~~on how to comply with change-in-terms requirements between the effective date of this rule and the effective date of the forthcoming HELOC rules.~~

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

Credit Card Act[27]

New TILA Section 127(i)(1) generally requires creditors to provide consumers with a written notice of an annual percentage rate increase at least 45 days prior to the effective date of the increase, for credit card accounts under an open-end consumer credit plan. 15 U.S.C. 1637(i)(1). The statute establishes several exceptions to this general requirement. 15 U.S.C. 1637(i)(1) and (i)(2). The first exception applies when the change is an increase in an annual percentage rate upon expiration of a specified period of time, provided that prior to commencement of that period, the creditor clearly and conspicuously disclosed to the consumer the length of the period and the rate that would apply after expiration of the period. The second exception applies to increases in variable annual percentage rates that change according to operation of a publicly available index that is not under the control of the creditor. Finally, a third exception applies to rate increases due to the completion of, or failure of a consumer to comply with, the terms of a workout or temporary hardship arrangement, provided that prior to the commencement of such arrangement the creditor clearly and conspicuously disclosed to the consumer the terms of the arrangement, including any increases due to completion or failure.

[27] For convenience, this section summarizes the provisions of the Credit Card Act that apply both to advance notices of changes in terms and rate increases. Consistent with the approach it took in the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule, the Board is implementing the advance notice requirements applicable to contingent rate increases set forth in the cardholder agreement in a separate section (§ 226.9(g)) from those advance notice requirements applicable to changes in the cardholder agreement (§ 226.9(c)). The distinction between these types of changes is that § 226.9(g) addresses changes in a rate being applied to a consumer's account consistent with the existing terms of the cardholder agreement, while § 226.9(c) addresses changes in the underlying terms of the agreement.

In addition to the rules in new TILA Section 127(i)(1) regarding rate increases, new TILA Section 127(i)(2) establishes a 45-day advance notice requirement for significant changes, as determined by rule of the Board, in the terms (including an increase in any fee or finance charge) of the cardholder agreement between the creditor and the consumer. 15 U.S.C. 1637(i)(2).

New TILA Section 127(i)(3) also establishes an additional content requirement for notices of interest rate increases or significant changes in terms provided pursuant to new TILA Section 127(i). 15 U.S.C. 1637(i)(3). Such notices are required to contain a brief statement of the consumer's right to cancel the account, pursuant to rules established by the Board, before the effective date of the rate increase or other change disclosed in the notice. In addition, new TILA Section 127(i)(4) states that closure or cancellation of an account pursuant to the consumer's right to cancel does not constitute a default under the existing cardholder agreement, and does not trigger an obligation to immediately repay the obligation in full or through a method less beneficial than those listed in revised TILA Section 171(c)(2). 15 U.S.C. 1637(i)(4). The disclosure associated with the right to cancel is discussed in the section-by-section analysis to § 226.9(c) and (g), while the substantive rules regarding this new right are discussed in the section-by-section analysis to § 226.9(h).

The Board implemented TILA Section 127(i), which was effective August 20, 2009, in the July 2009 Regulation Z Interim Final Rule. However, the Board is now implementing additional provisions of the Credit Card Act that are effective on February 22, 2010 that have an impact on the content of change-in-terms notices and the types of changes that are permissible upon provision of a change-in-terms notice pursuant to

§ 226.9(c) or (g). For example, revised TILA Section 171(a), which the Board is implementing in new § 226.55, as discussed elsewhere in this **Federal Register** notice generally prohibits increases in annual percentage rates, fees, and finance charges applicable to outstanding balances, subject to several exceptions. In addition, revised TILA Section 171(b) requires, for certain types of penalty rate increases, that the advance notice state the reason for a rate increase. Finally, for penalty rate increases applied to outstanding balances when the consumer fails to make a minimum payment within 60 days after the due date, as permitted by revised TILA Section 171(b)(4), a creditor is required to disclose in the notice of the increase that the increase will be terminated if the consumer makes the subsequent six minimum payments on time.

January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule

As discussed in **I. Background and Implementation of the Credit Card Act**, the Board is implementing the changes contained in the Credit Card Act in a manner consistent with the January 2009 Regulation Z Rule, to the extent permitted under the statute. Accordingly, the Board is retaining those requirements of the January 2009 Regulation Z Rule that are not directly affected by the Credit Card Act concurrently with the promulgation of regulations implementing the provisions of the Credit Card Act effective February 22, 2010.[28] Consistent with this approach, the Board has used § 226.9(c)(2) of the January 2009 Regulation Z Rule as the basis for its regulations to implement the change-in-terms requirements of the Credit Card Act. Section 226.9(c)(2)

[28] However, as discussed in **I. Background and Implementation of the Credit Card Act**, the Board intends to leave in place the mandatory compliance date for certain aspects of proposed §226.9(c)(2) that are not directly required by the Credit Card Act. These provisions would have a mandatory compliance date of July 1, 2010, consistent with the effective date that the Board adopted in the January 2009 Regulation Z Rule. For example, the Board is not requiring a tabular format for certain change-in-terms notice requirements before the July 1, 2010 mandatory compliance date.

also is intended, except where noted, to contain requirements that are substantively equivalent to the requirements of the July 2009 Regulation Z Interim Final Rule. Accordingly, the Board is adopting a revised version of § 226.9(c)(2) of the January 2009 Regulation Z Rule, with several amendments necessary to conform to the new Credit Card Act. This supplementary information focuses on highlighting those aspects in which § 226.9(c)(2) as adopted in this final rule differs from § 226.9(c)(2) of the January 2009 Regulation Z Rule.

May 2009 Regulation Z Proposed Clarifications

On May 5, 2009, the Board published for comment in the **Federal Register** proposed clarifications to the January 2009 Regulation Z Rule. See 74 FR 20784. Several of these proposed clarifications pertain to the advance notice requirements in § 226.9(c). The Board is adopting the May 2009 Regulation Z Proposed Clarifications that affect proposed § 226.9(c)(2), with revisions to the extent appropriate, as discussed further in this supplementary information.

9(c)(2)(i) Changes Where Written Advance Notice is Required

Section 226.9(c)(2) sets forth the change-in-terms notice requirements for open-end consumer credit plans that are not home-secured. Section 226.9(c)(2)(i) as proposed in October 2009 stated that a creditor must generally provide a written notice at least 45 days prior to the change, when any term required to be disclosed under § 226.6(b)(3), (b)(4), or (b)(5) is changed or the required minimum periodic payment is increased, unless an exception applies. As noted in the supplementary information to the proposal, this rule was intended to be substantively equivalent to § 226.9(c)(2) of the January 2009 Regulation Z Rule. The Board proposed to set forth the exceptions to this general rule in

proposed paragraph (c)(2)(v). In addition, proposed (c)(2)(iii) provided that 45 days' advance notice is not required for those changes that the Board is not designating as "significant changes" in terms using its authority under new TILA Section 127(i). Section 226.9(c)(2)(iii), which is discussed in more detail elsewhere in this supplementary information, also is intended to be equivalent in substance to the Board's January 2009 Regulation Z Rule.

Proposed § 226.9(c)(2)(i) set forth two additional clarifications of the scope of the change-in-terms notice requirements, consistent with § 226.9(c)(2) of the January 2009 Regulation Z Rule. First, as proposed, the 45-day advance notice requirement would not apply if the consumer has agreed to the particular change; in that case, the notice need only be given before the effective date of the change. Second, proposed § 226.9(c)(2)(i) also noted that increases in the rate applicable to a consumer's account due to delinquency, default, or as a penalty described in § 226.9(g) that are not made by means of a change in the contractual terms of a consumer's account must be disclosed pursuant to that section.

Proposed § 226.9(c)(2) applied to all open-end (not home-secured) credit, consistent with the January 2009 Regulation Z Rule. TILA Section 127(i), as implemented in the July 2009 Regulation Z Interim Final Rule for the period between August 20, 2009 and February 22, 2010, applies only to credit card accounts under an open-end (not home-secured) consumer credit plan. However, the advance notice requirements adopted by the Board in January 2009 apply to all open-end (not home-secured) credit. For consistency with the January 2009 Regulation Z Rule, the proposal accordingly would have applied § 226.9(c)(2) to all open-end (not home-secured) credit.

The final rule adopts this approach, which is consistent with the approach the Board adopted in the January 2009 Regulation Z Rule. The Board notes that while the general notice requirements are consistent for credit card accounts and other open-end credit that is not home-secured, there are certain content and other requirements, such as a consumer's right to reject certain changes in terms, that apply only to credit card accounts under an open-end (not home-secured) consumer credit plan. As discussed in more detail in the supplementary information to § 226.9(c)(2)(iv), the regulation applies such requirements only to credit card accounts under an open-end (not home-secured) consumer credit plan.

Section 226.9(c)(2)(i), as proposed and under the January 2009 Regulation Z Rule, provides that the 45-day advance notice timing requirement does not apply if the consumer has agreed to a particular change. In this case, notice must be given before the effective date of the change. Comment 9(c)(2)(i)-3, as adopted in the January 2009 Regulation Z Rule, states that the provision is intended for use in "unusual instances," such as when a consumer substitutes collateral or when the creditor may advance additional credit only if a change relatively unique to that consumer is made. In the May 2009 Regulation Z Proposed Clarifications, the Board proposed to amend the comment to emphasize the limited scope of the exception and provide that the exception applies solely to the unique circumstances specifically identified in the comment. See 74 FR 20788. The proposed comment would also add an example of an occurrence that would not be considered an "agreement" for purposes of relieving the creditor of its responsibility to provide an advance change-in-terms notice. This proposed example stated that an "agreement" does not include a consumer's request to reopen a closed

account or to upgrade an existing account to another account offered by the creditor with different credit or other features. Thus, a creditor that treats an upgrade of a consumer's account as a change in terms would be required to provide the consumer 45 days' advance notice before increasing the rate for new transactions or increasing the amount of any applicable fees to the account in those circumstances.

Commenters on the October 2009 Regulation Z Proposal and the May 2009 Regulation Z Proposed Clarifications raised concerns about the 45-day notice requirement causing an undue delay when a consumer requests that his or her account be changed to a different product offered by the creditor, for example to take advantage of a rewards or other program. The Board has addressed these concerns in comment 5(b)(1)(i)-6, discussed above. The Board also believes that the proposed clarification to comment 9(c)(2)(i)-3 is appropriate for those circumstances in which a creditor treats an upgrade of an account as a change-in-terms in accordance with proposed comment 5(b)(1)(i)-6. In addition, the Board continues to believe that it would be difficult to define by regulation the circumstances under which a consumer is deemed to have requested the account upgrade, versus circumstances in which the upgrade is suggested by the creditor. For these reasons, the Board is adopting the substantive guidance in proposed 9(c)(2)(i)-3. However, for clarity, the Board has moved this guidance into a new § 226.9(c)(2)(i)(B) of the regulation rather than including it in the commentary. Comment 9(c)(2)(i)-3, as adopted, contains a cross-reference to comment 5(b)(1)(i)-6.

The Board received a number of additional comments on § 226.9(c)(2), as are discussed below in further detail. However, the Board received no comments on the general approach in § 226.9(c)(2)(i), which is substantively equivalent to the rule the

Board adopted in January 2009. Therefore, the Board is adopting § 226.9(c)(2)(i) generally as proposed (redesignated as § 226.9(c)(2)(i)(A)), with one technical amendment to correct a scrivener's error in the proposal.

9(c)(2)(ii) Significant Changes in Account Terms

Pursuant to new TILA Section 127(i), the Board has the authority to determine by rule what are significant changes in the terms of the cardholder agreement between a creditor and a consumer. The Board proposed § 226.9(c)(2)(ii) to identify which changes are significant changes in terms. Similar to the January 2009 Regulation Z Rule, proposed § 226.9(c)(2)(ii) stated that for the purposes of § 226.9(c), a significant change in account terms means changes to terms required to be disclosed in the table provided at account opening pursuant to § 226.6(b)(1) and (b)(2) or an increase in the required minimum periodic payment. The terms included in the account-opening table are those that the Board determined, based on its consumer testing, to be the most important to consumers. In the July 2009 Regulation Z Interim Final Rule, the Board had expressly listed these terms in § 226.9(c)(2)(ii). Because § 226.6(b) was not in effect as of August 20, 2009, the Board could not identify these terms by a cross-reference to § 226.6(b) in the proposal. However, proposed § 226.9(c)(2)(ii) was intended to be substantively equivalent to the list of terms included in § 226.9(c)(2)(ii) of the July 2009 Regulation Z Interim Final Rule.

Industry commenters generally were supportive of the Board's proposed definition of "significant change in account terms." These commenters believed that the Board's proposed definition provided necessary clarity to creditors in determining for

which changes 45 days' advance notice is required, and that it properly focused on changes in those terms that are the most important to consumers.

Consumer group commenters stated that the Board's proposed definition of "significant change in account terms" was overly restrictive, and that 45 days' advance notice should also be required for other types of fees and changes in terms. These commenters specifically noted the addition of security interests or a binding mandatory arbitration provision as changes for which advance notice should be required. In addition, they stated that fees should be permitted to be disclosed orally and immediately prior to their imposition only if they are fees or one-time or time-sensitive services. Consumer groups noted their concerns that the Board's list of "significant changes in account terms" could lead creditors to establish new types of fees that for which 45 days' advance disclosure would not be required.

The Board is adopting § 226.9(c)(2)(ii) generally as proposed. The Board continues to believe, based on its consumer testing, that the list of fees, categories of fees, and other terms required to be disclosed in a tabular format at account-opening includes those terms that are the most important to consumers. The Board notes that consumers will receive notice of any other types of charges imposed as part of the plan prior to their imposition, as required by § 226.5(b)(1)(ii). The Board also believes that TILA Section 127(i) does not require 45 days' advance notice for all changes in terms, because the statute specifically mentions "significant change[s]," and thus by its terms does not apply to all changes.

However, in response to consumer group comments, the Board has added the acquisition of a security interest to the list of significant changes for which 45 days'

advance notice is required. The Board believes that if a creditor acquires or will acquire a security interest that was not previously disclosed under § 226.6(b)(5), this constitutes a change of which a consumer should be aware in advance. A consumer may wish to use a different form of financing or to otherwise adjust his or her use of the open-end plan in consideration of such a security interest. Under the final rule, a consumer will receive 45 days' advance notice of this change.

The Board is not adopting a requirement that creditors provide 45 days' advance notice of the addition of, or changes in the terms of, a mandatory arbitration clause. TILA does not address or require disclosures regarding arbitration for open-end credit plans, and Regulation Z's rules applicable to open-end credit have accordingly never addressed arbitration. Furthermore, the Board's regulations generally do not address the remedies for violations of Regulation Z and TILA; rather, the procedures and remedies for violations are addressed in the statute. Accordingly, the Board does not believe it is appropriate at this time to require disclosures regarding mandatory arbitration clauses under Regulation Z.

9(c)(2)(iii) Charges Not Covered by § 226.6(b)(1) and (b)(2)

Proposed § 226.9(c)(2)(iii) set forth the disclosure requirements for changes in terms required to be disclosed under § 226.6(b)(3) that are not significant changes in account terms described in § 226.9(c)(2)(ii). The Board proposed a 45-day notice period only for changes in the terms that are required to be disclosed as a part of the account-opening table under proposed § 226.6(b)(1) and (b)(2) or for increases in the required minimum periodic payment. A different disclosure requirement would apply when a creditor increases any component of a charge, or introduces a new charge, that is imposed

as part of the plan under proposed § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under proposed § 226.6(b)(1) and (b)(2). Under those circumstances, the proposal required the creditor to either, at its option (1) provide at least 45 days' written advance notice before the change becomes effective, or (2) provide notice orally or in writing of the amount of the charge to an affected consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge. This is consistent with the requirements of both the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule.

One consumer group commenter stated that if the 45-day advance notice requirement does not apply to all undisclosed charges, the Board should require written disclosures of all charges not required to be disclosed in the account-opening table. The Board is not adopting a requirement that notices given pursuant to § 226.9(c)(2)(iii) be in writing. The Board believes that oral disclosure of certain charges on a consumer's open-end (not home-secured) account may, in some circumstances, be more beneficial to a consumer than a written disclosure, because the oral disclosure can be provided at the time that the consumer is considering purchasing an incidental service from the creditor that has an associated charge. In such a case, it would unnecessarily delay the consumer's access to that service to require that a written disclosure be provided.

For the reasons discussed above and in the supplementary information to § 226.9(c)(2)(ii), the Board is adopting § 226.9(c)(2)(iii) as proposed. The Board continues to believe that there are some fees, such as fees for expedited delivery of a replacement card, that it may not be useful to disclose long in advance of when they become relevant to the consumer. For such fees, the Board believes that a more flexible

approach, consistent with that adopted in the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule is appropriate. Thus, if a consumer calls to request an expedited replacement card, the consumer could be informed of the amount of the fee in the telephone call in which the consumer requests the card. Otherwise, the consumer would have to wait 45 days from receipt of a change-in-terms notice to be able to order an expedited replacement card, which would likely negate the benefit to the consumer of receiving the expedited delivery service.

9(c)(2)(iv) Disclosure Requirements

General Content Requirements

Proposed § 226.9(c)(2)(iv) set forth the Board's proposed content and formatting requirements for change-in-terms notices required to be given for significant changes in account terms pursuant to proposed § 226.9(c)(2)(i). Proposed § 226.9(c)(2)(iv)(A) required such notices to include (1) a summary of the changes made to terms required by § 226.6(b)(1) and (b)(2) or of any increase in the required minimum periodic payment, (2) a statement that changes are being made to the account, (3) for accounts other than credit card accounts under an open-end consumer credit plan subject to § 226.9(c)(2)(iv)(B), a statement indicating that the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable, (4) the date the changes will become effective, (5) if applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice, (6) if the creditor is changing a rate on the account other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate referenced in the

notice does not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate, and (7) if the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied and, if applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms.

Proposed § 226.9(c)(2)(iv)(A) generally mirrored the content required under § 226.9(c)(2)(iii) of the January 2009 Regulation Z Rule, except that the Board proposed to require a disclosure regarding any applicable right to opt out of changes under proposed § 226.9(c)(2)(iv)(A)(3) only if the change is being made to an open-end (not home-secured) credit plan that is not a credit card account subject to § 226.9(c)(2)(iv)(B). For credit card accounts, as discussed in the supplementary information to §§ 226.9(h) and 226.55, the Credit Card Act imposes independent substantive limitations on rate increases, and generally provides the consumer with a right to reject other significant changes being made to their accounts. A disclosure of this right to reject, when applicable, is required for credit card accounts under proposed § 226.9(c)(2)(iv)(B). Therefore, the Board believed a separate reference to other applicable opt-out rights is unnecessary and may be confusing to consumers, when the notice is given in connection with a change in terms applicable to a credit card account.

The Board received few comments on § 226.9(c)(2)(iv)(A), and it is generally adopted as proposed, except that § 226.9(c)(2)(iv)(A)(1) has been amended to refer to security interests being acquired by the creditor, for consistency with § 226.9(c)(2)(ii). The Board is amending comment 9(c)(2)(i)-5, regarding the form of a change in terms notice required for an additional security interest. The comment notes that a creditor

must provide a description of the change consistent with § 226.9(c)(2)(iv), but that it may use a copy of the security agreement as the change-in-terms notice. The Board also has made a technical amendment to § 226.9(c)(2)(iv)(A)(1) to note that a description, rather than a summary, of any increase in the required minimum periodic payment be disclosed.

Several commenters noted that proposed Sample G-20, which sets forth a sample disclosure for an annual percentage rate increase for a credit card account, erroneously included a reference to the consumer's right to opt out of the change, which is not required by proposed § 226.9(c)(2)(iv)(A)(3) for credit card accounts. The reference to opt-out rights has been deleted from Sample G-20 in the final rule.

Consumer groups commented that notices provided in connection with rate increases should set forth the current rate as well as the increased rate that will apply. For the reasons discussed in the supplementary information to the January 2009 Regulation Z Rule, the Board is not adopting a requirement that a change-in-terms notice set forth the current rate or rates. See 74 FR 5244, 5347. As noted in that rulemaking, the main purpose of the change-in-terms notice is to inform consumers of the new rates that will apply to their accounts. The Board is concerned that disclosure of each current rate in the change-in-terms notice could contribute to information overload, particularly in light of new restrictions on repricing in § 226.55, which may lead to a consumer's account having multiple protected balances to which different rates apply.

One exception to the repricing rules set forth in § 226.55(b)(3) permits card issuers to increase the rate on new transactions for a credit card account under an open-end (not home-secured) consumer credit plan, provided that the creditor complies with the notice requirements in § 226.9(b), (c), or (g). Under this exception, the increased rate

can apply only to transactions that occurred more than 14 days after provision of the applicable notice. One federal banking agency suggested that § 226.9(c) should expressly repeat the 14 day requirement and reference the advance notice exception set forth in § 226.55(b)(3), so that issuers do not have to cross-reference two sections in providing the notice required under § 226.9(c)(2). The Board believes that including an express reference to the 14-day requirement from § 226.55(b)(3) in § 226.9(c)(2) is not necessary. The Board expects that card issuers will be familiar with the substantive requirements regarding rate increases set forth in § 226.55(b)(3), and that a second detailed reference to those requirements in § 226.9(c)(2) therefore would be redundant.

Additional Content Requirements for Credit Card Accounts

Proposed § 226.9(c)(2)(iv)(B) set forth additional content requirements that are applicable only to credit card accounts under an open-end (not home-secured) consumer credit plan. In addition to the information required to be disclosed pursuant to § 226.9(c)(2)(iv)(A), the proposal required credit card issuers making significant changes to terms to disclose certain information regarding the consumer's right to reject the change pursuant to § 226.9(h). The substantive rule regarding the right to reject is discussed in connection with proposed § 226.9(h); however, the associated disclosure requirements are set forth in § 226.9(c)(2). In particular, the proposal provided that a card issuer must generally include in the notice (1) a statement that the consumer has the right to reject the change or changes prior to the effective date, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment, (2) instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection, and (3) if

applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended. Proposed section 226.9(c)(2)(iv)(B) generally mirrored requirements made applicable to credit card issuers in the July 2009 Regulation Z Interim Final Rule.

The Board did not receive any significant comments on the content of disclosures regarding a consumer's right to reject certain significant changes to their account terms. Therefore, the content requirements in § 226.9(c)(2)(iv)(B)(1) – (3) are adopted as proposed.

The proposal provided that the right to reject does not apply to increases in the required minimum payment, an increase in an annual percentage rate applicable to a consumer's account, a change in the balance computation method applicable to a consumer's account necessary to comply with the new prohibition on use of "two-cycle" balance computation methods in proposed § 226.54, or changes due to the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment. The Board is adopting the exceptions to the right to reject as proposed, with one change. For the reasons discussed in the supplementary information to § 226.9(h), the proposed exception for increases in annual percentage rates has been adopted as an exception for all changes in annual percentage rates.

Rate Increases Resulting from Delinquency of More than 60 Days

As discussed in the supplementary information to § 226.9(g), TILA Section 171(b)(4) requires several additional disclosures to be provided when the annual percentage rate applicable to a credit card account under an open-end consumer credit plan is increased due to the consumer's failure to make a minimum periodic payment

within 60 days from the due date for that payment. In those circumstances, the notice must state the reason for the increase and disclose that the increase will cease to apply if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. The Board proposed in § 226.9(g)(3)(i)(B) to set forth this additional content for rate increases pursuant to the exercise of a penalty pricing provision in the contract; however, the proposal contained no analogous disclosure requirements in § 226.9(c)(2) when the rate increase is made pursuant to a change in terms notice. One issuer commented that § 226.9(c)(2) also should set forth guidance for disclosing the 6-month cure right when a rate is increased via a change-in-terms notice due to a delinquency of more than 60 days. The final rule adopts new § 226.9(c)(2)(iv)(C), which implements the notice requirements contained in amended TILA Section 171(b)(4), as adopted by the Credit Card Act; the substantive requirements of TILA Section 171(b)(4) are discussed in proposed § 226.55(b)(4), as discussed below.

New § 226.9(c)(2)(iv)(C) requires the notice regarding the 6-month cure right to be provided if the change-in-terms notice is disclosing an increase in an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment. This differs from § 226.9(g)(3)(i)(B), in that it references fees of a type required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). Section 226.9(c)(2) addresses changes in fees and interest rates, while § 226.9(g) applies only to interest rates; therefore, the reference to fees in § 226.9(c)(2)(iv)(C) has been included for conformity with the substantive

requirements of § 226.55. The notice is required to state the reason for the increase and that the increase will cease to apply if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

Several industry commenters noted that the model forms for the table required to be provided at account opening disclose a cure right that is more advantageous to the consumer than the cure required by § 226.55. In particular, proposed Samples G-17(B) and G-17(C) state that a penalty rate will apply until the consumer makes six consecutive minimum payments when due. In contrast, the substantive right under § 226.55 applies only if the consumer makes the first six consecutive required minimum periodic payments when due, following the effective date of a rate increase due to the consumer's failure to make a required minimum periodic payment within 60 days of the due date. The Board is adopting the disclosure of penalty rates in Samples G-17(B) and G-17(C) as proposed. The Board notes that Samples G-17(B) and G-17(C) set forth two examples of how the disclosures required by § 226.6(b)(1) and (b)(2) can be made, and those samples can be adjusted as applicable to reflect a creditor's actual practices regarding penalty rates. A creditor is still free, under the final rule, to provide that the penalty APR will cease to apply if the consumer makes any six consecutive payments on time, although the substantive right in § 226.55 does not compel a creditor to do so. The Board does not wish to discourage creditors from providing more advantageous penalty pricing triggers than those that are required by the Credit Card Act and § 226.55.

Formatting Requirements

Proposed § 226.9(c)(2)(iv)(C) set forth the formatting requirements that would apply to notices required to be given pursuant to § 226.9(c)(2)(i). The proposed formatting requirements were generally the same as those that the Board adopted in § 226.9(c)(2)(iii) of the January 2009 Regulation Z Rule, except that the reference to the content of the notice included, when applicable, the information about the right to reject that credit card issuers must disclose pursuant to § 226.9(c)(2)(iv)(B). These formatting requirements are not affected by the Credit Card Act, and therefore the Board proposed to adopt them generally as adopted in January 2009. The Board received no significant comment on the formatting requirements, and § 226.9(c)(2)(iv)(D) (renumbered from proposed § 226.9(c)(2)(iv)(C)) is adopted as proposed.

As proposed, the Board is amending Sample G-20 and adding a new Sample G-21 to illustrate how a card issuer may comply with the requirements of § 226.9(c)(2)(iv). The Board is amending references to these samples in § 226.9(c)(2)(iv) and comment 9(c)(2)(iv)-8 accordingly. Sample G-20 is a disclosure of a rate increase applicable to a consumer's credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G-21 illustrates an increase in the consumer's late payment and returned payment fees, and sets forth the content required in order to disclose the consumer's right to reject those changes.

9(c)(2)(v) Notice Not Required

The Board proposed § 226.9(c)(2)(v) to set forth the exceptions to the general change-in-terms notice requirements for open-end (not home-secured) credit. With several exceptions, proposed § 226.9(c)(2)(v) was intended to be substantively equivalent

to § 226.9(c)(2)(v) of the July 2009 Regulation Z Interim Final Rule, except that the Board proposed an additional express exception for the extension of a grace period. Proposed § 226.9(c)(2)(v)(A) set forth several exceptions that are in current § 226.9(c), including charges for documentary evidence, reductions of finance charges, suspension of future credit privileges (except as provided in § 226.9(c)(vi), discussed below), termination of an account or plan, or when the change results from an agreement involving a court proceeding. The Board did not include these changes in the set of "significant changes" giving rise to notice requirements pursuant to new TILA Section 127(i)(2). The Board stated that it believes 45 days' advance notice is not necessary for these changes, which are not of the type that generally result in the imposition of a fee or other charge on a consumer's account that could come as a costly surprise.

The Board received several comments on the exceptions in proposed § 226.9(c)(2)(v)(A) for termination of an account or plan and the suspension of future credit privileges. Consumer groups stated that notice should be required of credit limit decreases or account termination, either contemporaneously with or subsequent to those actions. In addition, one member of Congress stated that 45 days' advance notice should be required prior to account termination.

The Board is retaining the exceptions for account termination and suspension of credit privileges in the final rule. As stated in the proposal, the Board believes that for safety and soundness reasons, issuers generally have a legitimate interest in suspending credit privileges or terminating an account or plan when a consumer's creditworthiness deteriorates, and that 45 days' advance notice of these types of changes therefore would

not be appropriate. With regard to the suspension of credit privileges, the Board notes that § 226.9(c)(vi) requires creditors to provide 45 days' advance notice that a consumer's credit limit has been decreased before an over-the-limit fee or penalty rate can be imposed solely for exceeding that newly decreased credit limit. The Board believes that § 226.9(c)(vi) will adequately ensure that consumers receive notice of a decrease in their credit limit prior to any adverse consequences as a result of the consumer exceeding the new credit limit.

Similarly, the Board does not believe that it is necessary to require notices of the termination of an account or the suspension of credit privileges contemporaneously with or immediately following such a termination or suspension. In many cases, consumers will receive subsequent notification of the termination of an account or the suspension of credit privileges pursuant to Regulation B. See 12 CFR part 202. The Board acknowledges that Regulation B does not require subsequent notification of the termination of an account or suspension of credit privileges in all cases, for example, when the action affects all or substantially all of a class of the creditor's accounts or is an action relating to an account taken in connection with inactivity, default, or delinquency as to that account. However, the Board believes that the benefit to consumers of requiring such a subsequent notice in all cases would be limited. If a consumer's account is terminated or suspended and the consumer attempts to use the account for new transactions, those transactions will be denied. The Board expects that in such circumstances most consumers would call the card issuer and be notified at that time of the suspension or termination of their account.

Increase in Annual Percentage Rate Upon Expiration of Specified Period of Time

Proposed § 226.9(c)(2)(v)(B) set forth an exception contained in the Credit Card Act for increases in annual percentage rates upon the expiration of a specified period of time, provided that prior to the commencement of that period, the creditor disclosed to the consumer clearly and conspicuously in writing the length of the period and the annual percentage rate that would apply after that period. The proposal required that this disclosure be provided in close proximity and equal prominence to any disclosure of the rate that applies during that period, ensuring that it would be provided at the same time the consumer is informed of the temporary rate. In addition, in order to fall within this exception, the annual percentage rate that applies after the period ends may not exceed the rate previously disclosed.

The proposed exception generally mirrored the statutory language, except for two additional requirements. First, the Board's proposal provided, consistent with July 2009 Regulation Z Interim Final Rule and the standard for Regulation Z disclosures under Subpart B, that the disclosure of the period and annual percentage rate that will apply after the period is generally required to be in writing. See § 226.5(a)(1). Second, pursuant to its authority under TILA Section 105(a) to prescribe regulations to effectuate the purposes of TILA, the Board proposed to require that the disclosure of the length of the period and the annual percentage rate that would apply upon expiration of the period be set forth in close proximity and equal prominence to the disclosure of the rate that applies during the specified period of time. 15 U.S.C. 1604(a). The Board stated that it believes both of these requirements are appropriate in order to ensure that consumers receive, comprehend, and are able to retain the disclosures regarding the rates that will apply to their transactions.

Proposed comment 9(c)(2)(v)-5 clarified the timing of the disclosure requirements for telephone purchases financed by a merchant or private label credit card issuer. The Board is aware that the general requirement in the July 2009 Regulation Z Interim Final Rule that written disclosures be provided prior to commencement of the period during which a temporary rate will be in effect has caused some confusion for merchants who offer a promotional rate on the telephone to finance the purchase of goods. In order to clarify the application of the rule to such merchants, proposed comment 9(c)(2)(v)-5 stated that the timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a temporary rate if: (1) the first transaction subject to the temporary rate occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase at the temporary rate; (2) the merchant or third-party creditor permits consumers to return any goods financed subject to the temporary rate and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 226.9(c)(2)(v)(B); and (3) the disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate offer and return the goods are disclosed to the consumer as part of the offer to finance the purchase. This clarification mirrored a timing rule for account-opening disclosures provided by merchants financing the purchase of goods by telephone under § 226.5(b)(1)(iii) of the January 2009 Regulation Z Rule.

The Board received a large number of comments from retailers and private label card issuers raising concerns about the proposal and regarding the operational difficulties

associated with providing the disclosures required by proposed § 226.9(c)(2)(v)(B). Specifically, these commenters stated that issuers should be permitted to provide consumers with a disclosure of an "up to" annual percentage rate, and not the specific rate that will apply to a consumer's account upon expiration of the promotion. The Board is not adopting this suggestion, for several reasons. First, the Board believes that the appropriate interpretation is that amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(a)(1)) requires disclosure of the actual rate that will apply upon expiration of a temporary rate. Second, the Board believes that a disclosure of a range of rates or "up to" rate will not be as useful for consumers as a disclosure of the specific rate that will apply. The Board is aware that some private label card issuers and retailers permit consumers to make transactions at a promotional rate, even if the consumer's account is currently subject to a penalty rate. In this case, an "up to" rate disclosure would disclose the penalty rate, which would be much higher than the actual rate that will apply upon expiration of the promotion for most consumers. Thus, the disclosure would convey little useful information to a consumer whose account is not subject to the penalty rate.

Other retailers and private label card issuers suggested that the Board permit issuers to provide the required disclosures or a portion of the required disclosures with a receipt or other document. One such commenter stated that these disclosures should be permitted to be given at the conclusion of a transaction. The Board believes that amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(a)(1)) clearly contemplates that the disclosures will be provided prior to commencement of the period during which the temporary rate will be in effect. Therefore, the final rule would

not permit a creditor to provide the disclosures after conclusion of a transaction at point of sale.

However, the Board believes that it is appropriate to provide some flexibility for the formatting of notices of temporary rates provided at point of sale. The Board understands that private label and retail card issuers may offer different rates to different consumers based on their creditworthiness and other factors. In addition, some consumers' accounts may be at a penalty rate that differs from the standard rates on the portfolio. Commenters have indicated that there can be significant operational issues associated with ensuring that sales associates provide the correct disclosures to each consumer at point of sale when those consumers' rates vary. In order to address an analogous issue for the disclosures required to be given at account opening, the Board understands that card issuers disclose the rate that will apply to the consumer's account on a separate page which can be printed directly from the receipt terminal, as permitted by § 226.6(b)(2)(i)(E). The Board believes that a similar formatting rule is appropriate for disclosures of temporary rate offers. Accordingly, the Board is adopting a new comment 9(c)(2)(v)-7 which states that card issuers providing the disclosures required by § 226.9(c)(2)(v)(B) in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate that would apply after expiration of the period on a separate page or document from the temporary rate and the length of the period, provided that the disclosure of the annual percentage rate that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate and length of the period. The Board believes that this will ensure that consumers receive the disclosures

required for a temporary rate offer, and will be aware of the rate that will apply after the temporary rate expires, while alleviating burden on retail and private label credit card issuers.

One industry commenter urged the Board to provide flexibility in the formatting of the promotional rate disclosures under § 226.9(c)(2)(v)(B), noting that any requirement that these disclosures be presented in a tabular format would present significant operational challenges. The Board notes that the proposal did not require that these disclosures be provided in a tabular format, and the final rule similarly does not require that the disclosures under § 226.9(c)(2)(v)(B) be presented in a table.

In the October 2009 Regulation Z Proposal, the Board stated, that for a brief period necessary to update their systems to disclose a single rate, issuers offering a deferred interest or other promotional rate program at point of sale could disclose a range of rates or an "up to" rate rather than a single rate. The Board noted that stating a range of rates or "up to" rate would only be permissible for a brief transition period and that it expected that merchants and creditors would disclose a single rate that will apply when a deferred interest or other promotional rate expires in accordance with § 226.9(c)(2)(v)(B) as soon as possible. The Board expects that all issuers will disclose a single rate by the February 22, 2010 effective date of this final rule. The Board notes that in addition to the exception to § 226.9(c)(2)'s advance notice requirements, provision of the notice pursuant to §226.9(c)(2)(v)(B) now also is a condition of an exception to the substantive repricing rules in § 226.55(b)(1). Accordingly, the Board believes that it is particularly important that consumers receive notice of the specific rate that will apply upon expiration of a promotion, since the ability to raise the rate upon termination of the

program is conditioned on the consumer's receipt of that disclosure.

Several industry commenters stated that the alternative timing rule for telephone purchases in proposed comment 9(c)(2)(v)-5 should apply to all telephone offers of temporary rate reductions. These commenters argued that consumers should not have to wait for written disclosures to be delivered prior to commencement of a temporary reduced rate, because that rate constitutes a beneficial change to the consumer. Several of these commenters indicated that a consumer who accepts a temporary rate offer by telephone should have a subsequent right to reject the offer for 45 days after provision of the written disclosures.

In response to these comments, the Board is adopting a revised comment 9(c)(2)(v)-5, which provides that the timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a temporary rate, if: (i) the consumer accepts the offer of the temporary rate by telephone; (ii) the creditor permits the consumer to reject the temporary rate offer and have the rate or rates that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 226.9(c)(2)(v)(B); and (iii) the disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the offer and have the rate or rates that previously applied to the consumer's account reinstated are disclosed to the consumer as part of the temporary rate offer. The Board believes that consumers who accept a promotional rate offer by telephone expect that the promotional rate will apply immediately upon their acceptance. The Board believes that requiring written disclosures prior to commencement of a temporary rate when offer is

made by telephone and the required disclosures are provided orally would unnecessarily delay, in many cases, a benefit to the consumer. However, the Board believes that a consumer should have a right, subsequent to receiving written disclosures, to change his or her mind and reject the temporary rate offer. The Board believes that comment 9(c)(2)(v)-5, as adopted, ensures that consumers may take immediate advantage of promotions that they believe to be a benefit, while protecting consumers by allowing them to terminate the promotion, with no adverse consequences, upon receipt of written disclosures.

In addition to requesting that the disclosures under § 226.9(c)(2)(v)(B) be permitted to be provided by telephone, other industry commenters stated that these disclosures should be permitted to be provided electronically without regard to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The Board is not providing an exception to the consumer consent requirements under the E-Sign Act at this time. The requirements of the E-Sign Act are implemented in Regulation Z in § 226.36, which states that a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. The Board believes that disclosure of a promotional or other temporary rate is a disclosure related to a transaction, and that consumers should only receive the disclosures under § 226.9(c)(2)(v)(B) electronically if they have affirmatively consented to receive disclosures in that form.

Several commenters asked the Board to provide additional clarification regarding the proposed requirement that the disclosures of the length of the period and the rate that will apply after the expiration of the period be disclosed in close proximity and equal

prominence to the disclosure of the temporary rate. One card issuer indicated that the Board should require only that the disclosures required by § 226.9(c)(2)(v)(B) be provided in close proximity and equal prominence to the first listing of the promotional rate, analogous to what § 226.16(g) requires for disclosures of promotional rates in advertisements. The Board believes that this clarification is appropriate, and is adopting a new comment 9(c)(2)(v)-6, which states that the disclosures of the rate that will apply after expiration of the period and the length of the period are only required to be provided in close proximity and equal prominence to the first listing of the temporary rate in the disclosures provided to the consumer. The comment further states that for purposes of § 226.9(c)(2)(v)(B), the first statement of the temporary rate is the most prominent listing on the front side of the first page of the disclosure. The comment notes that if the temporary rate does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. The Board believes that this rule will ensure that consumers notice the disclosure of the rate that will apply after the temporary rate expires, by requiring that it be closely proximate and equally prominent to the most prominent disclosure of the temporary rate, while mitigating burden on issuers to present this disclosure multiple times in the materials provided to the consumer.

One industry commenter stated that there should be an exception analogous to § 226.9(c)(2)(v)(B) for promotional fee offerings. The Board is not adopting such an exception at this time. The Board notes that the exception in amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(a)(1)) refers only to annual percentage rates and not to fees. The Board does not think a similar exception for fees is

appropriate or necessary. Fees generally do not apply to a specific balance on the consumer's account, but rather, apply prospectively. Therefore, a creditor could reduce a fee pursuant to the exception in § 226.9(c)(2)(v) for reductions in finance or other charges, without having to provide advance notice of that reduction. The creditor could then increase the fee with prospective application after providing 45 days' advance notice pursuant to § 226.9(c). Nothing in the rule prohibits a creditor from providing notice of the increase in a fee at the same time it temporarily reduces the fee; a creditor could provide information regarding the temporary reduction in the same notice, provided that it is not interspersed with the content required to be disclosed pursuant to § 226.9(c)(2)(iv).

The Board proposed to retain comment 9(c)(2)(v)-6 from the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)-7) to clarify that an issuer offering a deferred interest or similar program may utilize the exception in § 226.9(c)(2)(v)(B). The proposed comment also provides examples of how the required disclosures can be made for deferred interest or similar programs. The Board did not receive any significant comment on the applicability of § 226.9(c)(2)(v)(B) to deferred interest plans, and continues to believe that the application of § 226.9(c)(2)(v)(B) to deferred interest arrangements is consistent with the Credit Card Act. The Board is adopting proposed comment 9(c)(2)(v)-7 (redesignated as comment 9(c)(2)(v)-9), in order to ensure that the final rule does not have unintended adverse consequences for deferred interest promotions. In order to ensure consistent treatment of deferred interest programs, the Board has added a cross-reference to comment 9(c)(2)(v)-9 indicating that for purposes of § 226.9(c)(2)(v)(B) and comment 9(c)(2)(v)-9, "deferred interest" has the

same meaning as in § 226.16(h)(2) and associated commentary.

In October 2009, the Board proposed to retain comment 9(c)(2)(v)-5 from the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)-6), which is applicable to the exceptions in both § 226.9(c)(2)(v)(B) and (c)(2)(v)(D), and provides additional clarification regarding the disclosure of variable annual percentage rates. The comment provides that if the creditor is disclosing a variable rate, the notice must also state that the rate may vary and how the rate is determined. The comment sets forth an example of how a creditor may make this disclosure. The Board believes that the fact that a rate is variable is an important piece of information of which consumers should be aware prior to commencement of a deferred interest promotion, a promotional rate, or a stepped rate program. The Board received no comments on proposed comment 9(c)(2)(v)-6 and it is adopted as redesignated comment 9(c)(2)(v)-8.

Increases in Variable Rates

The Board proposed § 226.9(c)(2)(v)(C) to implement an exception in the Credit Card Act for increases in variable annual percentage rates in accordance with a credit card or other account agreement that provides for a change in the rate according to operation of an index that is not under the control of the creditor and is available to the general public. The Board proposed a minor amendment to the text of § 226.9(c)(2)(v)(C) as adopted in the July 2009 Regulation Z Interim Final Rule to reflect the fact that this exception would apply to all open-end (not home-secured) credit. The Board believes that even absent this express exception, such a rate increase would not generally be a change in the terms of the cardholder or other account agreement that gives rise to the requirement to provide 45 days' advance notice, because the index,

margin, and frequency with which the annual percentage rate will vary will all be specified in the cardholder or other account agreement in advance. However, in order to clarify that 45 days' advance notice is not required for a rate increase that occurs due to adjustments in a variable rate tied to an index beyond the creditor's control, the Board proposed to retain § 226.9(c)(2)(v)(C) of the July 2009 Regulation Z Interim Final Rule.

The Board received no significant comment on § 226.9(c)(2)(v)(C), which is adopted as proposed. The Board notes that, as discussed in the supplementary information to § 226.55(b)(2), it is adopting additional commentary clarifying when an index is deemed to be outside of an issuer's control, in order to address certain practices regarding variable rate "floors" and the adjustment or resetting of variable rates to account for changes in the index. The Board is adopting a new comment 9(c)(2)(v)-11, which cross-references the guidance in comment 55(b)(2)-2.

Exception for Workout or Temporary Hardship Arrangements

In the October 2009 Regulation Z Proposal, the Board proposed to retain § 226.9(c)(2)(v)(D) to implement a statutory exception in amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(b)(3)), for increases in rates or fees or charges due to the completion of, or a consumer's failure to comply with the terms of, a workout or temporary hardship arrangement provided that the annual percentage rate or fee or charge applicable to a category of transactions following the increase does not exceed the rate that applied prior to the commencement of the workout or temporary hardship arrangement. Proposed § 226.9(c)(2)(v)(D) was substantively equivalent to the analogous provision included in the July 2009 Regulation Z Interim Final Rule.

The exception in proposed § 226.9(c)(2)(v)(D) applied both to completion of or failure to comply with a workout arrangement. The proposed exception was conditioned on the creditor's having clearly and conspicuously disclosed, prior to the commencement of the arrangement, the terms of the arrangement (including any such increases due to such completion). The Board notes that the statutory exception applies in the event of either completion of, or failure to comply with, the terms of such a workout or temporary hardship arrangement. This proposed exception generally mirrored the statutory language, except that the Board proposed to require that the disclosures regarding the workout or temporary hardship arrangement be in writing.

The Board also proposed to retain comment 9(c)(2)(v)-7 of the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)-8), which provides clarification as to what terms must be disclosed in connection with a workout or temporary hardship arrangement. The comment stated that in order for the exception to apply, the creditor must disclose to the consumer the rate that will apply to balances subject to the workout or temporary hardship arrangement, as well as the rate that will apply if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement. For consistency with proposed § 226.55(b)(5)(i), the Board proposed to revise the comment to also state that the creditor must disclose the amount of any reduced fee or charge of a type required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) that will apply to balances subject to the arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the arrangement. The proposal also required the notice to state, if applicable, that the consumer must make timely minimum payments in order to

remain eligible for the workout or temporary hardship arrangement. The Board noted its belief that it is important for a consumer to be notified of his or her payment obligations pursuant to a workout or similar arrangement, and that the rate, fee or charge may be increased if he or she fails to make timely payments.

Several industry commenters stated that creditors should be permitted to provide the disclosures pursuant to § 226.9(c)(2)(v)(D) for workout or temporary hardship arrangements orally with subsequent written confirmation. These commenters noted that oral disclosure of the terms of a workout arrangement would permit creditors to reduce rates and fees as soon as the consumer agrees to the arrangement, but that a requirement that written disclosures be provided in advance could unnecessarily delay commencement of the arrangement. These commenters noted that workout arrangements unequivocally benefit consumers, so there is no consumer protection rationale for delaying relief until a creditor can provide written disclosures. Commenters further noted that the consumers who enter such arrangements are having trouble making the payments on their accounts, and that any delay can be detrimental to the consumer.

The Board notes that amended TILA Section 127(i) (which cross-references TILA Section 171(b)(3)) requires clear and conspicuous disclosure of the terms of a workout or temporary hardship arrangement prior to its commencement, but the statute does not contain an express requirement that these disclosures be in writing. The Board further understands that a delay in commencement of a workout or temporary hardship arrangement can have adverse consequences for a consumer. Therefore, § 226.9(c)(2)(v)(D) of the final rule provides that creditors may provide the disclosure of the terms of the workout or temporary hardship arrangement orally by telephone,

provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided. The Board notes that a consumer's rate can only be raised, upon completion or failure to comply with the terms of, a workout or temporary hardship arrangement, to the rate that applied prior to commencement of the arrangement. Therefore, the Board believes that consumers will be adequately protected by receiving written disclosures as soon as practicable after oral disclosures are provided.

In addition to requesting that the disclosures under § 226.9(c)(2)(v)(D) be permitted to be provided by telephone, other industry commenters stated that these disclosures should be permitted to be provided electronically without regard to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The Board is not providing an exception to the consumer consent requirements under the E-Sign Act at this time. The Board believes that disclosure of the terms of a workout or other temporary hardship arrangement is a disclosure related to a transaction, and that consumers should only receive the disclosures under § 226.9(c)(2)(v)(D) electronically if they have affirmatively consented to receive disclosures in that form.

Several industry commenters requested that the Board extend the exception in § 226.9(c)(2)(v)(D) to address the reduction of the consumer's minimum periodic payment as part of a workout or temporary hardship arrangement. The Board understands that a requirement that 45 days' advance notice be given prior to reinstating the prior minimum payment requirements could lead to negative amortization for a period of 45 days or more, when the consumer's rate or rates are increased as a result of the

completion of or failure to comply with the terms of, the workout or temporary hardship arrangement. Therefore, the Board has amended § 226.9(c)(2)(v)(D) and comment 9(c)(2)(v)-10 (proposed as comment 9(c)(2)(v)-8) to provide that increases in the required minimum periodic payment are covered by the exception in § 226.9(c)(2)(v)(D), but that such increases in the minimum payment must be disclosed as part of the terms of the workout or temporary hardship arrangement. As with rate increases, a consumer's required minimum periodic payment can only be increased to the required minimum periodic payment prior to commencement of the workout or temporary hardship arrangement in order to qualify for the exception.

One industry commenter asked the Board to simplify the content requirements for the notice required to be given prior to commencement of a workout or temporary hardship arrangement. The issuer stated that the notice could be confusing for consumers because they may have different annual percentage rates applicable to different categories of transactions, promotional rates in effect, and protected balances under § 226.55. While the Board acknowledges that the disclosure of the various annual percentage rates applicable to a consumer's account could be complex, the Board believes that a consumer should be aware of all of the annual percentage rates and fees that would be applicable upon completion of, or failure to comply with, the workout or temporary hardship arrangement. Therefore, the Board is adopting comment 9(c)(2)(v)-10 (proposed as comment 9(c)(2)(v)-8) generally as proposed, except for the addition of a reference to changes in the required minimum periodic payment, discussed above.

Additional Exceptions

A number of commenters urged the Board to adopt additional exceptions to the

requirement to provide 45 days' advance notice of significant changes in account terms. Several industry commenters stated that the Board should provide an exception to the advance notice requirements for rate increases made when the provisions of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 et seq., which in some circumstances requires reductions in consumers' interest rates when they are engaged in military service, cease to apply. These commenters noted that proposed § 226.55 provided an exception to the substantive repricing requirements in these circumstances. However, the Board is not adopting an analogous exception to the notice requirements in § 226.9. The Board believes that consumers formerly engaged in military service should receive advance notice when a higher rate will begin to apply to their accounts. A consumer may not be aware of exactly when the SCRA's protections cease to apply and may choose, in reliance on the notice, to change his or her account usage or utilize another source of financing in order to mitigate the impact of the rate increase.

One industry trade association requested an exception to the 45-day advance notice requirement for termination of a preferential rate for employees. The Board notes that it expressly removed such an exception historically set forth in comment 9(c)-1 in the January 2009 Regulation Z Rule. For the reasons discussed in the supplementary information to the January 2009 Regulation Z Rule, the Board is not restoring that exception in this final rule. See 74 FR 5244, 5346.

Finally, one industry commenter requested an exception to the advance notice requirements when a change in terms is favorable to a consumer, such as the extension of a grace period, even if it does not involve a reduction in a finance charge. The commenter noted that, for such changes, an issuer also may not want to provide a right to

reject under § 226.9(h), because rejecting the change would be unfavorable to the consumer. While the Board notes that, consistent with the proposal, the final rule creates an exception to the advance notice requirements for extensions of the grace period, the Board is not adopting a more general exception to the advance notice requirements for favorable changes at this time. With the exception of reductions in finance or other charges, the Board believes that it is difficult to articulate criteria for when other types of changes are beneficial to a consumer.

9(c)(2)(vi) Reduction of the Credit Limit

Consistent with the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule, the Board proposed to retain § 226.9(c)(2)(vi) to address notices of changes in a consumer's credit limit. Section 226.9(c)(2)(vi) requires an issuer to provide a consumer with 45 days' advance notice that a credit limit is being decreased or will be decreased prior to the imposition of any over-the-limit fee or penalty rate imposed solely as the result of the balance exceeding the newly decreased credit limit. The Board did not propose to include a decrease in a consumer's credit limit itself as a significant change in a term that requires 45 days' advance notice, for several reasons. First, the Board recognizes that creditors have a legitimate interest in mitigating the risk of a loss when a consumer's creditworthiness deteriorates, and believes there would be safety and soundness concerns with requiring creditors to wait 45 days to reduce a credit limit. Second, the consumer's credit limit is not a term generally required to be disclosed under Regulation Z or TILA. Finally, the Board stated its belief that § 226.9(c)(2)(vi) adequately protects consumers against the two most costly surprises potentially associated with a reduction in the credit limit, namely, fees and rate increases,

while giving a consumer adequate time to mitigate the effect of the credit line reduction.

The Board received no significant comment on § 226.9(c)(2)(vi), which is adopted as proposed. The Board notes that consumer group commenters stated that the final rule should also require disclosure of a credit line decrease either contemporaneously with the decrease or shortly thereafter; for the reasons discussed above in the section-by-section analysis to § 226.9(c)(2)(v), the Board is not adopting such a requirement at this time.

The Board notes that the final rule contains additional protections against a credit line decrease. First, § 226.55 prohibits a card issuer from applying an increased rate, fee, or charge to an existing balance as a result of transactions that exceeded the credit limit. In addition, § 226.56 allows a card issuer to charge a fee for transactions that exceed the credit limit only when the consumer has consented to such transactions.

Additional Changes to Commentary to § 226.9(c)(2)

The commentary to § 226.9(c)(2) generally is consistent with the commentary to § 226.9(c)(2) of the January 2009 Regulation Z Rule, except for technical changes or changes discussed below. In addition, as discussed above, the Board is adopting adopt several new comments to § 226.9(c)(2)(v) and has renumbered the remaining commentary accordingly.

In October 2009, the Board proposed to amend comment 9(c)(2)(i)-6 to reference examples in § 226.55 that illustrate how the advance notice requirements in § 226.9(c) relate to the substantive rule regarding rate increases in proposed § 226.55. In the January 2009 Regulation Z Rule, comment 9(c)(2)(i)-6 referred to the commentary to § 226.9(g). Because, as discussed in the supplementary information to § 226.55, the

Credit Card Act moved the substantive rule regarding rate increases into Regulation Z, the Board believed that it is not necessary to repeat the examples under § 226.9. The Board received no comments on the proposed amendments to comment 9(c)(2)(i)-6, which are adopted as proposed.

The Board also proposed to amend comment 9(c)(2)(v)-2 (adopted in the January 2009 Regulation Z Rule as comment 9(c)(2)(iv)-2) in order to conform with the new substantive and notice requirements of the Credit Card Act. This comment addresses the disclosures that must be given when a credit program allows consumers to skip or reduce one or more payments during the year or involves temporary reductions in finance charges. However, new § 226.9(c)(2)(v)(B) requires a creditor to provide a notice of the period for which a temporarily reduced rate will be in effect, as well as a disclosure of the rate that will apply after that period, in order for a creditor to be permitted to increase the rate at the end of the period without providing 45 days' advance notice. Similarly, § 226.55, discussed elsewhere in this supplementary information, requires a creditor to provide advance notice of a temporarily reduced rate if a creditor wants to preserve the ability to raise the rate on balances subject to that temporarily reduced rate. Accordingly, the Board is proposing amendments to clarify that if a credit program involves temporary reductions in an interest rate, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates if these features are disclosed in advance in accordance with the requirements of § 226.9(c)(2)(v)(B). See proposed comment 55(b)-3. The proposed comment further clarifies that if a creditor does not provide advance notice in accordance with § 226.9(c)(2)(v)(B), that it must provide a notice that complies with the timing requirements of § 226.9(c)(2)(i) and the content and

format requirements of § 226.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). The proposed comment notes that creditors should refer to § 226.55 for additional restrictions on resuming the original rate that is applicable to credit card accounts under an open-end (not home-secured) plan.

Relationship Between § 226.9(c)(2) and (b)

In the October 2009 Regulation Z Proposal, the Board republished proposed amendments to § 226.9(c)(2)(v) and comments 9(c)(2)-4 and 9(c)(2)(i)-3 that were part of the May 2009 Regulation Z Proposed Clarifications. Several of the Board's proposed revisions to § 226.9(c)(2)(v) (proposed in May 2009 as § 226.9(c)(2)(iv)) and proposed comment 9(c)(2)-4 were to clarify the relationship between the change-in-terms requirements of § 226.9(c) and the notice provisions of § 226.9(b) that apply when a creditor adds a credit feature or delivers a credit access device for an existing open-end plan. See 74 FR 20787 for further discussion of these proposed amendments. Commenters that addressed this aspect of the proposal generally supported these proposed clarifications, which are adopted as proposed.

~~**9(e) Disclosures Upon Renewal of Credit or Charge Card**~~

~~The Credit Card Act amended TILA Section 127(d), which sets forth the disclosures that card issuers must provide in connection with renewal of a consumer's credit or charge card account. 15 U.S.C. 1637(d). TILA Section 127(d) is implemented in § 226.9(e), which has historically required card issuers that assess an annual or other fee based on inactivity or activity, on a credit card account of the type subject to § 226.5a, to provide a renewal notice before the fee is imposed. The creditor must provide disclosures required for credit card applications and solicitations (although not in a~~