Section 226.9 Subsequent Disclosure Requirements

9(c) Change in Terms

Section 226.9(c) sets forth the advance notice requirements when a creditor changes the terms applicable to a consumer's account. As discussed below, the Board is proposing several changes to § 226.9(c)(2) as adopted in the January 2009 Regulation Z Rule and the associated staff commentary in order to conform to the new requirements of the Credit Card Act.

9(c)(1) Rules Affecting Home-Equity Plans

In the January 2009 Regulation Z Rule, the Board preserved the existing rules for changes in terms for home-equity lines of credit in a new § 226.9(c)(1), in order to clearly delineate the requirements for HELOCs from those applicable to other open-end credit. The Board noted that possible revisions to rules affecting HELOCs would be considered in the Board's review of home-secured credit, which was underway at the time that the January 2009 Regulation Z rule was published. On August 26, 2009, the Board published proposed revisions to those portions of Regulation Z affecting HELOCs in the **Federal Register.** As discussed in **I. Background and Implementation of the Credit Card Act**, in order to clarify that this proposed rule is not intended to amend or otherwise affect the August 2009 Regulation Z HELOC Proposal, the Board is not republishing § 226.9(c)(1) in this **Federal Register** notice.

The Board anticipates, however, that a final rule will be issued with regard to this proposal prior to completion of final rules regarding HELOCs. Therefore, the Board anticipates that it will include § 226.9(c)(1), as adopted in the January 2009 Regulation Z Rule, in its final rulemaking based on this proposal, to give HELOC creditors guidance

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[13]

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.

[13] 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 proposing to implement 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 proposes to implement in a 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 will be 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 proposing to implement 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 proposing to retain those requirements of the January 2009 Regulation Z Rule that are not directly affected by the Credit Card Act in this rulemaking, concurrently with the promulgation of regulations implementing the provisions of the Credit Card Act effective February 22, 2010.[14] Consistent with this approach, the Board is proposing to use § 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

[14] 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 proposing to require a tabular format for certain change-in-terms notice requirements before the July 1, 2010 effective date.

Credit Card Act. Proposed § 226.9(c)(2) 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 proposing to adopt 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. While the Board is republishing revised § 226.9(c)(2) and the associated commentary in its entirety, this supplementary information will focus on highlighting those aspects in which proposed § 226.9(c)(2) 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 republishing 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. Proposed paragraph (c)(2)(i) states 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. This rule is intended to be substantively equivalent to § 226.9(c)(2) of the January 2009 Regulation Z Rule. The exceptions, as discussed below, are set forth in proposed

paragraph (c)(2)(v). In addition, paragraph (c)(2)(iii) provides 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). Proposed § 226.9(c)(2)(iii), which is discussed in more detail 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) sets 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 and the July 2009 Regulation Z Interim Final Rule. First, the 45-day advance notice requirement does 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) also notes 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.

The Board notes that proposed § 226.9(c)(2) would apply to all open-end (not home-secured) credit, consistent with the January 2009 Regulation Z Rule. TILA Section 127(i), as adopted by the Credit Card Act and 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. 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 apply § 226.9(c)(2) to all open-end (not home-secured) credit. 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. As discussed in more detail in the supplementary information to § 226.9(c)(2)(iv), the regulation would apply such requirements only to credit card accounts.

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 is proposing § 226.9(c)(2)(ii) to identify which changes are significant changes in terms. Similar to the January 2009 Regulation Z Rule, § 226.9(c)(2)(ii) would state 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). 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). However, proposed § 226.9(c)(2)(ii) is 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. However, for clarity, the Board is proposing to amend the text of § 226.9(c)(2)(ii) to cross-reference the requirements of § 226.6(b)(1) and (b)(2).

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

Proposed § 226.9(c)(2)(iii) sets 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 as described in § 226.9(c)(2)(ii). Consistent with TILA Section 127(i), the Board is only proposing a 45-day notice period 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 would require 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.

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

Proposed § 226.9(c)(2)(iv) contains the 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) sets forth the content that would be required in notices under § 226.9(c)(2)(i) for all open-end (not home-secured) credit and mirrors the content required to be disclosed in change-in-terms

notices pursuant to the Board's January 2009 Regulation Z Rule. Notices provided pursuant to § 226.9(c)(2)(i) would be required 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.

The content required by proposed § 226.9(c)(2)(iv)(A) generally mirrors the content required under § 226.9(c)(2)(iii) of the January 2009 Regulation Z Rule. Creditors would be required to disclose information regarding the balances to which the increased rate will apply as well as a statement, if applicable, identifying balances to which the current rate will continue to apply as of the effective date of the increase. This

content was not included in the July 2009 Regulation Z Interim Final Rule because at that time there were no substantive limitations regarding rate increases equivalent to those in proposed § 226.55. However, consistent with the January 2009 Regulation Z Rule, the Board believes that a statement identifying to which balances an increased rate will apply to is an important disclosure in light of § 226.55, in order to permit consumers to make informed decisions about their account usage.

In addition, the Board is proposing 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 below and 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 believes 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.

Proposed § 226.9(c)(2)(iv)(B) sets 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), credit card issuers making significant changes to terms must also 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, 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. Section 226.9(c)(2)(iv)(B) mirrors requirements made applicable to credit card issuers in the July 2009 Regulation Z Interim Final Rule, with several amendments discussed below.

As discussed in the supplementary information to § 226.9(h), the Board is proposing that a consumer's right to reject would not extend 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 July 2009 Regulation Z Interim Final Rule similarly excluded increases in a consumer's minimum payment from being subject to the right to reject. The Board also is proposing that the right to reject not apply to rate increases, because consumers will automatically receive the protections against rate increases applicable to

their balances under proposed § 226.55 without being required to take any action to reject the change. The Board recognizes that it would be an anomalous result for consumers to be able to reject a change in balance computation that is expressly required under the Credit Card Act and implementing rules. Finally, the Board would clarify that, as stated in proposed § 226.9(h)(3), the right to reject does not apply when the account is more than 60 days delinquent. Accordingly, for these types of changes creditors would not be required to give the disclosures associated with the right to reject in § 226.9(c)(2)(iv)(B).

Proposed § 226.9(c)(2)(iv)(C) sets forth the formatting requirements that would apply to notices required to be given pursuant to § 226.9(c)(2)(i). The proposed formatting requirements are 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 would include, 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 proposes to adopt them generally as adopted in January 2009. Accordingly, as discussed in **I. Background and Implementation of the Credit Card Act**, the Board is considering making these formatting requirements mandatory beginning on July 1, 2010, consistent with the effective date adopted for the January 2009 Regulation Z Rule. In addition, the Board is proposing to publish revised model forms that would reflect the new disclosure of the right to reject, when applicable.

The Board is proposing to amend Sample G-20 and to add a new sample G-21 to illustrate how a card issuer may comply with the requirements of proposed § 226.9(c)(2)(iv). The Board would amend references to these samples in

§ 226.9(c)(2)(iv) and comment 9(c)(2)(iv)-8 accordingly. Proposed 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 is proposing § 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 noted below, proposed § 226.9(c)(2)(v) is intended to be substantively equivalent to § 226.9(c)(2)(v) of the July 2009 Regulation Z Interim Final Rule. Proposed § 226.9(c)(2)(v)(A) would retain 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 is not including these changes in the set of "significant changes" giving rise to notice requirements pursuant to new TILA Section 127(i)(2). The Board believes that 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. In addition, 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.

Proposed § 226.9(c)(2)(v)(B) sets 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. As discussed below, this disclosure would be required to 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 exception generally mirrors the statutory language, except for two additional requirements. First, the Board's proposal expressly provides, 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 is proposing 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 any disclosure of the rate that applies during the specified period of time. 15 U.S.C. 1604(a). The Board believes that 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 clarifies 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 would state 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 mirrors 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 is also aware of operational issues arising from application of

§ 226.9(c)(2)(v)(B) of the July 2009 Regulation Z Interim Final Rule to deferred interest or other promotional rate offers made at the time that a consumer is financing a purchase made at point of sale. At the present time, the systems available to provide disclosures to consumers at point of sale may not have access to the rate currently applicable to purchases made on the consumer's account. This could occur, for example, if the issuer offers a promotion to consumers with existing credit card accounts, and not all consumers in the portfolio have the same rate applicable to purchases. In addition, some consumers' accounts may currently be at a penalty rate that differs from the standard rates on accounts in the portfolio. The Board is aware that such issuers are encountering difficulty, at the present time, providing the disclosure required by § 226.9(c)(2)(v)(B), which requires that the rate that will apply after the expiration of the promotional period be disclosed.

This proposal, consistent with section 226.9(c)(2)(v)(B) of the July 2009 Regulation Z Interim Final Rule, requires disclosure of the specific rate that will apply to a given consumer's account after the expiration of a deferred interest or other promotional rate offer. The Board believes that, in general, the statutory requirement is best implemented by a rule stating that a single rate must be disclosed. However, the Board is supplementing its transition guidance to the July 2009 Regulation Z Interim Final Rule to state, 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 may disclose a range of rates or an "up to" rate rather than a single rate. The Board notes that stating a range of rates or "up to" rate is only permissible for a brief transition period and expects that merchants and creditors will 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 is retaining in the proposal 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 comment also provides examples of how the required disclosures can be made for deferred interest or similar programs. The Board continues to believe that the application of § 226.9(c)(2)(v)(B) to deferred interest arrangements is consistent with the Credit Card Act and that this clarification remains necessary in order to ensure that the proposed rule does not have unintended adverse consequences for deferred interest promotions.

The Board is proposing to retain generally as adopted in the July 2009 Regulation Z Interim Final Rule § 226.9(c)(2)(v)(C), which also implements an exception contained 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 is proposing a minor amendment to the text of § 226.9(c)(2)(v)(C) 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 is proposing to retain § 226.9(c)(2)(v)(C) of the July 2009 Regulation Z Interim Final Rule.

Finally, the proposal retains § 226.9(c)(2)(v)(D) from the July 2009 Regulation Z Interim Final Rule, with several changes. Section 226.9(c)(2)(v)(D) implements a statutory exception 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.

The Board notes that the exception in proposed § 226.9(c)(2)(v)(D) applies both to completion of or failure to comply with a workout arrangement. In the July 2009 Regulation Z Interim Final Rule, the Board had implemented the exception that applies to completion of an arrangement is implemented in § 226.9(c)(2)(v)(D), while the exception applicable to failure to comply with a workout or temporary hardship arrangement was implemented in § 226.9(g). For clarity, the Board is proposing to implement both of these exceptions in a single § 226.9(c)(2)(v)(D). The exception is 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 exception also generally mirrors the statutory language,

except that the Board has expressly provided that the disclosures regarding the workout or temporary hardship arrangement are required to be in writing.

The Board proposes 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.

Finally, the Board also proposes 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 states 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 proposes 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 notice also must 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 believes 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.

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 is proposing 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 is not including 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 believes 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.

Furthermore, proposed § 226.55 would prohibit a creditor from applying an increased rate, fee, or charge to an existing balance as a result of transactions that exceeded the credit limit. In addition, proposed § 226.56 would allow a creditor to charge a fee for transactions that exceed the credit limit only when the consumer has consented to such transactions.

Proposed 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 proposing to adopt new comment 9(c)(2)(v)-5 (and to renumber comments 9(c)(2)(v)-5 through 9(c)(2)(v)-7 of the July 2009 Regulation Z Interim Final Rule accordingly as comments 9(c)(2)(v)-6 through 9(c)(2)(v)-8).

The Board is proposing 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 believes that it is not necessary to repeat the examples under § 226.9.

The Board also proposes 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), and (C). 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.

May 2009 Regulation Z Proposed Clarifications

As discussed in **I. Background and Implementation of the Credit Card Act**, the Board is generally republishing the May 2009 Regulation Z Proposed Clarifications

in connection with this proposed rule. Accordingly, the Board is republishing proposed amendments to § 226.9(c)(2)(v) (proposed as § 226.9(c)(2)(iv) of the May 2009 Regulation Z Proposed Clarifications) and comments 9(c)(2)-4 and 9(c)(2)(i)-3.

The Board is republishing revisions to § 226.9(c)(2)(v) (proposed in May 2009 as § 226.9(c)(2)(iv)) and proposed comment 9(c)(2)-4, which clarifies 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.

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 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 May 2009, 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 example would state 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.

The Board is aware that some creditors have 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 sought, in part, to address these concerns in proposed comment 5(b)(1)(i)-6, discussed above. The Board also continues to believe 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, 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. The Board seeks further comment on the operational and other burdens that would be associated with the proposed revision to comment 9(c)(2)(i)-3.

~~**9(c) 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 currently requires 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~~

~~whether or not the creditor maintains procedures reasonably adapted to obtain the required information.~~

~~(2) As an alternative to the brief identification for sale or nonsale credit, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor.~~

~~11. Section 226.9 is amended by republishing paragraphs (d) and (f) and revising paragraphs (a), (b), (c)(2), (e), (g), and (h) to read as follows:~~

§ 226.9 Subsequent disclosure requirements.

(a) Furnishing statement of billing rights. (1) Annual statement. The creditor shall mail or deliver the billing rights statement required by § 226.6(a)(5) and (b)(5)(iii) at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under § 226.5(b)(2) for any one billing cycle.

(2) Alternative summary statement. As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G-4 or Model Form G-4(A) in appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of § 226.5b may use either Model Form, at their option.

(b) Disclosures for supplemental credit access devices and additional features. (1) If a creditor, within 30 days after mailing or delivering the account-opening disclosures under § 226.6(a)(1) or (b)(3)(ii)(A), as applicable, adds a credit feature to the consumer's account or mails or delivers to the consumer a credit access device, including

but not limited to checks that access a credit card account, for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. Except as provided in paragraph (b)(3) of this section, after 30 days, if the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) Except as provided in paragraph (b)(3) of this section, whenever a credit feature is added or a credit access device is mailed or delivered, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by § 226.6(a)(1) or (b)(3)(ii)(A), as applicable, that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(3) Checks that access a credit card account.

(i) Disclosures. For open-end plans not subject to the requirements of § 226.5b, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under § 226.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from the finance charge terms previously disclosed, the creditor shall disclose on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G-19 in appendix G to this part:

(A) If a promotional rate, as that term is defined in § 226.16(g)(2)(i) applies to the checks:

(1) The promotional rate and the time period during which the promotional rate will remain in effect;

(2) The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section; and

(3) The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date.

(B) If no promotional rate applies to the checks:

(1) The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section.

(C) Any transaction fees applicable to the checks disclosed under § 226.6(b)(2)(iv); and

(D) Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase "How to Avoid Paying Interest on Check Transactions" shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase "Paying Interest" shall be used as the row heading.

(ii) Accuracy. The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are mailed or delivered. A variable annual percentage rate is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered.

(c) Change in terms. (1) Rules affecting home-equity plans.

* * * * *

(2) Rules affecting open-end (not home-secured) plans. (i) Changes where written advance notice is required. For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(2)(iii) and (c)(2)(v) of this section, when a significant change in account terms as described in paragraph (c)(2)(ii) of this section is made to a 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, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change. Increases in the rate applicable to a

consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

(ii) Significant changes in account terms. For purposes of this section, a "significant change in account terms" means a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2) or an increase in the required minimum periodic payment.

(iii) Charges not covered by § 226.6(b)(1) and (b)(2). Except as provided in paragraph (c)(2)(vi) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, a creditor may either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iv) Disclosure requirements. (A) Significant changes in account terms. If a creditor makes a significant change in account terms as described in paragraph (c)(2)(ii) of this section, the notice provided pursuant to paragraph (c)(2)(i) of this section must provide the following information:

(1) A summary of the changes made to terms required by § 226.6(b)(1) and (b)(2) and a summary 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 (not home-secured) consumer credit plan subject to § 226.9(c)(2)(iv)(B), a statement indicating 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 described in the notice will 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. 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.

(B) Credit card accounts under an open-end (not home-secured) consumer credit plan. In addition to the information in paragraph (c)(2)(iv)(A) of this section, if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must generally provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section. This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in an annual percentage rate applicable

to a consumer's account, a change in the balance computation method applicable to consumer's account necessary to comply with § 226.54, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment:

(1) A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, 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.

(C) Format requirements. (1) Tabular format. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must be in a tabular format (except for a summary of any increase in the required minimum periodic payment), with headings and format substantially similar to any of the account-opening tables found in G-17 in appendix G to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 226.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under § 226.6(b)(2).

(2) Notice included with periodic statement. If a notice required by paragraph (c)(2)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(1) of this section must be disclosed on the front of

any page of the statement. The summary of changes described in paragraph (c)(1)(iv)(A)(1) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(2) through (c)(2)(iv)(A)(7) and, if applicable, paragraph (c)(2)(iv)(B) of this section, and be substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part.

(3) Notice provided separately from periodic statement. If a notice required by paragraph (c)(2)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(1) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(1) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must immediately follow the information described in paragraph (c)(1)(iv)(A)(2) through (c)(1)(iv)(A)(7) and, if applicable, paragraph (c)(2)(iv)(B), of this section, substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part.

(v) Notice not required. For open-end plans (other than home equity plans subject to the requirements of § 226.5b) a creditor is not required to provide notice under this section:

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except

as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to a check or checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with § 226.9(b)(3);

(B) When the change is an increase in an annual percentage rate upon the expiration of a specified period of time, provided that:

(1) Prior to commencement of that period, the creditor 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;

(2) The disclosure of the length of the period and the annual percentage rate that would apply after expiration of the period are set forth in close proximity and in equal prominence to the disclosure of the rate that applies during the specified period of time; and

(3) The annual percentage rate that applies after that period does not exceed the rate disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this paragraph or, if the rate disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this section was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to paragraph (c)(2)(v)(B)(1);

(C) When the change is an increase in a variable annual percentage rate in accordance with a credit card or other account agreement that provides for changes 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; or

(D) When the change is 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) due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that:

(1) The annual percentage rate or fee or charge applicable to a category of transactions following any such increase does not exceed the rate or fee or charge that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

(2) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to such completion or failure).

(vi) Reduction of the credit limit. For open-end plans that are not subject to the requirements of § 226.5b, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45 days prior to imposing the over-

the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.

~~(d) Finance charge imposed at time of transaction. (1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.~~

~~(2) The card issuer, other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for the purposes of §§ 226.5a, 226.6 and 226.7.~~

~~(e) Disclosures upon renewal of credit or charge card. (1) Notice prior to renewal. A card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to § 226.5a, including any fee based on account activity or inactivity or any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. If the card issuer imposes any annual or other periodic fee for renewal, the notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which any renewal fee is initially charged to the account. If the card issuer has changed or amended any term required to be disclosed under § 226.(b)(1) and (b)(2) and such changed or amended term has not previously been disclosed to the consumer, the notice shall be provided at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. The notice shall contain the following information:~~

~~entire balance by the due date each month." Creditors may use the following language to describe that no grace period on check transactions is offered, as applicable: "We will begin charging interest on these checks on the transaction date."~~

~~9(c) Change in terms.~~

~~9(c)(1) Rules affecting home-equity plans.~~

* * * * *

9(c)(2) Rules affecting open-end (not home-secured) plans.

1. Changes initially disclosed. Except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially, such as rate increases under a properly disclosed variable-rate plan in accordance with § 226.9(c)(2)(v)(C). In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion.

2. State law issues. Some issues are not addressed by § 226.9(c)(2) because they are controlled by state or other applicable laws. These issues include the types of changes a creditor may make, to the extent otherwise permitted by this regulation.

3. Change in billing cycle. Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change affects any of the terms described in § 226.9(c)(2)(i), unless an exception under § 226.9(c)(2)(v) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 28-day grace period on purchases and the consumer will have fewer days during the billing cycle change. But see § 226.7(b)(11)(i)(A) regarding the general requirement that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan must be the same day each month.

4. Relationship to § 226.9(b). If a creditor adds a feature to the account on the type of terms otherwise required to be disclosed under § 226.6, the creditor must satisfy: the requirement to provide the finance charge disclosures for the added feature under § 226.9(b); and any applicable requirement to provide a change-in-terms notice under § 226.9(c), including any advance notice that must be provided. For example, if a creditor adds a balance transfer feature to an account more than 30 days after account-opening disclosures are provided, it must give the finance charge disclosures for the balance transfer feature under § 226.9(b) as well as comply with the change-in-terms notice requirements under § 226.9(c), including providing notice of the change at least 45 days prior to the effective date of the change. Similarly, if a creditor makes a balance transfer offer on finance charge terms that are higher than those previously disclosed for balance transfers, it would also generally be required to provide a change-in-terms notice at least 45 days in advance of the effective date of the change. A creditor may provide a single notice under § 226.9(c) to satisfy the notice requirements of both paragraphs (b) and (c) of § 226.9. For checks that access a credit card account subject to the disclosure requirements in § 226.9(b)(3), a creditor is not subject to the notice requirements under § 226.9(c) even if the applicable rate or fee is higher than those previously disclosed for such checks. Thus, for example, the creditor need not wait 45 days before applying the new rate or fee for transactions made using such checks, but the creditor must make the required disclosures on or with the checks in accordance with § 226.9(b)(3).

9(c)(2)(i) Changes where written advance notice is required.

1. Affected consumers. Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic

rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. Timing—effective date of change. The rule that the notice of the change in terms be provided at least 45 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.

3. Timing—advance notice not required. Advance notice of 45 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change if the consumer agrees to the particular change. This provision is solely intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of § 226.9(c)(2)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and the 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. See also comment 5(b)(1)(i)-6.

4. Form of change-in-terms notice. Except if § 226.9(c)(2)(iv) applies, a complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(2)(i) if the change is highlighted on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term being changed.

5. Security interest change—form of notice. A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. Examples. See comment 55(a)-1 and 55(b)-3 for examples of how a card issuer that is subject to § 226.55 may comply with the timing requirements for notices required by § 226.9(c)(2)(i).

9(c)(2)(iii) Charges not covered by § 226.6(b)(1) and (b)(2).

1. Applicability. Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(1) and (b)(2), the creditor may either, at its option (i) provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (ii) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to

pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (See the commentary under § 226.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(1) and (b)(2). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (See comment 5(b)(1)(ii)-1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)

9(c)(2)(iv) Disclosure requirements.

9(c)(2)(iv) Significant changes to account terms.

1. Changing margin for calculating a variable rate. If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 226.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. Changing index for calculating a variable rate. If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and the how the rate is determined, as explained in § 226.6(b)(2)(i)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.

3. Changing from a variable rate to a non-variable rate. If a creditor is changing from a variable rate to a non-variable rate, the creditor must disclose the amount of the new rate (that is, the non-variable rate) in the table.

4. Changing from a non-variable rate to a variable rate. If a creditor is changing from a non-variable rate to a variable rate, the creditor must disclose the amount of the new rate (the variable rate using the index and margin), and indicate that the rate varies with the market based on the index used, such as the prime rate or the LIBOR.

5. Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies. If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. Changes in fees. If a creditor is changing part of how a fee that is disclosed in a tabular format under § 226.6(b)(1) and (b)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of "Either $5 or 3% of the transaction amount, whichever is greater. (Max: $100)," and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: "Either $10 or 3% of the transaction amount, whichever is greater. (Max: $100)."

7. Combining a notice described in § 226.9(c)(2)(iv) with a notice described in § 226.9(g)(3). If a creditor is required to provide a notice described in § 226.9(c)(2)(iv) and a notice described in § 226.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. Content. Sample G-20 contains an example of how to comply with the requirements in § 226.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a 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 contains an example of how to comply with the requirements in § 226.9(c)(2)(iv) when (i) the late payment fee on a credit card account is being increased in accordance with a formula that depends on the outstanding balance on the account, and (ii) the returned payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with § 226.9(h).

9. Clear and conspicuous standard. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(2)(iv)(A)(1).

10. Terminology. See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(c)(2)(iv)(A)(1).

9(c)(2)(v) Notice not required.

1. Changes not requiring notice. The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit except as otherwise required by § 226.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. Skip features. i. General. If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges other than reductions in an interest rate (except if § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) applies), no notice of the change in terms is required either prior to the reduction or upon resumption of the higher finance charges or payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not

require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or finance charge, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or finance charge, either by stating explicitly when the higher payment or charges resume or by indicating the duration of the skip option. Language such as "You may skip your October payment" may serve as the change-in-terms notice.

ii. Temporary reductions in interest rates. 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 original rate if these features are disclosed in advance in accordance with the requirements of § 226.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate must comply 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), and (C). See comment 55(b)-3 for guidance regarding the application of § 226.55 in these circumstances.

3. Changing from a variable rate to a non-variable rate. If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. (See comment 9(c)(2)(iv)(A)-3.)

4. Changing from a non-variable rate to a variable rate. If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. (See comment 9(c)(2)(iv)(A)-4.)

5. Telephone purchases. 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 rate that will be in effect for a specified period of time (a temporary rate) if:

i. 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;

ii. 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

iii. 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.

6. Disclosure of annual percentage rates. If a rate disclosed pursuant to § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state "After October 1, 2009, your APR will be 14.99%. This APR will vary with the market

based on the Prime Rate."

7. Deferred interest or similar programs. If the applicable conditions are met, the exception in § 226.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not 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. For such programs, a creditor must disclose pursuant to § 226.9(c)(2)(v)(B)(1) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under § 226.9(c)(2)(v)(B)(1) include:

i. "No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%."

ii. "No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%."

8. Disclosure of the terms of a workout or temporary hardship arrangement. In order for the exception in § 226.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to § 226.9(c)(2)(v)(D)(2) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. 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 workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

iv. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

~~9(d) Finance charge imposed at time of transaction.~~

~~1. Disclosure prior to imposition. A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.~~

~~9(e) Disclosures upon renewal of credit or charge card.~~

~~1. Coverage. This paragraph applies to credit and charge card accounts of the type subject to § 226.5a. (See § 226.5a(a)(5) and the accompanying commentary for discussion of the types of accounts subject to § 226.5a.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account or if the card issuer has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in § 226.5a.~~