

~~suspended as a result of the consumer's rejection, a creditor is prohibited from imposing a periodic fee that was not charged before the consumer rejected the change (such as a closed account fee).~~

Section 226.10 Payments

~~Section 226.10, which implements TILA Section 164, currently contains rules regarding the prompt crediting of payments and is entitled "Prompt crediting of payments." 15 U.S.C. 1666c. As is discussed further in the section-by-section analysis, the Board is proposing to implement several new provisions of the Credit Card Act regarding payments in § 226.10, such as requirements regarding the permissibility of certain fees to make expedited payments. Several of these rules do not pertain directly to the prompt crediting of payments, but more generally to the conditions that may be imposed upon payments. Accordingly, the Board is proposing to amend the title of § 226.10 to "Payments" to more accurately reflect the content of amended § 226.10.~~

226.10(b) Specific Requirements for Payments

Cut-Off Times for Payments

TILA Section 164 states that payments received by the creditor from a consumer for an open-end consumer credit plan shall be posted promptly to the account as specified in regulations of the Board. The Credit Card Act amended TILA Section 164 to state that the Board's regulations shall prevent a finance charge from being imposed on any consumer if the creditor has received the consumer's payment in readily identifiable form, by 5 p.m. on the date on which such payment is due, in the amount, manner, and location indicated by the creditor to avoid the imposition of such a finance charge. While amended TILA Section 164 generally mirrors current TILA Section 164, the Credit Card

Act added the reference to a 5 p.m. cut-off time for payments received on the due date.

TILA Section 164 is implemented in § 226.10. The Board's January 2009 Regulation Z Rule addressed cut-off times by providing that a creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments. Section 226.10(b)(2)(ii) of the January 2009 Regulation Z Rule stated that a creditor may set reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person. Amended § 226.10(b)(2)(ii) provided a safe harbor for the reasonable cut-off time requirement, stating that it would be reasonable for a creditor to set a cut-off time for payments by mail of 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments. While this safe harbor referred only to payments received by mail, the Board noted in the supplementary information to the January 2009 Regulation Z Rule that it would continue to monitor other methods of payment in order to determine whether similar guidance was necessary. See 74 FR 5357.

As amended by the Credit Card Act, TILA Section 164 differs from § 226.10 of the January 2009 Regulation Z Rule in several respects. First, amended TILA Section 164 applies the requirement that a creditor treat a payment received by 5 p.m. on the due date as timely to all forms of payment, not only payments received by mail. In contrast, the safe harbor regarding cut-off times that the Board provided in § 226.10(b)(2)(ii) of the January 2009 Regulation Z Rule directly addressed only mailed payments. Second, while the Board's January 2009 Regulation Z Rule left open the possibility that in some circumstances, cut-off times earlier than 5 p.m. might be considered reasonable, amended

TILA Section 164 prohibits cut-off times earlier than 5 p.m. on the due date in all circumstances.

The Board proposes to implement amended TILA Section 164 in a revised § 226.10(b)(2)(ii). Proposed § 226.10(b)(2)(ii) would state that a creditor may set reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person, provided that such cut-off times must be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments. Creditors would be free to set later cut-off times; however, no cut-off time would be permitted to be earlier than 5 p.m. This paragraph, in accordance with amended TILA Section 164, would apply to payments received by mail, electronic means, telephone, or in person, not only payments received by mail.

Consistent with the January 2009 Regulation Z Rule, proposed § 226.10(b)(2)(ii) refers to the time zone of the location specified by the creditor for the receipt of payments. The Board believes that this clarification is necessary to provide creditors with certainty regarding how to comply with the proposed rule, given that consumers may reside in different time zones from the creditor. The Board believes that a rule requiring a creditor to process payments differently based on the time zone at each consumer's billing address could impose significant operational burdens on creditors. The Board solicits comment on whether this clarification continues to be appropriate for payments made by methods other than mail.

The Board notes that proposed § 226.10(b)(2)(ii) would generally apply to payments made in person. However, as discussed below, the Credit Card Act amends TILA Section 127(b)(12) to establish a special rule for payments on credit card accounts

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~~

~~due date for that payment.~~

~~12. Section 226.10 is revised to read as follows:~~

~~§ 226.10 Payments.~~

~~(a) General rule. A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.~~

(b) Specific requirements for payments. (1) General rule. A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.

(2) Examples of reasonable requirements for payments. Reasonable requirements for making payment may include:

(i) Requiring that payments be accompanied by the account number or payment stub;

(ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person (except as provided in paragraph (b)(3) of this section), provided that such cut-off times shall be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;

(iii) Specifying that only checks or money orders should be sent by mail;

(iv) Specifying that payment is to be made in U.S. dollars; or

(v) Specifying one particular address for receiving payments, such as a post office box.

~~i. Payment by check is received when the creditor gets it, not when the funds are collected.~~

~~ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.~~

~~iii. If the consumer elects to have payment made by a third party payor such as a financial institution, through a preauthorized payment or telephone bill payment arrangement, payment is received when the creditor gets the third party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under § 226.10(b).~~

~~iv. Payment made via the creditor's Web site is received on the date on which the consumer authorizes the creditor to effect the payment, even if the consumer gives the instruction authorizing that payment in advance of the date on which the creditor is authorized to effect the payment. If the consumer authorizes the creditor to effect the payment immediately, but the consumer's instruction is received after 5 p.m. or any later cut off time specified by the creditor, the date on which the consumer authorizes the creditor to effect the payment is deemed to be the next business day.~~

10(b) Specific requirements for payments.

1. Payment by electronic fund transfer. A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act.)

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~~