The Board will continue to monitor industry practices and take action when appropriate. In addition, Section 502 of the Credit Card Act requires that – at least every two years – the Board conduct a review of, among other things, the terms of credit card agreements, the practices of card issuers, the effectiveness of credit card disclosures, and the adequacy of protections against unfair or deceptive acts or practices relating to credit cards.

Waiver or Forfeiture of Protections

Consumer groups also requested that – in order to prevent creditors from misleading consumers into consenting to practices prohibited by Regulation Z – the Board adopt a provision affirmatively stating that the protections in Regulation Z cannot be waived or forfeited. However, as above, this request incorrectly assumes that creditors are generally permitted to engage in practices prohibited by Regulation Z in these circumstances. There is no such general exception to the provisions Regulation Z. Instead, the Board has expressly and narrowly defined the circumstances in which a consumer's consent or request alters the requirements in Regulation Z.[74] For this reason, the Board does not believe that the requested provision is necessary.

VI. Mandatory Compliance Dates

A. Mandatory compliance dates – in general. The mandatory compliance date for the portion of § 226.5(a)(2)(iii) regarding use of the term "fixed" and for §§ 226.5(b)(2), 226.7(b)(11), 226.7(b)(12), 226.7(b)(13), 226.9(c)(2) (except for

[74] See, e.g., comment 53(b)-5 (clarifying that preprinted language in an account agreement or on a payment coupon does not constitute a consumer request for purposes of allocating a payment in excess of the minimum pursuant to § 226.53(b)(2)); revised § 226.9(c)(2)(i) (clarifying that the statement in § 226.9(c)(2)(i) that the 45-day timing requirement does not apply if the consumer has agreed to a particular change is solely intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made).

226.9(c)(2)(iv)(D)), 226.9(e), 226.9(g) (except for 226.9(g)(3)(ii)), 226.9(h), 226.10, 226.11(c), 226.16(f), and §§ 226.51-226.58 is February 22, 2010. The mandatory compliance date for all other provisions of this final rule is July 1, 2010. For those provisions that are effective July 1, 2010, except to the extent that early compliance with this final rule is permitted, creditors generally must comply with the existing requirements of Regulation Z until July 1, 2010.

B. Prospective application of new rules. The final rule is prospective in application. The following paragraphs set forth additional guidance and examples as to how a creditor must comply with the final rule by the relevant mandatory compliance date.

C. Tabular summaries that accompany applications or solicitations (§ 226.5a). Credit and charge card applications provided or made available to consumers on or after July 1, 2010 must comply with the final rule, including format and terminology requirements. For example, if a direct-mail application or solicitation is mailed to a consumer on June 30, 2010, it is not required to comply with the new requirements, even if the consumer does not receive it until July 7, 2010. If a direct-mail application or solicitation is mailed to consumers on or after July 1, 2010, however, it must comply with the final rule. If a card issuer makes an application or solicitation available to the general public, such as "take-one" applications, any new applications or solicitations issued by the creditor on or after July 1, 2010 must comply with the new rule. However, if a card issuer issues an application or solicitation by making it available to the public prior to July 1, 2010, for example by restocking an in-store display of "take-one" applications on June 15, 2010, those applications need not comply with the new rule, even if a consumer

may pick up one of the applications from the display after July 1, 2010. Any "take-one" applications that the card issuer uses to restock the display on or after July 1, 2010, however, must comply with the final rule.

D. Account-opening disclosures (§ 226.6). Account-opening disclosures furnished on or after July 1, 2010 must comply with the final rule, including format and terminology requirements. The relevant date for purposes of this requirement is the date on which the disclosures are furnished, not when the consumer applies for the account. For example, if a consumer applies for an account on June 30, 2010, but the account-opening disclosures are not mailed until July 2, 2010, those disclosures must comply with the final rule. In addition, if the disclosures are furnished by mail, the relevant date is the day on which the disclosures were sent, not the date on which the consumer receives the disclosures. Thus, if a creditor mails the account-opening disclosures on June 30, 2010, even if the consumer receives those disclosures on July 7, 2010, the disclosures are not required to comply with the final rule.

E. Periodic statements (§ §226.7 and 226.5(b)(2)).

Timing requirements (§ 226.5(b)(2)). As discussed in the July 2009 Regulation Z Interim Final Rule, revised TILA Section 163 (as amended by the Credit Card Act) became effective on August 20, 2009. Accordingly, the interim final rule's revisions to § 226.5(b)(2)(ii) also became effective on August 22, 2009. In the interim final rule, the Board recognized that, with respect to open-end consumer credit plans other than credit cards, it could be difficult for some creditors to update their systems to produce periodic statements by August 20, 2009 that disclosed payment due dates and grace period expiration dates (if applicable) that were consistent with the 21-day requirement in

revised § 226.5(b)(2)(ii). As a result, the Board noted the possibility that, for a short period of time after August 20, some periodic statements for open-end consumer credit plans other than credit cards might disclose payment due dates and grace period expiration dates (if applicable) that were technically inconsistent with the interim final rule. In these circumstances, the Board stated that the creditor could remedy this technical issue by prominently disclosing elsewhere on or with the periodic statement that the consumer's payment will not be treated as late for any purpose if received within 21 days after the statement was mailed or delivered.

However, on November 6, 2009, the Technical Corrections Act amended Section 163(a) to remove the requirement that creditors provide periodic statements at least 21 days before the payment due date with respect to open-end consumer credit plans other than credit card accounts. Thus, effective November 6, 2009, creditors were no longer required to comply with § 226.5(b)(2)(ii) to the extent inconsistent with TILA Section 163(a), as amended by the Technical Corrections Act.

As noted above, the final rule's revisions to § 226.5(b)(2)(ii) and its commentary are intended to implement the Technical Corrections Act and to clarify certain aspects of the interim final rule. These revisions are not intended to impose any new substantive requirements on creditors. Nevertheless, to the extent that these revisions require creditors to make any changes to their systems or processes for providing periodic statements, the relevant date for purposes of determining when a creditor must comply with the final rule is the date on which the periodic statement is mailed or delivered, not the due date or grace period expiration date reflected on the statement. Thus, if a periodic statement is mailed or delivered on February 22, the creditor must have reasonable

procedures designed to ensure that the payment due date and the grace period expiration date are not earlier than March 15, consistent with the revisions to § 226.5(b)(2)(ii) in this final rule. However, if a periodic statement is mailed or delivered on February 21, the revisions to § 226.5(b)(2)(ii) in this final rule do not apply to that statement.

Content requirements (§ 226.7). Periodic statements mailed or delivered on or after February 22, 2010 must comply with § 226.7(b)(11), (b)(12), and (b)(13) of the final rule. The requirement in § 226.7(b)(11)(i)(A) that the due date for a credit card account under an open-end (not home-secured) consumer credit plan be the same day each month applies beginning with the first statement for an account that is mailed or delivered on or after February 22, 2010. The due date disclosed on the last statement for an account mailed or delivered prior to February 22, 2010 need not be the same day of the month as the due date disclosed on the first statement for that account that is mailed or delivered on or after February 22, 2010.

For all other requirements of § 226.7(b), periodic statements mailed or delivered on or after July 1, 2010 must comply with the final rule. For example, if a creditor mails a periodic statement to the consumer on June 30, 2010, that statement is not required to comply with the final rule, even if the consumer does not receive the statement until July 7, 2010.

For periodic statements mailed on or after July 1, 2010, fees and interest charges must be disclosed for the statement period and year-to-date. For the year-to-date figure, creditors comply with the final rule by aggregating fees and interest charges beginning with the first periodic statement mailed on or after July 1, 2010. The first statement mailed on or after July 1, 2010 need not disclose aggregated fees and interest charges

from prior cycles in the year. At the creditor's option, however, the year-to-date figure may reflect amounts computed in accordance with comment 7(b)(6)-3 for prior cycles in the year.

The Board recognizes that a creditor may wish to comply with certain provisions of the final rule for periodic statements that are mailed prior to July 1, 2010. A creditor may phase in disclosures required on the periodic statement under the final rule that are not currently required prior to July 1, 2010. A creditor also may generally omit from the periodic statement any disclosures that are not required under the final rule prior to July 1, 2010. However, a creditor must continue to disclose an effective APR unless and until that creditor provides disclosures of fees and interest that comply with § 226.7(b)(6) of the final rule. Similarly, as provided in § 226.7(a), in connection with a HELOC, a creditor must continue to disclose an effective APR unless and until that creditor provides fee and interest disclosures under § 226.7(b)(6).

F. Checks that access a credit card account (§ 226.9(b)). A creditor must comply with the disclosure requirements of § 226.9(b)(3) of the final rule for checks that access a credit account that are provided on or after July 1, 2010. Thus, for example, if a creditor mails access checks to a consumer on June 30, 2010, these checks are not required to comply with new § 226.9(b)(3), even if the consumer receives them on July 7, 2010.

G. Notices of changes in terms and penalty rate increases for credit card accounts under an open-end (not home-secured) consumer credit plan (§ 226.9(c)(2) and (g)).

In general. With the exception of the formatting requirements in § 226.9(c)(2)(iv)(D) and (g)(3)(ii), compliance with § 226.9(c)(2) and (g) is mandatory on the effective date of this final rule, February 22, 2010. Compliance with the

formatting requirements set forth in § 226.9(c)(2)(iv)(D) and (g)(3)(ii) is mandatory on July 1, 2010.

Change in terms notices. The relevant date for determining whether a change-in-terms notice must comply with the new requirements of revised § 226.9(c)(2) is generally the date on which the notice is provided, not the effective date of the change. Therefore, if a card issuer provides a notice of a change in terms for a credit card account under an open-end (not home-secured) consumer credit plan pursuant to § 226.9(c)(2) of the July 2009 Regulation Z Interim Final Rule prior to February 22, 2010, the notice generally is required to comply with the requirements of § 226.9(c)(2) of the Board's July 2009 Regulation Z Interim Final Rule rather than the final rule.

Accordingly, a card issuer may provide a notice in accordance with the July 2009 Regulation Z Interim Final Rule on February 20, 2010 disclosing a change-in-terms effective April 6, 2009. This notice would not be required to comply with the revised requirements of this final rule. For example, if the change being disclosed is a rate increase due to the consumer's failure to make a required minimum payment within 60 days of the due date, a notice provided prior to February 22, 2010 is not required to disclose the consumer's right to cure the rate increase by making the first six minimum payments on time following the effective date of the rate increase.

This transition guidance is similar to the guidance the Board provided with the July 2009 Regulation Z Interim Final Rule. The Board believes that this is the appropriate way to implement the February 22, 2010 effective date in order to ensure that institutions are provided the full implementation period provided under the Credit Card Act. In the alternative, the Credit Card Act could be construed to require creditors to

provide notices, pursuant to new § 226.9(c)(2), 45 days in advance of changes occurring or after February 22. However, this reading would create uncertainty regarding compliance with the rule by requiring creditors to begin providing change-in-terms notices in accordance with revised § 226.9(c)(2) prior to the publication of this final rule. Accordingly, for clarity and consistency, the Board believes the better interpretation is that creditors must begin to comply with amended TILA Section 127(i) (as implemented in amended § 226.9(c)(2)) for change-in-terms notices provided on or after February 22, 2010.

Penalty rate increases. For rate increases due to the consumer's default or delinquency or as a penalty, the 45-day timing requirement of § 226.9(g) of the July 2009 Regulation Z Interim Final Rule currently applies to credit card accounts under an open-end (not home-secured) consumer credit plan.

The Board is adopting an amended § 226.9(g) in this final rule, which retains the 45-day notice requirement from the July 2009 Regulation Z Interim Final Rule, with several changes. For example, for rate increases due to the consumer's failure to make a required minimum payment within 60 days of the due date, the final rule requires disclosure of the consumer's right to cure the rate increase by making the first six minimum payments on time following the effective date of the rate increase. Similar to, and for the reasons discussed in connection with, the transition guidance for § 226.9(c)(2), the relevant date for determining whether a change-in-terms notice must comply with the new requirements of revised § 226.9(g) is generally the date on which the notice is provided, not the effective date of the rate increase. Therefore, if a card issuer provides a notice of a rate increase due to delinquency, default, or as a penalty for

a credit card account under an open-end (not home-secured) consumer credit plan pursuant to § 226.9(g) of the July 2009 Regulation Z Interim Final Rule prior to February 22, 2010, the notice generally is required to comply with the requirements of § 226.9(g) of the Board's July 2009 Regulation Z Interim Final Rule rather than the final rule.

Workout and temporary hardship arrangements. The Board's July 2009 Regulation Z Interim Final Rule amended § 226.9(c)(2) and (g) to provide that creditors are not required to provide 45 days advance notice when a rate is increased due to the completion or failure of a workout or temporary hardship arrangement, provided that, among other things, the creditor had provided the consumer prior to commencement of the arrangement with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to completion or failure of the arrangement). This final rule further amends § 226.9(c)(2)(v)(D) to provide that, although this disclosure must generally be in writing, a creditor may disclose the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms to the consumer as soon as reasonably practicable after the oral disclosure is provided.

The revision to § 226.9(c)(2)(v)(D) recognizes that workout and temporary hardship arrangements are frequently established over the telephone and that creditors often apply the reduced rate immediately. Accordingly, to the extent that a creditor disclosed the terms of a workout or temporary hardship arrangement orally by telephone prior to February 22, 2010, the creditor may increase a rate to the extent consistent with § 226.9(c)(2)(v)(D)(1) on or after February 22 so long as the creditor has mailed or delivered written disclosure of the terms to the consumer by February 22.

Changes necessary to comply with final rule. The Board understands that, in order to comply with the final rule by February 22, 2010, card issuers may have to make changes to the account terms set forth in a consumer's credit agreement or similar legal documents. The Board also understands that, in some circumstances, the terms of the account may be inconsistent with the final rule on February 22, 2010 because those terms have not yet been amended consistent with the 45-day notice requirement in § 226.9(c)(2). For example, if a card issuer provides a notice on January 30, 2010 informing the consumer of changes to the method used to calculate a variable rate necessary to comply with § 226.55(b)(2), changes to the balance computation method necessary to comply with § 226.54, § 226.9(c)(2) technically prohibits the issuer from applying those changes to the account until March 16, 2010. In these circumstances, however, the card issuer must comply with the provisions of the final rule on February 22, 2010, even if the terms of the account have not yet been amended consistent with § 226.9(c)(2). Otherwise, card issuers could continue to, for example, calculate variable rates in a manner that is inconsistent with § 226.55(b)(2) after February 22, which would not be consistent with Congress' intent.

Accordingly, if on February 22, 2010 the terms of an account are inconsistent with the final rule, the card issuer is prohibited from enforcing those terms, even if those terms have not yet been amended consistent with the 45-day notice requirement in § 226.9(c)(2). Illustrative examples are provided below in the transition guidance for § 226.55(b)(2).

Right to reject. The Board's July 2009 Regulation Z Interim Final Rule adopted § 226.9(h), which provides consumers with the right to reject certain significant changes

in account terms. Under § 226.9(h), the right to reject applies when the card issuer is required to disclose that right in a § 226.9 notice. Current § 226.9(c) and (g) generally require disclosure of the right to reject when a rate is increased and when certain other significant account terms are changed. However, under the final rule, disclosure of the right to reject will no longer be required for rate increases because § 226.55 generally prohibits application of increased rates to existing balances. Thus, card issuers are not required to provide consumers with the right to reject a rate increase that is subject to § 226.55, consistent with the transition guidance for § 226.55 (discussed below).

Furthermore, as discussed above with respect to § 226.9(c)(2), the Board understands that card issuers will have to make significant changes in account terms in order to comply with the final rule by February 22, 2010. Because it would not be appropriate to permit consumers to reject changes that are mandated by the Credit Card Act and this final rule, card issuers are not required to provide consumers with the right to reject a change that is necessary to comply with the final rule. For example, card issuers are not required to provide a right to reject for changes to a balance computation method necessary to comply with § 226.54 or changes to the method used to calculate a variable rate necessary to comply with § 226.55(b)(2).

H. Notices of changes in terms and penalty rate increases for other open-end (not home-secured) plans (§ 226.9(c)(2) and (g)).

Change in terms notices – in general. Compliance with § 226.9(c)(2) of the final rule (except for the formatting requirements of § 226.9(c)(2)(iv)(D)) is mandatory on February 22, 2010 for open-end (not home-secured) plans that are not credit card accounts under an open-end (not home-secured) consumer credit plan. Prior to February

22, 2010, such creditors may provide change-in-terms notices 15 days in advance of a change, consistent with § 226.9(c)(1) of the July 2009 Interim Final Rule. For example, such a creditor may mail a change-in-terms notice to a consumer on February 20, 2010 disclosing a change effective on March 7, 2010. In contrast, a notice of a rate increase sent on February 22, 2010 would be required to comply with § 226.9(c)(2) of the final rule (except for the formatting requirements of § 226.9(c)(2)(iv)(D)), and thus the change disclosed in the notice could have an effective date no earlier than April 8, 2010.

Promotional rates.[75] Some creditors that are not card issuers may have outstanding promotional rate programs that were in place before the effective date of this final rule, but under which the promotional rate will not expire until after February 22, 2010. For example, a creditor may have offered its consumers a 5% promotional rate on transactions beginning on September 1, 2009 that will be increased to 15% effective as of September 1, 2010. Such creditors may have concerns about whether the disclosures that they have provided to consumers in accordance with these arrangements are sufficient to qualify for the exception in § 226.9(c)(2)(v)(B). The Board notes that § 226.9(c)(2)(v)(B) of this final rule requires written disclosures of the term of the promotional rate and the rate that will apply when the promotional rate expires. The final rule further requires that the term of the promotional rate and the rate that will apply when the promotional rate expires be disclosed in close proximity and equally prominent to the disclosure of the promotional rate. The Board anticipates that many creditors offering such a promotional rate program may already have complied with these advance notice requirements in connection with offering the promotional program.

[75] For simplicity, the Board refers in this transition guidance to "promotional rates." However, pursuant to new comment 9(c)(2)(v)-9, this transition guidance is intended to apply equally to deferred interest or similar programs.

The Board is nonetheless aware that some other creditors may be uncertain whether written disclosures provided at the time an existing promotional rate program was offered are sufficient to comply with the exception in § 226.9(c)(2)(v)(B). For example, for promotional rate offers provided after February 22, 2010, the disclosure under § 226.9(c)(2)(v)(B)(1) must include the rate that will apply after the expiration of the promotional period. For an existing promotional rate program, a creditor might instead have disclosed this rate narratively, for example by stating that the rate that will apply after expiration of the promotional rate is the standard annual percentage rate applicable to purchases. The Board does not believe that it is appropriate to require a creditor that generally provided disclosures consistent with § 226.9(c)(2)(v)(B), but that are technically not compliant because they described the post-promotional rate narratively, to provide consumers with 45 days' advance notice before expiration of the promotional period. This would have the impact of imposing the requirements of this final rule retroactively, to disclosures given prior to the February 22, 2010 effective date. Therefore, a creditor that generally made disclosures in connection with an open-end (not home-secured) plan that is not a credit card account under an open-end (not home-secured) consumer credit plan prior to February 22, 2010 complying with § 226.9(c)(2)(v)(B) but that describe the type of post-promotional rate rather than disclosing the actual rate is not required to provide an additional notice pursuant to § 226.9(c)(2) before expiration of the promotional rate in order to use the exception.

Similarly, the Board acknowledges that there may be some creditors with outstanding promotional rate programs that did not make, or, without conducting extensive research, are not aware if they made, written disclosures of the length of the

promotional period and the post-promotional rate. For example, some creditors may have made these disclosures orally. For the same reasons described in the foregoing paragraph, the Board believes that it would be inappropriate to preclude use of the § 226.9(c)(2)(v)(B) exception by creditors offering these promotional rate programs. That interpretation of the rule would in effect require creditors to have complied with the precise requirements of the exception before the February 22, 2010 effective date. However, the Board believes at the same time that it would be inconsistent with the intent of the Credit Card Act for creditors that provided no advance notice of the term of the promotion and the post-promotional rate to receive an exemption from the general notice requirements of § 229.9(c)(2).

Consequently, any creditor that is not a card issuer that provides a written disclosure to consumers subject to an existing promotional rate program, prior to February 22, 2010, stating the length of the promotional period and the rate or type of rate that will apply after that promotional rate expires is not required to provide an additional notice pursuant to § 226.9(c)(2) prior to applying the post-promotional rate. In addition, any creditor that is not a card issuer that provided, prior to February 22, 2010, oral disclosures of the length of the promotional period and the rate or type of rate that will apply after the promotional period also need not provide an additional notice under § 226.9(c)(2). However, any creditor subject to § 226.9(c)(2) that is not a card issuer and has not provided advance notice of the term of a promotion and the rate that will apply upon expiration of that promotion in the manner described above prior to February 22, 2010 will be required to provide 45 days' advance notice containing the content set forth in this final rule before raising the rate.

Penalty rate increases. For open-end (not home-secured) plans that are not credit card accounts under an open-end (not home-secured) consumer credit plan, § 226.9(c)(1) of the July 2009 Regulation Z Interim Final Rule requires only that notice of an increase due to the consumer's default, delinquency, or as a penalty must be given before the effective date of the change. Therefore, the relevant date for purposes of such penalty rate increases generally is the date on which the increase becomes effective. For example, if a consumer makes a late payment on February 15, 2010 that triggers penalty pricing, a creditor that is not a card issuer may increase the rate effective on or before February 21, 2010 in compliance with § 226.9(c)(1) of the July 2009 Regulation Z Interim Final Rule, and need not provide 45 days' advance notice of the change.

The Board is aware that there may be some circumstances in which a consumer's actions prior to February 22, 2010 trigger a penalty rate, but a creditor that is not a card issuer may be unable to implement that rate increase prior to February 22, 2010. For example, a consumer may make a late payment on February 15, 2010 that triggers a penalty rate, but the creditor may not be able to implement that rate increase until March 1, 2010 for operational reasons. In these circumstances, the Board believes that requiring 45 days' advance notice prior to the imposition of the penalty rate would not be appropriate, because it would in effect require compliance with new § 226.9(g) prior to the February 22 effective date. Therefore, for such penalty rate increases that are triggered, but cannot be implemented, prior to February 22, 2010, a creditor must either provide the consumer, prior to February 22, 2010, with a written notice disclosing the impending rate increase and its effective date, or must comply with new § 226.9(g). In the example described above, therefore, a creditor could mail to the consumer a notice on

February 20, 2010 disclosing that the consumer has triggered a penalty rate increase that will be effective on March 1, 2010. If the creditor mailed such a notice, it would not be required to comply with new § 226.9(g). This transition guidance applies only to penalty rate increases triggered prior to February 22, 2010; if a consumer engages in actions that trigger penalty pricing on February 22, 2010, the creditor must comply with new § 226.9(g) and, accordingly, must provide the consumer with a notice at least 45 days in advance of the effective date of the increase.

I. Renewal disclosures (§ 226.9(e)). Amended § 226.9(e) is effective February 22, 2010. Accordingly, renewal notices provided on or after February 22, 2010 must be provided 30 days in advance of renewal and must comply with § 226.9(e). If a creditor provides a renewal notice prior to February 22, 2010, even if the renewal occurs after the effective date, that notice need not comply with the final rule. For example, a card issuer may impose an annual fee and provide a renewal notice on February 21, 2010 consistent with the alternative timing rule currently in § 226.9(e)(2). In addition, the requirement to provide a renewal notice based on an undisclosed change in a term required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) applies only if the change occurred on or after February 22, 2010. The Board believes that this is appropriate because card issuers may not have systems in place to track whether undisclosed changes of the type subject to § 226.9(e) have occurred prior to the effective date of this rule.

J. Advertising rules (§ 226.16). Advertisements occurring on or after February 22, 2010, such as an advertisement broadcast on the radio, published in a newspaper, or mailed on February 22, 2010 or later, must comply with the new rules regarding the use of the term "fixed." Thus, an advertisement mailed on February 21, 2010 is not required

to comply with the final rule regarding use of the term "fixed" even if that advertisement is received by the consumer on February 28, 2010. Advertisements occurring on or after July 1, 2010, such as an advertisement broadcast on the radio, published in a newspaper, or mailed on July 1, 2010 or later, must comply with the remainder of the final rule regarding advertisements.

K. Additional rules regarding disclosures. The final rule contains additional new rules, such as revisions to certain definitions, that differ from current interpretations and are prospective. For example, creditors may rely on current interpretations on the definition of "finance charge" in § 226.4 regarding the treatment of fees for cash advances obtained from automatic teller machines (ATMs) until July 1, 2010. On or after that date, however, such fees must be treated as a finance charge. For example, for account-opening disclosures provided on or after July 1, 2010, a creditor will need to disclose fees to obtain cash advances at ATMs in accordance with the requirements § 226.6 of the final rule for disclosing finance charges. In addition, a HELOC creditor that chooses to continue to disclose an effective APR on the periodic statement will need to treat fees for obtaining cash advances at ATMs as finance charges for purposes of computing the effective APR on or after July 1, 2010. Similarly, foreign transaction fees must be treated as a finance charge on or after July 1, 2010.

L. Definition of open-end credit. As discussed in the section-by-section analysis to § 226.2(a)(20), all creditors must provide closed-end or open-end disclosures, as appropriate in light of revised § 226.2(a)(20) and the associated commentary, as of July 1, 2010.

M. Implementation of disclosure rules in stages. As noted above, commenters indicated creditors will likely implement the disclosure requirements of the final rule for which compliance is mandatory by July 1, 2010 in stages. As a result, some disclosures may contain existing terminology required currently under Regulation Z while other disclosures may contain new terminology required in this final rule. For example, the final rule requires creditors to use the term "penalty rate" when referring to a rate that can be increased due to a consumer's delinquency or default or as a penalty. In addition, creditors are required under the final rule to use a phrase other than the term "grace period" in describing whether a grace period is offered for purchases or other transactions. The final rule also requires in some circumstances that a creditor use a term other than "finance charge," such as "interest charge." As discussed in the section-by-section analysis to the January 2009 Regulation Z Rule, during the implementation period, terminology need not be consistent across all disclosures. For example, if a creditor uses terminology required by the final rule in the disclosures given with applications or solicitations, that creditor may continue to use existing terminology in the disclosures it provides at account-opening or on periodic statements until July 1, 2010. Similarly, a creditor may use one of the new terms or phrases required by the final rule in a certain disclosure but is not required to use other terminology required by the final rule in that disclosure prior to the mandatory compliance date. For example, the creditor may use new terminology to describe the grace period, consistent with the final rule, in the disclosures it provides at account-opening, but may continue to use other terminology currently permitted under the rules to describe a penalty rate in the same account-opening

disclosure. By the mandatory compliance date of this rule, however, all disclosures must have consistent terminology.

N. Ability to pay rules (§ 226.51). Section 226.51 applies to the opening of all accounts on or after February 22, 2010 as well as to all credit line increases occurring on or after February 22, 2010 for existing accounts. Industry commenters suggested that the Board apply the provisions of § 226.51 to applications received on or after February 22, 2010. The Board is concerned, however, that if the rule is applied only to applications received on or after February 22, 2010, it will be possible for a consumer whose application is received before February 22, 2010 but whose account is not opened until after February 22, 2010 to be deprived of the protections afforded by the statute. TILA Section 150 states, in part, that a card issuer may not open a credit card account unless the card issuer has considered the consumer's ability to make the required payments. Similarly, for consumer under 21 years old, TILA Section 127(c)(8) prohibits the issuance of a credit card without the submission of a written application meeting the requirements set forth in the statute. Therefore, the Board believes the relevant date is the date the account is opened.

Industry commenters also requested that the Board provide an exception to § 226.51 for accounts opened in response to solicitations and applications mailed before February 22, 2010. For the same reasons associated with the Board's decision to apply § 226.51 to applications received on or after February 22, 2010, the Board declines to make such an exception. The Board, however, is providing a limited exception for firm offers of credit made before February 22, 2010. The Fair Credit Reporting Act prohibits conditioning an offer on the consumer's income if income was not previously established

as one of the card issuer's specific criteria prior to prescreening. 15. U.S.C. 1681a(l)(1)(A). Consequently, the Board does not believe § 226.51 should apply to accounts opened in response to firm offers of credit made before February 22, 2010 where income was not previously established as a specific criteria prior to prescreening.

The Board also received requests that the provisions of § 226.51 not apply to credit line increases on accounts in existence before February 22, 2010. The Board believes that grandfathering such accounts would be contrary to the Credit Card Act's purpose, and therefore declines to make such an exception. The Board notes, however, that § 226.51(b)(2) only applies to accounts that have been opened pursuant to § 226.51(b)(1)(ii). As a result, if a consumer under the age of 21 has an existing account that was opened before February 22, 2010 without a cosigner, guarantor, or joint accountholder, the issuer need not obtain the written consent required under § 226.51(b)(2) before increasing the credit limit. The issuer, however, must still evaluate the consumer's ability to make the required payments under the credit line increase, consistent with § 226.51(a). If the consumer under the age of 21 is not able to make the required payments under the credit line increase, the issuer may either refrain from granting the credit line increase or have the consumer obtain a cosigner, guarantor, or joint accountholder on the account, consistent with the procedures set forth in § 226.51(b)(1)(ii), for the increased credit line. Moreover, if a consumer under the age of 21 has an existing account that was opened before February 22, 2010 with a cosigner, guarantor, or joint accountholder, the issuer must comply with § 226.51(b)(2) before increasing the credit limit, whether or not such cosigner, guarantor, or joint accountholder is at least 21 years old.

O. Limitations on fees (§ 226.52). The effective date for new TILA Section 127(n) is February 22, 2010. Accordingly, card issuers must comply with § 226.52(a) beginning on February 22, 2010. However, § 226.52(a) does not apply to accounts opened prior to February 22, 2010.

Some commenters suggested that the limitations in new TILA Section 127(n) should apply to accounts opened less than one year before the statutory effective date. Although the Board has generally taken the position that the provisions of the Credit Card Act apply to existing accounts as of the effective date, the Board has also generally attempted to avoid applying those provisions retroactively. Section 127(n) is different than most provisions of the Credit Card Act because it applies only during a specified period of time (the first year after account opening). Thus, if the Board were to apply § 226.52(a) to any account opened on or after February 23, 2009, card issuers could be in violation of the 25 percent limit as a result of fees that were permissible at the time they were imposed.[76]

The Board believes that limiting application of new TILA Section 127(n) and § 226.52(a) to accounts opened on or after February 22, 2010 is consistent with Congress' intent. The Credit Card Act expressly provides that certain requirements in revised TILA Section 148(b) apply retroactively. Specifically, although the Credit Card Act was enacted on May 22, 2009, revised TILA Section 148(b)(2) states that the requirement that card issuers review rate increases no less frequently than once every six

[76] For example, if the Board interpreted new TILA Section 127(n) as applying retroactively, a card issuer that opened an account with a $500 limit and $150 dollars in fees for the issuance or availability of credit on March 1, 2009 would be in violation of the Credit Card Act, despite the fact that the legislation was not enacted until May 22, 2009. Similarly, a card issuer that opened an account with a $500 limit and $125 dollars in fees for the issuance or availability of credit on June 1, 2009 would be prohibited from charging any fees to the account (other than those exempted by § 226.52(a)(2)) until June 1, 2010 as a result of imposing fees that were permitted at the time of imposition.

months applies to "accounts as to which the annual percentage rate has been increased since January 1, 2009." However, Congress did not include any language in new TILA Section 127(n) suggesting that it should apply retroactively.

P. Payment allocation (§ 226.53). The effective date for revised TILA Section 164(b) is February 22, 2010. Accordingly, card issuers must comply with § 226.53 beginning on February 22, 2010. As of that date, § 226.53 applies to existing as well as new accounts and balances. Thus, if a card issuer receives a payment that exceeds the required minimum periodic payment on or after February 22, 2010, the card issuer must apply the excess amount consistent with § 226.53.

Q. Limitations on the imposition of finance charges (§ 226.54). The effective date for new TILA Section 127(j) is February 22, 2010. Accordingly, card issuers must comply with § 226.54 beginning on February 22, 2010. The Board understands that card issuers generally calculate finance charges imposed with respect to transactions that occur during a billing cycle at the end of that cycle. Accordingly, if § 226.54 were applied to billing cycles that end on or after February 22, 2010, card issuers would be required to comply with its requirements with respect to transactions that occurred before February 22, 2010. However, for the reasons discussed above, the Board does not believe that Congress intended the provisions of the Credit Card Act to apply retroactively unless expressly provided. Accordingly, § 226.54 applies to the imposition of finance charges with respect to billing cycles that begin on or after February 22, 2010.

R. Limitations on increasing annual percentage rates, fees, and charges (§ 226.55). The effective date for revised TILA Section 171 and new TILA Section 172

is February 22, 2010. Accordingly, compliance with § 226.55 is mandatory beginning on February 22, 2010.

Prohibition on increases in rates and fees (§ 226.55(a)). Beginning on February 22, 2010, § 226.55(a) prohibits a card issuer from increasing an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (iii), or (xii) unless the increase is consistent with one of the exceptions in § 226.55(b) or the implementation guidance discussed below. The prohibition in § 226.55(a) applies to both existing accounts and accounts opened after February 22, 2010.

Temporary rates – generally (§ 226.55(b)(1)).[77] If a rate that will increase upon the expiration of a specified period of time applies to a balance on February 22, 2010, § 226.55(b)(1) permits the card issuer to apply an increased rate to that balance at expiration of the period so long as the card issuer previously disclosed to the consumer the length of the period and the rate that would apply upon expiration of the period. For example, if on February 22, 2010 a 5% rate applies to a $1,000 purchase balance and that rate is scheduled to increase to 15% on June 1, 2010, the card issuer may apply the 15% rate to any remaining portion of the $1,000 balance on June 1, provided that the card issuer previously disclosed that the 15% rate would apply on June 1.

A card issuer has satisfied the disclosure requirement in § 226.55(b)(1)(i) if it has provided disclosures consistent with § 226.9(c)(2)(v)(B), as adopted by the Board in the July 2009 Regulation Z Interim Final Rule. Because § 226.9(c)(2)(v)(B) became effective on August 20, 2009, the Board expects that card issuers will have satisfied the disclosure requirement in § 226.55(b)(1)(i) with respect to any temporary rate offered on

[77] For simplicity, this implementation guidance refers to rates subject to § 226.55(b)(1) as "temporary rates." However, pursuant to comment 55(b)(1)-3, this guidance is intended to apply equally to deferred interest or similar programs.

or after that date. However, the Board understands that, with respect to temporary rates offered prior to August 20, 2009, card issuers may be uncertain whether the disclosures provided at the time those rates were offered are sufficient to comply with § 226.9(c)(2)(v)(B) and § 226.55(b)(1)(i). The Board addressed this issue in the implementation guidance for § 226.9(c)(2)(v)(B) in the July 2009 Regulation Z Interim Final Rule. See 74 FR 36091-36092. That guidance applies equally with respect to § 226.55(b)(1)(i).

Specifically, the Board stated in the July 2009 Regulation Z Interim Final Rule that, if prior to August 20, 2009 a creditor provided disclosures that generally complied with § 226.9(c)(2)(v)(B) but described the type of increased rate that would apply upon expiration of the period instead of disclosing the actual rate,[78] the creditor could utilize the exception in § 226.9(c)(2)(v)(B). See 74 FR 36092. In these circumstances, a card issuer has also satisfied the requirements of § 226.55(b)(1)(i).

In addition, the Board acknowledged in the July 2009 Regulation Z Interim Final Rule that, prior to August 20, 2009, some creditors may not have provided written disclosures of the period during which the temporary rate would apply and the increased rate that would apply thereafter or may not be able to determine if they provided such disclosures without conducting extensive research.[79] The Board stated that, in these circumstances, a creditor could utilize the exception in § 226.9(c)(2)(v)(B) if it provided written disclosures that met the requirements in § 226.9(c)(2)(v)(B) prior to August 20, 2009 or if it can demonstrate that it provided oral disclosures that otherwise meet the requirements in § 226.9(c)(2)(v)(B). See 74 FR 36092. Similarly, in these

[78] For example: "After six months, the standard annual percentage rate applicable to purchases will apply."

[79] For example, some creditors may have provided these disclosures orally.

circumstances, a card issuer that satisfies either of these criteria has also satisfied the requirements of § 226.55(b)(1)(i).

Temporary rates – six-month requirement (§ 226.55(b)(1)). The requirement in § 226.55(b)(1) that temporary rates expire after a period of no less than six months applies to temporary rates offered on or after February 22, 2010. Thus, for example, if a card issuer offered a temporary rate on December 1, 2009 that applies to purchases until March 1, 2010, § 226.55(b)(1) would not prohibit the card issuer from applying an increased rate to the purchase balance on March 1 so long as the card issuer previously disclosed the period during which the temporary rate would apply and the increased rate that would apply thereafter. Some commenters suggested that the six-month requirement in § 226.55(b)(1) (which implements new TILA Section 172(b)) should apply to temporary rates offered less than six months before the statutory effective date (in other words, any temporary rate offered after September 22, 2009). However, as discussed above with respect to the restrictions on fees during the first year after account opening in new TILA Section 127(n) and new § 226.52(a), the Board believes that limiting application of the six-month requirement in new TILA Section 172(b) to temporary rates offered on or after February 22, 2010 is consistent with Congress' intent because – in contrast to revised TILA Section 148 – Congress did not expressly provide that new TILA Section 172(b) applies retroactively.

Variable rates (§ 226.55(b)(2)). If a rate that varies according to a publicly-available index applies to a balance on February 22, 2010, the card issuer may continue to adjust that rate due to changes in the relevant index consistent with § 226.55(b)(2). However, if on February 22, 2010 the account terms governing the variable rate permit

the card issuer to exercise control over the operation of the index in a manner that is inconsistent with § 226.55(b)(2) or its commentary, the card issuer is prohibited from enforcing those terms with respect to subsequent adjustments to the variable rate, even if the terms of the account have not yet been amended consistent with the 45-day notice requirement in § 226.9(c). The following examples illustrate the application of this guidance:

- Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month. The terms of the account provide that, at the beginning of each billing cycle, the card issuer will calculate the variable rate by adding a margin of 10 percentage points to the value of a publicly-available index on the last day of the prior billing cycle. However, contrary to § 226.55(b)(2), the terms of the account also provide that the variable rate will not decrease below 15%. See comment 55(b)(2)-2. On January 30, 2010, the card issuer provides a notice pursuant to § 226.9(c)(2) informing the consumer that, effective March 16, the 15% fixed minimum rate will be removed from the account terms. On January 31, the value of the index is 3% but, consistent with the fixed minimum rate, the card issuer applies a 15% rate beginning on February 1. The card issuer is not required to adjust the variable rate on February 22 because the terms of the account do not provide for a rate adjustment until the beginning of the March billing cycle. However, if the value of the index is 3% on February 28, the card issuer must apply a 13% rate beginning on March 1, even though the amendment to the account terms is not effective until March 16.

- Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month. The terms of the account provide that, at the beginning of each billing cycle, the card issuer will calculate the variable rate by adding a margin of 10 percentage points to the value of a publicly-available index. However, contrary to § 226.55(b)(2), the terms of the account also provide that the variable rate will be calculated based on the highest index value during the prior billing cycle. See comment 55(b)(2)-2. On January 30, 2010, the card issuer provides a notice pursuant to § 226.9(c)(2) informing the consumer that, effective March 16, the terms of the account will be amended to provide that the variable rate will be calculated based on the value of the index on the last day of the prior billing cycle. On January 31, the value of the index is 4.9% but, because the highest value for the index during the January billing cycle was 5.1%, the card issuer applies a 15.1% rate beginning on February 1. The card issuer is not required to adjust the variable rate on February 22 because the terms of the account do not provide for a rate adjustment until the beginning of the March billing cycle. However, if the value of the index is 4.9% on February 28, the card issuer complies with § 226.55(b)(2) if it applies a 14.9% rate beginning on March 1, even though the amendment to the account terms is not effective until March 16.

Increases in rates and certain fees and charges that apply to new transactions (§ 226.55(b)(3)). Section 226.55(b)(3) applies to any increase in a rate or in a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (iii), or (xii) that is effective on or

after February 22, 2010. Some commenters argued that the Board should adopt guidance similar to that in the July 2009 Regulation Z Interim Final Rule, where the Board determined that the relevant date for purposes of compliance with revised § 226.9(c)(2) and new § 226.9(g) was generally the date on which the notice was provided. That guidance, however, was based in large part on concerns about requiring creditors to comply with revised TILA Section 127(i) with respect to notices provided as much as 45 days prior to the statutory effective date. See 74 FR 36091.

In contrast, under this guidance, card issuers are only required to comply with revised TILA Section 171 with respect to increases that take effect after the statutory effective date. Furthermore, if the relevant date for compliance with § 226.55(b)(3) was the date on which a § 226.9(c) or (g) notice was provided, card issuers would be permitted to apply increased rates, fees, or charges to existing balances until April 7, 2010 so long as the notice was sent before the Credit Card Act's February 22, 2010 effective date. The Board does not believe that this was Congress' intent.

The following examples illustrate the application of this guidance:

- On January 7, 2010, a card issuer provides a notice of an increase in the purchase rate pursuant to § 226.9(c). Consistent with § 226.9(c), the increased rate is effective on February 21, 2010. Therefore, § 226.55(b)(3) does not apply. Accordingly, on February 21, 2010, the card issuer may apply the increased rate to both new purchases and the existing purchase balance (provided the consumer has not rejected application of the increased rate to the existing balance pursuant to § 226.9(h)).

- On January 8, 2010, a card issuer provides a notice of an increase in the purchase rate pursuant to § 226.9(c). Consistent with § 226.9(c), the increased rate is effective on February 22, 2010. Therefore, § 226.55(b)(3) applies. Accordingly, on February 22, 2010, the card issuer cannot apply the increased rate to purchases that occurred on or before January 22, 2010 (which is the fourteenth day after provision of the notice) but may apply the increased rate to purchases that occurred after that date.

Prohibition on increasing rates and certain fees and charges during first year after account opening (§ 226.55(b)(3)(iii)). The prohibition in § 226.55(b)(3)(iii) on increasing rates and certain fees and charges during the first year after account opening applies to accounts opened on or after February 22, 2010. Some commenters suggested that this provision (which implements new TILA Section 172(a)) should apply to accounts opened less than one year before the statutory effective date. However, as discussed above with respect to new TILA Section 172(b), the Board believes that limiting application of new TILA Section 172(a) to accounts opened on or after February 22, 2010 is consistent with Congress' intent because Congress did not expressly provide that new TILA Section 172(a) applies retroactively.

Delinquencies of more than 60 days (§ 226.55(b)(4)). Section 226.55(b)(4) applies once an account becomes more than 60 days delinquent even if the delinquency began prior to February 22, 2010. For example, if the required minimum periodic payment due on January 1, 2010 has not been received by March 3, 2010, § 226.55(b)(4) permits the card issuer to apply an increased rate, fee, or charge to existing balances on the account after providing notice pursuant to § 226.9(c) or (g).

Workout and temporary hardship arrangements (§ 226.55(b)(5)). Section 226.55(b)(5) applies to workout and temporary hardship arrangements that apply to an account on February 22, 2010. A card issuer that has complied with § 226.9(c)(2)(v)(D) or the transition guidance for that provision has satisfied the disclosure requirement in § 226.55(b)(5)(i).

If a workout or temporary hardship arrangement applies to an account on February 22, 2010 and the consumer completes or fails to comply with the terms of the arrangement on or after that date, § 226.55(b)(5)(ii) only permits the card issuer to apply an increased rate, fee, or charge that does not exceed the rate, fee, or charge that applied prior to commencement of the workout arrangement. For example, assume that, on January 1, 2010, a card issuer decreases the rate that applies to a $5,000 balance from 30% to 5% pursuant to a workout or temporary hardship arrangement between the issuer and the consumer. Under this arrangement, the consumer must pay by the fifteenth of each month in order to retain the 5% rate. The card issuer does not receive the payment due on March 15 until March 20. In these circumstances, § 226.55(b)(5)(ii) does not permit the card issuer to apply a rate to any remaining portion of the $5,000 balance that exceeds the 30% penalty rate.

Servicemembers Civil Relief Act (§ 226.55(b)(6)). If a card issuer reduced an annual percentage rate pursuant to 50 U.S.C. app. 527 prior to February 22, 2010 and the consumer leaves military service on or after that date, § 226.55(b)(6) only permits the card issuer to apply an increased rate that does not exceed the rate that applied prior to the reduction.

Closed or acquired accounts and transferred balances (§ 226.55(d)). Section 226.55(d) applies to any credit card account under an open-end (not home-secured) consumer credit plan that is closed on or after February 22, 2010 or acquired by another creditor on or after February 22, 2010. Section 226.55(d) also applies to any balance that is transferred from a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary on or after February 22, 2010. Thus, beginning on February 22, 2010, card issuers are prohibited from increasing rates, fees, or charges in these circumstances to the extent inconsistent with § 226.55, its commentary, and this guidance.

S. Over-the-limit transactions (§ 226.56). For credit card accounts opened prior to February 22, 2010, a card issuer may elect to provide an opt-in notice to all of its account-holders on or with the first periodic statement sent after the effective date of the final rule. Card issuers that choose to do so are prohibited from assessing any over-the-limit fees or charges after the effective date of the rule and prior to providing the opt-in notice, and subsequently could not assess any such fees or charges unless and until the consumer opts in and the card issuer sends written confirmation of the opt-in. The final rule does not, however, require that a card issuer waive fees that are incurred in connection with over-the-limit transactions that occur prior to February 22, 2010 even if the consumer has not opted in by the effective date. Thus, for example, a card issuer may assess fees if the consumer engages in an over-the-limit transaction prior to February 22, 2010, but the transaction posts or is charged to the account after that date, even if the consumer has not opted in by the effective date.

Early compliance. For existing accounts, an opt-in requirement could potentially result in a disruption in a consumer's ability to complete transactions if card issuers could not send notices, and obtain consumer opt-ins, until February 22, 2010. Accordingly, the Board solicited comment regarding whether a creditor should be permitted to obtain consumer consent for the payment of over-the-limit transactions prior to that date. Allowing creditors to obtain consumer consent prior to February 22, 2010 could also allow creditors to phase in their delivery of opt-in notices and processing of consumer consents.

Industry commenters agreed that the rule should permit creditors to obtain consents prior to February 22, 2010 to enable both creditors and consumers to avoid a flood of opt-in notices and transaction denials on or after that date. One industry commenter urged the Board to permit creditors to obtain valid consumer consents so long as they follow the requirements set forth in the proposed rule and provide the proposed model form. In contrast, consumer groups and one state government agency argued that creditors should not be permitted to obtain consumer consents prior to the effective date of the rule because they did not believe that the rule as proposed afforded consumers adequate protections.

Under the final rule, card issuers may provide the notice and obtain the consumer's affirmative consent prior to the effective date, provided that the card issuer complies with all the requirements in § 226.56, including the requirements to segregate the notice and provide written confirmation of the consumer's choice. The opt-in notice must also include the specified content in § 226.56(e)(1). Use of Model Form G-25(A), or a substantially similar notice, constitutes compliance with the notice requirements in

§ 226.56(e)(1). See § 226.56(e)(3). If an existing account-holder responds to an opt-in notice provided before February 22, 2010 and expresses a desire not to opt in, the Board expects that the card issuer would honor the consumer's choice at that time, unless the card issuer has clearly and conspicuously explained in the opt-in notice that the opt-in protections do not apply until that date.

In addition, in order to minimize potential disruptions to the payment systems that may otherwise result if card issuers could not send notices or obtain consumer consents until near the effective date of the rule, the Board believes that it is appropriate to treat opt-in notices that follow the model form as proposed as a substantially similar notice to the final model form for purposes of § 226.56(e)(3). That is, card issuers that provide opt-in notices based on the proposed model form would be deemed to be in compliance with the over-the-limit opt-in provisions, provided that the other requirements of the rule, including the written confirmation requirement, are satisfied. The Board anticipates that such relief would be temporary, however, and expects that card issuers will transition to the final Model Form G-25(A) as soon as reasonably practicable after February 22, 2010 in order to retain the safe harbor.

Prohibited practices. Sections 226.56(j)(2)-(4) prohibit certain credit card acts or practices regarding the imposition of over-the-limit fees. These prohibitions are based on the Board's authority under TILA Section 127(k)(5)(B) 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. However, compliance with the provisions of the final rule is not required before February 22, 2010. Thus, the final rule and the Board's accompanying analysis should have no bearing on

whether or not acts or practices restricted or prohibited under this rule are unfair or deceptive before the effective date of this rule.

Unfair acts or practices can be addressed through case-by-case enforcement actions against specific institutions, through regulations applying to all institutions, or both. An enforcement action concerns a specific institution's conduct and is based on all of the facts and circumstances surrounding that conduct. By contrast, a regulation is prospective and applies to the market as a whole, drawing bright lines that distinguish broad categories of conduct.

Moreover, as part of the Board's unfairness analysis, the Board has considered that broad regulations, such as the prohibitions in connection with over-the-limit practices in the final rule, can require large numbers of institutions to make major adjustments to their practices, and that there could be more harm to consumers than benefit if the regulations were effective earlier than the effective date. If institutions were not provided a reasonable time to make changes to their operations and systems to comply with the final rule, they would either incur excessively large expenses, which would be passed on to consumers, or cease engaging in the regulated activity altogether, to the detriment of consumers. For example, card issuers may be required to make significant systems changes in order to ensure that fees and interest charges assessed during a billing cycle did not cause an over-the-limit fee or charge to be imposed on a consumer's account. Thus, because the Board finds an act or practice unfair only when the harm outweighs the benefits to consumers or to competition, the implementation period preceding the effective date set forth in the final rule is integral to the Board's decision to restrict or prohibit certain acts or practices by regulation.

For these reasons, acts or practices occurring before the effective date of the final rule will be judged on the totality of the circumstances under applicable laws or regulations. Similarly, acts or practices occurring after the rule's effective date that are not governed by these rules will be judged on the totality of the circumstances under applicable laws or regulations. Consequently, only acts or practices covered by the rule that occur on or after the effective date would be prohibited by the regulation.

T. Reporting and marketing rules for college student open-end credit (§ 226.57).

Prohibited inducements (§ 226.57(c)). All tangible items offered to induce a college student to apply for or participate in an open end consumer credit plan, on or near the campus of an institution of higher education or at an event sponsored by or related to an institution of higher education, are prohibited on or after February 22, 2010 pursuant to § 226.57(c). If a college student has submitted an application for, or agreed to participate in, an open-end consumer credit plan prior to February 22, 2010, in reliance on the offer of a tangible item, such item may still be provided to the student on or after February 22, 2010.

Submission of reports to Board (§ 226.57(d)). Section 226.57(d)(3) provides that card issuers must submit the first report regarding college credit card agreements for the 2009 calendar year to the Board by February 22, 2010.

U. Internet posting of credit card agreements (§ 226.58). Section 226.58(c)(2) provides that card issuers must submit credit card agreements offered to the public as of December 31, 2009 to the Board no later than February 22, 2010.

V. Open-End Credit Secured by Real Property

In the May 2009 Regulation Z Proposed Clarifications, the Board solicited comment on whether additional transition guidance is needed for creditors that offer open-end credit secured by real property, where it is unclear whether that property is, or remains, the consumer's dwelling. The issue arose because the January 2009 Regulation Z Rule preserved certain existing rules, for example the rules under §§ 226.6, 226.7, and 226.9, for home-equity plans subject to § 226.5b pending the completion of the Board's separate review of the rules applicable to home-secured credit. The Board noted that creditors offering open-end credit secured by real property may be uncertain how they should comply with the January 2009 Regulation Z Rule. Financial institution commenters suggested that creditors be permitted to treat all open-end credit secured by residential property as covered by § 226.5b, rather than the rules for open-end (not home-secured) credit, regardless of whether the property is the consumer's dwelling. Consumer group commenters did not address this issue.

In the August 2009 Regulation Z HELOC Proposal, the Board proposed to adopt a new comment 5–1 that would provide guidance in situations where a creditor is uncertain whether an open-end credit plan is covered by the § 226.5b rules for HELOCs or the rules for open-end (not home-secured) credit. The comment period on this proposal closed on December 24, 2009, and the Board is still considering the comments it received.

Accordingly, the Board believes that until the August 2009 Regulation Z HELOC Proposal is finalized, it is appropriate to permit creditors that offer open-end credit secured by real property that are uncertain whether the plan is covered by § 226.5b to comply with this final rule by complying with, at their option, either the new rules that

apply to open-end (not home-secured) credit, or the existing rules applicable to home-equity plans. Therefore, if a creditor that offers open-end credit secured by real property is uncertain whether that property is, or remains, the consumer's dwelling, that creditor may comply with either the new rules regarding account-opening disclosures in § 226.6(b), periodic statement disclosures in § 226.7(b), and change-in-terms notices in § 226.9(c)(2), or the existing rules as preserved in §§ 226.6(a), 226.7(a), and 226.9(c)(1). However, such a creditor must treat the product consistently for the purpose of the disclosures in §§ 226.6, 226.7, and 226.9(c); for example, a creditor may not provide account-opening disclosures consistent with the new requirements of § 226.6(b) and periodic statement disclosures consistent with the existing requirements for HELOCs under § 226.7(a). In addition, as of the mandatory compliance date for this final rule, creditors must comply with any requirements of this final rule that apply to all open-end credit regardless of whether it is home-secured, such as the provision in § 226.10(d) regarding weekend or holiday due dates. This transition guidance applies only to provisions of Regulation Z that are amended by this rulemaking; accordingly, this transition guidance does not address creditors' responsibilities under other sections of Regulation Z, such as §§ 226.5b and 226.15.

VII. 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 the October 2009 Regulation Z Proposal, the Board conducted initial and final regulatory flexibility analyses and ultimately concluded that the rules in the Board's