

~~3. Using the account. A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not “use” the account by activating the account. A consumer also does not “use” the account when the creditor assesses fees on the account (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures). For example, the consumer does not “use” the account when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances. A consumer also does not “use” the account by paying an application fee excludable from the finance charge under § 226.4(e)(1) prior to receiving the account-opening disclosures.~~

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

5(b)(2) Periodic statements.

Paragraph 5(b)(2)(i).

1. Periodic statements not required. Periodic statements need not be sent in the following cases:

i. If the creditor adjusts an account balance so that at the end of the cycle the balance is less than \$1—so long as no finance charge has been imposed on the account for that cycle.

ii. If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (See § 226.13(a)(7).)

2. Termination of draw privileges. When a consumer's ability to draw on an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under § 226.5(b)(2)(i), for example, when the draw period of an open-end credit plan ends and consumers are paying off outstanding balances according to the account agreement or under the terms of a workout agreement that is not converted to a closed-end transaction. In addition, creditors must continue to follow all of the other open-end credit requirements and procedures in subpart B.

3. Uncollectible accounts. An account is deemed uncollectible for purposes of § 226.5(b)(2)(i) when a creditor has ceased collection efforts, either directly or through a third party.

4. Instituting collection proceedings. Creditors institute a delinquency collection proceeding by filing a court action or initiating an adjudicatory process with a third party. Assigning a debt to a debt collector or other third party would not constitute instituting a collection proceeding.

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

1. Mailing or delivery of periodic statements. A creditor is not required to determine the specific date on which a periodic statement is mailed or delivered to an individual consumer for purposes of § 226.5(b)(2)(ii). A creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period required by § 226.5(b)(2)(ii) when determining the payment due date and the date on which any grace period expires for purposes of § 226.5(b)(2)(ii)(A)(1) and (b)(2)(ii)(B)(1). For example, if a creditor has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date and the date on which any grace period expires must be no less than 24 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitations in § 226.5(b)(2)(ii)(A)(2) and (b)(2)(ii)(B)(2) on treating a payment as late and imposing finance charges apply for 24 days after the closing date of the billing cycle.

2. Treating a payment as late for any purpose. Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, assessing a late fee or any other fee, initiating collection activities, or terminating benefits (such as rewards on purchases) based on the consumer's failure to make a payment within a specified amount of time or by a specified date. The prohibition in § 226.5(b)(2)(ii)(A)(2) on treating a payment as late for any purpose applies only during the 21-day period following mailing or delivery of the periodic statement stating the due date for that payment and only if the required

minimum periodic payment is received within that period. For example:

i. Assume that a periodic statement mailed on April 4 states that a required minimum periodic payment of \$50 is due on April 25. If the card issuer does not receive any payment on or before April 25, § 226.5(b)(2)(ii)(A)(2) does not prohibit the card issuer from treating the required minimum periodic payment as late.

ii. Same facts as in paragraph i. above. On April 20, the card issuer receives a payment of \$30 and no additional payment is received on or before April 25. Section 226.5(b)(2)(ii)(A)(2) does not prohibit the card issuer from treating the required minimum periodic payment as late.

iii. Same facts as in paragraph i. above. On May 4, the card issuer has not received the \$50 required minimum periodic payment that was due on April 25. The periodic statement mailed on May 4 states that a required minimum periodic payment of \$150 is due on May 25. Section 226.5(b)(2)(ii)(A)(2) does not permit the card issuer to treat the \$150 required minimum periodic payment as late until April 26. However, the card issuer may continue to treat the \$50 required minimum periodic payment as late during this period.

3. Grace periods.

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

payment due date during which a late payment fee will not be imposed is not a grace period for purposes of § 226.5(b)(2)(ii)(B). See comments 7(b)(11)-1, 7(b)(11)-2, and 54(a)(1)-2.

ii. Applicability of § 226.5(b)(2)(ii)(B). Section 226.5(b)(2)(ii)(B) applies if an account is eligible for a grace period when the periodic statement is mailed or delivered. Section 226.5(b)(2)(ii)(B) does not require the creditor to provide a grace period or prohibit the creditor from placing limitations and conditions on a grace period to the extent consistent with § 226.5(b)(2)(ii)(B) and § 226.54. See comment 54(a)(1)-1. Furthermore, the prohibition in § 226.5(b)(2)(ii)(B)(2) applies only during the 21-day period following mailing or delivery of the periodic statement and applies only when the creditor receives a payment within that 21-day period that satisfies the terms of the grace period.

iii. 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 for the account is the twenty-fifth of the month. Assume also that, under the terms of the account, the balance at the end of a billing cycle must be paid in full by the following payment due date in order for the account to remain eligible for the grace period. At the end of the April billing cycle, the balance on the account is \$500. The grace period applies to the \$500 balance because the balance for the March billing cycle was paid in full on April 25. Accordingly, § 226.5(b)(2)(ii)(B)(1) requires the creditor to have reasonable procedures designed to ensure that the periodic statement reflecting the \$500 balance is mailed or delivered on or before May 4. Furthermore, § 226.5(b)(2)(ii)(B)(2) requires the creditor to have reasonable procedures designed to ensure that the creditor

does not impose finance charges as a result of the loss of the grace period if a \$500 payment is received on or before May 25. However, if the creditor receives a payment of \$300 on April 25, § 226.5(b)(2)(ii)(B)(2) would not prohibit the creditor from imposing finance charges as a result of the loss of the grace period (to the extent permitted by § 226.54).

4. Application of § 226.5(b)(2)(ii) to charge card and charged-off accounts.

i. Charge card accounts. For purposes of § 226.5(b)(2)(ii)(A)(1), the payment due date is the date the card issuer is required to disclose on the periodic statement pursuant to § 226.7(b)(11)(i)(A). Because § 226.7(b)(11)(ii) provides that § 226.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts, § 226.5(b)(2)(ii)(A)(1) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, § 226.5(b)(2)(ii)(A)(2) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement. Section 226.5(b)(2)(ii)(B) does not apply to charge card accounts because, for purposes of § 226.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with § 226.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate.

ii. Charged-off accounts. For purposes of § 226.5(b)(2)(ii)(A)(1), the payment due date is the date the card issuer is required to disclose on the periodic statement pursuant to § 226.7(b)(11)(i)(A). Because § 226.7(b)(11)(ii) provides that § 226.7(b)(11)(i) does not apply to periodic statements provided for charged-off accounts

where full payment of the entire account balance is due immediately, § 226.5(b)(2)(ii)(A)(1) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. Furthermore, although § 226.5(b)(2)(ii)(A)(2) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement, § 226.5(b)(2)(ii)(A)(2) does not prohibit a card issuer from continuing to treat prior payments as late during that period. See comment 5(b)(2)(ii)-2. Section 226.5(b)(2)(ii)(B) does not apply to charged-off accounts where full payment of the entire account balance is due immediately because such accounts do not provide a grace period.

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

6. Deferred interest and similar promotional programs. See comment 7(b)-1.iv.

~~Paragraph 5(b)(2)(iii).~~

~~1. Computer malfunction. The exceptions identified in § 226.5(b)(2)(iii) of this section do not extend to the failure to provide a periodic statement because of computer malfunction.~~

~~5(c) Basis of disclosures and use of estimates.~~

~~1. Legal obligation. The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.~~

~~i. The legal obligation is determined by applicable state or other law.~~