RESCINDED

Office of Thrift Supervision **December 1, 2005**
Department of the Treasury

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Transmittal

TR-368

Federal Register, Vol. 70, No. 199, pp. 60235 - 60244 **Number TR-368**

The Federal Reserve Board published the attached second advance Notice of Proposed rulemaking regarding the open-end credit rules of Regulation Z.

Proposed Rules

Federal Register

Vol. 70, No. 199

Monday, October 17, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1217]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments; extension of comment period.

SUMMARY: The Board is publishing for public comment a second advance notice of proposed rulemaking (ANPR) regarding the open-end (revolving) credit rules of the Board's Regulation Z, which implements the Truth in Lending Act (TILA). The Board periodically reviews each of its regulations to update them, if necessary. In December 2004, the Board published an initial ANPR to commence a comprehensive review of the open-end credit rules. The ANPR sought public comment on a variety of issues relating to the format of open-end credit disclosures, the content of disclosures, and the substantive protections provided under the regulation. The comment period closed on March 28, 2005. On April 20, 2005, President Bush signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act), which contains several amendments to TILA, including provisions concerning open-end credit disclosures. The Board plans to implement the amendments to TILA as part of its review of Regulation Z, and is publishing this second ANPR to reopen and extend the public comment period to obtain comments on implementing the Bankruptcy Act's amendments to TILA.

DATES: Comments must be received on or before December 16, 2005.

ADDRESSES: You may submit comments, identified by Docket No. R–1217, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

See Supplementary Information, Section I., for further instructions on submitting comments.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy, Senior Attorney, Jane E. Ahrens, Senior Counsel, or Elizabeth A. Eurgubian, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Form of Comment Letters

In December 2004, the Board initiated a comprehensive review of the open-end credit rules in Regulation Z by issuing an advance notice of proposed rulemaking (ANPR) that contained 58 specific questions. This document supplements that ANPR by requesting data or comment on specific issues relating to the Truth in Lending Act provisions in the new Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Consequently, the requests in this document are numbered consecutively, starting at number 59. Commenters are requested to refer to these numbers in their submitted comments, which will assist the Board and members of the public that review comments online. Questions are presented by subject matter, reflecting the TILA provisions in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 as follows:

Minimum Payment Disclosures

Should certain types of accounts and transactions be exempt from the disclosures? Q59–61

Hypothetical examples for periodic statements. Q62–64

What assumptions should be used in calculating the estimated repayment period? Q65

How should the minimum payment requirement and APR information be used in estimating the repayment period? Q66–75

What disclosures do consumers need about the assumptions made in estimating their repayment period? Q76

Option to provide the actual number of months to repay the outstanding balance. Q77–79

Are there alternative approaches the Board should consider? Q80–82

What guidance should the Board provide on making the minimum payment disclosures ''clear and conspicuous?'' Q83–84

Introductory Rate Disclosures. Q85–92

Internet Based Credit Card Solicitations. Q93–96

Disclosures Related to Payment Deadlines and Late Payment Penalties. Q97–101

Disclosures for Home-Secured Loans that May Exceed the Dwelling's Fair-Market Value. Q102–105

Prohibition on Terminating Accounts for Failure to Incur Finance Charges. Q106–108

II. Background

The Congress based the Truth in Lending Act (TILA) on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit, which results from consumers' awareness of the credit's cost. Accordingly, the stated purposes of the TILA are: (1) To provide a meaningful disclosure of credit terms to enable consumers to compare the various credit terms available in the marketplace more readily and avoid the uninformed use of credit; and (2) to protect consumers against inaccurate and unfair credit billing and credit card practices. 15 U.S.C. 1601(a). TILA is implemented by the Board's Regulation Z. *12 CFR part 226.* An Official Staff Commentary interprets the requirements of Regulation Z. 12 CFR part 226 (Supp. I).

TILA mandates that the Board prescribe regulations to carry out the purposes of the act. 15 U.S.C. 1604(a). In promulgating rules to implement TILA, the Board is also authorized, among other things, to do the following:

• Issue regulations that contain such classifications, differentiations, or other provisions, or provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a), and;

• Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time a proposed exemption is published for comment. 15 U.S.C. 1604(f).

The Board periodically reviews its regulations to update them, if necessary. In December 2004, the Board initiated a review of Regulation Z by issuing an advanced notice of proposed rulemaking (ANPR). 69 FR 70925, Dec. 8, 2004. The ANPR sought public comment on a variety of specific issues relating to three broad categories: the format of open-end credit disclosures, the content of disclosures, and the substantive protections provided under the regulation. The ANPR solicited comment on the scope of the Board's review, and also requested commenters to identify other issues that the Board should address in the review. The ANPR contained a series of questions designed to elicit commenters' views on the types of changes the Board should consider. The comment period closed on March 28, 2005.

The Board received over 200 comment letters in response to the December 2004 ANPR. More than half of the comments were from individual consumers. About 60 comments were received from the industry or industry representatives, and about 20 comments were received from consumer advocates and community development groups. The Office of the Comptroller of the Currency, one state agency, and one member of Congress also submitted comments. Staff is continuing to analyze the comment letters.

On April 20, 2005, President Bush signed into law S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the ''Bankruptcy Act''). Public Law 109–8, 119 Stat. 23. Although the new law primarily amends the bankruptcy code, it also contains several provisions amending TILA. The TILA amendments principally deal with open-end (revolving) credit accounts and require new disclosures on periodic statements and on credit card applications and solicitations. The new TILA provisions are as follows:

Minimum payment warnings. For open-end accounts, creditors must provide on each periodic statement a standardized warning about the effect of making only minimum payments, including:

• An example of how long it would take to pay off a specified balance, and

• A toll-free telephone number that consumers can use to obtain an estimate of how long it will take to pay off their own balance if only minimum payments are made.

The Board must develop a table that creditors can use in responding to consumers requesting such estimates. The Board and the Federal Trade Commission (FTC) must also establish their own toll-free telephone numbers for use by customers of small banks and non-depository institution creditors, respectively.

Introductory rate offers. A card issuer offering discounted introductory rates must disclose clearly and conspicuously on the application or solicitation the expiration date of the offer, the rate that will apply after that date, and an explanation of how the introductory rate could be lost (*e.g.*, by making a late payment).

Internet solicitations. Credit card offers on the Internet must include the same disclosure table (commonly known as the ''Schumer box'') that is currently required for applications or solicitations sent by direct mail.

Late fees. For open-end accounts, creditors must disclose on each periodic statement the earliest date on which a late payment fee may be charged, as well as the amount of the fee.

High loan-to-value mortgage credit. For home-secured credit that may exceed the dwelling's fair-market value, creditors must provide additional disclosures at the time of application and in advertisements (for both open-end and closed-end credit). The disclosures would warn consumers that interest on the portion of the loan that exceeds the home's fair-market value is not tax deductible.

Account termination. Creditors are prohibited from terminating an open-end account before its expiration date solely because the consumer has not incurred finance charges on the account.

III. Implementing the New TILA Provisions as Part of the Regulation Z Review

The Bankruptcy Act requires the Board to issue regulations implementing the amendments to TILA. The Board plans to implement these provisions as part of the Board's ongoing review of Regulation Z's open-end credit rules. Accordingly, the Board is publishing this second ANPR to reopen and extend the public comment period to obtain comments on implementing the Bankruptcy Act's amendments to TILA.

The Bankruptcy Act does not mandate when the new disclosures (including the Board's minimum payment table and toll-free number) must be implemented. The new TILA disclosure requirements will not take effect until at least 12 months after the Board issues final regulations adopting the changes. Even though there is no statutory deadline for issuing final rules to implement the new open-end disclosures, for disclosures concerning minimum payments and introductory rates, a separate provision of the Bankruptcy Act states that the Board should issue model forms and providing guidance on the ''clear and conspicuous'' standard within six months of the enactment of the Act (October 20, 2005). The issuance of model forms and clear and conspicuous standards within six months would have no effect, however, until final rules implementing the minimum payment and introductory rate disclosures are issued and become effective.

As a practical matter, issuing model forms and clear and conspicuous guidance for disclosures concerning minimum payments and introductory rates would require development of the substantive rules for the underlying disclosures at the same time. But the six-month period provides little time to develop and seek public comment on the underlying substantive disclosures that are subject to the guidance, and precludes effective consumer testing of the proposed new disclosures.

Implementing the Bankruptcy Act amendments as part of the broader Regulation Z review permits the new disclosures for minimum payments and introductory rates to be developed in the context of other changes that might be made both to the content and the format of the current open-end disclosures. A primary goal of the Regulation Z review is to improve the effectiveness and usefulness of TILA's open-end credit disclosures. One factor to be considered in the review is how the content of disclosures might be simplified to address concerns about so-called ''information overload.'' The review also will study alternatives for improving the format of disclosures, including revising the model forms and clauses published by the Board. The Board has stated its intention to use consumer testing and focus groups to test the effectiveness of any proposed revisions.

By incorporating the Bankruptcy Act amendments into the Regulation Z review, the Board can coordinate the changes and make all changes to the periodic statement disclosures at one time. The same would be true for the credit card solicitation disclosures. If the Board separately implemented the Bankruptcy Act amendments before completing the Regulation Z review, subsequent changes to the TILA disclosures made during the broader review might necessitate reexamination of the rules implementing the Bankruptcy Act. Combining the two rulemakings mitigates that risk.

Moreover, a substantial burden would be imposed on creditors if they were required to implement changes twice—once to implement the Bankruptcy Act amendments for minimum payments and introductory rates, and a second time to implement changes made as part of Regulation Z review. Implementing the Bankruptcy Act amendments as part of the overall review of Regulation Z should involve less regulatory burden by allowing creditors to adopt all the necessary changes to their systems at one time. The views of members of the Board's Consumer Advisory Council were solicited at their June 2005 meeting, and there was general consensus among the Council members supporting this approach.

Accordingly, the Board has decided to use an integrated approach that will develop both the underlying disclosures and the clear and conspicuous guidance at the same time, with the assistance of consumer testing, as part of the ongoing Regulation Z review. A clear and conspicuous standard currently exists in Regulation Z, and this is the standard that will apply to all TILA disclosures, including the Bankruptcy Act amendments, until a new standard is adopted after notice and comment is sought in connection with the Regulation Z review. *See* 12 CFR 226.5(a)(1); comment 5(a)(1)–1.

IV. Request for Comment on Implementing the TILA Amendments

The Board is requesting public comment on implementation of the Bankruptcy Act's amendments to TILA, as discussed below.

A. Minimum Payment Disclosures

The Bankruptcy Act amends Section 127(b) of TILA to require creditors that extend open-end credit to provide a disclosure on the front of each periodic statement in a prominent location about the effects of making only minimum payments. This disclosure includes: (1) A ''warning'' statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) a hypothetical example of how long it would take to pay off a specified balance if only minimum payments are made; and (3) a toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay their actual account balance.

Under the Bankruptcy Act, depository institutions may establish and maintain their own toll-free telephone numbers or use a third party. In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act directs the Board to prepare a ''table'' illustrating the approximate number of months it would take to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other advances are made. The Board is directed to create the table by assuming a significant number of different annual percentage rates, account balances, and minimum payment amounts; instructional guidance must be provided on how the information contained in the table should be used to respond to consumers' requests. The Board is also required to establish and maintain, for two years, a toll-free number for use by customers of depository institutions having assets of $250 million or less. The FTC must maintain a toll-free telephone number for creditors other than depository institutions.

The Bankruptcy Act provides that consumers who call the toll-free telephone number may be connected to an automated device through which they can obtain repayment information by providing information using a touch-tone telephone or similar device, but consumers who are unable to use the automated device must have the opportunity to be connected to an individual from whom the repayment information may be obtained. Creditors may not use the toll-free telephone number to provide consumers with information other than the repayment information set forth in the ''table'' issued by the Board.

Alternatively, a creditor may use a toll-free telephone number to provide the actual number of months that it will take consumers to repay their outstanding balance instead of providing an estimate based on the Board-created table. A creditor that does so, need not include a hypothetical example on their periodic statements; their toll-free number must be disclosed on the periodic statement but it need not be located on the front.

Should Certain Types of Accounts or Transactions Be Exempt From the Disclosures?

Under the Bankruptcy Act, minimum payment disclosures are required for all open-end accounts (such as credit card accounts, home-equity lines of credit, and general-purpose credit lines). The Act expressly states that these disclosure requirements do not apply, however, to any ''charge card'' account, the primary purpose of which is to require payment of charges in full each month. As discussed above, the Board has broad authority to provide exceptions from TILA's requirements. *See* 15 U.S.C. 1604(a), (f). Accordingly, the Board requests comment on whether certain open-end accounts should be exempt from some or all of the minimum payment disclosure requirements, as discussed below.

Much of the debate in Congress about the minimum payment disclosures focused on credit card accounts. For example, Senator Grassley, a primary sponsor of the Bankruptcy Act, in discussing the minimum payment disclosures, stated:

> [The Bankruptcy Act] contains significant new disclosures for consumers, mandating that credit card companies provide key information about how much [consumers] owe and how long it will take to pay off their credit card debts by only making the minimum payment. That is very important consumer education for every one of us.
>
> Consumers will also be given a toll-free number to call where they can get information about how long it will take to pay off their own credit card balances if they only pay the minimum payment. This will educate consumers and improve consumers' understanding of what their financial situation is.

Remarks of Senator Grassley (2005), *Congressional Record* (daily edition), vol. 151, March 1, p. S 1856.

Thus, it appears the principal concern was that consumers may not be fully aware of how long it takes to pay off their credit card accounts if only minimum monthly payments are made.

This differs from an installment loan where borrowers are required by the contract to repay the entire outstanding balance in a specified period. This concern may not exist for certain types of open-end credit accounts. For some open-end accounts, the length of time to repay the outstanding balance is fixed and expressed in the credit agreement. For example, some home-equity lines of credit (HELOCs) have a defined draw period and defined repayment period for amortizing the outstanding balance; the date of the final payment would be disclosed at account opening.

Reverse mortgages are another form of open-end credit where minimum payment disclosures may not be appropriate. Reverse mortgages are designed to allow consumers to convert the equity in their homes into cash; during an extended ''draw'' period consumers continue living in their homes, sometimes for an indefinite period, without making payments. The principal and interest become due upon certain events, such as when the homeowner moves, sells the home, or dies, or at the end of a selected loan term. Where payment dates are unknown, it does not appear that an estimate of the time to pay off the account could be provided.

Q59: Are there certain types of transactions or accounts for which the minimum payment disclosures are not appropriate? For example, should the Board consider a complete exemption from the minimum payment disclosures for open-end accounts or extensions of credit under an open-end plan if there is a fixed repayment period, such as with certain types of HELOCs? Alternatively, for these products, should the Board provide an exemption from disclosing the hypothetical example and the toll-free telephone number on periodic statements, but still require a standardized warning indicating that making only the minimum payment will increase the interest the consumer pays?

Q60: Should the Board consider an exemption that would permit creditors to omit the minimum payment disclosures from periodic statements for certain accountholders, regardless of the type of account; for example, an exemption for consumers who typically (1) do not revolve balances; or (2) make monthly payments that regularly exceed the minimum?

Q61: Some credit unions and retailers offer open-end credit plans that also allow extensions of credit that are structured like closed-end loans with fixed repayment periods and payments amounts, such as loans to finance the purchase of motor vehicles or other ''big-ticket items.'' How should the minimum payment disclosures be implemented for such credit plans?

Hypothetical Examples for Periodic Statements

Under the Bankruptcy Act, the hypothetical example that creditors must disclose on periodic statements varies depending on the creditor's minimum payment requirement. Generally, creditors that require minimum payments equal to 4 percent or less of the account balance must disclose on each statement that it takes 88 months to pay off a $1000 balance at an interest rate of 17 percent if the consumer makes a ''typical'' 2 percent minimum monthly payment. Creditors that require minimum payments exceeding 4 percent of the account balance must disclose that it takes 24 months to pay off a balance of $300 at an interest rate of 17 percent if the consumer makes a ''typical'' 5 percent minimum monthly payment (but the creditor may opt instead to disclose the statutory example for making 2 percent minimum payments). The example of a 5 percent minimum payment must be disclosed by creditors that are subject to FTC enforcement with respect to TILA, regardless of the creditor's actual minimum payment requirement. Creditors also have the option to substitute an example based on an APR that is greater than 17 percent.

Q62: The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. Currently, the repayment periods for the statutory examples are based on a 17 percent APR. Nonetheless, according to data collected by the Board, the average APR charged by commercial banks on credit card plans in May 2005 was 12.76 percent. If only accounts that were assessed interest are considered, the average APR rises to 14.81 percent. *See* Board of Governors of the Federal Reserve Board, *Statistical Release G. 19*, (July 2005). Should the Board adjust the 17 percent APR used in the statutory example? If so, what criteria should the Board use in making the adjustment?

Q63: The hypothetical examples in the Bankruptcy Act may be more appropriate for credit card accounts than other types of open-end credit accounts. Should the Board consider revising the account balance, APR, or ''typical'' minimum payment percentage used in examples for open-end accounts other than credit cards accounts, such as HELOCs and other types of credit lines? If revisions were made, what account balance, APR, and ''typical'' minimum payment percentage should be used?

Q64: The statutory examples refer to the stated minimum payment percentages of 2 percent or 5 percent, as being ''typical.'' The term ''typical'' could convey to some consumers that the percentage used is merely an example, and is not based on the consumer's actual account terms. But the term ''typical'' might be perceived by other consumers as indicting that the stated percentage is an industry norm that they should use to compare the terms of their account to other accounts. Should the hypothetical example refer to the minimum payment percentage as ''typical,'' and if not, how should the disclosure convey to consumers that the example does not represent their actual account terms?

What Assumptions Should Be Used in Calculating the Estimated Repayment Period?

The Bankruptcy Act requires open-end creditors to provide a toll-free telephone number on periodic statements that consumers can use to obtain an estimate of the time it will take to repay the consumer's outstanding balance, assuming the consumer makes only minimum payments on the account and the consumer does not make any more draws on the line. The Act requires creditors to provide estimates that are based on tables created by the Board that estimate repayment periods for different outstanding balances, payment amounts, and interest rates. The Board plans to develop formulas that can be used to generate the required tables. The formulas also can be used by creditors, the FTC, and the Board to calculate the repayment period for a particular account; the use of a formula instead of a table facilitates the use of automated systems to provide the required disclosures. Copies of the tables that can be generated using the repayment calculation formulas would also be made available by the Board upon request.

In establishing formulas and tables that estimate repayment periods, the Act directs the Board to assume a significant number of different APRs, account balances, and minimum payment amounts. A number of other assumptions can also affect the calculation of a repayment period. For example, the hypothetical examples that must be disclosed on periodic statements incorporate the following assumptions, in addition to the statutory assumptions listed above:

1. *Balance Calculation Method.* The previous-balance method is used; finance charges are based on the beginning balance for the cycle.

2. *Grace Period.* No grace period applies to any portion of the balance.

3. *Residual Finance Charge.* When the account balance becomes less than the required minimum payment, the receipt of the final amount in full completely pays off the account. In other words, there is no residual finance charge that accrues in the month when the final bill is paid in full.

4. *Interest Rate and Outstanding Balance.* There is a single periodic rate (17%) applied to a single balance.

5. *Minimum Payment Amount.* The minimum payment requirement in the $1,000 balance example is assumed to be 2 percent of the outstanding balance or $20, whichever is greater. For the $300 balance example, the minimum payment requirement is assumed to be 5 percent of the outstanding balance or $15, whichever is greater.

In developing a formula for calculating a consumer's estimated repayment period, the Board could use some of the same assumptions that were used in creating the statute's hypothetical examples.

Balance Calculation Method. The statutory examples use a previous-balance method which calculates the finance charge based on the entire account balance as of the first day in the billing cycle. The average daily balance method is more commonly used by creditors; however, that method requires additional assumptions. For example, an assumption would need to be made about the length of each billing cycle, and the date during each cycle that a consumer's payment is made. The Board does not have data on when consumers typically make their payments each month. In using the previous-balance method, the estimated repayment periods are similar to those that would result from using the average daily balance method, assuming that all months are of equal length and that payments are credited on the last day of the billing cycle.

Grace Period. The required disclosures about the effect of making minimum payments are based on the assumption that the consumer will be ''revolving'' or carrying a balance. Thus, it seems reasonable to assume that the account is already in a revolving condition at the time the consumer calls to obtain the estimate, and that no grace period applies.

Residual Interest. When the consumer's account balance at the end of a billing cycle is less than the required minimum payment, the statutory examples assume that no additional transactions occurred after the end of the billing cycle, that the account balance will be paid in full, and that no additional finance charges will be applied to the account between the date the statement was issued and the date of the final payment. This assumption is necessary to have a finite solution to the repayment period calculation. Without this assumption, the repayment period could be infinite.

Q65. In developing the formulas used to estimate repayment periods, should the Board use the three assumptions stated above concerning the balance calculation method, grace period, and residual interest? If not, what assumptions should be used, and why?

How Should the Minimum Payment Requirement and APR Information Be Used in Estimating the Repayment Period?

The Bankruptcy Act directs the Board in estimating repayment periods to allow for a significant number of different outstanding balances, minimum payment amounts, and interest rates. These variables could have a significant impact on the repayment period. With respect to the toll-free numbers set up by the Board and the FTC, information about the consumers' account terms must come from consumers because the information is not available to the Board or the FTC. Consumers would need easy access to this information to request an estimated repayment period. Because consumers' outstanding account balances appear on their monthly statements, consumers can provide that amount when requesting an estimate of the repayment period. Issues arise, however, with respect to the minimum payment requirement and interest rate information.

Periodic statements do not disclose the fixed percentage or formula used to determine the minimum dollar amount that must be paid each month. The statements only disclose the minimum dollar amount that must be paid for the current statement period, which would vary each month as the account balance declines. Furthermore, while periodic statements must disclose all APRs applicable to the account, the statements may, but do not necessarily, indicate the portion of the account balance subject to each APR. This information is also needed to estimate the repayment period.

Below, the Board seeks commenters' views regarding three basic approaches for developing a system to calculate estimated repayment periods for consumers who call the toll-free telephone number. The three approaches discussed are:

(1) Prompting consumers to provide an account balance, a minimum payment amount, and APRs in order to obtain an estimated repayment period. For information about minimum payments and APRs that is not currently disclosed on periodic statements, the Board could require additional disclosures on those statements. But the Board also could develop a formula that makes assumptions about these variables for a ''typical'' account.

(2) Prompting consumers to input information, or using assumptions based on a ''typical'' account to calculate an estimated repayment period—but also giving creditors the option to input information from their own systems regarding consumers' account terms, to provide more accurate estimates. Estimates provided by creditors that elect this option would differ somewhat from the estimates provided by other creditors, the Board, and the FTC.

(3) Prompting consumers to provide their account balance, but requiring creditors to input information from their own systems regarding the account's minimum payment requirement and the portion of the balance subject to each APR. These estimates would be more accurate, but would impose additional compliance burdens, and would not necessarily reflect consumers' actual repayment periods because of the use of several other assumptions.

Minimum Payment Amount. The Board solicits comment on how the creditor's minimum payment requirement should be factored into the formula used to calculate repayment periods. Most creditors calculate the minimum payment each month based on a formula. Although minimum payment formulas typically calculate the payment as a percentage of the outstanding balance, the exact formulas that creditors use can vary among creditors and accounts. Some credit card issuers may calculate the minimum payment amount as a percentage of the outstanding balance; others may calculate the minimum payment as a percentage of the outstanding balance plus any finance charges, late fees, or other fees. Some creditors may use minimum payment formulas that vary based on the APR; for example, higher minimum payment percentages might apply to accounts with higher APRs. Open-end credit plans with multiple credit features may apply different minimum payment formulas to different account features. For HELOCs, the minimum payment formula used during the draw period may differ from the formula used during the repayment period.

Although the dollar amount of the minimum payment due for the month is disclosed on periodic statements, the formula used by the creditor to calculate this amount currently is not included on the periodic statement. Even if the creditor's minimum payment formula were disclosed on periodic statements, the formula might be sufficiently complex that it would not be reasonable to expect this information to be used by consumers in using the toll-free telephone system.

The Board seeks comment on alternative approaches to address how minimum payment requirements should be factored into the formula used to estimate repayment periods. As discussed above, most minimum payment formulas, at least in part, calculate the minimum payment as a percentage of the outstanding balance. As the outstanding balance declines each month, the minimum payment amount declines until it reaches a certain floor amount (such as $20). Using the dollar amount of the minimum payment for a particular billing cycle would overstate the minimum payment amount in the succeeding months when the account balance declines and, therefore, would underestimate the consumer's repayment period. The potential error produced by using the current month's minimum payment amount would be compounded if that amount also includes fees assessed in the current cycle, such as late payment fees or over-the-credit-limit fees which, according to the statutory assumptions, will not be recurring each month.

One alternative is for the Board to select a ''typical'' minimum payment formula for particular types of open-end accounts (*e.g.*, general-purpose credit cards, retail credit cards, HELOCs, and other lines of credit), and use ''typical'' formulas for calculating the repayment estimates. For example, although there is no absolute industry standard for minimum payments for general-purpose credit cards, in recent months several major credit card issuers have moved toward using similar minimum payment formulas. These minimum payment formulas generally prevent prolonged negative amortization for customers who keep their payments current and are under the credit limit by requiring minimum payments never be less than all finance charges plus one percent of the outstanding balance. These creditors have different ways of treating late fees and over-the-credit limit fees, but generally the formulas are designed to prevent prolonged negative amortization either by including the fees in the minimum payment or capping the fees. The Board could use some variation of these minimum payment formulas, as an approximation of the minimum payment formulas that apply to general-purpose credit cards.

Unlike the Board and the FTC which must use consumer-input systems, a creditor that establishes its own toll-free telephone number could estimate repayment periods based on information in the creditor's database, including the creditor's minimum payment formula. A system based on the creditor's information might be easier for consumers to use and give them more accurate estimates. Accordingly, the Board could grant creditors the flexibility to either (1) use the same assumptions about minimum payment formulas and interest rates as the Board and FTC, or (2) use the creditor's actual minimum payment formula and interest rates to calculate the repayment estimate. One consequence of giving the creditor an option in this regard would be that consumers with identical account terms and balances could obtain different repayment estimates depending on whether the estimate was prepared using the Board's assumptions or the actual account terms. Alternatively, the Board could require all creditors to use their actual minimum payment formulas and interest rates to calculate the repayment estimate. But the Board and FTC would still be providing estimates using the Board's assumptions.

Q66: Comment is specifically solicited on whether the Board should select ''typical'' minimum payment formulas for various types of accounts. If so, how should the Board determine the formula for each type of account? Are there other approaches the Board should consider?

Q67: If the Board selects a ''typical'' minimum payment formula for general-purpose credit cards, would it be appropriate to assume the minimum payment is based on one percent of the outstanding balance plus finance charges? What are typical minimum payment formulas for open-end products other than general-purpose credit cards (such as retail credit cards, HELOCs, and other lines of credit)?

Q68: Should creditors have the option of programming their systems to calculate the estimated repayment period using the creditor's actual payment formula in lieu of a ''typical'' minimum payment formula assumed by the Board? Should creditors be required to do so? What would be the additional cost of compliance for creditors if they must use their actual minimum payment formula? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

Q69: Negative amortization can occur if the required minimum payment is less than the total finance charges and other fees imposed during the billing cycle. As discussed above, several major credit card issuers have moved toward minimum payment requirements that prevent prolonged negative amortization. But some creditors may use a minimum payment formula that allows negative amortization (such as by requiring a payment of 2% of the outstanding balance, regardless of the finance charges or fees incurred). Should the Board use a formula for calculating repayment periods that assumes a ''typical'' minimum payment that does not result in negative amortization? If so, should the Board permit or require creditors to use a different formula to estimate the repayment period if the creditor's actual minimum payment requirement allows negative amortization? What guidance should the Board provide on how creditors disclose the repayment period in instances where negative amortization occurs?

APR information. The statute's hypothetical repayment examples assume that a single APR applies to a single account balance. But open-end credit accounts, particularly credit card accounts, can have multiple APRs. The APR may differ for purchases, cash advances, and balance transfers. A card issuer may have a promotional APR that applies to the initial balance transfer and a separate APR for other balance transfers. Although all the APRs for accounts are disclosed on periodic statements, calculating the repayment period requires information about what percentage or amount of the total ending balance is subject to each APR. 15 U.S.C. 1637(b)(5); 12 CFR 226.7(d). Currently, the total ending balance is required to be disclosed, but not the portion of the cycle's ending balance that is subject to each APR. 15 U.S.C. 1637(b)(8); 12 CFR 226.7(i). (Some creditors may voluntarily disclose such information on periodic statements.) For example, assuming a $1,000 outstanding balance on an account with a 12 percent APR for purchases and a 19.5 percent APR on cash advances, the consumer will know from his or her periodic statement the amount of the total outstanding balance ($1,000), but may not know the percentage or amount of the ending balance subject to the 12 percent rate and the ending balance subject to the 19.5 percent rate. Creditors know the portion of the cycle's ending balance that is subject to each APR, and could develop automated systems that incorporate this information as part of their calculation. But again, the toll-free telephone systems developed by the Board and FTC would have to depend solely on data provided by the consumer.

If multiple APRs apply to the outstanding balance, using the lowest APR to calculate the repayment period would estimate repayment periods that are consistently too short; using the highest APR would estimate repayment periods that are consistently too long. How much the repayment periods are underestimated or overestimated in each of these cases would depend on how the outstanding balance is distributed among the multiple rates. Using an average of the multiple rates may either overestimate or underestimate the repayment period depending on how the outstanding balance is distributed among the rates. It is unclear whether detailed transaction data about how consumers use their credit card accounts would support a finding that there is a ''typical'' approach that would provide the best estimate of the repayment periods in most cases.

Q70: What proportion of credit card accounts accrue finance charges at more than one periodic rate? Are account balances typically distributed in a particular manner, for example, with the greater proportion of the balance accruing finance charges at the higher rate or the lower rate?

More precise repayment periods could be calculated if balances subject to different rates are treated separately. This raises practical issues if consumers must provide information about the multiple rates and the balances subject to each rate. Periodic statements would need to disclose the portion of the outstanding balance to which each APR applies. Although creditors commonly disclose an average daily balance for each periodic rate applied in a billing cycle, in many cases, the average daily balances applicable to the rates may not be good approximations of the portion of the ending balances applicable to the rates. The Board solicits comments on the best approach for applying APR information to estimate the repayment period.

Q71: The statute's hypothetical examples assume that a single APR applies to a single balance. For accounts that have multiple APRs, would it be appropriate to calculate an estimated repayment period using a single APR? If so, which APR for the account should be used in calculating the estimate?

Q72. Instead of using a single APR, should the Board adopt a formula that uses multiple APRs but incorporates assumptions about how those APRs should be weighted? Should consumers receive an estimated repayment period using the assumption that the lowest APR applies to the entire balance and a second estimate based on application of the highest APR; this would provide consumers with a range for the estimated repayment period instead of a single answer. Are there other ways to account for multiple APRs in estimating the repayment period?

Q73: One approach to considering multiple APRs could be to require creditors to disclose on periodic statements the portion of the ending balance that is subject to each APR for the account. Consumers could provide this information when using the toll-free telephone number to request an estimated repayment period that incorporates all the APRs that apply. What would be the additional compliance cost for creditors if, in connection with implementing the minimum payment disclosures, creditors were required to disclose on periodic statements the portion of the ending balance subject to each APR for the account?

Q74: As an alternative to disclosing more complete APR information on periodic statements, creditors could program their systems to calculate a consumer's repayment period based on the APRs applicable to the consumer's account balance. Should this be an option or should creditors be required to do so? What would be the additional cost of compliance for creditors if this was required? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

Q75: If multiple APRs are used, assumptions must be made about how consumers' payments are allocated to different balances. Should it be assumed for purposes of the toll-free telephone number that payments always are allocated first to the balance carrying the lowest APR?

What Disclosures Do Consumers Need About the Assumptions Made in Estimating Their Repayment Period?

Consumers may need to be aware of some of the assumptions underlying the estimate of their repayment period to properly comprehend the significance of the estimate. Accordingly, certain assumptions may need to be disclosed. For example, consumers might be informed that the estimated repayment period is based on the assumption that there will be no new transactions, no late payments, no changes in the APRs, and that only minimum payments are made. Consumers might also need to be aware of any assumptions about the creditor's minimum payment requirement.

Q76: What key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period? When and how should these key assumptions be disclosed? Should some or all of these assumptions be disclosed on the periodic statement or should they be provided orally when the consumer uses the toll-free telephone number? Should the Board issue model clauses for these disclosures?

Option To Provide the Actual Number of Months To Repay the Outstanding Balance

The Bankruptcy Act allows creditors to forego using the toll-free number to provide an estimated repayment period if the creditor instead provides through the toll-free number the ''actual number of months'' to repay the consumer's account.

Q77: What standards should be used in determining whether a creditor has accurately provided the ''actual number of months'' to repay the outstanding balance? Should the Board consider any safe harbors? For example, should the Board deem that a creditor has provided an ''actual'' repayment period if the creditor's calculation is based on certain account terms identified by the Board (such as the actual balance calculation method, payment allocation method, all applicable APRs, and the creditor's actual minimum payment formula)? With respect to other terms that affect the repayment calculation, should creditors be permitted to use the assumptions specified by the Board, even if those assumptions do not match the terms on the consumer's account?

Q78: Should the Board adopt a tolerance for error in disclosing the actual repayment periods? If so, what should the tolerance be?

Q79: Is information about the ''actual number of months'' to repay readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of developing new systems to provide the ''actual number of months'' to repay?

Are There Alternative Approaches the Board Should Consider?

Above, the Board solicits comments on three approaches for disclosing estimated repayment periods if only minimum payments are made. In developing a system, the Board will consider the complexity of each approach and the resulting compliance burden, as well as the accuracy and usefulness of the estimates that would be produced.

Q80: Are there alternative frameworks to the three approaches discussed above that the Board should consider in developing the repayment calculation formula? If suggesting alternative frameworks, please be specific. Given the variety of account structures, what calculation formula should the Board use in implementing the toll-free telephone system?

Q81: Are any creditors currently offering Web-based calculation tools that permit consumers to obtain estimates of repayment periods? If so, how are these calculation tools typically structured; what information is typically requested from consumers, and what assumptions are made in estimating the repayment period?

Q82: Are there alternative ways the Board should consider for creditors to provide repayment periods other than through toll-free telephone numbers? For example, the Board could encourage creditors to disclose the repayment estimate or actual number of months to repay on the periodic statement; these creditors could be exempted from the requirement to maintain a toll-free telephone number. This would simplify the process for consumers and possibly for creditors as well. What difficulties would creditors have in disclosing the repayment estimate or actual repayment period on the periodic statement?

What Guidance Should the Board Provide on Making the Minimum Payment Disclosures ''Clear and Conspicuous?''

The Bankruptcy Act provides that the minimum payment disclosures must be on the front of the periodic statement in a prominent location, and must be clear and conspicuous. The Board is directed to issue model disclosures and to promulgate rules to provide guidance on the clear and conspicuous requirement. The Act requires the Board to consult with the other Federal banking agencies, the National Credit Union Administration, and the FTC. In promulgating clear and conspicuous regulations, the Board is directed to ensure that the required standard ''can be implemented in a manner that results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.''

Q83: What guidance should the Board provide on the location or format of the minimum payment disclosures? Is a minimum type size requirement appropriate?

Q84: What model forms or clauses should the Board consider?

B. Introductory Rate Disclosures

The Bankruptcy Act amends section 127(c) of TILA to require additional disclosures for credit card applications and solicitations sent by direct mail or provided over the Internet that offer a ''temporary'' APR. The Act defines a ''temporary'' APR as any credit card interest rate that applies ''for an introductory period of less than 1 year, if that rate is less than an APR that was in effect within 60 days before the date of mailing the application or solicitation.''

Currently, creditors offering a temporary APR may promote the introductory rate in their marketing materials, as long as the permanent rate is provided in the required disclosure table (commonly known as the ''Schumer box'') that is included on or with the solicitation. The Schumer box must contain any APR that may be applied to an outstanding balance. Although creditors are not required to include temporary introductory rates in the Schumer box, when a temporary rate is included, the expiration date must also appear in the box. If the initial APR may increase upon the occurrence of one or more specific events, such as a late payment, the issuer must disclose in the Schumer box both the initial rate and the increased penalty rate. The specific event or events that may trigger the penalty rate must be disclosed outside of the Schumer box, with an asterisk or other means to direct the consumer to this additional information. 15 U.S.C. 1637(c)(1)(A)(i); 12 CFR 226.5a(b)(1); comments 5a(b)(1)–5, –7.

The Bankruptcy Act requires credit card issuers to use the term ''introductory'' clearly and conspicuously in immediate proximity to *each* mention of the temporary APR in applications, solicitations, and all accompanying promotional materials. Credit card issuers also must disclose, in a prominent location closely proximate to the *first* mention of the introductory APR, the time period when the introductory APR expires and the APR that will apply after the introductory rate expires (popularly known as the ''go-to'' APR). If the go-to APR is a variable rate, then the disclosure must be based on an APR that was in effect within 60 days before the application or solicitation was mailed.

The Bankruptcy Act also requires credit card issuers to disclose clearly and conspicuously in offers with temporary APRs, a general description of the circumstances that may result in revocation of the introductory rate (other than expiration of the introductory period), and the APR that will apply if the introductory APR is revoked. For variable-rate programs, the disclosed APR must be one that was in effect within 60 days before the date of mailing the application or solicitation. These disclosures also must be located prominently on or with the application or solicitation.

Q85: The Bankruptcy Act requires the Board to issue model disclosures and rules that provide guidance on satisfying the clear and conspicuous requirement for introductory rate disclosures. The Board is directed to adopt standards that can be implemented in a manner that results in disclosures that are ''reasonably understandable and designed to call attention to the nature and significance of the information.'' What guidance should the Board provide on satisfying the clear and conspicuous requirement? Should the Board impose format requirements, such as a minimum font size? Are there other requirements the Board should consider? What model disclosures should the Board issue?

Q86: Credit card issuers must use the term ''introductory'' in immediate proximity to *each* mention of the introductory APR. What guidance, if any, should the Board provide in interpreting the ''immediate proximity'' requirement? Is it sufficient for the term ''introductory'' to immediately precede or follow the APR (such as ''Introductory APR 3.9%'' or ''3.9% APR introductory rate'')?

Q87: The expiration date and go-to APR must be closely proximate to the ''first mention'' of the temporary introductory APR. The introductory APR might, however, appear several times on the first page of a solicitation letter. What standards should the Board use to identify one APR in particular as the ''first mention'' (such as the APR using the largest font size, or the one located highest on the page)?

Q88: Direct-mail offers often include several documents sent in a single envelope. Should the Board seek to identify one document as the ''first mention'' of the temporary APR? Or should each document be considered a separate solicitation, so that all documents mentioning the introductory APR contain the required disclosures?

Q89: The expiration date for the temporary APR and the go-to APR also must be in a ''prominent location'' that is ''closely proximate'' to the temporary APR. What guidance, if any, should the Board provide on this requirement?

Q90: Some credit card issuers' offers list several possible permanent APRs, and consumer qualifications for any particular rate is subsequently determined by information gathered as part of the application process. What guidance should the Board provide on how to disclose the ''go-to'' APR in the solicitation when the permanent APR is set using risk-based pricing? Should all the possible rates be listed, or should a range of rates be permissible, indicating the rate will be determined based on creditworthiness?

Q91: Regulation Z currently provides that if the initial APR may increase upon the occurrence of one or more specific events, such as a late payment, the issuer must disclose in the Schumer box both the initial rate and the increased penalty rate. The specific event or events that may trigger the penalty rate must be disclosed outside of the Schumer box, with an asterisk or other means used to direct the consumer to this additional information. The Bankruptcy Act requires that a general description of the circumstances that may result in revocation of the temporary rate must be disclosed ''in a prominent manner'' on the application or solicitation. What additional rules should be considered by the Board to ensure that creditors' disclosures comply with the Bankruptcy Act amendments? Is additional guidance needed on what constitutes a ''general description'' of the circumstances that may result in revocation of the temporary APR? If so, what should that guidance say?

Q92: The introductory rate disclosures required by the Bankruptcy Act apply to applications and solicitations whether sent by direct mail or provided electronically. To what extent should the guidance for applications and solicitations provided by direct mail differ from the guidance for those provided electronically?

C. Internet Based Credit Card Solicitations

The Bankruptcy Act further amends Section 127(c) of TILA to require that the same disclosures made for applications or solicitations sent by direct mail also be made for solicitations to open a credit card account using the Internet or other interactive computer service. A ''solicitation'' is an offer to open an account without requiring an application. 15 U.S.C. 1637(c); 12 CFR 226.5a(a)(1). The Act specifies that disclosures provided using the Internet must be ''readily accessible to consumers in close proximity to the solicitation,'' and also must be ''updated regularly to reflect the current policies, terms, and fee amounts.''

In June 2000, the Electronic Signatures in Global and National Commerce Act (E-Sign Act) became law. The E-Sign Act seeks to encourage the continued expansion of electronic commerce, and establishes the legal validity and enforceability of electronic signatures, contracts, and other records (including disclosures) in interstate and foreign commerce transactions. The E-Sign Act does not affect any requirement imposed by law or regulation, other than a requirement that documents or signatures be ''non-electronic'' or in paper form. The E-Sign Act also does not affect the content or timing of any consumer disclosure. The E-Sign Act became effective on October 1, 2000.

In March 2001, the Board issued interim final rules authorizing the use of electronic disclosures under Regulation Z, consistent with the requirements of the E-Sign Act. 66 FR 17329 (Mar. 30, 2001). The interim rules, which are not mandatory, also contained standards for the electronic delivery of disclosures, including the need to update periodically the disclosures made available on a creditor's Internet web site. For example, the interim rules stated that variable-rate disclosures made available at a credit card issuer's Internet web site should be based on an APR that was in effect within the last 30 days.

Q93: Although the Bankruptcy Act provisions concerning Internet offers refer to credit card solicitations (where no application is required), this may be interpreted to also include applications. Is there any reason for treating Internet applications differently than Internet solicitations?

Q94: What guidance should the Board provide on how solicitation (and application) disclosures may be made clearly and conspicuously using the Internet? What model disclosures, if any, should the Board provide?

Q95: What guidance should the Board provide regarding when disclosures are ''readily accessible to consumers in close proximity'' to a solicitation that is made on the Internet? The 2001 interim final rules stated that a consumer must be able to access the disclosures at the time the application or solicitation reply form is made available electronically. The interim rules provided flexibility in satisfying this requirement. For example, a card issuer could provide on the application (or reply form) a link to disclosures provided elsewhere, as long as consumers cannot bypass the disclosures before submitting the application or reply form. Alternatively, if a link to the disclosures was not used, the electronic application or reply form could clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the electronic application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. Is additional or different guidance needed from the guidance in the 2001 interim final rules?

Q96: What guidance should the Board provide regarding what it means for the disclosures to be ''updated regularly to reflect the current policies, terms, and fee amounts?'' Is the guidance in the 2001 interim rules, suggesting a 30-day standard, appropriate?

D. Disclosures Related to Payment Deadlines and Late Payment Penalties

Under the Bankruptcy Act, Section 127(b) of TILA is amended to require creditors offering open-end plans to provide additional disclosures on periodic statements if a late payment fee will be imposed for failure to make a payment on or before the required due date. The periodic statement must disclose clearly and conspicuously, the date on which the payment is due or, if different, the earliest date on which a late payment fee may be charged, as well as the amount of the late payment fee that may be imposed if payment is made after that date.

Q97: Under what circumstances, if any, would the ''date on which the payment is due'' be different from the ''earliest date on which a late payment fee may be charged?''

Q98: Is additional guidance needed on how these disclosures may be made in a clear and conspicuous manner on periodic statements? Should the Board consider particular format requirements, such as requiring the late payment fee to be disclosed in close proximity to the payment due date (or the earliest date on which a late payment fee may be charged, if different)? What model disclosures, if any, should the Board provide with respect to these disclosures?

Q99: The December 2004 ANPR requested comment on whether the Board should issue a rule requiring creditors to credit payments as of the date they are received, regardless of what time during the day they are received. Currently, under Regulation Z, creditors may establish reasonable cut-off hours; if the creditor receives a payment after that time (such as 2 pm), then the creditor is not required to credit the payment as of that date. If the Board continues to allow creditors to establish reasonable cut-off hours, should the cut-off hour be disclosed on each periodic statement in close proximity to the payment due date?

Q100: Failure to make a payment on or before the required due date commonly triggers an increased APR in addition to a late payment fee. As a part of the Regulation Z review, should the Board consider requiring that any increased rate that would apply to outstanding balances accompany the late payment fee disclosure?

Q101: The late payment disclosure is required for all open-end credit products. Are there any special issues applicable to open-end accounts other than credit cards that the Board should consider?

E. Disclosures for Home-Secured Loans That May Exceed the Dwelling's Fair-Market Value

Under the Bankruptcy Act, creditors extending home-secured credit (both open-end and closed-end) must provide additional disclosures for home-secured loans that exceed or may exceed the fair-market value of the dwelling. Section 144 and 147(b) of TILA are amended to require that each advertisement relating to an extension of credit that may exceed the fair-market value of the dwelling must include a clear and conspicuous statement that: (1) The interest on the portion of the credit extension that is greater than the fair-market value of the dwelling is not tax deductible for Federal income tax purposes; and (2) the consumer should consult a tax adviser for further information about the deductibility of interest and charges. This requirement only applies to advertisements that are disseminated in paper form to the public or through the Internet, as opposed to radio or television.

In addition, Sections 127(A) and 128 of TILA are amended to require creditors extending home-secured credit to make the above disclosures at the time of application in cases where the extension of credit exceeds or may exceed the fair-market value of the dwelling. Currently, open-end creditors extending home-secured credit already are required to disclose at the time of application that the consumer should consult a tax adviser for further information about the deductibility of interest and charges. *See* 15 U.S.C. 1637a(a)(13); 12 CFR 226.5b(d)(11).

Q102: What guidance should the Board provide in interpreting when an ''extension of credit may exceed the fair-market value of the dwelling?'' For example, should the disclosures be required only when the new credit extension may exceed the dwelling's fair-market value, or should disclosures also be required if the new extension of credit combined with existing mortgages may exceed the dwelling's fair-market value?

Q103: In determining whether the debt ''may exceed'' a dwelling's fair-market value, should only the initial amount of the loan or credit line and the current property value be considered? Or should other circumstances be considered, such as the potential for a future increase in the total amount of the indebtedness when negative amortization is possible?

Q104: What guidance should the Board provide on how to make these disclosures clear and conspicuous? Should the Board provide model clauses or forms with respect to these disclosures?

Q105: With the exception of certain variable-rate disclosures (12 CFR 226.17(b) and 226.19(a)), disclosures for closed-end mortgage transactions generally are provided within three days of application for home-purchase loans and before consummation for all other home-secured loans. 15 U.S.C. 1638(b). Is additional compliance guidance needed for the Bankruptcy Act disclosures that must be provided at the time of application in connection with closed-end loans?

F. Prohibition on Terminating Accounts for Failure To Incur Finance Charges

The Bankruptcy Act amends Section 127 of TILA to prohibit an open-end creditor from terminating an account under an open-end consumer credit plan before its expiration date solely because the consumer has not incurred finance charges on the account. Under the Bankruptcy Act, this prohibition would not prevent a creditor from terminating an account for inactivity in three or more consecutive months.

Q106: What issues should the Board consider in providing guidance on when an account ''expires?'' For example, card issuers typically place an expiration date on the credit card. Should this date be considered the expiration date for the account?

Q107: The prohibition on terminating accounts for failure to incur finance charges applies to all open-end credit products. Are there any issues applicable to open-end accounts other than credit card accounts that the Board should consider?

Q108: The prohibition on terminating accounts does not prevent creditors from terminating an account for inactivity in three or more consecutive months (assuming the termination complies with other applicable laws and regulations, such as the rules in Regulation Z governing the termination of HELOCS, 12 CFR 226.5b(f)(2)). Should the Board provide guidance on this aspect of the statute, and what constitutes ''inactivity?''

By order of the Board of Governors of the Federal Reserve System, October 11, 2005.

Jennifer J. Johnson,

Secretary of the Board.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22696; Directorate Identifier 2004–SW–46–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B and B1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model EC 155B and B1 helicopters. This proposal would require inspecting an electrical cable bundle for wear. If wear is present, the AD would require installing an airworthy cable bundle and modifying the routing of the electrical cable bundles. This proposal is prompted by reports of a short circuit in the wiring, which led to failure of the normal and emergency landing gear operation modes. The actions specified by this proposed AD are intended to prevent interference of the wiring with the structure resulting in an electrical short circuit, failure of the landing gear to extend, and an emergency landing.

DATES: Comments must be received on or before December 16, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- DOT Docket Web Site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-Wide Rulemaking Web Site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- Fax: 202–493–2251; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.