

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~~

~~organizations. For example, information that may be part of the terms and conditions of a college credit card agreement and that, if so, could be required to be included in the report, could include any terms that differentiate between student and non-student accounts (for example, that provide for difference in payments based on whether an account is a student or non-student account), or that relate to advertising or marketing (such as provisions on mailing lists, online advertising, or on campus marketing). The report could also be required to specify the terms and conditions of credit card accounts (for example, rates and fees) that may be opened in connection with the college credit card agreement. Inclusion of such information in issuers' annual reports could facilitate the Board's review of the reports and preparation of the Board's report to Congress concerning college credit card agreements, but could also impose additional costs on card issuers in preparing their reports to the Board. The Board requests comment on the costs and benefits of requiring these (or any other) items of information to be included in the annual report.~~

Section 226.58 Internet Posting of Credit Card Agreements

Section 204 of the Credit Card Act adds new TILA Section 122(d) to require creditors to post agreements for open-end consumer credit card plans on the creditors' Web sites and to submit those agreements to the Board for posting on a publicly-available Web site established and maintained by the Board. 15 U.S.C. 1632(d). The Board proposes to implement these provisions in new § 226.58.

58(a) Applicability

Proposed § 226.58(a) would make proposed § 226.58 applicable to any card issuer that issues a credit card under a credit card account under an open-end (not home-

secured) consumer credit plan, as defined in proposed revised § 226.2(a)(15). Thus, consistent with the approach the Board is proposing in implementing other sections of the Credit Card Act, home-equity lines of credit accessible by credit cards and overdraft lines of credit accessed by debit cards would not be covered by proposed § 226.58.

58(b) Definitions

Proposed § 226.58(b)(1) defines “agreement” or “credit card agreement” as a 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. As proposed, § 226.58(b)(1) states and proposed comment 58(b)(1)-1 further clarifies that the agreement is deemed to include certain information, such as annual percentage rates and fees, even if the issuer does not otherwise technically include this information in the document evidencing the terms of the legal obligation. This information is listed under the defined term “pricing information” in § 226.58(b)(4). The Board believes that, to enable consumers to shop for credit cards and compare information about various credit card plans in an effective manner, it is necessary that the credit card agreements posted on the Board’s Web site include information such as rates and fees, in addition to other terms and conditions of the agreements. However, the Board solicits comment on the definition of agreement and on whether more or less information should be included. As proposed comment 58(b)(1)-2 would clarify, the agreement would not include documents that may be sent to the consumer along with the credit card or credit card agreement, such as a cover letter, a validation sticker on the card, other information about card security,

offers for credit insurance or other optional products, advertisements, and disclosures required under federal or state law that are not incorporated into the agreement itself.

Proposed § 226.58(b)(2) defines “business day” as a day on which the creditor’s offices are open to the public for carrying on substantially all of its business functions. This is consistent with the definition of business day used in most other sections of Regulation Z.

Proposed § 226.58(b)(3) states that an issuer “offers” or “offers to the public” an agreement if the issuer is soliciting or accepting applications for new accounts that would be subject to that agreement. As proposed comment 58(b)(3)-1 would clarify, 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, an issuer may market affinity cards to students and alumni of a particular educational institution or solicit only high-net-worth individuals for a particular card, but the corresponding card agreements would be considered to be offered to the public. Proposed comment 58(b)(3)-2 would clarify that 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.

Proposed § 226.58(b)(4) defines the term “pricing information” to include: (1) the information under § 226.6(b)(2)(i) through (b)(2)(xii), (b)(3) and (b)(4) that is required to be disclosed in writing pursuant to § 226.5(a)(1)(ii); (2) the credit limit; and (3) the method used to calculate required minimum payments. This definition makes reference to the provisions of § 226.6(b) as revised by the January 2009 Regulation Z Rule. While the effective date of proposed § 226.58 would be February 22, 2010, the

Board is soliciting comment regarding whether the July 1, 2010 mandatory compliance date of revised § 226.6 should be retained, as discussed elsewhere in this proposal. If the July 1, 2010 mandatory compliance date for revised § 226.6(b) is retained, the Board may make technical and conforming changes to proposed § 226.58(b)(4) to account for the difference in mandatory compliance dates. However, the definition of pricing information for purposes of proposed § 226.58 would conform to the requirements of revised § 226.6(b)(2)(i) through (b)(2)(xii), (b)(3) and (b)(4) beginning on February 22, 2010, even if compliance with portions of revised § 226.6(b) is not mandatory until July 1, 2010.

58(c) Registration with Board

Proposed § 226.58(c) would require any card issuer that offered one or more credit card agreements as of December 31, 2009 to register with the Board, in the form and manner prescribed by the Board, no later than February 1, 2010. However, a card issuer that would have qualified for the de minimis exception under proposed § 226.58(e) as of December 31, 2009, if proposed § 226.58 had been in effect on that date, would not be required to register.

The Board expects to provide additional details regarding the registration process in a document setting forth technical specifications for the credit card agreement posting requirements, to be posted on the Board's public Web site. The Board anticipates that issuers will register online through the Board's Web site and that registration will capture basic identifying information about each issuer, such as the issuer's name, address, and identifying number (e.g., RSSD ID number or tax identification number), and the name,

phone number and email address of a contact person at the issuer. The Board will contact the issuer to confirm that the issuer in fact authorized the registration.

Proposed § 226.58(c)(2) would provide that any issuer that is required to make a submission to the Board under § 226.58(d) that has not previously registered with the Board must register with the Board at least 21 days before the quarterly submission deadline specified in § 226.58(d)(1) on which the card issuer's first submission is due. As proposed comment 58(c)-1 would clarify, this provision would apply, for example, if a new credit card issuer is organized or if an existing issuer that previously qualified for the de minimis exception under § 226.58(e) ceased to qualify. For example, a card issuer that previously qualified for the de minimis exception ceases to qualify as of September 30. That issuer's first submission to the Board is due on October 31, the next quarterly submission deadline. The issuer must register with the Board at least 21 days before October 31.

Proposed § 226.58(c)(3) would require card issuers that have registered with the Board under § 226.58(c)(1) or (c)(2) to provide updated registration information to the Board no later than the first quarterly submission deadline specified in § 226.58(d)(1) after the information changes. For example, as described in proposed comment 58(c)-2, a card issuer that has already registered with the Board changes its address on October 15. The issuer must submit revised registration information advising the Board of the address change no later than October 31, the next quarterly submission deadline specified in § 226.58(d)(1) after the change.

58(d) Submission of Agreements to Board

Proposed § 226.58(d) would require that each card issuer electronically submit the credit card agreements, as defined in proposed § 226.58(b)(1), that the issuer offers, as defined in proposed § 226.58(b)(2), to the Board on a quarterly basis. Consistent with new TILA Section 122(d)(3), the Board will post the credit card agreements it receives on its Web site.

New TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on its Web site in any case where the administrative burden outweighs the benefit of increased transparency. In addition, TILA Section 105(a) gives the Board authority to prescribe regulations containing provisions necessary or proper to effectuate the purposes of and to facilitate compliance with TILA. The Board believes that, with respect to credit card agreements that are not currently offered to the public, the administrative burden associated with submission for posting on the Board's Web site would outweigh the benefit of increased transparency. The Board also believes that providing an exception for agreements not currently offered to the public is appropriate both to effectuate the purposes of TILA and to facilitate compliance with TILA.

The Board is aware that the number of credit card agreements currently in effect but no longer offered to the public is extremely large, and the Board believes that requiring issuers to prepare and submit these agreements would impose a significant burden on issuers. The Board also believes that the primary benefit of making credit card agreements available on the Board's Web site is to assist consumers in comparing credit

card agreements offered by various 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 because consumers could not apply for cards subject to these agreements. In addition, including agreements no longer offered to the public would significantly increase the number of agreements included on the Board's Web site, possibly to include hundreds of thousands of agreements (or more). This volume of data would render the amount of data provided through the Web site too large to be helpful to most consumers. Thus, the Board is proposing that an issuer only submit to the Board under § 226.58(d) those agreements that the issuer currently offers to the public.

58(d)(1) Quarterly Submissions

Proposed § 226.58(d)(1) would require issuers to make quarterly submissions to the Board, in the form and manner specified by the Board, that would contain: (1) the credit card agreements, as described in Appendix N, that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the Board; (2) any credit card agreement previously submitted to the Board that was modified or amended during the preceding calendar quarter, as described in proposed § 226.58(d)(3); and (3) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing, as described in proposed § 226.58(d)(4) and (e). Quarterly submissions to the Board would be due no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year.

Proposed comment 58(d)-1 would give the following example: a card issuer has already submitted three credit card agreements to the Board. On October 15, the issuer

stops offering agreement A. On November 20, the issuer makes changes to the terms of agreement B. On December 1, the issuer starts offering a new agreement D. The issuer must submit to the Board no later than the first business day on or after January 31: (1) notification that the issuer is withdrawing agreement A, because it is no longer offered to the public; (2) the revised version of agreement B; and (3) agreement D.

As proposed comment 58(d)-2 would clarify, under proposed § 226.58(d)(1), an issuer is not required to make any submission to the Board at a particular quarterly submission deadline if, during the previous calendar quarter, the issuer did not take any of the following actions: (1) offering a new credit card agreement that was not submitted to the Board previously; (2) revising or amending an agreement previously submitted to the Board; and (3) 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 proposed § 226.58(d)(1). Between September 30 and December 31, the issuer continues to offer all five of these agreements to the public without amending or revising them and does not begin offering any new agreements. The issuer is not required to make any submission to the Board by the following January 31.

The Board expects to provide additional details regarding the electronic submission process in the technical specifications document to be posted on the Board's public Web site.

58(d)(2) Timing of First Two Submissions

Proposed § 226.58(d)(2) would specify timing requirements for the first two submissions to the Board following the effective date. As described above, quarterly

submissions to the Board generally are due no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. However, Section 3 of the Credit Card Act provides that new TILA Section 122(d) becomes effective on February 22, 2010, nine months after the date of enactment of the Credit Card Act. Thus, consistent with Section 3 of the Credit Card Act, proposed § 226.58(d)(2) would require issuers to send their initial submissions, containing credit card agreements offered to the public as of December 31, 2009, to the Board no later than February 22, 2010. Proposed § 226.58(d)(2) would provide that the next submission must be sent to the Board no later than August 2, 2010 (the first business day on or after July 31, 2010), and must contain: (1) any credit card agreements that the card issuer offered to the public as of June 30, 2010, that the card issuer has not previously submitted to the Board; (2) any credit card agreement previously submitted to the Board that was modified or amended after December 31, 2009, and on or before June 30, 2010, as described in proposed § 226.58(d)(3); and (3) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing as of June 30, 2010, as described in proposed § 226.58(d)(4) and (e).

For example, as of December 31, 2009, a card issuer offers three agreements. The issuer is required to submit these agreements to the Board no later than February 22, 2010. On March 10, 2010, the issuer begins offering a new agreement. In general, an issuer that begins offering a new agreement on March 10 of a given year would be required to submit that agreement to the Board no later than April 30 of that year. However, under proposed § 226.58(d)(2), no submission to the Board would be due on

April 30, 2010, and the issuer instead would be required to submit the new agreement no later than August 2, 2010.

58(d)(3) Changes to Agreements

Under proposed § 226.58(d)(3), if a credit card agreement has been submitted to the Board, no changes have been made to the agreement, and the card issuer continues to offer the agreement to the public, no additional submission of that agreement is required. For example, as described in proposed comment 58(d)-3, a credit card issuer begins offering an agreement in October and submits the agreement to the Board the following January 31, as required by proposed § 226.58(d)(1). As of March 31, the issuer has not revised or amended the agreement and is still offering the agreement to the public. The issuer is not required to submit anything to the Board regarding that agreement by April 30.

If an issuer makes changes to a credit card agreement previously submitted to the Board (including changes to the provisions of the agreement, the pricing information, or both), proposed § 226.58(d)(3) would require the card issuer to submit the entire revised agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change becomes effective. Proposed comment 58(d)-4 would give the following example: an issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the method used to calculate required minimum payments under the agreement. Because an element of the pricing information has changed, the issuer must submit the entire revised agreement to the Board no later than January 31 of the following year.

As proposed, § 226.58(d)(3) would require credit card issuers to resubmit agreements following any change, regardless of whether that change affects the substance of the agreement. The Board recognizes that requiring issuers to resubmit agreements following nonsubstantive changes could impose a substantial burden on issuers with no corresponding benefit to consumers. The Board solicits comment on whether issuers are likely to make technical changes to agreements without simultaneously making substantive changes, whether requiring issuers to resubmit agreements following any change (however minor) would impose a significant burden, and what standard the Board should use to determine what changes merit resubmission of an agreement.

As proposed comment 58(d)-5 would explain, an issuer may not fulfill the requirement to submit the entire revised agreement to the Board by submitting a change-in-terms or similar notice covering only the terms that have changed. Amendments and revisions would be required to be integrated into the text of the agreement (or the single addendum described in proposed Appendix N, if applicable), not provided as separate riders. For example, an 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 an addendum of pricing information as described in proposed Appendix N. The 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 addendum of pricing information. Instead, the issuer must revise the addendum of pricing information 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 addendum has changed.

The Board believes that permitting issuers to submit change-in-terms notices or riders containing amendments and revisions would make it difficult for consumers to determine what provisions and pricing information are currently offered by issuers. Consumers would be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Board believes that issuers are better placed than consumers to assemble this information. While the Board understands that this may somewhat increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers outweighs this burden.

58(d)(4) Withdrawal of Agreements

Proposed § 226.58(d)(4) would require an 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 issuer ceased to offer the agreement. For example, as described in proposed comment 58(d)-6, on January 5 an issuer stops offering to the public an agreement it previously submitted to the Board. The 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 issuer stopped offering the agreement.

58(e) De Minimis Exception

New TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and

submitted to the Board for posting on the Board's Web site 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 consumer account holders. The Board believes that a de minimis exception to these requirements is appropriate, but believes that it may not be feasible to base such an exception on the number of accounts under a credit card plan. In particular, the Board is not aware of a way to define "credit card plan" that would not divide issuer's portfolios into such small units that large numbers of credit card agreements could fall under the de minimis exception.

The Board therefore proposes to establish a de minimis exception in proposed § 226.58(e) based on an issuer's total number of open accounts. Under proposed § 226.58(e)(1), an issuer would not be required to submit any credit card agreements to the Board under proposed § 226.58(d) if the card issuer has fewer than 10,000 open credit card accounts under open-end (not home-secured) consumer credit plans, as of the last business day of the calendar quarter. For example, as described in proposed comment 58(e)-1, an issuer offers five credit card agreements to the public as of September 30. However, the issuer has only 2,000 open credit card accounts under open-end (not home-secured) consumer credit plans as of September 30. The issuer is not required to submit any agreements to the Board by October 31 because the issuer qualifies for the de minimis exception.

Proposed comment 58(e)-2 would clarify that, for purposes of the de minimis exception, a credit card account is considered to be open even if the account is inactive, as long as the account has not been closed by the cardholder or the card issuer and the cardholder can obtain extensions of credit on the account. 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 need not be considered open. If an account has only temporarily been suspended (for example, due to a report of unauthorized use), the account is considered open.

As proposed comment 58(e)-3 would clarify, whether an issuer qualifies for the de minimis exception would be determined as of the last business day of each calendar quarter. For example, as of December 31, an issuer offers three agreements to the public and has 9,500 open credit card accounts under open end (not home secured) consumer credit plans. As of January 30, the issuer still offers three agreements, but has 10,100 open accounts. As of March 31, the issuer still offers three agreements, but has only 9,700 open accounts. Even though the issuer had 10,100 open accounts at one time during the calendar quarter, the issuer qualifies for the de minimis exception because the number of open accounts was less than 10,000 as of March 31. The issuer therefore is not required to submit any agreements to the Board under § 226.58(d) by April 30.

The Board believes that the administrative burden on issuers of preparing and submitting such agreements would outweigh the benefit of increased transparency from including those agreements on the Board's Web site, but the Board solicits comment on the 10,000 open accounts threshold for the de minimis exception. In addition, the Board recognizes that the proposed de minimis exception would not alleviate the administrative burden on large issuers of submitting agreements for credit card plans with a very small number of open accounts. The Board solicits comments on whether the Board should create a de minimis exception applicable to a small credit card plan offered by an issuer

of any size, and if so how the Board should define “credit card plan” for purposes of such an exception.

Proposed § 226.58(e)(2) would specify that if an issuer that previously qualified for the de minimis exception ceases to qualify, the card issuer must begin making quarterly submissions to the Board under § 226.58(d) no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. As proposed comment 58(e)-4 would clarify, whether an issuer has ceased to qualify for the de minimis exception under proposed § 226.58(e)(2) would be determined as of the last business day of the calendar quarter, as indicated in proposed § 226.58(e)(1). For example, as of June 30, an issuer offers three agreements to the public and has 9,500 credit card accounts under open-end (not home-secured) consumer credit plans. The issuer is not required to submit any agreements to the Board under § 226.58(d) because the issuer qualifies for the de minimis exception. As of July 15, the issuer still offers the same three agreements, but now has 10,000 open accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis exception under proposed § 226.58(e)(1) is determined as of the last business day of the calendar quarter. As of September 30, the issuer still offers the same three agreements and still has 10,000 open accounts. Because the issuer had 10,000 open accounts as of September 30, the 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.

Proposed § 226.58(e)(3) would provide that if a card issuer that did not previously qualify comes within the de minimis exception, the card issuer may, but is not required

to, notify the Board that the card issuer is withdrawing each agreement the card issuer previously submitted to the Board. Until the issuer notifies the Board that each agreement it previously submitted is being withdrawn, the issuer must continue to make quarterly submissions to the Board under § 226.58(d) and to provide updated registration information under § 226.58(c)(3). Proposed comment 58(e)-5 would give the following example: an issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The issuer has registered with the Board and submitted each of the three agreements to the Board as required under § 226.58(c) and (d). As of March 31, the issuer has only 9,999 open accounts. The issuer has two options. First, the issuer may notify the Board that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Board, the issuer is no longer required to make quarterly submissions to the Board under § 226.58(d) or to provide updated registration information to the Board under § 226.58(c)(3). Alternatively, the issuer may choose not to notify the Board that it is withdrawing its agreements. In this case, the issuer must continue making quarterly submissions to the Board under § 226.58(d) and providing updated registration information to the Board under § 226.58(c)(3). The issuer might choose not to withdraw its agreements if, for example, the issuer believes that it will likely cease to qualify for the de minimis exception again in the near future.

58(f) Agreements Posted on Card Issuer's Web Site

In addition to requiring that card issuers submit credit card agreements to the Board for posting on the Board's Web site, new TILA Section 122(d) requires that each issuer post the credit card agreements to which it is a party on its own Web site. The Board proposes to implement this requirement in proposed § 226.58(f).

Proposed § 226.58(f) would set out two requirements. First, under proposed § 226.58(f)(1), each issuer would be required to post on its publicly available Web site the same agreements it is required to submit to the Board under proposed § 226.58(d) (i.e., the agreements the issuer offers to the public). An issuer that is not required to submit agreements to the Board under proposed § 226.58(d) because it qualifies for the de minimis exception under proposed § 226.58(e) would not be subject to this requirement.

Second, under proposed § 226.58(f)(2), each issuer would be required to provide each individual cardholder with access to his or her specific credit card agreement, by either: (1) posting and maintaining the individual cardholder's agreement on the issuer's Web site; or (2) making a copy of each cardholder's agreement available to the cardholder upon that cardholder's request. If a card issuer chooses to make agreements available upon request, the issuer would be required to provide the cardholder with the ability to request a copy of the agreement both: (1) by using the issuer's Web site (such as by clicking on a clearly identified box to make the request); and (2) by calling a toll free telephone number displayed on the Web site and clearly identified as to purpose. Proposed comment 58(f)(2)-1 would clarify that agreements provided upon request may be provided in either electronic or paper form, regardless of the form of the cardholder's request. Whether provided electronically or in paper form, agreements must be provided in a typeface that is clear and legible.

As proposed comment 58(f)-2 would clarify, the requirement to provide access to credit card agreements under proposed § 226.58(f)(2) would apply to all open credit card accounts under open-end (not home-secured) consumer credit plans, regardless of

whether such agreements are required to be submitted to the Board pursuant to proposed § 226.58(d). For example, an issuer that is not required to submit agreements to the Board because it qualifies for the de minimis exception under § 226.58(e) would still be required to provide cardholders with access to their specific agreements under § 226.58(f)(2). Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Board under § 226.58(d), but would still need to be provided to the cardholder to whom it applies under § 226.58(f)(2).

As described above, the Board proposes to exercise its authority to create exceptions from the requirements of new TILA Section 122(d) with respect to the submission of certain agreements to the Board for posting on the Board's Web site. However, the Board believes that it would not be appropriate to apply these exceptions to the requirement that issuers provide cardholders with access to their specific credit card agreement through the issuer's Web site. In particular, the Board believes that, for the reasons discussed above, posting credit card agreements that are not currently offered to the public on the Board's Web site would not be beneficial to consumers. However, the Board believes that the benefit of increased transparency of providing an individual cardholder access to his or her specific credit card agreement is substantial regardless of whether the cardholder's agreement continues to be offered by the issuer. The Board believes that this benefit outweighs the administrative burden on issuers of providing such access, and the Board therefore is not proposing to exempt agreements that are not offered to the public from the requirements of proposed § 226.58(f)(2). Similarly, the proposal provides that card issuers with fewer than 10,000 open credit card accounts under open-end (not home-secured) consumer credit plans would not be required to

submit agreements to the Board. However, the Board believes that the benefit of increased transparency associated with providing an individual cardholder with access to his or her specific credit card agreement is substantial regardless of the number of the card issuer's open accounts. The Board believes that this benefit of increased transparency for consumers outweighs the administrative burden on issuers of providing such access, and the Board therefore is not proposing to apply the de minimis exception to the requirements of proposed § 226.58(f)(2).

The Board is providing issuers with the option to make copies of cardholder agreements available on request because the Board believes that the benefit of increased transparency associated with immediate access to cardholder agreements, as compared to access after a brief waiting period, would not outweigh the administrative burden on issuers of providing immediate access. The Board believes that the administrative burden associated with posting each cardholder's credit card agreement on the issuer's Web site may be substantial for some issuers. In particular, the Board notes that some smaller institutions with limited information technology resources could find a requirement to post all cardholder's agreements to be a significant burden. The Board understands that it is important that all cardholders be able to obtain copies of their credit card agreements promptly, and proposed § 226.58(f)(2) would ensure that this occurs.

If a card issuer chooses to make agreements available upon request under proposed § 226.58(f)(2)(ii), the card issuer would be required to send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement no later than 10 business days after the issuer receives the cardholder's request. As proposed comment 58(f)(2)-3 would clarify, if, for example, an issuer chooses to respond to a

cardholder's request by mailing a paper copy of the cardholder's agreement, the issuer would be required to mail the agreement no later than 10 business days after receipt of the cardholder's request. Alternatively, if an issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the issuer's Web site, the issuer must post the agreement on its Web site no later than 10 business days after receipt of the cardholder's request. The Board believes that requiring issuers to provide cardholder's agreements within 10 business days gives card issuers adequate time to respond to requests while providing cardholders with prompt access to their credit card agreements. The Board solicits comments regarding whether issuers should have a shorter or longer period in which to respond to cardholder requests.

Proposed § 226.58(f)(3) would state that credit card issuers may provide credit card agreements in electronic form under § 226.58(f)(1) and (f)(2) without regard to the consumer notice and consent requirements of Section 101(c) of the E-Sign Act. Because new TILA Section 122(d) specifies that credit card issuers must provide access to cardholder agreements on the issuer's Web site, the Board believes that the requirements of the E-Sign Act do not apply.

Appendix M1 – Repayment Disclosures

~~As discussed in the section-by-section analysis to proposed § 226.7(b)(12), TILA Section 127(b)(11), as added by Section 1301(a) of the Bankruptcy Act, required creditors, the FTC and the Board to establish and maintain toll-free telephone numbers in certain instances in order to provide consumers with an estimate of the time it will take to repay the consumer's outstanding balance, assuming the consumer makes only minimum payments on the account and the consumer does not make any more draws on the~~

~~months, a credit card issuer would be required to subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest whole dollar as set forth in proposed § 226.7(b)(12)(i)(F)(2)) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest whole dollar as set forth in proposed § 226.7(b)(12)(i)(C)). The Board requests comment on whether the Board should adopt specific tolerances for calculation and disclosure of the savings estimate for repayment in 36 months, and if so, what those tolerances should be.~~

Appendix M2 – Sample Calculations of Repayment Disclosures

~~In proposed Appendix M2, the Board proposes to provide sample calculations for the minimum payment repayment estimate, the total cost repayment estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 months discussed in proposed Appendix M1 to part 226.~~

Appendix N – Specifications for Internet Posting of Credit Card Agreements

Proposed Appendix N would provide additional details regarding the content of agreements submitted to the Board under proposed § 226.58(d) and posting of agreements offered to the public on the card issuer's Web site and availability of agreements for all open accounts under § 226.58(f).

Agreements Submitted to the Board Under § 226.58(d)

Under proposed Appendix N, each agreement submitted to the Board must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter.

Proposed Appendix N also would specify that information that is not uniform for all cardholders under an agreement, but that instead may vary from one cardholder to another depending upon a cardholder's creditworthiness, state of residence, or other factors, such as the pricing information, must be set forth in an addendum to the agreement. The addendum would be required to provide the information either by setting forth all the possible variations (such as purchase APRs of 6.9 percent, 8.9 percent, 10.9 percent, or 12.9 percent), or by providing a range (such as purchase APR ranging from 6.9 percent to 12.9 percent).

Proposed Appendix N also would clarify that an issuer would not be required to submit with an agreement any disclosures required by state or federal law such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act, except to the extent that those disclosures are included in the provisions of the agreement or the pricing information. Similarly, issuers would not be required to submit solicitation materials or periodic statements.

As described in proposed Appendix N, agreements submitted to the Board would not contain any personally identifiable information (such as name, address, telephone number, or account number) relating to any cardholder.

Finally, proposed Appendix N would clarify that issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the single addendum described above, if applicable). Changes in provisions or pricing information must be integrated into the body of the agreement (or into the single addendum described above, if applicable). For example, it would be impermissible for an 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 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 as described above.

The Board believes that permitting issuers to submit agreements that include change-in-terms notices or riders containing amendments and revisions would be confusing for consumers and would greatly lessen the usefulness of agreements posted on the Board's Web site. Consumers would be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Board believes that issuers are better placed than consumers to assemble this information. While the Board understands that this may somewhat increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers outweighs this burden.

Posting of Agreements Offered to the Public on Card Issuer's Web Site Under § 226.58(f)(1)

Proposed Appendix N would clarify that, with respect to posting on the issuer's Web site the agreements the issuer is required to submit to the Board under proposed § 226.58(f)(1), the agreements need not conform to the electronic format required for submission to the Board under proposed § 226.58(d). For example, assume the Board requires that agreements submitted to the Board under proposed § 226.58(d) be submitted in plain text format. When posting the agreements on its own Web site under § 226.58(f)(1), an issuer may post the agreements in plain text format, in PDF format, in

HTML format or in some other electronic format, provided the format is readily usable by the general public.

Proposed Appendix N specifies that, under proposed § 226.58(f)(1), the content of the agreements posted on the issuer's Web site must be the same as the content of the agreements submitted to the Board, as described in the first part of proposed Appendix N. Under proposed Appendix N, an issuer would be required to update the agreements posted on its Web site under § 226.58(f)(1) at least as frequently as the quarterly schedule required for submission of agreements to the Board under § 226.58(d). If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site would be permitted to contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

Proposed Appendix N also would specify that the agreements must be posted on the issuer's Web site in a location that is prominent and easily accessible by the public and must be presented in a clear and legible typeface.

Availability of Agreements for All Open Accounts Under § 226.58(f)(2)

With respect to cardholder agreements posted on the issuer's Web site under proposed § 226.58(f)(2), proposed Appendix N would specify that such agreements may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and easily accessible to the cardholder.

With respect to any agreement provided under § 226.58(f)(2), whether posted on the card issuer's Web site under § 226.58(f)(2)(i) or made available upon the cardholder's request under § 226.58(f)(2)(ii), proposed Appendix N would provide that the agreement

generally must conform to the content requirements for agreements submitted to the Board. However, the agreement would be required to set forth the specific provisions and pricing information applicable to the particular cardholder. The agreement also would be permitted to contain personally identifiable information relating to the cardholder, such as name address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized person. Issuers would be permitted to provide pricing information in the text of the agreement or in a single attached addendum. All agreements would be required to be presented in a clear and legible typeface.

Agreements provided under § 226.58(f)(2) would be required under proposed Appendix N to include provisions and pricing information that is complete and accurate as of a date no more than 60 days prior to the date on which the agreement is posted on the card issuer's Web site under § 226.58(f)(2)(i) or the date the cardholder's request is received under § 226.58(f)(2)(ii). For example, an issuer posts cardholder agreements on its Web site under § 226.58(f)(2)(i). The agreement posted on the Web site for a particular cardholder on May 1 must contain the provisions and pricing information applicable to that cardholder as of March 2 or later. The Board believes that 60 days gives issuers a reasonable amount of time to update provisions and pricing information, while providing cardholders with card agreements that are current and accurate. However, the Board solicits comments on whether this period should be shorter or longer.

Finally, proposed Appendix N would clarify that issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices

or riders (other than the single addendum described above, if applicable). Changes in provisions or pricing information must be integrated into the text of the agreement (or into the single addendum described above, if applicable). For example, it would be not be permissible for an issuer to send to a cardholder under § 226.58(f)(2)(ii) an agreement consisting of a terms and conditions document dated January 1, 2005, and four subsequent change-in-terms notices. Instead, the issuer would be required to send to the cardholder a single document that integrates the changes made by each of the change-in-terms notices into the body of the terms and conditions document.

As described above, the Board believes that requiring consumers to sift through change in-terms notices and riders in an attempt to assemble the agreement to which they are currently subject would be burdensome for consumers. The Board believes that issuers are better placed than consumers to assemble this information. While the Board understands that this may somewhat increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers would outweigh this burden.

~~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.~~

~~Prior to proposing this rule, the Board conducted initial and final regulatory flexibility analyses and ultimately concluded that the rules in the Board's January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule would have a significant economic impact on a substantial number of small entities. See 72 FR 33033~~

25. Appendix N to part 226 is added to read as follows:

APPENDIX N –INTERNET POSTING OF CREDIT CARD AGREEMENTS

1. Credit Card Agreements Submitted to the Board Under § 226.58(d)

(a) Each agreement submitted to the Board must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter.

(b) Information that is not uniform for all cardholders under an agreement, but that instead may vary from one cardholder to another depending upon a cardholder's creditworthiness, state of residence, or other factors, such as the pricing information, must be set forth in an addendum to the agreement. The addendum must provide the information either by setting forth all the possible variations (such as purchase APRs of 6.9 percent, 8.9 percent, 10.9 percent, or 12.9 percent), or by providing a range (such as purchase APR ranging from 6.9 percent to 12.9 percent).

(c) Card issuers are not required to submit any disclosures required by state or federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act, except to the extent that those disclosures are included in the provisions of the agreement or the pricing information. Similarly, card issuers are not required to submit solicitation materials or periodic statements.

(d) Agreements must not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number.

(e) Issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the single addendum described above, if applicable). Changes in provisions or pricing information must be integrated

into the body of the agreement (or into the single addendum described above, if applicable).

2. Posting of Agreements Offered to the Public on Card Issuer's Web Site Under Proposed § 226.58(f)(1)

(a) Agreements may be posted in any electronic format that is readily usable by the general public.

(b) The content of the agreements posted on the issuer's Web site must be the same as those submitted to the Board, as specified in paragraph 1. above.

(c) The card issuer must update the agreements posted on its Web site at least as frequently as the quarterly schedule required for submission of agreements to the Board under § 226.58(d). If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

(d) The agreements posted on the issuer's Web site must be placed in a location that is prominent and easily accessible by the public and must be presented in a clear and legible typeface.

3. Availability of Agreements for All Open Accounts Under § 226.58(f)(2)

(a) If the card issuer posts an agreement on its Web site under § 226.58(f)(2)(i), the agreement may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and easily accessible to the cardholder.

(b) The content of such agreements (whether posted on the card issuer's Web site under § 226.58(f)(2)(i) or made available upon the cardholder's request under § 226.58(f)(2)(ii)) must conform to the content requirements for agreements submitted to the Board, as specified in paragraph 1. above, except that each agreement: (1) must set forth the specific provisions and pricing information applicable to the particular cardholder; and (2) may contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons. Pricing information may be integrated into the text of the agreement or provided in a single attached addendum. All agreements must be presented in a clear and legible typeface.

(c) Agreements must contain provisions and pricing information that is complete and accurate as of a date no more than 60 days prior to: (1) the date on which the agreement is posted on the card issuer's Web site under § 226.58(f)(2)(i); or (2) the date the cardholder's request is received under § 226.58(f)(2)(ii).

(d) Issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the single addendum described above, if applicable). Changes in provisions or pricing information must be integrated into the body of the agreement (or into the single addendum described above, if applicable).

~~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. Material included. For purposes of this section, the 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)(4). For example, the basic credit contract may not specify rates, fees and other information that constitutes pricing information as defined in § 226.58(b)(4); 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. Material excluded. Documents that may be sent to the consumer along with the credit card or credit card agreement, but that are not deemed part of the agreement for purposes of this section, include items such as a cover letter, a validation sticker on the card, other information about card security, offers for credit insurance or other optional

products, advertisements, and disclosures required under federal or state law that are not incorporated into the agreement itself.

58(b)(3) 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, an 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 card agreement would be considered to be offered to the public.

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(c) Registration with Board.

1. Subsequent registration requirement. An issuer that is required to make a submission to the Board under § 226.58(d) that has not previously registered with the Board must register with the Board at least 21 days before the quarterly submission deadline specified in § 226.58(d)(1) on which the card issuer's first submission is due. This provision would apply, for example, if a new credit card issuer is organized or if an existing issuer that previously qualified for the de minimis exception under § 226.58(e) ceased to qualify. For example, a card issuer that previously qualified for the de minimis exception ceases to qualify as of September 30. That issuer's first submission to the Board is due on October 31, the next quarterly submission deadline. The issuer must register with the Board no later than October 10, 21 days before October 31.

2. Updates to registration information. Issuers that have registered with the Board under § 226.58(c)(1) or (c)(2) must provide updated registration information to the Board no later than the first quarterly submission deadline specified in § 226.58(d)(1) after the information changes. For example, a card issuer that has already registered with the Board changes its address on October 15. The issuer must submit revised registration information advising the Board of the address change no later than October 31, the next quarterly submission deadline specified in § 226.58(d)(1) after the change.

58(d) Submission of agreements to Board.

1. Quarterly submission requirement. Section 226.58(d)(1) requires card issuers to make 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 issuer stops offering agreement A. On November 20, the issuer makes changes to the terms of agreement B. On December 1, the issuer starts offering a new agreement D. The issuer must submit to the Board no later than the first business day on or after January 31: (i) notification that the issuer is withdrawing agreement A, because it is no longer offered to the public; (ii) the revised version of agreement B; and (iii) agreement D.

2. No quarterly submission required. Under § 226.58(d)(1), an issuer is not required to make any submission to the Board at a particular quarterly submission deadline if, during the previous calendar quarter, the 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) revising or 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(d)(1). Between September 30 and December 31, the issuer continues to offer all five of these agreements to the public without amending or revising them and does not begin offering any new agreements. The issuer is not required to make any submission to the Board by the following January 31.

3. No requirement to resubmit unchanged agreements. Under § 226.58(d)(3), if a credit card agreement has been submitted to the Board, no changes have been made to the agreement, and the card issuer continues to offer the agreement to the public, no additional submission of 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(d)(1). As of March 31, the issuer has not revised or amended the agreement and is still offering the agreement to the public. The issuer is not required to submit anything to the Board regarding that agreement by April 30.

4. Submission of changed agreements. If an issuer makes changes to a credit card agreement previously submitted to the Board (including changes to the provisions of the agreement, the pricing information, or both), § 226.58(d)(3) requires the issuer to submit the entire revised agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change becomes effective. For example, an issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the method used to calculate required minimum payments under

the agreement. Because an element of the pricing information has changed, the issuer must submit the entire revised agreement to the Board no later than January 31 of the following year.

5. Change-in-terms notices not permissible. Section 226.58(d)(3) requires that if a change is made to a credit card agreement previously submitted to the Board, the card issuer must submit the entire revised agreement to the Board. An 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 and revisions must be integrated into the text of the agreement (or the single addendum described in Appendix N, if applicable), not provided as separate riders. For example, an 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 an addendum of pricing information as described in Appendix N. The 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 addendum of pricing information. Instead, the issuer must revise the addendum of pricing information 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 addendum has changed.

6. Notice of withdrawal of agreement. Section 226.58(d)(4) requires an 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 issuer ceased to offer the agreement. For example, on

January 5 an issuer stops offering to the public an agreement it previously submitted to the Board. The 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 issuer stopped offering the agreement.

58(e) De minimis exception.

1. De minimis exception. Under § 226.58(e)(1), an issuer is not required to submit any credit card agreements to the Board under § 226.58(d) if the card issuer has fewer than 10,000 open credit card accounts under open-end (not home-secured) consumer credit plans, as of the last business day of the calendar quarter. For example, an issuer offers five credit card agreements to the public as of September 30. However, the issuer has only 2,000 open credit card accounts under open-end (not home-secured) consumer credit plans as of September 30. The issuer is not required to submit any agreements to the Board by October 31 because the issuer qualifies for the de minimis exception.

2. Open accounts clarified. For purposes of the de minimis exception, a credit card account is considered to be open even if the account is inactive, as long as the account has not been closed by the cardholder or the card issuer and the cardholder can obtain extensions of credit on the account. 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, it need not be considered open. If an account has only been suspended temporarily (for example, due to a report by the cardholder of unauthorized use of the card), the account is considered open.

3. Date for determining whether issuer qualifies clarified. Whether an 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, an issuer offers three agreements to the public and has 9,500 credit card accounts under open-end (not home secured) consumer credit plans. As of January 30, the issuer still offers three agreements, but has 10,100 open accounts. As of March 31, the issuer still offers three agreements, but has only 9,700 open accounts. Even though the issuer had 10,100 open accounts at one time during the calendar quarter, the issuer qualifies for the de minimis exception because the number of open accounts was less than 10,000 as of March 31. The issuer therefore is not required to submit any agreements to the Board under § 226.58(d) by April 30.

4. Date for determining whether issuer ceases to qualify clarified. Whether an issuer has ceased to qualify for the de minimis exception under § 226.58(e)(2) is determined as of the last business day of the calendar quarter, as indicated in § 226.58(e)(1). For example, as of June 30, an issuer offers three agreements to the public and has 9,500 open credit card accounts under open-end (not home-secured) consumer credit plans. The issuer is not required to submit any agreements to the Board under § 226.58(d) because the issuer qualifies for the de minimis exception. As of July 15, the issuer still offers the same three agreements, but now has 10,000 open accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis exception under § 226.58(e)(1) is determined as of the last business day of the calendar quarter. As of September 30, the issuer still offers the same three agreements and still has 10,000 open accounts. Because the issuer had 10,000 open accounts as of September 30, the 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(e)(3) provides that if a card issuer that did not previously qualify comes within the de minimis exception, the card issuer may, but is not required to, notify the Board that the card issuer is withdrawing each agreement the card issuer previously submitted to the Board. Until the issuer notifies the Board that each agreement it previously submitted is being withdrawn, the issuer must continue to make quarterly submissions to the Board under § 226.58(d) and to provide updated registration information under § 226.58(c)(3). For example, an issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The issuer has registered with the Board and submitted each of the three agreements to the Board as required under § 226.58(c) and (d). As of March 31, the issuer has only 9,999 open accounts. The issuer has two options. First, the issuer may notify the Board that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Board, the issuer is no longer required to make quarterly submissions to the Board under § 226.58(d) or to provide updated registration information to the Board under § 226.58(c)(3). Alternatively, the issuer may choose not to notify the Board that it is withdrawing its agreements. In this case, the issuer must continue making quarterly submissions to the Board under § 226.58(d) and providing updated registration information to the Board under § 226.58(c)(3). The issuer might choose not to withdraw its agreements if, for example, the issuer believes that it will likely cease to qualify for the de minimis exception again in the near future.

58(f)(2) Agreements for all open accounts.

1. Credit card agreements provided upon request. Section 226.58(f)(2) states that card issuers may choose to make agreements available to cardholders upon request.

Agreements provided upon request may be provided by the issuer in either electronic or paper form, regardless of the form of the cardholder's request.

2. Requirement applies to all open accounts. The requirement to provide access to credit card agreements under § 226.58(f)(2) applies to all open credit card accounts under open-end (not home-secured) consumer credit plans, regardless of whether such agreements are required to be submitted to the Board pursuant to § 226.58(d). For example, an issuer that is not required to submit agreements to the Board because it qualifies for the de minimis exception under § 226.58(e) would still be required to provide cardholders with access to their specific agreements under § 226.58(f)(2).

Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Board under § 226.58(d), but would still need to be provided to the cardholder to whom it applies under § 226.58(f)(2).

3. Deadline for providing requested agreements clarified. Section 226.58(f)(2) requires that credit card agreements provided upon request must be sent to the cardholder or otherwise made available to the cardholder no later than 10 business days after the cardholder's request is received. For example, if an issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the issuer must mail the agreement no later than 10 business days after receipt of the cardholder's request. Alternatively, if an issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the issuer's Web site, the issuer must post the

agreement on its Web site no later than 10 business days after receipt 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 § 226.7(b)(2)), G-18(B)-(C), G-19, G-20, and G-21. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:~~

~~i. Using the first person, instead of the second person, in referring to the borrower.~~

~~ii. Using “borrower” and “creditor” instead of pronouns.~~