~~comment clarifies that, if a creditor terminates or suspends credit availability based on a consumer's rejection of a significant change in terms, the balance on the account for purposes of § 226.9(h)(2)(iii) is the balance at the end of the day on which credit availability was terminated or suspended. However, if a creditor does not terminate or suspend credit availability, the balance on the account for purposes of § 226.9(h)(2)(iii) is the balance on a date that is not earlier than the date on which the creditor was notified of the rejection. An example is provided.~~

~~Additional Revisions to Commentary~~

~~Consistent with the revisions discussed above, the Board has made non-substantive, technical amendments to the commentary to § 226.9(h). In addition, for organizational reasons, the Board has renumbered comments 9(h)(2)(ii)-1 and -2. Finally, the Board has amended comment 9(h)(2)(ii)-2 to clarify the application of the prohibition in § 226.9(h)(2)(ii) on imposing a fee or charge solely as a result of the consumer's rejection of a significant change in terms. In particular, the revised comment clarifies that, if credit availability is terminated or 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. In October 2009, the Board proposed 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 proposed to amend the title of § 226.10 to "Payments" to more accurately reflect the content of amended § 226.10. The Board received no comments on this change, which is adopted as proposed.

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 two 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.

In the October 2009 Regulation Z Proposal, the Board proposed to implement amended TILA Section 164 in a revised § 226.10(b)(2)(ii). Proposed § 226.10(b)(2)(ii) 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, 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. The Board is adopting § 226.10(b)(2)(ii) generally as proposed.

Consistent with the January 2009 Regulation Z Rule, proposed § 226.10(b)(2)(ii) referred to the time zone of the location specified by the creditor for the receipt of payments. The Board believed that this clarification was 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 noted 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 solicited comment on whether this clarification is appropriate for payments made by methods other than mail.

Consumer group commenters indicated that the cut-off time rule for electronic and telephone payments should refer to the consumer's time zone. These commenters believe that it is unfair for consumers to be penalized for making what they believe to be a timely payment based on their own time zone. In contrast, industry commenters stated that it is appropriate for the 5 p.m. cut-off time to be determined by reference to the time zone of the location specified for making payments, including for payments by means other than mail. These commenters specifically noted the operational burden that would be associated with a rule requiring a creditor to process payments differently based on the time zone of the consumer.

The final rule, consistent with the proposal, refers to the time zone of the location specified by the creditor for making payments. The Board believes that the benefit to consumers of a rule that refers to the time zone of the consumer's billing address would not outweigh the operational burden to creditors. As amended by the Credit Card Act, TILA contains a number of protections, including new periodic statement mailing requirements for credit card accounts implemented in § 226.5(b)(2)(ii), to ensure that consumers receive a sufficient period of time to make payments. The Board also notes that there may be consumers who are United States residents, such that Regulation Z would apply pursuant to comment 1(c)-1, but who have billing addresses that are outside of the United States. Thus, if the rule referred to the time zone of the consumer's billing address, a creditor might need to have many different payment processing procedures, including procedures for time zones outside of the United States.

Section 226.10(b)(2)(ii), consistent with the proposal, generally applies 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 is implementing in a 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. 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 are 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 thus is adopting a reference in § 226.10(b)(2)(ii) 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, § 226.10(b)(2)(ii), consistent with the proposal, applies to all open-end credit. This is consistent with current § 226.10, which applies to all open-end credit.

<u>Other Requirements for Conforming Payments</u>

One industry commenter asked the Board to clarify that an issuer can specify a single address for receiving conforming payments. The Board notes that § 226.10(b)(2)(v) provides "[s]pecifying one particular address for receiving payments" such as a post office box" as an example of a reasonable requirement for payments. Accordingly, the Board believes that no additional clarification is necessary. However, a creditor that specifies a single address for the receipt of conforming payments is still subject to the general requirement in § 226.10(b) that the requirement enable most consumers to make conforming payments.

The commenter further urged the Board to adopt a clarification to comment 10(b)-2, which states that if a creditor promotes electronic payment via its Web site, any payments made via the creditor's Web site are generally conforming payments for purposes of § 226.10(b). The commenter asked the Board to clarify that a creditor may set a cut-off time for payments via its Web site, consistent with the general rule in § 226.10(b). The Board agrees that this clarification is appropriate and has included a reference to the creditor's cut-off time in comment 10(b)-2.

Finally, the Board is adopting a technical revision to § 226.10(b)(4), which addresses nonconforming payments. Section 226.10(b)(4) states that 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. The Board has amended § 226.10(b)(4) to clarify that a creditor may only specify such requirements as are permitted under § 226.10. For example, a creditor may not specify requirements for making payments that would be unreasonable under § 226.10(b)(2), such as a cut-off time for mailed payments of 4:00 p.m., and treat payments received by mail between 4:00 p.m. and 5:00 p.m. as non-conforming payments.

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 proposed 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).

Proposed § 226.10(b)(3)(i) stated 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 proposal further provided 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) interpreted 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.

Several industry commenters stated that the Board should clarify the relationship between § 226.10(b)(3) and the general rule in § 226.10(b)(2) regarding cut-off times. These commenters indicated that it was unclear whether the Board intended to require that bank branches remain open until 5 p.m. if a card issuer accepts in-person payments at a branch location. The Board did not intend to require branches or offices of financial institutions to remain open until 5 p.m. if in-person credit card payments are accepted at that location. The Board believes that such a rule might discourage financial institutions from accepting in-person payments, to the detriment of consumers. The Board therefore is adopting § 226.10(b)(3)(i) generally as proposed, but has clarified that, notwithstanding § 226.10(b)(2)(ii), a card issuer may impose a cut-off time earlier than 5 p.m. for payments on a credit card account under an open-end (not home-secured) consumer credit plan made in person at a branch or office of a card issuer that is a financial institution, if the close of business of the branch or office is earlier than 5 p.m.

For example, if a branch or office of the card issuer closes at 3 p.m., the card issuer must treat in-person payments received at that branch prior to 3 p.m. as received on that date.

Several industry commenters stated that a card issuer should not be required to treat an in-person payment received at a branch or office as conforming, if the issuer does not promote payment at the branch. The Board believes that TILA Section 127(b)(12)(C) requires all card issuers that are financial institutions that accept payments in person at a branch or office to treat those payments as received on the date on which the consumer makes the payment. The Credit Card Act does not distinguish between circumstances where a card issuer promotes in-person payments at branches and circumstances where a card issuer accepts, but does not promote, such payments. The Board believes that the intent of TILA Section 127(b)(12)(C) is to require in-person payments to be treated as received on the same day, which is consistent with consumer expectations. Accordingly, § 226.10(b)(3) does not distinguish between financial institutions that promote in-person payments at a branch and financial institutions that accept, but do not promote, such payments.

Neither the Credit Card Act nor TILA defines "financial institution." In order to give clarity to card issuers, the Board proposed 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) stated that "financial institution" has the same meaning as "depository institution" as defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

Industry commenters noted that the Board's proposed definition of "financial institution" excluded credit unions. Consumer groups stated that a broader definition of "financial institution" including entities other than depository institutions, such as retail locations that accept payments on store credit cards for that retailer, would be appropriate in light of consumer expectations. The Board has revised § 226.10(b)(3)(ii) in the final rule to cover credit unions, because omission of credit unions in the proposal was an unintentional oversight. Section 226.10(b)(3)(ii) of the final rule states that a "financial institution" means a bank, savings association, or credit union. The Board believes that a broader definition of "financial institution" that includes non-depository institutions, such as retail locations, would not be appropriate, because the primary business of such entities is not the provision of financial services. The Board believes that the statute's reference to "financial institutions" contemplates that not all card issuers will be covered by this rule. The Board believes that the definition it is adopting effectuates the purposes of amended TILA Section 127(b)(12) by including all banks, savings associations, and credit unions, while excluding entities such as retailers that should not be considered "financial institutions" for purposes of proposed § 226.10(b)(3).

In October, 2009, the Board proposed 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 stated 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).

One industry commenter commented in support of proposed comment 10(b)-5, but asked that it be expanded to cover co-branded cards in addition to private label credit cards. This commenter pointed out that as proposed, comment 10(b)-5 applied only to private label credit cards, but the Board's supplementary information referenced co-branded credit cards. Consumer groups indicated that they believe proposed comment 10(b)-5 is contrary to consumer expectations. These commenters further stated that if a bank branch must credit payments as of the date of in-person payment, consumers will come to expect and assume that retail locations that accept credit card payments should do the same. The Board is adopting comment 10(b)-5 generally as proposed, but has expanded the comment to address co-branded credit cards. 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. TILA Section 127(b)(12) is limited to branches or offices of a card issuer that is a financial institution, and accordingly the Board believes that the statute was not intended to address other types of locations where an in-person payment on a credit card account may be accepted.

Finally, the Board also proposed 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. The Board received no significant comment on proposed comment 10(b)-6, and it is adopted as proposed.

One issuer asked the Board to clarify that in-person payments made at a branch or location of a card issuer's affiliate should not be treated as conforming payments, even if the affiliate shares the same logo or trademark as the card issuer. The Board understands that for many large financial institutions, the card issuing entity may be a separate legal entity from the affiliated depository institution or other affiliated entity. In such cases, the card issuing entity is not likely to have branches or offices at which a consumer can make a payment, while the affiliated depository institution or other affiliated entity may have such branches or offices. Therefore, as a practical matter, in many cases a consumer will only be able to make in-person payments on his or her credit card account at an affiliate of the card issuer, not at a branch of the card issuer itself. The Board believes that in such cases, it may not be apparent to consumers that they are in fact making payment at a legal entity different than their card issuer, especially when the affiliates share a logo or have similar names. Therefore, the Board believes that the clarification requested by the commenter is inappropriate. The Board is adopting a new comment 10(b)-7 which states that if an affiliate of a card issuer that is a financial institution shares a name with the card issuer, such as "ABC," and accepts in-person payments on the card issuer's credit card accounts, those payments are subject to the requirements of § 226.10(b)(3).

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 that if the due date for payments is a day on which the creditor does not receive or accept payments by mail, the creditor may not treat a payment received by mail the next business day as late for any purpose. In contrast, new TILA Section 127(o) provides that if the due date is a day on which the creditor does not receive or accept payments by mail, the creditor may not treat a payment received the next business day as late for any purpose. TILA Section 127(o) applies to payments made by any method on a due date which is a day on which the creditor does not receive or accept mailed payments, and is not limited to payments received the next business day by mail. Second, new TILA Section 127(o) applies only to credit card accounts under an open-end consumer plan, while § 226.10(d) of the January 2009 rule applies to all open-end consumer credit.

The Board proposed to implement new TILA Section 127(o) in an amended § 226.10(d). The general rule in proposed § 226.10(d) would track the statutory language of new TILA Section 127(o) to state that 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. The Board proposed, however, to provide that if the creditor accepts or receives payments made by a method other than mail, such as electronic or telephone payments, a due date on which the creditor does not receive or accept payments by mail, it is not required to treat a payment made by that method on the next business day as timely. The Board proposed this clarification using its authority under TILA Section 105(a) to make adjustments necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

Consumer group commenters stated that electronic and telephone payments should not be exempted from the rule for payments made on a due date which is a day on which the creditor does not receive or accept payments by mail. The Board notes that proposed § 226.10(d) did not create a general exemption for electronic or telephone payments, except when the creditor receives or accepts payments by those methods on a day on which it does not accept payments by mail. Under these circumstances, § 226.10(d) requires a creditor to credit a conforming electronic or telephone payment as of the day of receipt, and accordingly the fact that the creditor does not accept mailed payments on that day does not result in any detriment to a consumer who makes his or her payment electronically or by telephone.

The Board believes that it is not the intent of new TILA Section 127(o) to permit consumers who can make timely payments by methods other than mail, such as payments by phone, to have an extra day after the due date to make payments using those methods without those payments being treated as late. Rather, the Board believes that new TILA Section 127(o) was intended to address those limited circumstances in which a consumer cannot make a timely payment on the due date, for example if it falls on a weekend or holiday and the creditor does not accept or receive payments on that date. In those circumstances, without the protections of new TILA Section 127(o), the consumer would have to make a payment one or more days in advance of the due date in order to have that payment treated as timely. The Credit Card Act provides other protections designed to ensure that consumers have adequate time to make payments, such as amended TILA Section 163, which was implemented in § 226.5(b) in the July 2009 Regulation Z Interim Final Rule, which generally requires that creditors mail or deliver periodic statements to consumers at least 21 days in advance of the due date. For these reasons, the Board is adopting § 226.10(d) as proposed, except that the Board has restructured the paragraph for clarity.

An industry trade association asked the Board to clarify that § 226.10(d), which prohibits the treatment of a payment as late for any purpose, does not prohibit charging interest for the period between the due date on which the creditor does not accept payments by mail and the following business day. The Board believes, consistent with the approach it took in § 226.5(b)(2)(ii), that charging interest for the period between the due date and the following business day does not constitute treating a payment as late for any purpose, unless the delay results in the loss of a grace period. Accordingly, the Board is adopting new comment 10(d)-2, which cross-references the guidance on "treating a payment as late for any purpose" in comment 5(b)(2)(ii)-2. The comment also expressly states that when an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late.

One industry commenter asked the Board to clarify the operation of § 226.10(d) if a holiday on which an issuer does not accept payments is on a Friday, but the bank does accept payments by mail on the following Saturday. The Board believes that in this case, Saturday is the next business day for purposes of § 226.10(d). Accordingly, the Board has included a statement in § 226.10(d)(1) indicating that for the purposes of § 226.10(d), the "next business day" means the next day on which the creditor accepts or receives payments by mail.

Another industry commenter stated that the rule should provide that if a creditor receives multiple mail deliveries on the next business day following a due date on which it does not accept mailed payments, only payments in the first delivery should be required to be treated as timely. The Board believes that such a comment would not be appropriate, because if the creditor received or accepted mailed payments on the due date, payments in every mail delivery on that day would be timely, not just those payments received in the first mail delivery. The Board believes that consumers should accordingly have a full business day after a due date on which the creditor does not accept payments by mail in order to make a timely payment.

Finally, as proposed, amended § 226.10(d) applies to all open-end consumer credit plans, not just credit card accounts, even though new TILA Section 127(o) applies only to credit card accounts. The Board received no comments on the applicability of § 226.10(d) to open-end credit plans that are not credit card accounts. The Board believes that it is appropriate to have one consistent rule regarding the treatment of payments when the due date falls on a date on which the creditor does not receive or accept payments by mail. The Board believes that that Regulation Z should treat payments on an open-end plan that is not a credit card account the same as payments on a credit card account. Regardless of the type of open-end plan, if the payment due date is a day on which the creditor does not accept or receive payments by mail, a consumer should not be required to make payments prior to the due date in order for them to be treated as timely. This is consistent with § 226.10(d) of the January 2009 Regulation Z Rule, which set forth one consistent rule for all open-end credit.

10(e) Limitations on Fees Related to Method of Payment

The Credit Card Act adopted new TILA Section 127(l) which generally prohibits creditors, in connection with a credit card account under an open-end consumer credit plan, from imposing a separate fee to allow a consumer to repay an extension of credit or pay a finance charge, unless the payment involves an expedited service by a customer service representative. 15 U.S.C. 1637(l). In the October 2009 Regulation Z Proposal, the Board proposed to implement TILA Section 127(l) in § 226.10(e), which generally prohibits creditors, in connection with a credit card account under an open-end (not home-secured) consumer credit plan, from imposing a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. The final rule adopts new § 226.10(e) as proposed.

Separate fee. Proposed comment 10(e)-1 defined "separate fee" as a fee imposed on a consumer for making a single payment to the account. Consumer group commenters suggested that the definition of the term "separate fee" was too narrow and could create a loophole for periodic fees, such as a monthly fee, to allow consumers to make a payment. Consistent with the statutory provision in TILA Section 127(l), the Board believes a separate fee for any payment made to an account is prohibited, with the exception of a payment involving expedited service by a customer service representative. See 15 U.S.C. 1604(a). The Board revises proposed comment 10(e)-1 by removing the word "single" in order to clarify that the prohibition on a “separate fee” applies to any general payment method which does not involve expedited service by a customer service representative and to any payment to an account, regardless of whether the payment involves a single payment transaction or multiple payment transactions. Therefore, the term separate fee includes any fee which may be imposed periodically to allow consumers to make payments. The Board also notes that periodic fees may be prohibited because they do not involve expedited service or a customer service representative. The term separate fee also includes any fee imposed to allow a consumer to make multiple payments to an account, such as automatic monthly payments, if the payments do not involve expedited service by a customer service representative. Accordingly, comment 10(e)-1 is adopted with the clarifying revision.

<u>Expedited</u>. The Board proposed comment 10(e)-2 to clarify that the term “expedited” means crediting a payment to the account the same day or, if the payment is received after the creditor’s cut-off time, the next business day. In response to the October 2009 Regulation Z Proposal, industry commenters asked the Board to revise guidance on the term “expedited” to include representative-assisted payments that are scheduled to occur on a specific date, <u>i.e.</u>, a future date, and then credited or posted immediately on the requested specified date. The Board has not included this interpretation of expedited in the final rule because the Board believes it would be inconsistent with the intent of TILA Section 127(l). Comment 10(e)-2 is adopted as proposed.

<u>Customer service representative</u>. Proposed comment 10(e)-3 clarified that expedited service by a live customer service representative of the creditor would be

required in order for a creditor to charge a separate fee to allow consumers to make a payment. One commenter requested that the Board clarify that a creditor's customer service representative includes the creditor's agents or service bureau. The Board notes that proposed comment 10(e)-3 already stated that payment service may be provided by an agent of the creditor. Consumer group commenters strongly supported the Board's guidance that a customer service representative does not include automated payment systems, such as a voice response unit or interactive voice response system. Another commenter, however, asked the Board to clarify guidance for payment transactions which involve both an automated system and the assistance of a live customer service representative. Specifically, the commenter noted that some payments systems require an initial consumer contact through an automated system but the payment is ultimately handled by a live customer service representative. The Board acknowledges that some payments transactions may require the use of an automated system for a portion of the transaction, even if a live customer service representative provides assistance. For example, a customer's telephone call may be answered by an automated system before the customer is directed to a live customer service representative, or a customer service representative may direct a customer to an automated system to complete the payment transaction, such as entering personal identification numbers (PINs). The Board notes that a payment made with the assistance of a live representative or agent of the credit, which also requires an automated system for a portion of the transaction, is considered service by a live customer service representative. The Board is amending comment 10(e)-3 in the final rule accordingly.

Section 226.10(f) Changes by Card Issuer

The Credit Card Act adopted new TILA Section 164(c), which provides that a card issuer may not impose any late fee or finance charge for a late payment on a credit card account if a card issuer makes "a material change in the mailing address, office, or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a cardholder payment made during the 60-day period following the date on which the change took effect." 15 U.S.C. 1666c(c). The Board is implementing new TILA Section 164(c) in § 226.10(f). Proposed § 226.10(f) prohibited a credit card issuer from imposing any late fee or finance charge for a late payment on a credit card account if a card issuer makes a material change in the address for receiving cardholder payments or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a payment made during the 60-day period following the date on which the change took effect. As discussed in the October 2009 Regulation Z Proposal, the Board modified the language of new TILA Section 164(c) to clarify that the meaning of the term "office" applies only to changes in the address of a branch or office at which payments on a credit card account are accepted. To avoid potential confusion, the Board revises § 226.10(f) to clarify that the prohibition on imposing a late fee or finance charge applies only during the 60-day period following the date on which a material change took effect. The Board adopts § 226.10(f) as proposed with the clarifying revision.

Comment 10(f)-1 clarified that "address for receiving payment" means a mailing address for receiving payment, such as a post office box, or the address of a branch or office at which payments on credit card accounts are accepted. No comments were received on proposed comment 10(f)-1 in particular; however, as discussed below, industry commenters opposed including the closing of a bank branch as an example of a material change in address. See comment 10(f)-4.iv. The final rule adopts comment 10(f)-1 as proposed.

The Board also proposed comment 10(f)-2 to provide guidance to creditors in determining whether a change or delay is material. Proposed comment 10(f)-2 clarified that "material change" means any change in address for receiving payment or procedures for handling cardholder payments which causes a material delay in the crediting of a payment. Proposed comment 10(f)-2 further clarified that a "material delay" means any delay in crediting a payment to a consumer's account which would result in a late payment and the imposition of a late fee or finance charge. The final rule adopts comment 10(f)-2 as proposed.

In the October 2009 Regulation Z Proposal, the Board acknowledged that a card issuer may face operational challenges in order to ascertain, for any given change in the address for receiving payment or procedures for handling payments, whether that change did in fact cause a material delay in the crediting of a consumer's payment. Accordingly, proposed comment 10(f)-3 provided card issuers with a safe harbor for complying with the proposed rule. Specifically, a card issuer may elect not to impose a late fee or finance charge on a consumer's account for the 60-day period following a change in address for receiving payment or procedures for handling cardholder payments which could reasonably expected to cause a material delay in crediting of a payment to the consumer's account. The Board solicited comment on other reasonable methods that card issuers may use in complying with proposed § 226.10(f). The Board did not receive any significant comments on the proposed safe harbor or suggestions for alternative reasonable methods which would assist card issuers in compliance.

Despite the lack of comments, the Board believes that a safe harbor based on a "reasonably expected" standard is appropriate. The safe harbor recognizes the operational difficulty in determining in advance the number of customer accounts affected by a particular change in payment address or procedure and whether that change will cause a late payment. However, upon further consideration, the Board notes that in certain circumstances, a late fee or finance charge may have been improperly imposed because the late payment was subsequently determined to have been caused by a material change in the payment address or procedures. Accordingly, the final rule revises comment 10(f)-3, which is renumbered comment 10(f)-3.i, to clarify that for purposes of § 226.10(f), a late fee or finance charge is not imposed if the fee or charge is waived or removed, or an amount equal to the fee or charge is credited to the account. Furthermore, the Board amends proposed comment 10(f)-3 by adopting comment 10(f)-3.ii, which provides a safe harbor specifically for card issuers with a retail location which accepts payment.

The final rule permits a card issuer to impose a late fee or finance charge for a late payment during the 60-day period following a material change in a retail location which accepts payments, such as closing a retail location or no longer accepting payments at the retail location. However, if a card issuer is notified by a consumer, no later than 60 days after the card issuer transmitted the first periodic statement that reflects the late fee or finance charge for a late payment, that a late payment was caused by such change, the card issuer must waive or remove any late fee or finance charge, or credit an amount equal to any late fee or finance charge, imposed on the account during the 60-day period following the date on which the change took effect. In response to concerns raised by commenters, the Board believes a safe harbor for card issuers which accept payment at retail locations addresses the operational difficulty of determining which consumers are effected by a material change in a retail location or procedures for handling payment at a retail location. Accordingly, the final rule adopts comment 10(f)-3(ii) and provides an example as guidance in new comment 10(f)-4.vi, as discussed below.

Proposed comment 10(f)-4 provided illustrative examples consistent with proposed § 226.10(f), in order to provide additional guidance to creditors. Proposed comment 10(f)-4.i illustrated an example of a change in mailing address which is immaterial. No comments were received on this example, and the final rule adopts comment 10(f)-4.i as proposed. Proposed comment 10(f)-4.ii illustrated an example of a material change in mailing address which would not cause a material delay in crediting a payment. No comments were received on this example, and the final rule adopts comment 10(f)-4.ii as proposed. Proposed comment 10(f)-4.iii illustrated an example of a material change in mailing address which could cause a material delay in crediting a payment. No comments were received on this example, and the final rule adopts comment 10(f)-4.iii as proposed.

Proposed comment 10(f)-4.iv illustrated an example of a permanent closure of a local branch office of a card issuer as a material change in address for receiving payment. Several industry commenters raised concerns about proposed comment 10(f)-4.iv. In particular, industry commenters argued that a branch closing of a bank is not a material change in the address for receiving payment. One industry commenter suggested that a bank branch closing should not be considered as a factor in determining the cause of a late payment. Two commenters noted that national banks and insured depository institutions are required to give 90 days' advance notice related to the branch closing as well as post a notice at the branch location at least 30 days prior to closure. See 12 U.S.C. 1831r-1; 12 CFR 5.30(j). Commenters argued that these advance notice requirements provide adequate notice for customers to make alternative arrangements for payment.

Furthermore, industry commenters stated that interpreting a branch closing as a material change, as proposed in comment 10(f)-4.iv, would impose significant operational challenges and costs on banks in order to comply with this provision. Specifically, commenters stated that banks would have difficulty determining which customers "regularly make payments" at particular branches and which late payments were caused by the closing of a bank branch. In addition, commenters asserted that they would be unable to identify customers who are outside the "footprint" of a branch and unsuccessfully attempt to make a payment at the closed branch, such as if the customer is traveling in a different city. Furthermore, one commenter noted that banks can respond to a one-time complaint from a customer impacted by a branch closing.

The Board is adopting comment 10(f)-4.iv, but with clarification and additional guidance based on the comments and the Board's further consideration. In order to ease compliance burden, the final comment clarifies that a card issuer is not required to determine whether a customer "regularly makes payments" at a particular branch. As noted by commenters, certain banks and card issuers may have other regulatory obligations which require the identification of and notification to customers of a local bank branch. The final comment is revised to provide an example of a card issuer which chooses to rely on the safe harbor for the late payments on customer accounts which it reasonably believes may be affected by the branch closure.

Proposed comment 10(f)-4.v illustrated an example of a material change in the procedures for handling cardholder payments. The Board did not receive comments on this example, and the final rule adopts comment 10(f)-4.v as proposed.

The final rule includes new comment 10(f)-4.vi to address circumstances when a card issuer which accepts payment at a retail location makes a material change in procedures for handling cardholder payments the retail location, such as no longer accepting payments in person as a conforming payment. The new example also provides guidance for circumstances when a card issuer is notified by a consumer that a late fee or finance charge for a late payment was caused by a material change. Under these circumstances, a card issuer must waive or remove the late fee or finance charge or credit the customer's account in an amount equal to the fee or charge.

Proposed comment 10(f)-5 clarified that when an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute imposition of a finance charge for a late payment for purposes of § 226.10(f). Notwithstanding the proposed rule, a card issuer may impose a finance charge due to a periodic interest rate in those circumstances. The Board received no significant comment addressing comment 10(f)-5, which is adopted as proposed.

~~Section 226.11 Treatment of Credit Balances; Account Termination~~

~~11(c) Timely Settlement of Estate Debts~~