

~~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

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 is proposing 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 is proposing, 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 is proposing 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).

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. Therefore, proposed § 226.10(d) would provide that if a creditor receives or accepts payments by a method other than mail on the due date, the creditor need not treat payments made by that method on the next business day as timely, even if the creditor does not receive or accept mailed payments on the due date. For example, if a creditor receives or accepts electronic payments on a Sunday due date, that creditor need not treat as timely an electronic payment made on the following Monday, even if it does not receive or accept payments by mail on that Sunday due date.

Finally, the Board is proposing to apply amended § 226.10(d) 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 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). The Board is proposing to implement TILA Section 127(l) in § 226.10(e). Proposed § 226.10(e) would generally track the statutory language of new TILA Section 127(l) and would state that, for credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor may not impose 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 text of proposed § 226.10(e) differs from the text of TILA Section 127(l), in order to clarify that 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).~~

~~(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(e).~~

~~(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.~~

~~(e) 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

or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely, even if it does not accept mailed payments on the due date.

~~(e) Limitations on fees related to method of payment. For credit card accounts under an open end (not home-secured) consumer credit plan, a creditor may not impose 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.~~

~~(f) Changes by card issuer. If a card issuer makes a material change in the address for receiving payment or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a payment to the consumer's account during the 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account.~~

~~13. Section 226.11 is revised to read as follows:~~

~~**§ 226.11 Treatment of credit balances; account termination.**~~

~~(a) Credit balances. When a credit balance in excess of \$1 is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of the consumer), the creditor shall~~

~~(1) Credit the amount of the credit balance to the consumer's account;~~

~~(2) Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;~~

~~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.~~