

directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." For open-end credit plans, fees that are not finance charges but that may be imposed as part of the plan must also be disclosed; these are commonly referred to as "other charges." The commentary interprets this requirement to apply to "significant charges related to the plan." Regulation Z does not require disclosure of charges that are not considered either finance charges or "other charges."

Fee To Expedite a Payment on a Credit or Charge Card Account

Card issuers increasingly have been making expedited payment services available to consumers. The expedited payment service provides consumers an alternative to mailing a payment that might not reach the card issuer by the due date. Typically to avoid being assessed a late fee, consumers request expedited payment service for a lesser charge.

Comment 6(b)-1 provides examples of "other charges" that must be disclosed to consumers under Regulation Z; the list of examples is not exhaustive. A revision to comment 6(b)-1 was proposed indicating that a fee imposed for expediting an individual payment at the consumer's request should be disclosed as an "other charge." The proposed comment only covered an expedited payment service where that method of payment was not established in advance as the regular payment method for the account. Under the proposal, changes in the amount of the fee would not trigger a change-in-terms notice.

Generally, consumer groups agreed with the proposal to treat the fee for an expedited payment service as an "other charge" subject to the condition that creditors document consumers knowing and voluntary assent to the fee. Otherwise, they believed the fee is a finance charge. They also advocated that the change-in-terms notice requirements apply.

Most industry commenters opposed the proposed comment on expedited payment fees. They asserted that the fee should not be disclosed under TILA as an "other charge" because in their view the payment service is not part of the credit plan and is not significant in its occurrence or in amount. Industry commenters disagreed that the fee resembles a late charge or substitutes for it. They noted that the fee is disclosed to consumers at the time they request the payment service and, therefore, they believe consumers will not benefit materially from disclosure of the fee on

account-opening disclosures or on periodic statements under TILA. More generally, industry commenters believe that because there is another reasonable payment option available to the consumer without paying a charge, the expedited payment fee should not be disclosed either as a finance charge or as an "other charge" under TILA. They contend that the creditor's fee should be considered separate from the credit plan as though it were imposed by a third-party courier or wire transfer service. Some commenters expressed concern about the potential effect of treating an expedited payment fee as part of the credit plan for home-equity lines of credit; they believe the fee should not be considered a term of the plan subject to the rules in § 226.5b that limit unilateral changes.

The proposal was intended to address fees charged to consumers who request an expedited payment service as an alternative to mailing a payment that might not reach the card issuer by the due date. This service typically allows consumers to avoid being assessed a late fee, which typically is higher than the fee imposed for the expedited payment service. The expedited payment service covered by the proposal is not a payment method established in advance as the expected method for making regular payments on the account. Where a card issuer offers an expedited payment service, it is usually available to all account holders; the proposal was not directed to situations where the issuer makes an ad hoc accommodation to satisfy the request of a particular customer. The proposal also was not intended to address electronic payment options that are not offered as an alternative to paying a late fee, or bill-payment services offered in connection with a consumer's deposit account that might be used to pay credit card bills as well as other bills.

For the reasons discussed in the proposal, expedited payment fees, as currently constructed and described above, are not finance charges under TILA and Regulation Z because the consumer has a reasonable means for making payment on the account without paying a fee to the creditor. As noted above, the act and regulation also require disclosure by the creditor of the amount of any charge other than a finance charge "that may be imposed as part of the plan * * *." 15 U.S.C. 1637(a)(5); 12 CFR 226.6(b). The official staff commentary interprets this requirement to apply to "significant charges related to the plan (that are not finance charges)" and provides examples of charges that are "other charges" under this standard as well as

charges that are not "other charges" under this standard. *See* comments 6(b)-1 and -2.

Based on the record established by the comment letters, the fee for expediting a payment that was described in the proposal does not clearly meet the standard for treatment as an "other charge." Accordingly, the proposed revision to comment 6(b)-1, classifying the fee as an "other charge," is not being adopted. In order to provide clear compliance guidance, comment 6(b)-2 is being revised to indicate that, at this time, creditors are not required to disclose the fee under TILA and Regulation Z. Creditors should continue their current practice of informing consumers of the amount of the charge at the time the service is requested. In addition, when the fee is charged to the credit account, creditors must include the cost on the periodic statement for that billing cycle. *See* § 226.7(b).

In response to the request for comment on the proper classification of this fee and the fee to expedite delivery of a credit card discussed below, commenters suggested that the Board adopt a general rule for classifying fees under TILA. In their view, the adoption of such a rule would aid creditors' compliance, particularly when determining how new fees should be treated under TILA. There is significant merit in reviewing this area to assess whether general principles can be articulated for determining the appropriate treatment of creditors' fees. Accordingly, in connection with a broader review of Regulation Z, the staff plans to recommend that the Board undertake such an assessment to determine if a general rule can be established consistent with the requirements of TILA. This review would include assessing the treatment of existing fees to determine if a different classification for individual fees is appropriate.

Fees for Expediting Delivery of a Credit or Charge Card

Comment 6(b)-2 provides examples of charges that are neither finance charges nor "other charges." A revision to comment 6(b)-2 was proposed to add, as an example, a card issuer's fee for expediting delivery of a card upon request, provided the issuer does not charge for delivery by standard mail service. The proposed comment is being adopted substantially as proposed. A minor revision has been made to clarify that the comment also applies when the card is delivered without a fee by a means other than standard mail service that is at least as fast as standard mail service.