

~~1. Memorandum of understanding. Section 226.57(d)(2) requires that the report to the Board include, among other items, a copy of any memorandum of understanding between the card issuer and the institution (or affiliated organization) that “directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities.” Such a memorandum of understanding includes any document that amends the college credit card agreement, or that constitutes a further agreement between the parties as to the interpretation or administration of the agreement. For example, a memorandum of understanding required to be included in the report would include a document that provides details on the dollar amounts of payments from the card issuer to the university, to supplement the original agreement which only provided for payments in general terms (e.g., as a percentage). A memorandum of understanding for these purposes would not include email (or other) messages that merely discuss matters such as the addresses to which payments should be sent or the names of contact persons for carrying out the agreement.~~

Section 226.58—Internet posting of credit card agreements.

58(b) Definitions.

58(b)(1) Agreement.

1. Inclusion of pricing information. For purposes of this section, a credit card agreement is deemed to include certain information, such as annual percentage rates and fees, even if the issuer does not otherwise include this information in the basic credit contract. This information is listed under the defined term “pricing information” in § 226.58(b)(6). For example, the basic credit contract may not specify rates, fees and other information that constitutes pricing information as defined in § 226.58(b)(6);

instead, such information may be provided to the cardholder in a separate document sent along with the card. However, this information nevertheless constitutes part of the agreement for purposes of § 226.58.

2. Provisions contained in separate documents included. A credit card agreement is defined as the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. An agreement therefore may consist of several documents that, taken together, define the legal obligation between the issuer and consumer. For example, provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the card issuer's or consumer's obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract.

58(b)(2) Amends.

1. Substantive changes. A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 226.58(b)(2) provides that any change in the pricing information, as defined in § 226.58(b)(6), is deemed to be substantive. Examples of other changes that generally would be considered substantive include: (i) addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of credit to the consumer, such as changes in a provision describing how the

minimum payment will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

2. Non-substantive changes. Changes that generally would not be considered substantive include, for example: (i) correction of typographical errors that do not affect the meaning of any terms of the agreement; (ii) changes to the card issuer's corporate name, logo, or tagline; (iii) changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins; (iv) changes to the name of the credit card to which the program applies; (v) reordering sections of the agreement without affecting the meaning of any terms of the agreement; (vi) adding, removing, or modifying a table of contents or index; and (vii) changes to titles, headings, section numbers, or captions.

58(b)(4) Offers.

1. Cards offered to limited groups. A card issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons. For example, a card issuer may market affinity cards to students and alumni of a particular educational institution, or may solicit only high-net-worth individuals for a particular card; in these cases, the agreement would be considered to be offered to the public. Similarly, agreements for credit cards issued by a credit union are considered to be offered to the public even though such cards are available only to credit union members.

2. Individualized agreements. A card issuer is deemed to offer a credit card agreement to the public even if the terms of the agreement are changed immediately upon opening of an account to terms not offered to the public.

58(b)(5) Open account

1. Open account clarified. The definition of open account includes a credit card account under an open-end (not home-secured) consumer credit plan if either: (i) the cardholder can obtain extensions of credit on the account; or (ii) there is an outstanding balance on the account that has not been charged off. Under this definition, an account that meets either of these criteria is considered to be open even if the account is inactive. Similarly, if an account has been closed for new activity (for example, due to default by the cardholder), but the cardholder is still making payments to pay off the outstanding balance, the account is considered open.

58(b)(7) Private label credit card account and private label credit card plan.

1. Private label credit card account. The term private label credit card account means a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants. This term applies to any such credit card account, regardless of whether it is issued by the merchant or its affiliate or by an unaffiliated third party.

2. Co-branded credit cards. The term private label credit card account does not include accounts with so-called co-branded credit cards. Credit cards that display the name, mark, or logo of a merchant or affiliated group of merchants as well as the mark, logo, or brand of payment network are generally referred to as co-branded cards. While

these credit cards may display the brand of the merchant or affiliated group of merchants as the dominant brand on the card, such credit cards are usable at any merchant that participates in the payment network. Because these credit cards can be used at multiple unaffiliated merchants, accounts with such credit cards are not considered private label credit card accounts under § 226.58(b)(7).

3. Affiliated group of merchants. The term “affiliated group of merchants” means two or more affiliated merchants or other persons that are related by common ownership or common corporate control. For example, the term would include franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among each other, by contract or otherwise, to accept a credit card bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network), for the purchase of goods or services solely at such merchants or persons. For example, several local clothing retailers jointly agree to issue credit cards called the “Main Street Fashion Card” that can be used to make purchases only at those retailers. For purposes of this section, these retailers would be considered an affiliated group of merchants.

4. Private label credit card plan. Which credit card accounts issued by a particular issuer constitute a private label credit card plan is determined by where the credit cards can be used. All of the private label credit card accounts issued by a particular card issuer with credit cards usable at the same merchant or affiliated group of merchants constitute a single private label credit card plan, regardless of whether the rates, fees, or other terms applicable to the individual credit card accounts differ. For

example, a card issuer has 3,000 open private label credit card accounts with credit cards usable only at Merchant A and 5,000 open private label credit card accounts with credit cards usable only at Merchant B and its affiliates. The card issuer has two separate private label credit card plans, as defined by § 226.58(b)(7)—one plan consisting of 3,000 open accounts with credit cards usable only at Merchant A and another plan consisting of 5,000 open accounts with credit cards usable only at Merchant B and its affiliates.

The example above remains the same regardless of whether (or the extent to which) the terms applicable to the individual open accounts differ. For example, assume that, with respect to the card issuer's 3,000 open accounts with credit cards usable only at Merchant A in the example above, 1,000 of the open accounts have a purchase APR of 12 percent, 1,000 of the open accounts have a purchase APR of 15 percent, and 1,000 of the open accounts have a purchase APR of 18 percent. All of the 5,000 open accounts with credit cards usable only at Merchant B and Merchant B's affiliates have the same 15 percent purchase APR. The card issuer still has only two separate private label credit card plans, as defined by § 226.58(b)(7). The open accounts with credit cards usable only at Merchant A do not constitute three separate private label credit card plans under § 226.58(b)(7), even though the accounts are subject to different terms.

58(c) Submission of agreements to Board.

58(c)(1) Quarterly submissions.

1. Quarterly submission requirement. Section 226.58(c)(1) requires card issuers to send quarterly submissions to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. For example, a card issuer

has already submitted three credit card agreements to the Board. On October 15, the card issuer stops offering agreement A. On November 20, the card issuer amends agreement B. On December 1, the issuer starts offering a new agreement D. The card issuer must submit to the Board no later than the first business day on or after January 31: (i) notification that the card issuer is withdrawing agreement A, because it is no longer offered to the public; (ii) the amended version of agreement B; and (iii) agreement D.

2. No quarterly submission required. Under § 226.58(c)(1), a card issuer is not required to make any submission to the Board at a particular quarterly submission deadline if, during the previous calendar quarter, the card issuer did not take any of the following actions: (i) offering a new credit card agreement that was not submitted to the Board previously; (ii) amending an agreement previously submitted to the Board; and (iii) ceasing to offer an agreement previously submitted to the Board. For example, a card issuer offers five agreements to the public as of September 30 and submits these to the Board by October 31, as required by § 226.58(c)(1). Between September 30 and December 31, the card issuer continues to offer all five of these agreements to the public without amending them and does not begin offering any new agreements. The card issuer is not required to make any submission to the Board by the following January 31.

3. Quarterly submission of complete set of updated agreements. Section 226.58(c)(1) permits a card issuer to submit to the Board on a quarterly basis a complete, updated set of the credit card agreements the card issuer offers to the public. For example, a card issuer offers agreements A, B, and C to the public as of March 31. The card issuer submits each of these agreements to the Board by April 30 as required by § 226.58(c)(1). On May 15, the card issuer amends agreement A, but does not make any

changes to agreements B or C. As of June 30, the card issuer continues to offer amended agreement A and agreements B and C to the public. At the next quarterly submission deadline, July 31, the card issuer must submit the entire amended agreement A and is not required to make any submission with respect to agreements B and C. The card issuer may either: (i) submit the entire amended agreement A and make no submission with respect to agreements B and C; or (ii) submit the entire amended agreement A and also resubmit agreements B and C. A card issuer may choose to resubmit to the Board all of the agreements it offered to the public as of a particular quarterly submission deadline even if the card issuer has not introduced any new agreements or amended any agreements since its last submission and continues to offer all previously submitted agreements.

58(c)(3) Amended agreements.

1. No requirement to resubmit agreements not amended. Under § 226.58(c)(3), if a credit card agreement has been submitted to the Board, the agreement has not been amended, and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. For example, a credit card issuer begins offering an agreement in October and submits the agreement to the Board the following January 31, as required by § 226.58(c)(1). As of March 31, the card issuer has not amended the agreement and is still offering the agreement to the public. The card issuer is not required to submit anything to the Board regarding that agreement by April 30.

2. Submission of amended agreements. If a card issuer amends a credit card agreement previously submitted to the Board, § 226.58(c)(3) requires the card issuer to

submit the entire amended agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. For example, a card issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended and the card issuer must submit the entire amended agreement to the Board no later than January 31.

3. Change-in-terms notices not permissible. Section 226.58(c)(3) requires that if an agreement previously submitted to the Board is amended, the card issuer must submit the entire revised agreement to the Board. A card issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments must be integrated into the text of the agreement (or the addenda described in § 226.58(c)(8)), not provided as separate riders. For example, a card issuer changes the purchase APR associated with an agreement the issuer has previously submitted to the Board. The purchase APR for that agreement was included in the addendum of pricing information, as required by § 226.58(c)(8). The card issuer may not submit a change-in-terms or similar notice reflecting the change in APR, either alone or accompanied by the original text of the agreement and original pricing information addendum. Instead, the card issuer must revise the pricing information addendum to reflect the change in APR and submit to the Board the entire text of the agreement and the entire revised addendum, even though no changes have been made to the provisions of the agreement and only one item on the pricing information addendum has changed.

58(c)(4) Withdrawal of agreements.

1. Notice of withdrawal of agreement. Section 226.58(c)(4) requires a card issuer to notify the Board if any agreement previously submitted to the Board by that issuer is no longer offered to the public by the first quarterly submission deadline after the last day of the calendar quarter in which the card issuer ceased to offer the agreement. For example, on January 5 a card issuer stops offering to the public an agreement it previously submitted to the Board. The card issuer must notify the Board that the agreement is being withdrawn by April 30, the first quarterly submission deadline after March 31, the last day of the calendar quarter in which the card issuer stopped offering the agreement.

58(c)(5) De minimis exception.

1. Relationship to other exceptions. The de minimis exception is distinct from the private label credit card exception under § 226.58(c)(6) and the product testing exception under § 226.58(c)(7). The de minimis exception provides that a card issuer with fewer than 10,000 open credit card accounts is not required to submit any agreements to the Board, regardless of whether those agreements qualify for the private label credit card exception or the product testing exception. In contrast, the private label credit card exception and the product testing exception provide that a card issuer is not required to submit to the Board agreements offered solely in connection with certain types of credit card plans with fewer than 10,000 open accounts, regardless of the card issuer's total number of open accounts.

2. De minimis exception. Under § 226.58(c)(5), a card issuer is not required to submit any credit card agreements to the Board under § 226.58(c)(1) if the card issuer has

fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. For example, a card issuer offers five credit card agreements to the public as of September 30. However, the card issuer has only 2,000 open credit card accounts as of September 30. The card issuer is not required to submit any agreements to the Board by October 31 because the issuer qualifies for the de minimis exception.

3. Date for determining whether card issuer qualifies clarified. Whether a card issuer qualifies for the de minimis exception is determined as of the last business day of each calendar quarter. For example, as of December 31, a card issuer offers three agreements to the public and has 9,500 open credit card accounts. As of January 30, the card issuer still offers three agreements, but has 10,100 open accounts. As of March 31, the card issuer still offers three agreements, but has only 9,700 open accounts. Even though the card issuer had 10,100 open accounts at one time during the calendar quarter, the card issuer qualifies for the de minimis exception because the number of open accounts was less than 10,000 as of March 31. The card issuer therefore is not required to submit any agreements to the Board under § 226.58(c)(1) by April 30.

4. Date for determining whether card issuer ceases to qualify clarified. Whether a card issuer has ceased to qualify for the de minimis exception under § 226.58(c)(5) is determined as of the last business day of the calendar quarter. For example, as of June 30, a card issuer offers three agreements to the public and has 9,500 open credit card accounts. The card issuer is not required to submit any agreements to the Board under § 226.58(c)(1) because the card issuer qualifies for the de minimis exception. As of July 15, the card issuer still offers the same three agreements, but now has 10,000 open accounts. The card issuer is not required to take any action at this time, because whether

a card issuer qualifies for the de minimis exception under § 226.58(c)(5) is determined as of the last business day of the calendar quarter. As of September 30, the card issuer still offers the same three agreements and still has 10,000 open accounts. Because the card issuer had 10,000 open accounts as of September 30, the card issuer ceased to qualify for the de minimis exception and must submit the three agreements it offers to the Board by October 31, the next quarterly submission deadline.

5. Option to withdraw agreements clarified. Section 226.58(c)(5) provides that if a card issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the card issuer must continue to make quarterly submissions to the Board as required by § 226.58(c)(1) until the card issuer notifies the Board that the issuer is withdrawing all agreements it previously submitted to the Board. For example, a card issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The card issuer has submitted each of the three agreements to the Board as required under § 226.58(c)(1). As of March 31, the card issuer has only 9,999 open accounts. The card issuer has two options. First, the card issuer may notify the Board that the card issuer is withdrawing each of the three agreements it previously submitted. Once the card issuer has notified the Board, the card issuer is no longer required to make quarterly submissions to the Board under § 226.58(c)(1). Alternatively, the card issuer may choose not to notify the Board that it is withdrawing its agreements. In this case, the card issuer must continue making quarterly submissions to the Board as required by § 226.58(c)(1). The card issuer might choose not to withdraw its agreements if, for example, the card issuer believes that it likely will cease to qualify for the de minimis exception again in the near future.

58(c)(6) Private label credit card exception.

1. Private label credit card exception. Under § 226.58(c)(6)(i), a card issuer is not required to submit to the Board a credit card agreement if, as of the last business day of the calendar quarter, the agreement: (A) is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts; and (B) is not offered to the public other than for accounts under such a plan. For example, a card issuer offers to the public a credit card agreement offered solely for private label credit card accounts with credit cards that can be used only at Merchant A. The card issuer has 8,000 open accounts with such credit cards usable only at Merchant A. The card issuer is not required to submit this agreement to the Board under § 226.58(c)(1) because the agreement is offered for a private label credit card plan with fewer than 10,000 open accounts, and the credit card agreement is not offered to the public other than for accounts under that private label credit card plan.

In contrast, assume the same card issuer also offers to the public a different credit card agreement that is offered solely for private label credit card accounts with credit cards usable only at Merchant B. The card issuer has 12,000 open accounts with such credit cards usable only at Merchant B. The private label credit card exception does not apply. Although this agreement is offered for a private label credit card plan (i.e., the 12,000 private label credit card accounts with credit cards usable only at Merchant B), and the agreement is not offered to the public other than for accounts under that private label credit card plan, the private label credit card plan has more than 10,000 open accounts. (The card issuer still is not required to submit to the Board the agreement

offered in connection with credit cards usable only at Merchant A, as each agreement is evaluated separately under the private label credit card exception.)

2. Card issuers with small private label and other credit card plans. Whether the private label credit card exception applies is determined on an agreement-by-agreement basis. Therefore, some agreements offered by a card issuer may qualify for the private label credit card exception even though the card issuer also offers other agreements that do not qualify, such as agreements offered for accounts with cards usable at multiple unaffiliated merchants or agreements offered for accounts under private label plans with 10,000 or more open accounts.

3. De minimis exception distinguished. The private label credit card exception under § 226.58(c)(6) is distinct from the de minimis exception under § 226.58(c)(5). The private label credit card exception exempts card issuers from submitting certain agreements to the Board regardless of the card issuer's overall size as measured by total number of open accounts. In contrast, the de minimis exception exempts a particular card issuer from submitting any credit card agreements to the Board if the card issuer has fewer than 10,000 total open accounts. For example, a card issuer offers to the public two credit card agreements. Agreement A is offered solely for private label credit card accounts with credit cards usable only at Merchant A. The card issuer has 5,000 open credit card accounts with such credit cards usable only at Merchant A. Agreement B is offered solely for credit card accounts with cards usable at multiple unaffiliated merchants that participate in a major payment network. The card issuer has 40,000 open credit card accounts with such payment network cards. The card issuer is not required to submit agreement A to the Board under § 226.58(c)(1) because agreement A qualifies for

the private label credit card exception under § 226.58(c)(6). Agreement A is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (i.e., the 5,000 accounts with credit cards usable only at Merchant A) and is not otherwise offered to the public. The card issuer is required to submit agreement B to the Board under § 226.58(c)(1). The card issuer does not qualify for the de minimis exception under § 226.58(c)(5) because it has more than 10,000 open accounts, and agreement B does not qualify for the private label credit card exception under § 226.58(c)(6) because it is not offered solely for accounts under a private label credit card plan with fewer than 10,000 open accounts.

4. Agreement otherwise offered to the public. An agreement qualifies for the private label exception only if it is offered for accounts under one or more private label credit card plans with fewer than 10,000 open accounts and is not offered to the public other than for accounts under such a plan. For example, a card issuer offers a single agreement to the public. The agreement is offered for private label credit card accounts with credit cards usable only at Merchant A. The card issuer has 9,000 such open accounts with credit cards usable only at Merchant A. The agreement also is offered for credit card accounts with credit cards usable at multiple unaffiliated merchants that participate in a major payment network. The agreement does not qualify for the private label credit card exception. The agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts. However, the agreement also is offered to the public for accounts that are not part of a private label credit card plan and therefore does not qualify for the private label credit card exception.

Similarly, an agreement does not qualify for the private label credit card exception if it is offered in connection with one private label credit card plan with fewer than 10,000 open accounts and one private label credit card plan with 10,000 or more open accounts. For example, a card issuer offers a single credit card agreement to the public. The agreement is offered for two types of accounts. The first type of account is a private label credit card account with a credit card usable only at Merchant A. The second type of account is a private label credit card account with a credit card usable only at Merchant B. The card issuer has 10,000 such open accounts with credit cards usable only at Merchant A and 5,000 such open accounts with credit cards usable only at Merchant B. The agreement does not qualify for the private label credit card exception. While the agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (i.e., the 5,000 open accounts with credit cards usable only at Merchant B), the agreement is also offered for accounts not under such a plan (i.e., the 10,000 open accounts with credit cards usable only at Merchant A).

5. Agreement used for multiple small private label plans. The private label exception applies even if the same agreement is used for more than one private label credit card plan with fewer than 10,000 open accounts. For example, a card issuer has 15,000 total open private label credit card accounts. Of these, 7,000 accounts have credit cards usable only at Merchant A, 5,000 accounts have credit cards usable only at Merchant B, and 3,000 accounts have credit cards usable only at Merchant C. The card issuer offers to the public a single credit card agreement that is offered for all three types of accounts and is not offered for any other type of account. The card issuer is not required to submit the agreement to the Board under § 226.58(c)(1). The agreement is

used for three different private label credit card plans (i.e., the accounts with credit cards usable at Merchant A, the accounts with credit cards usable at Merchant B, and the accounts with credit cards usable at Merchant C), each of which has fewer than 10,000 open accounts, and the card issuer does not offer the agreement for any other type of account. The agreement therefore qualifies for the private label credit card exception under § 226.58(c)(6).

6. Multiple agreements used for one private label credit card plan. The private label credit card exception applies even if a card issuer offers more than one agreement in connection with a particular private label credit card plan. For example, a card issuer has 5,000 open private label credit card accounts with credit cards usable only at Merchant A. The card issuer offers to the public three different agreements each of which may be used in connection with private label credit card accounts with credit cards usable only at Merchant A. The agreements are not offered for any other type of credit card account. The card issuer is not required to submit any of the three agreements to the Board under § 226.58(c)(1) because each of the agreements is used for a private label credit card plan which has fewer than 10,000 open accounts and none of the three is offered to the public other than for accounts under such a plan.

58(c)(8) Form and content of agreements submitted to the Board.

1. “As of” date clarified. Agreements submitted to the Board must contain the provisions of the agreement and pricing information in effect as of the last business day of the preceding calendar quarter. For example, on June 1, a card issuer decides to decrease the purchase APR associated with one of the agreements it offers to the public. The change in the APR will become effective on August 1. If the card issuer submits the

agreement to the Board on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower APR because that APR was not in effect on June 30, the last business day of the preceding calendar quarter.

2. Pricing agreement addendum. Pricing information must be set forth in the separate addendum described in § 226.58(c)(8)(ii)(A) even if it is also stated elsewhere in the agreement.

3. Pricing agreement variations do not constitute separate agreements. Pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed by setting forth all the possible variations or by providing a range of possible variations. Two agreements that differ only with respect to variations in the pricing information do not constitute separate agreements for purposes of this section. For example, a card issuer offers two types of credit card accounts that differ only with respect to the purchase APR. The purchase APR for one type of account is 15 percent, while the purchase APR for the other type of account is 18 percent. The provisions of the agreement and pricing information for the two types of accounts are otherwise identical. The card issuer should not submit to the Board one agreement with a pricing information addendum listing a 15 percent purchase APR and another agreement with a pricing information addendum listing an 18 percent purchase APR. Instead, the card issuer should submit to the Board one agreement with a pricing information addendum listing possible purchase APRs of 15 or 18 percent.

4. Optional variable terms addendum. Examples of provisions that might be included in the variable terms addendum include a clause that is required by law to be included in credit card agreements in a particular state but not in other states (unless, for example, a clause is included in the agreement used for all cardholders under a heading such as “For State X Residents”), the name of the credit card plan to which the agreement applies (if this information is included in the agreement), or the name of a charitable organization to which donations will be made in connection with a particular card (if this information is included in the agreement).

5. Integrated agreement requirement. Card issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders. The only two addenda that may be submitted as part of an agreement are the pricing information addendum and optional variable terms addendum described in § 226.58(c)(8). Changes in provisions or pricing information must be integrated into the body of the agreement, pricing information addendum, or optional variable terms addendum described in § 226.58(c)(8). For example, it would be impermissible for a card issuer to submit to the Board an agreement in the form of a terms and conditions document dated January 1, 2005, four subsequent change in terms notices, and 2 addenda showing variations in pricing information. Instead, the card issuer must submit a document that integrates the changes made by each of the change in terms notices into the body of the original terms and conditions document and a single addendum displaying variations in pricing information.

58(d) Posting of agreements offered to the public.

1. Requirement applies only to agreements submitted to the Board. Card issuers are only required to post and maintain on their publicly available Web site the credit card agreements that the card issuer must submit to the Board under § 226.58(c). If, for example, a card issuer is not required to submit any agreements to the Board because the card issuer qualifies for the de minimis exception under § 226.58(c)(5), the card issuer is not required to post and maintain any agreements on its Web site under § 226.58(d). Similarly, if a card issuer is not required to submit a specific agreement to the Board, such as an agreement that qualifies for the private label exception under § 226.58(c)(6), the card issuer is not required to post and maintain that agreement under § 226.58(d) (either on the card issuer's publicly available Web site or on the publicly available Web sites of merchants at which private label credit cards can be used). (The card issuer in both of these cases is still required to provide each individual cardholder with access to his or her specific credit card agreement under § 226.58(e) by posting and maintaining the agreement on the card issuer's Web site or by providing a copy of the agreement upon the cardholder's request.)

2. Card issuers that do not otherwise maintain Web sites. Unlike § 226.58(e), § 226.58(d) does not include a special rule for card issuers that do not otherwise maintain a Web site. If a card issuer is required to submit one or more agreements to the Board under § 226.58(c), that card issuer must post those agreements on a publicly available Web site it maintains (or, with respect to an agreement for a private label credit card, on the publicly available Web site of at least one of the merchants at which the card may be used, as provided in § 226.58(d)(1)).

3. Private label credit card plans. Section 226.58(d) provides that, with respect to an agreement offered solely for accounts under one or more private label credit card plans, a card issuer may comply by posting and maintaining the agreement on the Web site of at least one of the merchants at which the cards issued under each private label credit card plan with 10,000 or more open accounts may be used. For example, a card issuer has 100,000 open private label credit card accounts. Of these, 75,000 open accounts have credit cards usable only at Merchant A and 25,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

The card issuer is required to submit the agreement to the Board under § 226.58(c)(1). (The card issuer has more than 10,000 open accounts, so the § 226.58(c)(5) de minimis exception does not apply. The agreement is offered solely for two different private label credit card plans (i.e., one plan consisting of the accounts with credit cards usable at Merchant A and one plan consisting of the accounts with credit cards usable at Merchant B and its affiliates, Merchants C and D), but both of these plans have more than 10,000 open accounts, so the § 226.58(c)(6) private label credit card exception does not apply. Finally, the agreement is not offered solely in connection with a product test by the card issuer, so the § 226.58(c)(7) product test exception does not apply.)

Because the card issuer is required to submit the agreement to the Board under § 226.58(c)(1), the card issuer is required to post and maintain the agreement on the card issuer's publicly available Web site under § 226.58(d). However, because the agreement

is offered solely for accounts under one or more private label credit card plans, the card issuer may comply with § 226.58(d) in either of two ways. First, the card issuer may comply by posting and maintaining the agreement on the card issuer's own publicly available Web site. Alternatively, the card issuer may comply by posting and maintaining the agreement on the publicly available Web site of Merchant A and the publicly available Web site of at least one of Merchants B, C and D. It would not be sufficient for the card issuer to post the agreement on Merchant A's Web site alone because § 226.58(d) requires the card issuer to post the agreement on the publicly available Web site of "at least one of the merchants at which cards issued under each private label credit card plan may be used" (emphasis added).

In contrast, assume that a card issuer has 100,000 open private label credit card accounts. Of these, 5,000 open accounts have credit cards usable only at Merchant A and 95,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

The card issuer is required to submit the agreement to the Board under § 226.58(c)(1). (The card issuer has more than 10,000 open accounts, so the § 226.58(c)(5) de minimis exception does not apply. The agreement is offered solely for two different private label credit card plans (i.e., one plan consisting of the accounts with credit cards usable at Merchant A and one plan consisting of the accounts with credit cards usable at Merchant B and its affiliates, Merchants C and D), but one of these plans has more than 10,000 open accounts, so the § 226.58(c)(6) private label credit card

exception does not apply. Finally, the agreement is not offered solely in connection with a product test by the card issuer, so the § 226.58(c)(7) product test exception does not apply.)

Because the card issuer is required to submit the agreement to the Board under § 226.58(c)(1), the card issuer is required to post and maintain the agreement on the card issuer's publicly available Web site under § 226.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the card issuer may comply with § 226.58(d) in either of two ways. First, the card issuer may comply by posting and maintaining the agreement on the card issuer's own publicly available Web site. Alternatively, the card issuer may comply by posting and maintaining the agreement on the publicly available Web site of at least one of Merchants B, C and D. The card issuer is not required to post and maintain the agreement on the publicly available Web site of Merchant A because the card issuer's private label credit card plan consisting of accounts with cards usable only at Merchant A has fewer than 10,000 open accounts.

58(e) Agreements for all open accounts.

1. Requirement applies to all open accounts. The requirement to provide access to credit card agreements under § 226.58(e) applies to all open credit card accounts, regardless of whether such agreements are required to be submitted to the Board pursuant to § 226.58(c) (or posted on the card issuer's Web site pursuant to § 226.58(d)). For example, a card issuer that is not required to submit agreements to the Board because it qualifies for the de minimis exception under § 226.58(c)(5) would still be required to provide cardholders with access to their specific agreements under § 226.58(e).

Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Board under § 226.58(c), but would still need to be provided to the cardholder to whom it applies under § 226.58(e).

2. Readily available telephone line. Section 226.58(e) provides that card issuers that provide copies of cardholder agreements upon request must provide the cardholder with the ability to request a copy of their agreement by calling a readily available telephone line. To satisfy the readily available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt response. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

3. Issuers without interactive Web sites. Section 226.58(e)(2) provides that a card issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts is not required to provide a cardholder with the ability to request a copy of the agreement by using the card issuer's Web site. A card issuer without a Web site of any kind could comply by disclosing the telephone number on each periodic statement; a card issuer with a non-interactive Web site could comply in the same way, or alternatively could comply by displaying the telephone number on the card issuer's Web site.

4. Deadline for providing requested agreements clarified. Sections 226.58(e)(1)(ii) and (e)(2) require that credit card agreements provided upon request must be sent to the cardholder or otherwise made available to the cardholder in electronic or

paper form no later than 30 days after the cardholder's request is received. For example, if a card issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the card issuer must mail the agreement no later than 30 days after receipt of the cardholder's request. Alternatively, if a card issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the card issuer's Web site, the card issuer must post the agreement on its Web site no later than 30 days after receipt of the cardholder's request. Section 226.58(e)(3)(v) provides that a card issuer may provide cardholder agreements in either electronic or paper form regardless of the form of the cardholder's request.

~~APPENDIX F OPTIONAL ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CREDITORS~~

~~OFFERING OPEN-END PLANS SUBJECT TO THE REQUIREMENTS OF § 226.5B~~

~~1. Daily rate with specific transaction charge. If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(e)(3)-2 for guidance on an appropriate calculation method.~~

~~APPENDICES G AND H OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES~~

~~1. Permissible changes. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in G-2(A), G-3(A), G-4(A), G-10(A) (E), G-17(A) (D), G-18(A) (except as permitted pursuant to~~