

Additional Disclosure Requirements [§229.18]

1. Determine if the financial institution displays a notice of its availability policy in a conspicuous place at locations where employees receive consumer deposits. [§229.18(b)]
NOTE: Drive-up windows and night depositories do not require the notice. See commentary to §229.18(b).
2. Determine if the financial institution displays a notice at each of its proprietary ATMs stating that the funds deposited in the ATM may not be available for immediate withdrawal. [§229.18(c)(1)]
3. If the financial institution has off-premises ATMs from which funds are not collected more than twice a week, determine if the institution discloses on or at the ATM, the days upon which the deposits made at the ATM will be considered “received”. [§229.18(c)(2)]
4. Determine if the institution includes a notice on all preprinted deposit slips that the deposited funds may not be available for immediate withdrawal. [§229.18(a)]

Payment of Interest [§229.14]

1. Determine whether the financial institution pays interest as of the date of the deposit, or as of the date provisional credit is granted.
2. If the financial institution pays interest as of the date provisional credit is granted, review the financial institution’s schedule for provisional credit. (This schedule may be from a Federal Reserve Bank or may be based on the time credit is generally received from a correspondent bank). Select an interest-bearing account statement and ask the financial institution to detail the interest rate calculation.
3. Review the financial institution’s method for calculating interest on deposits reviewed. Select another interest-bearing account and, using the financial institution’s procedures for calculating interest, verify that the financial institution accrues interest as of the date provisional credit is received.

Calculated Availability Non-consumer Transaction Accounts [§229.19(d)]

1. Determine if the financial institution uses a formula for calculating funds availability for non-consumer transaction accounts.
2. Review a copy of the financial institution’s formula.
3. Select a large corporate account subject to the formula. Ask the financial institution to demonstrate how funds are made available to the customer. Determine whether it appears that the formula accurately reflects the type of deposit mix reasonably expected for this type of account holder. (For example, a local grocery store may have 90% of its deposits made up of local check deposits. Therefore, a formula providing a deposit mix of at least 90% availability

within two days may be reasonable. A mail order firm, on the other hand, may have a large percent of nonlocal checks in its check deposits. Therefore, its formula may allow for lengthier availability schedules).

Record Retention [§229.21(g) and 229.13(g)(4)]

1. Determine that the financial institution retains for two years records to show compliance with this section of the regulation. Also, the bank should retain a copy of each notice provided when a “reasonable cause” exception is invoked, along with a brief description of the facts giving rise to the availability of that exception.

Examination Objectives – Part II

Subpart D

1. Determine the financial institution’s compliance with Subpart D notice content and timing requirements (general consumer awareness disclosures regarding substitute checks and notices that respond to a consumer’s expedited recredit claim regarding a substitute check error).
2. Ascertain whether the financial institution complies with timing requirements for acting on a substitute check expedited recredit claim.

Examination Procedures

Whether a financial institution will or will not function as a “reconverting bank”,⁸ the interlinked nature of the payments system virtually guarantees that every financial institution will at some time receive a substitute check that is subject to the provisions of Subpart D, the “Check 21” section of Regulation CC. While some financial institutions will rapidly migrate toward electronic check exchange, others will proceed more hesitantly. Regardless, because the Check 21 Act provides that a properly prepared substitute check is the “legal equivalent of the original check for all purposes,” all banks must be prepared to *accept* a substitute check in place of the original after the Act’s effective date of October 28, 2004.

One of a bank’s regulatory compliance obligations will be to apprise consumer customers who receive cancelled checks with their periodic account statements or who otherwise receive substitute checks on an occasional basis of their rights under the new law through a consumer awareness disclosure. A bank that provides a substitute check to a consumer also must be prepared to comply with the Check 21 Act’s expedited recredit procedure for addressing errors relating to substitute checks. Even if the customer does not receive actual cancelled checks in a monthly statement but instead receives a truncated summary, the individual may eventually receive a substitute check, either in response to a request for a check or a copy of

⁸ A reconverting bank is the bank that creates a substitute check; if a nonbank creates a substitute check, the reconverting bank is the first bank to transfer, present, or return the substitute check (or the first paper or electronic representation of that substitute check) for consideration.

a check or because a check that the consumer deposited was returned unpaid to the consumer in the form of a substitute check. Some increase in the potential for duplicate posting (substitute check and original) may also involve a degree of consumer education and explanation. The regulation specifies the appropriate timing for the distribution of the consumer awareness disclosure and also provides model language. Finally, institutions will likely want to train their personnel so that they can adequately convey to customers the impact of this new instrument in the payments system.

General

1. Obtain copies of the documents associated with the institution's Check 21 compliance, including but not limited to the following:
 - Consumer awareness disclosure(s)
 - Sample (test) substitute checks, *if available*
 - Direct mail correspondence, statement stuffers, etc., describing Check 21/substitute check implementation to consumer customers
 - Notices relating to expedited recredit claims:
 - Notice of valid claim and refund
 - Notice of provisional refund
 - Denial of claim
 - Reversal of refund
 - Any other relevant documents
2. Determine the individuals within the institution who may have responsibilities associated with Check 21. The following represents a non-exhaustive listing:
 - New accounts personnel
 - Employee training department
 - Internal auditors, reviewers
 - Deposit operations, bookkeeping
3. 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.
4. Determine the training methods employed by the institution in conveying specific responsibilities to employees. Are written procedures distributed to employees?

Consumer Awareness – §229.57

NOTE: Model disclosure language is provided in Appendix C of the Regulation

Determine whether the bank distributes only a single version of its Consumer Awareness Disclosure or whether variations, depending on the circumstances giving rise to distribution, are maintained. Each notice should reflect the following:

1. *General Disclosure Content*

Determine whether the disclosure notice states

- That a substitute check is the legal equivalent of an original check; [§229.57(a)(1)] and
- the consumer recredit rights that apply when a consumer in good faith believes that a substitute check was not properly charged to his or her account. [§229.57(a)(2)]

2. *Timing and Distribution*

A bank is required to provide its consumer customers with a Consumer Awareness Disclosure prior to the receipt of a substitute check.

- For those who receive cancelled checks with periodic statements:
 - *Existing customers as of October 28, 2004*
Determine that the bank provided the disclosure no later than the first regularly scheduled communication with the consumer after October 28, 2004 (for each consumer who is a customer of the bank on that date). [§229.57(b)(1)(i)]
 - *New customers after October 28, 2004*
Determine that the bank provided the disclosure at the time the customer relationship was established. [§229.57(b)(1)(ii)]
- For those who do not receive cancelled checks with periodic statements and who will receive substitute checks on an occasional basis only
 - *Upon customer request for an original check or a copy of a check*
Determine that the bank provide the disclosure to a consumer customer who requested an original check or a copy of a check and received a substitute check in response. [§229.57(b)(2)(i)]
 - *Upon customer's receipt of a returned substitute check*
Determine that the bank provide the disclosure to a consumer customer of the bank who receives a returned substitute check (at the time the bank provides such substitute check). [§229.57(b)(2)(ii)]

3. *Mode of Delivery of Information* [§229.58]

Determine whether the bank employed one of the following in delivering its Consumer Awareness Disclosure(s) and expedited recredit notice(s)

- U.S. mail
- Any other means to which the recipient agreed to receive account information, including electronically