the dollar amount of a fee for violating the account terms or other requirements is reasonably necessary to deter that type of violation, the card issuer must use an empirically derived, demonstrably and statistically sound model that reasonably estimates the effect of the dollar amount of the fee on the frequency of the type of violation. A model that reasonably estimates a statistical correlation between the imposition of a fee and the frequency of a type of violation is not sufficient to satisfy the requirements of § 226.52(b)(1)(ii). Instead, in order to support a determination that the dollar amount of a fee is reasonably necessary to deter a particular type of violation, a model must reasonably estimate that, independent of other variables, the imposition of a lower fee amount would result in a substantial increase in the frequency of that type of violation. The parameterization of the model used for this purpose must be sufficiently flexible to allow for the identification of a lower fee level above which additional fee increases have no marginal effect on the frequency of violations.

52(b)(2) Prohibited fees

1. *Relationship to § 226.52(b)(1) and (b)(3).* A card issuer does not comply with § 226.52(b)(1) if it imposes a fee that is inconsistent with the prohibitions in § 226.52(b)(2). Similarly, the prohibitions in § 226.52(b)(2) apply even if a fee is consistent with the safe harbor in § 226.52(b)(3). For example, even if a card issuer has determined for purposes of § 226.52(b)(1) that a $25 fee represents a reasonable proportion of the total costs incurred by the card as a result of a particular type of violation or that a $25 fee

is reasonably necessary to deter that 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 $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 that was not received on or before the payment due date. Thus, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of the required minimum periodic payment on which that fee is based. For example, assume that an account has a balance of $1,000. If the card issuer does not receive the $20 required minimum periodic payment on or before the payment due date, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a late payment fee that exceeds $20 (even if a higher fee would be permitted under § 226.52(b)(1) or (b)(3)).

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 during the billing cycle in 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. The following examples illustrate the application of § 226.52(b)(2)(i) to returned-payment fees:

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 $20 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. Section 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned-payment fee that exceeds $20 (even if a higher fee would be permitted under § 226.52(b)(1) or (b)(3)). 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. Section 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned-payment fee that exceeds $30 (even if a higher fee would be permitted under § 226.52(b)(1) or (b)(3)).

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.

3. *Over-the-limit fees.* 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 as of the date on 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. 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 so long as the dollar amount of the fee does not exceed the total amount of credit extended in excess of the limit as of that date. 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. If the card issuer chooses to impose an over-the-limit fee on March 6, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing an over-the-limit fee that exceeds $10 (even if a higher fee would be permitted under § 226.52(b)(1) or (b)(3)).

ii. Same facts as above, except that the card issuer chooses not to impose an over-the-limit fee on March 6. On March 25, a $5 transaction is charged to the account, increasing the balance to $5,015. If the card issuer chooses to impose an over-the-limit fee on March 25, § 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) or (b)(3)).

iii. Same facts as in paragraph ii. above, except that the card issuer chooses not to impose an over-the-limit fee on March 25. On March 26, the card issuer receives a payment of $20, reducing the balance below the credit limit to $4,995. In these circumstances, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing an over-the-limit fee (even if a fee would be permitted under § 226.52(b)(1) or (b)(3)). Furthermore, § 226.52(b)(2)(i)(A) does not permit the card issuer to impose a fee at the end of the billing cycle (March 31) based on the total amount of credit extended in excess of the credit limit on an earlier date (such as March 6 or 25).

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 account terms or other requirements 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 $20.

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)(2)(i)(A), the card issuer may impose a late payment fee of $20 or a returned-payment fee of $20 (assuming that these amounts comply with § 226.52(b)(1) or (b)(3)). 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)(2)(i)(A), the card issuer may impose a late payment fee of $20 or a returned-payment fee of $20 (assuming that these amounts comply with § 226.52(b)(1) or (b)(3)). 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.

iii. Assume that the credit limit for an account is $1,000. On March 31, the balance on the account is $975 and the card issuer has not received the $20 required minimum periodic payment due on March 25. On that same date (March 31), a $50 transaction is charged to the account, which increases the balance to $1,025. Consistent with § 226.52(b)(2)(i)(A), the card issuer may impose a late payment fee of $20 and an over-the-limit fee of $25 (assuming that these amounts comply with § 226.52(b)(1) or (b)(3)). Section 226.52(b)(2)(ii) does not prohibit the imposition of both fees because those fees are based on different events or transactions.

52(b)(3) Safe harbor.

1. *Relationship to § 226.52(b)(1) and (b)(2).* A fee that complies with the safe harbor in § 226.52(b)(3) complies with the requirements of § 226.52(b)(1). However, the safe harbor in § 226.52(b)(3) 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)(3) does not permit the card issuer to impose a higher late payment fee.

2. *Adjustments based on Consumer Price Index.* For purposes of § 226.52(b)(3)(i) and (b)(3)(ii), 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)(3)(i) and (b)(3)(ii) has risen by a whole dollar, those amounts will be increased by $1.00. In contrast, 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)(3)(i) and (b)(3)(ii) 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)(3)(i) and (b)(3)(ii).

3. *Fees as percentages of dollar amount associated with transaction.*

i. *Late payment fee.* For purposes of § 226.52(b)(3)(ii), 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, § 226.52(b)(3)(ii) generally permits a card issuer to impose a late payment fee that does not exceed 5% of the required minimum periodic payment on which that fee is based. For example, assume that, under the terms of a credit card account, the card issuer must receive a minimum payment of $450 on or before June 15. If the card issuer does not receive the $450 payment on or before June 15, § 226.52(b)(3)(ii) permits the card issuer to impose a late payment fee of $23 (which equals 5% of the $450 required minimum periodic payment, rounded to the nearest whole dollar).

ii. *Returned-payment fee.* For purposes of § 226.52(b)(3)(ii), 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. *See* comment 52(b)(2)(i)–2. Thus, § 226.52(b)(3)(ii) generally permits a card issuer to impose a returned-payment fee that does not exceed 5% of the amount of that required minimum periodic payment. For example:

A. Assume that a $500 required minimum periodic payment is due on March 25. On that date, the card issuer receives a check for $700, but the check is returned to the card issuer for insufficient funds on March 27. Section 226.52(b)(3)(ii) permits the card issuer to impose a returned-payment fee of $25 (which equals 5% of $500 required minimum periodic payment), provided this amount does exceed the limitation in § 226.52(b)(3)(ii).

B. Same facts as above except that the card issuer receives the $700 check on March 31 and the check is returned for insufficient funds on April 2. The minimum payment due on April 25 is $800. Section 226.52(b)(3)(ii) permits the card issuer to impose a returned-payment fee of $40 (which equals 5% of $800 required minimum periodic payment), provided this amount does exceed the limitation in § 226.52(b)(3)(ii).

iii. *Over-the-limit fee.* For purposes of § 226.52(b)(3)(ii), 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 as of the date on which the over-the-limit fee is imposed. Thus, § 226.52(b)(3)(ii) generally permits a card issuer to impose an over-the-limit fee that does not exceed 5% of that amount. Although § 226.56(j)(1)(i) prohibits a card issuer from imposing more than one over-the-limit fee per billing cycle, a card issuer may choose the date during the billing cycle on which to impose an over-the-limit fee. For example, 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 September 1, the account has a balance of $4,900. On September 15, a $500 transaction is charged to the account, increasing the balance to $5,400. The card issuer chooses not to impose an over-the-limit fee at this time. On September 20, a $200 transaction is charged to the account, increasing the balance to $5,600. If the card issuer chooses to impose an over-the-limit fee on September 20, § 226.52(b)(3)(ii) permits the issuer to impose a fee of $30 (which equals 5% of the $600 extensions of credit in excess of the $5,000 credit limit), provided this amount does exceed the limitation in § 226.52(b)(3)(ii).

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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

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 applied to the account due to factors 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) 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 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(a) requires the 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). 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.

59(b) Consideration of Factors

1. *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 for consideration of factors described in § 226.59(a) and (d). For example, 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. 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 and should take into account any reduction in the consumer's credit risk based upon the consumer's timely payments.

59(c) Timing

1. *In general.* The issuer may review all of its accounts subject to paragraph (a) of this

section 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, 2010. The card issuer increases the rates applicable to the other half of its credit card accounts on September 1, 2010. 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.

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 its 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 its 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 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 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 may consider the factors that it considers as of January 25, 2011.

2. *Comparison of existing account to factors used for new accounts.* Under § 226.59(a), if a creditor evaluates its existing accounts using the same factors that it uses in determining the rates applicable to new accounts, 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. For example, 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 the 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 its 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 prime rate. Section 226.59(a) requires, however, that the rate on the existing account after the reduction, as determined by adding the prime rate and margin, 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.

3. *Multiple product lines.* If a card issuer uses different factors in determining the applicable annual percentage rates for different types of credit card plans, § 226.59(d) requires the card issuer to review those factors that it uses in determining the annual percentage rates for the consumer's specific type of credit card 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. However, 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.

59(g) Acquired Accounts

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%. As soon as reasonably practicable 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 its 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%. As soon as reasonably practicable 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 its 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, March 3, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–4859 Filed 3–12–10; 8:45 am]

BILLING CODE 6210–01–P