

## Expedited Funds Availability Act<sup>1</sup>

### Introduction

The Expedited Funds Availability Act (EFA) was enacted in August 1987 and became effective in September 1988. The Check Clearing for the 21st Century Act (Check 21) was enacted October 28, 2003, with an effective date of October 28, 2004. Regulation CC (12 CFR Part 229) issued by the Board of Governors of the Federal Reserve System implements EFA in Subparts A through C and Check 21 in Subpart D. Regulation CC sets forth the requirements that depository institutions make funds deposited into transaction accounts available according to specified time schedules and that they disclose their funds availability policies to their customers. The regulation also establishes rules designed to speed the collection and return of unpaid checks. The Check 21 section of the regulation describes requirements that affect banks that create or receive substitute checks, including consumer disclosures and expedited recredit procedures.

Regulation CC contains four subparts:

- Subpart A – Defines terms and provides for administrative enforcement.
- Subpart B – Specifies availability schedules or time frames within which banks must make funds available for withdrawal. It also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest.
- Subpart C – Sets forth rules concerning the expeditious return of checks, the responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns by the paying bank, check-endorsement standards, and other related changes to the check collection system.
- Subpart D – Contains provisions concerning requirements a substitute check must meet to be the legal equivalent of an original check; bank duties, warranties, and indemnities associated with substitute checks; expedited recredit procedures for consumers and banks; and consumer disclosures regarding substitute checks.

The Appendices to the regulation provide additional information:

- Appendices A and B – Routing number guides.
- Appendix C – Model forms and clauses that banks may use to meet their disclosure responsibilities under the regulation.

- Appendix D – Standards on how a bank shall indorse a check.

### Subpart A – General Definitions

**“Account”** For purposes of subparts B and C is a “deposit” as defined in 12 CFR 204.2(a)(1)(i) that is a “transaction account” as defined in 12 CFR 204.2(e) (12 CFR 204 is the Federal Reserve Board’s Regulation D). It encompasses consumer and corporate accounts and includes accounts from which the account holder is permitted to make transfers or withdrawals by:

- Negotiable instrument;
- Payment order of withdrawal;
- Telephone transfer; or
- Electronic payment.

However, for the purpose of subpart B, “account” does not include accounts where the account holder is a bank or a foreign bank, or where the account holder is the Treasury of the United States.

For the purpose of subpart D, “account” means any deposit at a bank, including a demand deposit or other transaction account and a savings deposit or other time deposit. Many deposits that are not accounts for purposes of the other subparts of Regulation CC, such as savings deposits, are accounts for purposes of subpart D.

**“Bank”** All banks, mutual savings banks, savings banks and savings associations that are insured by the FDIC, and federally-insured credit unions. “Bank” also refers to non-federally insured banks, credit unions and thrifts, as well as agencies and branches of foreign banks and Federal Home Loan Bank (FHLB) members. For purposes of subparts C and D, “bank” also includes any person engaged in the business of banking, Federal Reserve Banks, FHLBs, and state/local governments to the extent that the government unit pays checks. For purposes of subpart D only, “bank” also refers to the U.S. Treasury and the United States Postal Service (USPS) to the extent that they act as payors.

- **“Paying Bank”** Any bank at which or through which a check is payable and to which it is sent for payment or collection. For purposes of subpart D, “paying bank” also includes the U.S. Treasury and USPS. The term “paying bank” also includes the Federal Reserve Banks, FHLBs, state/local governments, and, if a check is not payable by a bank, the bank through which a check is payable.
- **“Reconverting Bank”** The bank that creates a substitute check or is the first bank to transfer or present a substitute check to another party.

**“Business Day”** and **“Banking Day”** are defined as follows –

<sup>1</sup> This section fully incorporates the examination procedures issued under DSC RD Memo 04-049: Expedited Funds Availability Act/Regulation CC Examination Procedures.

## VI. Deposits — EFA

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- **“Business Day”** Any day excluding Saturdays, Sundays and legal holidays (standard Federal Reserve holiday schedule).
- **“Banking Day”** A business day in which a bank is open for substantially all of its banking activities.

Even though a bank may be open for regular business on a Saturday or Sunday, it is not a banking day for the purpose of Regulation CC because Saturday and Sunday are never a ‘business day’ under the regulation. The fact that one branch is open to the public for substantially all of its banking activities does not necessarily mean that day is a banking day for other branches.

**“Check”** Includes both original checks and substitute checks.<sup>2</sup>

- **“Original Check”** The first paper check issued with respect to a particular payment transaction.
- **“Substitute Check”** A paper reproduction of an original check that:
  - Contains an image of the front and back of the original check;
  - Bears an MICR line containing all of the information encoded on the original check’s MICR line, except as provided in the industry standard for substitute checks;<sup>3</sup>
  - Conforms in dimension, paper stock, and otherwise with industry standards for substitute checks; and
  - Is suitable for automated processing in the same manner as the original check.  
A substitute check for which a bank has provided the warranties described in §229.52 is the legal equivalent of an original check if the substitute check accurately represents all of the information on the front and back of the original check and bears the legend “This is a legal copy of your check. You can use it the same way you would use the original check.”
- **“Copy”** Any paper reproduction of an original check, including a paper printout of an electronic image, a photocopy, or a substitute check. A “sufficient copy” is a copy of an original check that accurately represents all of the information on the front and back of the check at the

<sup>2</sup> The term “check” does not include checks drawn in a foreign currency or checks drawn on a bank located outside the United States.

<sup>3</sup> Magnetic ink character recognition (MICR) line means the numbers, which may include the routing number, account number, check number, and check amount, that are printed across the bottom of a check in magnetic ink. The industry standard for substitute checks is American National Standard Specifications for an Image Replacement Document – IRD, X9.100-140. ANS X9.100-140 specifies ways in which the content of a substitute check’s MICR line may vary from the content of the original check’s MICR line. ANS X9.100-140 also specifies circumstances in which a substitute check MICR line need not be printed in magnetic ink.

time of truncation or is otherwise sufficient to establish the validity of a claim.

**“Consumer”** A natural person who draws a check on a consumer account or cashes or deposits a returned check against a consumer account.

**“Consumer Account”** An account used primarily for personal, family, or household purposes.

**“Customer”** A person who has an account with a bank.

**“Local Check”** A check deposited in a location of the depository bank that is located in the same Federal Reserve check processing region as the paying bank.

**“Non-Local Check”** is a check deposited in a different check processing region than the paying bank.

**“Truncate”** To remove an original check from the forward collection or return process and replace it with a substitute check or, by agreement, information relating to the original check. The truncating bank may or may not choose to provide subsequent delivery of the original check.

### Administrative Enforcement – §229.3

The regulation is to be enforced for banks through Section 8 of the Federal Deposit Insurance Act (12 USC 1818) and for credit unions through the Federal Credit Union Act (12 USC 1751 et seq.). In addition, a supervisory agency may enforce compliance though any other authority conferred on it by law. The Federal Reserve Board shall enforce the requirements of the regulation for depository institutions that are not specifically committed to some other government agency.

### Subpart B – Availability of Funds And Disclosure of Funds Availability Policies

#### Next-Day Availability – §229.10

Cash, electronic payments, and certain check deposits must generally be made available for withdrawal the business day after the banking day on which they were received. Among the covered check deposits are cashier’s, certified, and teller’s checks, government checks (including U.S. Treasury checks, U.S. Postal money orders, state and local government checks, checks drawn on Federal Reserve or Federal Home Loan Banks), and certain “on us” checks (checks drawn on the same bank or a branch thereof).

Generally, to qualify for next-day availability, the deposit must be:

- Made at a staffed teller station; and
- Deposited into an account held by the payee of the check.