~~finance charges when a dispute is resolved under § 226.12 (which governs the right of a cardholder to assert claims or defenses against the card issuer) or § 226.13 (which governs resolution of billing errors).~~

~~In addition, because a payment may be returned for reasons other than insufficient funds (such as because the account on which the payment is drawn has been closed or because the consumer has instructed the institution holding that account not to honor the payment), the Board proposed to use its authority under TILA Section 105(a) to apply the exception in new TILA Section 127(j)(2)(B) to all circumstances in which adjustments to finance charges are made as a result of the return of a payment.~~

~~The Board did not receive significant comment on this aspect of the proposal. Accordingly, § 226.54(b) is adopted as proposed.~~

Section 226.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges

As revised by the Credit Card Act, TILA Section 171(a) generally prohibits creditors from increasing any annual percentage rate, fee, or finance charge applicable to any outstanding balance on a credit card account under an open-end consumer credit plan. See 15 U.S.C. 1666i-1. Revised TILA Section 171(b), however, provides exceptions to this rule for temporary rates that expire after a specified period of time and rates that vary with an index. Revised TILA Section 171(b) also provides exceptions in circumstances where the creditor has not received the required minimum periodic payment within 60 days after the due date and where the consumer completes or fails to comply with the terms of a workout or temporary hardship arrangement. Revised TILA Section 171(c) limits a creditor's ability to change the terms governing repayment of an outstanding balance. The Credit Card Act also creates a new TILA Section 172, which provides that a creditor generally cannot increase a rate, fee, or finance charge during the first year after account opening and that a promotional rate (as defined by the Board) generally cannot expire earlier than six months after it takes effect. As discussed in detail below, the Board is implementing both revised TILA Section 171 and new TILA Section 172 in § 226.55.

55(a) General Rule

As noted above, revised TILA Section 171(a) generally prohibits increases in annual percentage rates, fees, and finance charges on outstanding balances. Revised TILA Section 171(d) defines "outstanding balance" as the amount owed as of the end of the fourteenth day after the date on which the creditor provides notice of an increase in the annual percentage rate, fee, or finance charge in accordance with TILA Section 127(i).[42] TILA Section 127(i)(1) and (2), which went into effect on August 20, 2009, generally require creditors to notify consumers 45 days before an increase in an annual percentage rate or any other significant change in the terms of a credit card account (as determined by rule of the Board).

In the July 2009 Regulation Z Interim Final Rule, the Board implemented new TILA Section 127(i)(1) and (2) in § 226.9(c) and (g). In addition to increases in annual percentage rates, § 226.9(c)(2)(ii) lists the fees and other charges for which an increase constitutes a significant change to the account terms necessitating 45 days' advance

[42] As discussed in the July 2009 Regulation Z Interim Final Rule (at 74 FR 36090), the Board believes that this fourteen-day period is intended to balance the interests of consumers and creditors. On the one hand, the fourteen-day period ensures that the increased rate, fee, or charge will not apply to transactions that occur before the consumer has received the notice and had a reasonable amount of time to review it and decide whether to use the account for additional transactions. On the other hand, the fourteen-day period reduces the potential that a consumer – having been notified of an increase for new transactions – will use the 45-day notice period to engage in transactions to which the increased rate, fee, or charge cannot be applied.

notice, including annual or other periodic fees, fixed finance charges, minimum interest charges, transaction charges, cash advance fees, late payment fees, over-the-limit fees, balance transfer fees, returned-payment fees, and fees for required insurance, debt cancellation, or debt suspension coverage. As discussed above, however, the Board has amended § 226.9(c)(2)(ii) to identify these significant account terms by a cross-reference to the account-opening disclosure requirements in § 226.6(b). Because the definition of outstanding balance in revised TILA Section 171(d) is expressly conditioned on the provision of the 45-day advance notice, the Board believes that it is consistent with the purposes of the Credit Card Act to limit the general prohibition in revised TILA Section 171(a) on increasing fees and finance charges to increases in fees and charges for which a 45-day notice is required under § 226.9.

Furthermore, because revised TILA Section 171(a) prohibits the application of increased fees and charges to outstanding balances rather than to new transactions or to the account as a whole, the Board believes that it is appropriate to apply that prohibition only to fees and charges that could be applied to an outstanding balance. For example, increased cash advance or balance transfer fees would apply only to new cash advances or balance transfers, not to existing balances. Similarly, increased penalty fees such as late payment fees, over-the-limit fees, and returned payment fees would apply to the account as a whole rather than any specific balance.[43]

Accordingly, the Board proposed to use its authority under TILA Section 105(a) to limit the general prohibition in revised TILA Section 171(a) to increases in annual percentage rates and in fees and charges required to be disclosed under § 226.6(b)(2)(ii)

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[43] However, the Board notes that a consumer that does not want to accept an increase in these types of fees may reject the increase pursuant to § 226.9(h).

(fees for the issuance or availability of credit), § 226.6(b)(2)(iii) (fixed finance charges and minimum interest charges), or § 226.6(b)(2)(xii) (fees for required insurance, debt cancellation, or debt suspension coverage).[44] Although consumer groups expressed concern that card issuers might develop new fees in order to evade the prohibition on applying increased fees to existing balances, the Board believes that these categories of fees are sufficiently broad to address any attempts at circumvention.

In addition, for clarity and organizational purposes, proposed § 226.55(a) generally prohibited increases in annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) with respect to all transactions, rather than just increases on existing balances. As explained in the proposal, the Board does not intend to alter the substantive requirements in revised TILA Section 171. Instead, the Board believes that revised TILA Section 171 can be more clearly and effectively implemented if increases in rates, fees, and charges that apply to transactions that occur more than fourteen days after provision of a § 226.9(c) or (g) notice are addressed in an exception to the general prohibition rather than placed outside that prohibition. The Board and the other Agencies adopted a similar approach in the January 2009 FTC Act Rule. See 12 CFR 227.24, 74 FR 5560. The Board did not receive significant comment on this aspect of the proposal. Accordingly, § 226.55(a) states that, except as provided in § 226.55(b), a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii).

[44] As discussed below with respect to § 226.55(b)(3), a card issuer may still increase these types of fees and charges so long as the increased fee or charge is not applied to the outstanding balance.

Proposed comment 55(a)-1 provided examples of the general application of § 226.55(a) and the exceptions in § 226.55(b). The Board has clarified these examples but no substantive change is intended. Additional examples illustrating specific aspects of the exceptions in § 226.55(b) are provided in the commentary to those exceptions.

Proposed comment 55(a)-2 clarified that nothing in § 226.55 prohibits a card issuer from assessing interest due to the loss of a grace period to the extent consistent with § 226.54. In addition, the comment states that a card issuer has not reduced an annual percentage rate on a credit account for purposes of § 226.55 if the card issuer does not charge interest on a balance or a portion thereof based on a payment received prior to the expiration of a grace period. For example, if the annual percentage rate for purchases on an account is 15% but the card issuer does not charge any interest on a $500 purchase balance because that balance was paid in full prior to the expiration of the grace period, the card issuer has not reduced the 15% purchase rate to 0% for purposes of § 226.55. The Board has revised this comment to clarify that any loss of a grace period must also be consistent with the requirements for mailing or delivering periodic statements in § 226.5(b)(2)(ii)(B). Otherwise, it is adopted as proposed.

55(b) Exceptions

Revised TILA Section 171(b) lists the exceptions to the general prohibition in revised Section 171(a). Similarly, § 226.55(b) lists the exceptions to the general prohibition in § 226.55(a). In addition, § 226.55(b) clarifies that the listed exceptions are not mutually exclusive. In other words, a card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in § 226.55(b) even if that increase would not be permitted under a different exception. Comment 55(b)-1 clarifies that, for example, although a card issuer cannot increase an annual percentage rate pursuant to § 226.55(b)(1) unless that rate is provided for a specified period of at least six months, the card issuer may increase an annual percentage rate during a specified period due to an increase in an index consistent with § 226.55(b)(2). Similarly, although § 226.55(b)(3) does not permit a card issuer to increase an annual percentage rate during the first year after account opening, the card issuer may increase the rate during the first year after account opening pursuant to § 226.55(b)(4) if the required minimum periodic payment is not received within 60 days after the due date. The Board did not receive significant comment on the prefatory language in § 226.55(b) or on comment 55(b)-1, which are adopted as proposed. Similarly, except as noted below, comments 55(b)-2 through -6 are adopted as proposed.

Proposed comment 55(b)-2 addressed circumstances where the date on which a rate, fee, or charge may be increased pursuant to an exception in § 226.55(b) does not fall on the first day of a billing cycle. Because it may be operationally difficult for some card issuers to apply an increased rate, fee, or charge in the middle of a billing cycle, the comment clarifies that, in these circumstances, the card issuer may delay application of the increased rate, fee, or charge until the first day of the following billing cycle without relinquishing the ability to apply that rate, fee, or charge.

Commenters generally supported this guidance, but requested additional clarification regarding mid-cycle increases. Because these increases can occur as a result of the interaction between the exceptions in § 226.55(b) and the 45-day notice requirements in § 226.9(c) and (g), the Board has incorporated into comment 55(b)-2 the guidance provided in proposed comment 55(b)-6 regarding that interaction.[45] Specifically, proposed comment 55(b)-6 stated that nothing in § 226.55 alters the requirements in § 226.9(c) and (g) that creditors provide written notice at least 45 days prior to the effective date of certain increases in annual percentage rates, fees, and charges. For example, although § 226.55(b)(3)(ii) permits a card issuer that discloses an increased rate pursuant to § 226.9(c) or (g) to apply that rate to transactions that occurred more than fourteen days after provision of the notice, the card issuer cannot begin to accrue interest at the increased rate until that increase goes into effect, consistent with § 226.9(c) or (g). The final rule adopts this guidance – with illustrative examples – in comment 55(b)-2.

In addition, proposed comment 55(b)-6 clarified that, on or after the effective date, the card issuer cannot calculate interest charges for days before the effective date based on the increased rate. In response to requests from commenters for further clarification, the Board has added this guidance to comment 55(b)-2 and adopted additional guidance addressing the application of different balance computation methods when an increased rate goes into effect in the middle of a billing cycle.

Comment 55(b)-3 clarifies that, although nothing in § 226.55 prohibits a card issuer from lowering an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii), a card issuer that does so cannot subsequently increase the rate, fee, or charge unless permitted by one of the exceptions in § 226.55(b). The Board believes that this interpretation is consistent with the intent of revised TILA Section 171 insofar as it ensures that consumers are informed of the key terms and conditions associated with a lowered rate, fee, or charge before relying on that

[45] As a result, proposed comment 55(b)-6 is not adopted in this final rule.

rate, fee, or charge. For example, revised Section 171(b)(1)(A) requires creditors to disclose how long a temporary rate will apply and the rate that will apply after the temporary rate expires before the consumer engages in transactions in reliance on the temporary rate. Similarly, revised Section 171(b)(3)(B) requires the creditor to disclose the terms of a workout or temporary hardship arrangement before the consumer agrees to the arrangement. The comment provides examples illustrating the application of § 226.55 when an annual percentage rate is lowered. Comment 55(b)-3 is adopted as proposed, although the Board has made non-substantive clarifications and added additional examples in response to comments regarding the application of § 226.55 when an existing temporary rate is extended and when a default occurs before a temporary rate expires.

As discussed below, several of the exceptions in proposed § 226.55 require the creditor to determine when a transaction occurred. For example, consistent with revised TILA Section 171(d)'s definition of "outstanding balance," § 226.55(b)(3)(ii) provides that a card issuer that discloses an increased rate pursuant to § 226.9(c) or (g) may not apply that increased rate to transactions that occurred prior to or within fourteen days after provision of the notice. Accordingly, comment 55(b)-4 clarifies that when a transaction occurred for purposes of § 226.55 is generally determined by the date of the transaction.[46] The Board understands that, in certain circumstances, a short delay can occur between the date of the transaction and the date on which the merchant charges that transaction to the account. As a general matter, the Board believes that these delays should not affect the application of § 226.55. However, to address the operational

[46] This comment is based on comment 9(h)(3)(ii)-2, which was adopted in the July 2009 Regulation Z Interim Final Rule. See 74 FR 36101.

difficulty for card issuers in the rare circumstance where a transaction that occurred within fourteen days after provision of a § 226.9(c) or (g) notice is not charged to the account prior to the effective date of the increase or change, this comment clarifies that the card issuer may treat the transaction as occurring more than fourteen days after provision of the notice for purposes of § 226.55. In addition, the comment clarifies that, when a merchant places a "hold" on the available credit on an account for an estimated transaction amount because the actual transaction amount will not be known until a later date, the date of the transaction for purposes of § 226.55 is the date on which the card issuer receives the actual transaction amount from the merchant. Illustrative examples are provided in comment 55(b)(3)-4.iii.

Comment 55(b)-5 clarifies the meaning of the term "category of transactions," which is used in some of the exceptions in § 226.55(b). This comment states that, for purposes of § 226.55, a "category of transactions" is a type or group of transactions to which an annual percentage rate applies that is different than the annual percentage rate that applies to other transactions.[47] For example, purchase transactions, cash advance transactions, and balance transfer transactions are separate categories of transactions for purposes of § 226.55 if a card issuer applies different annual percentage rates to each. Furthermore, if, for example, the card issuer applies different annual percentage rates to different types of purchase transactions (such as one rate for purchases of gasoline or purchases over $100 and a different rate for all other purchases), each type constitutes a separate category of transactions for purposes of § 226.55.

55(b)(1) Temporary Rate Exception

[47] Similarly, a type or group of transactions is a "category of transactions" for purposes of § 226.55 if a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) applies to those transactions that is different than the fee or charge that applies to other transactions.

Revised TILA Section 171(b)(1) provides that a creditor may increase an annual percentage rate upon the expiration of a specified period of time, subject to three conditions. First, prior to commencement of the period, the creditor must have disclosed to the consumer, in a clear and conspicuous manner, the length of the period and the increased annual percentage rate that will apply after expiration of the period. Second, at the end of the period, the creditor must not apply a rate that exceeds the increased rate that was disclosed prior to commencement of the period. Third, at the end of the period, the creditor must not apply the previously-disclosed increased rate to transactions that occurred prior to commencement of the period. Thus, under this exception, a creditor that, for example, discloses at account opening that a 5% rate will apply to purchases for six months and that a 15% rate will apply thereafter is permitted to increase the rate on the purchase balance to 15% after six months.

The Board proposed to implement the exception in revised TILA Section 171(b)(1) regarding temporary rates as well as the requirements in new TILA Section 172(b) regarding promotional rates in § 226.55(b)(1). As a general matter, commenters supported or did not address proposed § 226.55(b)(1) and its commentary. Accordingly, except as discussed below, they are adopted as proposed.[48]

New TILA Section 172(b) provides that "[n]o increase in any . . . promotional rate (as that term is defined by the Board) shall be effective before the end of the 6-month period beginning on the date on which the promotional rate takes effect, subject to such

[48] Some industry commenters requested that the Board expand § 226.55(b)(1) to apply to increases in fees to a pre-disclosed amount after a specified period of time. However, as discussed above with respect to § 226.9(c) and (h), the Board believes that such an exception would be inconsistent with the Credit Card Act. In addition, some industry commenters requested that the Board exclude promotional programs under which no interest is charged for a specified period of time. However, the Board believes that, for purposes of § 226.55, these programs do not differ in any material way from programs that offer annual percentage rate of 0% for a specified period of time.

reasonable exceptions as the Board may establish by rule." Pursuant to this authority, the Board believes that promotional rates should be subject to the same requirements and exceptions as other temporary rates that expire after a specified period of time. In particular, the Board believes that consumers who rely on promotional rates should receive the disclosures and protections set forth in revised TILA Section 171(b)(1) and § 226.55(b)(1). This will ensure that a consumer will receive disclosure of the terms of the promotional rate before engaging in transactions in reliance on that rate and that, at the expiration of the promotion, the rate will only be increased consistent with those terms. Accordingly, the Board has incorporated the requirement that promotional rates last at least six months into § 226.55(b)(1), which would permit a card issuer to increase a temporary annual percentage rate upon the expiration of a specified period that is six months or longer.

Furthermore, pursuant to its authority under new TILA Section 172(b) to establish reasonable exceptions to the six-month requirement for promotional rates, the Board believes that it is appropriate to apply the other exceptions in revised TILA Section 171(b) and § 226.55(b) to promotional rate offers. For example, the Board believes that a card issuer should be permitted to offer a consumer a promotional rate that varies with an index consistent with revised TILA Section 171(b)(2) and § 226.55(b)(2) (such as a rate that is one percentage point over a prime rate that is not under the card issuer's control). Similarly, the Board believes that a card issuer should be permitted to increase a promotional rate if the account becomes more than 60 days delinquent during the promotional period consistent with revised TILA Section 171(b)(4) and § 226.55(b)(4). Thus, the Board has applied to promotional rates the general proposition in proposed § 226.55(b) that a rate may be increased pursuant to an exception in § 226.55(b) even if that increase would not be permitted under a different exception.

Section 226.55(b)(1)(i) implements the requirement in revised TILA Section 171(b)(1)(A) that creditors disclose the length of the period and the annual percentage rate that will apply after the expiration of that period. This language tracks § 226.9(c)(2)(v)(B)(1), which the Board adopted in the July 2009 Regulation Z Interim Final Rule as part of an exception to the general requirement that creditors provide 45 days notice before an increase in annual percentage rate. Because the disclosure requirements in § 226.9(c)(2)(v)(B)(1) and § 226.55(b)(1)(i) implement the same statutory provision (revised TILA Section 171(b)(1)(A)), the Board believes a single set of disclosures should satisfy both requirements. Accordingly, comment 55(b)(1)-1 clarifies that a card issuer that has complied with the disclosure requirements in § 226.9(c)(2)(v)(B) has also complied with the disclosure requirements in § 226.55(b)(2)(i).

Section 226.55(b)(1)(ii) implements the limitations in revised TILA Section 171(b)(1)(B) and (C) on the application of increased rates following expiration of the specified period. First, § 226.55(b)(1)(ii)(A) states that, upon expiration of the specified period, a card issuer must not apply an annual percentage rate to transactions that occurred prior to the period that exceeds the rate that applied to those transactions prior to the period. In other words, the expiration of a temporary rate cannot be used as a reason to apply an increased rate to a balance that preceded application of the temporary rate. For example, assume that a credit card account has a $5,000 purchase balance at a 15% rate and that the card issuer reduces the rate that applies to all purchases (including the

$5,000 balance) to 10% for six months with a 22% rate applying thereafter. Under § 226.55(b)(1)(ii)(A), the card issuer cannot apply the 22% rate to the $5,000 balance upon expiration of the six-month period (although the card issuer could apply the original 15% rate to that balance).

Second, § 226.55(b)(1)(ii)(B) states that, if the disclosures required by § 226.55(b)(1)(i) are provided pursuant to § 226.9(c), the card issuer must not – upon expiration of the specified period – apply an annual percentage rate to transactions that occurred within fourteen days after provision of the notice that exceeds the rate that applied to that category of transactions prior to provision of the notice. The Board believes that this clarification is necessary to ensure that card issuers do not apply an increased rate to an outstanding balance (as defined in revised TILA Section 171(d)) upon expiration of the specified period. Accordingly, consistent with the purpose of revised TILA Section 171(d), § 226.55(b)(1)(ii)(B) ensures that a consumer will have fourteen days to receive the § 226.9(c) notice and review the terms of the temporary rate (including the increased rate that will apply upon expiration of the specified period) before engaging in transactions to which that increased rate may eventually apply.

Third, § 226.55(b)(1)(ii)(C) states that, upon expiration of the specified period, the card issuer must not apply an annual percentage rate to transactions that occurred during the specified period that exceeds the increased rate disclosed pursuant to § 226.55(b)(1)(i). In other words, the card issuer can only increase the rate consistent with the previously-disclosed terms. Examples illustrating the application of § 226.55(b)(1)(ii)(A), (B), and (C) are provided in comments 55(a)-1 and 55(b)-3.

Comment 55(b)(1)-2 clarifies when the specified period begins for purposes of the six-month requirement in § 226.55(b)(1). As a general matter, comment 55(b)(1)-2 states that that the specified period must expire no less than six months after the date on which the creditor discloses to the consumer the length of the period and rate that will apply thereafter (as required by § 226.55(b)(1)(i)). However, if the card issuer provides these disclosures before the consumer can use the account for transactions to which the temporary rate will apply, the temporary rate must expire no less than six months from the date on which it becomes available.

For example, assume that on January 1 a card issuer offers a 5% annual percentage rate for six months on purchases (with a 15% rate applying thereafter). If a consumer may begin making purchases at the 5% rate on January 1, § 226.55(b)(1) permits the issuer to begin accruing interest at the 15% rate on July 1. However, if a consumer may not begin making purchases at the 5% rate until February 1, § 226.55(b)(1) does not permit the issuer to begin accruing interest at the 15% rate until August 1.

The Board understands that card issuers often limit the application of a promotional rate to particular categories of transactions (such as balance transfers or purchases over $100). The Board does not believe that the six-month requirement in new TILA Section 172(b) was intended to prohibit this practice so long as the consumer receives the benefit of the promotional rate for at least six months. Accordingly, proposed comment 55(b)(1)-2 clarifies that § 226.55(b)(1) does not prohibit these types of limitations. However, the comment also clarifies that, in circumstances where the card issuer limits application of the temporary rate to a particular transaction, the temporary rate must expire no less than six months after the date on which that transaction occurred. For example, if on January 1 a card issuer offers a 0% temporary rate on the purchase of an appliance and the consumer uses the account to purchase a $1,000 appliance on March 1, the card issuer cannot increase the rate on that $1,000 purchase until September 1.

The Board believes that this application of the six-month requirement is consistent with the intent of new TILA Section 172(b). Although the six-month requirement could be interpreted as requiring a separate six-month period for every transaction to which the temporary rate applies, the Board believes this interpretation would create a level of complexity that would be not only confusing for consumers but also operationally burdensome for card issuers, potentially leading to a reduction in promotional rate offers that provide significant consumer benefit.

As a general matter, commenters supported the guidance in comment 55(b)(1)-2. Some industry commenters argued that the six-month requirement should not apply when the temporary rate is limited to a particular transaction, but the Board finds no support for such an exclusion in new TILA Section 172(b). Other industry commenters argued that, even if a temporary rate is limited to a particular transaction, the six-month period required by § 226.55(b)(1) should always begin once the terms have been disclosed and the rate is available to consumers. However, because temporary rates that are limited to particular transactions are frequently offered in retail settings, the Board is concerned that many consumers would not receive the benefit of the six-month period mandated by Section 172(b) if that period began when the rate was available.

For example, assume that a temporary rate of 0% is available on the purchase of a television from a particular retailer beginning on January 1. If the six-month period begins on January 1, a consumer who purchases a television on January 1 will receive the benefit of 0% rate for six months. However, a consumer who purchases a television on June 1 will only receive the benefit of the 0% rate for one month. As discussed above, the Board believes that, as a general matter, the benefits of temporary rates that can be used for multiple transactions sufficiently outweigh the fact that a consumer will not receive the temporary rate for the full six months on every transaction and therefore justify interpreting the six-month period in new TILA Section 172(b) as beginning when the rate becomes available. However, when the temporary rate applies only to a single transaction, the Board believes that Section 172(b) requires the card issuer to apply the temporary rate to that transaction for at least six months.

Although some industry commenters cited the operational difficulty of tracking transaction-specific expiration dates for temporary rates, the Board notes that several card issuers do so today. Furthermore, as discussed in comment 55(b)-2, a card issuer is not required to increase the rate precisely six months after the date of the transaction. Instead, assuming monthly billing cycles, a card issuer could, for example, use a single expiration date of July 31 for all temporary rate transactions that occur during the month of January (although this would require the card issuer to extend the temporary rate for up to a month). Accordingly, in this respect, comment 55(b)(1)-2 is adopted as proposed.[49]

[49] However, in order to address confusion regarding the application of comment 55(b)(1)-2 to balance transfer offers, the Board has added an example clarifying that the six-month period for temporary rates that apply to multiple balance transfers begins once the terms have been disclosed and the rate is available

Comment 55(b)(1)-3 clarifies that the general prohibition in § 226.55(a) applies to the imposition of accrued interest upon the expiration of a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. As discussed in the January 2009 FTC Act Rule, the assessment of deferred interest is effectively an increase in rate on an existing balance. See 74 FR 5527-5528. However, if properly disclosed, deferred interest programs can provide substantial benefits to consumers. See 74 FR 20812-20813. Furthermore, as discussed above with respect to § 226.54, the Board does not believe that the Credit Card Act was intended to ban properly-disclosed deferred interest programs. Accordingly, comment 55(b)(1)-3 further clarifies that card issuers may continue to offer such programs consistent with the requirements of § 226.55(b)(1). In particular, § 226.55(b)(1) requires that the deferred interest or similar period be at least six months. Furthermore, prior to the commencement of the period, § 226.55(b)(1)(i) requires the card issuer to disclose the length of the period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the period. The comment provides examples illustrating the application of § 226.55 to deferred interest and similar programs.

Some industry commenters requested that the Board exclude deferred interest and similar programs from the six-month requirement in § 226.55(b)(1). However, because the Board has concluded that these programs should be treated as promotional programs for purposes of revised TILA Section 171, the Board does believe there is a basis for

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to consumers. The Board has also made non-substantive clarifications to the examples in comment 55(b)(1)-2.

excluding these programs from the six-month requirement in new TILA Section 172(b). However, in order to ensure consistent treatment of deferred interest programs across Regulation Z, the Board has revised comment 55(b)(1)-3 to clarify that "deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary. In addition, the Board has added an example clarifying the application of the exception in § 226.55(b)(4) for accounts that are more than 60 days delinquent to deferred interest and similar programs.

Comment 55(b)(1)-4 clarifies that § 226.55(b)(1) does not permit a card issuer to apply an increased rate that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion. The comment provides examples of rate increases that are not permitted by § 226.55. Some industry commenters requested that, when a reduced rate is provided to employees of a business, the Board permit application of an increased rate to existing balances when employment ends. However, the Board believes that such an exception would be inconsistent with revised TILA Section 171(b)(1) because it is based on a contingent event rather than a specified period of time.

55(b)(2) Variable Rate Exception

Revised TILA Section 171(b)(2) provides that a card issuer may increase "a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the card issuer's control and is available to the general public." The Board proposed to implement this exception in § 226.55(b)(2), which states that a creditor may increase an annual percentage rate that varies according to an index that is not under the creditor's control and is available to the general public when the increase in rate is due to an increase in the index. Section 226.55(b)(2) is adopted as proposed.

The proposed commentary to § 226.55(b)(2) was modeled on commentary adopted by the Board and the other Agencies in the January 2009 FTC Act Rule as well as § 226.5b(f) and its commentary. See 12 CFR 227.24 comments 24(b)(2)-1 through 6, 74 FR 5531, 5564; § 226.5b(f)(1), (3)(ii); comment 5b(f)(1)-1 and -2; comment 5b(f)(3)(ii)-1. Proposed comment 55(b)(2)-1 clarified that § 226.55(b)(2) does not permit a card issuer to increase a variable annual percentage rate by changing the method used to determine that rate (such as by increasing the margin), even if that change will not result in an immediate increase. However, consistent with existing comment 5b(f)(3)(v)-2, the comment also clarifies that a card issuer may change the day of the month on which index values are measured to determine changes to the rate. This comment is generally adopted as proposed, although the Board has clarified that that changes to the day on which index values are measured are permitted from time to time. As discussed below, systematic changes in the date to capture the highest possible index value would be inconsistent with § 226.55(b)(2).

Proposed comment 55(b)(1)–2 further clarified that a card issuer may not increase a variable rate based on its own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the Wall Street Journal, even if the card issuer's own prime rate is one of several rates used to establish the published rate. In addition, proposed comment 55(b)(2)-3 clarified that a publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the credit card account. These comments are adopted as proposed, except that, as discussed below, the Board has provided additional clarification in comment 55(b)(2)-2 regarding what constitutes exercising control over the operation of an index for purposes of § 226.55(b)(2).

Consumer groups and a member of Congress raised concerns about two industry practices that, in their view, exercise control over the variable rate in a manner that is inconsistent with revised TILA Section 171(b)(2). First, they noted that many card issuers set minimum rates or "floors" below which a variable rate cannot fall even if a decrease would be consistent with a change in the applicable index. For example, assume that a card issuer offers a variable rate of 17%, which is calculated by adding a margin of 12 percentage points to an index with a current value of 5%. However, the terms of the account provide that the variable rate will not decrease below 17%. As a result, the variable rate can only increase, and the consumer will not benefit if the value of the index falls below 5%. The Board agrees that this practice is inconsistent with § 226.55(b)(2). Accordingly, the Board has revised comment 55(b)(2)-2 to clarify that a card issuer exercises control over the operation of the index if the variable rate based on that index is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index.[50]

The second practice raised by consumer groups and a member of Congress relates to adjusting or resetting variable rates to account for changes in the index. Typically, card issuers do not reset variable rates on a daily basis. Instead, card issuers may reset variable rates monthly, every two months, or quarterly. When the rate is reset, some card

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[50] However, because there is no disadvantage to consumers, comment 55(b)(2)-2 clarifies that card issuers are permitted to set fixed maximum rates or "ceilings" that do not permit the variable rate to increase consistent with increases in an index.

issuers calculate the new rate by adding the margin to the value of the index on a particular day (such as the last day of a month or billing cycle). However, some issuers calculate the variable rate based on the highest index value during a period of time (such as the 90 days preceding the last day of a month or billing cycle). Consumer groups and a member of Congress argued that the latter practice is inconsistent with § 226.55(b)(2) insofar as the consumer can be prevented from receiving the benefit of decreases in the index.

The Board agrees that a card issuer exercises control over the operation of the index if the variable rate can be calculated based on any index value during a period of time. Accordingly, the Board has revised comment 55(b)(2)-2to clarify that, if the terms of the account contain such a provision, the card issuer cannot apply increases in the variable rate to existing balances pursuant to § 226.55(b)(2). However, the comment also clarifies that a card issuer can adjust the variable rate based on the value of the index on a particular day or, in the alternative, the average index value during a specified period.

Because the conversion of a non-variable rate to a variable rate could lead to future increases in the rate that applies to an existing balance, comment 55(b)(2)-4 clarifies that a non-variable rate may be converted to a variable rate only when specifically permitted by one of the exceptions in § 226.55(b). For example, under § 226.55(b)(1), a card issuer may convert a non-variable rate to a variable rate at the expiration of a specified period if this change was disclosed prior to commencement of the period. This comment is adopted as proposed.

Because § 226.55 applies only to <u>increases</u> in annual percentage rates, proposed comment 55(b)(2)-5 clarifies that nothing in § 226.55 prohibits a card issuer from changing a variable rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by § 226.9(c). An illustrative example is provided. Consumer group commenters argued that the Board should prohibit issuers from converting a variable rate to a non-variable rate when the index used to calculate the variable rate has reached its peak value. However, it would be difficult or impossible to develop workable standards for determining when a variable rate has reached its peak value or for distinguishing between conversions that are done for legitimate reasons and those that are not. Furthermore, as the consumer group commenters acknowledged, non-variable rates can be beneficial to consumers insofar as they provide increased predictability regarding the cost of credit. Accordingly, this comment is adopted as proposed.

Proposed comment 55(b)(2)-6 clarified that a card issuer may change the index and margin used to determine a variable rate if the original index becomes unavailable, so long as historical fluctuations in the original and replacement indices were substantially similar and the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. This comment further clarified that, if the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

Consumer group commenters raised concerns that card issuers could substitute indices in a manner that circumvents the requirements of § 226.55(b)(2). Because comment 55(b)(2)-6 addresses the narrow circumstance in which an index becomes unavailable, the Board does not believe there is a significant risk of abuse. Indeed, this comment is substantively similar to long-standing guidance provided by the Board with respect to HELOCs (comment 5b(f)(3)(ii)-1), and the Board is not aware of any abuse in that context. Accordingly, the Board does not believe that revisions to comment 55(b)(2)-6 are warranted at this time.

55(b)(3) Advance Notice Exception

Section 226.55(a) prohibits increases in annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) with respect to both existing balances and new transactions. However, as discussed above, the prohibition on increases in rates, fees, and finance charges in revised TILA Section 171 applies only to "outstanding balances" as defined in Section 171(d). Accordingly, § 226.55(b)(3) provides that a card issuer may generally increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) with respect to new transactions after complying with the notice requirements in § 226.9(b), (c), or (g).

Because § 226.9 applies different notice requirements in different circumstances, § 226.55(b)(3) clarifies that the transactions to which an increased rate, fee, or charge may be applied depend on the type of notice required. As a general matter, when an annual percentage rate, fee, or charge is increased pursuant to § 226.9(c) or (g), § 226.55(b)(3)(ii) provides that the card issuer must not apply the increased rate, fee, or charge to transactions that occurred within fourteen days after provision of the notice. This is consistent with revised TILA Section 171(d), which defines the outstanding balance to which an increased rate, fee, or finance charge may not be applied as the amount due at the end of the fourteenth day after notice of the increase is provided.

However, pursuant to its authority under TILA Section 105(a), the Board has adopted a different approach for increased rates, fees, and charges disclosed pursuant to § 226.9(b). As discussed in the July 2009 Regulation Z Interim Final Rule, the Board believes that the fourteen-day period is intended, in part, to ensure that an increased rate, fee, or charge will not apply to transactions that occur before the consumer has received the notice of the increase and had a reasonable amount of time to review it and decide whether to engage in transactions to which the increased rate, fee, or charge will apply. See 74 FR 36090. The Board does not believe that a fourteen-day period is necessary for increases disclosed pursuant to § 226.9(b), which requires card issuers to disclose any new finance charge terms applicable to supplemental access devices (such as convenience checks) and additional features added to the account after account opening before the consumer uses the device or feature for the first time. For example, § 226.9(b)(3)(i)(A) requires that card issuers providing checks that access a credit card account to which a temporary promotional rate applies disclose key terms on the front of the page containing the checks, including the promotional rate, the period during which the promotional rate will be in effect, and the rate that will apply after the promotional rate expires. Thus, unlike increased rates, fees, and charges disclosed pursuant to a § 226.9(c) and (g) notice, the fourteen-day period is not necessary for increases disclosed pursuant to § 226.9(b) because the device or feature will not be used before the consumer has received notice of the applicable terms. Accordingly, § 226.55(b)(3)(i) provides that, if a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to

§ 226.9(b), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to provision of the notice.

Finally, § 226.55(b)(3)(iii) provides that the exception in § 226.55(b)(3) does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after the credit card account is opened. This provision implements new TILA Section 172(a), which generally prohibits increases in annual percentage rates, fees, and finance charges during the one-year period beginning on the date the account is opened.

The Board did not receive significant comment regarding § 226.55(b)(3). Thus, the final rules adopts § 226.55(b)(3) as proposed. Similarly, except as discussed below, the Board has generally adopted the commentary to § 226.55(b)(3) as proposed, although the Board has made some non-substantive clarifications.

Comment 55(b)(3)-1 clarifies that a card issuer may not increase a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to § 226.55(b)(3) if the consumer has rejected the increased fee or charge pursuant to § 226.9(h). In addition, comment 55(b)(3)-2 clarifies that, if an increased annual percentage rate, fee, or charge is disclosed pursuant to both § 226.9(b) and (c), the requirements in § 226.55(b)(3)(ii) control and the rate, fee, or charge may only be applied to transactions that occur more than fourteen days after provision of the § 226.9(c) notice.

Comment 55(b)(3)-3 clarifies whether certain changes to a credit card account constitute an "account opening" for purposes of the prohibition in § 226.55(b)(3)(iii) on increasing annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening. In particular, the comment distinguishes between circumstances in which a card issuer opens multiple accounts for the same consumer and circumstances in which a card issuer substitutes, replaces, or consolidates one account with another. As an initial matter, this comment clarifies that, when a consumer has a credit card account with a card issuer and the consumer opens a new credit card account with the same card issuer (or its affiliate or subsidiary), the opening of the new account constitutes the opening of a credit card account for purposes of § 226.55(b)(3)(iii) if, more than 30 days after the new account is opened, the consumer has the option to obtain additional extensions of credit on each account. Thus, for example, if a consumer opens a credit card account with a card issuer on January 1 of year one and opens a second credit card account with that card issuer on July 1 of year one, the opening of the second account constitutes an account opening for purposes of § 226.55(b)(3)(iii) so long as, on August 1, the consumer has the option to engage in transactions using either account. This is the case even if the consumer transfers a balance from the first account to the second. Thus, because the card issuer has two separate account relationships with the consumer, the prohibition in § 226.55(b)(3)(iii) on increasing annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening applies to the opening of the second account.[51]

[51] This comment is based on commentary to the January 2009 FTC Act Rule proposed by the Board and the other Agencies in May 2009. See 12 CFR 227.24, proposed comment 24-4, 74 FR 20816; see also 74 FR 20809. In that proposal, the Board recognized that the process of replacing one account with another generally is not instantaneous. If, for example, a consumer requests that a credit card account with a $1,000 balance be upgraded to a credit card account that offers rewards on purchases, the second account may be opened immediately or within a few days but, for operational reasons, there may be a delay before the $1,000 balance can be transferred and the first account can be closed. For this reason, the Board sought comment on whether 15 or 30 days was the appropriate amount of time to complete this process. In response, industry commenters generally stated that at least 30 days was required. Accordingly, the Board proposed a 30-day period in comment 55(b)(3)-3. The Board did not receive additional comment on this issue. Accordingly, the 30-day period is adopted in the final rule.

In contrast, the comment clarifies that an account has not been opened for purposes of § 226.55(b)(3)(iii) when a card issuer substitutes or replaces one credit card account with another credit card account (such as when a retail credit card is replaced with a cobranded general purpose card that can be used at a wider number of merchants) or when a card issuer consolidates or combines a credit card account with one or more other credit card accounts into a single credit card account. As discussed below with respect to proposed § 226.55(d)(2), the Board believes that these transfers should be treated as a continuation of the existing account relationship rather than the creation of a new account relationship. Similarly, the comment also clarifies that the substitution or replacement of an acquired credit card account does not constitute an "account opening" for purposes of § 226.55(b)(3)(iii). Thus, in these circumstances, the prohibition in § 226.55(b)(3)(iii) does not apply. However, when a substitution, replacement or consolidation occurs during the first year after account opening, comment 55(b)(3)-3.ii.B clarifies that the card issuer may not increase an annual percentage rate, fee, or charge in a manner otherwise prohibited by § 226.55.[52]

Comment 55(b)(3)-4 provides illustrative examples of the application of the exception in proposed § 226.55(b)(3). Comment 55(b)(3)-5 contains a cross-reference to comment 55(c)(1)-3, which clarifies the circumstances in which increased fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) may be imposed consistent with § 226.55.

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[52] For example, assume that, on January 1 of year one, a consumer opens a credit card account with a purchase rate of 15%. On July 1 of year one, the account is replaced with a credit card account issued by the same card issuer, which offers different features (such as rewards on purchases). Under these circumstances, the card issuer could not increase the annual percentage rate for purchases to a rate that is higher than 15% pursuant to § 226.55(b)(3) until January 1 of year two (which is one year after the first account was opened).

55(b)(4) Delinquency Exception

Revised TILA Section 171(b)(4) permits a creditor to increase an annual percentage rate, fee, or finance charge “due solely to the fact that a minimum payment by the [consumer] has not been received by the creditor within 60 days after the due date for such payment.” However, this exception is subject to two conditions. First, revised Section 171(b)(4)(A) provides that the notice of the increase must include “a clear and conspicuous written statement of the reason for the increase and that the increase will terminate not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time from the [consumer] during that period.” Second, revised Section 171(b)(4)(B) provides that the creditor must “terminate [the] increase not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period.”

The Board has implemented this exception in § 226.55(b)(4). The additional notice requirements in revised TILA Section 171(b)(4)(A) are set forth in § 226.55(b)(4)(i). The requirement in revised Section 171(b)(4)(B) that the increase be terminated if the card issuer receives timely payments during the six months following the increase is implemented in § 226.55(b)(4)(ii), although the Board proposed to make four adjustments to the statutory requirement pursuant to its authority under TILA Section 105(a) to make adjustments to effectuate the purposes of TILA and to facilitate compliance therewith.

First, proposed § 226.55(b)(4)(ii) interpreted the requirement that the creditor “terminate” the increase as a requirement that the card issuer reduce the annual percentage rate, fee, or charge to the rate, fee, or charge that applied prior to the increase.

The Board believes that this interpretation is consistent with the intent of revised TILA Section 171(b)(4)(B) insofar as the increased rate, fee, or charge will cease to apply once the consumer has met the statutory requirements. The Board does not interpret revised TILA Section 171(b)(4)(B) to require the card issuer to refund or credit the account for amounts charged as a result of the increase prior to the termination or cessation. The Board did not receive significant comment on this aspect of the proposal, which is adopted in the final rule.

Second, proposed § 226.55(b)(4)(ii) provided that the card issuer must reduce the annual percentage rate, fee, or charge after receiving six consecutive required minimum periodic payments on or before the payment due date. The Board believes that shifting the focus from the number of months to the number of on-time payments provides more specificity and clarity for both consumers and card issuers as to what is required to obtain the reduction. Because credit card accounts typically require payment on a monthly basis,[53] a consumer who makes six consecutive on-time payments will also generally have paid on time for six months. However, card issuers are permitted to adjust their due dates and billing cycles from time to time,[54] which could create uncertainty regarding whether a consumer has complied with the statutory requirement to make on-time payments during the six-month period. The Board did not receive significant comment on this proposed adjustment. Accordingly, because the Board believes that this adjustment to TILA Section 171(b)(4) will facilitate compliance with that provision, it is adopted in the final rule.

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[53] Although some creditors use quarterly billing cycles for other open-end products, the Board is not aware of any creditor that does so with respect to credit card accounts under open-end (not home-secured) consumer credit plans.

[54] See, e.g., comments 2(a)(4)-3 and 7(b)(11)-7.

Third, proposed § 226.55(b)(4)(ii) applied to the six consecutive required minimum periodic payments received on or before the payment due date beginning with the first payment due following the effective date of the increase. The Board believes that limiting this requirement to the period immediately following the increase is consistent with revised TILA Section 171(b)(4)(B), which requires a creditor to terminate an increase "6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period." Thus, as clarified in comment 55(b)(4)-3 (which is discussed below), § 226.55(b)(4)(ii) does not require a card issuer to terminate an increase if, at some later point in time, the card issuer receives six consecutive required minimum periodic payments on or before the payment due date. The Board did not receive significant comment on this interpretation, which is adopted in the final rule.

Fourth, proposed § 226.55(b)(4)(ii) provided that the card issuer must also reduce the annual percentage rate, fee, or charge with respect to transactions that occurred within fourteen days after provision of the § 226.9(c) or (g) notice. This requirement is consistent with the definition of "outstanding balance" in revised TILA Section 171(d), as applied in § 226.55(b)(1)(ii)(B) and § 226.55(b)(3)(ii). As above, the Board did not receive significant comment on this aspect of the proposal, which is adopted in the final rule.

Accordingly, for the reasons discussed above, § 226.55(b)(4) is adopted as proposed. Similarly, except as discussed below, the Board has adopted the commentary to § 226.55(b)(4) as proposed (with certain non-substantive clarifications).

Comment 55(b)(4)-1 clarifies that, in order to satisfy the condition in § 226.55(b)(4) that the card issuer has not received the consumer's required minimum periodic payment within 60 days after the payment due date, a card issuer that requires monthly minimum payments generally must not have received two consecutive minimum payments. The comment further clarifies that whether a required minimum periodic payment has been received for purposes of § 226.55(b)(4) depends on whether the amount received is equal to or more than the first outstanding required minimum periodic payment. The comment provides the following example: Assume that the required minimum periodic payments for a credit card account are due on the fifteenth day of the month. On May 13, the card issuer has not received the $50 required minimum periodic payment due on March 15 or the $150 required minimum periodic payment due on April 15. If the card issuer receives a $50 payment on May 14, § 226.55(b)(4) does not apply because the payment is equal to the required minimum periodic payment due on March 15 and therefore the account is not more than 60 days delinquent. However, if the card issuer instead received a $40 payment on May 14, § 226.55(b)(4) does apply because the payment is less than the required minimum periodic payment due on March 15. Furthermore, if the card issuer received the $50 payment on May 15, § 226.55(b)(4) applies because the card issuer did not receive the required minimum periodic payment due on March 15 within 60 days after the due date for that payment.

As discussed above, § 226.9(g)(3)(i)(B) requires that the written notice provided to consumers 45 days before an increase in rate due to delinquency or default or as a penalty include the information required by revised Section 171(b)(4)(A). Accordingly, comment 55(b)(4)-2 clarifies that a card issuer that has complied with the disclosure requirements in § 226.9(g)(3)(i)(B) has also complied with the disclosure requirements in § 226.55(b)(4)(i).

Comment 55(b)(4)-3 clarifies the requirements in § 226.55(b)(4)(ii) regarding the reduction of annual percentage rates, fees, or charges that have been increased pursuant to § 226.55(b)(4). First, as discussed above, the comment clarifies that § 226.55(b)(4)(ii) does not apply if the card issuer does not receive six consecutive required minimum periodic payments on or before the payment due date beginning with the payment due immediately following the effective date of the increase, even if, at some later point in time, the card issuer receives six consecutive required minimum periodic payments on or before the payment due date.

Second, the comment states that, although § 226.55(b)(4)(ii) requires the card issuer to reduce an annual percentage rate, fee, or charge increased pursuant to § 226.55(b)(4) to the annual percentage rate, fee, or charge that applied prior to the increase, this provision does not prohibit the card issuer from applying an increased annual percentage rate, fee, or charge consistent with any of the other exceptions in § 226.55(b). For example, if a temporary rate applied prior to the § 226.55(b)(4) increase and the temporary rate expired before a reduction in rate pursuant to § 226.55(b)(4), the card issuer may apply an increased rate to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to the § 226.55(b)(4) increase, the card issuer may apply any increase in that variable rate to the extent consistent with § 226.55(b)(2). This is consistent with § 226.55(b), which provides that a card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to one of the exceptions in § 226.55(b) even if that increase would not be permitted under a different exception.

Third, the comment states that, if § 226.55(b)(4)(ii) requires a card issuer to reduce an annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the reduced rate, fee, or charge until the first day of the following billing cycle. As discussed above with respect to comment 55(b)-2, the Board understands that it may be operationally difficult for some card issuers to reduce a rate, fee, or charge in the middle of a billing cycle. Accordingly, this comment is consistent with comment 55(b)-2, which clarifies that a card issuer may delay application of an increase in a rate, fee, or charge until the start of the next billing cycle without relinquishing its ability to apply that rate, fee, or charge. Finally, the comment provides examples illustrating the application of § 226.55(b)(4)(ii).[55]

55(b)(5) Workout and Temporary Hardship Arrangement Exception

Revised TILA Section 171(b)(3) permits a creditor to increase an annual percentage rate, fee, or finance charge "due to the completion of a workout or temporary hardship arrangement by the [consumer] or the failure of a [consumer] to comply with the terms of a workout or temporary hardship arrangement." However, like the exception for delinquencies of more than 60 days in revised TILA Section 171(b)(4), this exception is subject to two conditions. First, revised Section 171(b)(3)(A) provides that "the annual percentage rate, fee, or finance charge applicable to a category of transactions following any such increase does not exceed the rate, fee, or finance charge that applied to that

[55] In response to requests for clarification, the Board has added an example to comment 55(b)(4)-3 illustrating the application of § 226.55(b)(4)(ii) when a consumer qualifies for a reduction in rate while a temporary rate is still in effect. In addition, the Board has added a cross-reference to comment 55(b)(1)-3, which provides an illustrative example of the application of § 226.55(b)(4) to deferred interest or similar programs.

category of transactions prior to commencement of the arrangement." Second, revised Section 171(b)(3)(B) provides that the creditor must have "provided the [consumer], prior to the commencement of such arrangement, with clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure)."

The Board proposed to implement this exception in § 226.55(b)(5). The notice requirements in revised Section 171(b)(3)(B) were set forth in proposed § 226.55(b)(5)(i). The limitation on increases following completion or failure of a workout or temporary hardship arrangement was set forth in proposed § 226.55(b)(5)(ii). Section 226.55(b)(5) is generally adopted as proposed, although – as discussed below – the Board has revised § 226.55(b)(5)(i) and comment 55(b)(5)-2 for consistency with the revisions to the notice requirements for workout and temporary hardship arrangements in § 226.9(c)(2)(v)(D). Otherwise, the commentary to § 226.55(b)(5) is adopted as proposed.

Comment 55(b)(5)-1 clarifies that nothing in § 226.55(b)(5) permits a card issuer to alter the requirements of § 226.55 pursuant to a workout or temporary hardship arrangement. For example, a card issuer cannot increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to a workout or temporary hardship arrangement unless otherwise permitted by § 226.55. In addition, a card issuer cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under § 226.55(c).[56]

Comment 55(b)(5)-2 clarifies that a card issuer that has complied with the disclosure requirements in § 226.9(c)(2)(v)(D) has also complied with the disclosure

[56] The definition of "protected balance" and the permissible repayment methods for such a balance are discussed in detail below with respect to § 226.55(c).

requirements in § 226.55(b)(5)(i). The comment also contains a cross-reference to proposed comment 9(c)(2)(v)-10 (formerly comment 9(c)(2)(v)-8), which the Board adopted in the July 2009 Regulation Z Interim Final Rule to clarify the terms a creditor is required to disclose prior to commencement of a workout or temporary hardship arrangement for purposes of § 226.9(c)(2)(v)(D), which is an exception to the general requirement that a creditor provide 45 days advance notice of an increase in annual percentage rate. See 74 FR 36099. Because the disclosure requirements in § 226.9(c)(2)(v)(D) and § 226.55(b)(5)(i) implement the same statutory provision (revised TILA Section 171(b)(3)(B)), the Board believes a single set of disclosures should satisfy the requirements of all three provisions. The Board has revised the disclosure requirement in § 226.55(b)(5)(i) and the guidance in comment 55(b)(5)-2 for consistency with the revisions to § 226.9(c)(2)(v)(D), which permit creditors to disclose the terms of the workout or temporary hardship arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms as soon as reasonably practicable after the oral disclosure is provided.

Similar to the commentary to § 226.55(b)(4), comment 55(b)(5)-3 states that, although the card issuer may not apply an annual percentage rate, fee, or charge to transactions that occurred prior to commencement of the arrangement that exceeds the rate, fee, or charge that applied to those transactions prior to commencement of the arrangement, § 226.55(b)(5)(ii) does not prohibit the card issuer from applying an increased rate, fee, or charge upon completion or failure of the arrangement to the extent consistent with any of the other exceptions in § 226.55(b) (such as an increase in a variable rate consistent with § 226.55(b)(2)). Finally, comment 55(b)(5)-4 provides illustrative examples of the application of this exception.[57]

<u>55(b)(6) Servicemembers Civil Relief Act Exception</u>

In the October 2009 Regulation Z Proposal, the Board proposed to use its authority under TILA Section 105(a) to clarify the relationship between the general prohibition on increasing annual percentage rates in revised TILA Section 171 and certain provisions of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 <u>et seq</u>. Specifically, 50 U.S.C. app. 527(a)(1) provides that "[a]n obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent. * * *" With respect to credit card accounts, this restriction applies during the period of military service. <u>See</u> 50 U.S.C. app. 527(a)(1)(B).[58]

Under revised TILA Section 171, a creditor that complies with the SCRA by lowering the annual percentage rate that applies to an existing balance on a credit card account when the consumer enters military service arguably would not be permitted to increase the rate for that balance once the period of military service ends and the protections of the SCRA no longer apply. In May 2009, the Board and the other Agencies proposed to create an exception to the general prohibition in the January 2009 FTC Act Rule on applying increased rates to existing balances for these circumstances, provided that the increased rate does not exceed the rate that applied prior to the period of

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[57] In response to requests for clarifications, the Board has revised comment 55(b)(5)-4 to provide an example of the application of § 226.55(b)(5) to fees.

[58] 50 U.S.C. app. 527(a)(1)(B) applies to obligations or liabilities that do not consist of a mortgage, trust deed, or other security in the nature of a mortgage.

military service. See 12 CFR 227.24(b)(6), 74 FR 20814; see also 74 FR 20812. Revised TILA Section 171 does not contain a similar exception.

Nevertheless, the Board does not believe that Congress intended to prohibit creditors from returning an annual percentage rate that has been reduced by operation of the SCRA to its pre-military service level once the SCRA no longer applies. Accordingly, the Board proposed to create § 226.55(b)(6), which states that, if an annual percentage rate has been decreased pursuant to the SCRA, a card issuer may increase that annual percentage rate once the SCRA no longer applies. However, the proposed rule would not have permitted the card issuer to apply an annual percentage rate to any transactions that occurred prior to the decrease that exceeds the rate that applied to those transactions prior to the decrease. Furthermore, because the Board believes that a consumer leaving military service should receive 45 days advance notice of this increase in rate, the Board did not propose a corresponding exception to § 226.9.

Commenters were generally supportive of proposed § 226.55(b)(6). Accordingly, it is adopted as proposed. However, although industry commenters argued that a similar exception should be adopted in § 226.9(c), the Board continues to believe – as discussed above with respect to § 226.9(c) – that consumers who leave military service should receive 45 days advance notice of an increase in rate.

The Board has also adopted the commentary to § 226.55(b)(6) as proposed. Comment 55(b)(6)-1 clarifies that, although § 226.55(b)(6) requires the card issuer to apply to any transactions that occurred prior to a decrease in annual percentage rate pursuant to 50 U.S.C. app. 527 a rate that does not exceed the rate that applied to those transactions prior to the decrease, the card issuer may apply an increased rate once 50

U.S.C. app 527 no longer applies, to the extent consistent with any of the other exceptions in § 226.55(b). For example, if the rate that applied prior to the decrease was a variable rate, the card issuer may apply any increase in that variable rate to the extent consistent with § 226.55(b)(2). This comment mirrors similar commentary to § 226.55(b)(4) and (b)(5). An illustrative example is provided in comment 26(b)(6)-2.

55(c) Treatment of Protected Balances

Revised TILA Section 171(c)(1) states that "[t]he creditor shall not change the terms governing the repayment of any outstanding balance, except that the creditor may provide the [consumer] with one of the methods described in [revised Section 171(c)(2)] . . . or a method that is no less beneficial to the [consumer] than one of those methods." Revised TILA Section 171(c)(2) lists two methods of repaying an outstanding balance: first, an amortization period of not less than five years, beginning on the effective date of the increase set forth in the Section 127(i) notice; and, second, a required minimum periodic payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of the increase set forth in the Section 127(i) notice.

For clarity, § 226.55(c)(1) defines the balances subject to the protections in revised TILA Section 171(c) as "protected balances." Under this definition, a "protected balance" is the amount owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) cannot be applied after the annual percentage rate, fee, or charge for that category of transactions has been increased pursuant to § 226.55(b)(3). For example, when a card issuer notifies a consumer of an increase in the annual percentage rate that applies to new purchases pursuant to § 226.9(c), the protected balance is the purchase balance at the end of the fourteenth day after provision of the notice. See § 226.55(b)(3)(ii). The Board and the other Agencies adopted a similar definition in the January 2009 FTC Act Rule. See 12 CFR 227.24(c), 74 FR 5560; see also 74 FR 5532. The Board did not receive significant comment on § 226.55(c)(1), which is adopted as proposed.

Comment 55(c)(1)-1 provides an illustrative example of a protected balance. Comment 55(c)(1)-2 clarifies that, because § 226.55(b)(3)(iii) does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening, § 226.55(c) does not apply to balances during the first year after account opening. These comments are adopted as proposed.

Comment 55(c)(1)-3 clarifies that, although § 226.55(b)(3) does not permit a card issuer to apply an increased fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) to a protected balance, a card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. For example, a card issuer may add a new annual or a monthly maintenance fee to an account or increase such a fee so long as the fee is not based solely on the protected balance. However, if the consumer rejects an increase in a fee or charge pursuant to § 226.9(h), the card issuer is prohibited from applying the increased fee or charge to the account and from imposing any other fee or charge solely as a result of the rejection. See § 226.9(h)(2)(i) and (ii); comment 9(h)(2)(ii)-2.

Proposed § 226.55(c)(2) would have implemented the restrictions on accelerating the repayment of protected balances in revised TILA Section 171(c). As discussed above with respect to § 226.9(h), the Board previously implemented these restrictions in the July 2009 Regulation Z Interim Final Rule as § 226.9(h)(2)(iii). However, for clarity and consistency, the Board proposed to move these restrictions to § 226.55(c)(2). The Board did not propose to substantively alter the repayment methods in § 226.9(h)(2)(iii), except that the repayment methods in § 226.55(c)(2) focused on the effective date of the increase (rather than the date on which the card issuer is notified of the rejection pursuant to § 226.9(h)). The Board did not receive significant comment on § 226.55(c)(2), which is adopted as proposed.

Similarly, for the reasons discussed above with respect to § 226.9(h), the Board proposed to move the commentary clarifying the application of the repayment methods from § 226.9(h)(2)(iii) to § 226.55(c) and to adjust that commentary for consistency with § 226.55(c). In addition, proposed comment 55(c)(2)(iii)-1 clarified that, although § 226.55(c)(2)(iii) limits the extent to which the portion of the required minimum periodic payment based on the protected balance may be increased, it does not limit or otherwise address the creditor's ability to determine the amount of the required minimum periodic payment based on other balances on the account or to apply that portion of the minimum payment to the balances on the account. Proposed comment 55(c)(2)(iii)-2 provided an illustrative example. These comments are adopted as proposed.

55(d) Continuing Application of § 226.55

Pursuant to its authority under TILA Section 105(a), the Board proposed to adopt § 226.55(d), which provided that the limitations in § 226.55 continue to apply to a balance on a credit card account after the account is closed or acquired by another card issuer or the balance is transferred from a credit card account issued by a card issuer to another credit account issued by the same card issuer or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 226.5b). This provision is based on commentary to the January 2009 FTC Act Rule proposed by the Board and the other Agencies in May 2009, primarily in response to concerns that permitting card issuers to apply an increased rate to an existing balance in these circumstances could lead to circumvention of the general prohibition on such increases. See 12 CFR 227.21 comments 21(c)-1 through -3, 74 FR 20814-20815; see also 74 FR 20805-20807. As discussed below, § 226.55(d) and its commentary are adopted as proposed.

Because the protections in revised TILA Section 171 and new TILA Section 172 cannot be waived or forfeited, § 226.55(d) does not distinguish between closures or transfers initiated by the card issuer and closures or transfers initiated by the consumer. Although there may be circumstances in which individual consumers could make informed choices about the benefits and costs of waiving the protections in revised Section 171 and new Section 172, an exception for those circumstances would create a significant loophole that could be used to deny the protections to other consumers. For example, if a card issuer offered to transfer its cardholder's existing balance to a credit product that would reduce the rate on the balance for a period of time in exchange for the cardholder accepting a higher rate after that period, the cardholder would have to determine whether the savings created by the temporary reduction would offset the cost of the subsequent increase, which would depend on the amount of the balance, the amount and length of the reduction, the amount of the increase, and the length of time it would take the consumer to pay off the balance at the increased rate. Based on extensive consumer testing conducted during the preparation of the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule, the Board believes that it would be very difficult to ensure that card issuers disclosed this information in a manner that will enable most consumers to make informed decisions about whether to accept the increase in rate. Although some approaches to disclosure may be effective, others may not and it would be impossible to distinguish among such approaches in a way that would provide clear guidance for card issuers. Furthermore, consumers might be presented with choices that are not meaningful (such as a choice between accepting a higher rate on an existing balance or losing credit privileges on the account).

Section 226.55(d)(1) provides that § 226.55 continues to apply to a balance on a credit card account after the account is closed or acquired by another card issuer. In some cases, the acquiring institution may elect to close the acquired account and replace it with its own credit card account. See comment 12(a)(2)-3. The acquisition of an account does not involve any choice on the part of the consumer, and the Board believes that consumers whose accounts are acquired should receive the same level of protection against increases in annual percentage rates after acquisition as they did beforehand.[59] Comment 55(d)-1 clarifies that § 226.55 continues to apply regardless of whether the account is closed by the consumer or the card issuer and provides illustrative examples of the application of § 226.55(d)(1). Comment 55(d)-2 clarifies the application of § 226.55(d)(1) to circumstances in which a card issuer acquires a credit card account with

[59] Thus, as discussed in the commentary to § 226.55(b)(2), a card issuer that acquires a credit card account with a balance to which a variable rate applies generally would not be permitted to substitute a new index for the index used the determine the variable rate if the change could result in an increase in the annual percentage rate. However, the commentary to § 226.55(b)(2) does clarify that a card issuer that does not utilize the index used to determine the variable rate for an acquired balance may convert that rate to an equal or lower non-variable rate, subject to the notice requirements of § 226.9(c).

a balance by, for example, merging with or acquiring another institution or by purchasing another institution's credit card portfolio.

Section 226.55(d)(2) provides that § 226.55 continues to apply to a balance on a credit card account after the balance is transferred from a credit card account issued by a card issuer to another credit account issued by the same card issuer or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 226.5b). Comment 55(d)-3.i provides examples of circumstances in which balances may be transferred from one credit card account issued by a card issuer to another credit card account issued by the same card issuer (or its affiliate or subsidiary), such as when the consumer's account is converted from a retail credit card that may only be used at a single retailer or an affiliated group of retailers to a co-branded general purpose credit card which may be used at a wider number of merchants. Because of the concerns discussed above regarding circumvention and informed consumer choice and for consistency with the issuance rules regarding card renewals or substitutions for accepted credit cards under § 226.12(a)(2), the Board believes – and § 226.55(d)(2) provides – that these transfers should be treated as a continuation of the existing account relationship rather than the creation of a new account relationship. See comment 12(a)(2)-2.

Section 226.55(d)(2) does not apply to balances transferred from a credit card account issued by a card issuer to a credit account issued by the same card issuer (or its affiliate or subsidiary) that is subject to § 226.5b (which applies to open-end credit plans secured by the consumer's dwelling). The Board believes that excluding transfers to such accounts is appropriate because § 226.5b provides protections that are similar to – and, in some cases, more stringent than – the protections in § 226.55. For example, a card issuer may not change the annual percentage rate on a home-equity plan unless the change is based on an index that is not under the card issuer's control and is available to the general public. See 12 CFR 226.5b(f)(1).

Comment 55(d)-3.ii clarifies that, when a consumer chooses to transfer a balance to a credit card account issued by a different card issuer, § 226.55 does not prohibit the card issuer to which the balance is transferred from applying its account terms to that balance, provided those terms comply with 12 CFR part 226. For example, if a credit card account issued by card issuer A has a $1,000 purchase balance at an annual percentage rate of 15% and the consumer transfers that balance to a credit card account with a purchase rate of 17% issued by card issuer B, card issuer B may apply the 17% rate to the $1,000 balance. However, card issuer B may not subsequently increase the rate that applies to that balance unless permitted by one of the exceptions in § 226.55(b).

Although balance transfers from one card issuer to another raise some of the same concerns as balance transfers involving the same card issuer, the Board believes that transfers between card issuers are not contrary to the intent of revised TILA Section 171 and § 226.55 because the card issuer to which the balance is transferred is not increasing the cost of credit it previously extended to the consumer. For example, assume that card issuer A has extended a consumer $1,000 of credit at a rate of 15%. Because § 226.55 generally prohibits card issuer A from increasing the rate that applies to that balance, it would be inconsistent with § 226.55 to allow card issuer A to reprice that balance simply by transferring it to another of its accounts. In contrast, in order for the $1,000 balance to be transferred to card issuer B, card issuer B must provide the consumer with a new $1,000 extension of credit in an arms-length transaction and should be permitted to price that new extension consistent with its evaluation of prevailing market rates, the risk presented by the consumer, and other factors. Thus, the transfer from card issuer A to card issuer B does not appear to raise concerns about circumvention of proposed § 226.55 because card issuer B is not increasing the cost of credit it previously extended.

Consumer groups and some industry commenters supported proposed § 226.55(d). However, the Board understands from industry comments received regarding both the May 2009 and October 2009 proposals that drawing a distinction between balance transfers involving the same card issuer and balance transfers involving different card issuers may limit a card issuer's ability to offer its existing cardholders the same terms that it would offer another issuer's cardholders. As noted in those proposals, however, the Board understands that currently card issuers generally do not make promotional balance transfer offers available to their existing cardholders for balances held by the issuer because it is not cost-effective to do so. Furthermore, although many card issuers do offer existing cardholders the opportunity to upgrade to accounts offering different terms or features (such as upgrading to an account that offers a particular type of rewards), the Board understands that these offers generally are not conditioned on a balance transfer, which indicates that it may be cost-effective for card issuers to make these offers without repricing an existing balance. The comments opposing § 226.55(d) do not lead the Board to a different understanding. Accordingly, the Board continues to believe that § 226.55(d) will benefit consumers overall.

~~Section 226.56 Requirements for Over-the-Limit Transactions~~

~~When a consumer seeks to engage in a credit card transaction that may cause his or her credit limit to be exceeded, the creditor may, at its discretion, authorize the over-~~