

~~format requirements of § 226.9(e)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). The proposed comment notes that creditors should refer to § 226.55 for additional restrictions on resuming the original rate that is applicable to credit card accounts under an open end (not home secured) plan.~~

### **Relationship Between § 226.9(e)(2) and (b)**

~~In the October 2009 Regulation Z Proposal, the Board republished proposed amendments to § 226.9(e)(2)(v) and comments 9(e)(2)-4 and 9(e)(2)(i)-3 that were part of the May 2009 Regulation Z Proposed Clarifications. Several of the Board's proposed revisions to § 226.9(e)(2)(v) (proposed in May 2009 as § 226.9(e)(2)(iv)) and proposed comment 9(e)(2)-4 were to clarify the relationship between the change-in-terms requirements of § 226.9(e) and the notice provisions of § 226.9(b) that apply when a creditor adds a credit feature or delivers a credit access device for an existing open end plan. See 74 FR 20787 for further discussion of these proposed amendments. Commenters that addressed this aspect of the proposal generally supported these proposed clarifications, which are adopted as proposed.~~

### **9(e) Disclosures Upon Renewal of Credit or Charge Card**

The Credit Card Act amended TILA Section 127(d), which sets forth the disclosures that card issuers must provide in connection with renewal of a consumer's credit or charge card account. 15 U.S.C. 1637(d). TILA Section 127(d) is implemented in § 226.9(e), which has historically required card issuers that assess an annual or other fee based on inactivity or activity, on a credit card account of the type subject to § 226.5a, to provide a renewal notice before the fee is imposed. The creditor must provide disclosures required for credit card applications and solicitations (although not in a

tabular format) and must inform the consumer that the renewal fee can be avoided by terminating the account by a certain date. The notice must generally be provided at least 30 days or one billing cycle, whichever is less, before the renewal fee is assessed on the account. Under current § 226.9(e), there is an alternative delayed notice procedure where the fee can be assessed provided the fee is reversed if the consumer is given notice and chooses to terminate the account.

#### Alternative Delayed Notice

The Credit Card Act amended TILA Section 127(d) to eliminate the provision permitting creditors to provide an alternative delayed notice. Thus, the statute requires card issuers to provide the renewal notice described in § 226.9(e)(1) prior to imposition of any annual or other periodic fee to renew a credit or charge card account of the type subject to § 226.5a, including any fee based on account activity or inactivity. Card issuers may no longer assess the fee and provide a delayed notice offering the consumer the opportunity to terminate the account and have the fee reversed. Accordingly, the Board proposed to delete § 226.9(e)(2) and to renumber § 226.9(e)(3) as § 226.9(e)(2). The Board proposed technical conforming changes to comments 9(e)-7, 9(e)(2)-1 (currently comment 9(e)(3)-1), and 9(e)(2)-2 (currently comment 9(e)(3)-2).

Consumer groups commented that the Board's final rule should permit the alternative delayed disclosure. These commenters believe that the deletion of TILA Section 127(d)(2) was a drafting error, and that the Board should use its authority under TILA Section 105(a) to restore the alternative delayed notice procedure. These commenters stated that restoring § 226.9(e)(2) would benefit both consumers and issuers,

because consumers are in their opinion more likely to notice the fee and exercise their right to cancel the card if the fee appears on the periodic statement.

The Board believes that the language of Section 203 of the Credit Card Act, which amended TILA Section 127(d), clearly deletes the statutory basis for the alternative delayed notice. Therefore, the Board does not believe that use of its TILA Section 105(a) authority is appropriate at this time to override this express statutory provision. The final rule deletes § 226.9(e)(2) and renumbers § 226.9(e)(3) as § 226.9(e)(2), as proposed. Similarly, the Board is adopting the technical conforming changes to comments 9(e)-7, 9(e)(2)-1 (currently comment 9(e)(3)-1), and 9(e)(2)-2 (currently comment 9(e)(3)-2), as proposed.

#### Terms Amended Since Last Renewal

As amended by the Credit Card Act, TILA Section 127(d) provides that a card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed must provide the renewal disclosure, even if that card issuer does not charge an annual fee, periodic fee, or other fee for renewal of the credit or charge card account. The Board proposed to implement amended TILA Section 127(d) by making corresponding amendments to § 226.9(e)(1). Proposed § 226.9(e)(1) stated, in part, that any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. The Board proposed to use its authority pursuant to TILA Section 105(a) to clarify that the requirement to provide the renewal disclosures due to a change in account terms applies only if the change has not been previously disclosed and is a change of the

type required to be disclosed in the table provided at account opening.

Several industry commenters stated that renewal disclosures should be required only if an annual or other renewal fee is assessed on a consumer's account. However, the Credit Card Act specifically amended TILA Section 127(d) to require renewal disclosures when creditors have changed or amended terms of the account since the last renewal that have not been previously disclosed. The Board therefore believes that a rule requiring renewal disclosures to be given only if an annual or other renewal fee is charged would not effectuate the statutory amendment.

Consumer groups stated that renewal disclosures should be required if any undisclosed change has been made to the account terms since the last renewal, not only if undisclosed changes have been made to terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Consumer groups argued that the language “any term of the account” in amended TILA Section 127(d) contemplates that renewal disclosures will be given if any term has been changed and not previously disclosed, regardless of the type of term. As discussed in the supplementary information to the proposal, the Board considered an interpretation of amended TILA Section 127(d), consistent with consumer group comments, that would have required that the renewal disclosures be provided for all changes in account terms that have not been previously disclosed, including changes that are not required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Such an interpretation of the statute would require that the renewal disclosures be given even when creditors have made relatively minor changes to the account terms, such as by increasing the amount of a fee to expedite delivery of a credit card. The Board noted that it believes providing a renewal notice in these circumstances would not provide a

meaningful benefit to consumers.

The Board also noted that under such an interpretation, the renewal notice would in many cases not disclose the changed term, which would render it of little value to consumers. Amended TILA Section 127(d) requires only that the renewal disclosure contain the information set forth in TILA Sections 127(c)(1)(A) and (c)(4)(A), which are implemented in § 226.5a(b)(1) through (b)(7). These sections require disclosure of key terms of a credit card account including the annual percentage rates applicable to the account, annual or other periodic membership fees, minimum finance charges, transaction charges on purchases, the grace period, balance computation method, and disclosure of similar terms for charge card accounts. The Board notes that the required disclosures all address terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Therefore, if the rule required that the renewal disclosures be provided for any change in terms, such as a change in a fee for expediting delivery of a credit card, the renewal disclosures would not disclose the amount of the changed fee. The Board also notes that charges imposed as part of an open-end (not home-secured) plan that are not required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) are required to be disclosed to consumers prior to their imposition pursuant to § 226.5(b)(1)(ii). Therefore, if a card issuer changed a charge imposed as part of an open-end (not home-secured) plan but had not previously disclosed that change, a consumer would receive disclosure prior to imposition of the charge.

For these reasons, the Board is adopting § 226.9(e)(1) as proposed. The Board believes that § 226.9(e)(1) as adopted strikes the appropriate balance between ensuring that consumers receive notice of important changes to their account terms that have not

been previously disclosed and avoiding burden on issuers with little or no corresponding benefit to consumers. In most cases, changes to terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) will be required to be disclosed 45 days in advance in accordance with § 226.9(c)(2). However, there are several types of changes to terms required to be disclosed under § 226.6(b)(1) and (b)(2) for which advance notice is not required under § 226.9(c)(2)(v)(1), including reductions in finance and other charges and the extension of a grace period. The Board believes that such changes are generally beneficial to the consumer, and therefore a 45-day advance notice requirement is not appropriate for these changes. However, the Board believes that requiring creditors to send consumers subject to such changes a notice prior to renewal disclosing key terms of their accounts will promote the informed use of credit by consumers. The notice will remind consumers of the key terms of their accounts, including any reduced rates or extended grace periods that apply, when consumers are making a decision as to whether to renew their account and how to use the account in the future.

One industry commenter requested that the Board clarify that disclosing a change in terms on a periodic statement is sufficient to constitute prior disclosure of that change for purposes of § 226.9(e). The Board believes that this generally is appropriate, and has adopted a new comment 9(e)-10 . Comment 9(e)-10 states that clear and conspicuous disclosure of a changed term on a periodic statement provided to a consumer prior to renewal of the consumer's account constitutes prior disclosure of that term for purposes of § 226.9(e)(1). The comment contains a cross-reference to § 226.9(c)(2) for additional timing, content, and formatting requirements that apply to certain changes in terms under that paragraph.

Consumer group commenters urged the Board to require that renewal disclosures be tabular, prominently located, and retainable. The Board is not imposing such a requirement at this time. The Board believes that the general requirements of § 226.5(a), which require that renewal disclosures be clear and conspicuous and in writing, are sufficient to ensure that renewal disclosures are noticeable to consumers.

Section 226.9(e)(1), consistent with the proposal, further clarifies the timing of the notice requirement when a card issuer has changed a term on the account but does not impose an annual or other periodic fee for renewal, by stating that if the card issuer has changed or amended any term required to be disclosed under § 226.6(b)(1) and (b)(2) and such changed or amended term has not previously been disclosed to the consumer, the notice shall be provided at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. Accordingly, card issuers that do not charge periodic or other fees for renewal of the credit or charge card account, and who have previously disclosed any changed terms pursuant to § 226.9(c)(2) are not required to provide renewal disclosures pursuant to proposed § 226.9(e).

~~**9(g) Increase in Rates Due to Delinquency or Default or as a Penalty**~~

~~**9(g)(1) Increases Subject to This Section**~~

~~The Board proposed to adopt § 226.9(g) substantially as adopted in the January 2009 Regulation Z Rule, except as required to be amended for conformity with the Credit Card Act. Proposed § 226.9(g), in combination with amendments to § 226.9(e), implemented the 45-day advance notice requirements for rate increases in new TILA Section 127(i). This approach is consistent with the Board's January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule, each of which included change~~