

~~credit or other features. Thus, a creditor that treats an upgrade of a consumer's account as a change in terms would be required to provide the consumer 45 days' advance notice before increasing the rate for new transactions or increasing the amount of any applicable fees to the account in those circumstances.~~

~~The Board is aware that some creditors have raised concerns about the 45-day notice requirement causing an undue delay when a consumer requests that his or her account be changed to a different product offered by the creditor, for example to take advantage of a rewards or other program. The Board has sought, in part, to address these concerns in proposed comment 5(b)(1)(i)-6, discussed above. The Board also continues to believe that the proposed clarification to comment 9(c)(2)(i)-3 is appropriate for those circumstances in which a creditor treats an upgrade of an account as a change in terms in accordance with proposed comment 5(b)(1)(i)-6. In addition, it would be difficult to define by regulation the circumstances under which a consumer is deemed to have requested the account upgrade, versus circumstances in which the upgrade is suggested by the creditor. The Board seeks further comment on the operational and other burdens that would be associated with the proposed revision to comment 9(c)(2)(i)-3.~~

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 currently requires 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.

The Credit Card Act amended TILA Section 127(d) to eliminate the provision permitting creditors to provide an alternative delayed notice. Thus, all creditors will be required 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. Creditors 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 is proposing to delete § 226.9(e)(2) and to renumber § 226.9(e)(3) as § 226.9(e)(2). The Board also proposes 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).

In addition, amended 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 a periodic or other fee for renewal of the credit or charge card account. The Board proposes to amend § 226.9(e)(1) to provide that the renewal notice must be provided in those circumstances. The amended language in proposed § 226.9(e)(1)

would state, 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 proposes 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.

The Board notes that 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.

The Board considered an alternative interpretation of amended TILA Section 127(d) that would have required that the renewal disclosures be provided for all changes

in account terms that have not been previously disclosed, even 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. However, the Board believes that providing a renewal notice in these circumstances would not provide a meaningful benefit 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).

Proposed § 226.9(e)(1) would further clarify 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 is proposing 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), implements 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(e) 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). The general rule is set forth in proposed § 226.9(g)(1) and provides 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 limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.~~

~~(d) Finance charge imposed at time of transaction. (1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.~~

~~(2) The card issuer, other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for the purposes of §§ 226.5a, 226.6 and 226.7.~~

(e) Disclosures upon renewal of credit or charge card. (1) Notice prior to renewal. A card issuer that imposes 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 or 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. If the card issuer imposes any annual or other periodic fee for renewal, the notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which any renewal fee is initially charged to the account. If the card issuer has changed or amended any term required to be disclosed under § 226.(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. The notice shall contain the following information:

(i) The disclosures contained in § 226.5a(b)(1) through (b)(7) that would apply if the account were renewed,^{20a} and

(ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee, if applicable.

(2) Notification on periodic statements. The disclosures required by this paragraph may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer shall include a reference to those disclosures on the front of the statement.

~~(f) Change in credit card account insurance provider. (1) Notice prior to change. If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open end credit card account of the type subject to § 226.5a, the card issuer shall mail or deliver to the cardholder written notice of the change not less than 30 days before the change in provider occurs. The notice shall also include the following items, to the extent applicable:~~

- ~~(i) Any increase in the rate that will result from the change;~~
- ~~(ii) Any substantial decrease in coverage that will result from the change; and~~
- ~~(iii) A statement that the cardholder may discontinue the insurance.~~

~~(2) Notice when change in provider occurs. If a change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items, to the extent applicable:~~

- ~~(i) The name and address of the new insurance provider;~~

^{20a} [Reserved]

~~§ 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and~~

~~iv. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.~~

9(d) Finance charge imposed at time of transaction.

~~1. Disclosure prior to imposition. A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.~~

9(e) Disclosures upon renewal of credit or charge card.

1. Coverage. This paragraph applies to credit and charge card accounts of the type subject to § 226.5a. (See § 226.5a(a)(5) and the accompanying commentary for discussion of the types of accounts subject to § 226.5a.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account or if the card issuer 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, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in § 226.5a.

2. Form. The disclosures under this paragraph must be clear and conspicuous, but need not appear in a tabular format or in a prominent location. The disclosures need not be in a form the cardholder can retain.

3. Terms at renewal. Renewal notices must reflect the terms actually in effect at the time of renewal. For example, a card issuer that offers a preferential annual percentage rate to employees during their employment must send a renewal notice to employees disclosing the lower rate actually charged to employees (although the card issuer also may show the rate charged to the general public).

4. Variable rate. If the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose the rate in effect at the time of mailing or delivery of the renewal notice. Alternatively, the card issuer may use the rate as of a specified date within the last 30 days before the disclosure is provided.

5. Renewals more frequent than annual. If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card issuer may provide the notice no less than once every 12 months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also discloses the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal-notice period has expired. For example, if a \$2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is \$2, the annualized fee is \$24, and \$2 will be billed to the account each

month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose the fact.

6. Terminating credit availability. Card issuers have some flexibility in determining the procedures for how and when an account may be terminated. However, the card issuer must clearly disclose the time by which the cardholder must act to terminate the account to avoid paying a renewal fee, if applicable. State and other applicable law govern whether the card issuer may impose requirements such as specifying that the cardholder's response be in writing or that the outstanding balance be repaid in full upon termination.

7. Timing of termination by cardholder. When a card issuer provides notice under § 226.9(e)(1), a cardholder must be given at least 30 days or one billing cycle, whichever is less, from the date the notice is mailed or delivered to make a decision whether to terminate an account.

8. Timing of notices. A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.

9. Prompt reversal of renewal fee upon termination. In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account, the card issuer must reverse or otherwise withdraw the fee promptly. Once a cardholder has terminated an account, no additional action by the cardholder may be required.

9(e)(2) Notification on periodic statements.

1. Combined disclosures. If a single disclosure is used to comply with both §§ 226.9(e) and 226.7, the periodic statement must comply with the rules in §§ 226.5a and 226.7. For example, a description substantially similar to the heading describing the grace period required by § 226.5a(b)(5) must be used and the name of the balance-calculation method must be identified (if listed in § 226.5a(g)) to comply with the requirements of § 226.5a. A card issuer may include some of the renewal disclosures on a periodic statement and others on a separate document so long as there is some reference indicating that the disclosures relate to one another. All renewal disclosures must be provided to a cardholder at the same time.

2. Preprinted notices on periodic statements. A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.

~~9(f) Change in credit card account insurance provider.~~

~~1. Coverage. This paragraph applies to credit card accounts of the type subject to § 226.5a if credit insurance (typically life, disability, and unemployment insurance) is offered on the outstanding balance of such an account. (Credit card accounts subject to § 226.9(f) are the same as those subject to § 226.9(e); see comment 9(e) 1.) Charge card accounts are not covered by this paragraph. In addition, the disclosure requirements of this paragraph apply only where the card issuer initiates the change in insurance provider.~~