

~~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(e)(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(c), 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-

in-terms notice requirements in § 226.9(c) and increases in rates due to the consumer's default or delinquency or as a penalty for events specified in the account agreement in § 226.9(g). Proposed § 226.9(g)(1) set forth the general rule and stated that for open-end plans other than home-equity plans subject to the requirements of § 226.5b, a creditor must provide a written notice to each consumer who may be affected when a rate is increased due to a delinquency or default or as a penalty for one or more events specified in the account agreement. The Board received no significant comment on the general rule in § 226.9(g)(1), which is adopted as proposed.

9(g)(2) Timing of Written Notice

Proposed paragraph (g)(2) set forth the timing requirements for the notice described in paragraph (g)(1), and stated that the notice must be provided at least 45 days prior to the effective date of the increase. The notice must, however, be provided after the occurrence of the event that gave rise to the rate increase. That is, a creditor must provide the notice after the occurrence of the event or events that trigger a specific impending rate increase and may not send a general notice reminding the consumer of the conditions that may give rise to penalty pricing. For example, a creditor may send a consumer a notice pursuant to § 226.9(g) if the consumer makes a payment that is one day late disclosing a rate increase applicable to new transactions, in accordance with § 226.55. However, a more general notice reminding a consumer who makes timely payments that paying late may trigger imposition of a penalty rate would not be sufficient to meet the requirements of § 226.9(g) if the consumer subsequently makes a late payment. The Board received no significant comment on § 226.9(g)(2), which is adopted as proposed.

9(g)(3) Disclosure Requirements for Rate Increases

Proposed paragraph (g)(3) set forth the content and formatting requirements for notices provided pursuant to § 226.9(g). Proposed § 226.9(g)(3)(i)(A) set forth the content requirements applicable to all open-end (not home-secured) credit plans. Similar to the approach discussed above with regard to § 226.9(c)(2)(iv), the Board proposed a separate § 226.9(g)(3)(i)(B) that contained additional content requirements required under the Credit Card Act that are applicable only to credit card accounts under an open-end (not home-secured) consumer credit plan.

Proposed § 226.9(g)(3)(i)(A) provided that the notice must state that the delinquency, default, or penalty rate has been triggered, and the date on which the increased rate will apply. The notice also must state the circumstances under which the increased rate will cease to apply to the consumer's account or, if applicable, that the increased rate will remain in effect for a potentially indefinite time period. In addition, the notice must include a statement indicating to which balances the delinquency or default rate or penalty rate will be applied, and, if applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment.

Proposed § 226.9(g)(3)(i)(B) set forth additional content that credit card issuers must disclose if the rate increase is due to the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment. In those circumstances, the proposal required that the notice state the reason for the increase and disclose that the increase will cease to apply if the creditor receives six consecutive

required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. Proposed § 226.9(g)(3)(i)(B) implemented notice requirements contained in amended TILA Section 171(b)(4), as adopted by the Credit Card Act, and implemented in proposed § 226.55(b)(4), as discussed below.

Unlike § 226.9(g)(3) of the July 2009 Regulation Z Interim Final Rule, the notice proposed under § 226.9(g)(3) would not have required disclose the consumer's right to reject the application of the penalty rate. For the reasons discussed in the supplementary information to § 226.9(h), the Board is not providing a right to reject penalty rate increases in light of the new substantive rule on rate increases in proposed § 226.55. Accordingly, the proposal would not have required disclosure of a right to reject for penalty rate increases.

Proposed paragraph (g)(3)(ii) set forth the formatting requirements for a rate increase due to default, delinquency, or as a penalty. These requirements were substantively equivalent to the formatting rule adopted in § 226.9(g)(3)(ii) of the January 2009 Regulation Z Rule and would require the disclosures required under § 226.9(g)(3)(i) to be set forth in the form of a table. As discussed elsewhere in this **Federal Register**, the formatting requirements are not directly compelled by the Credit Card Act, and consequently the Board is retaining the original July 1, 2010 effective date of the January 2009 Regulation Z Rule for the tabular formatting requirements.

The Board proposed to amend Sample G-21 from the January 2009 Regulation Z Rule (redesignated as Sample G-22) and to add a new sample G-23 to illustrate how a card issuer may comply with the requirements of proposed § 226.9(g)(3)(i). The

proposal would have amended references to these samples in comment 9(g)-8 accordingly. Proposed Sample G-22 is a disclosure of a rate increase applicable to a consumer's credit card account based on a late payment that is fewer than 60 days late. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G-23 discloses a rate increase based on a delinquency of more than 60 days, and includes the required content regarding the consumer's ability to cure the penalty pricing by making the next six consecutive minimum payments on time.

One industry commenter stated that § 226.9(g)(3) and Model Form G-23 should be revised to more accurately reflect the balances to which the consumer's cure right applies, when the consumer's rate is increased due to a delinquency of greater than 60 days. As discussed in the supplementary information to § 226.55(b)(4)(ii), the rule requires only that the rate be reduced on transactions that occurred prior to or within 14 days of the notice provided pursuant to § 226.9(c) or (g), when the consumer makes the first six required minimum periodic payments on time following the effective date of a rate increase due to a delinquency of more than 60 days. The Board believes that consumers could be confused by a notice, as proposed, that states only that the rate increase will cease to apply if the consumer, but does not distinguish between outstanding balances and new transactions. Accordingly, the Board has revised § 226.9(g)(3)(i)(B)(2) to require disclosure that the increase will cease to apply with respect to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date,

beginning with the first payment due following the effective date of the increase. The Board has made a conforming change to Model Form G-23.

The Board received no other significant comment on the disclosure requirements in § 226.9(g)(3) and is otherwise adopting § 226.9(g)(3) as proposed.

9(g)(4) Exceptions

Proposed § 226.9(g)(4) set forth an exception to the advance notice requirements of § 226.9(g), which is consistent with an analogous exception contained in the January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule. Proposed § 226.9(g)(4) clarified the relationship between the notice requirements in § 226.9(c)(vi) and (g)(1) when the creditor decreases a consumer's credit limit and under the terms of the credit agreement a penalty rate may be imposed for extensions of credit that exceed the newly decreased credit limit. This exception is substantively equivalent to § 226.9(g)(4)(ii) of the January 2009 Regulation Z Rule. In addition, it is generally equivalent to § 226.9(g)(4)(ii) of the July 2009 Regulation Z Interim Final Rule, except that the proposed exception implemented content requirements analogous to those in proposed § 226.9(g)(3)(i) that pertain to whether the rate applies to outstanding balances or only to new transactions. See 74 FR 5355 for additional discussion of this exception. The Board received no comments on this exception, which is adopted as proposed.

As discussed in the supplementary information to the October 2009 Regulation Z Proposal, a second exception for an increase in an annual percentage rate due to the failure of a consumer to comply with a workout or temporary hardship arrangement contained in the July 2009 Regulation Z Interim Final Rule has been moved to § 226.9(c)(2)(v)(D).

The Board noted in the supplementary information to the proposal that one respect in which proposed § 226.9(g)(4) differs from the January 2009 Regulation Z Rule is that it did not contain an exception to the 45-day advance notice requirement for penalty rate increases if the consumer's account becomes more than 60 days delinquent prior to the effective date of a rate increase applicable to new transactions, for which a notice pursuant to § 226.9(g) has already been provided.

Industry commenters urged the Board to provide an exception that would permit creditors to send a notice disclosing a rate increase applicable to both a consumer's outstanding balances and new transactions, prior to the consumer's account becoming more than 60 days delinquent. These commenters stated that, as proposed, the rule would require issuers to wait at least 105 days prior to imposing rate increases as a result of the consumer paying more than 60 days late. These commenters also stated that a notice disclosing the consequences that would occur if a consumer paid more than 60 days late would give the consumer the opportunity to avoid the rate increase.

The Board is not adopting an exception that would permit a creditor to send a notice disclosing a rate increase applicable to both a consumer's outstanding balances and new transactions, prior to the consumer's failure to make a minimum payment within 60 days of the due date for that payment. As discussed in the supplementary information to § 226.9(g)(3)(i), amended TILA Section 171(b)(4)(A) requires that specific content be disclosed when a consumer's rate is increased based on a failure to make a minimum payment within 60 days of the due date for that payment. Specifically, TILA Section 171(b)(4)(A) requires the notice to state the reasons for the increase and that the increase will terminate no later than six months from the effective date of the change, provided

that the consumer makes the minimum payments on time during that period. The Board believes that the intent of this provision is to create a right for consumers whose rate is increased based on a payment that is more than 60 days late to cure that penalty pricing in order to return to a lower interest rate.

The Board believes that the disclosures associated with this ability to cure will be the most useful to consumers if they receive them after they have already triggered such penalty pricing based on a delinquency of more than 60 days. Under the Board's proposed rule, creditors will be required to provide consumers with a notice specifically disclosing a rate increase based on a delinquency of more than 60 days, at least 45 days prior to the effective date of that increase. The notice will state the effective date of the rate increase, which will give consumers certainty as to the applicable 6-month period during which they must make timely payments in order to return to the lower rate. If creditors were permitted to raise the rate applicable to all of a consumer's balances without providing an additional notice, consumers may be unsure exactly when their account became more than 60 days delinquent and therefore may not know the period in which they need to make timely payments in order to return to a lower rate.

The Board believes that many creditors will impose rate increases applicable to new transactions for consumers who make late payments that are 60 or fewer days late. For notices of such rate increases provided pursuant to § 226.9(g), § 226.9(g)(3)(i)(A)(5) requires that the notice describe the balances to which the current rate will continue to apply unless the consumer fails to make a minimum periodic payment within 60 days of the due date for that payment. The Board believes that this will result in consumers receiving a notice of the consequences of paying more than 60 days late and, thus, will

give consumers an opportunity to avoid a rate increase applicable to outstanding balances.

In addition, the Board notes that the Credit Card Act, as implemented in § 226.55(b)(4), does not permit a creditor to raise the interest rate applicable to a consumer's existing balances unless that consumer fails to make a minimum payment within 60 days from the due date. This differs from the Board's January 2009 FTC Act Rule, which permitted such a rate increase based on a failure to make a minimum payment within 30 days from the due date. The exception in § 226.9(g)(4)(iii) of the January 2009 Regulation Z Rule reflected the Board's understanding that some creditors might impose penalty pricing on new transactions based on a payment that is one or several days late, and therefore it might be a relatively common occurrence for consumers' accounts to become 30 days delinquent within the 45-day notice period provided for a rate increase applicable to new transactions. The Board believes that, given the 60-day period imposed by the Credit Card Act and § 226.55(b)(4), it will be less common for consumers' accounts to become delinquent within the original 45-day notice period provided for new transactions.

Proposed Changes to Commentary to § 226.9(g)

The commentary to § 226.9(g) generally is consistent with the commentary to § 226.9(g) of the January 2009 Regulation Z Rule, except for technical changes. In addition, the Board has amended comment 9(g)-1 to reference examples in § 226.55 that illustrate how the advance notice requirements in § 226.9(g) relate to the substantive rule regarding rate increases applicable to existing balances. Because, as discussed in the supplementary information to § 226.55, the Credit Card Act placed the substantive rule

regarding rate increases into TILA and Regulation Z, there Board believes that it is not necessary to repeat the examples under § 226.9.

~~**9(h) Consumer Rejection of Certain Significant Changes in Terms**~~

~~In the July 2009 Regulation Z Interim Final Rule, the Board adopted § 226.9(h), which provided that, in certain circumstances, a consumer may reject significant changes to account terms and increases in annual percentage rates. See 74 FR 36087 36091, 36096, 36099-36101. Section 226.9(h) implemented new TILA Section 127(i)(3) and (4), which like the other provisions of the Credit Card Act implemented in the July 2009 Regulation Z Interim Final Rule went into effect on August 20, 2009. See Credit Card Act § 101(a) (new TILA Section 127(i)(3)-(4)). However, several aspects of § 226.9(h) were based on revised TILA Section 171, which like the other statutory provisions addressed in this final rule goes into effect on February 22, 2010. Accordingly, because the Board is now implementing revised TILA Section 171 in § 226.55, the Board has modified § 226.9(h) for clarity and consistency.~~

~~**Application of Right to Reject to Increases in Annual Percentage Rate**~~

~~Because revised TILA Section 171 renders the right to reject redundant in the context of rate increases, the Board has amended § 226.9(h) to apply that right only to other significant changes to an account term. Currently, § 226.9(h) provides that, if a consumer rejects an increase in an annual percentage rate prior to the effective date stated in the § 226.9(e) or (g) notice, the creditor cannot apply the increased rate to transactions that occurred within fourteen days after provision of the notice. See § 226.9(h)(2)(i), (h)(3)(ii). However, under revised TILA Section 171 (as implemented in proposed § 226.55), a creditor is generally prohibited from applying an increased rate to~~