

**Bona Fide Errors**

Section 229.21(c) states that a bank will not be considered liable for violations of the regulation if it can demonstrate, by a preponderance of evidence, that violations resulted from bona fide errors and that it maintains procedures designed to avoid such errors.

**Reliance on Federal Reserve Board Rulings**

Section 229.21(e) provides that a bank will not be held liable if it acts in good faith in reliance on any rule, regulation, model form (if the disclosure actually corresponds to the bank's availability policy), or interpretation of the Federal Reserve Board, even if it were subsequently determined to be invalid. Banks may rely on the commentary as well as on the regulation itself.

**Exclusions**

The liability established by this section does not apply to violations of Subpart C (Collection of Checks) of the regulation, or to actions for wrongful dishonor of a check by a paying bank's customer. (Separate liability provisions applying to Subpart C are found in §229.38)

**Subpart C – Collection of Checks**

Subpart C covers the check collection system and includes rules to speed the collection and return of checks. Basically, these rules cover the return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment on large-dollar returns of the paying bank, and mandatory check indorsement standards.

Sections 229.30 and 229.31 require paying and returning banks to return checks expeditiously using one of two standards: the "two-day/four-day" test and the "forward collection" test. Under the "two-day/four-day" test a local check is received by the depository bank two business days after presentment and a nonlocal bank four business days after presentment. The "forward collection" test is when the paying bank uses comparable transportation methods and banks, for returns, as those used for forward collection. The paying bank can return checks directly to the depository bank of any bank agreeing to process the returns, including the Federal Reserve.

Subpart C, in §229.33, also requires a bank to provide notification of nonpayment if it determines not to pay a check of \$2,500 or more, regardless of the channel of collection. The regulation addresses the depository bank's duty to notify its customers that a check is being returned and the paying bank's responsibility for giving notice of nonpayment.

Other areas that are covered in Subpart C are indorsement standards, warranties by paying and returning banks, bona fide errors and liability, variations by agreement, insolvency of banks, and the effect of merger transactions.

The provisions of Subpart C §229.41 supersede any state law, but only to the extent that it is inconsistent with Regulation CC.

The expeditious return requirements of §229.42 do not apply to checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or units of general local government and that are not payable through or at a bank.

**Subpart D – Substitute Checks****General Provisions Governing Substitute Checks – §229.51**

A substitute check for which a bank has provided the warranties described in §229.52<sup>4</sup> 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."<sup>5</sup>

The reconverting bank must adhere to Regulation CC's standards for preserving bank indorsements and identifications. A reconverting bank that receives consideration for a substitute check that it transfers, presents, or returns also is the first bank to provide the warranties described in §229.52 and the indemnity described in §229.53.

**Substitute Check Warranties and Indemnity – §§229.52 and 229.53**

Starting with the reconverting bank, any bank that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) and receives consideration for that check warrants that the substitute check meets the legal equivalence requirements and that a check that has already been paid will not be presented for subsequent payment.

Such a bank also provides an indemnity to cover losses that the recipient and any subsequent recipient of the substitute check incurs due to the receipt of a substitute check instead of the original check.

**Expedited Recredit for Consumers – §229.54**

Section 229.54(a) sets forth the conditions under which a consumer may make an expedited recredit claim for losses associated with the consumer's receipt of a substitute check.

<sup>4</sup> A person other than a bank that creates a substitute check could transfer that check only by agreement unless and until a bank provides the substitute check warranties.

<sup>5</sup> A bank may not vary the language of the legal equivalence legend.

## VI. Deposits — EFA

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To use the expedited recredit procedure, the consumer must be able to assert in good faith that:

- the consumer's account was charged for a substitute check that was provided to the consumer;
- the consumer's account was improperly charged or the consumer has a warranty claim;
- the consumer suffered a loss; and
- the consumer needs the original check or a sufficient copy to determine the validity of the claim.

To make a claim, the consumer must comply with the timing, content, and form requirements in §229.54(b). This section generally provides that a consumer's claim must be received by the bank that holds the consumer's account no later than the fortieth calendar day after the later of:

- the calendar day on which the bank mailed (or delivered by a means agreed to by the consumer) the periodic statement describing the contested transaction; or
- the calendar day on which the bank mailed (or delivered by a means agreed to by the consumer) the substitute check itself.

Section 229.54(b)(1)(ii) requires the bank to give the consumer an additional, reasonable period of time if the consumer experiences "extenuating circumstances" that prevent timely submission of the claim.

The commentary to §229.60 provides that the bank may voluntarily give the consumer more time to submit a claim than the rule allows.

Under §229.54(b)(2)(ii), a complaint is not considered complete, and thus does not constitute a claim, until it contains all of the required information the rule requires. The rule requires the claim to contain:<sup>6</sup>

- a description of why the consumer believes the account was improperly charged or the nature of the consumer's warranty claim;
- a statement that the consumer has suffered a loss and an estimate of the amount of the loss;
- a reason why the original check (or a copy of the check that is better than the substitute check the consumer already received) is necessary to determine whether the consumer's claim is valid; and
- sufficient information to allow the bank to identify the substitute check and investigate the claim.

A bank, in its discretion, may require the consumer to submit the claim in writing. If a consumer makes an oral claim to a

bank that requires a written claim, the bank must inform the consumer of the in-writing requirement at that time. Under those circumstances, the bank must receive the written claim by the later of ten business days from the date of an oral claim or the expiration of the consumer's initial 40-day period for submitting a timely claim. As long as the original oral claim fell within the 40-day requirement for notification and a complete written claim was received within the additional ten-day window, the claim meets the timing requirements (§§229.54(b)(1) and 229.54(b)(3)), even if the written claim was received after the expiration of the initial 40-day period.

### *The Bank's Action on Claims*

Section 229.54(c) requires a bank to act on the consumer's claim no later than the tenth business day after the banking day on which it received the consumer's claim:

- If the bank determines that the consumer's claim is valid, it must recredit the consumer's account no later than the end of the business day after the banking day on which it makes that determination. The amount of the recredit should be for the amount of the consumer's loss, up to the amount of the substitute check, plus interest on that amount if the account is an interest-bearing account. The bank must then notify the consumer of the recredit using the notice discussed below (*Notices Relating to Expedited Recredit Claims*).
- If the bank determines that the consumer's claim is invalid, it must notify the consumer of that decision using the notice discussed below (*Notices Relating to Expedited Recredit Claims*).
- If the bank has not determined the validity of the consumer's claim by the tenth business day after the banking day on which the bank received the claim, the bank must recredit the consumer's account for the amount of the consumer's loss, up to the amount of the substitute check or \$2,500, whichever is less. The bank also must recredit interest on that amount if the consumer's account is an interest-bearing account. The bank must send a notice to that effect to the consumer using the notice discussed below (*Notices Relating to Expedited Recredit Claims*). If the consumer's loss was more than \$2,500, the bank has until the end of the forty-fifth calendar day from the date of the claim to recredit any remaining amount of the consumer's loss, up to the amount of the substitute check (plus interest), unless it determines prior to that time that the claim was invalid and notifies the consumer of that decision.

Section 229.54(d) generally requires that recredited funds receive next day availability. However, a bank that provisionally recredits funds pending further investigation may invoke safeguard exceptions to delay availability of the recredit under the limited circumstances described in

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<sup>6</sup> If a consumer submits an incomplete complaint, the bank must so inform the consumer and must tell the consumer what information is missing.

§229.54(d)(2). The safeguard exceptions apply to new accounts and repeatedly overdrawn accounts, or if the bank has reasonable cause to suspect the claim is fraudulent. A bank may delay availability of a provisionally-recredited amount until the start of the earlier of the business day after the banking day on which the bank determines the consumer's claim is valid or the 45th calendar day after the banking day on which the bank received the claim if the account is new, the account is overdrawn, or the bank has reasonable cause to believe that the claim is fraudulent. When the bank delays availability under this section, it may not impose overdraft fees on checks drawn against the provisionally-credited funds until the fifth calendar day after the day on which the bank sent the notice regarding the delayed availability.

If, after providing the recredit, the bank determines that the consumer's claim was invalid, the bank may reverse the recredit. This reversal must be accompanied by a consumer notification using the notice discussed below (*Notices Relating to Expedited Recredit Claims*).

#### ***Notices Relating to Expedited Recredit Claims***

Section 229.54(e) outlines the requirements for providing consumer notices related to expedited recredit:

- The bank must send the notice of recredit no later than the business day after the banking day on which the bank recredits the consumer's account. This notice must include the amount of the recredit and the date the recredited funds will be available for withdrawal.
- The bank must send notice that the consumer's claim is not valid no later than the business day after the banking day on which the bank makes this determination. This notice must include the original check or a sufficient copy of it. (Except as provided in §229.58, *see* below). The notice must demonstrate to the consumer why the claim is not valid. The notice also must include either any information or document that the bank used in making its determination or an indication that the consumer may request copies of this information.
- The bank must send the notice of a reversal of recredit no later than the business day after the banking day on which the bank made the reversal. The notice must include all of the information required in a notice of invalid claim plus the amount (including interest) and date of the reversal. §229.54(e)(3)(i).

Appendix C to Regulation CC contains model forms (models C-23 through C-25) that a bank may use to craft the various notices required §229.54(e). Although there is no statutory safe harbor for appropriate use of these models, the Board published them to assist banks in complying with §229.54(e).

#### **Expedited Recredit for Banks – §229.55**

Section 229.55 sets forth expedited recredit procedures applicable between banks. A claimant bank must adhere to the timing, content, and form requirements of §229.55(b) in order for the claim to be valid. A bank against which an interbank recredit claim is made has ten business days within which to act on the claim (§229.55(c)). The provisions of §229.55 may be varied by agreement. (No other provisions of subpart D may be varied by agreement).

#### **Liability – §229.56**

Section 229.56 describes the damages for which a bank or person would be liable in the event of breach of warranty or failure to comply with subpart D:

- The amount of the actual loss, up to the amount of the substitute check, resulting from the breach or failure, and
- Interest and expenses (including costs, reasonable attorney's fees, and other expenses of representation) related to the substitute check.

These amounts could be reduced in the event of negligence or failure to act in good faith. It is also important to note that §229.56 has a specific exception that allows for greater recovery as provided in the indemnity section. Thus, a person that had an indemnity claim that also involves a breach of a substitute check warranty could recover all damages proximately caused by the warranty breach.

Section 229.56(b) excuses failure to meet this subpart's time limits because of circumstances beyond a bank's control. Section 229.56(c) provides that an action to enforce a claim under this subpart may be brought in any United States district court. Section 229.56(c) also provides the subpart's statute of limitations: one year from the date on which a person's cause of action accrues.<sup>7</sup> Section 229.56(d) states that if a person fails to provide notice of a claim for more than 30 days from the date on which a cause of action accrues, the warranting or indemnifying bank is discharged from liability *to the extent of any loss caused by the delay in giving notice of the claim*.

#### **Consumer Awareness – §229.57**

##### ***Content requirements***

A bank must provide its consumer customers with a disclosure that explains that a substitute check is the legal equivalent of the original check and describes the consumer's recredit rights for substitute checks. A bank may, but is not required, to use the Board's model form (model C-5A in appendix C to Regulation CC) to meet the content requirements for this notice. A bank that uses the model form appropriately is

<sup>7</sup> For purposes of this paragraph, a cause of action accrues as of the date on which the injured person first learns, or reasonably should have learned, of the facts giving rise to the claim, including the identity of the warranting or indemnifying bank against which the action is brought.