~~overwhelming majority of credit card accounts are held by creditors 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.~~

~~Second, creditors would not be required to submit 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. 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 proposed 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.

~~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~~

~~under § 226.51(b)(1)(ii). Therefore, the Board believes, a card issuer is not required to accept an application from a consumer less than 21 years old with the signature of a cosigner, guarantor, or joint applicant pursuant to § 226.51(b)(1)(i), unless refusing such applications would violate Regulation B. For example, if the card issuer permits other applicants of non-business credit card accounts who have attained the age of 21 to provide the signature of a cosigner, guarantor, or joint applicant, the card issuer must provide this option to applicants of non-business credit card accounts who have not attained the age of 21 (assuming the consumer has the legal ability to enter into a contract).~~

~~Proposed comment 51(b)(2)-1 would provide that the requirement under § 226.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to § 226.51(b)(1)(ii) must agree in writing to assume liability for a credit line increase does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old requests the increase. Because the party that must approve the increase is the one that is requesting the increase in this situation, the Board believes that § 226.51(b)(2) would be redundant.~~

Section 226.52 Limitations on Fees

52(a) Limitations During First Year After Account Opening

New TILA Section 127(n)(1) applies "[i]f the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened." 15 U.S.C. 1637(n)(1). If the 25 percent threshold is met, then "no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account." However, new TILA Section 127(n)(2) provides that Section 127(n) may not be construed as authorizing any imposition or payment of advance fees prohibited by any other provision of law. The Board is proposing to implement new TILA Section 127(n) in § 226.52(a).[19]

Subprime credit cards often charge substantial fees at account opening and during the first year after the account is opened. For example, these cards may impose multiple one-time fees when the consumer opens the account (such as an application fee, a program fee, and an annual fee) as well as a monthly maintenance fee, fees for using the account for certain types of transactions, and fees for increasing the credit limit. The account-opening fees are often billed to the consumer on the first periodic statement, substantially reducing from the outset the amount of credit that the consumer has available to make purchases or other transactions on the account. For example, some subprime credit card issuers assess $250 in fees at account opening on accounts with credit limits of $300, leaving the consumer with only $50 of available credit with which to make purchases or other transactions. In addition, the consumer may pay interest on the fees until they are paid in full.

Because of concerns that some consumers were not aware of how fees would affect their ability to use the card for its intended purpose of engaging in transactions, the Board's January 2009 Regulation Z Rule enhanced the disclosure requirements for

[19] In a subsequent rulemaking, the Board intends to implement new TILA Section 149 in § 226.52(b). New TILA Section 149, which is effective August 22, 2010, requires that credit card penalty fees and charges be reasonable and proportional to the consumer's violation of the cardholder agreement.

these types of fees and clarified the circumstances under which a consumer who has been notified of the fees in the account-opening disclosures (but has not yet used the account or paid a fee) may reject the plan and not be obligated to pay the fees. See § 226.5(b)(1)(iv), 74 FR 5402; § 226.5a(b)(14), 74 FR 5404; § 226.6(b)(1)(xiii), 74 FR 5408. In addition, because the Board and the other Agencies were concerned that disclosure alone was insufficient to protect consumers from unfair practices regarding high-fee subprime credit cards, the January 2009 FTC Act Rule prohibited institutions from charging certain types of fees during the first year after account opening that, in the aggregate, constituted the majority of the credit limit. In addition, these fees were limited to 25 percent of the initial credit limit in the first billing cycle with any additional amount (up to 50 percent) spread equally over the next five billing cycles. Finally, institutions were prohibited from circumventing these restrictions by providing the consumer with a separate credit account for the payment of additional fees. See 12 CFR 227.26, 74 FR 5561, 5566; see also 74 FR 5538-5543.[20]

52(a)(1) General Rule

As noted above, new TILA Section 127(n)(1) applies when "the terms of a credit card account . . . require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened." Congress's use of "require" could be construed to mean that Section 127(n)(1) applies

[20] Although the Board, OTS, and NCUA adopted substantively identical rules under the FTC Act, each agency placed its rules in its respective part of Title 12 of the Code of Federal Regulations. Specifically, the Board placed its rules in part 227, the OTS in part 535, and the NCUA in part 706. For simplicity, this supplementary information cites to the Board's rules and official staff commentary.

only to fees that are unconditional requirements of the account—in other words, fees that all consumers are required to pay regardless of how the account is used (such as account-opening fees, annual fees, and monthly maintenance fees). However, such a narrow reading would be inconsistent with the words "any fees," which indicate that Congress intended the provision to apply to a broader range of fees. Furthermore, categorically excluding fees that are conditional (in other words, fees that consumers are only required to pay in certain circumstances) would enable card issuers to circumvent the 25 percent limit by, for example, requiring consumers to pay fees in order to receive a particular credit limit or to use the account for purchases or other transactions. Finally, new TILA Section 127(n)(1) specifically excludes three fees that are conditional (late payment fees, over-the-limit fees, and fees for a payment returned for insufficient funds), which suggests that Congress otherwise intended Section 127(n)(1) to apply to fees that a consumer is required to pay only in certain circumstances (such as fees for other violations of the account terms or fees for using the account for transactions).

New TILA Section 127(n)(1) further provides that, if the 25 percent threshold is met, "no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account." Although this language could be read to require card issuers to determine at account opening the total amount of fees that will be charged during the first year, the Board does not believe this was Congress's intent because the total amount of fees charged during the first year will depend on how the account is used. For example, most card issuers currently require consumers who use a credit card account for cash advances, balance transfers, or foreign transactions to pay a fee that is equal to a percentage of the transaction. Thus, the total amount of fees charged during the first year will depend on, among other things, the number and amount of cash advances, balance transfers, or foreign transactions. Although card issuers could address this uncertainty by ceasing to charge such fees, card issuers that did so would also likely reduce consumers' ability to use their credit cards for these types of transactions, which could be detrimental for some consumers. Accordingly, the Board believes Section 127(n)(1) should be interpreted to limit the fees charged to a credit card account during the first year to 25 percent of the initial credit limit and to prevent card issuers from collecting additional fees by other means (such as directly from the consumer or by providing a separate credit account). In order to effectuate this purpose and to facilitate compliance, the Board proposes to use its authority under TILA Section 105(a) to implement new TILA Section 127(n) as set forth below.

Proposed § 226.52(a)(1)(i) provides that, if a card issuer charges any fees to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening, those fees must not in total constitute more than 25 percent of the credit limit in effect when the account is opened. Proposed comment 52(a)(1)(i)-1 provides an illustrative example of the application of the rule.

Proposed comment 52(a)(1)(i)-2 clarifies that a card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with § 226.52(a)(1)(i) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges at the end of the billing cycle during which the fee was charged. Thus, if a card issuer's systems automatically assess a fee based on certain account activity (such as automatically assessing a cash advance fee when the account is used for a cash advance) and, as a result, the total amount of fees subject to § 226.52(a) that have been charged to the account during the first year exceeds the 25 percent limit, the card issuer can comply with § 226.52(a)(1)(i) by removing the fee and any interest charged on that fee at the end of the billing cycle.

Proposed comment 52(a)(1)(i)-3 clarifies that, because the limitation in § 226.52(a)(1)(i) is based on the credit limit in effect when the account is opened, a subsequent increase in the credit limit during the first year does not permit the card issuer to charge to the account additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit). An illustrative example is provided.

Proposed § 226.52(a)(1)(ii) would prevent card issuers from circumventing proposed § 226.52(a)(1)(i) by providing that a card issuer that charges fees to the account during the first year after account opening must not require the consumer to pay any fees in excess of the 25 percent limit with respect to the account during the first year. Proposed comment 52(a)(1)(ii)-1 clarifies that § 226.52(a)(1)(ii) prohibits a card issuer that charges to a credit card account fees during the first year that total 25 percent of the initial credit limit from requiring the consumer to pay any additional fees through other means during the first year (such as through a payment from the consumer to the card issuer or from another credit account provided by the card issuer). An illustrative example is provided.

<u>52(a)(2) Fees Not Subject to Limitations</u>

Proposed § 226.52(a)(2)(i) implements the exception in new TILA Section 127(n)(1) for late payment fees, over-the-limit fees, and fees for payments returned for insufficient funds. However, pursuant to the Board's authority under TILA Section 105(a), proposed § 226.52(a)(2)(i) applies to all fees for returned payments 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).

As discussed above, new TILA Section 127(n)(1) applies to fees that a consumer is required to pay with respect to a credit card account. Accordingly, proposed § 226.52(a)(2)(ii) would create an exception to § 226.52(a) for fees that a consumer is not required to pay with respect to the account. The proposed commentary to § 226.52(a) illustrates the distinction between fees the consumer is required to pay and those the consumer is not required to pay. Proposed comment 52(a)(2)-1 clarifies that, except as provided in § 226.52(a)(2), the limitations in § 226.52(a)(1) apply to any fees that a card issuer will or may require the consumer to pay with respect to a credit card account during the first year after account opening. The comment lists several types of fees as examples of fees covered by § 226.52(a). First, fees that the consumer is required to pay for the issuance or availability of credit described in § 226.5a(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit. Second, fees for insurance described in § 226.4(b)(7) or debt cancellation or debt suspension coverage described in § 226.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account. Third, fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and other fees for using the account for purchases). And fourth, fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by § 226.52(a)(2)(i)).

Proposed comment 52(a)(2)-2 provides as examples of fees that generally fall within the exception in § 226.52(a)(2)(ii) fees for making an expedited payment (to the extent permitted by § 226.10(e)), fees for optional services (such as travel insurance), fees for reissuing a lost or stolen card, and statement reproduction fees.

Finally, proposed comment 52(a)(2)-3 clarifies that a security deposit that is charged to a credit card account is a fee for purposes of § 226.52(a). However, the comment also clarifies that § 226.52(a) would not prohibit a creditor from providing a secured credit card that requires a consumer to provide a cash collateral deposit that is equal to the credit line for the account.

52(a)(3) Rule of Construction

New TILA Section 127(n)(2) states that "[n]o provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law." 15 U.S.C. 1637(n)(2). The Board proposes to implement this provision in § 226.52(a)(3). As an example of a provision of law limiting the payment of advance fees, proposed comment 52(a)(3)-1 cites 16 CFR § 310.4(a)(4), which prohibits any telemarketer or seller from "[r]equesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person."

§ 226.52 Limitations on fees.

(a) Limitations during first year after account opening. (1) General rule. Except as provided in paragraph (a)(2) of this section, if a card issuer charges any fees to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after the account is opened:

(i) The card issuer must not charge to the account during that period fees that in total constitute more than 25 percent of the credit limit in effect when the account is opened; and

(ii) The card issuer must not require the consumer to pay any fees in excess of the total amount permitted by paragraph (a)(1)(i) of this section with respect to the account during that period.

(2) Fees not subject to limitations. Paragraph (a) of this section does not apply to:

(i) Late payment fees, over-the-limit fees, and returned-payment fees; or

(ii) Fees that the consumer is not required to pay with respect to the account.

(3) Rule of construction. Paragraph (a) of this section does not authorize the imposition or payment of fees or charges otherwise prohibited by law.

~~**§ 226.53 Allocation of payments.**~~

~~(a) General rule. Except as provided in paragraph (b) of this section, when a consumer makes a payment in excess of the required minimum periodic payment for a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer must allocate the excess amount first to the balance with the highest annual~~

~~51(b)(1) Applications from young consumers~~.

~~1. Relation to Regulation B. In considering an application or credit line increase on the credit card account of a consumer who is less than 21 years old, creditors must comply with the applicable rules in Regulation B (12 CFR part 202).~~

~~51(b)(2) Credit line increases for young consumers.~~

~~1. Credit line request by joint accountholder aged 21 or older. The requirement under § 226.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to § 226.51(b)(1)(i) must agree in writing to assume liability for the increase before a credit line is increased, does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old requests the increase.~~

Section 226.52—Limitations on Fees

52(a) Limitations during first year after account opening.

52(a)(1)(i) 25 percent limit.

1. Example. Assume that, under the terms of a credit card account, a consumer is required to pay $120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to five percent of the cash advance and a late payment fee of $15 if the required minimum periodic payment is not received by the payment due date (which is the twenty-fifth of the month). At account opening on January 1 of year one, the credit limit for the account is $500. Section 226.52(a)(1)(i) permits the card issuer to charge to the account the $120 in fees for the issuance or availability of credit at account opening. On February 1 of year one, the consumer uses the account for a $100 cash advance. Section 226.52(a)(1)(i) permits the card issuer to charge a $5 cash-advance fee to the account. On March 26 of year one,

the card issuer has not received the consumer's required minimum periodic payment. Section 226.52(a)(2)(i) permits the card issuer to charge a $15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a $50 cash advance. Section 226.52(a)(1)(i) does not permit the card issuer to charge a $2.50 cash advance fee to the account. Furthermore, § 225.52(a)(1)(ii) prohibits the card issuer from collecting the $2.50 cash advance fee from the consumer by other means.

2. Fees that exceed 25 percent limit. A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with § 226.52(a)(1)(i) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges at the end of the billing cycle during which the fee was charged. For example, assuming the facts in comment 52(a)(1)(i)-1 above, the card issuer complies with § 226.52(a)(1)(i) if the card issuer charged the $2.50 cash advance fee to the account on July 15 of year one but waived or removed the fee or credited the account for $2.50 (plus any interest charges on that $2.50) at the end of the billing cycle.

3. Increases in credit limit. Because the limitation in § 226.52(a)(1)(i) is based on the credit limit in effect when the account is opened, a subsequent increase in the credit limit during the first year does not permit the card issuer to charge to the account additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit). For example, assume that, at account opening on January 1, the credit limit for a credit card account is $400 and the consumer is required to pay $100 in fees for the issuance or availability of credit. On July 1, the card issuer increases the credit limit for

the account to $600. Section 226.52(a)(1)(i) does not permit the card issuer to require the consumer to pay additional fees based on the increased credit limit.

52(a)(1)(ii) Additional fees.

1. Example. Section 226.52(a)(1)(ii) prohibits a card issuer that charges to a credit card account fees during the first year that total 25 percent of the initial credit limit from requiring the consumer to pay any additional fees through other means during the first year (such as through a payment from the consumer to the card issuer or from another credit account provided by the card issuer). For example, assume that, under the terms of a credit card account, a consumer is required to pay $125 in fees for the issuance or availability of credit during the first year after account opening. At account opening on January 1 of year one, the credit limit for the account is $500. Section 226.52(a)(1)(i) permits the card issuer to charge the $125 in fees to the account. However, § 226.52(a)(1)(ii) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional fees with respect to the account during the first year after account opening or requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional fees during the first year.

52(a)(2) Fees not subject to limitations.

1. Covered fees. Except as provided in § 226.52(a)(2), the limitations in § 226.52(a)(1) apply to any fees that a card issuer will or may require the consumer to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening. For example, § 226.52(a) applies to:

i. Fees that the consumer is required to pay for the issuance or availability of credit described in § 226.5a(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit;

ii. Fees for insurance described in § 226.4(b)(7) or debt cancellation or debt suspension coverage described in § 226.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account;

iii. Fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases); and

iv. Fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by § 226.52(a)(2)(i)).

2. Fees the consumer is not required to pay. Section 226.52(a)(2)(ii) provides that § 226.52(a) does not apply to fees that the consumer is not required to pay with respect to the account. For example, the limitations in § 226.52(a) generally do not apply to fees for making an expedited payment (to the extent permitted by § 226.10(e)), fees for optional services (such as travel insurance), fees for reissuing a lost or stolen card, or statement reproduction fees.

3. Security deposits. A security deposit that is charged to a credit card account is a fee for purposes of the limitations in § 226.52(a)(1). In contrast, however, a security deposit is not subject to the 25 percent limit in § 226.52(a)(1)(i) if it is not charged to the account. Similarly, § 226.52(a)(1)(ii) does not prohibit a card issuer from requiring a

consumer to provide a security deposit that exceeds 25 percent of the credit limit at account opening so long as the card issuer does not charge any portion of that security deposit to the account.

52(a)(3) Rule of construction.

1. Fees or charges otherwise prohibited by law. Section 226.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law. For example, see 16 CFR § 310.4(a)(4).

~~Section 226.53 Allocation of Payments~~

~~1. Required minimum periodic payment. Section 226.53 addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the card issuer. Section 226.53 does not limit or otherwise address the card issuer's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. A card issuer may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in § 226.53 to the extent consistent with other applicable law or regulatory guidance.~~

~~2. Applicable rates and balances. Section 226.53 permits a card issuer to allocate an amount paid by the consumer in excess of the required minimum periodic payment based on the annual percentage rates and balances on the date the preceding billing cycle ends, on the date the payment is credited to the account, or on any day in between those two dates. For example:~~

~~i. Assume that the billing cycles for a credit card account start on the first day of the month and end on the last day of the month. On the date the March billing cycle ends~~