3. *Total contractual obligation of advertised lease.* Section 213.7 applies to advertisements for consumer leases, as defined in § 213.2(e). Under § 213.2(e), a consumer lease is exempt from the requirements of this Part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. See comment 2(e)–9. Accordingly, § 213.7 does not apply to an advertisement for a specific consumer lease if the total contractual obligation for that lease exceeds the threshold amount in effect when the advertisement is made. If a lessor promotes multiple consumer leases in a single advertisement, the entire advertisement must comply with § 213.7 unless all of the advertised leases are exempt under § 213.2(e). For example:

A. Assume that, in an advertisement, a lessor states that certain terms apply to a consumer lease for a specific automobile. The total contractual obligation of the advertised lease exceeds the threshold amount in effect when the advertisement is made. Although the advertisement does not refer to any other lease, some or all of the advertised terms for the exempt lease also apply to other leases offered by the lessor with total contractual obligations that do not exceed the applicable threshold amount. The advertisement is not required to comply with § 213.7 because it refers only to an exempt lease.

B. Assume that, in an advertisement, a lessor states certain terms (such as the amount due at lease signing) that will apply to consumer leases for automobiles of a particular brand. However, the advertisement does not refer to a specific lease. The total contractual obligations of the leases for some of the automobiles will exceed the threshold amount in effect when the advertisement is made, but the total contractual obligations of the leases for other automobiles will not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to terms for consumer leases that are not exempt.

C. Assume that, in a single advertisement, a lessor states that certain terms apply to consumer leases for two different automobiles. The total contractual obligation of the lease for the first automobile exceeds the threshold amount in effect when the advertisement is made, but the total contractual obligation of the lease for the second automobile does not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to a consumer lease that is not exempt.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 24, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–7377 Filed 4–1–11; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1399]

RIN No. 7100–AD59

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Effective July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Truth in Lending Act (TILA) by increasing the threshold for exempt consumer credit transactions from $25,000 to $50,000. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, this threshold must be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Accordingly, the Board is making corresponding amendments to Regulation Z, which implements TILA, and to the accompanying staff commentary. Because the Dodd-Frank Act also increases the Consumer Leasing Act's threshold for exempt consumer leases from $25,000 to $50,000, the Board is making similar amendments to Regulation M elsewhere in today's **Federal Register**.

DATES: Consistent with Sections 1062 and 1100H of the Dodd-Frank Act, this final rule is effective on the transfer date designated by the Secretary of the Treasury, which is July 21, 2011.

FOR FURTHER INFORMATION CONTACT: Stephen Shin, Attorney, or Benjamin K. Olson, Counsel, 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. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act

This final rule implements Section 1100E of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which was signed into law on July 21, 2010. Public Law 111–203 § 1100E, 124 Stat. 1376 (2010). Section 1100E amends Section 104(3) of the Truth in Lending Act (TILA) by establishing a new threshold for exempt consumer credit transactions. Currently, TILA Section 104(3) exempts "[c]redit transactions, other than those in which a security interest is or will be acquired in real property, or in personal property used or expected to be used as the principal dwelling of the consumer, and other than private education loans (as that term is defined in section 140(a)), in which the total amount financed exceeds $25,000." 15 U.S.C. 1603(3). Regulation Z implements this exemption in § 226.3(b).

Effective July 21, 2011, the Dodd-Frank Act raises TILA's $25,000 exemption threshold to $50,000. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, this threshold shall be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics. Therefore, from July 21, 2011 to December 31, 2011, the threshold dollar amount will be $50,000. Effective January 1, 2012, the $50,000 threshold will be adjusted annually based on any annual percentage increase in the CPI–W.

In December 2010, the Board proposed to amend § 226.3(b) and the accompanying commentary for consistency with the amendments made by the Dodd-Frank Act. *See* 75 FR 78636 (Dec. 16, 2010) (December 2010 Proposed Regulation Z Rule). In addition, because the Dodd-Frank Act makes similar amendments to the exemption threshold in the Consumer Leasing Act (which is part of TILA), the Board simultaneously proposed to amend Regulation M, which implements the Consumer Leasing Act (CLA). *See* 75 FR 78632 (Dec. 16, 2010) (December 2010 Proposed Regulation M Rule).

The Board received 10 comments on the December 2010 Regulation Z Proposed Rule. As discussed below, the Board is adopting the rule largely as proposed with some modifications to facilitate compliance. Elsewhere in today's **Federal Register,** the Board is also adopting a final rule amending Regulation M in order to implement the amendments to CLA's exemption threshold for consumer leases.

II. Summary of Final Rule

Revisions to § 226.3(b)

Consistent with the Dodd-Frank Act, the Board's final rule revises § 226.3(b) and the accompanying staff commentary to provide that, effective July 21, 2011, a consumer credit account is exempt from the requirements of Regulation Z if: (1) The initial extension of credit on the account exceeds $50,000; or (2) the creditor makes a firm commitment at

account opening to extend credit in excess of $50,000. This final rule further provides that, effective January 1, 2012, the $50,000 threshold will be adjusted annually by any annual percentage increase in the CPI–W.

The Board has also adopted a transition rule in § 226.3(b)(2) to reduce the compliance burden with respect to certain accounts that are currently exempt under the $25,000 threshold. Specifically, this transition rule provides that, if an open-end credit account is exempt on July 20, 2011 based on a firm commitment to extend more than $25,000 in credit, the creditor has until December 31, 2011 to either retain the exemption by increasing the firm commitment to more than $50,000 or begin complying with Regulation Z.

Effective Date

Section 1100H of the Dodd-Frank Act provides that Section 1100E will become effective on the designated transfer date, as defined by Section 1062 of that Act. Section 1062 of the Dodd-Frank Act requires, in relevant part, the Secretary of the Treasury to designate a single calendar date for the transfer of certain functions from other agencies to the Bureau of Consumer Financial Protection. Pursuant to Section 1062(a), the Secretary of the Treasury has determined that the designated transfer date shall be July 21, 2011. *See* 75 FR 57252 (Sept. 20, 2010). Accordingly, because Section 1100E will become effective on July 21, 2011, this final rule will be effective on that date. However, if the Secretary of Treasury designates a later transfer date pursuant to Section 1062, this final rule will instead be effective on that date.

Consumer group commenters argued that, because Section 1100E placed creditors on notice of the increased threshold amount, creditors should be required to begin complying with all aspects of the Board's rule on July 21, 2011. In contrast, one industry commenter requested that the Board delay compliance by one year (*i.e.,* until July 21, 2012). This commenter asserted that—in light of the extensive regulatory changes required by the Dodd-Frank Act and other statutes—it would be burdensome for small institutions to comply with Regulation Z for credit extensions and firm commitments of $50,000 or less by July 21, 2011. However, the Board understands that institutions that extend consumer credit generally already have the systems in place to comply with Regulation Z. Thus, as a general matter, it should not be unduly burdensome for these institutions to comply with Regulation Z with respect to accounts opened after July 21, 2011. Nevertheless, as discussed in detail below with respect to the transition rule in § 226.3(b)(2), the Board believes it is appropriate to provide additional time for compliance with respect to certain exempt accounts opened prior to July 21, 2011.

III. Statutory Authority

TILA mandates that the Board prescribe regulations to carry out TILA's purposes and specifically authorizes the Board, among other things, to do the following:

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with that Act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).
- 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 TILA and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

For the reasons discussed below, the Board believes that it is necessary and appropriate to make amendments to Regulation Z in order to effectuate the purposes of TILA, to prevent circumvention, and to facilitate compliance.

IV. Section-by-Section Analysis

Section 226.3 Exempt Transactions

3(b) Credit Over Applicable Threshold Amount

Section 226.3(b) of Regulation Z implements the exemption for certain consumer credit transactions in TILA Section 104(3). Specifically, § 226.3(b) currently provides that Regulation Z does not apply to an extension of credit in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000, unless: (1) The extension of credit is secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or (2) the extension of credit is a private education loan (as defined in § 226.46(b)(5)). Section 1100E(a)(1) of the Dodd-Frank Act increases the dollar amount of the exemption threshold in TILA Section 104(3) from $25,000 to $50,000. Furthermore, Section 1100E(b) requires that this amount be adjusted annually for inflation. Accordingly, the Board is amending § 226.3(b) and the accompanying commentary to implement Section 1100E.

3(b)(1) Exemption

The Board proposed to redesignate current § 226.3(b) as § 226.3(b)(1)(i) and add a new § 226.3(b)(1)(ii) to provide that the threshold amount will be adjusted annually to reflect any annual percentage increase in the CPI–W.[1] Because the threshold amount could change from year to year, § 226.3(b)(1)(i) refers to the "applicable threshold amount," rather than stating a specific amount.[2] Instead, new § 226.3(b)(1)(ii) provides that the threshold amount applicable to a specific extension of credit or express written commitment to extend credit is listed in the official staff commentary. The Board also proposed to amend § 226.3(b) to require that, in order for an account to be exempt based on an initial extension of credit, the amount of credit *extended* (rather than the amount *financed*) must exceed the applicable threshold amount.

One industry commenter requested that the Board only increase the exemption threshold amount to $50,000 without making subsequent annual adjustments for inflation. The Board believes that such an approach would be inconsistent with Section 1100E(b), which requires that the exemption threshold amount be adjusted annually based on increases in the CPI–W.

Consumer groups and a member of Congress requested that the Board amend § 226.3(b) to eliminate the exemption for accounts with an express written commitment (or firm commitment) to extend credit in excess of the threshold amount. These commenters noted that TILA Section 104(3) does not provide a firm commitment exemption. Furthermore, they expressed concern that a credit card account with a credit limit that exceeds the threshold amount would be exempt from TILA and therefore from the consumer protections in the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act), which amended TILA.

For purposes of obtaining an exemption, Regulation Z has treated a

[1] The Board notes that, consistent with the Dodd-Frank Act, § 226.3(b)(1)(ii) requires that the annual adjustment for inflation reflect the "annual percentage increase" in the CPI–W, as applicable. Therefore, an annual period of deflation or no inflation would not require a change in the threshold amount.

[2] For consistency, the Board proposed to remove the references to the $25,000 threshold from comments 2(a)(19)–3 and 23(a)(1)–5. The Board did not receive any comments on these revisions, which are adopted as proposed.

creditor's firm commitment to extend credit in excess of the threshold amount as the functional equivalent of an extension of credit in excess of that amount since the 1980s. As a result, creditors ranging from large financial institutions to small community banks and credit unions have been relying on this exemption for more than twenty years. Section 1100E did not repeal the firm commitment exemption, and the Board's December 2010 Regulation Z Proposed Rule did not request comment on whether the exemption should be eliminated. Thus, if the Board were to eliminate this exemption, it would do so without the benefit of public comment regarding the operational burden on creditors and the effect on the cost and availability of credit for consumers. For these reasons, this final rule retains the firm commitment exemption.[3]

The Board also notes that a credit card account is not exempt from TILA and the Credit Card Act simply because the credit card issuer sets the credit limit on the account above the threshold amount. Instead, as discussed in detail below, an open-end account does not qualify for an exemption based on a firm commitment unless the creditor makes an express commitment in writing to extend a total amount of credit that exceeds the threshold amount. Furthermore, the creditor must honor transactions up to the committed amount without requiring additional credit information (although creditors are permitted to, for example, verify the value of collateral before making an extension and perform periodic reviews of the consumer's creditworthiness).[4] Thus, unless a credit card issuer can satisfy these requirements, a credit card account with a credit limit above the threshold amount does not qualify for a firm commitment exemption and is subject to TILA and the Credit Card Act.

The member of Congress also suggested that, for accounts that are exempt based on an initial extension of credit, the Board require a creditor to begin to comply with Regulation Z if, at any point in time during the life of the account, the outstanding balance does not exceed the threshold amount. He argued this approach would be consistent with TILA Section 104(3), which refers to "the total amount financed." Because, however, the balance on an account will almost always fall below the threshold amount as it is repaid, the Board is concerned that this approach would be contrary to the purpose of TILA Section 104(3) because it would effectively prevent any account from remaining exempt based on an initial extension of credit above the threshold. Furthermore, the Board believes that conditioning the exemption on the amount of credit extended—and not the amount financed—promotes consumer understanding.[5]

Therefore, in order to effectuate the purposes of TILA and to facilitate compliance, the Board uses its authority under TILA Section 105(a) to adopt § 226.3(b)(1) as proposed, with non-substantive revisions to its headings. 15 U.S.C. 1604(a). As discussed below, the Board is also revising and reorganizing the commentary to § 226.3(b).

Threshold Amount

The Board proposed a new comment 3(b)–1 listing the threshold amounts in effect for specific periods of time.[6] In particular, the proposed comment clarified that, prior to July 21, 2011, the threshold amount is $25,000 and that, from July 21, 2011 through December 31, 2011, the threshold amount will be $50,000. The proposed comment also clarified that the threshold amount will be adjusted effective January 1 of each year by any annual percentage increase in the CPI–W that was in effect on the preceding June 1.[7] The comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on the previous June 1 becomes available. For example, after the annual percentage change in the CPI–W in effect on June 1, 2011 becomes available, comment 3(b)-1 will be amended to provide the threshold amount in effect beginning on January 1, 2012. The Board received only one comment regarding this approach, which stated that the proposed timeframe would provide adequate time for creditors to comply with any inflation adjustment in the threshold amount.

Proposed comment 3(b)–1 further clarified that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. This approach is consistent with Section 1100E(b) of the Dodd-Frank Act, which provides that annual CPI–W adjustments should be "rounded to the nearest multiple of $100, or $1,000, as applicable." The Board believes that Congress did not intend for an annual CPI–W adjustment to be rounded to the nearest $100 in some circumstances but to the nearest $1,000 in others, which could lead to anomalous results. Because $1,000 is itself a multiple of $100, the Board believes that this commentary clarifies the statutory language in a manner consistent with the intent of Section 1100E. The only comment the Board received on this aspect of the proposal supported the proposed clarification with respect to rounding. Accordingly, for the reasons discussed above, the Board is adopting comment 3(b)–1 as proposed.

Open-End Credit

Proposed comment 3(b)–2 provided guidance on the application of § 226.3(b)(1) to open-end credit accounts. Consistent with the existing commentary, proposed comment 3(b)–2.i clarified that an open-end account qualifies for exemption under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either: (1) The creditor makes an initial extension of credit that exceeds the threshold amount; or (2) the creditor makes a firm written commitment to extend a total amount of credit in excess of the threshold amount with no requirement of additional credit information for any advances on the account (except as permitted from time

[3] As an alternative to eliminating the firm commitment exemption, consumer group commenters requested that, in order to prevent evasion, the Board prohibit creditors from reducing a firm commitment for at least six months after account opening. However, this requirement would involve a substantial limitation to the firm commitment exemption that was not set forth in the proposed rule and therefore was not the subject of public comment.

[4] Because a creditor that makes a firm commitment must honor transactions up to the committed amount without requiring additional credit information, the Board understands that some creditors do not utilize the firm commitment exemption because of the cost associated with maintaining capital to honor advances for available credit on a committed line.

[5] For a discussion of the results of the Board's consumer testing regarding the "amount financed," see 74 FR 43232, 43308 (Aug. 26, 2009).

[6] For organizational purposes, the guidance in current comment 3(b)–1 has been moved to other comments, as discussed below.

[7] The Dodd-Frank Act specifically requires that the threshold amount be adjusted annually by any annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics; however, it does not specify which Bureau of Labor Statistics report should be used to determine that increase. Consistent with its approach for annual adjustments in § 226.32(a)(1)(ii), the Board will use the CPI–W reported by the Bureau of Labor Statistics for June 1 of each year. *See* 12 CFR 226.32(a)(1)(ii) and its commentary. The Board believes this approach permits the publication of an increased threshold amount sufficiently in advance of the January 1 effective date.

to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

In addition, in order to provide certainty regarding the exemption status of an account, the Board proposed to clarify in comment 3(b)–2.i that the initial extension of credit or firm commitment must be made at account opening for purposes of determining whether an open-end account is exempt under § 226.3(b). Some industry commenters supported the requirement that a firm commitment to extend credit in excess of the threshold amount occur at account opening; however, other industry commenters specifically opposed this requirement with respect to initial extensions of credit. In particular, they argued that many consumers open an account in order to have access to credit at a future time and do not want an extension at account opening. In addition, some industry commenters argued that the proposed requirement would impose a significant compliance burden on creditors who offer open-end lines of credit associated with brokerage accounts, which are serviced on systems that cannot presently provide Regulation Z disclosures. They stated that these lines of credit are structured to be exempt under § 226.3(b) based on a contractual requirement that the initial extension of credit must exceed the applicable threshold amount, even if that extension does not occur at account opening.

Based on the comments and further consideration, the Board believes that it is not necessary to require that the initial extension of credit be made at account opening for purposes of § 226.3(b). Instead, the Board has revised comment 3(b)–2.i to clarify that an account is exempt under § 226.3(b) based on an initial extension of credit at or after account opening, provided that extension exceeds the threshold amount in effect at the time the extension is made. In addition to providing flexibility, this approach is consistent with Section 1100E of the Dodd-Frank Act because, regardless of when the account is opened, the initial extension of credit must exceed the threshold amount (as adjusted based on the CPI–W) that is in effect at the time the extension is made. Neither the Dodd-Frank Act nor TILA requires that the initial extension occur at account opening.

However, in order to ensure that consumers are fully protected, the final rule clarifies that, if a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of Regulation Z from the date the account was opened (or earlier, if applicable). For example, assume that the threshold amount is $50,000 and that, after account opening, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of Regulation Z from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 226.6 (account-opening disclosures), § 226.7 (periodic statements), § 226.52 (limitations on fees), and § 226.55 (limitations on increasing annual percentages rates, fees, and charges). Illustrative examples are provided. Comment 3(b)–2.i is otherwise adopted as proposed.

Proposed comment 3(b)–2.ii provided general guidance regarding circumstances in which an account that was exempt under § 226.3(b) no longer qualifies for an exemption. An account would cease to be exempt, for example, if a security interest is taken at a later time in any real property, or in the consumer's principal dwelling. Specifically, the comment clarified that a creditor must begin to comply with all of the applicable requirements of Regulation Z within a reasonable period of time after an account ceases to be exempt. For example, if an open-end account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7.

Industry commenters, including trade associations representing credit unions and community banks, argued that the proposed guidance would impose significant operational difficulties and requested further clarification regarding creditors' responsibilities when an account no longer qualifies for an exemption under § 226.3(b). Consumer group commenters generally supported the proposed guidance, but requested that, to the extent that a creditor imposed charges that were inconsistent with Regulation Z while the account was exempt, the creditor be required to refund those charges once the exemption is lost.

In order to clarify the proposed guidance, the Board is revising comment 3(b)–2.ii to state that, once an exempt account ceases to be exempt, the applicable requirements of Regulation Z apply prospectively to any balances on the account. For example, if a credit card account under an open-end (not home-secured) consumer credit plan ceases to be exempt, the protections in § 226.55 generally prevent the card issuer from increasing the rate that applies to the account's existing balance, even if that balance consists of transactions that occurred while the account was exempt. The Board further clarifies, however, that the creditor is not required to comply with the requirements of Regulation Z retroactively for the period of time during which the account was exempt. Thus, for example, a creditor is not required to refund amounts charged during the period the account was exempt or to provide disclosures regarding transactions or changes in account terms that occurred during that period. Finally, because the Board understands that many creditors voluntarily comply with Regulation Z for exempt accounts, the final rule clarifies that, if a creditor provided disclosures consistent with the requirements of Regulation Z while the account was exempt (including account-opening disclosures consistent with § 226.6 and change-in-terms notices consistent with § 226.9), the creditor is not required to provide the disclosures required by § 226.6 reflecting the current terms of the account if the account ceases to be exempt.

Proposed comment 3(b)–2.iii addressed the effect of subsequent changes when an open-end account is exempt under § 226.3(b) based on an initial extension of credit. The comment clarified that, if a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. Comment 3(b)–2.iii also clarified that, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account will not become exempt under § 226.3(b) even if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

Industry commenters generally supported the Board's proposal. Although one industry commenter requested that an account become

exempt once the total amount of the transactions on the account exceeds the threshold, the Board does not believe that this approach would be consistent with the intent of TILA Section 104(3). Accordingly, the Board is adopting comment 3(b)–2.iii as proposed with revisions for clarity and consistency.

Proposed comment 3(b)–2.iv addressed the effect of subsequent changes when an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, rather than an initial extension of credit. In particular, proposed comment 3(b)–2.iv.A clarified that if the firm commitment does not exceed the threshold amount, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest). In addition, the proposed comment stated that, in order for an open-end account to remain exempt under § 226.3(b) based on a firm commitment, the amount of the firm commitment must continue to exceed the threshold amount currently in effect, as adjusted annually. Thus, in order for an account to remain exempt under the proposed rule, a creditor could not reduce its firm commitment below the threshold amount currently in effect and would have been required to increase its firm commitment when it no longer exceeded the threshold amount due to increases in the threshold as a result of increases in the CPI–W.

Trade associations representing credit unions and community banks opposed the proposed requirement that, in order for an account to remain exempt based on a firm commitment, the amount of the commitment must continue to exceed the threshold amount currently in effect. These commenters argued that the continuous monitoring of such accounts would impose significant operational costs and compliance burdens, particularly on small institutions. Several industry commenters requested the Board clarify that if an account is exempt based on a firm commitment in excess of the threshold amount at account opening, the account will remain exempt regardless of subsequent increases in the threshold amount as a result of inflation. In addition, some industry commenters argued that the account should remain exempt even if the creditor reduces the firm commitment below the applicable threshold amount. One industry commenter, however, noted that creditors frequently renew lines of credit and that the amount of firm commitment is rarely reduced before renewal. This commenter requested that the Board provide additional flexibility to creditors when the consumer requests a reduction in the firm commitment amount.

As discussed above, consumer groups and a member of Congress requested that the Board eliminate the firm commitment exemption. In the alternative, consumer group commenters urged the Board to adopt the proposed requirement that the firm commitment continue to exceed the threshold amount.

Based on the comments and further analysis, the Board is revising proposed comment 3(b)–2.iv.A in order to ease some of the compliance burden for creditors, while retaining protections against circumvention. As discussed below with respect to the transition rule in § 226.3(b)(2), all creditors that currently rely on the firm commitment exemption must review their accounts and either increase their firm commitments to more than $50,000 by December 31, 2011 or begin to comply with Regulation Z. Although this requirement will impose a one-time burden on creditors, the Board believes that, because Section 1100E of the Dodd-Frank Act was intended to expand TILA's coverage to transactions involving higher dollar amounts, it would be inconsistent with that intent to allow existing accounts to remain exempt based on firm commitments of less than $50,000. In contrast, however, the Board does not believe it would be appropriate to require creditors to continually review and adjust accounts that are exempt based on a firm commitment due to any incremental CPI–W increases in the threshold amount. In particular, the Board notes that, for smaller institutions with limited resources, the burden of monitoring the firm commitment amount in accordance with annual increases in the threshold amount is likely to be significant. In some cases, the Board understands that small institutions would have to conduct this review manually. Accordingly, the Board has revised comment 3(b)–2.iv.A to clarify that if a creditor makes a firm commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI–W. For example, if the applicable threshold amount is $50,000 and an account is exempt at account opening based on a firm commitment of $55,000, the account remains exempt even if the threshold amount subsequently increases to $56,000 as a result of increases in the CPI–W.

However, in order to prevent circumvention, the Board is adopting the proposed guidance in comment 3(b)–2.iv.A with respect to a reduction in a firm commitment. Accordingly, the revised comment clarifies that if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example, if the applicable threshold amount is $56,000 and a $60,000 firm commitment on an exempt account is reduced to $52,000, the account no longer qualifies for an exemption based on the firm commitment. However, if the firm commitment on the exempt account is reduced to $58,000, the account remains exempt because the firm commitment still exceeds the threshold amount in effect at the time of the reduction. This guidance applies to any reduction in the firm commitment, whether upon the creditor's initiative or the borrower's request. The Board believes that the final rule does not impose any unwarranted monitoring burden in these circumstances because the creditor presumably would review the account in order to determine whether to reduce the firm commitment.

Proposed comment 3(b)–2.iv.B clarified that when an open-end account no longer qualifies for an exemption under § 226.3(b) based on a firm commitment, the creditor would not be required to begin complying with Regulation Z if it permitted the consumer to repay any outstanding balance on the account consistent with the account terms without providing additional extensions of credit. This guidance was based on the Board's concern that, if an account ceased to be exempt, the creditor would close the account and require the consumer to repay the outstanding balance rather than begin to comply with Regulation Z. Consumer group commenters opposed adoption of this guidance, arguing that creditors should be required to comply with Regulation Z in these circumstances. In addition, an industry trade association stated that creditors generally comply with Regulation Z even if an account qualifies for an exemption under § 226.3(b). Based on these comments and further analysis, the Board believes that this guidance is not necessary. Furthermore, as discussed above, the Board has revised comment 3(b)–2.ii to provide additional guidance and flexibility for accounts that no longer qualify for an exemption under § 226.3(b). Accordingly, the final

rule does not adopt proposed comment 3(b)–2.iv.B.

Finally, proposed comment 3(b)–2.iv.C addressed circumstances in which an account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment and the creditor subsequently makes an initial extension of credit that exceeds the applicable threshold amount. The comment clarified that, in these circumstances, the account qualifies for a § 226.3(b) exemption based on the initial extension of credit if that extension is a single advance exceeding the threshold amount at the time of the extension. As a result, the account would remain exempt under § 226.3(b) even if the firm commitment is subsequently reduced below the threshold amount. For example, assume that, at account opening on January 1 of year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $53,000 in credit. On July 1 of year one, the consumer uses the account for an initial extension of $52,000, which is taken in a single advance. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1, the creditor reduces the firm commitment to $50,000 or less.

One industry commenter suggested that the Board permit accounts to qualify for an exemption in these circumstances based on multiple advances that, in total, exceed the applicable threshold amount, instead of a single, initial advance. For consistency with the guidance in revised comment 3(b)–2.i, the Board declines to adopt this suggestion. Therefore, comment 3(b)–2.iv.C is renumbered as comment 3(b)(2)–2.iv.B for organizational purposes and otherwise adopted as proposed, with non-substantive revisions for clarity and consistency.

Closed-End Credit

Proposed comment 3(b)–3 provided guidance on the application of § 226.3(b)(1) to closed-end loans. Specifically, comment 3(b)–3.i clarified that a closed-end loan is exempt under § 226.3(b) in either of two circumstances (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)).

First, the comment clarified that a closed-end loan would be exempt if the creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount, such as through repayment.

Second, the comment clarified that a closed-end loan would be exempt if the creditor makes a loan commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. The comment further clarified that, in these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit actually extended does not exceed the threshold amount.[8] This guidance addressed loan commitments for closed-end credit with terms that provide for scheduled advances or advances at the consumer's option, where the total amount of credit ultimately drawn may be less than the original loan commitment on which the exemption was based.

Proposed comment 3(b)–3.ii provided guidance on the effect of subsequent changes to a closed-end loan or loan commitment or to the threshold amount. Specifically, the comment clarified that, if a creditor makes an extension of credit or loan commitment to extend credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, such as an increase as a result of Section 1100E or an increase in the CPI–W. In addition, the proposed comment incorporated existing guidance regarding the refinancing of an exempt closed-end loan. Consumer groups and one industry commenter generally supported the proposed comment. Accordingly, the Board is adopting comment 3(b)–3 as proposed with non-substantive revisions for clarity.

Additional Commentary

Proposed comment 3(b)–4 provided guidance when a security interest in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, is added to an existing account or loan that is exempt under § 226.3(b). The proposed comment incorporated guidance from current comments 3(b)–2.ii and 3(b)–3 with respect to open-end credit and closed-end credit, respectively. The Board did not receive substantive comments on proposed comment 3(b)–4, which is adopted as proposed with non-substantive revisions for clarity.

[8] This guidance is currently set forth in comment 3(b)–1.

Proposed comment 3(b)–5 incorporated the guidance currently provided in comment 3(b)–1 regarding credit extensions secured by mobile homes. Specifically, this comment clarified that the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer. The only comment to address this guidance supported adoption of the proposal. Accordingly, the Board is adopting comment 3(b)–5 as proposed.

3(b)(2) Transition Rule for Open-End Accounts Exempt Prior to July 21, 2011

The Board proposed to add a new § 226.3(b)(2) in order to address transition issues related to open-end accounts that are exempt under current § 226.3(b) but may not be exempt under the revised threshold. Specifically, proposed § 226.3(b)(2) provided that an open-end account that is exempt under § 226.3(b) on July 20, 2011 based on an extension of credit in excess of $25,000 or an express written commitment to extend credit in excess of $25,000 remains exempt until July 21, 2012. However, the account would cease to be exempt under § 226.3(b)(2) if the creditor takes a security interest in any real property, or in personal property used or expected to be used as the consumer's principal dwelling; or if the creditor reduces any express written commitment to extend credit to $25,000 or less. Section 226.3(b)(2) was proposed pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of, and to facilitate compliance with, TILA. 15 U.S.C. 1604(a).

The Board understands that many creditors currently choose to comply with Regulation Z in circumstances where the initial extension or firm commitment exceeds $25,000. For example, the Board understands that creditors offering closed-end automobile loans typically provide Regulation Z disclosures regardless of the amount of the loan. However, because some currently exempt open-end credit accounts may be serviced on systems that cannot presently provide Regulation Z disclosures, the Board proposed a transition period in order to provide additional flexibility and facilitate compliance with the revisions to § 226.3(b).

In particular, the Board noted that this concern exists with respect to certain open-end lines of credit associated with brokerage accounts that are serviced on systems that cannot currently provide

Regulation Z disclosures.[9] Industry commenters indicated that creditors offering this type of product would generally be able to comply with the increased threshold amount on July 21, 2011 by requiring that any initial extensions of credit on or after that date exceed $50,000; however, they requested that the Board delay the mandatory compliance date for the proposed requirement that an initial extension of credit occur at account opening. As discussed above, the Board is revising its commentary to clarify that the initial extension of credit on an open-end account is not required to occur at account opening for purposes of § 226.3(b). Therefore, with respect to accounts that are exempt based on an initial extension of credit, the Board believes additional compliance time is not required. Accordingly, the Board is not adopting the proposed transition rule for these accounts.

However, the Board believes that it is appropriate to provide creditors that are currently relying on a firm commitment exemption with additional time to adjust to the increase in the threshold amount from $25,000 to $50,000 pursuant to Section 1100E. As noted above, the Board believes that it would be inconsistent with the intent of Section 1100E to permit accounts to remain exempt based on firm commitments to extend more than $25,000 (but less than $50,000) in credit. Thus, in order to comply with the final rule, creditors must review all accounts that are currently exempt based on a firm commitment and, to the extent the commitment does not exceed $50,000, either increase the commitment or begin to comply with Regulation Z. Industry commenters argued that this task would be burdensome (particularly for small institutions) and requested additional time to comply. However, as noted above, consumer group commenters opposed providing any additional time for compliance.

Based on the comments and further analysis, the Board believes it is appropriate to provide additional time for creditors who currently rely on the firm commitment exemption to make the necessary adjustments to comply with the one-time increase from $25,000 to $50,000; however, the Board does not believe that the proposed one-year transition period is necessary because the Board understands that these creditors generally have the systems and procedures in place to comply with Regulation Z. Accordingly, as adopted in the final rule, § 226.3(b)(2) provides that an open-end account that is exempt on July 20, 2011 based on an express written commitment to extend credit in excess of $25,000 generally remains exempt until December 31, 2011. The Board believes that this will provide creditors with sufficient time to review their accounts and make the necessary adjustments.

The Board is revising proposed comment 3(b)–6 to provide guidance regarding the application of revised § 226.3(b)(2). In particular, the comment clarifies that if, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of $25,000, the account generally remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under the § 226.3(b) based on a firm commitment. Furthermore, comment 3(b)–6 clarifies that § 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011 and does not apply if a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an initial and a final regulatory flexibility analysis on the impact a rule is expected to have on small entities. However, under section 605(b) of the RFA, the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The Board has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

Based on its initial and final analyses and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* The final rule implements Section 1100E of the Dodd-Frank Act, which increases the threshold for consumer credit transactions exempt under TILA from $25,000 to $50,000. Section 1100E also provides that this threshold shall be adjusted annually to reflect any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). The supplementary information above describes in detail the reasons, objectives, and legal basis for each component of the final rule.

2. *Summary of the significant issues raised by public comment on Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments.* An industry group representing credit unions requested that, in order to reduce regulatory burden, the Board provide additional guidance regarding the types of records that institutions are required to retain in order to demonstrate compliance with Regulation Z. Section 226.25 states that creditors must retain "evidence of compliance with this regulation (other than advertising requirements under sections 226.16 and 226.24) for two years after the date disclosures are required to be made or action is required to be taken." Comment 25–2 clarifies that "[a]dequate evidence of compliance does not necessarily mean actual paper copies of disclosure statements or other business records." Instead, "[t]he evidence may be retained on microfilm, microfiche, or by any other method that reproduces records accurately (including computer programs)." Furthermore, "[t]he creditor need retain only enough information to reconstruct the required disclosures or other records. Thus, for example, the creditor need not retain each open-end periodic statement, so long as the specific information on each statement can be retrieved."

Because the current regulation and commentary provide creditors with considerable flexibility regarding the retention of records, the Board is concerned that adopting a more specific set of requirements (such as a list of documents that creditors must retain) could increase regulatory burden, rather than reducing it. Furthermore, because the Board did not propose any amendments to the record retention requirements in § 226.25, any revisions to those requirements would not have the benefit of input from the public, including small institutions. Accordingly, the final rule does not alter the requirements of § 226.25.

[9] To the extent the creditors who provide these accounts are not broker-dealers, the accounts are not exempt under § 226.3(d).

3. *Small entities affected by the final rule.* All creditors that offer closed-end or open-end consumer credit extensions that exceed $25,000 but do not exceed $50,000, as adjusted annually to reflect increases in the CPI–W, would be affected by the final rule. Based on 2010 call report data, the Board estimates that there are approximately 4,360 banks and thrifts with assets of $175 million or less and 6,655 credit unions with assets of $175 million or less, that would be required to comply with the Board's final rule. The Board acknowledges, however, that the total number of small entities likely to be affected by the final rule is unknown, in part because Regulation Z has broad applicability to individuals and businesses that extend even small amounts of consumer credit. In addition, it is unclear how many of these small entities currently do not have systems in place to comply with Regulation Z because they only extend credit in excess of $25,000. It is also unclear how many of those entities will choose to engage in consumer credit transactions between $25,000 and $50,000, as opposed to only making loans above the new threshold.

4. *Recordkeeping, reporting, and compliance requirements.* The final rule imposes new recordkeeping, reporting, and compliance requirements under Regulation Z on creditors that extend consumer credit in amounts that exceed $25,000 but do not exceed $50,000, as adjusted annually to reflect increases in the CPI–W. The Board understands that small entities that offer consumer credit generally have systems in place to comply with Regulation Z for extensions of credit of $25,000 or less. The Board notes that the precise costs to small entities to provide Regulation Z disclosures to accounts with consumer credit extensions of more than $25,000 but not more than $50,000, and the costs of updating their systems to comply with the final rule, are difficult to predict. These costs would depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer accounts, the complexity of the terms of the products that they offer, and the range of such product offerings. One industry commenter noted that the Board's rule could impose operational burden on smaller institutions with respect to open-end accounts exempt prior to July 21, 2011. The Board, however, has revised the rule to provide creditors, particularly smaller institutions, with additional flexibility to ease compliance burden.

Final Amendments

This subsection summarizes several of the final amendments to Regulation Z and their likely impact on small entities. More information regarding these and other changes can be found in IV. Section-by-Section Analysis.

On July 21, 2011, the amendments to § 226.3(b)(1)(i) and its accompanying commentary raise the threshold for exempt consumer credit transactions from $25,000 to $50,000. For accounts which do not qualify for the exemption under the new threshold, creditors that are small entities are required to comply with all applicable Regulation Z requirements. The Board anticipates that creditors that are small entities, with some additional burden, will service accounts which do not meet the increased threshold for exemption on the same systems in place for non-exempt accounts. Furthermore, the Board understands that some creditors that are small entities generally do not rely on the exemption in § 226.3(b) and comply with Regulation Z regardless of the amount of the credit extension. Therefore, the Board does not anticipate significant additional burden on small entities by raising the exemption threshold dollar amount.

Under § 226.3(b)(1)(ii), the threshold amount must be adjusted annually by any annual percentage increase in the CPI–W. To the extent creditors that are small entities rely on the exemption under § 226.3(b), § 226.3(b)(1)(ii) requires those creditors to establish processes and alter their systems in order to comply with the provision. The cost of such changes would depend on the size of the institution and the composition of its portfolio. The Board anticipates that creditors that are small entities, with some additional burden, will service accounts which do not or may not meet the applicable threshold for exemption on the same systems in place for non-exempt accounts. In addition, as noted above, the Board understands that many creditors that are small entities generally comply with Regulation Z regardless of the amount of the credit extension. Furthermore, as discussed above, the Board has revised the proposed rule to reduce the monitoring burden for small entities that rely on the firm commitment exemption. As a result, the Board does not anticipate significant additional burden on small entities by adjusting the exemption threshold dollar amount annually for inflation.

Section 226.3(b)(2) addresses circumstances where certain previously exempt open-end accounts would cease to qualify for an exemption based on a firm commitment on July 21, 2011 under the revised threshold amount. Under § 226.3(b)(2), these accounts would have until December 31, 2011 to comply with the revised threshold amount in effect at that time ($50,000). Therefore, the Board has reduced the burden on small entities that rely on the firm commitment exemption by providing additional time to comply with the final rule.

Accordingly, the Board believes that, in the aggregate, the provisions of its final rule would not have a significant economic impact on a substantial number of small entities.

5. *Significant alternatives to the revisions.* The provisions of the final rule would implement the statutory requirements of the Dodd-Frank Act, which establish new threshold requirements for exempt consumer credit transactions. As discussed above in the supplementary information, the Board has revised the proposed rule to reduce the compliance burden for small entities and to provide small entities with additional time to come into compliance, while effectuating the statute in a manner that is beneficial to consumers.

VI. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). In addition, as permitted by the PRA, the Board extends for three years the current recordkeeping and disclosure requirements in connection with Regulation Z. The collection of information that is required by this final rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions, small businesses, and institutions of higher education. TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic

statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and for home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for 24 months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Board that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Board-regulated institutions as: state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other entities subject to Regulation Z. To ease the burden and cost of compliance with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

The current total annual burden to comply with the provisions of Regulation Z is estimated to be 1,497,362 hours for the 1,138 institutions [10] supervised by the Board that are deemed to be respondents for the purposes of the PRA.

On July 21, 2011, the amendments to § 226.3(b)(1)(i) and its accompanying commentary raise the threshold for exempt consumer credit transactions from $25,000 to $50,000. In addition, § 226.3(b)(1)(ii) requires that the threshold dollar amount be adjusted annually for inflation to reflect any annual percentage increase in the CPI–W. As a result, creditors will now be required to comply with Regulation Z requirements for certain accounts with extensions of consumer credit—or express written commitments to extend consumer credit—of more than $25,000 but not more than $50,000, as adjusted annually to reflect increases in the CPI–W.

The Board estimates that the final rule would impose a one-time increase in the total annual burden under Regulation Z. The 1,138 respondents would take, on average, 40 hours (one business week) to update their systems to comply with the requirements of Regulation Z for loans that are no longer exempt. This one-time revision would increase the burden by 45,520 hours. On a continuing basis, the Board estimates that 1,138 respondents would take, on average, 8 hours (one business day) annually to comply with the requirements of Regulation Z for loans that are no longer exempt and would increase the ongoing burden by 9,104 hours. Thus, the total annual burden is estimated to increase by 54,624 hours (from 1,497,362 to 1,551,986 hours) during the first year after the final rule is adopted. Thereafter, the ongoing total annual burden would be 1,506,466.[11]

The total burden increase represents averages for all respondents regulated by the Board. The Board expects that the amount of time required to implement each of the changes for a given financial institution or entity may vary based on the size and complexity of the respondent. Furthermore, the Board understands that many creditors voluntarily comply with Regulation Z for accounts that are currently exempt. Therefore, the estimated burden increase likely overstates the actual increase in burden for those creditors.

The other Federal financial institution supervisory agencies (the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA)) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15 U.S.C. 1607(a). These agencies may, but are not required to, use the Board's methodology for estimating burden. Using the Board's method, the total current estimated annual burden for the approximately 16,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Board, OCC, OTS, FDIC, and NCUA under TILA would be approximately 21,813,445 hours. The final rule would impose a one-time increase in the estimated annual burden by 648,000. On a continuing basis, the final rule would impose an increase in the estimated annual burden by 129,600. Thus, the total annual burden is estimated to increase by 777,600 hours to 22,591,045 hours during the first year after the final rule is adopted. Thereafter, the ongoing total annual burden would be 21,943,045. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. As noted above, the estimated burden increase likely overstates the actual increase in burden because many creditors voluntarily comply with Regulation Z for exempt accounts.

The Board has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Final Revisions

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 is revised to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

[10] The number of Federal Reserve-supervised creditors was obtained from numbers published in the Board of Governors of the Federal Reserve System Annual Report: 878 State member banks, 258 Branches & agencies of foreign banks, and 2 Commercial lending companies.

[11] The burden estimate for this rulemaking does not include the burden addressing changes to implement the following provisions announced in separate rulemakings: Closed-End Mortgages (Docket No. R–1366) (74 FR 43232) (75 FR 58470), Home-Equity Lines of Credit (Docket No. R–1367) (74 FR 43428), Reverse Mortgages (Docket No. R–1390) (75 FR 58539), or Appraisal Independence (Docket No. R–1394) (75 FR 66554).

Subpart B—Open-End Credit

■ 2. Section 226.3(b) is revised to read as follows:

§ 226.3 Exempt transactions.

* * * * *

(b) *Credit over applicable threshold amount*—(1) *Exemption*—(i) *Requirements.* An extension of credit in which the amount of credit extended exceeds the applicable threshold amount or in which there is an express written commitment to extend credit in excess of the applicable threshold amount, unless the extension of credit is:

(A) Secured by any real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(B) A private education loan as defined in § 226.46(b)(5).

(ii) *Annual adjustments.* The threshold amount in paragraph (b)(1)(i) of this section is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official staff commentary to this paragraph (b) for the threshold amount applicable to a specific extension of credit or express written commitment to extend credit.

(2) *Transition rule for open-end accounts exempt prior to July 21, 2011.* An open-end account that is exempt on July 20, 2011 based on an express written commitment to extend credit in excess of $25,000 remains exempt until December 31, 2011 unless:

(i) The creditor takes a security interest in any real property, or in personal property used or expected to be used as the principal dwelling of the consumer; or

(ii) The creditor reduces the express written commitment to extend credit to $25,000 or less.

* * * * *

■ 3. In Supplement I to part 226:

■ A. Under *Section 226.2—Definitions and Rules of Construction,* under *2(a)(19) Dwelling,* paragraph 3. is revised.

■ B. Under *Section 226.3—Exempt Transactions,* section *3(b) Credit over $25,000 not secured by real property or a dwelling* is revised.

■ C. Under *Section 226.23—Right of Rescission,* under *23(a) Consumer's Right to Rescind,* under *Paragraph 23(a)(1),* paragraph 5. is revised.

The additions and revisions read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

* * * * *

2(a)(19) Dwelling.

* * * * *

3. *Relation to exemptions.* Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in § 226.3(b).

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over applicable threshold amount.

1. *Threshold amount.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. This comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

2. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this Part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 226.6 (account-opening disclosures), § 226.7 (periodic statements), § 226.52 (limitations on fees), and § 226.55 (limitations on increasing annual percentages rates, fees, and charges). For example:

(1) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this Part apply to the account.

(2) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this Part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this Part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this Part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this Part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this Part while the account was exempt, it is not required to provide disclosures required by § 226.6 reflecting the current terms of the account. See also comment 3(b)–4.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does

not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 226.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–6 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 226.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 226.3(b).

(2) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 226.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

(2) Same facts as in paragraph iv.B(1) above except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

(3) Same facts as in paragraph iv.B(1) above except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 226.3(b) exemption on April 1 of year two, the account does not qualify for a § 226.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

3. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 226.3(b) (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 226.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this Part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 226.3(b). See also comment 3(b)–4.

4. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if, after account opening, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 226.3(b) and the creditor must begin to comply with all of the applicable requirements of this Part within a reasonable period of time. See comment 3(b)–2.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 226.15.

ii. *Closed-end credit.* For closed-end loans, if, after consummation, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 226.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 226.23 and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 226.23(a)(1) and the accompanying commentary. In contrast, if a closed-end loan that is exempt under § 226.3(b) is satisfied and replaced by a loan that is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 226.3(b) and the creditor must comply with all of the applicable requirements of this Part. See comment 3(b)-3.

5. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 226.2(a)(19), the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–4.

6. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt

under § 226.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph i. above except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 226.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this Part.

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Section 226.23—Right of Rescission

* * * * *

23(a) Consumer's right to rescind Paragraph 23(a)(1).

* * * * *

5. *Addition of a security interest.* Under footnote 47, the addition of a security interest in a consumer's principal dwelling to an existing obligation is rescindable even if the existing obligation is not satisfied and replaced by a new obligation, and even if the existing obligation was previously exempt under § 226.3(b). The right of rescission applies only to the added security interest, however, and not to the original obligation. In those situations, only the § 226.23(b) notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.

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By order of the Board of Governors of the Federal Reserve System, March 24, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–7376 Filed 4–1–11; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 717 and 748

Fair Credit Reporting Act and Bank Secrecy Act Compliance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; technical amendments.

SUMMARY: NCUA is amending its Bank Secrecy Act (BSA) Compliance and Fair Credit Reporting Act (FCRA) regulations involving the Fair and Accurate Credit Transactions Act of 2003 (FACTA) to make minor, non-substantive technical amendments. These technical amendments update citations in these NCUA regulations to conform to the reorganization of the Financial Crimes Enforcement Network, Department of Treasury (FinCEN) BSA regulations.

DATES: *Effective Date:* April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Regina Metz, Staff Attorney, 703–518–6561, or Jennifer Vickers, Trial Attorney, 703–518–6547, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: Effective March 1, 2011, FinCEN is reorganizing and moving its existing BSA regulations from 31 CFR part 103 to 31 CFR chapter X. *See* 75 FR 65806, October 26, 2010. NCUA is amending provisions of its FCRA FACTA regulations (12 CFR part 717), including Appendix J to 12 CFR part 717, and BSA Compliance (12 CFR part 748) regulations to make minor, non-substantive technical amendments to conform the citations therein to FinCEN's reorganized BSA regulations.

Description of the Final Rule

NCUA's FCRA FACTA and BSA Compliance regulations currently cite to FinCEN's BSA regulations in 31 CFR part 103. Due to FinCEN's reorganization of its BSA regulations, these citations to 31 CFR part 103 in NCUA's regulations would become obsolete on March 1, 2011. To avoid this, the final rule amends NCUA's FCRA FACTA regulations (12 CFR 717.82(c)(2)(i)(A)), including Appendix J to 12 CFR part 717, Section III(a), and BSA Compliance regulations (12 CFR 748.1(c)(2)(ii) and (iii) and 748.2(a) and (b)(1) and (2)) to comport with FinCEN's reorganized BSA regulations at 31 CFR chapter X.

Administrative Procedure Act

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

This final rule makes minor, non-substantive technical amendments to NCUA's FCRA FACTA and BSA Compliance regulations as described above, to conform certain citations to FinCEN's reorganized BSA regulations. Therefore, NCUA, for good cause, finds that the notice and comment procedures prescribed by the APA are unnecessary because the final rule makes technical amendments to citations without substantive change to the relevant provisions of 12 CFR parts 717 and 748.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. See 5 U.S.C. 603 and 604. As noted above under Administrative Procedure Act, NCUA has determined, for good cause, that it is unnecessary to publish a notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

There are no information collection requirements in this final rule.

List of Subjects

12 CFR Part 717

Consumer protection, Credit unions, Fair and accurate credit, Fair credit reporting, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 748

Consumer protection, Credit unions, Crime, Currency, Reporting and recordkeeping requirements, Security measures.

For the reasons discussed in the **SUPPLEMENTARY INFORMATION** section above, 12 CFR part 717 and 12 CFR part 748 are amended as follows:

PART 717—FAIR CREDIT REPORTING

■ 1. The authority citation for part 717 continues to read as follows:

Authority: 12 U.S. C. 1751 *et seq.;* 15 U.S.C. 1681a, 1681b, 1681c, 1681s, 1681s–1, 1681t, 1681w, 6801, and 6805, Pub. L. 108–159, 117 Stat. 1952.

■ 2. Amend § 717.82 by revising paragraph (c)(2)(i)(A) to read as follows:

§ 717.82 Duties of users regarding address discrepancies.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Obtains and uses to verify the consumer's identity in accordance with the requirements of the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) (31 CFR 1020.220);

* * * * *

■ 3. In Appendix J to part 717, revise Section III, paragraph (a) to read as follows:

Appendix J to Part 717—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

III. Detecting Red Flags

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