

deemed to be in compliance with the content requirement(s) for which it uses language from the model form. A bank may provide the notice required by §229.57 along with other information.

Distribution to consumer customers who receive cancelled checks with periodic account statements

Under §229.57(b)(1), a bank must provide this disclosure to existing consumer customers who routinely receive their cancelled checks in their periodic statement no later than the first statement after October 28, 2004. For customer relationships established after that date, a bank must provide the disclosure to a new consumer customer who routinely will receive cancelled checks in periodic statements at the time the customer relationship is established.

Distribution to consumer customers who receive a substitute check on an occasional basis

Under §229.57(b)(2), a bank also must provide the disclosure to a consumer customer who receives a substitute check on an occasional basis, including when a consumer receives a substitute check in response to a request for a check or a copy of a check, or when a check deposited by the consumer is returned to the consumer as an unpaid item in the form of a substitute check. A bank must provide the disclosure to a consumer customer in these cases even if the bank previously provided the disclosure to the consumer.

When the consumer contacts the bank to request a check or a copy of a check and the bank responds by providing a substitute check, the bank must provide this disclosure at the time of the request, if feasible. Otherwise, the bank must provide the disclosure no later than when the bank provides a substitute check in response to the consumer's request. It would not be feasible to provide the disclosure at the time of the request if, for example, the consumer made his or her request by telephone or if the bank did not know at the time of the request whether it would provide a substitute check or some other document in response. A bank is not required to provide the disclosure if the bank responds to the consumer's request by providing something other than an actual substitute check (such as a photocopy of an original check or a substitute check).

When a bank returns a deposited item unpaid to a consumer in the form of a substitute check, the bank must provide the disclosure when it provides the substitute check.

Mode of Delivery of Information – §229.58

Section 229.58 provides that banks may deliver any notice or other information required under this subpart by United States mail or by any other means to which the recipient has agreed to receive account information, including electronically. A bank that is required to provide an original check or a

sufficient copy (each of which is defined as a specific paper document) instead may provide an electronic image of the original check or sufficient copy if the recipient has agreed to receive that information electronically.

Examination Objectives – Part I Subparts A and B

NOTE: Subpart C of Regulation CC, "Collection of Checks", has been omitted. It addresses exclusively payment systems issues among financial institutions. There are no consumer-related regulatory compliance issues to review during the course of an examination. Subpart D, "Substitute Checks" begins on page VI-1.20.

1. Determine that the financial institution's funds availability policies comply with Regulation CC.
2. Determine that the financial institution has established internal controls for compliance with Regulation CC's provisions relating to funds availability.
3. Determine that the financial institution has established a training program for applicable employees addressing Regulation CC responsibilities.
4. Determine that the financial institution maintains records of compliance with Regulation CC for a period of two years.

Examination Procedures

A financial institution may delay funds availability for some deposits on a case-by-case basis and on other deposits on an automatic basis. In addition, the institution may make decisions concerning holds and may maintain records at branches as well as the main office. Therefore, to check for compliance with the hold policies, the examiner must determine the types of holds employed and how the decisions are made and where the records are maintained. If a branch makes its decision and maintains its own records, such as in a decentralized structure, sampling may be done at the branch. If the decision to delay availability is either centralized or made at a regional processing center and records are maintained there, sampling for compliance may be made at that location.

General

1. Determine the types of transaction accounts, as defined in Regulation D [§204.2(e)] (e.g., demand deposits, NOW accounts, ATS accounts) offered by the financial institution.
2. Obtain copies of the forms used by the financial institution for transaction accounts, including but not limited to the following:
 - Specific availability policy disclosures
 - Exception hold notices
 - Case-by-case hold notices
 - Special deposit slips

- Change in terms notices
3. Determine, by account type, the institution's specific funds availability policies with regard to deposits.
 4. Determine which individuals actually perform the various activities necessary to comply with the different provisions of Regulation CC, Subpart B. This would include, for example, personnel engaged in
 - Distributing disclosure statements
 - Employee training
 - Internal reviews
 - Computer program development for deposit accounts (not necessarily a computer programmer)
 - Deposit operations
 - Overdraft administration
 - ATM deposit processing
 - Private (personal) banking
 - Determining case-by-case holds or exceptions
 5. Review the financial institution's training manual, internal audit or similar reports for Regulation CC, written procedures given to employees detailing their responsibilities under the regulation, and other similar materials.
 6. Determine the extent and adequacy of the instruction and training received by the individuals listed above to enable them to carry out their assigned responsibilities under Regulation CC.
 7. Verify that the institution provides employees with a written copy of the Regulation CC procedures corresponding to their area of responsibility. [§229.19(f)(2)]

Initial Disclosures and Subsequent Changes

1. Review the financial institution's specific availability policy disclosure. Determine if the disclosure accurately reflects the financial institution's funds availability policies and meets the requirements under §229.16 for content.
2. Determine if the financial institution provides the initial disclosure statement prior to accepting funds to open a new transaction account or mails the disclosures within one business day of receiving a written request by mail, or a telephone request, to open a new account. [§229.17(a)]
3. Determine if the financial institution provides its funds availability policy upon an oral or written request within a reasonable time period. [§229.18(d)]
4. Determine if the financial institution has made changes to its availability policies since the last examination. If yes, determine whether the depositor was notified in accordance with §229.18(e).

Automatic (and/or Automated) Hold Policies

1. Review the financial institution's schedules or other materials outlining funds availability time periods for the following types of deposits:
 - Cash [§229.10(a)]
 - Electronic payments [§229.10(b)]
 - U.S. Treasury checks [§229.10(c)(1)(i) and 229.12(b)(2)]
 - U.S. Postal Service Money Orders [§229.10(c)(1)(ii), 229.10(c)(2) and 229.12(b)(3)]
 - Checks drawn on Federal Reserve Banks or Federal Home Loan Banks [§229.10(c)(1)(iii), 229.10(c)(2), 229.12(b)(4) and 229.12(c)(1)(ii)]
 - State or local government checks [§229.10(c)(1)(iv), 229.10(c)(2), 229.12(b)(4) and 229.12(c)(1)(ii)]
 - Cashier's, certified, and teller's checks [§229.10(c)(1)(v), 229.10(c)(2), 229.12(b)(4) and 229.12(c)(1)(ii)]
 - "On us" checks (checks drawn on the same bank or a branch thereof) [§229.10(c)(1)(vi) and 229.11(c)(1)(ii)]
 - Local checks (checks deposited from within same Federal Reserve check processing region as the paying bank) [§229.12(b)(1)]
 - Non-local checks (checks from a different check processing region) [§229.12(c)(1)(i)]
 - Credit union share draft accounts [commentary to §229.16(b)]
2. Determine that the financial institution's policy for providing funds availability is in accordance with regulatory requirements.
3. Determine the financial institution's procedures for placing holds.
4. Selectively sample each of the types of deposits listed in question one and verify the funds availability time frames. Determine, for each deposit category, whether the financial institution's procedures provide funds availability within the required time periods. Determine that the procedures and disclosed policy are the same.

ATM Deposits - Nonproprietary [§229.12(f)]

(See also §§229.19(a)(4), 229.19(a)(5)(ii) and commentary to 229.19(a), (b) for off-premises ATMs).

1. Determine that the institution makes funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the fifth business day following the day of deposit.

Availability Rules \$100 and \$400 [§229.10(c)(1)(vii), and §229.12(d)]

1. Determine the financial institution's procedures for complying with the \$100 availability rule and, if applicable, the \$400 cash withdrawal rule.
2. Review records which detail holds placed on accounts. Determine if holds are in accordance with the regulation.
3. Sample deposit accounts with deposits subject to these rules and verify the institution's compliance with the rules. Verify that actual practices and policies match.

Extended Holds

Case-by-Case Holds

1. Determine if the financial institution places holds on a case-by-case basis. If yes, review the institution's procedures for placing case-by-case holds.
2. Review the specific availability policy disclosures to determine whether the case-by-case hold policy has been disclosed.
3. Review any physical records and/or reports generated from holds placed. (Sample should include records from the main office, as well as branch offices, depending on type of branch system operated).
4. Sample a few of the case-by-case holds and determine whether the financial institution makes the funds available for withdrawal within the required time frames.
5. Determine whether the financial institution provides the customer with a notice of the case-by-case hold as required by §229.16(c)(2). Determine if the notices meet the timing and content requirements.
6. If the institution does not provide the notice at the time of deposit, determine whether it either discloses the availability of refunds of overdraft and returned check fees, or does not assess these fees, when the requirements of §229.16(c)(3) are met.

Exception Holds [§229.13]

1. Determine whether the financial institution places holds on an exception basis. If yes, review procedures for placing exception holds.
2. Review the specific availability policy disclosures to determine whether the institution has disclosed its exception holds policy.
3. Review any physical records and/or reports generated from holds placed. (Sample should include records from the main office, as well as branch offices, depending on type of branch system operated).
4. Sample a few of the exception holds and determine when the financial institution makes the funds available for withdrawal. Determine that the financial institution does not add more than one business day for "on-us" checks,

five business days for local checks, and six business days for nonlocal checks to the maximum time periods in the federal availability schedule for the deposit, unless it can show that a longer delay is reasonable. [§229.13(h)]

5. With the exception of new accounts, determine whether the financial institution provides the customer with an exception hold notice as required by §229.13(g).
6. Review hold notices. Determine if the notices meet the timing and content requirements for each type of exception hold.

NOTE: institutions are required to retain copies of "reasonable cause" hold notices for a two-year time period.

New Accounts [§229.13(a)]

1. Review financial institution policies for new accounts.
2. Determine how the financial institution defines a "new account" relationship. Determine if the financial institution's definition is in compliance with Regulation CC §229.13(a).
3. Review the specific availability policy disclosure to determine whether the institution has disclosed its availability policy regarding new accounts.
4. Review a new account report or listing of new account holders. Determine if any holds were placed on the accounts.
5. Sample new deposit accounts and request that the financial institution provide documentation concerning the composition of the opening deposit.
6. Review holds placed and determine if holds are within regulatory limits with respect to time and amount. *See* §229.13(a)(1).

NOTE: No regulatory time limits are set forth for funds availability for local and nonlocal check deposits into new accounts.

Large Deposits [§229.13(b)]

1. Determine whether the financial institution has procedures and a special hold policy for "large deposits". If yes, determine whether the institution considers a large deposit, for purposes of the large deposit exception, to be a day's aggregate deposit of checks exceeding \$5,000.
2. Determine that the financial institution does not invoke the large deposit exception for cash or electronic payments.
3. Review at least one account deposit on which a large deposit hold was placed and ensure that the hold was placed only on the amount by which a day's deposit of checks exceeds \$5,000.
4. Determine if the financial institution provided the customer with a written exception notice that meets the requirements of §229.13(g)(1) or (g)(2).