~~between any such entities." Proposed comment 57(d)(3)-1 clarified what types of documents would be considered memoranda of understanding for purposes of this requirement, by providing that a memorandum of understanding includes any document that amends the college credit card agreement, or that constitutes a further agreement between the parties as to the interpretation or administration of the agreement, and by providing of examples of documents that would or would not be included. The Board received no comments regarding what types of documents should be considered memoranda of understanding, and comment 57(d)(3)-1, redesignated as comment 57(d)(2)-1, is adopted as proposed.~~

~~Additional details regarding the submission process are provided in the Consumer and College Credit Card Agreement Submission Technical Specifications Document, which is published as Attachment I to this **Federal Register** notice and which will be available on the Board's public Web site.~~

Section 226.58 Internet Posting of Credit Card Agreements

Section 204 of the Credit Card Act adds new TILA Section 122(d) to require creditors to post agreements for open-end consumer credit card plans on the creditors' Web sites and to submit those agreements to the Board for posting on a publicly-available Web site established and maintained by the Board. 15 U.S.C. 1632(d). The Board proposed to implement these provisions in proposed § 226.58 with additional guidance included in proposed Appendix N. As discussed below, proposed § 226.58 is adopted with modifications. Proposed Appendix N has been eliminated from the final rule, but the provisions of proposed Appendix N, with certain modifications, have been incorporated into § 226.58.

The final rule requires that card issuers post on their Web sites, so as to be available to the public generally, the credit card agreements they offer to the public. Issuers must also submit these agreements to the Board quarterly for posting on the Board's public Web site. However, under the final rule, as proposed, issuers are not required to post on their publicly available Web sites, or to submit to the Board, credit card agreements that are no longer offered to the public, even if the issuer still has credit card accounts open under such agreements.

In addition, the final rule requires that issuers post on their Web sites, or otherwise make available upon request by the cardholder, all of their agreements for open credit card accounts, whether or not such agreements are currently offered to the public. Thus, any cardholder will be able to access a copy of his or her own credit card agreement. Agreements posted (or otherwise made available) under this provision in the final rule may contain personally identifiable information relating to the cardholder, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons. In contrast, the agreements that are currently offered to the public and that must be posted on the issuer's Web site (and submitted to the Board) may not contain personally identifiable information.

The final rule also contains, as proposed, a de minimis exception from the requirement to post on issuers' publicly available Web sites, and submit to the Board for posting on the Board's public Web site, agreements currently offered to the public. The de minimis exception applies to issuers with fewer than 10,000 open credit card accounts. The final rule also contains exceptions for private label plans offered on behalf of a single merchant or a group of affiliated merchants and for plans that are offered in order to test a new credit card product, provided that in each case the plan involves no more than 10,000

credit card accounts. However, none of these exceptions applies to the requirement that issuers make available by some means upon request all of their credit card agreements for their open credit card accounts, whether or not currently offered to the public.

58(a) Applicability

The Board proposed to make § 226.58 applicable to any card issuer that issues credit cards under a credit card account under an open-end (not home-secured) consumer credit plan, as defined in proposed § 226.2(a)(15). The Board received no comments on proposed § 226.58(a) and therefore is adopting this section as proposed. Thus, consistent with the approach the Board is implementing with respect to other sections of the Credit Card Act, home-equity lines of credit accessible by credit cards and overdraft lines of credit accessed by debit cards are not covered by § 226.58.

58(b) Definitions

58(b)(1) Agreement

Proposed § 226.58(b)(1) defined "agreement" or "credit card agreement" as a written document or documents evidencing the terms of the legal obligation or the prospective legal obligation between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. Proposed § 226.58(b)(1) further provided that an agreement includes the information listed under the defined term "pricing information."

Commenters generally were supportive of the Board's proposed definition of agreement, and the Board is adopting § 226.58(b)(1) as proposed. One card issuer commenter stated that creditors should not be required to provide pricing information as part of agreements submitted to the Board. The Board disagrees. The Board continues to believe that, to enable consumers to shop for credit cards and compare information about

various credit card plans in an effective manner, it is necessary that the credit card agreements posted on the Board's Web site include rates, fees, and other pricing information.

The Board proposed two comments clarifying the definition of agreement under § 226.58(b)(1). Proposed comment 58(b)(1)-1 clarified that an agreement is deemed to include the information listed under the defined term "pricing information," even if the issuer does not otherwise include this information in the document evidencing the terms of the obligation. Comment 58(b)(1)-1 is adopted as proposed.

Proposed comment 58(b)(1)-2 clarified that an agreement would not include documents sent to the consumer along with the credit card or credit card agreement such as a cover letter, a validation sticker on the card, other information about card security, offers for credit insurance or other optional products, advertisements, and disclosures required under federal or state law. The Board received no comments on proposed comment 58(b)(1)-2. For organizational reasons, proposed comment 58(b)(1)-2 has been eliminated and the guidance contained in proposed comment 58(b)(1)-2 has been moved to § 228.58(c)(8), discussed below.

The final rule adds new comment 58(b)(1)-2, which clarifies that an agreement may consist of multiple documents that, taken together, define the legal obligation between the issuer and the consumer. As an example, comment 58(b)(1)-2 notes that provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the issuer's or consumer's obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract. The definition of agreement under § 226.58(b)(1) indicates that an agreement may consist of a "document

or documents" (emphasis added). However, several commenters indicated that it would be helpful for the Board to emphasize this point, and the Board agrees that further clarity may assist issuers in complying with § 226.58.

58(b)(2) Amends

In connection with the proposed rule, the Board solicited comment on whether issuers should be required to resubmit agreements to the Board following minor, technical changes. Commenters overwhelmingly indicated that the Board should only require resubmission of agreements following substantive changes. Commenters including both large and small card issuers noted that issuers frequently make non-substantive changes without simultaneously making substantive changes and that requiring resubmission following technical changes would impose a significant burden on issuers while providing little or no benefit to consumers. The Board agrees that requiring resubmission of agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of increased transparency.

The final rule therefore includes a new definition of "amends" as § 226.58(b)(2). The definition specifies that an issuer amends an agreement if it makes a substantive change to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. Any change in the pricing information, as defined in § 226.58(b)(6), is deemed to be a substantive change, and therefore an amendment. Under § 226.58(c), discussed below, an issuer is only required to resubmit an agreement to the Board following a change to the agreement if that change constitutes an amendment as defined in § 226.58(b)(2).

To provide additional clarity regarding what types of changes would be considered amendments, the final rule includes two new comments, comment 58(b)(2)-1 and 58(b)(2)-2. Comment 58(b)(2)-1 gives examples of changes that generally would be considered substantive, such as: (i) addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of credit to the consumer, such as changes in a clause describing how the minimum payment will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as changes in a provision regarding authorized users or assignment of the agreement.

Comment 58(b)(2)-2 gives examples of changes that generally would not be considered substantive, such as: (i) correction of typographical errors that do not affect the meaning of any terms of the agreement; (ii) changes to the issuer's corporate name, logo, or tagline; (iii) changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins; (iv) changes to the name of the credit card to which the program applies; (v) reordering sections of the agreement without affecting the meaning of any terms of the agreement; (vi) adding, removing, or modifying a table of contents or index; and (vii) changes to titles, headings, section numbers, or captions.

58(b)(3) Business Day

As proposed, § 226.58(b)(3) of the final rule, corresponding to proposed § 226.58(b)(2), defines "business day" as a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. This is consistent with the definition of business day used in most other sections of Regulation Z. The Board received no comments regarding proposed § 226.58(b)(2).

58(b)(4) Offers

The proposed rule provided that an issuer "offers" or "offers to the public" an agreement if the issuer is soliciting or accepting applications for new accounts that would be subject to that agreement. The Board received no comments regarding the definition of offers, and the § 226.58(b)(4) definition, corresponding to proposed § 226.58(b)(3), is adopted as proposed.

Several credit union commenters argued that credit cards issued by credit unions are not offered to the public under this definition because such cards are available only to credit union members. These commenters concluded that credit unions therefore should not be required to submit agreements to the Board for posting on the Board's Web site. The Board disagrees. The Board understands that, of the one hundred largest Visa and MasterCard credit card issuers in the United States, several dozen are credit unions, including some with hundreds of thousands of open credit card accounts and at least one with over one million open credit card accounts. In addition, credit union membership criteria have relaxed in recent years, in some cases significantly. Credit cards issued by credit unions are a significant source of open-end consumer credit, and exempting credit unions from submitting agreements to the Board would significantly lessen the usefulness

of the Board's Web site as a comparison shopping tool for consumers. The final rule therefore includes new language in comment 58(b)(4)-1, corresponding to proposed comment 58(b)(3)-1, clarifying that agreements for credit cards issued by credit unions are considered to be offered to the public even though they are available only to credit union members.

The two proposed comments to the definition of offers are otherwise adopted as proposed. Comment 58(b)(4)-1, corresponding to proposed comment 58(b)(3)-1, clarifies that a card issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons. For example, an issuer may market affinity cards to students and alumni of a particular educational institution or solicit only high-net-worth individuals for a particular card, but the corresponding agreements would be considered to be offered to the public. Comment 58(b)(4)-2, corresponding to proposed comment 58(b)(3)-2, clarifies that a card issuer is deemed to offer a credit card agreement to the public even if the terms of the agreement are changed immediately upon opening of an account to terms not offered to the public.

58(b)(5) Open Account

The proposed rule provided guidance in proposed comment 58(e)-2 regarding the definition of open accounts for purposes of the de minimis exception. Proposed comment 58(e)-2 stated that, for purposes of the de minimis exception, a credit card account is considered to be open even if the account is inactive, as long as the account has not been closed by the cardholder or the card issuer and the cardholder can obtain extensions of credit on the account. In addition, if an account has only temporarily been suspended (for example, due to a report of unauthorized use), the account is considered open. However,

if an account has been closed for new activity (for example, due to default by the cardholder), but the cardholder is still making payments to pay off the outstanding balance, the account need not be considered open.

The final rule eliminates this comment and adds a new definition of "open account" as § 226.58(b)(5). Under § 226.58(b)(5), an account is an "open account" or "open credit card account" if it is a credit card account under an open-end (not home-secured) consumer credit plan and either: (i) the cardholder can obtain extensions of credit on the account; or (ii) there is an outstanding balance on the account that has not been charged off. An account that has been suspended only temporarily (for example, due to a report by the cardholder of unauthorized use of the card) is considered an open account or open credit card account. The term open account is used in the de minimis, private label, and product testing exceptions under § 226.58(c) and in § 226.58(e), regarding availability of agreements to existing cardholders. These sections are discussed below.

The final rule also includes new comment 58(b)(5)-1. This comment clarifies that, under the § 226.58(b)(5) definition of open account, an account is considered open if either of the two conditions set forth in the definition are met even if the account is inactive. Similarly, the comment clarifies that an account is considered open if an account has been closed for new activity (for example, due to default by the cardholder) but the cardholder is still making payments to pay off the outstanding balance.

The definition of open account included in the final rule differs from the guidance provided in proposed comment 58(e)-2. In particular, accounts closed to new activity are considered open accounts under § 226.58(b)(5), but were not considered open accounts

under the proposed comment. The Board is aware that, under the new definition of open accounts, some issuers that may have qualified for the de minimis exception under the proposed rule will not qualify for the exception under the final rule. The Board believes that the approach to accounts closed for new activity under the final rule more accurately reflects the size of an issuer's portfolio. This approach also is more consistent with the treatment of such accounts under other sections of Regulation Z.

In addition, the proposed comment applied only to the de minimis exception and did not provide guidance on the meaning of open accounts for other purposes, including for purposes of determining availability of agreements to existing cardholders. Because the definition of open account applies to all subsections of § 226.58, the addition of the defined term clarifies that issuers must provide a cardholder with a copy of his or her particular credit card agreement under § 226.58(e) even if his or her account has been closed to new activity.

58(b)(6) Pricing Information

Proposed § 226.58(b)(4) defined the term "pricing information" to include: (1) the information under § 226.6(b)(2)(i) through (b)(2)(xii), (b)(3) and (b)(4) that is required to be disclosed in writing pursuant to § 226.5(a)(1)(ii); (2) the credit limit; and (3) the method used to calculate required minimum payments. The Board received a number of comments on the proposed definition of pricing information, and the definition is adopted with modifications, as discussed below, as § 226.58(b)(6).

Section 226.58(b)(6) defines the pricing information as the information listed in § 226.6(b)(2)(i) through (b)(2)(xii) and (b)(4). The definition specifies that the pricing

information does not include temporary or promotional rates and terms or rates and terms that apply only to protected balances.

Under § 226.58(b)(6), the pricing information continues to include the information listed in § 226.6(b)(2)(i) through (b)(2)(xii), as proposed. The information listed in § 226.6(b)(3) has been omitted from the final rule, as information listed under § 226.6(b)(3) required to be disclosed in writing pursuant to § 226.5(a)(1)(ii) is, by definition, included in § 226.6(b)(2). The information listed in § 226.6(b)(4) is included as proposed.

The credit limit is not included in the definition of pricing information under the final rule. Many card issuer commenters stated that the Board should not include the credit limit as an element of the pricing information. These commenters argued that the range of credit limits offered in connection with a particular agreement is likely to be so broad that it would not assist consumers in shopping for a credit card and noted that existing cardholders are notified of their individual credit limit on their periodic statements. These commenters also noted that credit limits are individually tailored and change frequently. They argued that including the credit limit as part of the pricing information therefore would require issuers to update and resubmit agreements frequently, imposing a significant burden on card issuers. The Board agrees with these commenters.

The method used to calculate minimum payments also is not included in the definition of pricing information under the final rule. Methods used to calculate minimum payments are often complex and may be difficult to explain in a form that is readily understandable but still accurate. Upon further consideration, the Board believes

that including this information in the pricing information likely would cause confusion among consumers and is unlikely to assist consumers in shopping for a credit card.

The § 226.58(b)(6) definition of pricing information also excludes temporary or promotional rates and terms or rates and terms that apply only to protected balances. Several card issuer commenters noted that promotional terms change frequently and therefore become outdated quickly. They also noted that these terms may be offered only to targeted groups of consumers. Including such terms as part of the pricing information likely would lead to confusion, as consumers often would be misled into believing they could apply for a particular set of terms when in fact they could not. The Board agrees that including these terms likely would lead to substantial consumer confusion about the terms available from a particular issuer. Similarly, including rates and terms that apply only to protected balances likely would mislead consumers about the terms that would apply to an account generally.

Consumer groups commented that the Board should require issuers to disclose as part of the pricing information how the credit limit is set and under what circumstances it may be reduced and how issuers allocate the minimum payment. The Board does not believe that this information would assist consumers in shopping for a credit card. The Board has conducted extensive consumer testing to develop account opening disclosures that are meaningful and understandable to consumers. The Board believes that these disclosures are an appropriate basis for the pricing information to be submitted to the Board and provided to cardholders under § 226.58. This additional information therefore is not included in the definition of pricing information under the final rule.

Other commenters suggested that the Board should use the disclosure requirements for credit and charge card applications and solicitations under § 226.5a, rather than the account-opening disclosures under § 226.6, as the basis for the pricing information definition. The Board continues to believe that the account-opening disclosures under § 226.6 are a more appropriate basis for the pricing information to be submitted to the Board and provided to cardholders under § 226.58. For example, the Board believes that the more robust disclosure regarding rates required by § 226.6(b)(4) would be of substantial assistance to consumers in comparing credit cards among different issuers. As proposed, the final rule continues to use § 226.6 as the basis for the definition of pricing information.

As proposed, the definition of pricing information makes reference to the provisions of § 226.6 as revised by the January 2009 Regulation Z Rule. As discussed elsewhere in this supplementary information, the Board has decided to retain the July 1, 2010, mandatory compliance date for revised § 226.6, while the effective date of § 226.58 is February 22, 2010. The definition of pricing information for purposes of § 226.58 conforms to the requirements of revised § 226.6(b)(2)(i) through (b)(2)(xii) and (b)(4) beginning on February 22, 2010, even though compliance with portions of revised § 226.6(b) is not mandatory until July 1, 2010.

58(b)(7) Private Label Credit Card Account and Private Label Credit Card Plan

In connection with the proposed rule, the Board solicited comment on whether the Board should create an exception applicable to small credit card plans offered by an issuer of any size. The Board is adopting in § 226.58(c)(6) an exception for small private label credit card plans, discussed below. The final rule includes as § 226.58(b)(7)

definitions for two new defined terms, "private label credit card account" and "private label credit card plan," used in connection with that exception.

Section 226.58(b)(7) defines a private label credit card account as a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants and defines a private label credit card plan as all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants.

The final rule includes additional guidance regarding these definitions in four comments. Comment 58(b)(7)-1 clarifies that the term private label credit card account applies to any credit card account that meets the terms of the definition, regardless of whether the account is issued by the merchant or its affiliate or by an unaffiliated third party.

Comment 58(b)(7)-2 clarifies that accounts with so-called co-branded credit cards are not considered private label credit card accounts. Credit cards that display the name, mark, or logo of a merchant or affiliated group of merchants as well as the mark, logo, or brand of payment network are generally referred to as co-branded cards. While these credit cards may display the brand of the merchant or affiliated group of merchants as the dominant brand on the card, such credit cards are usable at any merchant that participates in the payment network. Because these credit cards can be used at multiple unaffiliated merchants, they are not considered private label credit cards under § 226.58(b)(7).

Comment 58(b)(7)-3 clarifies that an "affiliated group of merchants" means two or more affiliated merchants or other persons that are related by common ownership or

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

Comment 58(b)(7)-4 provides examples of which credit card accounts constitute a private label credit card plan under § 226.58(b)(7). As comment 58(b)(7)-4 indicates, which credit card accounts issued by a particular issuer constitute a private label credit card plan is determined by where the credit cards can be used. All of the private label credit card accounts issued by a particular issuer with credit cards that are usable at the same merchant or affiliated group of merchants constitute a single private label credit card plan, regardless of whether the rates, fees, or other terms applicable to the individual credit card accounts differ. Comment 58(b)(7)-4 provides the following example: an issuer has 3,000 open private label credit card accounts with credit cards usable only at Merchant A and 5,000 open private label credit card accounts with credit cards usable only at Merchant B and its affiliates. The issuer has two separate private label credit card plans, as defined by § 226.58(b)(7)—one plan consisting of 3,000 open accounts with

credit cards usable only at Merchant A and another plan consisting of 5,000 open accounts with credit cards usable only at Merchant B and its affiliates.

Comment 58(b)(7)-4 notes that the example above remains the same regardless of whether (or the extent to which) the terms applicable to the individual open accounts differ. For example, assume that, with respect to the issuer's 3,000 open accounts with credit cards usable only at Merchant A in the example above, 1,000 of the open accounts have a purchase APR of 12 percent, 1,000 of the open accounts have a purchase APR of 15 percent, and 1,000 of the open accounts have a purchase APR of 18 percent. All of the 5,000 open accounts with credit cards usable only at Merchant B and Merchant B's affiliates have the same 15 percent purchase APR. The issuer still has only two separate private label credit card plans, as defined by § 226.58(b)(7). The open accounts with credit cards usable only at Merchant A do not constitute three separate private label credit card plans under § 226.58(b)(7), even though the accounts are subject to different terms.

Proposed 58(c) Registration With Board

Proposed § 226.58(c) required any card issuer that offered one or more credit card agreements as of December 31, 2009 to register with the Board, in the form and manner prescribed by the Board, no later than February 1, 2010. The proposed rule required issuers that had not previously registered with the Board (such as new issuers formed after December 31, 2009) to register before the deadline for their first quarterly submission.

Proposed § 226.58(c) is not included in the final rule. The Board is eliminating the registration requirement from the final rule because of technical changes to the Board's submission process. The Board instead plans to capture the identifying

information about each issuer that would have been captured during the registration process (e.g., the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), and the name, phone number and email address of a contact person at the issuer) at the time of each issuer's first submission of agreements to the Board. Under the final rule, there is no requirement to register with the Board prior to submitting credit card agreements.

58(c) Submission of Agreements to Board

Proposed § 226.58(d) required that each card issuer electronically submit to the Board on a quarterly basis the credit card agreements that the issuer offers to the public. Commenters did not oppose the general requirements of proposed § 226.58(d), and the Board is adopting the proposed provision, redesignated as § 226.58(c), with certain modifications, as discussed below. Consistent with new TILA Section 122(d)(3), the Board will post the credit card agreements it receives on its Web site.

The Board proposed to use its exemptive authority under Sections 105(a) and 122(d)(5) of TILA to require issuers to submit to the Board only agreements currently offered to the public. Commenters generally were supportive of this proposed use of the Board's exemptive authority, and the Board received no comments indicating that issuers should be required to submit agreements not offered to the public. The Board continues to believe that, with respect to credit card agreements that are not currently offered to the public, the administrative burden on issuers of preparing and submitting agreements for posting on the Board's Web site would outweigh the benefit of increased transparency for consumers. The Board also continues to believe that providing an exception for

agreements not currently offered to the public is appropriate both to effectuate the purposes of TILA and to facilitate compliance with TILA.

As stated in the proposal, the Board is aware that the number of credit card agreements currently in effect but no longer offered to the public is extremely large, and the Board believes that requiring issuers to prepare and submit these agreements would impose a significant burden on issuers. The Board also believes that the primary benefit of making credit card agreements available on the Board's Web site is to assist consumer in comparing credit card agreements offered by various issuers when shopping for a new credit card. Including agreements that are no longer offered to the public would not facilitate comparison shopping by consumers because consumers could not apply for cards subject to these agreements. In addition, including agreements no longer offered to the public would significantly increase the number of agreements included on the Board's Web site, possibly to include hundreds of thousands of agreements (or more). This volume of data would render the amount of data provided through the Web site too large to be helpful to most consumers. Thus, as proposed, § 226.58(c) requires issuers to submit to the Board only those agreements the issuer currently offers to the public.

58(c)(1) Quarterly Submissions

Proposed § 226.58(d)(1) required issuers to send quarterly submissions to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. The proposed rule required issuers to submit: (i) the credit card agreements that the issuer offered to the public as of the last business day of the preceding calendar quarter that the issuer has not previously submitted to the Board; (ii) any credit card agreement previously submitted to the Board that was modified or

amended during the preceding calendar quarter; and (iii) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing. Proposed comment § 226.58(d)-1 provided an example of the submission requirements as applied to a hypothetical issuer. Proposed comment 58(d)-2 clarified that an issuer is not required to make any submission to the Board if, during the previous calendar quarter, the issuer did not take any of the following actions: (1) offering a new credit card agreement that was not submitted to the Board previously; (2) revising or amending an agreement previously submitted to the Board; and (3) ceasing to offer an agreement previously submitted to the Board.

Commenters did not oppose the Board's approach to submission of agreements as described in proposed § 226.58(d)(1). The Board therefore is adopting proposed § 226.58(d)(1) and proposed comments 58(d)-1 and 58(d)-2, redesignated in the final rule as § 226.58(c)(1) and comments 58(c)(1)-1 and 58(c)(1)-2, with certain modifications.

As discussed above, the Board is eliminating from the final rule the requirement that issuers register with the Board before submitting agreements to the Board. Section 226.58(c)(1) therefore includes a new requirement that issuers submit along with their quarterly submissions identifying information relating to the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number).

In addition, Sections 226.58(c)(1) and comments 58(c)(1)-1 and (c)(1)-2 reflect, through use of the defined term "amend," that issuers are required to resubmit agreements only following substantive changes. As discussed above, commenters overwhelmingly indicated that the Board should only require resubmission of agreements following

substantive changes. The Board agrees that requiring resubmission of agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of transparency. This is reflected in the final rule by requiring that issuers resubmit agreements under § 226.58(c)(1) only when an agreement has been amended as defined in § 226.58(b)(2).

Several commenters asked that issuers be permitted to submit a complete, updated set of credit card agreements on a quarterly basis, rather than tracking which agreements are being modified, withdrawn, or added. These commenters argued that requiring issuers to track which agreements are being modified, withdrawn, or amended could impose a substantial burden on some issuers with no corresponding benefit to consumers. The Board agrees. The final rule therefore includes new comment 58(c)(1)-3, which clarifies that § 226.58(c)(1) permits an issuer to submit to the Board on a quarterly basis a complete, updated set of the credit card agreements the issuer offers to the public. The comment gives the following example: an issuer offers agreements A, B and C to the public as of March 31. The issuer submits each of these agreements to the Board by April 30 as required by § 226.58(c)(1). On May 15, the issuer amends agreement A, but does not make any changes to agreements B or C. As of June 30, the issuer continues to offer amended agreement A and agreements B and C to the public. At the next quarterly submission deadline, July 31, the issuer must submit the entire amended agreement A and is not required to make any submission with respect to agreements B and C. The issuer may either: (i) submit the entire amended agreement A and make no submission with respect to agreements B and C; or (ii) submit the entire amended agreement A and also resubmit agreements B and C. The comment also states that an issuer may choose to

resubmit to the Board all of the agreements it offered to the public as of a particular quarterly submission deadline even if the issuer has not introduced any new agreements or amended any agreements since its last submission and continues to offer all previously submitted agreements.

Additional details regarding the submission process are provided in the Consumer and College Credit Card Agreement Submission Technical Specifications Document, which is published as Attachment I to this **Federal Register** notice and which will be available on the Board's public Web site.

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

Proposed § 226.58(d)(2), redesignated as § 226.58(c)(2), is adopted as proposed. Section 3 of the Credit Card Act provides that new TILA Section 122(d) becomes effective on February 22, 2010, nine months after the date of enactment of the Credit Card Act. Thus, consistent with Section 3 of the Credit Card Act and as proposed, the final rule requires issuers to send their initial submissions, containing credit card agreements offered to the public as of December 31, 2009, to the Board no later than February 22, 2010. The next submission must be sent to the Board no later than August 2, 2010 (the first business day on or after July 31, 2010), and must contain: (1) any credit card agreement that the card issuer offered to the public as of June 30, 2010, that the card issuer has not previously submitted to the Board; (2) any credit card agreement previously submitted to the Board that was modified or amended after December 31, 2009, and on or before June 30, 2010, as described in § 226.58(c)(3); and (3) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing as of June 30, 2010, as described in § 226.58(c)(4) and (5).

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

Several card issuer commenters suggested that issuers' initial submission should be due on a date later than February 22, 2010. The Board is aware that many issuers are likely to make changes to their agreements related to other provisions of the Credit Card Act before the February 22, 2010, effective date and that agreements as of December 31, 2009, therefore will be somewhat outdated by the time they are sent to the Board on February 22, 2010. The Board believes, however, that it is important to provide consumers with access to issuer's credit card agreements promptly following the statutory effective date.

58(c)(3) Amended Agreements

Proposed § 226.58(d)(3) required that, if an issuer makes changes to an agreement previously submitted to the Board, the issuer must submit the entire revised agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. The proposed rule also specified that, if a credit card agreement has been submitted to the Board, no changes have been made to the agreement, and the card issuer continues to offer the agreement to the public, no additional submission with respect to that agreement is required. Two proposed

comments, proposed comments 58(d)-3 and 58(d)-4, provided examples of situations in which resubmission would not and would be required, respectively. Proposed comment 58(d)-5 clarified that an issuer could not fulfill the requirement to submit the entire revised agreement to the Board by submitting a change-in-terms or similar notice covering only the changed terms and that revisions could not be submitted as separate riders.

The proposed rule required credit card issuers to resubmit agreements following any change, regardless of whether that change affects the substance of the agreement. As discussed above, the Board solicited comment on whether issuers should be required to resubmit agreements to the Board following minor, technical changes. Commenters overwhelmingly indicated that the Board should only require resubmission of agreements following substantive changes.

The Board agrees with these commenters that requiring resubmission of agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of increased transparency to consumers. The final rule therefore includes a new definition of "amends" in § 226.58(b)(2), as discussed above. Under the final rule, an issuer is only required to resubmit an agreement to the Board following a change to the agreement if that change constitutes an amendment as defined in § 226.58(b)(2). The definition in § 226.58(b)(2) specifies that an issuer amends an agreement if it makes a substantive change to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. The definition specifies that any change in the pricing information is deemed to be a substantive change and therefore an amendment. Section 226.58(c)(3)

and comments 58(c)(3)-1, 58(c)(3)-2, and 58(c)(3)-3 (corresponding to proposed § 226.58(d)(3) and proposed comments 58(d)-3, 58(d)-4, and 58(d)-5) have been revised to incorporate the defined term "amend" but otherwise are adopted as proposed with several technical changes.

Under § 226.58(c)(3), corresponding to proposed § 226.58(d)(3), if a credit card agreement has been submitted to the Board, the agreement has not been amended as defined in § 226.58(b)(2) and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. For example, as described in comment 58(c)(3)-1, corresponding to proposed comment 58(d)-3, a credit card issuer begins offering an agreement in October and submits the agreement to the Board the following January 31, as required by § 226.58(c)(1). As of March 31, the issuer has not amended the agreement and is still offering the agreement to the public. The issuer is not required to submit anything to the Board regarding that agreement by April 30.

If a credit card agreement that previously has been submitted to the Board is amended, as defined in § 226.58(b)(2), the final rule provides that the card issuer must submit the entire amended agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. Comment 58(c)(3)-2, corresponding to proposed comment 58(d)-4, gives the following example: an issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended and

the issuer must submit the entire amended agreement to the Board no later than January 31.

Comment 58(c)(3)-3, corresponding to proposed comment 58(d)-5, explains that an issuer may not fulfill the requirement to submit the entire amended agreement to the Board by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, the comment emphasizes that, as required by § 226.58(c)(8)(iv), amendments must be integrated into the text of the agreement (or the addenda described in § 226.58(c)(8)), not provided as separate riders. For example, an issuer changes the purchase APR associated with an agreement the issuer has previously submitted to the Board. The purchase APR for that agreement was included in the addendum of pricing information, as required by § 226.58(c)(8). The issuer may not submit a change-in-terms or similar notice reflecting the change in APR, either alone or accompanied by the original text of the agreement and original pricing information addendum. Instead, the issuer must revise the pricing information addendum to reflect the change in APR and submit to the Board the entire text of the agreement and the entire revised addendum, even though no changes have been made to the provisions of the agreement and only one item on the pricing information addendum has changed.

58(c)(4) Withdrawal of Agreements

Proposed § 226.58(d)(4), redesignated as § 226.58(c)(4), and proposed comment 58(d)-6, redesignated as comment 58(c)(4)-1, are adopted as proposed with one technical change. The Board received no comments regarding this section and the accompanying commentary. As proposed, § 226.58(c)(4) requires an issuer to notify the Board if the issuer ceases to offer any agreement previously submitted to the Board by the first

quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. For example, as described in comment 58(c)(4)-1, on January 5 an issuer stops offering to the public an agreement it previously submitted to the Board. The issuer must notify the Board that the agreement is being withdrawn by April 30, the first quarterly submission deadline after March 31, the last day of the calendar quarter in which the issuer stopped offering the agreement.

58(c)(5) De Minimis Exception

Proposed § 226.58(e) provided an exception to the requirement that credit card agreements be submitted to the Board for issuers with fewer than 10,000 open credit card accounts under open-end (not home-secured) consumer credit plans. Commenters generally were supportive of this provision, and proposed § 226.58(e) is incorporated into the final rule as § 226.58(c)(5) with certain modifications as discussed below.

The proposal noted that TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on the Board's Web site in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders. The Board expressed its belief that a de minimis exception should be created, but noted that it might not be feasible to base such an exception on the number of accounts under a credit card plan. In particular, the Board stated that it was unaware of a way to define "credit card plan" that would not divide issuers' portfolios into such small units that large numbers of credit card agreements could fall under the de minimis exception. The Board therefore proposed a de minimis exception for issuers with fewer

than 10,000 open credit card accounts. Under the proposed exception, such issuers were not required to submit any credit card agreements to the Board.

As described below, the Board is adopting as part of the final rule two exceptions based on the number of accounts under a credit card plan—the private label credit card exception and the product testing exception. The Board continues to believe, however, that the administrative burden on small issuers of preparing and submitting agreements would outweigh the benefit of increased transparency from including those agreements on the Board's Web site. The final rule therefore includes the proposed § 226.58(e) de minimis exception for issuers with fewer than 10,000 open accounts substantially as proposed, redesignated as § 226.58(c)(5).

In connection with the proposed rule, the Board solicited comment on the 10,000 open account threshold for the de minimis exception. Several commenters supported the 10,000 account threshold. Several other commenters stated that the threshold should be raised to 25,000 open accounts. The Board continues to believe that 10,000 open accounts is an appropriate threshold for the de minimis exception, and that threshold is retained in the final rule. One commenter stated that accounts with terms and conditions that are no longer offered to the public should not be counted toward the 10,000 account threshold. The Board believes that this exception is unworkable and could bring large numbers of issuers within the de minimis exception. The final rule therefore does not incorporate this approach.

Proposed § 226.58(e)(1) has been modified to incorporate the defined term "open account," discussed above, and redesignated as § 226.58(c)(5)(i), but otherwise is adopted as proposed. Under § 226.58(c)(5)(i), a card issuer is not required to submit any

credit card agreements to the Board if the card issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter.

The final rule includes new comment 58(c)(5)-1, which clarifies the relationship between the de minimis exception and the private label credit card and product testing exceptions. As comment 58(c)(5)-1 explains, the de minimis exception is distinct from the private label credit card exception under § 226.58(c)(6) and the product testing exception under § 226.58(c)(7). The de minimis exception provides that an issuer with fewer than 10,000 open credit card accounts is not required to submit any agreements to the Board, regardless of whether those agreements qualify for the private label credit card exception or the product testing exception. In contrast, the private label credit card exception and the product testing exception provide that an issuer is not required to submit to the Board agreements offered solely in connection with certain types of credit card plans with fewer than 10,000 open accounts, regardless of the issuer's total number of open accounts.

Proposed comments 58(e)-1 and 58(e)-3, redesignated as comments 58(c)(5)-2 and 58(c)(5)-3, have been modified to incorporate the defined term "open account," but otherwise are adopted as proposed. Comment 58(c)(5)-2 gives the following example of an issuer that qualifies for the de minimis exception: an issuer offers five credit card agreements to the public as of September 30. However, the issuer has only 2,000 open credit card accounts as of September 30. The issuer is not required to submit any agreements to the Board by October 31 because the issuer qualifies for the de minimis exception. Comment 58(c)(5)-3 clarifies that whether an issuer qualifies for the de minimis exception is determined as of the last business day of the calendar quarter and

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

Proposed comment 58(e)-2 provided guidance regarding the definition of open accounts for purposes of the de minimis exception. As discussed above, the Board has eliminated proposed comment 58(e)-2 from the final rule and added a definition of "open account" as § 226.58(b)(5).

Proposed § 226.58(e)(2), redesignated as § 226.58(c)(5)(ii), is adopted as proposed. Section 226.58(c)(5)(ii) specifies that if an issuer that previously qualified for the de minimis exception ceases to qualify, the card issuer must begin making quarterly submissions to the Board no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. Proposed comment 58(e)-4, redesignated as comment 58(c)(5)-4, has been modified to incorporate the defined term "open account," but otherwise is adopted as proposed. Comment 58(c)(5)-4 clarifies that whether an issuer has ceased to qualify for the de minimis exception is determined as of the last business day of the calendar quarter and provides the following example: as of June 30, an issuer offers three agreements to the public and has 9,500 open credit card accounts. The issuer is not required to submit any agreements to the Board under § 226.58(c)(1)

because the issuer qualifies for the de minimis exception. As of July 15, the issuer still offers the same three agreements, but now has 10,000 open accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis exception under § 226.58(c)(5) is determined as of the last business day of the calendar quarter. As of September 30, the issuer still offers the same three agreements and still has 10,000 open accounts. Because the issuer had 10,000 open accounts as of September 30, the issuer ceased to qualify for the de minimis exception and must submit the three agreements it offers to the Board by October 31, the next quarterly submission deadline.

Proposed § 226.58(e)(3), redesignated as § 226.58(c)(5)(iii), has been modified to reflect the elimination of the requirement to register with the Board, as discussed above, but otherwise is adopted substantively as proposed. Section 226.58(c)(5)(iii) provides that if an issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the card issuer must continue to make quarterly submissions to the Board until the issuer notifies the Board that the issuer is withdrawing all agreements it previously submitted to the Board.

Proposed comment 58(e)-5, redesignated as comment 58(c)(5)-5, is similarly modified to reflect the elimination of the registration requirement, but otherwise is adopted substantively as proposed. Comment 58(c)(5)-5 gives the following example of the option to withdraw agreements under § 226.58(c)(5)(iii): an issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The issuer has submitted each of the three agreements to the Board as required under § 226.58(c)(1). As of March 31, the issuer has only 9,999 open accounts. The issuer has two options. First,

the issuer may notify the Board that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Board, the issuer is no longer required to make quarterly submissions to the Board under § 226.58(c)(1). Alternatively, the issuer may choose not to notify the Board that it is withdrawing its agreements. In this case, the issuer must continue making quarterly submissions to the Board as required by § 226.58(c)(1). The issuer might choose not to withdraw its agreements if, for example, the issuer believes that it likely will cease to qualify for the de minimis exception again in the near future.

58(c)(6) Private Label Credit Card Exception

The final rule includes new section § 226.58(c)(6), which provides an exception to the requirement that credit card agreements be submitted to the Board for private label credit card plans with fewer than 10,000 open accounts. TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on the Board's Web site in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders. As discussed above, the final rule includes a de minimis exception for issuers with fewer than 10,000 total open credit card accounts as § 226.58(c)(5). As also disclosed above, the Board solicited comment in connection with the proposed rule regarding whether the Board should create a de minimis exception applicable to small credit card plans offered by an issuer of any size and, if so, how the Board should define a credit card plan. Commenters generally supported creating such an exception. One card issuer commenter suggested that the Board create an exception

for credit cards that can only be used for purchases at a single merchant or affiliated group of merchants, commonly referred to as private label credit cards, regardless of issuer size.

The Board is adopting such an exception. The Board believes that the administrative burden on issuers of preparing and submitting to the Board agreements for private label credit card plans with a de minimis number of consumer account holders outweighs the benefit of increased transparency of including these agreements on the Board's Web site. The small size of these credit card plans suggests that it is unlikely that most consumers would regard these products as comparable alternatives to other credit card products. In addition, the Board is aware that the number of small private label credit card programs is very large. Including agreements associated with these plans on the Board's Web site would significantly increase the number of agreements, potentially making the Web site less useful to consumers as a comparison shopping tool. Also, the Board believes that, with respect to private label credit cards, a credit card plan can be defined sufficiently narrowly to avoid dividing issuers' portfolios into units so small that large numbers of credit card agreements would fall under the exception.

Under § 226.58(c)(6)(i), a card issuer is not required to submit to the Board a credit card agreement if, as of the last business day of the calendar quarter, the agreement: (A) is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts; and (B) is not offered to the public other than for accounts under such a plan.

As discussed above, a private label credit card plan is defined in § 226.58(b)(7) as all of the private label credit card accounts issued by a particular issuer with credit cards

usable at the same single merchant or affiliated group of merchants. For example, all of the private label credit card accounts issued by Issuer A with credit cards usable only at Merchant B and Merchant B's affiliates constitute a single private label credit card plan under § 226.58(b)(7).

The exception is limited to agreements that are "not offered to the public other than for accounts under [one or more private label credit card plans each of which has fewer than 10,000 open accounts]" in order to ensure that issuers are required to submit to the Board agreements that are offered in connection with general purpose credit card accounts or credit card accounts under large (*i.e.*, 10,000 or more open accounts) private label plans, regardless of whether those agreements also are used in connection with a small (*i.e.*, fewer than 10,000 open accounts) private label credit card plan. The Board is concerned that, without this limitation, large numbers of credit card agreements could fall under the private label credit card exception.

Section 226.58(c)(6)(ii) provides that if an agreement that previously qualified for the private label credit card exception ceases to qualify, the card issuer must submit the agreement to the Board no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. Section 226.58(c)(6)(iii) provides that if an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Board with respect to that agreement until the issuer notifies the Board that the agreement is being withdrawn.

The final rule includes six related comments. Comment 58(c)(6)-1 gives the following two examples of how the exception applies. In the first example, an issuer

offers to the public a credit card agreement offered solely for private label credit card accounts with credit cards that can be used only at Merchant A. The issuer has 8,000 open accounts with such credit cards usable only at Merchant A. The issuer is not required to submit this agreement to the Board under § 226.58(c)(1) because the agreement is offered for accounts under a private label credit card plan (i.e., the 8,000 private label credit card accounts with credit cards usable only at Merchant A), that private label credit card plan has fewer than 10,000 open accounts, and the credit card agreement is not offered to the public other than for accounts under that private label credit card plan.

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

Comment 58(c)(6)-2 clarifies that whether the private label credit card exception applies is determined on an agreement-by-agreement basis. Therefore, some agreements offered by an issuer may qualify for the private label credit card exception even though

the issuer also offers other agreements that do not qualify, such as agreements offered for accounts with cards usable at multiple unaffiliated merchants or agreements offered for accounts under private label credit card plans with 10,000 or more open accounts.

Comment 58(c)(6)-3 clarifies the relationship between the private label credit card exception and the § 226.58(c)(5) de minimis exception. The comment notes that the two exceptions are distinct. The private label credit card exception exempts an issuer from submitting certain agreements under a private label plan to the Board, regardless of the issuer's overall size as measured by the issuer's total number of open accounts. In contrast, the de minimis exception exempts an issuer from submitting any credit card agreements to the Board if the issuer has fewer than 10,000 total open accounts. For example, an issuer offers to the public two credit card agreements. Agreement A is offered solely for private label credit card accounts with credit cards usable only at Merchant A. The issuer has 5,000 open credit card accounts with such credit cards usable only at Merchant A. Agreement B is offered solely for credit card accounts with cards usable at multiple unaffiliated merchants that participate in a major payment network. The issuer has 40,000 open credit card accounts with such payment network cards. The issuer is not required to submit agreement A to the Board under § 226.58(c)(1) because agreement A qualifies for the private label credit card exception under § 226.58(c)(6). Agreement A is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (i.e., the 5,000 private label credit card accounts with credit cards usable only at Merchant A) and is not otherwise offered to the public. The issuer is required to submit agreement B to the Board under § 226.58(c)(1). The issuer does not qualify for the de minimis exception under § 226.58(c)(5) because it

has more than 10,000 open accounts, and agreement B does not qualify for the private label credit card exception under § 226.58(c)(6) because it is not offered solely for accounts under a private label credit card plan with fewer than 10,000 open accounts.

Comment 58(c)(6)-4 gives the following example of when an agreement would not qualify for the private label credit card exception because it is offered to the public other than for accounts under a private label credit card plan with fewer than 10,000 open accounts. An issuer offers an agreement for private label credit card accounts with credit cards usable only at Merchant A. This private label plan has 9,000 such open accounts. The same agreement also is offered for credit card accounts with credit cards usable at multiple unaffiliated merchants that participate in a major payment network. The agreement does not qualify for the private label credit card exception. The agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts. However, the agreement also is offered to the public for accounts that are not part of a private label credit card plan, and therefore does not qualify for the private label credit card exception.

Comment 58(c)(6)-4 notes that, similarly, an agreement does not qualify for the private label credit card exception if it is offered in connection with one private label credit card plan with fewer than 10,000 open accounts and one private label credit card plan with 10,000 or more open accounts. For example, an issuer offers a single credit card agreement to the public. The agreement is offered for two types of accounts. The first type of account is a private label credit card account with a credit card usable only at Merchant A. The second type of account is a private label credit card account with a credit card usable only at Merchant B. The issuer has 10,000 such open accounts with

credit cards usable only at Merchant A and 5,000 such open accounts with credit cards usable only at Merchant B. The agreement does not qualify for the private label credit card exception. While the agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (i.e., the 5,000 open accounts with credit cards usable only at Merchant B), the agreement is also offered for accounts not under such a plan (i.e., the 10,000 open accounts with credit cards usable only at Merchant A).

Comment 58(c)(6)-5 clarifies that the private label exception applies even if the same agreement is used for more than one private label credit card plan with fewer than 10,000 open accounts. For example, a card issuer has 15,000 total open private label credit card accounts. Of these, 7,000 accounts have credit cards usable only at Merchant A, 5,000 accounts have credit cards usable only at Merchant B, and 3,000 accounts have credit cards usable only at Merchant C. The card issuer offers to the public a single credit card agreement that is offered for all three types of accounts and is not offered for any other type of account. The issuer is not required to submit the agreement to the Board under § 226.58(c)(1). The agreement is used for three different private label credit card plans (i.e., the accounts with credit cards usable at Merchant A, the accounts with credit cards usable at Merchant B, and the accounts with credit cards usable at Merchant C), each of which has fewer than 10,000 open accounts, and the issuer does not offer the agreement for any other type of account. The agreement therefore qualifies for the private label credit card exception under § 226.58(c)(6).

Comment 58(c)(6)-6 clarifies that the private label credit card exception applies even if an issuer offers more than one agreement in connection with a particular private label credit card plan. For example, an issuer has 5,000 open private label credit card

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

58(c)(7) Product Testing Exception

The final rule includes new section § 226.58(c)(7), which provides an exception to the requirement that credit card agreements be submitted to the Board for certain agreements offered to the public solely as part of product test by an issuer. As described above, TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on the Board's Web site in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders. As discussed above, the final rule includes a de minimis exception for issuers with fewer than 10,000 open credit card accounts as § 226.58(c)(5). As also discussed above, the Board solicited comment in connection with the proposed rule regarding whether the Board should create a de minimis exception applicable to small credit card plans offered by an issuer of any size and, if so, how the Board should define a credit card plan. Commenters generally supported creating such an exception. One card issuer commenter suggested that the

Board create an exception for agreements offered to limited groups of consumers in connection with product testing by an issuer, regardless of issuer size.

The Board is adopting such an exception. The Board believes that the administrative burden on issuers of preparing and submitting to the Board agreements used for a small number of consumer account holders in connection with a product test by an issuer outweighs the benefit of increased transparency of including these agreements on the Board's Web site. The Board understands that issuers test new credit card strategies and products by offering credit cards to discrete, targeted groups of consumers for a limited time. Posting these agreements on the Board's and issuers' Web sites would not facilitate comparison shopping by consumers, as these terms are offered only to a limited group of consumers for a short period of time. Including these agreements could mislead consumers into believing that these terms are available more generally. In addition, posting these agreements would make issuer testing strategies transparent to competitors. Also, the Board believes that, with respect to product tests, a credit card plan can be defined sufficiently narrowly to avoid dividing issuers' portfolios into units so small that large numbers of credit card agreements would fall under the exception.

Under § 226.58(c)(7)(i), an issuer is not required to submit to the Board a credit card agreement if, as of the last day of the calendar quarter, the agreement: (A) is offered as part of a product test offered to only a limited group of consumers for a limited period of time; (B) is used for fewer than 10,000 open accounts; and (C) is not offered to the public other than in connection with such a product test. Section 226.58(c)(7)(ii) provides that if an agreement that previously qualified for the product testing exception

ceases to qualify, the card issuer must submit the agreement to the Board no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. Section 226.58(c)(7)(iii) provides that if an agreement that did not previously qualify for the product testing exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Board with respect to that agreement until the issuer notifies the Board that the agreement is being withdrawn.

58(c)(8) Form and Content of Agreements Submitted to the Board

Many commenters on the proposed rule expressed confusion about the form and content requirements for agreements submitted to the Board. In order to make this information more readily noticeable and understandable, the Board is eliminating proposed Appendix N and incorporating the form and content requirements for agreements submitted to the Board as new § 226.58(c)(8). The form and content requirements under § 226.58(c)(8) are organized into four subsections, discussed below: (i) form and content generally; (ii) pricing information; (iii) optional variable terms addendum; and (iv) integrated agreement. Form and content requirements included in proposed Appendix N for agreements posted on issuers' Web sites under proposed § 226.58(f)(1), redesignated as § 226.58(d), and individual cardholders' agreements provided under proposed § 226.58(f)(2), redesignated as § 226.58(e), have similarly been incorporated into those sections and are discussed below.

58(c)(8)(i) Form and Content Generally

Section 226.58(c)(8)(i)(A) states that each agreement must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter, as proposed in Appendix N, paragraph 1. One commenter

questioned whether a change-in-terms notice should be integrated into an agreement where the change-in-terms notice is not yet effective. The final rule therefore includes new comment 58(c)(8)-1, which gives the following example of the application of § 226.5(c)(8)(i)(A): on June 1, an issuer decides to decrease the purchase APR associated with one of the agreements it offers to the public. The change in the APR will become effective on August 1. If the issuer submits the agreement to the Board on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower APR because that APR was not in effect on June 30, the last business day of the preceding calendar quarter.

Section 226.58(c)(8)(i)(B) states that agreements submitted to the Board must not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number, as proposed in Appendix N, paragraph 1.

Section 226.58(c)(8)(i)(C) identifies certain items that are not deemed to be part of the agreement for purposes of § 226.58, and therefore are not required to be included in submissions to the Board. These items are as follows: (i) disclosures required by state or federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act; (ii) solicitation materials; (iii) periodic statements; (iv) ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements; (v) offers for credit insurance or other optional products and other similar advertisements; and (vi) documents that may be sent to the consumer along with the credit card or credit card agreement, such as a cover letter, a validation sticker on the card, or other information about card security.

This list incorporates items identified as excluded from agreements in proposed Appendix N, paragraph 1, and proposed comment 58(b)(1)-2. In addition, one commenter asked that Board clarify that the agreement does not include ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements. Because the Board agrees that including such ancillary agreements would not assist consumers in shopping for a credit card, this item is included in § 226.58(c)(8)(i)(C).

The final rule also includes new § 226.58(c)(8)(i)(D), which provides that agreements submitted to the Board must be presented in a clear and legible font.

58(c)(8)(ii) Pricing Information

Section 226.58(c)(8)(ii)(A) of the final rule specifies that pricing information must be set forth in a single addendum to the agreement that contains only the pricing information. This differs from proposed Appendix N, paragraph 1, which required issuers to set forth any information not uniform for all cardholders, including the pricing information, in an addendum to the agreement.

The Board believes, on the basis of consumer testing conducted in the context of developing the requirements for account-opening disclosures, that the pricing information (which is defined by reference to the requirements for account-opening disclosures under § 226.6) is particularly relevant to consumers in choosing a credit card. Upon further consideration, the Board has concluded that this information could be difficult for consumers to find if it is integrated into the text of the credit card agreement. The Board believes that requiring pricing information to be attached as a separate addendum would ensure that this information is easily accessible to consumers. The Board understands

that cardholder agreements may be complex and densely worded, and the Board is concerned that including pricing information within such a document could hamper the ability of consumers to find and comprehend it. The Board therefore is requiring under § 226.58(c)(8)(ii)(A) that this information be provided in a separate addendum.

The final rule also includes comment 58(c)(8)-2, which clarifies that pricing information must be set forth in the separate addendum described in § 226.58(c)(8)(ii)(A) even if it is also stated elsewhere in the agreement.

Section 226.58(c)(8)(ii)(B) of the final rule provides that pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent). This corresponds with a provision from proposed Appendix N, paragraph 1.

One commenter stated that issuers should have the flexibility to either provide pricing information and other varying information in an addendum or to provide each variation as a separate agreement. The Board's final rule does not provide this flexibility with respect to pricing information. The Board understands that issuers offer a range of terms and conditions and that issuers may make these terms and conditions available in a variety of different combinations, particularly with respect to items included in the pricing information. The Board is aware that the number of variations of pricing information is extremely large, and believes that including each of these variations on the Board's Web site likely would render the number of agreements provided on the Web site

too large to be helpful to most consumers. For example, an issuer might offer credit cards with a purchase APR of 12 percent, 13 percent, 14 percent, 15 percent, 16 percent or 17 percent, an annual fee of $0, $20, or $40, and one of three debt suspension coverage fees. Including each of the 54 possible combinations of these terms as a separate agreement on the Board's Web site would likely be overwhelming to consumers shopping for a credit card.

The final rule includes comment 58(c)(8)-3, which clarifies that variations in pricing information do not constitute a separate agreement for purposes of § 226.58(c). The comment provides the following example: an issuer offers two types of credit card accounts that differ only with respect to the purchase APR. The purchase APR for one type of account is 15 percent, while the purchase APR for the other type of account is 18 percent. The provisions of the agreement and pricing information for the two types of accounts are otherwise identical. The issuer should not submit to the Board one agreement with a pricing information addendum listing a 15 percent purchase APR and another agreement with a pricing information addendum listing an 18 percent purchase APR. Instead, the issuer should submit to the Board one agreement with a pricing information addendum listing possible purchase APRs of 15 percent and 18 percent.

Section 226.58(c)(8)(ii)(C) of the final rule provides that if a rate included in the pricing information is a variable rate, the issuer must identify the index or formula used in setting the rate and the margin. Rates that may vary from one cardholder to another must be disclosed by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or the range of possible margins

(such as the prime rate plus from 5 percent to 12 percent). The value of the rate and the value of the index are not required to be disclosed.

Several card issuer commenters requested that issuers be permitted to provide interest rate information as an index and range of margins. These commenters argued that updating and resubmitting agreements every time an underlying index changes would be a substantial burden on issuers that would not provide a corresponding benefit to consumers. The Board agrees with these commenters. For purposes of comparison shopping for credit cards using the Board's Web site, consumers would be able to compare the margins offered by issuers using the same index and would be able to reference other on-line resources that provide the current values of financial indices to compare the rates offered by issuers using different indices. To provide uniformity in how variable rates are disclosed, the Board is requiring that such rates be provided as an index and margin, list of possible margins or range of possible margins.

58(c)(8)(iii) Optional Variable Terms Addendum

Section 226.58(c)(8)(iii) of the final rule provides that provisions of the agreement other than the pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors may be set forth in a single addendum to the agreement separate from the pricing information addendum. This differs from the provisions of proposed Appendix N, paragraph 1, which required issuers to set forth any information not uniform for all cardholders in a single addendum to the agreement.

As noted above, one commenter stated that issuers should have the flexibility to either provide pricing information and other varying information in an addendum or to

provide each variation as a separate agreement. The Board's final rule provides this flexibility with respect to provisions of the agreement other than the pricing information. The Board understands that there is substantially less variation in the credit card agreements offered by a particular issuer with respect to terms other than pricing information. The Board therefore believes that providing issuers with flexibility regarding how these terms are disclosed is unlikely to result in a volume of data on the Board's Web site that is overwhelming to consumers.

The final rule also includes comment 58(c)(8)-4, which gives examples of provisions that might be included in the optional variable terms addendum. For example, the addendum might include a clause that is required by law to be included in credit card agreements in a particular state but not in other states (unless, for example, a clause is included in the agreement used for all cardholders under a heading such as "For State X Residents"), the name of the credit card plan to which the agreement applies (if this information is included in the agreement), or the name of a charitable organization to which donations will be made in connection with a particular card (if this information is included in the agreement).

58(c)(8)(iv) Integrated Agreement

Section 226.58(c)(8)(iv) incorporates provisions of proposed Appendix N, paragraph 1, stating that issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and optional variable terms addendum described in § 226.58(c)(8)(ii) and (c)(8)(iii)). Changes in the provisions or pricing information must

be integrated into the body of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate.

The final rule also includes new comment 58(c)(8)-5, which provides clarification regarding the integrated agreement requirement. Comment 58(c)(8)-5 explains that only two addenda may be submitted as part of an agreement—the pricing information addendum and optional variable terms addendum described in § 226.58(c)(8). Changes in provisions or pricing information must be integrated into the body of the agreement, pricing information addendum, or optional variable terms addendum. For example, it would be impermissible for an issuer to submit to the Board an agreement in the form of a terms and conditions document dated January 1, 2005, four subsequent change in terms notices, and two addenda showing variations in pricing information. Instead, the issuer must submit a document that integrates the changes made by each of the change-in-terms notices into the body of the original terms and conditions document and a single addendum displaying variations in pricing information.

As the Board stated in connection with the proposal, the Board believes that permitting issuers to submit agreements that include change-in-terms notices or riders containing amendments and revisions would be confusing for consumers and would greatly lessen the usefulness of the agreements posted on the Board's Web site. Consumers would be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Board believes that this would impose a significant burden on consumers attempting to shop for credit cards. The Board also believes that consumers in many instances would draw incorrect conclusions about which terms have been changed or superseded, causing these

consumers to be misled regarding the credit card terms that are currently available. This would hinder the ability of consumers to understand and to effectively compare the terms offered by various issuers. The Board believes that issuers are better placed than consumers to assemble this information correctly. While the Board understands that this requirement may significantly increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers outweighs this burden.

58(d) Posting of Agreements Offered to the Public

New TILA Section 122(d) requires that, in addition to submitting credit card agreements to the Board for posting on the Board's Web site, each card issuer must post the credit card agreements to which it is a party on its own Web site. The Board proposed to implement this requirement in proposed § 226.58(f). Proposed § 226.58(f)(1) required each issuer to post on its publicly available Web site the same agreements it submitted to the Board (i.e., the agreements the issuer offered to the public). The Board proposed additional guidance regarding the posting requirement in proposed Appendix N, paragraph 2.

Commenters did not oppose the general requirements of proposed § 226.58(f)(1), and the Board is adopting the proposed provision in final form, with certain modifications, as discussed below. In the final rule, proposed § 226.58(f)(1) is redesignated § 226.58(d), and the content of Appendix N, paragraph 2, is incorporated into this section of the regulation, in order to ensure that the guidance provided is more readily noticeable and conveniently located for readers.

Comment 58(d)-1 is added in the final rule to clarify that issuers are only required to post and maintain on their publicly available Web site the credit card agreements that

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

Comment 58(d)-2 is added to the final rule to clarify that, unlike § 226.58(e), discussed below, § 226.58(d) does not include a special rule for issuers that do not otherwise maintain a Web site. If an issuer is required to submit one or more agreements to the Board under § 226.58(c), that issuer must post those agreements on a publicly available Web site it maintains (or, with respect to an agreement for a private label credit card, on the publicly available Web site of at least one of the merchants at which the card may be used, as provided in § 226.58(d)(1)).

Some card issuer commenters suggested that issuers should be permitted to post agreements for private label or co-branded cards on the Web site of a retailer that accepts the card, rather than the issuer's own Web site; the commenters noted that consumers are more likely to find such agreements if posted on the retailer's Web site. The Board

agrees with these commenters, and accordingly § 226.58(d)(1) provides that an issuer may comply by posting and maintaining an agreement offered solely for accounts under one or more private label credit card plans in accordance with the requirements of § 226.58(d) on the publicly available Web site of at least one of the merchants at which credit cards issued under each private label credit card plan with 10,000 or more open accounts may be used.

Comment 58(d)-3 is included in the final rule to clarify how this provision would apply. The comment provides the following example: a card issuer has 100,000 open private label credit card accounts. Of these, 75,000 open accounts have credit cards usable only at Merchant A and 25,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

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

agreement on Merchant A's Web site alone because § 226.58(d) requires the issuer to post the agreement on the publicly available Web site of "at least one of the merchants at which cards issued under each private label credit card plan may be used" (emphasis added).

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

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

Section 226.58(d)(2) incorporates provisions from proposed Appendix N, paragraph 2, stating that agreements posted pursuant to this section must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8), except as provided in § 226.58(d) (for example, as provided in § 226.58(d)(3), agreements posted on an issuer's Web site need not conform to the electronic format required for submission to the Board, as discussed below).

Proposed Appendix N clarified that the agreements posted on an issuer's Web site need not conform to the electronic format required for submission to the Board. This clarification is incorporated into the final rule as § 226.58(d)(3), which states that agreements posted pursuant to this section may be posted in any electronic format that is readily usable by the general public. For example, when posting the agreements on its own Web site, an issuer may post the agreements in plain text format, in PDF format, in HTML format, or in some other electronic format, provided the format is readily usable by the general public.

Consumer group comments suggested that the rule should ensure that consumers are able to access credit card agreements offered to the public through an issuer's Web site without being required to provide personal information. The Board believes that the intent of the statute is to allow access to credit card agreements offered to the public without having to provide such information; accordingly, § 226.58(d)(3) also includes language setting forth this requirement, as well as a requirement that agreements posted on the issuer's Web site must be placed in a location that is prominent and readily accessible by the public, moved from proposed Appendix N, paragraph 2.

Section 226.58(d)(4) incorporates provisions from proposed Appendix N, paragraph 2, stating that an issuer must update the agreements posted on its Web site at least as frequently as the quarterly schedule required for submission of agreements to the Board. If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

Consumer group commenters suggested that the final rule clarify that any member of the public may have access to the agreement for any open account, whether or not currently offered to the public. The Board is not adopting such a requirement because, as discussed above, the Board believes the administrative burden associated with providing access to all open accounts would outweigh the benefit to consumers. A consumer group commenter asked that the rule require that, when a change is made to an agreement, the on-line version of that agreement be updated within a specific period of time no greater than 72 hours. The final rule does not include this requirement because the Board believes the burden to card issuers of updating agreements in such a short time would outweigh the benefit. In addition, if a consumer applies or is solicited for a credit card, the consumer will receive updated disclosures under § 226.5a. Finally, the same commenter suggested that issuers should be required to archive previous versions of credit card agreements and allow on-line access to them for purposes of comparison. The Board believes the burden to card issuers of being required to archive and make available all previous versions of its credit card agreements would outweigh the benefit to consumers.

58(e) Agreements for All Open Accounts

In addition to the requirements under proposed § 226.58(f)(1), proposed § 226.58(f)(2) required each issuer to provide each individual cardholder with access to his or her specific credit card agreement, by either: (1) posting and maintaining the individual cardholder's agreement on the issuer's Web site; or (2) making a copy of each cardholder's agreement available to the cardholder upon that cardholder's request. Proposed Appendix N, paragraph 3, provided further guidance on these requirements. Proposed § 226.58(f)(2), along with material from proposed Appendix N, paragraph 3, is incorporated into the final rule as § 226.58(e), with certain modifications, as discussed below.

As discussed above, the Board is exercising its authority to create exceptions from the requirements of new TILA Section 122(d) with respect to the submission of certain agreements to the Board for posting on the Board's Web site. However, the Board believes that it would not be appropriate to apply these exceptions to the requirement that issuers provide cardholders with access to their specific credit card agreement through the issuer's Web site. In particular, the Board believes that, for the reasons discussed above, posting credit card agreements that are not currently offered to the public on the Board's Web site would not be beneficial to consumers. However, the Board believes that the benefit of increased transparency of providing an individual cardholder access to his or her specific credit card agreement is substantial regardless of whether the cardholder's agreement continues to be offered by the issuer. The Board believes that this benefit outweighs the administrative burden on issuers of providing such access, and the final

rule therefore does not exempt agreements that are not offered to the public from the requirements of § 226.58(e).

Similarly, the final rule provides that card issuers with fewer than 10,000 open credit card accounts are not required to submit agreements to the Board, and provides for other exceptions from the requirement to submit agreements. However, the Board believes that the benefit of increased transparency associated with providing an individual cardholder with access to his or her specific credit card agreement is substantial regardless of the whether the card issuer is required to submit the agreement to the Board for posting on the Board's Web site. The Board believes that this benefit of increased transparency for consumers outweighs the administrative burden on issuers of providing such access, and therefore § 226.58(e) in the final rule does not include the exceptions from the requirement to submit agreements to the Board under § 226.58(c).

Comment 58(e)-1 clarifies that the requirement to provide access to credit card agreements under § 226.58(e) applies to all open credit card accounts, regardless of whether such agreements are required to be submitted to the Board pursuant to § 226.58(c) (or posted on the issuer's Web site pursuant to § 226.58(d)). For example, an issuer that is not required to submit agreements to the Board because it qualifies for the de minimis exception under § 226.58(c)(5) still is required to provide cardholders with access to their specific agreements under § 226.58(e). Similarly, an agreement that is no longer offered to the public is not required to be submitted to the Board under § 226.58(c), but nevertheless must be provided to the cardholder to whom it applies under § 226.58(e). This comment corresponds to proposed comment 58(f)(2)-2.

Section 226.58(e)(1)(ii) provides issuers with the option to make copies of cardholder agreements available on request because the Board believes that the benefit of increased transparency associated with immediate access to cardholder agreements, as compared to access after a brief waiting period, does not outweigh the administrative burden on issuers of providing immediate access. The Board believes that the administrative burden associated with posting each cardholder's credit card agreement on the issuer's Web site may be substantial for some issuers. In particular, the Board notes that some smaller institutions with limited information technology resources could find a requirement to post all cardholder's agreements to be a significant burden. The Board understands that it is important that all cardholders be able to obtain copies of their credit card agreements promptly, and § 226.58(e)(1)(ii) ensures that this will occur.

Under proposed § 226.58(f)(2)(ii), a card issuer that chose to make agreements available upon request was required to provide the cardholder with the ability to request a copy of the agreement both: (1) by using the issuer's Web site (such as by clicking on a clearly identified box to make the request); and (2) by calling a toll-free telephone number displayed on the Web site and clearly identified as to purpose. Commenters suggested that an exception should be created for issuers that do not maintain toll-free telephone numbers; the commenters contended that maintaining a toll-free telephone number could be a substantial burden for small issuers, and noted that issuers that currently do not maintain toll-free telephone numbers likely have a primarily local customer base. The final rule, in § 226.58(e)(1)(ii)(B), does not require that the telephone number for cardholders to call to request copies of their agreements be toll-free, but instead provides that the telephone line must be "readily available."

Comment 58(e)-2 provides guidance on the "readily available" standard, stating that to satisfy the readily available standard, the card issuer must provide enough telephone lines so that cardholders get a reasonably prompt response, but that the issuer need only provide telephone service during normal business hours. The comment further states that, within its primary service area, the issuer must provide a local or toll-free telephone number, but that the issuer need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business. This standard is based on a comparable requirement under Regulation E, 12 CFR Part 205, that requires financial institutions to provide a telephone line for consumers to call for certain purposes. See Regulation E, § 205.10(a)(1)(iii), 12 CFR § 205.10(a)(1)(iii), and comment 10(a)(1)-7 in the Regulation E Official Staff Commentary, 12 CFR Part 205, Supplement I, paragraph 10(a)(1)-7.

A number of commenters addressed the requirement to provide cardholders the ability to request a copy of their agreement by using the issuer's Web site (under proposed § 226.58(f)(2)(ii)(A), redesignated § 226.58(e)(1)(ii)(A) in the final rule), in addition to the ability to request a copy by calling a telephone number. The commenters noted that many card issuers do not have interactive Web sites, and that some may not have Web sites of any kind; they contended that permitting cardholders to request copies of their particular agreements through a Web site would require creating and maintaining an interactive Web site and complying with privacy and data security requirements, which could represent a significant compliance burden, especially for smaller issuers. The commenters suggested various alternative means for providing cardholders the means to request copies of their agreements.

Based on information received from financial institution trade associations and service providers, it appears that a substantial number of card issuers do not maintain interactive Web sites, and that some issuers (for example, more than 250 credit unions) do not have Web sites of any kind. The Board believes that cardholders should be provided with convenient means to request copies of their credit card agreements, but that there are alternative methods that would serve this purpose and would not require issuers that do not have interactive Web sites to incur the expense to create and maintain such Web sites; the Board believes that the burden of creating and maintaining such Web sites would not be outweighed by the convenience to cardholders of being able to request a copy of their agreements directly through a Web site, as opposed to using an alternative means.

Accordingly, in the final rule, § 226.58(e)(2) sets forth a special rule for card issuers that do not have a Web site or that have a Web site that is not interactive (i.e., a Web site from which a cardholder cannot access specific information about his or her individual account). Section 226.58(e)(2) provides that, instead of complying with § 226.58(e)(1), such an issuer may make agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line, the number for which is: (i) displayed on the issuer's Web site and clearly identified as to purpose; or (ii) included on each periodic statement sent to the cardholder and clearly identified as to purpose.

The final rule includes comment 58(e)-3, which further clarifies how this special rule applies. Comment 58(e)-3 clarifies that an issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts

is not required to provide a cardholder with the ability to request a copy of the agreement by using the issuer's Web site. The comment further clarifies that an issuer without a Web site of any kind could comply by disclosing the telephone number on each periodic statement; an issuer with a non-interactive Web site could comply in the same way, or alternatively could comply by displaying the telephone number on the issuer's Web site.

Under proposed § 226.58(f)(2)(ii), if a cardholder requested a copy of his or her credit card agreement (either using the issuer's Web site or by calling the telephone number provided), the issuer was required to send, or otherwise make available to, the cardholder a copy of the agreement within 10 business days after receiving the request. The Board solicited comments on whether issuers should have a shorter or longer period in which to respond to cardholder requests. Some commenters contended that 10 business days would not provide sufficient time to respond to a request; the commenters noted that they will be required to integrate changes in terms into the agreement and provide pricing information, which, particularly for older agreements that may have had many changes in terms over the years, could require more time. The commenters suggested various longer time periods to respond to a cardholder request, including 30 business days or 60 calendar days.

The Board believes that it would be reasonable to provide more time for an issuer to respond to a cardholder request for a copy of the credit card agreement. Although cardholders should be able to obtain a copy of their agreement promptly, integrating changes in terms may require more time for older agreements; for newer agreements with fewer changes since the account was opened, the cardholder is more likely to still have a copy of the agreement and therefore less likely to need to request a copy. For all

agreements, the pricing information has been disclosed to cardholders at the time the account is opened, and much of the pricing information is disclosed again on periodic statements. Accordingly, the final rule, in §§ 226.58(e)(1)(ii) and (e)(2), provides that the issuer must send or otherwise make available to the cardholder the agreement in electronic or paper form within 30 calendar days after receiving the cardholder's request.

Proposed comment 58(f)(2)-3 provided guidance on the deadline for providing agreements upon request. In the final rule, the comment is redesignated comment 58(e)-4. The comment states that if an issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the issuer would be required to mail the agreement no later than 30 days after receipt of the cardholder's request. Alternatively, if an issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the issuer's Web site, the issuer must post the agreement on its Web site no later than 30 days after receipt of the cardholder's request. The comment further notes that, under § 226.58(e)(3)(v), issuers are permitted to provide copies of agreements in either paper or electronic form, regardless of the form of the cardholder's request, as discussed below.

Section 226.58(e)(3) states requirements for the form and content of agreements, and is drawn largely from proposed Appendix N, paragraph 3, and proposed staff commentary. Section 226.58(e)(3)(i) corresponds to part of paragraph 3(b) of proposed Appendix N, and states that except as elsewhere provided, agreements posted on the card issuer's Web site pursuant to § 226.58(e)(1)(i) or made available upon the cardholder's request pursuant to § 226.58(e)(1)(ii) or (e)(2) must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8).

Section 226.58(e)(3)(ii) corresponds to proposed Appendix N, paragraph 3(a), and states that if a card issuer posts an agreement on its Web site or otherwise provides an agreement to a cardholder electronically pursuant to § 226.58(e), the agreement may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the cardholder.

Section 226.58(e)(1)(iii) is drawn from part of paragraph 3(b) of proposed Appendix N and provides that agreements posted or otherwise provided pursuant to § 226.58(e) may contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons.

Section 226.58(e)(1)(iv) corresponds generally to proposed Appendix N, paragraph (c), and states that agreements must set forth the specific provisions and pricing information applicable to the particular cardholder, and that agreement provisions and pricing information must be complete and accurate as of a date no more than 60 days prior to the date on which the agreement is posted on the card issuer's Web site or the cardholder's request is received.

Finally, § 226.58(e)(1)(v) is drawn from proposed comment 58(f)(2)-1, and provides that agreements provided upon request may be provided by the issuer in either electronic or paper form, regardless of the form of the cardholder's request.

Paragraph 3(d) of proposed Appendix N clarified that issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders. This language is not incorporated into the text of the final rule as part of

§ 226.58(e), but the requirement nevertheless applies because § 226.58(e) provides that agreements posted on the card issuer's Web site or made available upon the cardholder's request must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8), and § 226.58(c)(8) imposes this requirement. Thus, changes in provisions or pricing information must be integrated into the text of the agreement (or into the pricing information described in § 226.58(c)(8)(ii)). For example, it is not permissible for an issuer to send to a cardholder under § 226.58(e)(1)(ii) an agreement consisting of a terms and conditions document dated January 1, 2005, and four subsequent change-in-terms notices. Instead, the issuer is required to send to the cardholder a single document that integrates the changes made by each of the change-in-terms notices into the body of the terms and conditions document or the pricing information addendum.

The Board believes that it is important for consumers be able to accurately assess the terms of a credit card agreement to which they are a party. As described above in connection with the integrated agreement requirement for agreements submitted to the Board, the Board believes that requiring consumers to sift through change-in-terms notices and riders in an attempt to assemble the current version of a credit card agreement imposes a significant burden on consumers, is likely to lead to consumer confusion, and would greatly lessen the usefulness of making credit card agreements available under the final rule. The Board believes that these arguments apply with even more force in the context of providing an individual cardholder with access to his or her specific credit card agreement. Permitting issuers to provide provisions of the agreement or pricing information as change-in-terms notices or riders would require consumers to bear the

burden of assembling a coherent picture of the terms to which they are currently subject. The Board believes that this likely would hinder the ability of many consumers to understand the terms applicable to them. The Board also believes that consumers in many instances would draw incorrect conclusions about which terms have been changed or superseded, causing these consumers to be misled regarding the terms of their credit card agreement. The Board believes that issuers are better placed than consumers to assemble this information correctly. While the Board understands that this may significantly increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers outweighs this burden.

Some commenters suggested that the final rule provide an exception from the requirements of § 226.58(e) for accounts purchased from another issuer. Similarly, commenters suggested an exception for older accounts. Commenters argued that in such cases, issuers may not have the agreements and therefore may find it difficult or impossible to comply. The final rule does not contain the suggested exceptions. The Board believes that cardholders need to be able to obtain the credit card agreements to which they are parties.

Finally, some commenters suggested that the final rule provide a grace period during which issuers would not be required to provide an integrated agreement upon request, but could instead send the cardholder the initial agreement and all subsequent change in terms notices. Alternatively, it was suggested that such a grace period be provided for accounts opened prior to a specific date. The final rule does not provide such a grace period. As discussed above, it likely would be difficult in many cases for cardholders to understand a complex credit card agreement supplemented by change in

terms notices. In addition, as discussed above, the final rule allows 30 days (as opposed to 10 business days, as proposed) for issuers to respond to cardholder requests, in part in order to provide issuers sufficient time to integrate change in terms notices with the initial agreement before sending it to the cardholder.

58(f) E-Sign Act Requirements

Section § 226.58(f), corresponding to proposed § 226.58(f)(3), provides that card issuers may provide credit card agreements in electronic form under § 226.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). Because new TILA Section 122(d) specifies that credit card issuers must provide access to cardholder agreements on the issuer's Web site, the Board believes that the requirements of the E-Sign Act do not apply.

~~**Appendix M1 – Repayment Disclosures**~~

~~As discussed in the section-by-section analysis to § 226.7(b)(12), TILA Section 127(b)(11), as added by Section 1301(a) of the Bankruptcy Act, required creditors, the FTC and the Board to establish and maintain toll-free telephone numbers in certain instances in order to provide consumers with an estimate of the time it will take to repay the consumer's outstanding balance, assuming the consumer makes only minimum payments on the account and the consumer does not make any more draws on the account. 15 U.S.C. 1637(b)(11)(F). The Act required creditors, the FTC and the Board to provide estimates that are based on tables created by the Board that estimate repayment periods for different minimum monthly payment amounts, interest rates, and outstanding balances. In the January 2009 Regulation Z Rule, instead of issuing a table, the Board~~