

~~a separate disclosure of a variable rate in effect within the last 30 days will strike the balance between operational burden on creditors and ensuring that consumers receive clear and timely disclosures of the terms that apply to their accounts.~~

~~Accordingly, the Board is adopting a new § 226.6(b)(4)(ii)(H), which states that creditors imposing annual percentage rates that vary according to an index that is not under the creditor's control that provide the disclosures required by § 226.6(b) in person at the time an open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may disclose in the table a rate, or range of rates to the extent permitted by § 226.6(b)(2)(i)(E), that was in effect within the last 90 days before the disclosures are provided, along with a reference directing the consumer to the account agreement or other disclosure provided with the account opening table where an annual percentage rate applicable to the consumer's account in effect within the last 30 days before the disclosures are provided is disclosed.~~

~~**Section 226.7 Periodic Statement**~~

~~**7(b) Rules Affecting Open-End (Not Home-Secured) Plans**~~

~~**7(b)(8) Grace Period**~~

~~See discussion regarding § 226.5a(b)(5).~~

~~**7(b)(11) Due Date; Late Payment Costs**~~

In 2005, the Bankruptcy Act amended TILA to add Section 127(b)(12), which required creditors that charge a late payment fee to disclose on the periodic statement (1) the payment due date or, if the due date differs from when a late payment fee would be charged, the earliest date on which the late payment fee may be charged, and (2) the amount of the late payment fee. See 15 U.S.C. 1637(b)(12). In the January 2009

Regulation Z Rule, the Board implemented this section of TILA for open-end (not home-secured) credit plans. Specifically, the final rule added § 226.7(b)(11) to require creditors offering open-end (not home-secured) credit plans that charge a fee or impose a penalty rate for paying late to disclose on the periodic statement: the payment due date, and the amount of any late payment fee and any penalty APR that could be triggered by a late payment. For ease of reference, this supplementary information will refer to the disclosure of any late payment fee and any penalty APR that could be triggered by a late payment as “the late payment disclosures.”

Section 226.7(b)(13), as adopted in the January 2009 Regulation Z Rule, sets forth formatting requirements for the due date and the late payment disclosures. Specifically, § 226.7(b)(13) requires that the due date be disclosed on the front side of the first page of the periodic statement. Further, the amount of any late payment fee and any penalty APR that could be triggered by a late payment must be disclosed in close proximity to the due date.

Section 202 of the Credit Card Act amends TILA Section 127(b)(12) to provide that for a “credit card account under an open-end consumer credit plan,” a creditor that charges a late payment fee must disclose in a conspicuous location on the periodic statement (1) the payment due date, or, if the due date differs from when a late payment fee would be charged, the earliest date on which the late payment fee may be charged, and (2) the amount of the late payment fee. In addition, if a late payment may result in an increase in the APR applicable to the credit card account, a creditor also must provide on the periodic statement a disclosure of this fact, along with the applicable penalty APR.

The disclosure related to the penalty APR must be placed in close proximity to the due-date disclosure discussed above.

In addition, Section 106 of the Credit Card Act adds new TILA Section 127(o), which requires that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan be the same day each month. 15 U.S.C. 1637(o).

As discussed in more detail below, in the October 2009 Regulation Z Proposal, the Board proposed to retain the due date and the late payment disclosure provisions adopted in § 226.7(b)(11) as part of the January 2009 Regulation Z Rule, with several revisions. Format requirements relating to the due date and the late payment disclosure provisions are discussed in more detail in the section-by-section analysis to § 226.7(b)(13).

Applicability of the due date and the late payment disclosure requirements. The due date and the late payment disclosures added to TILA Section 127(b)(12) by the Bankruptcy Act applied to all open-end credit plans. Consistent with TILA Section 127(b)(12), as added by the Bankruptcy Act, the due date and the late payment disclosures in § 226.7(b)(11) (as adopted in the January 2009 Regulation Z Rule) apply to all open-end (not home-secured) credit plans, including credit card accounts, overdraft lines of credit and other general purpose lines of credit that are not home secured.

The Credit Card Act amended TILA Section 127(b)(12) to apply the due date and the late payment disclosures only to creditors offering a credit card account under an open-end consumer credit plan. Consistent with newly-revised TILA Section 127(b)(12), in the October 2009 Regulation Z Proposal, the Board proposed to amend § 226.7(b)(11) to require the due date and the late payment disclosures only for a “credit card account

under an open-end (not home-secured) consumer credit plan,” as that term would have been defined under proposed § 226.2(a)(15)(ii). Based on the proposed definition of “credit card account under an open-end (not home-secured) consumer credit plan,” the due date and the late payment disclosures would not have applied to (1) open-end credit plans that are not credit card accounts such as general purpose lines of credit that are not accessed by a credit card; (2) HELOC accounts subject to § 226.5b even if they are accessed by a credit card device; and (3) overdraft lines of credit even if they are accessed by a debit card. In addition, as discussed in more detail below, under proposed § 226.7(b)(11)(ii), the Board also proposed to exempt charge card accounts from the late payment disclosure requirements.

In response to the October 2009 Regulation Z Proposal, several consumer groups encouraged the Board to use its authority under Section 105(a) of TILA to require the payment due date and late payment disclosures for all open-end credit, not just “credit card accounts under an open-end (not home-secured) consumer credit plan.”

However, the final rule applies the payment due date and late payment disclosures only to credit card accounts under an open-end (not home-secured) consumer credit plan, as that term is defined in § 226.2(a)(15)(ii). Thus, the due date and the late payment disclosures would not apply to (1) open-end credit plans that are not credit card accounts such as general purpose lines of credit that are not accessed by a credit card; (2) HELOC accounts subject to § 226.5b even if they are accessed by a credit card device; and (3) overdraft lines of credit even if they are accessed by a debit card. In addition, as discussed in more detail below, under § 226.7(b)(11)(ii), the final rule also exempts

charge card accounts and charged-off accounts from the payment due date and late payment disclosure requirements.

1. HELOC accounts. In the August 2009 Regulation Z HELOC Proposal, the Board did not propose to use its authority in TILA Section 105(a) to apply the due date and late payment disclosures to HELOC accounts subject to §226.5b, even if they are accessed by a credit card device. In the supplemental information to the August 2009 Regulation Z HELOC Proposal, the Board stated its belief that the payment due date and late payment disclosures are not needed for HELOC accounts to effectuate the purposes of TILA. The consequences to a consumer of not making the minimum payment by the payment due date are less severe for HELOC accounts than for unsecured credit cards. Unlike with unsecured credit cards, creditors offering HELOC accounts subject to 226.5b typically do not impose a late-payment fee until 10-15 days after the payment is due. In addition, as proposed in the August 2009 Regulation Z HELOC Proposal, creditors offering HELOC accounts would be restricted from terminating and accelerating the account, permanently suspending the account or reducing the credit line, or imposing penalty rates or penalty fees (except for the contractual late-payment fee) for a consumer's failure to pay the minimum payment due on the account, unless the payment is more than 30 days late. For unsecured credit cards, under the Credit Card Act, after the first year an account is opened, unsecured credit card issuers may increase rates and fees on new transactions for a late payment, even if the consumer is only one day late in making the minimum payment. Unlike with unsecured credit cards, as proposed in the August 2009 Regulation HELOC Proposal, even after the first year that the account is open, creditors offering HELOC accounts subject to § 226.5b could not impose penalty

rates or penalty fees (except for a contractual late-payment fee) on new transactions for a consumer's failure to pay the minimum payment on the account, unless the consumer's payment is more than 30 days late. For these reasons, the final rule does not extend the payment due date and late payment disclosures to HELOC accounts subject to § 226.5b, even if they are accessed by a credit card device.

2. Overdraft lines of credit and other general purpose credit lines. For several reasons, the Board also does not use its authority in TILA Section 105(a) to apply the due date and late payment disclosures to overdraft lines of credit (even if they are accessed by a debit card) and general purpose credit lines that are not accessed by a credit card. First, these lines of credit are not in wide use. The 2007 Survey of Consumer Finances data indicates that few families--1.7 percent--had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. (By comparison, 73 percent of families had a credit card, and 60.3 percent of these families had a credit card balance at the time of the interview.)²² Second, the Board is concerned that the operational costs of requiring creditors to comply with the payment due date and late payment disclosure requirements for overdraft lines of credit and other general purpose lines of credit may cause some institutions to no longer provide these products as accommodations to consumers, to the detriment of consumers who currently use these products. For these reasons, the final rule does not extend the payment due date and late payment disclosure requirements to overdraft lines of credit and other general purpose credit lines.

3. Charge card accounts. As discussed above, the late payment disclosures in TILA Section 127(b)(12), as amended by the Credit Card Act, apply to "creditors"

²² Brian Bucks, et al., Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin (February 2009).

offering credit card accounts under an open-end consumer credit plan. Issuers of “charge cards” (which are typically products where outstanding balances cannot be carried over from one billing period to the next and are payable when a periodic statement is received) are “creditors” for purposes of specifically enumerated TILA disclosure requirements. 15 U.S.C. 1602(f); § 226.2(a)(17). The late payment disclosure requirement in TILA Section 127(b)(12), as amended by the Credit Card Act, is not among those specifically enumerated.

Under the October 2009 Regulation Z Proposal, a charge card issuer would have been required to disclose the payment due date on the periodic statement that was the same day each month. However, under proposed § 226.7(b)(11)(ii), a charge card issuer would not have been required to disclose on the periodic statement the late payment disclosures, namely any late payment fee or penalty APR that could be triggered by a late payment. The Board noted that, as discussed above, the late payment disclosure requirements are not specifically enumerated in TILA Section 103(f) to apply to charge card issuers. In addition, the Board noted that for some charge card issuers, payments are not considered “late” for purposes of imposing a fee until a consumer fails to make payments in two consecutive billing cycles. Therefore, the Board concluded that it would be undesirable to encourage consumers who in January receive a statement with the balance due upon receipt, for example, to avoid paying the balance when due because a late payment fee may not be assessed until mid-February; if consumers routinely avoided paying a charge card balance by the due date, it could cause issuers to change their practice with respect to charge cards.

An industry commenter noted that charge cards should also be exempt from the requirement in new TILA Section 127(o) that the payment due date be the same day each month because that requirement, like the late payment disclosure requirements in revised TILA Section 127(b)(12), is not specifically enumerated in TILA Section 103(f) as applying to charge card issuers. Historically, however, the Board has generally used its authority under TILA Section 105(a) to apply the same requirements to credit and charge cards. See § 226.2(a)(15); comment 2(a)(15)-3. The Board has taken a similar approach with respect to implementation of the Credit Card Act. See § 226.2(a)(15)(ii). Nevertheless, in these circumstances, the Board believes that it would not be appropriate to apply the requirements in TILA Section 127(b)(12) and (o) to periodic statements provided solely for charge card accounts.

Charge card accounts generally require that the consumer pay the full balance upon receipt of the periodic statement. See comment 2(a)(15)-3. In practice, however, the Board understands that charge card issuers generally request that consumers make payment by some later date. See comment 5a(b)(7)-1. As discussed below, proposed comments 7(b)(11)-1 and -2 clarify that the payment due date disclosed pursuant to § 226.7(b)(11)(i)(A) must be the date on which the consumer is legally obligated to make payment, even if the contract or state law provides that a late payment fee cannot be assessed until some later date. Thus, proposed § 226.7(b)(11)(i)(A) would have required a charge card issuer to disclose that payment was due immediately upon receipt of the periodic statement. As discussed above with respect to § 226.5(b)(2)(ii), the Board believes that such a disclosure would be unnecessarily confusing for consumers and would prevent a charge card issuer from complying with the requirement that periodic

statements be mailed or delivered 21 days before the payment due date. Instead, the Board believes that it is appropriate to amend proposed § 226.7(b)(11)(ii)(A) to exempt charge card periodic statements from the requirements of § 226.7(b)(11)(i).

However, as discussed above, charge card issuers are still prohibited by § 226.5(b)(2)(ii)(A)(2) from treating a payment as late for any purpose during the 21-day period following mailing or delivery of the periodic statement. Furthermore, § 226.7(b)(11)(ii) makes clear the exemption is for periodic statements provided solely for charge card accounts; periodic statements provided for credit card accounts with a charge card feature and revolving feature must comply with the due date and late payment disclosure provisions as to the revolving feature. The Board is also retaining comment app. G-9 (which was adopted in the January 2009 Regulation Z Rule). Comment app. G-9 explains that creditors offering card accounts with a charge card feature and a revolving feature may revise disclosures, such as the late payment disclosures and the repayment disclosures discussed in the section-by-section analysis to § 226.7(b)(12) below, to make clear the feature to which the disclosures apply.

4. Charged-off accounts. In response to the October 2009 Regulation Z Proposal, one commenter requested that credit card issuers not be required to provide the payment due date and late payment disclosures for charged-off accounts since, on those accounts, consumers are over 180 days late, the accounts have been placed in charge-off status, and full payment is due immediately. The final rule provides that the payment due date and late payment disclosures do not apply to a charged-off account where full payment of the entire account balance is due immediately. See § 226.7(b)(11)(ii)(B). In these cases, it would be impossible for card issuers to ensure that the payment due date is the same day

each month because the payment is due immediately upon receipt of the periodic statement, and issuers cannot control which day the periodic statement will be received. In addition, the late payment disclosures are not likely to be meaningful to consumers because consumers are likely aware of any penalties for late payment when an account is 180 days late.

5. Lines of credit accessed solely by account numbers. In response to the October 2009 Regulation Z Proposal, one commenter requested that the Board provide an exemption from the due date and late payment disclosures for lines of credit accessed solely by account numbers. This commenter believed that this exemption would simplify compliance issues, especially for smaller retailers offering in-house revolving open-end accounts, in view of some case law indicating that a reusable account number could constitute a “credit card.” The final rule does not contain a specific exemption from the payment due date and late payment disclosure requirements for lines of credit accessed solely by account numbers. The Board believes that consumers that use these lines of credit (to the extent they are considered credit card accounts) would benefit from the due date and late payment disclosures.

Payment due date. As adopted in the January 2009 Regulation Z Rule, § 226.7(b)(11) requires creditors offering open-end (not home-secured) credit to disclose the due date for a payment if a late payment fee or penalty rate could be imposed under the credit agreement, as discussed in more detail as follows. As adopted in the January 2009 Regulation Z Rule, § 226.7(b)(11) applies to all open-end (not home-secured) credit plans, even those plans that are not accessed by a credit card device. In the October 2009 Regulation Z Proposal, the Board proposed generally to retain the due date disclosure,

except that this disclosure would have been required only for a card issuer offering a “credit card account under an open-end (not home-secured) consumer credit plan,” as that term would have been defined in proposed § 226.2(a)(15)(ii).

In addition, the Board proposed several other revisions to § 226.7(b)(11) in order to implement new TILA Section 127(o), which requires that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan be the same day each month. In addition to requiring that the due date disclosed be the same day each month, in order to implement new TILA Section 127(o), the Board proposed to require that the due date disclosure be provided regardless of whether a late payment fee or penalty rate could be imposed and proposed to require that the due date be disclosed for charge card accounts, although charge card issuers would not be required to provide the late payment disclosures set forth in proposed § 226.7(b)(11)(i)(B). The final rule retains this provision with one modification. For the reasons discussed above, the final rule amends proposed § 226.7(b)(11)(ii) to provide that the due date and late payment disclosure requirements do not apply to periodic statements provided solely for charge card accounts or to periodic statements provided for charged-off accounts where payment of the entire account balance is due immediately.

1. Courtesy periods. In the January 2009 Regulation Z Rule, § 226.7(b)(11) interpreted the due date to be a date that is required by the legal obligation. Comment 7(b)(11)-1 clarified that creditors need not disclose informal “courtesy periods” not part of the legal obligation that creditors may observe for a short period after the stated due date before a late payment fee is imposed, to account for minor delays in payments such as mail delays. In the October 2009 Regulation Z Proposal, the Board proposed to retain

comment 7(b)(11)-1 with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the due date and late payment disclosures to a “credit card account under an open-end (not home-secured) consumer credit plan,” as that term would have been defined in proposed § 226.2(a)(15)(ii). The Board received no comments on this provision. The final rule adopts comment 7(b)(11)-1 as proposed.

2. Assessment of late fees. Under TILA Section 127(b)(12), as revised by the Credit Card Act, a card issuer must disclose on periodic statements the payment due date or, if different, the earliest date on which the late payment fee may be charged. Some state laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. Under such a state law, the later date arguably would be required to be disclosed on periodic statements.

In the January 2009 Regulation Z Rule, the Board required creditors to disclose the due date under the terms of the legal obligation, and not a later date, such as when creditors are restricted by state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date. Specifically, comment 7(b)(12)-2 (as adopted as part of the January 2009 Regulation Z Rule) notes that some state or other laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. For example, assume a payment is due on March 10 and state law provides that a late payment fee cannot be assessed before March 21. Comment 7(b)(11)-2 clarifies that creditors must disclose the due date under the terms of the legal obligation (March 10 in this example), and not a date different than the due date, such as when creditors are restricted by state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due

date (March 21 in this example). Consumers' rights under state law to avoid the imposition of late payment fees during a specified period following a due date are unaffected by the disclosure requirement. In this example, the creditor would disclose March 10 as the due date for purposes of § 226.7(b)(11), even if under state law the creditor could not assess a late payment fee before March 21.

The Board was concerned that disclosure of the later date would not provide a meaningful benefit to consumers in the form of useful information or protection and would result in consumer confusion. In the example above, highlighting March 20 as the last date to avoid a late payment fee may mislead consumers into thinking that a payment made any time on or before March 20 would have no adverse financial consequences. However, failure to make a payment when due is considered an act of default under most credit contracts, and can trigger higher costs due to loss of a grace period, interest accrual, and perhaps penalty APRs. The Board considered additional disclosures on the periodic statement that would more fully explain the consequences of paying after the due date and before the date triggering the late payment fee, but such an approach appeared cumbersome and overly complicated.

For these reasons, notwithstanding TILA Section 127(b)(12) (as revised by the Credit Card Act), in the October 2009 Regulation Z Proposal, the Board proposed to continue to require card issuers to disclose the due date under the terms of the legal obligation, and not a later date, such as when creditors are restricted by state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date.

Thus, the Board proposed to retain comment 7(b)(11)-2 with several revisions. First, the comment would have been revised to refer to card issuers, rather than creditors, consistent with the proposal to limit the due date and late payment disclosures to a “credit card account under an open-end (not home-secured) consumer credit plan,” as that term would have been defined in proposed § 226.2(a)(15)(ii). Second, the comment would have been revised to address the situation where the terms of the account agreement (rather than state law) limit a card issuer from imposing a late payment fee unless a payment is late a certain number of days following a due date. The Board proposed to revise comment 7(b)(11)-2 to provide that in this situation a card issuer must disclose the date the payment is due under the terms of the legal obligation, and not the later date when a late payment fee may be imposed under the contract.

The Board did not receive any comments on this aspect of the October 2009 Regulation Z Proposal. For the reasons described above, comment 7(b)(11)-2 is adopted as proposed. The Board adopts this exception to the TILA requirement to disclose the later date pursuant to the Board’s authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

3. Same due date each month. The Credit Card Act created a new TILA Section 127(o), which states in part that the payment due date for a credit card account under an open end consumer credit plan shall be the same day each month. The Board proposed to implement this requirement by revising § 226.7(b)(11)(i). The text the Board proposed to insert into amended § 226.7(b)(11)(i) generally tracked the statutory language in new TILA Section 127(o) and stated that for credit card accounts under open-end (not home-

secured) consumer credit plans, the due date disclosed pursuant to § 226.7(b)(11)(i) must be the same day of the month for each billing cycle.

The Board proposed several new comments to clarify the requirement that the due date be the same day of the month for each billing cycle. Proposed comment 7(b)(11)-6 clarified that the same day of the month means the same numerical day of the month. The proposed comment noted that one example of a compliant practice would be to have a due date that is the 25th of every month. In contrast, it would not be permissible for the payment due date to be the same relative date, but not numerical date, of each month, such as the third Tuesday of the month. The Board believes that the intent of new TILA Section 127(o) is to promote predictability and to enhance consumer awareness of due dates each month to make it easier to make timely payments. The Board stated in the proposal that requiring the due date to be the same numerical day each month would effectuate the statute, and that the Board believed permitting the due date to be the same relative day each month would not as effectively promote predictability for consumers.

The Board noted that in practice the requirement that the due date be the same numerical date each month would preclude creditors from setting due dates that are the 29th, 30th, or 31st of the month. The Board is aware that some credit card issuers currently set due dates for a portion of their accounts on every day of the month, in order to distribute the burden associated with processing payments more evenly throughout the month. The Board solicited comment on any operational burden associated with processing additional payments received on the 1st through 28th of the month in those months with more than 28 days.

Several industry commenters requested that the Board permit creditors to set a due date that is the last day of each month, even though the last day of the month will fall on a different numerical date in some months. Other industry commenters stated that the rule should permit due dates that are the 29th or 30th of each month, noting that February is the only month that has fewer than 30 days. One commenter noted that there could be customer service problems with the rule as proposed, especially if a consumer requests a payment due date that is the last day of the month. The Board believes that the intent of new TILA Section 127(o) is that a consumer's due date be predictable and generally not change from month to month. However, comment 7(b)(11)-6 has been revised from the proposal to provide that a consumer's due date may be the last day of the month, notwithstanding the fact that this will not be the same numerical date for each month. The Board believes that consumers can generally understand what the last day of the month will be, and that this clarification effectuates the intent of new TILA Section 127(o) that consumer's due date be predictable from month to month.

Proposed comment 7(b)(11)(i)-7 provided that a creditor may adjust a consumer's due date from time to time, for example in response to a consumer-initiated request, provided that the new due date will be the same numerical date each month on an ongoing basis. The proposed comment cross-referenced existing comment 2(a)(4)-3 for guidance on transitional billing cycles that might result when the consumer's due date is changed. The Board stated its belief that it is appropriate to permit creditors to change the consumer's due date from time to time, for example, if the creditor wishes to honor a consumer request for a new due date that better coincides with the time of the month when the consumer is paid by his or her employer. While the proposed comment referred

to consumer-initiated requests as one example of when a change in due date might occur, proposed § 226.7(b)(11)(i) and comment 7(b)(11)-7 did not prohibit changes in the consumer's due date from time to time that are not consumer-initiated, for example, if a creditor acquires a portfolio and changes the consumer's due date as it migrates acquired accounts onto its own systems.

The Board received only one comment on proposed comment 7(b)(11)(i)-7, which is adopted as proposed. One industry commenter stated that the guidance that the due date may be adjusted from time to time, but must be the same thereafter is overly restrictive. This commenter stated that consumers should be able to choose their desired due date. The Board believes that comment 7(b)(11)(i)-7 does permit sufficient flexibility for card issuers to permit consumers to change their due dates from time to time. However, the Board believes that clarification that the due date must generally be the same each month is necessary to effectuate the purposes of new TILA Section 127(o) and to provide predictability to consumers regarding their payment due dates.

Regulation Z's definition of "billing cycle" in § 226.2(a)(4) contemplates that the interval between the days or dates of regular periodic statements must be equal and no longer than a quarter of a year. Therefore, some creditors may have billing cycles that are two or three months in duration. The Board proposed comment 7(b)(11)-8 to clarify that new § 226.7(b)(11)(i) does not prohibit billing cycles that are two or three months, provided that the due date for each billing cycle is on the same numerical date of each month. The Board received no comments on comment 7(b)(11)-8, which is adopted as proposed.

Finally, the Board proposed comment 7(b)(11)-9 to clarify the relationship between §§ 226.7(b)(11)(i) and 226.10(d). As discussed elsewhere in this supplementary information, § 226.10(d) provides that if the payment due date is a day on which the creditor does not receive or accept payments by mail, the creditor is generally required to treat a payment received the next business day as timely. It is likely that, from time to time, a due date that is the same numerical date each month as required by § 226.7(b)(11)(i) may fall on a date on which the creditor does not accept or receive mailed payments, such as a holiday or weekend. Proposed comment 7(b)(11)-9 clarified that in such circumstances the creditor must disclose the due date according to the legal obligation between the parties, not the date as of which the creditor is permitted to treat the payment as late. For example, if the consumer's due date is the 4th of every month, a card issuer may not accept or receive payments by mail on Thursday, July 4. Pursuant to § 226.10(d), the creditor may not treat a mailed payment received on the following business day, Friday, July 5, as late for any purpose. The creditor must nonetheless, however, disclose July 4 as the due date on the periodic statement and may not disclose a July 5 due date.

Two industry commenters objected to proposed comment 7(b)(11)-9 and stated that creditors should be permitted to disclose the next business day as the due date if the regular due date falls on a weekend or holiday on which they do not receive or accept payments by mail. One commenter noted that this proposed requirement could create operational difficulties, because some creditors' systems do not process payments as timely if the payment is received after the posted due date on the periodic statement. The commenter stated that this would require some creditors to apply back-end due diligence

to ensure that they are not inadvertently creating penalties, which can pose a significant burden on creditors.

The Board is adopting comment 7(b)(11)-9 as proposed. The Board believes that the purpose of TILA Section 127(o) is to promote consistency and predictability regarding a consumer's due date. The Board believes that predictability is not promoted by permitting creditors to disclose different numerical dates during months where the consumer's payment due date falls, for example, on a weekend or holiday when the card issuer does not receive or accept payments by mail. This is consistent with the approach that the Board has taken with regard to payment due dates in comments 7(b)(11)-1 and -2, where the due date disclosed is required to reflect the legal obligation between the parties, not any courtesy period offered by the creditor or required by state or other law.

Late payment fee and penalty APR. In the January 2009 Regulation Z Rule, the Board adopted § 226.7(b)(11) to require creditors offering open-end (not home-secured) credit plans that charge a fee or impose a penalty rate for paying late to disclose on the periodic statement the amount of any late payment fee and any penalty APR that could be triggered by a late payment (in addition to the payment due date discussed above).

Consistent with TILA Section 127(b)(12), as revised by the Credit Card Act, proposed § 226.7(b)(11) would have continued to require that a card issuer disclose any late payment fee and any penalty APR that may be imposed on the account as a result of a late payment, in addition to the payment due date discussed above. No comments were received on this aspect of the proposal. The final rule adopts this provision as proposed.

Fee or rate triggered by multiple events. In the January 2009 Regulation Z Rule, the Board added comment 7(b)(11)-3 to provide guidance on complying with the late

payment disclosure if a late fee or penalty APR is triggered after multiple events, such as two late payments in six months. Comment 7(b)(11)-3 provides that in such cases, the creditor may, but is not required to, disclose the late payment and penalty APR disclosure each month. The disclosures must be included on any periodic statement for which a late payment could trigger the late payment fee or penalty APR, such as after the consumer made one late payment in this example. In the October 2009 Regulation Z Proposal, the Board proposed to retain this comment with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the late payment disclosures to a “credit card account under an open-end (not home-secured) consumer credit plan,” as that term would have been defined in proposed § 226.2(a)(15)(ii).

In response to the October 2009 Regulation Z Proposal, one commenter suggested that consumers would benefit from disclosure of the issuer’s policy on late fee and penalty APRs on each periodic statement, whether or not the cardholder could trigger such consequences by making a late payment with respect to a particular billing period. The final rule retains comment 7(b)(11)-3 as proposed. The Board believes that issuers should be given the flexibility to tailor the late payment disclosure to the activity on the consumer’s account, which will likely make the disclosure more useful to consumers.

Range of fees and rates. In the January 2009 Regulation Z Rule, § 226.7(b)(11)(i)(B) provides that if a range of late payment fees or penalty APRs could be imposed on the consumer’s account, creditors may disclose the highest late payment fee and rate and at the creditor’s option, an indication (such as using the phrase “up to”) that lower fees or rates may be imposed. Comment 7(b)(11)-4 was added to illustrate the requirement. The final rule also permits creditors to disclose a range of fees or rates. In

the October 2009 Regulation Z Proposal, the Board proposed to retain § 226.7(b)(11)(i)(B) and comment 7(b)(11)-4 with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the late payment disclosures to a “credit card account under an open-end (not home-secured) consumer credit plan,” as that term would have been defined in proposed § 226.2(a)(15)(ii). This approach recognizes the space constraints on periodic statements and provides card issuers flexibility in disclosing possible late payment fees and penalty rates.

In response to the October 2009 Regulation Z Proposal, one industry commenter requested that the Board allow credit card issuers to disclose a range of rates or a highest rate for a card program where different penalty APRs apply to different accounts in the program. According to the commenter, different penalty APRs may apply to consumers’ accounts within the same card program because some consumers in a program may not have received a change in terms for a program (possibly because the account was not active at the time of the change), or the consumer may have opted out of a change in terms related to an increase in the penalty APR. The commenter indicates that some systems do not have the operational capability to tailor the periodic statement warning message as a variable message and include the precise penalty APR that applies to each account. The commenter believed that there is no detriment to a consumer in allowing a more generic warning message because the intent of the warning message is to give consumers notice that paying late can have serious consequences. Section 226.7(b)(11)(i)(B) and comment 7(b)(11)-4 are adopted as proposed. The Board did not amend these provisions to allow card issuers to disclose to a consumer a range of rates or highest rate for a card program, where those rates do not apply to a consumer’s account.

The Board is mindful of compliance costs associated with customizing the disclosure to reflect terms applicable to a consumer's account; however, the Board believes the purposes of TILA would not be served if a consumer received a late-payment disclosure for a penalty APR that exceeded, perhaps substantially, the penalty APR the consumer could be assessed under the terms of the legal obligation of the account. For that reason, § 226.7(b)(11)(i)(B) and comment 7(b)(11)-4 provide that ranges or the highest fee or penalty APR must be those applicable to the consumer's account. Accordingly, a creditor may state a range or highest penalty APR only if all penalty APRs in that range or the highest penalty APR would be permitted to be imposed on the consumer's account under the terms of the consumer's account.

Penalty APR in effect. In the January 2009 Regulation Z Rule, comment 7(b)(11)-5 was added to provide that if the highest penalty APR has previously been triggered on an account, the creditor may, but is not required to, delete as part of the late payment disclosure the amount of the penalty APR and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the creditor may, but is not required to, modify the language to indicate that the penalty APR has been increased due to previous late payments, if applicable. In the October 2009 Regulation Z Proposal, the Board proposed to retain this comment with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the late payment disclosures to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term would have been defined in proposed § 226.2(a)(15)(ii).

In response to the October 2009 Regulation Z Proposal, one commenter suggested that the Board revise comment 7(b)(11)-5 to provide that if the highest APR has

previously been triggered on an account, a creditor must modify the language of the late payment disclosure to indicate that the penalty APR has been increased due to previous late payment. The final rule adopts comment 7(b)(11)-5 as proposed. To ease compliance burdens, the Board believes that it is appropriate to provide flexibility to card issuers in providing the late payment disclosure when the highest penalty APR has previously been triggered on the account. The Board notes that consumers will receive advance notice under § 226.9(g) when a penalty APR is being imposed on the consumer's account. In cases where the highest penalty APR has been imposed, the Board does not believe that allowing the late payment disclosures to continue to include the amount of the penalty APR and the warning that the rate may be imposed for an untimely payment is likely to confuse consumers.

~~7(b)(12) Repayment Disclosures~~

~~The Bankruptcy Act added TILA Section 127(b)(11) to require creditors that extend open end credit to provide a disclosure on the front of each periodic statement in a prominent location about the effects of making only minimum payments. 15 U.S.C. 1637(b)(11). This disclosure included: (1) a “warning” statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer’s balance; (2) a hypothetical example of how long it would take to pay off a specified balance if only minimum payments are made; and (3) a toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay his or her actual account balance (“generic repayment estimate”). In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act directed the Board to prepare a “table”~~