

~~made in person at branches of financial institutions, which the Board proposes to implement in new § 226.10(b)(3). Notwithstanding the general rule in proposed § 226.10(b)(2)(ii), card issuers that are financial institutions that accept payments in person at a branch or office may not impose a cut-off time earlier than the close of business of that office or branch, even if the office or branch closes later than 5 p.m. Accordingly, a financial institution that accepts payments at a branch or office that closes at 6 p.m. would be required to treat all payments received in person at the branch or office prior to 6 p.m. on the due date as timely. The Board notes that this rule refers only to payments made in person at the branch or office. Payments made by other means such as by telephone, electronically, or by mail would be subject to the general rule prohibiting cut-off times prior to 5 p.m., regardless of when a financial institution's branches or offices close. The Board notes that there may be creditors that are not financial institutions that accept payments in person, such as at a retail location, and believes that it is necessary for proposed § 226.10(b)(2)(ii) to refer to payments made in person in order to address cut-off times for such creditors that are not also subject to proposed § 226.10(b)(3).~~

~~The Board notes that the Credit Card Act applies the 5 p.m. cut-off time requirement to all open-end credit plans, including open-end (home secured) credit. Accordingly, proposed § 226.10(b)(2)(ii) would apply to all open-end credit. This is consistent with current § 226.10, which applies to all open-end credit.~~

#### Payments Made at Financial Institution Branches

The Credit Card Act amends TILA Section 127(b)(12) to provide that, for creditors that are financial institutions which maintain branches or offices at which

payments on credit card accounts are accepted in person, the date on which a consumer makes a payment on the account at the branch or office is the date on which the payment is considered to have been made for purposes of determining whether a late fee or charge may be imposed. 15 U.S.C. 1637(b)(12). The Board is proposing to implement the requirements of amended TILA Section 127(b)(12) that pertain to payments made at branches or offices of a financial institution in new § 226.10(b)(3). Section 226.10(b)(3), as adopted in the January 2009 Regulation Z Rule, would accordingly be renumbered as § 226.10(b)(4).

Proposed § 226.10(b)(3)(i) states that a card issuer that is a financial institution shall not impose a cut-off time earlier than the close of business for payments made in person on a credit card account under an open-end (not home-secured) consumer credit plan at any branch or office of the card issuer at which such payments are accepted. The proposed regulation further states that payments made in person at a branch or office of the financial institution during the business hours of that branch or office shall be considered received on the date on which the consumer makes the payment. Proposed § 226.10(b)(3) interprets amended TILA Section 127(b)(12) as requiring card issuers that are financial institutions to treat in-person payments they receive at branches or offices during business hours as conforming payments that must be credited as of the day the consumer makes the in-person payment. The Board believes that this is the appropriate reading of amended TILA Section 127(b)(12) because it is consistent with consumer expectations that in-person payments made at a branch of the financial institution will be credited on the same day that they are made.

The Board notes that neither the Credit Card Act nor TILA defines “financial institution.” In order to give clarity to card issuers, the Board proposes to adopt a definition of “financial institution,” for purposes of § 226.10(b)(3), in a new § 226.10(b)(3)(ii). Proposed § 226.10(b)(3)(ii) would state that “financial institution” has the same meaning as “depository institution” as defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)). The Board believes that this definition effectuates the purposes of amended TILA Section 127(b)(12) by including all banks and savings associations, while excluding entities such as retailers that should not be considered “financial institutions” for purposes of proposed § 226.10(b)(3). The Board solicits comment on whether an alternative definition would be appropriate. In particular, the Board solicits comment on whether there are other credit card issuers that should be considered “financial institutions” for purposes of the rule.

The Board also is proposing a new comment 10(b)-5 to clarify the application of proposed § 226.10(b)(3) for payments made at point of sale. Proposed comment 10(b)-5 would state that if a creditor that is a financial institution issues a credit card that can be used only for transactions with a particular merchant or merchants, and a consumer is able to make a payment on that credit card account at a retail location maintained by such a merchant, that retail location is not considered to be a branch or office of the creditor for purposes of § 226.10(b)(3). The Board believes that the intent of TILA Section 127(b)(12) is to apply only to payments made at a branch or office of the creditor, not to payments made at a location maintained by a third party that is not the creditor. This comment is intended to clarify that this rule does not apply when a retailer accepts

payments at its stores for a co-branded or private label credit card that is issued by a separate financial institution.

Finally, the Board also is proposing a new comment 10(b)-6 to clarify what constitutes a payment made “in person” at a branch or office of a financial institution. Proposed comment 10(b)-6 would state that for purposes of § 226.10(b)(3), payments made in person at a branch or office of a financial institution include payments made with the direct assistance of, or to, a branch or office employee, for example a teller at a bank branch. In contrast, the comment would provide that a payment made at the bank branch without the direct assistance of a branch or office employee, for example a payment placed in a branch or office mail slot, is not a payment made in person for purposes of § 226.10(b)(3). The Board believes that this is consistent with consumer expectations that payments made with the assistance of a financial institution employee will be credited immediately, while payments that are placed in a mail slot or other receptacle at the branch or office may require additional processing time.

~~**10(d) Crediting of Payments When Creditor Does Not Receive or Accept Payments on Due Date**~~

~~The Credit Card Act adopted a new TILA Section 127(o) that provides, in part, that if the payment due date for a credit card account under an open end consumer credit plan is a day on which the creditor does not receive or accept payments by mail (including weekends and holidays), the creditor may not treat a payment received on the next business day as late for any purpose. 15 U.S.C. 1637(o). New TILA Section 127(o) is similar to § 226.10(d) of the Board’s January 2009 Regulation Z Rule, with two notable differences. Amended § 226.10(d) of the January 2009 Regulation Z Rule stated~~

(3) In-person payments on credit card accounts. (i) General. A card issuer that is a financial institution shall not impose a cut-off time earlier than the close of business for payments on a credit card account under an open-end (not home-secured) consumer credit plan made in person at any branch or office of the card issuer at which such payments are accepted. Any such payment made in person at a branch or office of the card issuer earlier than the close of business of that branch or office shall be considered received on the date on which the consumer makes the payment.

(ii) Financial institution. For purposes of paragraph (b)(3) of this section, “financial institution” shall mean a “depository institution” as defined in 12 U.S.C. 1813(c).

(4) Nonconforming payments. If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

(c) Adjustment of account. If a creditor fails to credit a payment, as required by paragraphs (a) or (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer’s account so that the charges imposed are credited to the consumer’s account during the next billing cycle.

~~(d) Crediting of payments when creditor does not receive or accept payments on due date. If the due date for payments is a day on which the creditor does not receive or accept payments by mail, the creditor may generally not treat a payment received by any method the next business day as late for any purpose. However, if the creditor accepts or receives payments made on the due date by a method other than mail, such as electronic~~

~~2. Payment via creditor's Web site. If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site would generally be conforming payments for purposes of § 226.10(b).~~

~~3. Acceptance of nonconforming payments. If the creditor accepts a nonconforming payment (for example, payment mailed to a branch office, when the creditor had specified that payment be sent to a different location), finance charges may accrue for the period between receipt and crediting of payments.~~

~~4. Implied guidelines for payments. In the absence of specified requirements for making payments (See § 226.10(b)):~~

- ~~i. Payments may be made at any location where the creditor conducts business.~~
- ~~ii. Payments may be made any time during the creditor's normal business hours.~~
- ~~iii. Payment may be by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the creditor and consumer have so agreed.~~

~~5. Payments made at point of sale. If a creditor that is a financial institution issues a credit card that can be used only for transactions with a particular merchant or merchants, and a consumer is able to make a payment on that credit card account at a retail location maintained by such a merchant, that retail location is not considered to be a branch or office of the creditor for purposes of § 226.10(b)(3).~~

6. In-person payments on credit card accounts. For purposes of § 226.10(b)(3), payments made in person at a branch or office of a financial institution include payments made with the direct assistance of, or to, a branch or office employee, for example a teller

at a bank branch. A payment made at the bank branch without the direct assistance of a branch or office employee, for example a payment placed in a branch or office mail slot, is not a payment made in person for purposes of § 226.10(b)(3).

~~10(d) Crediting of payments when creditor does not receive or accept payments on due date.~~

~~1. Example. A day on which the creditor does not receive or accept payments by mail may occur, for example, if the U.S. Postal Service does not deliver mail on that date.~~

~~10(e) Limitations on fees related to method of payment.~~

~~1. Separate fee to allow consumers to make a payment. For the purposes of § 226.10(e), “separate fee” means a fee imposed on a consumer for making a single payment to the consumer’s account. A fees or other charge imposed if payment is made after the due date, such as a late fee or finance charge, is not a separate fee to allow consumers to make a payment for purposes of § 226.10(e).~~

~~2. Expedited. For purposes of § 226.10(e), the term “expedited” means crediting a payment the same day or, if the payment is received after any cut-off time established by the creditor, the next business day.~~

~~3. Service by a customer service representative. Service by a customer service representative of a creditor means any payment made to the consumer’s account with the assistance of a live representative or agent of the creditor, including those made in person, on the telephone, or by electronic means. A customer service representative does not include automated, means of making payment that do not involve a live representative or agent of the creditor, such as a voice response unit or interactive voice response system.~~