

- Determine if the notice was provided within the prescribed time frames of §229.13(g)(1) or (g)(2).

#### **Redeposited Checks [§229.13(c)]**

- Determine if the financial institution has procedures and a special hold policy for redeposited checks.
- If yes, determine if the institution refrains from imposing this exception solely because of a missing indorsement or because the check was postdated.
- 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).
- Determine if the notice was provided within the prescribed time frames of §229.13(g)(1) or (g)(2).

#### **Repeated Overdrafts [§229.13(d)]**

- Determine whether the financial institution has procedures or a special hold policy for customers with repeated overdrafts.
- If yes, review the financial institution's definition for accounts "repeatedly overdrawn" and determine whether it meets the regulatory definition in §229.13(d).
- Determine that the financial institution returns the account to the financial institution's normal account status when the account has not been repeatedly overdrawn for a six-month period following the time the account was characterized as repeatedly overdrawn.

- Review the financial institution's overdraft account holder list.

*NOTE: this may or may not be the same overdraft list maintained in the ordinary course of business. The financial institution may maintain a list of recent overdrafts, as well as a list of customers repeatedly overdrawn.*

- Review an account classified as repeatedly overdrawn. Determine if the financial institution properly classified the account and followed the regulatory procedures outlined in §229.13(d).
- Determine the date the account was placed in "repeated overdraft" exception status. Review account statements for the six months prior to the date the account was identified as an overdraft exception.
- Determine whether the financial institution provided the customer with an exception notice when an exception hold was placed on the account. If so, review the content of the notice and determine if it meets the requirements of §229.13(g)(1) or (g)(3).
- Determine if notice was given within the required time frames. [§229.12(g)(1) or (g)(3)]

#### **Reasonable Cause to Doubt Collectability [§229.13(e)]**

- Determine if the financial institution has procedures or a special policy for placing "reasonable cause" holds.
- If yes, determine who initiates "reasonable cause" holds.
- Obtain a listing of accounts or checks where this exception was applied. Review the exception notice given to the customer.
- Determine if the reason for invoking the exception was "reasonable".
- Review the content of the notice and determine if it meets the requirements of §229.13(g)(1).
- Determine if notice was given within the required time frames. [§229.13(g)(1)]
- If the institution imposes a "reasonable cause" exception hold and 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 §229.13(e)(2) are met.

#### **Emergency Conditions [§229.13(f)]**

- Determine if the financial institution has procedures or a special policy for placing "emergency condition" holds. If yes, review the institution's procedures for placing these holds.
- Determine whether the institution invokes this exception only under the conditions specified in §229.13(f).
- Determine whether the institution makes the funds available for withdrawal within a reasonable time period from either the termination of the emergency or the period in which the deposit would normally be available for withdrawal, whichever is later.

*NOTE: a reasonable period for on-us checks is one business day. A reasonable time for local checks is five business days. For nonlocal checks, six days is usually considered reasonable). [§229.13(h)(3), 229.13(h)(4)]*

#### **Miscellaneous Provisions**

##### **Special Deposit Slips [§229.10(c)(3)]**

- Determine if the financial institution requires a special deposit slip for state or local government checks, cashier's, certified, or teller's checks in order to provide next business day availability on the deposits. [§229.10(c)(3)(i)]
- If the financial institution requires a special deposit slip, determine that the financial institution [§229.10(c)(3)(ii)]
  - Provides the deposit slip to its customers,
  - Informs the customers how to obtain and prepare the slips, or
  - Makes the special deposit slips "reasonably available".

### ***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”,<sup>8</sup> 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

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<sup>8</sup> 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.