

VI. Deposits — EFA

terms that result from the sample are equivalent or more prompt than the requirements of this regulation.

Holds on Other Funds

Section 229.19(e) clarifies that, if a customer deposits a check, the bank may place a hold on any of the customer's funds to the extent that the funds held do not exceed the amount of the check deposited, and the total amount of funds held are made available for withdrawal within the times required in this regulation. For example, if a customer cashes a check (other than an "on us" check) over-the-counter, the depository bank may place a hold on any of the customer's funds to the extent that the funds held do not exceed the amount of the cashed check.

Employee Training and Compliance

Section 229.19(f) contains the requirements for employee training and compliance. The EFA Act requires banks to inform each employee who performs duties subject to the Act about its requirements. The EFA Act and Regulation CC also require banks to establish and maintain procedures designed to ensure and monitor employee compliance with such requirements.

Effects of Mergers

Section 229.19(g) explains the effect of a merger transaction. Merged banks may be treated as separate banks for a period of up to one year after consummation of the merger transaction. However, a customer of any bank that is a party to the merger transaction, and has an established account with the merging bank, may not be treated as a new account holder under the new account exception of §229.13(a). A deposit in any branch of the merged bank is considered deposited in the bank for purposes of the availability schedules in accordance with §220.19(a). This rule affects the status of the combined entity in a number of areas. For example:

- When the resulting bank is a "participant" in a check clearinghouse association;
- When an ATM is a "proprietary ATM"; and
- When a check is drawn on a branch of the depository bank.

Relation to State Law – §229.20

General Rule

Section 229.20(a) contains the general rule as to how Regulation CC relates to state laws addressing expedited funds availability.

If a state has a shorter hold for a certain category of checks than is provided for under federal law, that state requirement will supersede the federal provision. For example, most state laws base some hold periods on whether the check deposited is drawn on an in-state or out-of-state bank. If a state contains

more than one check processing region, the state's hold period for in-state checks may be shorter than the federal maximum hold period for nonlocal checks. Accordingly, the state schedule would supersede the federal schedule to the extent that it applies to in-state, nonlocal checks.

The EFA Act also indicates that any state law providing availability in a shorter period of time than required by federal law is applicable to all federally insured institutions in that state, including federally chartered institutions. If a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

Preemption of Inconsistent Law

Section 229.20(b) provides that other provisions of state laws that are inconsistent with federal law are preempted. State laws requiring disclosure of availability policies for transaction accounts are preempted by the regulation. Preemption does not require a determination of the Federal Reserve Board in order to be effective.

Preemption Standards and Determinations

The Federal Reserve Board may issue a preemption determination upon the request of an interested party in a state. The determination will only relate to the provisions of Subparts A and B of the regulation.

Civil Liability – §229.21

Statutory Penalties

Section 229.21(a) sets forth the statutory penalties that can be imposed as a result of a successful individual or class action suit brought for violations of Subpart B of the regulation. Basically, a bank could be held liable for:

- Actual damages;
- Not less than \$100 nor more than \$1,000 in the case of an individual action;
- The lesser of \$500,000 or one percent of the net worth of the bank involved in the case of a class action; and/or
- The costs of the action together with reasonable attorney's fees as determined by the court.

These penalties also apply to provisions of state law that supersede provisions of this regulation such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (*See* Commentary to Appendix D, §229.20)