~~payments must always be allocated first to the balance with the highest rate.~~

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 creditor from imposing finance charges on the portion of the balance that has been repaid.

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

~~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.~~

~~at a minimum, the consumer will receive two complete billing cycles to avoid accrued interest charges by paying off a balance subject to a deferred interest or similar program.~~

~~In addition, the Board is proposing comment 53(b)-2, which clarifies that a grace period during which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of § 226.53(b). The Board and the other Agencies proposed a similar comment in May 2009. See 12 CFR 227.23 proposed comment 23(b)-1, 74 FR 20816.~~

Section 226.54 Limitations on the Imposition of Finance Charges

The Credit Card Act creates a new TILA Section 127(j), which applies when a consumer loses any time period provided by the creditor with respect to a credit card account within which the consumer may repay any portion of the credit extended without incurring a finance charge (i.e., a grace period). 15 U.S.C. 1637(j). In these circumstances, new TILA Section 127(j)(1)(A) prohibits the creditor from imposing a finance charge with respect to any balances for days in billing cycles that precede the most recent billing cycle (a practice that is sometimes referred to as “two-cycle” or “double-cycle” billing). Furthermore, in these circumstances, Section 127(j)(1)(B) prohibits the creditor from imposing a finance charge with respect to any balances or portions thereof in the current billing cycle that were repaid within the grace period. However, Section 127(j)(2) provides that these prohibitions do not apply to any adjustment to a finance charge as a result of the resolution of a dispute or the return of a payment for insufficient funds. As discussed below, the Board proposes to implement new TILA Section 127(j) in § 226.54.

54(a) Limitations on Imposing Finance Charges as a Result of the Loss of a Grace Period

54(a)(1) General Rule

Prohibition on Two-Cycle Billing

As noted above, new TILA Section 127(j)(1)(A) prohibits the balance computation method sometimes referred to as "two-cycle billing" or "double-cycle billing." The January 2009 FTC Act Rule contained a similar prohibition. See 12 CFR 227.25, 74 FR 5560-5561; see also 74 FR 5535-5538. The two-cycle balance computation method has several permutations but, generally speaking, a card issuer using the two-cycle method assesses interest not only on the balance for the current billing cycle but also on balances on days in the preceding billing cycle. This method generally does not result in additional finance charges for a consumer who consistently carries a balance from month to month (and therefore does not receive a grace period) because interest is always accruing on the balance. Nor does the two-cycle method affect consumers who pay their balance in full within the grace period every month because interest is not imposed on their balances. The two-cycle method does, however, result in greater interest charges for consumers who pay their balance in full one month but not the next month (and therefore lose the grace period).

The following example illustrates how the two-cycle method results in higher costs for these consumers than other balance computation methods: Assume that the billing cycle on a credit card account starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. Under the terms of the account, the consumer will not be charged interest on purchases if the balance at the end of a billing cycle is paid in full by the following payment due date (in other words, if the consumer receives a grace period). The consumer uses the credit card to make a $500 purchase on March 15. The consumer pays the balance for the February billing cycle in full on March 25. At the end of the March billing cycle (March 31), the consumer's balance consists only of the $500 purchase and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25). The consumer pays $400 on April 25, leaving a $100 balance. Because the consumer did not pay the balance for the March billing cycle in full on April 25, the consumer would lose the grace period and most card issuers would charge interest on the $500 purchase from the start of the April billing cycle (April 1) through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 30). Card issuers using the two-cycle method, however, would also charge interest on the $500 purchase from the date of purchase (March 15) to the end of the March billing cycle (March 31).

The Board proposes to implement new TILA Section 127(j)(1)(A)'s prohibition on two-cycle billing in proposed § 226.54(a)(1)(i), which states that, except as provided in proposed § 226.54(b), a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account if those finance charges are based on balances for days in billing cycles that precede the most recent billing cycle. The Board also proposes to adopt § 226.54(a)(2), which would define "grace period" for purposes of § 226.54(a)(1) as having the same meaning as in § 226.5(b)(2)(ii). Section 226.5(b)(2)(ii) was amended by the July 2009 Regulation Z Interim Final Rule to define "grace period" as a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. 74 FR 36094. Finally, proposed comment 54(a)(1)-4 explains that § 226.54(a)(1)(i) prohibits use of the two-cycle average daily balance computation method.

Partial Grace Period Requirement

As discussed above, many credit card issuers that provide a grace period currently require the consumer to pay off the entire balance on the account or the entire balance subject to the grace period before the period expires. However, new TILA Section 127(j)(1)(B) limits this practice. Specifically, Section 127(j)(1)(B) provides that a creditor may not impose any finance charge on a credit card account as a result of the loss of any time period provided by the creditor within which the consumer may repay any portion of the credit extended without incurring a finance charge with respect to any balances or portions thereof in the current billing cycle that were repaid within such time period. The Board proposes to implement this prohibition in proposed § 226.54(a)(1)(ii), which states that, except as provided in proposed § 226.54(b), a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account if those finance charges are based on any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.

The Board also proposes to adopt comment 54(a)(1)-5, which would clarify that card issuers are not required to use a particular method to comply with § 226.54(a)(1)(ii) but provides an example of a method that is consistent with the requirements of § 226.54(a)(1)(ii). Specifically, it states that a card issuer can comply with the requirements of § 226.54(a)(1)(ii) by applying the consumer's payment to the balance subject to the grace period at the end of the prior billing cycle (in a manner consistent with the payment allocation requirements in § 226.53) and then calculating interest charges based on the amount of that balance that remains unpaid. An example of the application of this method is provided in proposed comment 54(a)(1)-6 along with other examples of the application of § 226.54(a)(1)(i) and (ii).

In addition to the commentary clarifying the specific prohibitions in § 226.54(a)(1)(i) and (ii), the Board is proposing to adopt three comments clarifying the general scope and applicability of § 226.54. First, proposed comment 54(a)(1)–1 would clarify that § 226.54 does not require the card issuer to provide a grace period or prohibit a card issuer from placing limitations and conditions on a grace period to the extent consistent with § 226.54. Currently, neither TILA nor Regulation Z requires a card issuer to provide a grace period. Nevertheless, for competitive and other reasons, many credit card issuers choose to do so, subject to certain limitations and conditions. For example, credit card grace periods generally apply to purchases but not to other types of transactions (such as cash advances). In addition, as noted above, card issuers that provide a grace period generally require the consumer to pay off all balances on the account or the entire balance subject to the grace period before the period expires.

Although new TILA Section 127(j) prohibits the imposition of finance charges as a result of the loss of a grace period in certain circumstances, the Board does not interpret this provision to mandate that card issuers provide such a period or to limit card issuers' ability to place limitations and conditions on a grace period to the extent consistent with the statute. Instead, Section 127(j)(1) refers to "any time provided by the creditor within which the [consumer] may repay any portion of the credit extended without incurring a finance charge." This language indicates that card issuers retain the ability to determine when and under what conditions to provide a grace period on a credit card account so long as card issuers that choose to provide a grace period do so consistent with the requirements of new TILA Section 127(j).

The Board also proposes to adopt comment 54(a)(1)-2, which would clarify that proposed § 226.54 does not prohibit the card issuer from charging accrued interest at the expiration of a deferred interest or similar promotional program. Specifically, the comment would state that, when a card issuer offers a deferred interest or similar promotional program, § 226.54 does not prohibit the card issuer from charging that accrued interest to the account if the balance is not paid in full prior to expiration of the period (consistent with § 226.55 and other applicable law and regulatory guidance). A contrary interpretation of proposed § 226.54 (and new TILA Section 127(j)) would effectively eliminate deferred interest and similar programs by prohibiting the card issuer from charging interest based on the deferred interest balance during the deferred interest period if that balance was not paid in full at expiration. However, as discussed above with respect to proposed § 226.53, the Credit Card Act's revisions to TILA Section 164 specifically create an exception to the general rule governing payment allocation for deferred interest programs, which indicates that Congress did not intend to ban such programs. See Credit Card Act § 104(1) (revised TILA Section 164(b)(2)).

Finally, proposed comment 54(a)(1)-3 would clarify that card issuers must comply with the payment allocation requirements in § 226.53 even if doing so will result in the loss of a grace period. For example, as illustrated in proposed comment 54(a)(1)-6.ii, a card issuer must generally allocate a payment in excess of the required minimum periodic payment to a cash advance balance with a 25% rate before a purchase balance with a purchase balance with a 15% rate even if this will result in the loss of a grace period on the purchase balance. Although there could be a narrow set of circumstances in which – depending on the size of the balances and the amount of the difference between the rates – this allocation would result in higher interest charges than if the excess payment were applied in a way that preserved the grace period, Congress did not create an exception for these circumstances in the provisions of the Credit Card Act specifically addressing payment allocation.

54(b) Exceptions

New TILA Section 127(j)(2) provides that the prohibitions in Section 127(j)(1) do not apply to any adjustment to a finance charge as a result of resolution of a dispute or as a result of the return of a payment for insufficient funds. The Board proposes to implement these exceptions in proposed § 226.54(b).

The Board interprets the exception for the "resolution of a dispute" in new TILA Section 127(j)(2)(A) to apply when the dispute is resolved pursuant to TILA's dispute resolution procedures. Accordingly, proposed § 226.54(b)(1) would permit adjustments to finance charges when a dispute is resolved under § 226.12 (which governs the right of a cardholder to assert claims or defenses against the card issuer) or § 226.13 (which governs resolution of billing errors).

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

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

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

~~**55(a) General Rule**~~

~~As noted above, revised TILA Section 171(a) generally prohibits increases in annual percentage rates, fees, and finance charges on outstanding balances. Revised~~

~~percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.~~

~~(b) Special rule for balances subject to deferred interest or similar programs~~. ~~When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, the card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment first to that balance during the two billing cycles immediately preceding expiration of the specified period and any remaining portion to any other balances consistent with paragraph (a) of this section.~~

§ 226.54 Limitations on the imposition of finance charges.

(a) Limitations on imposing finance charges as a result of the loss of a grace period. (1) General rule. Except as provided in paragraph (b) of this section, a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan if those finance charges are based on:

(i) Balances for days in billing cycles that precede the most recent billing cycle; or

(ii) Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.

(2) Definition of grace period. For purposes of paragraph (a)(1) of this section, “grace period” has the same meaning as in § 226.5(b)(2)(ii).

(b) Exceptions. Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under § 226.12 or § 226.13; or

(2) Adjustments to finance charges as a result of the return of a payment.

~~**§ 226.55 Limitations on increasing annual percentage rates, fees, and charges.**~~

~~(a) General rule. Except as provided in paragraph (b) of this section, a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account under an open-end (not home-secured) consumer credit plan.~~

~~(b) Exceptions. A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in this paragraph even if that increase would not be permitted under a different exception.~~

~~(1) Temporary rate exception. A card issuer may increase an annual percentage rate upon the expiration of a specified period of six months or longer, provided that:~~

~~(i) Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period; and~~

~~(ii) Upon expiration of the specified period:~~

~~(A) The card issuer must not apply an annual percentage rate to transactions that occurred prior to the period that exceeds the annual percentage rate that applied to those transactions prior to the period;~~

~~finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of § 226.53(b).~~

Section 226.54—Limitations on the Imposition of Finance Charges

54(a) Limitations on imposing finance charges as a result of the loss of a grace period.

54(a)(1) General rule.

1. Grace period not mandated. Section 226.54 prohibits the imposition of finance charges as a result of the loss of a grace period in certain specified circumstances. Section 226.54 does not require the card issuer to provide a grace period or prohibit the card issuer from placing limitations and conditions on a grace period to the extent consistent with § 226.54.

2. Charging accrued interest at expiration of deferred interest or similar promotional programs. When a card issuer offers a deferred interest or similar promotional program under which a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time, § 226.54 does not prohibit the card issuer from charging that accrued interest to the account if the balance is not paid in full prior to expiration of the period (to the extent consistent with § 226.55 and other applicable law and regulatory guidance).

3. Relationship to payment allocation requirements in § 226.53. Card issuers must comply with the payment allocation requirements in § 226.53 even if doing so will result in the loss of a grace period.

4. Prohibition on two-cycle balance computation method. When a consumer ceases to be eligible for a grace period, § 226.54(a)(1)(i) prohibits the card issuer from

computing the finance charge using the two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance (including or excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

5. Prohibition on imposing finance charges on amounts paid within grace period. When a balance on a credit card account is subject to a grace period and the card issuer receives payment for some but not all of that balance prior to the expiration of the grace period, § 226.54(a)(1)(ii) prohibits the card issuer from imposing finance charges on the portion of the balance paid. Card issuers are not required to use a particular method to comply with § 226.54(a)(1)(ii). However, a card issuer complies with § 226.54(a)(1)(ii) if it applies the consumer's payment to the balance subject to the grace period at the end of the prior billing cycle (in a manner consistent with the payment allocation requirements in § 226.53) and then calculates interest charges based on the amount of the balance that remains unpaid.

6. Examples. Assume that the annual percentage rate for purchases on a credit card account is 15%. The billing cycle starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. Under the terms of the account, the consumer will receive a grace period and not be charged interest on purchases if the purchase balance at the end of a billing cycle is paid in full by the following payment due date. For purposes of this example, assume

that none of the required minimum periodic payment is allocated to the balances discussed. During the March billing cycle, the following transactions are charged to the account: a $100 purchase on March 10, a $200 purchase on March 15, and a $300 purchase on March 20. The balance for the February billing cycle is paid in full on March 25. At the end of the March billing cycle (March 31), the consumer's total purchase balance is $600 and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25).

i. On April 10, a $150 purchase is charged to the account. On April 25, the card issuer receives $500 in excess of the required minimum periodic payment. Section 226.54(a)(1)(i) prohibits the card issuer from reaching back and charging interest on any of the March transactions from the date of the transaction through the end of the March billing cycle (March 31). In these circumstances, the card issuer may comply with § 226.54(a)(1)(ii) by applying the $500 excess payment to the $600 purchase balance and then charging interest only on the portion of the $600 purchase balance that remains unpaid ($100) from the start of the April billing cycle (April 1) through the end of the April billing cycle (April 30). In addition, the card issuer may charge interest on the $150 purchase from the date of the transaction (April 10) through the end of the April billing cycle (April 31).

ii. Same facts as in paragraph 6 above except that, on March 18, a $250 cash advance is charged to the account at an annual percentage rate of 25%. The grace period does not apply to cash advances, but the consumer retains the grace period on purchases. On April 25, the card issuer receives $600 in excess of the required minimum periodic payment. As required by § 226.53, the card issuer allocates the $600 excess payment first to the balance with the highest annual percentage rate (the $250 cash advance balance). Although § 226.54(a)(1)(i) prohibits the card issuer from charging interest on the March transactions based on days in the March billing cycle, the card issuer may charge interest on the $250 cash advance from the date of the transaction (March 18) through April 24. In these circumstances, the card issuer may comply with § 226.54(a)(1)(ii) by applying the remainder of the excess payment ($350) to the $600 purchase balance and then charging interest only on the portion of the $600 purchase balance that remains unpaid ($250) from the start of the April billing cycle (April 1) through the end of the April billing cycle (April 30).

iii. Same facts as in paragraph 6 above except that the consumer does not pay the balance for the February billing cycle in full on March 25 and therefore, under the terms of the account, is not eligible for a grace period on the March purchases. Under these circumstances, § 226.54 does not apply and the card issuer may charge interest from the date of each transaction through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 25).

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

~~55(a) General rule~~.

~~1. Examples. Section 226.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account unless specifically permitted by one of the exceptions in § 226.55(b). The following examples illustrate the general application of § 226.55(a) and (b). Additional examples illustrating specific aspects of the exceptions in § 226.55(b) are provided in the commentary to those exceptions.~~