

well as whether there are other provisions of this proposed rule that are not directly required by the Credit Card Act for which a mandatory compliance date of July 1, 2010 would also be appropriate. The Board also seeks comment on appropriate transition rules for the proposed amendments to Regulation Z.

## **II. Summary of Major Proposed Revisions**

### **A. Increases in Annual Percentage Rates**

Existing balances. Consistent with the Credit Card Act, the proposed rule would prohibit creditors from applying increased annual percentage rates and certain fees and charges to existing credit card balances, except in the following circumstances: (1) when a temporary rate lasting at least six months expires; (2) when the rate is increased due to the operation of an index (i.e., when the rate is a variable rate); (3) when the minimum payment has not been received within 60 days after the due date; and (4) when the consumer successfully completes or fails to comply with the terms of a workout arrangement. In addition, when the annual percentage rate on an existing balance has been reduced pursuant to the Servicemembers Civil Relief Act (SCRA), the proposed rule would permit the creditor to increase that rate once the SCRA ceases to apply.

New transactions. The proposed rule would implement the Credit Card Act's prohibition on increasing an annual percentage rate during the first year after an account is opened. After the first year, the proposed rule would provide that creditors are permitted to increase the annual percentage rates that apply to new transactions so long as the creditor complies with the Credit Card Act's 45-day advance notice requirement, which was implemented in the July 2009 Regulation Z Interim Final Rule.

## B. Evaluation of Consumer's Ability to Pay

General requirements. The Credit Card Act prohibits creditors from opening a new credit card account or increasing the credit limit for an existing credit card account unless the creditor considers the consumer's ability to make the required payments under the terms of the account. Because credit card accounts typically require consumers to make a minimum monthly payment that is a percentage of the total balance (plus, in some cases, accrued interest and fees), the proposed rule would require creditors to consider the consumer's ability to make the required minimum payments.

However, because a creditor will not know the exact amount of a consumer's minimum payments at the time it is evaluating the consumer's ability to make those payments, the proposal would require creditors to use a reasonable method for estimating a consumer's minimum payments and would provide a safe harbor that creditors could use to satisfy this requirement. For example, with respect to the opening of a new credit card account, the safe harbor would provide that it would be reasonable for a creditor to estimate minimum payments based on a consumer's utilization of the full credit line using the minimum payment formula employed by the creditor with respect to the credit card product for which the consumer is being considered.

The proposed rule would also clarify the types of factors creditors should review in considering a consumer's ability to make the required minimum payments. Specifically, an evaluation of a consumer's ability to pay must include a review of the consumer's income or assets as well as the consumer's current obligations, and a creditor must establish reasonable policies and procedures for considering that information. When considering a consumer's income or assets and current obligations, a creditor

would be permitted to rely on information provided by the consumer or information in a consumer's credit report.

Specific requirements for underage consumers. Consistent with the Credit Card Act, the proposed rule prohibits a creditor from issuing a credit card to a consumer who has not attained the age of 21 unless the consumer has submitted a written application that meets certain requirements. Specifically, the application must include either: (1) the signature of a cosigner who has attained the age of 21, who has the means to repay debts incurred by the underage consumer in connection with the account, and who assumes joint liability for such debts; or (2) information indicating that the underage consumer has the ability to make the required payments for the account.

#### C. Marketing to Students

Prohibited inducements. The Credit Card Act limits a creditor's ability to offer a student at an institution of higher education any tangible item to induce the student to apply for or open an open-end consumer credit plan offered by the creditor. Specifically, the Credit Card Act prohibits such offers: (1) on the campus of an institution of higher education; (2) near the campus of an institution of higher education; or (3) at an event sponsored by or related to an institution of higher education.

The proposed commentary would provide guidance to assist creditors in complying with the rule. For example, the proposed commentary would clarify that "tangible item" means a physical item (such as a gift card, t-shirt, or magazine subscription) and does not include non-physical items (such as discounts, rewards points, or promotional credit terms). The proposed commentary would also clarify that a location that is within 1,000 feet of the border of the campus of an institution of higher

education (as defined by the institution) is considered near the campus of that institution. Finally, consistent with guidance recently adopted by the Board with respect to certain private education loans, the proposed commentary would state that an event is related to an institution of higher education if the marketing of such event uses words, pictures, or symbols identified with the institution in a way that implies that the institution endorses or otherwise sponsors the event.

Disclosure and reporting requirements. The proposed rule would also implement the provisions of the Credit Card Act requiring institutions of higher education to publicly disclose agreements with credit card issuers regarding the marketing of credit cards. The proposal would state that an institution may comply with this requirement by, for example, posting the agreement on its Web site or by making the agreement available upon request.

D. Fees or Charges for Transactions That Exceed the Credit Limit

Consumer consent requirement. Consistent with the Credit Card Act, the proposed rule would require that a creditor obtain a consumer's express consent (or opt-in) before imposing any fees on a consumer's credit card account for making an extension of credit that exceeds the account's credit limit. Prior to obtaining this consent, the creditor must disclose, among other things, the dollar amount of any fees or charges that will be assessed for an over-the-limit transaction as well as any increased rate that may apply if the consumer exceeds the credit limit. In addition, if the consumer consents, the creditor is also required to provide a notice of the consumer's right to revoke that consent on any periodic statement that reflects the imposition of an over-the-limit fee or charge.

The proposed rule would apply these requirements to all consumers (including existing account holders) if the creditor imposes a fee or charge for paying an over-the-limit transaction. Thus, after the February 22, 2010 effective date, creditors would be prohibited from assessing any over-the-limit fees or charges on an account until the consumer consents to the payment of transactions that exceed the credit limit.

Prohibited practices. Even if the consumer has affirmatively consented to the creditor's payment of over-the-limit transactions, the Credit Card Act prohibits certain practices in connection with the assessment of over-the-limit fees or charges. Consistent with these statutory prohibitions, the proposed rule would prohibit a creditor from imposing more than one over-the-limit fee or charge per billing cycle. In addition, a creditor could not impose an over-the-limit fee or charge on the account for the same over-the-limit transaction in more than three billing cycles.

The Credit Card Act also directs the Board to prescribe regulations that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees. Pursuant to this authority, the proposed rule would prohibit a creditor from assessing an over-the-limit fee or charge that is caused by the creditor's failure to promptly replenish the consumer's available credit. The proposed rule would also prohibit creditors from conditioning the amount of available credit on the consumer's consent to the payment of over-the-limit transactions. Finally, the proposed rule would prohibit the imposition of any over-the-limit fees or charges if the credit limit is exceeded solely because of the creditor's assessment of fees or charges (including accrued interest charges) on the consumer's account.

#### E. Timely Settlement of Estates

The Credit Card Act directs the Board to prescribe regulations requiring creditors to establish procedures ensuring that any administrator of an estate can resolve the outstanding credit card balance of a deceased accountholder in a timely manner. The proposed rule would impose two specific requirements designed to enable administrators to determine the amount of and pay a deceased consumer's balance in a timely manner. First, upon request by the administrator, the creditor would be required to disclose the amount of the balance in a timely manner. Second, once an administrator has made such a request, the creditor would be required to cease the imposition of fees and charges on the account (including the accrual of interest) so that the amount of the balance does not increase while the administrator is arranging for payment.

#### F. On-line Disclosure of Credit Card Agreements

The Credit Card Act requires creditors to post credit card agreements on their Web sites and to submit those agreements to the Board for posting on its Web site. The Credit Card Act further provides that the Board may establish exceptions to these requirements in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of accountholders.

The proposed rule would require a creditor to post on its Web site or otherwise make available its credit card agreements with its current cardholders. However, the proposed rule would establish two limitations with respect to the submission of agreements to the Board. First, the proposed rule would establish a de minimis exception for creditors with fewer than 10,000 open credit card accounts. Because the

overwhelming majority of credit card accounts are held by creditors that have more than 10,000 open accounts, the information provided through the Board's Web site would still reflect virtually all of the terms available to consumers.

Second, creditors would not be required to submit agreements that are not currently offered to the public. The Board believes that the primary purpose of the information provided through the Board's Web site is to assist consumers in comparing credit card agreements offered by different issuers when shopping for a new credit card. Including agreements that are no longer offered to the public would not facilitate comparison shopping by consumers. In addition, including such agreements could create confusion regarding which terms are currently available.

#### G. Additional Provisions

The proposed rule also implements the following provisions of the Credit Card Act, all of which go into effect on February 22, 2010.

Limitations on fees. The Board's January 2009 FTC Act Rule prohibited banks from charging to a credit card account during the first year after account opening certain account-opening and other fees that, in total, constituted the majority of the initial credit limit. The Credit Card Act contains a similar provision, except that it applies to all fees (other than fees for late payments, returned payments, and exceeding the credit limit) and limits the total fees to 25% of the initial credit limit.

Payment allocation. When different rates apply to different balances on a credit card account, the Board's January 2009 FTC Act Rule required banks to allocate payments in excess of the minimum first to the balance with the highest rate or pro rata among the balances. The Credit Card Act contains a similar provision, except that excess

payments must always be allocated first to the balance with the highest rate.

Double-cycle billing. The Board's January 2009 FTC Act Rule prohibited banks from imposing finance charges on balances for days in previous billing cycles as a result of the loss of a grace period (a practice sometimes referred to as "double-cycle billing"). The Credit Card Act contains a similar prohibition. In addition, when a consumer pays some but not all of a balance prior to expiration of a grace period, the Credit Card Act prohibits the creditor from imposing finance charges on the portion of the balance that has been repaid.

Fees for making payment. The Credit Card Act prohibits creditors from charging a fee for making a payment, except for payments involving an expedited service by a service representative of the creditor.

Minimum payments. The Board's January 2009 Regulation Z Rule implemented provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requiring creditors to provide a toll-free telephone number where consumers could receive an estimate of the time to repay their account balances if they made only the required minimum payment each month. The Credit Card Act substantially revised the statutory requirements for these disclosures. In particular, the Credit Card Act requires the following new disclosures on the periodic statement: (1) the amount of time and the total cost (interest and principal) involved in paying the balance in full making only minimum payments; and (2) the monthly payment amount required to pay off the balance in 36 months and the total cost (interest and principal) of repaying the balance in 36 months.