

~~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(c), 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(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). 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.

9(g)(2) Timing of Written Notice

Proposed paragraph (g)(2) sets forth the timing requirements for the notice described in paragraph (g)(1), and states 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.

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

Proposed paragraph (g)(3) sets forth the content and formatting requirements for notices provided pursuant to § 226.9(g). Proposed § 226.9(g)(3)(i)(A) sets 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 is proposing a separate § 226.9(g)(3)(i)(B) that would contain 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) provides 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) sets 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 notice must 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) implements 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) need not 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 believes that a right to reject penalty rate increases is

unnecessary in light of the new substantive rule on rate increases in proposed § 226.55. Accordingly, for penalty rate increases no disclosure of a right to reject need be provided.

Proposed paragraph (g)(3)(ii) sets forth the formatting requirements for a rate increase due to default, delinquency, or as a penalty. These requirements are 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 considering retaining the original July 1, 2010 effective date of the January 2009 Regulation Z Rule for the tabular formatting requirements.

The Board is proposing 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 Board would amend 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.

9(g)(4) Exceptions

Proposed § 226.9(g)(4) sets 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) clarifies 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 proposal implements 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.

As discussed in the supplementary information to § 226.9(c)(2)(v), 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 notes that one respect in which proposed § 226.9(g)(4) differs from the January 2009 Regulation Z Rule is that it does 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. As discussed in the supplementary information to proposed § 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.

In addition, the Board notes that the Credit Card Act, as implemented in proposed § 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 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)~~

~~(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and~~

~~(iii) A statement that the cardholder may discontinue the insurance.~~

~~(3) Substantial decrease in coverage. For purposes of this paragraph, a substantial decrease in coverage is a decrease in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance.~~

~~Significant terms of coverage include, for example, the following:~~

~~(i) Type of coverage provided;~~

~~(ii) Age at which coverage terminates or becomes more restrictive;~~

~~(iii) Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;~~

~~(iv) Eligibility requirements and number and identity of persons covered;~~

~~(v) Definition of a key term of coverage such as disability;~~

~~(vi) Exclusions from or limitations on coverage; and~~

~~(vii) Waiting periods and whether coverage is retroactive.~~

~~(4) Combined notification. The notices required by paragraph (f)(1) and (2) of this section may be combined provided the timing requirement of paragraph (f)(1) of this section is met. The notices may be provided on or with a periodic statement.~~

~~(g) Increase in rates due to delinquency or default or as a penalty. (1) Increases subject to this section. For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraph (g)(4) of this section, a creditor must provide a written notice to each consumer who may be affected when:~~

- (i) A rate is increased due to the consumer's delinquency or default; or
- (ii) A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

(2) Timing of written notice. Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, the creditor shall provide written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase.

(3)(i) Disclosure requirements for rate increases. (A) General. If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

- (1) A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;
- (2) The date on which the delinquency or default rate or penalty rate will apply;
- (3) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;
- (4) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied; and
- (5) 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.

(B) Rate increases resulting from failure to make minimum periodic payment within 60 days from due date. For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to § 226.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (g)(1) of this section must also contain the following information:

(1) A statement of the reason for the increase; and

(2) 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.

(ii) Format requirements. (A) If a notice required by paragraph (g)(1) of this section is included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement.

(B) If a notice required by paragraph (g)(1) of this section is not included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(4) of this section.

(4) Exception for decrease in credit limit. A creditor is not required to provide, prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, a notice pursuant to paragraph (g)(1) of this section, provided that:

(i) The creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes:

(A) A statement that the credit limit on the account has been or will be decreased.

(B) A statement indicating the date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

(C) A statement that the penalty rate will not be imposed on the date specified in paragraph (g)(4)(i)(B) of this section, if the outstanding balance does not exceed the credit limit as of that date;

(D) The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite time period;

(E) A statement indicating to which balances the penalty rate may be applied; and

(F) 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 the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(ii) The creditor does not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice and described in paragraph 9(g)(4)(i)(B) of this section.

(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~~

~~reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice.~~

9(g) Increase in rates due to delinquency or default or as a penalty.

1. Relationship between § 226.9(c) and (g) and § 226.55— examples. Card issuers subject to § 226.55 are prohibited from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in § 226.55(b). See comments 55(a)-1 and 55(b)-3 and the commentary to § 226.55(b)(4) for examples that illustrate the relationship between the notice requirements of § 226.9(c) and (g) and § 226.55.

2. Affected consumers. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

3. Combining a notice described in § 226.9(g)(3) with a notice described in § 226.9(c)(2)(iv). If a creditor is required to provide notices pursuant to both § 226.9(c)(2)(iv) and (g)(3) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

4. Content. Sample G-22 contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate on a consumer's credit card account is being increased to a penalty rate as described in § 226.9(g)(1)(ii), based on a late payment that is not more than 60 days late. Sample G-23 contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate increase is triggered by a delinquency of more than 60 days.

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~~