

~~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).

The Board believes that the intent of new TILA Section 127(l) is to prohibit the imposition of a separate fee for making any payment, unless the payment transaction involves expedited service by a customer service representative. Accordingly, the Board notes that proposed § 226.10(e) would cover all methods of payment, such as mail, electronic, and telephone payments. Under proposed § 226.10(e), consistent with TILA Section 127(i), creditors would be permitted to charge a separate fee only for those payment transactions that involve expedited service by a customer service representative. A creditor, however, would not be permitted to charge a separate fee for payment transactions that do not involve a customer service representative, such as payments sent by mail.

The Board is proposing several comments to provide guidance to creditors in complying with § 226.10(e). Proposed comment 10(e)-1 would clarify that the term “separate fee” means any fee imposed on a consumer for making a single payment to the consumer’s account. Proposed comment 10(e)-1 would clarify, however, that a fee or 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).

The Board also proposes to adopt comment 10(e)-2, which clarifies 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.¹⁶ For example, if a creditor accepts a nonconforming payment (such as a payment mailed to a branch office

¹⁶ The Board notes that any cut-off time specified by the creditor must comply with proposed § 226.10(b)(2)(ii), discussed earlier in the supplementary information. Furthermore, the Board notes that the creditor must also comply with § 226.10(a), which generally requires a creditor to credit payments 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.

when it had specified the payment be sent to a different location) and a customer service representative credits the payment to the consumer's account the same day, the creditor may impose a separate fee. The Board believes that this standard for determining whether service is expedited will promote consistent practices among different creditors and will provide certainty as to how to comply with proposed § 226.10(e). In contrast, it would be difficult to apply a standard defining expedited service in relation to the time required for a payment to post using standard mail service because the length of time for delivery by mail for a given consumer or creditor may vary. In addition, a standard for determining whether service is expedited based on proximity to the due date would not address those circumstances in which consumers may want to make an expedited payment to the account in advance of the due date, such as in order to increase the amount of available credit.

Proposed comment 10(e)-3 would clarify 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. Payments made on the account with the assistance of a live representative or agent may include payments made in person, on the telephone, or by electronic means. The Board understands that automated systems, such as a voice response unit or an interactive voice response system, are widely used to permit customers to make a payment by telephone or other electronic means. The proposed comment clarifies that a customer service representative does not include automated payment systems because these transactions do not involve a live customer service representative.

~~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.