contained in the January 2009 Regulation Z Rule that are not specific requirements of the Credit Card Act. Commenters noted that they have already allocated resources and planned for a July 1, 2010 mandatory compliance date for the January 2009 Regulation Z Rule and that it would be unworkable, if not impossible, to comply with all of the requirements of this final rule by February 22, 2010. The Board notes that this final rule is being issued less than two months prior to the February 22, 2010 effective date of the majority of the Credit Card Act requirements, and that an acceleration of the mandatory compliance date for provisions originally adopted in the January 2009 Regulation Z Rule that are not directly impacted by the Credit Card Act would be extremely burdensome for creditors. For some creditors, it may be impossible to implement these provisions by February 22, 2010. Accordingly, the Board is generally retaining a July 1, 2010 mandatory compliance date for those provisions originally adopted in the January 2009 Regulation Z Rule that are not requirements of the Credit Card Act.[1]

Accordingly, as discussed further in **VI. Mandatory Compliance Dates**, the mandatory compliance date for the portion of § 226.5(a)(2)(iii) regarding use of the term "fixed" and for §§ 226.5(b)(2), 226.7(b)(11), 226.7(b)(12), 226.7(b)(13), 226.9(c)(2) (except for 226.9(c)(2)(iv)(D)), 226.9(e), 226.9(g) (except for 226.9(g)(3)(ii)), 226.9(h), 226.10, 226.11(c), 226.16(f), and §§ 226.51-226.58 is February 22, 2010. The mandatory compliance date for all other provisions of this final rule is July 1, 2010.

II. Summary of Major Revisions

[1] The Board notes that the provisions regarding advance notice of changes in terms and rate increases set forth in § 226.9(c)(2) and (g) apply to all open-end (not home-secured) plans. The Credit Card Act's requirements regarding advance notice of changes in terms and rate increases, as implemented in this final rule, apply only to credit card accounts under an open-end (not home-secured) consumer credit plan. In order to have one consistent rule for all open-end (not home-secured) plans, compliance with the requirements of § 226.9(c)(2) and (g) (except for specific formatting requirements) is mandatory for all open-end (not home-secured) plans on February 22, 2010.

A. Increases in Annual Percentage Rates

Existing balances. Consistent with the Credit Card Act, the final rule prohibits credit card issuers from applying increased annual percentage rates and certain fees and charges to existing credit card balances, except in the following circumstances: (1) when a temporary rate lasting at least six months expires; (2) when the rate is increased due to the operation of an index (i.e., when the rate is a variable rate); (3) when the minimum payment has not been received within 60 days after the due date; and (4) when the consumer successfully completes or fails to comply with the terms of a workout arrangement. In addition, when the annual percentage rate on an existing balance has been reduced pursuant to the Servicemembers Civil Relief Act (SCRA), the final rule permits the card issuer to increase that rate once the SCRA ceases to apply.

New transactions. The final rule implements the Credit Card Act's prohibition on increasing an annual percentage rate during the first year after an account is opened. After the first year, the final rule provides that a card issuer is permitted to increase the annual percentage rates that apply to new transactions so long as the issuer provides the consumer with 45 days advance notice of the increase.

B. Evaluation of Consumer's Ability to Pay

General requirements. The Credit Card Act prohibits credit card issuers from opening a new credit card account or increasing the credit limit for an existing credit card account unless the issuer considers the consumer's ability to make the required payments under the terms of the account. Because credit card accounts typically require consumers to make a minimum monthly payment that is a percentage of the total balance (plus, in

some cases, accrued interest and fees), the final rule requires card issuers to consider the consumer's ability to make the required minimum payments.

However, because an issuer will not know the exact amount of a consumer's minimum payments at the time it is evaluating the consumer's ability to make those payments, the Board proposed to require issuers to use a reasonable method for estimating a consumer's minimum payments and proposed a safe harbor that issuers could use to satisfy this requirement. For example, with respect to the opening of a new credit card account, the proposed safe harbor provided that it would be reasonable for an issuer to estimate minimum payments based on a consumer's utilization of the full credit line using the minimum payment formula employed by the issuer with respect to the credit card product for which the consumer is being considered.

Based on comments received and further analysis, the final rule adopts these aspects of the proposal. In addition, the final rule provides that – if the applicable minimum payment formula includes fees and accrued interest – the estimated minimum payment must include mandatory fees and must include interest charges calculated using the annual percentage rate that will apply after any promotional or other temporary rate expires.

The proposed rule would also have specified the types of factors card issuers should review in considering a consumer's ability to make the required minimum payments. Specifically, it provided that an evaluation of a consumer's ability to pay must include a review of the consumer's income or assets as well as current obligations, and a creditor must establish reasonable policies and procedures for considering that information. When considering a consumer's income or assets and current obligations,

an issuer would have been permitted to rely on information provided by the consumer or information in a consumer's credit report.

Based on comments received and further analysis, the final rule adopts these aspects of the proposal. In addition, when evaluating a consumer's ability to pay, the final rule requires issuers to consider the ratio of debt obligations to income, the ratio of debt obligations to assets, or the income the consumer will have after paying debt obligations (i.e., residual income). Furthermore, the final rule provides that it would be unreasonable for an issuer not to review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets. Finally, in order to provide flexibility regarding consideration of income or assets, the final rule permits issuers to make a reasonable estimate of the consumer's income or assets based on empirically derived, demonstrably and statistically sound models.

Specific requirements for underage consumers. Consistent with the Credit Card Act, the final rule prohibits a creditor from issuing a credit card to a consumer who has not attained the age of 21 unless the consumer has submitted a written application that meets certain requirements. Specifically, the application must include either: (1) information indicating that the underage consumer has the ability to make the required payments for the account; or (2) the signature of a cosigner who has attained the age of 21, who has the means to repay debts incurred by the underage consumer in connection with the account, and who assumes joint liability for such debts.

C. Marketing to Students

Prohibited inducements. The Credit Card Act limits a creditor's ability to offer a student at an institution of higher education any tangible item to induce the student to apply for or open an open-end consumer credit plan offered by the creditor. Specifically, the Credit Card Act prohibits such offers: (1) on the campus of an institution of higher education; (2) near the campus of an institution of higher education; or (3) at an event sponsored by or related to an institution of higher education.

The final rule contains official staff commentary to assist creditors in complying with these prohibitions. For example, the commentary clarifies that "tangible item" means a physical item (such as a gift card, t-shirt, or magazine subscription) and does not include non-physical items (such as discounts, rewards points, or promotional credit terms). The commentary also clarifies that a location that is within 1,000 feet of the border of the campus of an institution of higher education (as defined by the institution) is considered near the campus of that institution. Finally, consistent with guidance recently adopted by the Board with respect to certain private education loans, the commentary states that an event is related to an institution of higher education if the marketing of such event uses words, pictures, or symbols identified with the institution in a way that implies that the institution endorses or otherwise sponsors the event.

Disclosure and reporting requirements. The final rule also implements the provisions of the Credit Card Act requiring institutions of higher education to publicly disclose agreements with credit card issuers regarding the marketing of credit cards. The final rule states that an institution may comply with this requirement by, for example,

posting the agreement on its Web site or by making the agreement available upon request.

In addition, the final rule implements the provisions of the Credit Card Act requiring card issuers to make annual reports to the Board regarding any business, marketing, or promotional agreements between the issuer and an institution of higher education (or an affiliated organization) regarding the issuance of credit cards to students at that institution. The first report must provide information regarding the 2009 calendar year and must be submitted to the Board by February 22, 2010.[2]

D. Fees or Charges for Transactions That Exceed the Credit Limit

Consumer consent requirement. Consistent with the Credit Card Act, the final rule requires credit card issuers to obtain a consumer's express consent (or opt-in) before imposing any fees on a consumer's credit card account for making an extension of credit that exceeds the account's credit limit. Prior to obtaining this consent, the issuer must disclose, among other things, the dollar amount of any fees or charges that will be assessed for an over-the-limit transaction as well as any increased rate that may apply if the consumer exceeds the credit limit. In addition, if the consumer consents, the issuer is also required to provide a notice of the consumer's right to revoke that consent on any periodic statement that reflects the imposition of an over-the-limit fee or charge.

The final rule applies these requirements to all consumers (including existing accountholders) if the issuer imposes a fee or charge for paying an over-the-limit transaction. Thus, after February 22, 2010, issuers are prohibited from assessing any

[2] Technical specifications for these submissions are set forth in Attachment I to this **Federal Register** notice.

over-the-limit fees or charges on an account until the consumer consents to the payment of transactions that exceed the credit limit.

Prohibited practices. Even if the consumer has affirmatively consented to the issuer's payment of over-the-limit transactions, the Credit Card Act prohibits certain practices in connection with the assessment of over-the-limit fees or charges. Consistent with these statutory prohibitions, the final rule would prohibit an issuer from imposing more than one over-the-limit fee or charge per billing cycle. In addition, an issuer could not impose an over-the-limit fee or charge on the account for the same over-the-limit transaction in more than three billing cycles.

The Credit Card Act also directs the Board to prescribe regulations that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees. Pursuant to this authority, the proposed rule would have prohibited issuers from assessing over-the-limit fees or charges that are caused by the issuer's failure to promptly replenish the consumer's available credit. The proposed rule would have also prohibited issuers from conditioning the amount of available credit on the consumer's consent to the payment of over-the-limit transactions. Finally, the proposed rule would have prohibited the imposition of any over-the-limit fees or charges if the credit limit is exceeded solely because of the issuer's assessment of fees or charges (including accrued interest charges) on the consumer's account. The final rule adopts these prohibitions.

E. Payment Allocation

When different rates apply to different balances on a credit card account, the Board's January 2009 FTC Act Rule required banks to allocate payments in excess of the

minimum first to the balance with the highest rate or pro rata among the balances. The Credit Card Act contains a similar provision, except that excess payments must always be allocated first to the balance with the highest rate. In addition, the Credit Card Act provided that, when a balance on an account is subject to a deferred interest or similar program, excess payments must be allocated first to that balance during the last two billing cycles of the deferred interest period so that the consumer can pay the balance in full and avoid deferred interest charges.

The final rule mirrors the statutory requirements. However, in order to provide consumers who utilize deferred interest programs with an additional means of avoiding deferred interest charges, the final rule also permits issuers to allocate excess payments in the manner requested by the consumer at any point during a deferred interest period. This exception allows issuers to retain existing programs that permit consumers to, for example, pay off a deferred interest balance in installments over the course of the deferred interest period. However, this provision applies only when a balance on an account is subject to a deferred interest or similar program.

F. Timely Settlement of Estates

The Credit Card Act directs the Board to prescribe regulations requiring credit card issuers to establish procedures ensuring that any administrator of an estate can resolve the outstanding credit card balance of a deceased accountholder in a timely manner. The proposed rule would have imposed two specific requirements designed to enable administrators to determine the amount of and pay a deceased consumer's balance in a timely manner.

First, upon request by the administrator, the issuer would have been required to disclose the amount of the balance in a timely manner. The final rule adopts this requirement. Second, once an administrator has requested the account balance, the proposed rule would have prohibited the issuer from imposing additional fees and charges on the account so that the amount of the balance does not increase while the administrator is arranging for payment. However, because the Board was concerned that a permanent moratorium on fees and interest charges could be unduly burdensome, the proposal solicited comment on whether a particular period of time would generally be sufficient to enable an administrator to arrange for payment.

Based on comments received and further analysis, the Board believes that it would not be appropriate to permanently prohibit the accrual of interest on a credit card account once an administrator requests the account balance because interest will continue to accrue on other types of credit accounts that are part of the estate. Instead, the final rule provides that – if the administrator pays the balance stated by the issuer in full within 30 days – the issuer must waive any additional interest charges. However, the final rule retains the proposed prohibition on the imposition of additional fees so that the account is not, for example, assessed late payment fees or annual fees while the administrator is settling the estate.

G. On-line Disclosure of Credit Card Agreements

The Credit Card Act requires issuers to post credit card agreements on their Web sites and to submit those agreements to the Board for posting on its Web site. The Credit Card Act further provides that the Board may establish exceptions to these requirements in any case where the administrative burden outweighs the benefit of increased

transparency, such as where a credit card plan has a de minimis number of accountholders.

The final rule adopts the proposed requirement that issuers post on their Web sites or otherwise make available their credit card agreements with current cardholders. In addition, consistent with the Credit Card Act, the final rule generally requires that – no later than February 22, 2010 – issuers submit to the Board for posting on its Web site all credit card agreements offered to the public as of December 31, 2009. Subsequent submissions are due on August 2, 2010 and on a quarterly basis thereafter.[3]

However, the final rule also adopts certain exceptions to this submission requirement. First, the final rule adopts the proposed de minimis exception for issuers with fewer than 10,000 open credit card accounts. Because the overwhelming majority of credit card accounts are held by issuers that have more than 10,000 open accounts, the information provided through the Board's Web site would still reflect virtually all of the terms available to consumers. Similarly, based on comments received and further analysis, the final rule provides that issuers are not required to submit agreements for private label plans offered on behalf of a single merchant or a group of affiliated merchants or for plans that are offered in order to test a new credit card product so long as the plan involves no more than 10,000 credit card accounts.

Second, the final rule adopts the proposed exception for agreements that are not currently offered to the public. The Board believes that the primary purpose of the information provided through the Board's Web site is to assist consumers in comparing credit card agreements offered by different issuers when shopping for a new credit card.

[3] Technical specifications for these submissions are set forth in Attachment I to this **Federal Register** notice.

Including agreements that are no longer offered to the public would not facilitate comparison shopping by consumers. In addition, including such agreements could create confusion regarding which terms are currently available.

G. Additional Provisions

The final rule also implements the following provisions of the Credit Card Act, all of which go into effect on February 22, 2010.

Limitations on fees. The Board's January 2009 FTC Act Rule prohibited banks from charging to a credit card account during the first year after account opening certain account-opening and other fees that, in total, constituted the majority of the initial credit limit. The Credit Card Act contains a similar provision, except that it applies to all fees (other than fees for late payments, returned payments, and exceeding the credit limit) and limits the total fees to 25% of the initial credit limit.

Double-cycle billing. The Board's January 2009 FTC Act Rule prohibited banks from imposing finance charges on balances for days in previous billing cycles as a result of the loss of a grace period (a practice sometimes referred to as "double-cycle billing"). The Credit Card Act contains a similar prohibition. In addition, when a consumer pays some but not all of a balance prior to expiration of a grace period, the Credit Card Act prohibits the issuer from imposing finance charges on the portion of the balance that has been repaid.

Fees for making payment. The Credit Card Act prohibits issuers from charging a fee for making a payment, except for payments involving an expedited service by a service representative of the issuer.

Minimum payments. The Board's January 2009 Regulation Z Rule implemented provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requiring creditors to provide a toll-free telephone number where consumers could receive an estimate of the time to repay their account balances if they made only the required minimum payment each month. The Credit Card Act substantially revised the statutory requirements for these disclosures. In particular, the Credit Card Act requires the following new disclosures on the periodic statement: (1) the amount of time and the total cost (interest and principal) involved in paying the balance in full making only minimum payments; and (2) the monthly payment amount required to pay off the balance in 36 months and the total cost (interest and principal) of repaying the balance in 36 months.

III. Statutory Authority

General Rulemaking Authority

Section 2 of the Credit Card Act states that the Board "may issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act." This final rule implements several sections of the Credit Card Act, which amend TILA. TILA mandates that the Board prescribe regulations to carry out its purposes and specifically authorizes the Board, among other things, to do the following:

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or