

~~balance to exceed the new credit limit, the general rule in § 226.9(g)(1)(ii) would apply and the creditor would be required to give an additional 45 days' notice prior to imposition of the penalty rate (but under these circumstances the consumer would have no ability to cure the over the limit balance in order to avoid penalty pricing).~~

9(h) Consumer rejection of certain significant changes in terms.

1. Circumstances in which § 226.9(h) does not apply. Section 226.9(h) applies when § 226.9(c)(2)(iv)(B) requires disclosure of the consumer's right to reject a significant change to an account term. Thus, for example, § 226.9(h) does not apply to changes to the terms of home equity plans subject to the requirements of § 226.5b that are accessible by a credit or charge card because § 226.9(c)(2) does not apply to such plans. Similarly, § 226.9(h) does not apply in the following circumstances because § 226.9(c)(2)(iv)(B) does not require disclosure of the right to reject in those circumstances: (i) an increase in the required minimum periodic payment; (ii) a change in an annual percentage rate applicable to a consumer's account (such as changing the margin or index for calculating a variable rate, changing from a variable rate to a non-variable rate, or changing from a non-variable rate to a variable rate); (iii) a change in the balance computation method necessary to comply with § 226.54; and (iv) when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment.

9(h)(1) Right to reject.

1. Reasonable requirements for submission of rejections. A creditor may establish reasonable requirements for the submission of rejections pursuant to § 226.9(h)(1). For example:

i. It would be reasonable for a creditor to require that rejections be made by the primary account holder and that the consumer identify the account number.

ii. It would be reasonable for a creditor to require that rejections be made only using the toll-free telephone number disclosed pursuant to § 226.9(c). It would also be reasonable for a creditor to designate additional channels for the submission of rejections (such as an address for rejections submitted by mail) so long as the creditor does not require that rejections be submitted through such additional channels.

iii. It would be reasonable for a creditor to require that rejections be received before the effective date disclosed pursuant to § 226.9(c) and to treat the account as not subject to § 226.9(h) if a rejection is received on or after that date. It would not, however, be reasonable to require that rejections be submitted earlier than the day before the effective date. If a creditor is unable to process all rejections received before the effective date, the creditor may delay implementation of the change in terms until all rejections have been processed. In the alternative, the creditor could implement the change on the effective date and then, on any account for which a timely rejection was received, reverse the change and remove or credit any interest charges or fees imposed as a result of the change. For example, if the effective date for a change in terms is June 15 and the creditor cannot process all rejections received by telephone on June 14 until June 16, the creditor may delay imposition of the change until June 17. Alternatively, the creditor could implement the change for all affected accounts on June 15 and then, once all rejections have been processed, return any account for which a timely rejection was received to the prior terms and ensure that the account is not assessed any additional interest or fees as a result of the change or that the account is credited for such interest or

fees.

2. Use of account following provision of notice. A consumer does not waive or forfeit the right to reject a significant change in terms by using the account for transactions prior to the effective date of the change. Similarly, a consumer does not revoke a rejection by using the account for transactions after the rejection is received.

9(h)(2)(ii) Prohibition on penalties.

1. Termination or suspension of credit availability. Section 226.9(h)(2)(ii) does not prohibit a creditor from terminating or suspending credit availability as a result of the consumer's rejection of a significant change in terms.

2. Solely as a result of rejection. A creditor is prohibited from imposing a fee or charge or treating an account as in default solely as a result of the consumer's rejection of a significant change in terms. For example, if credit availability is terminated or suspended as a result of the consumer's rejection of a significant change in terms, a creditor is prohibited from imposing a periodic fee that was not charged before the consumer rejected the change (such as a closed account fee). See also comment 55(d)-1. However, regardless of whether credit availability is terminated or suspended as a result of the consumer's rejection, a creditor is not prohibited from continuing to charge a periodic fee that was charged before the rejection. Similarly, a creditor that charged a fee for late payment before a change was rejected is not prohibited from charging that fee after rejection of the change.

9(h)(2)(iii) Repayment of outstanding balance.

1. Relevant date for repayment methods. Once a consumer has rejected a significant change in terms, § 226.9(h)(2)(iii) prohibits the creditor from requiring

repayment of the balance on the account using a method that is less beneficial to the consumer than one of the methods listed in § 226.55(c)(2). When applying the methods listed in § 226.55(c)(2) pursuant to § 226.9(h)(2)(iii), a creditor may utilize the date on which the creditor was notified of the rejection or a later date (such as the date on which the change would have gone into effect but for the rejection). For example, assume that on April 16 a creditor provides a notice pursuant to § 226.9(c) informing the consumer that the monthly maintenance fee for the account will increase effective June 1. The notice also states that the consumer may reject the increase by calling a specified toll-free telephone number before June 1 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free number and exercises the right to reject. If the creditor chooses to establish a five-year amortization period for the balance on the account consistent with § 226.55(c)(2)(ii), that period may begin no earlier than the date on which the creditor was notified of the rejection (May 5). However, the creditor may also begin the amortization period on the date on which the change would have gone into effect but for the rejection (June 1).

2. Balance on the account.

i. In general. When applying the methods listed in § 226.55(c)(2) pursuant to § 226.9(h)(2)(iii), the provisions in § 226.55(c)(2) and the guidance in the commentary to § 226.55(c)(2) regarding protected balances also apply to a balance on the account subject to § 226.9(h)(2)(iii). If a creditor terminates or suspends credit availability based on a consumer's rejection of a significant change in terms, the balance on the account that is subject to § 226.9(h)(2)(iii) is the balance at the end of the day on which credit availability is terminated or suspended. However, if a creditor does not terminate or

suspend credit availability based on the consumer's rejection, the balance on the account subject to § 226.9(h)(2)(iii) is the balance at the end of the day on which the creditor was notified of the rejection or, at the creditor's option, a later date.

ii. Example. Assume that on June 16 a creditor provides a notice pursuant to § 226.9(c) informing the consumer that the annual fee for the account will increase effective August 1. The notice also states that the consumer may reject the increase by calling a specified toll-free telephone number before August 1 but that, if the consumer does so, credit availability for the account will be terminated. On July 20, the account has a purchase balance of \$1,000 and the consumer calls the toll-free number and exercises the right to reject. On July 22, a \$200 purchase is charged to the account. If the creditor terminates credit availability on July 25 as a result of the rejection, the balance subject to the repayment limitations in § 226.9(h)(2)(iii) is the \$1,200 purchase balance at the end of the day on July 25. However, if the creditor does not terminate credit availability as a result of the rejection, the balance subject to the repayment limitations in § 226.9(h)(2)(iii) is the \$1,000 purchase balance at the end of the day on the date the creditor was notified of the rejection (July 20), although the creditor may, at its option, treat the \$200 purchase as part of the balance subject to § 226.9(h)(2)(iii).

9(h)(3) Exception.

1. Examples. Section 226.9(h)(3) provides that § 226.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. The following examples illustrate the application of this exception:

i. Account becomes more than 60 days delinquent before notice provided.

Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On June 20 of year two, the creditor has not received the required minimum periodic payments due on April 15, May 15, and June 15. On June 20, the creditor provides a notice pursuant to § 226.9(c) informing the consumer that a monthly maintenance fee of \$10 will be charged beginning on August 4. However, § 226.9(c)(2)(iv)(B) does not require the creditor to notify the consumer of the right to reject because the creditor has not received the April 15 minimum payment within 60 days after the due date. Furthermore, the exception in § 226.9(h)(3) applies and the consumer may not reject the fee.

ii. Account becomes more than 60 days delinquent after rejection. Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On April 20 of year two, the creditor has not received the required minimum periodic payment due on April 15. On April 20, the creditor provides a notice pursuant to § 226.9(c) informing the consumer that an annual fee of \$100 will be charged beginning on June 4. The notice further states that the consumer may reject the fee by calling a specified toll-free telephone number before June 4 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free telephone number and rejects the fee. Section 226.9(h)(2)(i) prohibits the creditor from charging the \$100 fee to the account. If, however, the creditor does not receive the minimum payments due on April 15 and May 15 by June 15, § 226.9(h)(3) permits the creditor to charge the \$100 fee. The creditor must provide a second notice of the fee pursuant to § 226.9(c), but

§ 226.9(c)(2)(iv)(B) does not require the creditor to disclose the right to reject and § 226.9(h)(3) does not allow the consumer to reject the fee. Similarly, the restrictions in § 226.9(h)(2)(ii) and (iii) no longer apply.

Section 226.10 — Payments

~~10(a) General rule.~~

~~1. Crediting date. Section 226.10(a) does not require the creditor to post the payment to the consumer's account on a particular date; the creditor is only required to credit the payment as of the date of receipt.~~

~~2. Date of receipt. The "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor. For example:~~

~~i. Payment by check is received when the creditor gets it, not when the funds are collected.~~

~~ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.~~

~~iii. If the consumer elects to have payment made by a third party payor such as a financial institution, through a preauthorized payment or telephone bill payment arrangement, payment is received when the creditor gets the third party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under § 226.10(b).~~