

~~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 is proposing to amend 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 provides 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 proposed rule – goes into effect on February 22, 2010. Accordingly, because the Board is now implementing revised TILA Section 171 in proposed § 226.55, the Board proposes to modify § 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 proposes to amend § 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(c) 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 transactions that occurred within fourteen days after provision of a § 226.9(c) or (g) notice regardless of whether the consumer rejects that increase. Similarly, although the exceptions in § 226.9(h)(3)(i) and revised TILA Section 171(b)(4) permit a creditor to apply an increased rate to an existing balance when an account becomes more than 60 days delinquent, revised TILA Section 171(b)(4)(B) (as implemented in proposed § 226.55(b)(4)(ii)) provides that the creditor must terminate the increase if the consumer makes the next six payments on or before the payment due date. Thus, with respect to

rate increases, the right to reject does not provide consumers with any meaningful protections beyond those provided by revised TILA Section 171. Accordingly, the Board believes that, on or after February 22, 2010, the right to reject will be unnecessary for rate increases. Indeed, once revised TILA Section 171 becomes effective, notifying consumers that they have a right to reject a rate increase could be misleading insofar as it could imply that a consumer who does so will receive some additional degree of protection (such as protection against increases in the rate that applies to future transactions).

Accordingly, the Board proposes to remove references to rate increases from § 226.9(h) and its commentary. Similarly, because the exception in § 226.9(h)(3)(ii) for transactions that occurred more than fourteen days after provision of the notice is based on revised TILA Section 171(d),¹⁵ the Board proposes to remove that exception from § 226.9(h) and incorporate it into proposed § 226.55. Finally, the Board proposes to redesignate comment 9(h)(3)-1 as comment 9(h)-1 and amend it to clarify that § 226.9(h) does not apply to increases in an annual percentage rate.

Repayment Restrictions

Because the repayment restrictions in § 226.9(h)(2)(iii) are based on revised TILA Section 171(c), the Board believes that those restrictions should be implemented with the rest of revised Section 171 in proposed § 226.55. Section 226.9(h)(2)(iii) implemented new TILA Section 127(i)(4), which expressly incorporated the repayment methods in revised TILA Section 171(c)(2). Because the rest of revised Section 171 would not be effective until February 22, 2010, the July 2009 Regulation Z Interim Final Rule

¹⁵ See 74 FR 36089-36090.

implemented new TILA Section 127(i)(4) by incorporating the repayment restrictions in Section 171(c)(2) into § 226.9(h)(2)(iii). See 74 FR 36089. However, the Board believes that – once revised TILA Section 171 becomes effective on February 22, 2010 – these repayment restrictions should be moved to § 226.55(c). In addition to being duplicative, implementing revised TILA Section 171(c)'s repayment methods in both § 228.9(h) and § 226.55(c) would create the risk of inconsistency. Furthermore, because these restrictions will generally be of greater importance in the context of rate increases than other significant changes in terms, the Board believes they should be located in proposed § 226.55. Accordingly, the Board proposes to move the provisions and commentary regarding repayment to proposed § 226.55(c)(2) and to amend § 226.9(h)(2)(iii) to include a cross-reference to § 226.55(c)(2).

The Board also proposes to amend comment 9(h)(2)(iii)-1 to clarify the application of the repayment methods listed in proposed § 226.55(c)(2) in the context of a rejection of a significant change in terms. As revised, this comment would clarify that, 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, when a creditor increases an annual percentage rate pursuant to § 226.55(b)(3), § 226.55(c)(2)(ii) permits the creditor to establish an amortization period for a protected balance of not less than five years, beginning no earlier than the effective date of the increase. Accordingly, when a consumer rejects a significant change in terms pursuant to § 226.9(h)(1), § 226.9(h)(2)(iii) permits the creditor to establish an amortization period for the balance on the account of not less than five years, beginning

no earlier than the date on which the creditor was notified of the rejection. The comment provides an illustrative example.

In addition, comment 9(h)(2)(iii)-2 would be revised to clarify the meaning of “the balance on the account” that is subject to the repayment restrictions in proposed § 226.55(c)(2). The revised comment would clarify that, 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). Furthermore, the revised comment would clarify that, 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 for purposes of § 226.9(h)(2)(iii) is the balance at the end of the day on which credit availability was terminated or suspended. However, if a creditor does not terminate or suspend credit availability, the balance on the account for purposes of § 226.9(h)(2)(iii) is the balance on a date that is not earlier than the date on which the creditor was notified of the rejection. An example is provided.

Additional Revisions to Commentary

Consistent with the proposed revisions discussed above, the Board proposes to make non-substantive, technical amendments to the commentary to § 226.9(h). In addition, for organizational reasons, the Board proposes to renumber comments 9(h)(2)(ii)-1 and -2. Finally, the Board proposes to amend comment 9(h)(2)(ii)-2 to clarify the application of the prohibition in § 226.9(h)(2)(ii) on imposing a fee or charge solely as a result of the consumer’s rejection of a significant change in terms. In particular, the revised comment would clarify that, if credit availability is terminated or

suspended as a result of the consumer's rejection, 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).

Section 226.10 Payments

~~Section 226.10, which implements TILA Section 164, currently contains rules regarding the prompt crediting of payments and is entitled "Prompt crediting of payments." 15 U.S.C. 1666c. As is discussed further in the section-by-section analysis, the Board is proposing to implement several new provisions of the Credit Card Act regarding payments in § 226.10, such as requirements regarding the permissibility of certain fees to make expedited payments. Several of these rules do not pertain directly to the prompt crediting of payments, but more generally to the conditions that may be imposed upon payments. Accordingly, the Board is proposing to amend the title of § 226.10 to "Payments" to more accurately reflect the content of amended § 226.10.~~

226.10(b) Specific Requirements for Payments

Cut-Off Times for Payments

~~TILA Section 164 states that payments received by the creditor from a consumer for an open-end consumer credit plan shall be posted promptly to the account as specified in regulations of the Board. The Credit Card Act amended TILA Section 164 to state that the Board's regulations shall prevent a finance charge from being imposed on any consumer if the creditor has received the consumer's payment in readily identifiable form, by 5 p.m. on the date on which such payment is due, in the amount, manner, and location indicated by the creditor to avoid the imposition of such a finance charge. While amended TILA Section 164 generally mirrors current TILA Section 164, the Credit Card~~

~~(iii) (A) If a notice provided pursuant to paragraph (g)(4)(i) of this section is included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement; or~~

~~(B) If a notice required by paragraph (g)(4)(i) of this section is not included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the reduction in credit limit may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(1) of this section.~~

(h) Consumer rejection of certain significant changes in terms. (1) Right to reject. If paragraph (c)(2)(iv)(B) of this section requires disclosure of the consumer's right to reject a significant change to an account term, the consumer may reject that change by notifying the creditor of the rejection before the effective date of the change.

(2) Effect of rejection. If a creditor is notified of a rejection of a significant change to an account term as provided in paragraph (h)(1) of this section, the creditor must not:

(i) Apply the change to the account;

(ii) Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

(iii) Require 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).

(3) Exception. Section 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.

~~12. Section 226.10 is revised to read as follows:~~

~~§ 226.10 Payments.~~

~~(a) General rule. A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.~~

~~(b) Specific requirements for payments. (1) General rule. A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.~~

~~(2) Examples of reasonable requirements for payments. Reasonable requirements for making payment may include:~~

~~(i) Requiring that payments be accompanied by the account number or payment stub;~~

~~(ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person (except as provided in paragraph (b)(3) of this section), provided that such cut-off times shall be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;~~

~~(iii) Specifying that only checks or money orders should be sent by mail;~~

~~(iv) Specifying that payment is to be made in U.S. dollars; or~~

~~(v) Specifying one particular address for receiving payments, such as a post office box.~~

~~5. Clear and conspicuous standard. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(g).~~

~~6. Terminology. See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(g).~~

~~9(g)(4) Exception for decrease in credit limit.~~

~~1. The following illustrates the requirements of § 226.9(g)(4). Assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to § 226.9(g)(4) on January 1, stating among other things that the penalty rate would apply if the consumer's balance exceeded the new credit limit as of February 16. If the consumer's balance exceeded the credit limit on February 16, the creditor could impose the penalty rate on that date. However, a creditor could not apply the penalty rate if the consumer's balance did not exceed the new credit limit on February 16, even if the consumer's balance had exceeded the new credit limit on several dates between January 1 and February 15. If the consumer's balance did not exceed the new credit limit on February 16 but the consumer conducted a transaction on February 17 that caused the 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) an increase in an annual percentage rate applicable to a consumer's account; (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). 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:~~