

From: Corporate Compliance and Security, Colleen Lynch  
Subject: Reg Z - Truth in Lending

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Comments:

Good afternoon,

We (association comprised of 50 financial institutions) have an operational issue that we believe renders the need to disclose the right to reject in the 45 day notice of a penalty rate increase somewhat misleading and not necessary. A brief summary of our processing of penalty rates may be necessary to understand the issue. Prior to the rule amendment, under our processing system, monthly statements generated and rate increases went into effect if no payment was received after 30, 60 or 90 days (depending upon each client's program). To prevent penalty rate increases from going into effect until proper notice, we are setting our system so that such increases will only go into effect for all clients with penalty pricing only after 60 days delinquency, which is at day 90 in our system. The rate increase will not go into effect if the cardholder makes payment before day 90, i.e. before being 60 days late (the system cannot support a rate increase with payment before the set time for rate increase).

To allow for 45 days notice, we have set up notice to go out immediately after 30 days delinquency, prior to the cardholder being 60 days delinquent. Our notice would state that "the penalty rate has been triggered due to the cardholder's nonpayment and the APR would increase to XX on (a fixed date 60 days from date of notice) unless the cardholder makes payment prior to this date. The rate increase would be effective indefinitely unless the cardholder makes the minimum payment by the due date for 6 consecutive months."

We are trying to determine if and how we should include the right to reject without confusing our cardholders considering the following. If the cardholder makes payment before the date of the increase (within 60 days), regardless of whether or not they call in to reject, the rate won't go up. If the cardholder does not make payment, the payment would be 60 days late and regardless of whether or not they call in to reject, the rate would go up. (We are relying on the exception in 226.9(h)(3)(i) that if payment 60 days late, no right to reject is required.) Due to the timing and what is in essence a grace period for the penalty pricing, which we cannot get around due to system settings, we believe that to include a right of rejection that really has no effect would mislead the cardholder to think they could reject even with the language "unless we haven't received the minimum payment due within 60 days of the due date." Notwithstanding cardholder confusion, to include a right to reject and 1-800 number would be a waste of resources and the cardholder's time because if they don't make payment they can't reject and if they do make payment, they didn't need to reject. We are therefore proposing not to include the right to reject in reliance on the exception in 226.9(h)(3)(i) that if payment 60 days late, no right to reject is required.

We considered the following alternatives to avoid this situation altogether, but our processor doesn't support the functionality at the current time (still in discussions):

-At 60 days, if clients don't reject rate increase but make payment, we would increase the rate at day 90 - BUT system doesn't support rate increase if payment made prior to day 90.

-We would set system to trigger notice at 60 days with rate increase 60 days thereafter (similar to sample in comment 9(h)(3)(i)-1) at day 120 - BUT no day 120 setting to trigger rate increase and if there were if cardholder makes payment, rate wouldn't increase.

Please advise if our solution is acceptable or if our interpretation is correct. If you see an alternative option or solution to our problem, we welcome your input and further discussion. I thank you for your time and look forward to hearing from you.

Colleen Lynch  
Corporate Compliance and Security