

The Fear of Change: Is Your Credit Union Required to Provide a Change-In-Terms Notice? (Compilation)

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NAFCU's compliance team often receives questions related to regulatory requirements for providing change-in-terms disclosures for different credit union products. This is the compilation of a series of three blogs to help you understand and navigate the numerous regulations governing change-in-term requirements. The following chart covers several key regulations governing change-in-terms notices for checking and savings accounts. In general, these laws and regulations require a credit union to provide its members with change-in-terms notices before most changes in account terms.

Checking and Savings Accounts					
Regulation	Citation	Notice Requirement	Form of the Notice	Exceptions	Model Language, Forms & Disclosure Requirements
Truth in Savings Act	12 CFR §707.5(a) .	<p>30 calendar days advance notice for changes in particular terms that are required to be disclosed prior to account opening when those changes would be adverse to the member. Notice must include the effective date of the change.</p> <p>Listed in section 707.4(b), these terms include:</p> <ul style="list-style-type: none"> • The annual percentage yield (APY) and dividend rate; • Any fee that may be imposed in connection with the account; • The frequency for compounding and crediting dividends; and • Any minimum balance requirements to open the account or avoid fees. 	Written notice required.	<ul style="list-style-type: none"> • Changes in the dividend rate and corresponding changes in the APY for variable-rate accounts; • Changes in fees for check printing; and • Changes in any term for term share accounts with maturities of one month or less. See, 12 CFR § 707.5(a)(2). • Disclosures required by and provided in accordance with the Electronic Fund Transfer Act and its implementing Regulation (Reg. E), may be substituted for the disclosures required by section 707.3. See, 12 CFR §707.3(c). 	<p>Appendix B to Part 707 provides a model clause for change-in-terms notices required under the rule and recommends the use of as simple language as possible to convey the change-in-terms.</p> <p>According to the Official Staff Commentary in Appendix C, it may be included on a periodic statement or other mailing. If all new disclosures are provided, the change must be highlighted in some manner.</p>

Regulation CC	12 CFR § 229.18(e) .	<p>At least 30 days before implementing a change to credit union funds availability policies.</p> <p>For changes that result in faster availability for a member than what Regulation CC requires, notice is required no later than 30 days after implementation.</p>	<p>In any form as long as it is clear and conspicuous.</p>		<p>According to the Commentary in Appendix E, if all new disclosures are provided, the credit union must direct the customer to the changed terms by highlighting the change or using a cover letter or insert.</p>
Electronic Fund Transfers Act	12 CFR § 1005.8(a)(1) .	<p>At least 21 days before the effective date of any change in a term or condition that would result in:</p> <ul style="list-style-type: none"> • Increased fees to the member; • Increased liability for the member; • Fewer types of available electronic fund transfers; or • Stricter limitations on the frequency of dollar amount of transfers. <p>Terms or conditions required to be disclosed can be found in section 1005.7(b) and include:</p> <ul style="list-style-type: none"> • Liability of consumer; • Telephone number and address for reporting unauthorized electronic funds transfers; • The credit union's business days; • Types of transfers and limitations; • Fees; • Documentation; 	<p>Written notice.</p>	<ul style="list-style-type: none"> • If an immediate change in terms is necessary to maintain or restore the security of an account or an electronic fund transfer system. • When closing some of the credit union's ATMs or cancelling an "access device," such as a debit or ATM card. • When a credit union changes the telephone number or address used for reporting unauthorized transactions, a change-in-terms notice is required only if the credit union plans to impose liability on the member for unauthorized transfers. 	<p>According to the Official Staff Interpretation to Regulation E, no specific form or wording is required for the change-in-terms notice.</p> <p>The notice can appear on a periodic statement or may be given by sending a copy of a revised disclosure statement if the change is highlighted.</p>

		<ul style="list-style-type: none"> • A summary of the consumer's right to stop payment; • A summary of the credit union's liability to the consumer for failure to make or to stop certain transfers; • Error resolution; and • ATM fees. 			
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Similar to the regulations governing change-in-term notices for savings and checking accounts, Regulation Z requires a credit union to provide its members with change-in-terms notices before most changes in loan terms. The following chart covers the basics of the change-in-terms provisions for open-end credit; however, the regulation contains additional provisions and details for specific circumstances. This chart is a helpful starting place, but credit unions researching an open-end credit change-in-terms question should review the full regulation for more specific guidance.

Consumer Credit: Open-end Credit					
Regulation	Citation	Notice Requirement	Form of the Notice	Exceptions	Model Language, Forms & Disclosure Requirements
Truth in Lending Act	12 CFR § 1026.9(c)(2)(i)(A) .	<p>At least 45-days advance notice to affected members when making a "significant change in account terms" to a members account.</p> <p>A significant term under 12 CFR § 1026.9(c)(2)(ii) is defined as:</p> <ul style="list-style-type: none"> • A change to a term required to be disclosed under Sections 1026.6(b)(1) and (b)(2) which include: the annual percentage rate (APR), penalty rates, account fees (such as late fees, cash advance fees, returned payment fees, balance transfer fees, transaction charges and 	<p>Written notice.</p> <p>The notice must be clear and conspicuous and in a form the consumer can keep. <i>See</i>, comment 9 to 9(c)(2)(iv), section 5(a) and comments to 5(a)(1).</p>	<p>The 45-day timing requirement does not apply if the consumer has agreed to a particular change, such as when a member substitutes collateral. <i>See</i>, 12 CFR 1026.9(c)(2).</p> <p>The exception does not apply to:</p> <ul style="list-style-type: none"> • A member's general acceptance of a credit union's reservation of the right to change terms; • A member's use of the account (which might 	<p>The regulation requires the change-in-terms notice to be similar in format to the account opening disclosures, in tabular format with headings, substantially similar to the tables in Sample G-17, Appendix G. <i>See</i>, 12 CFR § 1026.9(c)(2)(iv)(D)(1).</p> <p>Notice included with a periodic statement</p> <p>Credit unions are required to provide the</p>

		<p>over the limit fees), grace periods; balance computation method; and the amount of available credit;</p> <ul style="list-style-type: none"> • An increase in the required minimum periodic payment, a change to a term required to be disclosed under Section 1026.6(b)(4); or • The acquisition of a security interest. <p>Credit unions are also required to provide advance notice before increasing any component of a charge, or including any new charge that would be required to be disclosed under section 1026.6(b)(3) and that is not defined as a "significant change in account terms." Examples of these types of charges include:</p> <ul style="list-style-type: none"> • Fees to obtain cash advances from proprietary ATMs; • Fees to expedite delivery of credit cards; • Fees for increasing a credit limit; or • Fees to pay by telephone or internet. <i>See</i>, 12 CFR § 1026.9, Supp. I, comment to (c)(2)(iii) – 1. <p>In addition, 45 days advance notice before imposing any over-the-limit fees or penalty rates that occur solely because of a member exceeding a newly</p>	<p>Fee-related changes in account terms that do not need to be disclosed under 6(b)(1) or (b)(2) but do under (b)(3), the notice may be written or oral but must be at a time and in a manner that is likely to be noticed by the member.</p>	<p>imply acceptance of terms under state law);</p> <ul style="list-style-type: none"> • A member's acceptance of a unilateral change that is not particular to that member; and • The member's request to reopen a closed account or to upgrade an existing account to another account with different features. <i>See</i>, 12 CFR § 1026.9(c)(2)(i)(B). <p>In addition, credit unions are not required to provide notice for any of the following:</p> <ul style="list-style-type: none"> • Reductions in any component of a finance or other charge; • The substitution of one issuer for another; • A termination or suspension of credit privileges; or • When extending a grace period; • If the credit plan allows for temporary reductions in interest rates or fees (including skipped or reduced payment features), provided that the credit union disclosed these features in advance; • Before rate increases under properly disclosed variable rate plans (the 	<p>table on the front of any page of the statement, immediately following the other change-in-terms disclosures, and in a format substantially similar to Samples G-20 or G-21 in Appendix G. <i>See</i>, 12 CFR § 1026.9(c)(2)(iv)(D)(2).</p> <p><u><i>Notice separately from a periodic statement</i></u></p> <p>Any changes in account terms required to be disclosed in tabular format must be disclosed either on the first page or segregated on a separate page from other information. If the table is segregated on a separate page, it must immediately follow the other change-in-terms disclosures. The table must be in a format substantially similar to Samples G-20 or G-21 in Appendix G. <i>See</i>, 12 CFR § 1026.9(c)(2)(iv)(D)(3).</p>
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		decreased credit limit. <i>See, 12 CFR § 1026.9(c)(2)(vi).</i>		<p>rate increase must be based on a publically available index that is not under the credit union's control);</p> <ul style="list-style-type: none"> • When the change in account terms is an increase in the APR, fees or other charges, or required minimum periodic payment due to the completion of a properly disclosed workout or temporary hardship arrangement. <i>See, 12 CFR § 1026.9(c)(2)(v); 12 CFR § 1026.9, Supp. I, comment to (c)(2)(v) – 2; and 12 CFR § 1026.9(c)(2)(v).</i> 	
Special Credit Card Rules					
Truth in Lending Act	12 CFR § 1026.9(c)(2)(iv)(B).	At least 45 days advance notice before the effective date of the proposed significant change to a credit card plan , a credit union must provide cardholders with the change-in-terms notice for general open-end credit plans, as well as an additional disclosure stating the member's right to reject the proposed change.	Written notice.	<p>The right to reject disclosure is not required in the following cases:</p> <ul style="list-style-type: none"> • An increase in the required minimum periodic payment; • An increase in a fee as a result of a reevaluation of a determination made under § 1026.52(b)(1)(i); • An adjustment to the safe harbors in § 1026.52(b)(1)(ii) to reflect changes in the Consumer Price Index; • A change in an annual percentage rate 	<p>Under section 1026.9(c)(2)(iv)(B), the disclosure must include:</p> <ul style="list-style-type: none"> • A statement that the member has the right to reject the proposed change; • Instructions for rejecting the change and a toll-free telephone number that the member may use to notify the credit union of the rejection; and • If applicable, a statement that if the

				<p>applicable to a consumer's account</p> <ul style="list-style-type: none"> • An increase in a fee previously reduced consistent with the SCRA or a similar law if the amount of the increased fee does not exceed the amount of that fee prior to the reduction; or • 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. <i>See, 12 CFR § 1026.9(c)(2)(iv)(B).</i> 	<p>member rejects the change, the member's ability to use the account for further advances will be terminated or suspended.</p> <p>If a member exercises the right to reject significant changes in account terms, a credit union may not apply the changes to the account, impose a fee or treat the account in default solely because of the rejection. <i>See, 12 CFR § 1026.9(h)(2).</i></p> <p>The regulation also requires credit unions to treat the balances as a "protected balance" under section 1026.55(c).</p>
Home Secured Credit Plans: Home Equity Lines of Credit (HELOCs)					
Truth in Lending Act	12 CFR § 1026.9(c)(1)(i) .	At least 15 days prior to the effective date of the change , unless an exception applies, whenever a credit union proposes to change an account term required to be disclosed at account opening under section 1026.6(a) or increase the required periodic payment. These account opening disclosures include finance charges as well as any other charges.	Written notice mailed or delivered to affected members.	<p>Notice is generally not required when a credit union implements changes which were initially disclosed, such as rate increases under disclosed, variable-rate plan or increases related to a loss of an employee discount or a balance-based discount. <i>See, 12 CFR § 1026, Supp. I, comment 1026.9(c)(1) – 1.</i></p> <p>Notice is not required involving a reduction of any component of a finance charge or other charge, or</p>	<p>The credit union may provide the change-in-terms notice by giving its members a complete new set of initial disclosures so long as the change is highlighted in some way.</p> <p>Alternatively, the disclosure statement may accompany a letter or insert that indicates or draws attention to the charge.</p> <p>When the term change is the addition of a security</p>
		No later than three business days after the action is taken , if the credit union prohibits			

		<p>additional extensions of credit or reduces the credit limit.</p> <p>The notice may be mailed or delivered as late as the effective date of the change if:</p> <ul style="list-style-type: none"> • There is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default; or <p>The consumer agrees to a particular change (for use when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount.). <i>See, 9(c)(1)(i) and comment 3.</i></p>		<p>when the changes result from an agreement involving a court proceeding.</p> <p>The commentary provides some examples of changes that do not require notice, including:</p> <ul style="list-style-type: none"> • A change in the member's credit limit; • The substitution of one issuer for another; or • Changes arising merely by operation of law such as automatic changes to the security interest. <i>See, 12 CFR § 1026, Supp. I, comment 1026.9(c)(1)(ii) – 1.</i> <p>If the HELOC plan allows a member to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in account terms is required either prior to the reduction or upon reinstatement of the higher rates if these features were explained in the initial disclosure statement.</p> <p>Notice is not required when credit unions freeze or reduce a credit line, rather than terminating a plan and accelerating the balance.</p>	<p>interest or the addition or subtraction of collateral, a credit union may satisfy the change-in-terms requirements by providing a copy of the new security agreement that describes the collateral.</p>
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The change-in-terms provisions are different for closed-end consumer credit products such as mortgages, auto loans and loans secured by other types of personal property that do not contemplate repeated transactions. Regulation Z does not typically contemplate changes in account terms for closed-end credit plans. Changes to closed-end credit products which fall short of a refinancing (a new transaction requiring a complete new set of disclosures), are largely governed by state contract law and the agreement with the member. In addition to any state contract law requirements, NCUA issued a [Supervisory Letter](#) on workout agreements and loan modification programs, which provides helpful guidance. This last chart covers several key regulations governing change-in-terms notices for closed-end credit.

Consumer Credit: Closed-end Credit					
Regulation	Citation	Notice Requirement	Form of the Notice	Exceptions	Model Language, Forms & Disclosure Requirements
Truth in Lending Act	12 CFR § 1026.20 .	<p>No change-in-terms notice typically contemplated in Regulation Z for closed-end credit plans; however, there are some provisions in section 1026.20.</p> <p>Additional disclosures required for loan modifications that fall within the definition of "refinancing."</p> <p>A loan modification is considered a "refinancing" if:</p> <ul style="list-style-type: none"> • There is a new transaction; • With the same creditor; • With the same consumer (transactions with a different consumer and the same creditor are subject to the rules on assumptions); • The existing obligation is closed-end and subject to TILA disclosures (a different disclosure regime applies to changes in the terms of open-end credit); and 	Written disclosures, when applicable.	<p>Generally, credit unions are not required to provide notice when they implement changes involving a reduction of any component of a finance charge or other charge, or when the changes result from an agreement involving a court proceeding.</p> <p>Notice is not required for the following, since they are not treated as refinancings by Regulation Z:</p> <ul style="list-style-type: none"> • A renewal of a single payment obligation with no change in the original terms; • A reduction in the annual percentage rate with a corresponding change in the payment schedule; • An agreement involving a court proceeding; 	

		<ul style="list-style-type: none"> • The new obligation satisfies and replaces the existing obligation. <p>The loan agreement and state law will determine whether a particular transaction "satisfies" and "replaces" an existing obligation.</p>		<ul style="list-style-type: none"> • A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in §1026.4(d); • The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart. <i>See, 12 CFR §1026.20(a).</i> <p>Notice is not required prior to the reduction or upon reinstatement of a higher rate, provided the features were explained in the initial disclosure statement, when a HELOC plan allows a member to:</p> <ul style="list-style-type: none"> • Skip or reduce one or more payments during the year, or • Involves temporary reductions in finance charges. 	
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				<ul style="list-style-type: none"> • In addition, the rule provides exemptions for changes in the payment schedule because of the member's default or delinquency. 	
<p>Truth in Lending Act</p> <p><i>Adjustable Rate Mortgages (ARMs) Rules</i></p>	<p>12 CFR § 1026.20(c).</p>	<p>A credit union is required to provide notice of an interest rate adjustment that results in an adjustment to the required payment at least 60 days but no more than 120 days before the first payment at the adjusted level is due.</p> <p>For ARMs with uniformly scheduled rate adjustments, (such as an adjustment every 60 days), and for ARMs originated prior to January 10, 2015, in which the adjusted interest rate and payment are calculated based on a date that is less than 45 days prior to the adjustment date, credit unions are required to provide notice to at least 25 days but no more than 120 days before the first payment at the adjusted level.</p> <p>If the first adjustment will occur within the first 210 after closing, the adjustment disclosure must be provided at consummation. See, 12 CFR § 1026.20(d).</p> <p>As soon as practicable, but not less than 25 days before the first payment at the adjusted level is due, for the first</p>	<p>Written notice.</p>	<p>The requirements of paragraph (c) do not apply to:</p> <ul style="list-style-type: none"> • ARMs with terms of one year or less; • The first interest rate adjustment to an ARM if the first payment at the adjusted level is due within 210 days after consummation and the new interest rate disclosed at consummation pursuant to §1026.20(d) was not an estimate; or • The creditor, assignee or servicer of an adjustable-rate mortgage when the servicer on the loan is subject to the Fair Debt Collections Practices Act (FDCPA) with regard to the loan and the consumer has sent a notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)). 	

		<p>adjustment to an ARM if it occurs within 60 days of consummation and the new interest rate disclosed at consummation pursuant to §1026.20(d) was an estimate.</p> <p><i>See also</i>, NAFCU's blog ARM Adjustment Disclosures: The Basics.</p>			
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