Expedited Funds Availability Act

Introduction

The Expedited Funds Availability Act (EFA) was enacted in August 1987 and became effective in September 1988. The Check Clearing for the 21st Century Act (Check 21) was enacted October 28, 2003, with an effective date of October 28, 2004. Regulation CC (12 CFR Part 229) issued by the Board of Governors of the Federal Reserve System implements EFA in Subparts A through C and Check 21 in Subpart D. Regulation CC sets forth the requirements that depository institutions make funds deposited into transaction accounts available according to specified time schedules and that they disclose their funds availability policies to their customers. The regulation also establishes rules designed to speed the collection and return of unpaid checks. The Check 21 section of the regulation describes requirements that affect banks that create or receive substitute checks, including consumer disclosures and expedited recredit procedures.

Regulation CC contains four subparts:

- Subpart A – Defines terms and provides for administrative enforcement.
- Subpart B – Specifies availability schedules or time frames within which banks must make funds available for withdrawal. It also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest.
- Subpart C – Sets forth rules concerning the expeditious return of checks, the responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns by the paying bank, check-endorsement standards, and other related changes to the check collection system.
- Subpart D – Contains provisions concerning requirements a substitute check must meet to be the legal equivalent of an original check; bank duties, warranties, and indemnities associated with substitute checks; expedited recredit procedures for consumers and banks; and consumer disclosures regarding substitute checks.

The Appendices to the regulation provide additional information:

- Appendices A and B – Routing number guides.
- Appendix C – Model forms and clauses that banks may use to meet their disclosure responsibilities under the regulation.
- Appendix D – Standards on how a bank shall indorse a check.

Subpart A – General Definitions

"Account" For purposes of subparts B and C is a "deposit" as defined in 12 CFR 204.2(a)(1)(i) that is a "transaction account" as defined in 12 CFR 204.2(e) (12 CFR 204 is the Federal Reserve Board's Regulation D). It encompasses consumer and corporate accounts and includes accounts from which the account holder is permitted to make transfers or withdrawals by:

- Negotiable instrument;
- Payment order of withdrawal;
- Telephone transfer; or
- Electronic payment.

However, for the purpose of subpart B, "account" does not include accounts where the account holder is a bank or a foreign bank, or where the account holder is the Treasury of the United States.

For the purpose of subpart D, "account" means any deposit at a bank, including a demand deposit or other transaction account and a savings deposit or other time deposit. Many deposits that are not accounts for purposes of the other subparts of Regulation CC, such as savings deposits, are accounts for purposes of subpart D.

"Bank" All banks, mutual savings banks, savings banks and savings associations that are insured by the FDIC, and federally-insured credit unions. "Bank" also refers to non-federally insured banks, credit unions and thrifts, as well as agencies and branches of foreign banks and Federal Home Loan Bank (FHLB) members. For purposes of subparts C and D, "bank" also includes any person engaged in the business of banking, Federal Reserve Banks, FHLBs, and state/local governments to the extent that the government unit pays checks. For purposes of subpart D only, "bank" also refers to the U.S. Treasury and the United States Postal Service (USPS) to the extent that they act as payors.

- **"Paying Bank"** Any bank at which or through which a check is payable and to which it is sent for payment or collection. For purposes of subpart D, "paying bank" also includes the U.S. Treasury and USPS. The term "paying bank" also includes the Federal Reserve Banks, FHLBs, state/local governments, and, if a check is not payable by a bank, the bank through which a check is payable.
- **"Reconverting Bank"** The bank that creates a substitute check or is the first bank to transfer or present a substitute check to another party.

"Business Day" and **"Banking Day"** are defined as follows –

- **"Business Day"** Any day excluding Saturdays, Sundays and legal holidays (standard Federal Reserve holiday schedule).

- **"Banking Day"** A business day in which a bank is open for substantially all of its banking activities.

Even though a bank may be open for regular business on a Saturday or Sunday, it is not a banking day for the purpose of Regulation CC because Saturday and Sunday are never a 'business day' under the regulation. The fact that one branch is open to the public for substantially all of its banking activities does not necessarily mean that day is a banking day for other branches.

"Check" Includes both original checks and substitute checks.[1]

- **"Original Check"** The first paper check issued with respect to a particular payment transaction.
- **"Substitute Check"** A paper reproduction of an original check that:
  - Contains an image of the front and back of the original check;
  - Bears an MICR line containing all of the information encoded on the original check's MICR line, except as provided in the industry standard for substitute checks;[2]
  - Conforms in dimension, paper stock, and otherwise with industry standards for substitute checks; and
  - Is suitable for automated processing in the same manner as the original check. A substitute check for which a bank has provided the warranties described in §229.52 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."
- **"Copy"** Any paper reproduction of an original check, including a paper printout of an electronic image, a photocopy, or a substitute check. A "sufficient copy" is a copy of an original check that accurately represents all of the information on the front and back of the check at the time of truncation or is otherwise sufficient to establish the validity of a claim.

"Consumer" A natural person who draws a check on a consumer account or cashes or deposits a returned check against a consumer account.

"Consumer Account" An account used primarily for personal, family, or household purposes.

"Customer" A person who has an account with a bank.

"Truncate" To remove an original check from the forward collection or return process and replace it with a substitute check or, by agreement, information relating to the original check. The truncating bank may or may not choose to provide subsequent delivery of the original check.

Administrative Enforcement – §229.3

The regulation is to be enforced for banks through Section 8 of the Federal Deposit Insurance Act (12 USC 1818) and for credit unions through the Federal Credit Union Act (12 USC 1751 et seq.). In addition, a supervisory agency may enforce compliance though any other authority conferred on it by law. The Federal Reserve Board shall enforce the requirements of the regulation for depository institutions that are not specifically committed to some other government agency.

Subpart B – Availability of Funds And Disclosure of Funds Availability Policies

Next-Day Availability – §229.10

Cash, electronic payments, and certain check deposits must generally be made available for withdrawal the business day after the banking day on which they were received. Among the covered check deposits are cashier's, certified, and teller's checks, government checks (including U.S. Treasury checks, U.S. Postal money orders, state and local government checks, checks drawn on Federal Reserve or Federal Home Loan Banks), and certain "on us" checks (checks drawn on the same bank or a branch thereof).

Generally, to qualify for next-day availability, the deposit must be:

- Made at a staffed teller station; and
- Deposited into an account held by the payee of the check.

However, two types of deposits, U.S. Treasury checks and "on us" checks, must receive next-day availability even if the deposit is not made at a staffed teller station. Other next-day check deposits, and cash deposits, that are not made at staffed teller stations must be available for withdrawal on the second business day after the day of deposit under §229.10(a)(2) and §229.10(c)(2).

[1] The term "check" does not include checks drawn in a foreign currency or checks drawn on a bank located outside the United States.

[2] Magnetic ink character recognition (MICR) line means the numbers, which may include the routing number, account number, check number, and check amount, that are printed across the bottom of a check in magnetic ink. The industry standard for substitute checks is American National Standard Specifications for an Image Replacement Document – IRD, X9.100-140. ANS X9.100-140 specifies ways in which the content of a substitute check's MICR line may vary from the content of the original check's MICR line. ANS X9.100-140 also specifies circumstances in which a substitute check MICR line need not be printed in magnetic ink.

Additional Rules

Under §229.10(c)(1)(iv-v), for state and local government checks to receive next-day availability, the depository bank must be located in the same state as the governmental unit issuing the check. Further, under §229.10(c)(3), the depository bank may require special deposit slips or envelopes for these deposits, as well as for cashier's, certified and teller's check deposits. If the depository bank requires the use of special deposit slips, it must either provide the slips or inform customers how they may be obtained.

For "on us" checks to receive next-day availability, the checks must be drawn on the same or another branch of the bank where the check is deposited. In addition, both branches must be located in the same state or check processing region.

$200 Rule

Section 229.10(c)(1)(vii) of the regulation contains a special $200 rule for check deposits not subject to next-day availability. Under the rule, the depository bank must make available for withdrawal the lesser of $200 or the aggregate amount deposited to all accounts, including individual and joint accounts, held by the same customer on any one banking day. The $200 rule does not apply to deposits received at nonproprietary Automated Teller Machines (ATMs).

Availability Schedule – §229.12

The permanent availability schedule became effective on February 27, 2010. (See Permanent Funds Availability Schedule-Figures A & B on the following pages.) Under this schedule, check deposits must be made available no later than the second business day following the banking day of deposit. Funds, including cash and all checks, deposited at nonproprietary ATMs must be made available no later than the fifth business day following the banking day on which the funds were deposited.

Checks that would normally receive next-day availability are treated as check deposits if they do not meet all the criteria for next-day availability under §229.10(c). (As mentioned earlier, certain checks generally deposited at a staffed teller station and into an account held by the payee of the check receive next-day availability. However, state, local government and certain "on us" checks are subject to additional rules.)

U.S. Treasury checks and U.S. Postal Money orders that do not meet all the requirements for next-day or second day availability as outlined in §229.10(c) receive funds availability as if they were checks. Cashiers, certified, teller's, state and local government, and checks drawn on the Federal Reserve or Federal Home Loan Banks that do not meet all the requirements in §229.10(c) receive funds availability as checks.

Cash Withdrawals

Special rules apply to cash withdrawals from check deposits. While §229.12 (d) allows the depository bank to extend the availability schedule for cash or similar withdrawals by one day, the customer must still be allowed to withdraw the first $200 of any check deposit not subject to next-day availability on the business day following the day of deposit. In addition to the first $200, a customer must also be allowed to withdraw $400 of the deposited funds (or the maximum amount that can be withdrawn from an ATM, but not more than $400) no later than 5 p.m. on the day funds become available for check withdrawals. The remainder of deposited funds would be available for cash withdrawal on the following business day.

Figure A: Permanent Funds Availability Schedules

Illustrates availability of different types of checks deposited separate days, under the permanent schedules

[1] The first $200 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).

[2] Checks must be made available for check writing purposes by the second business day following deposit § 229.12(b).

[3] $400 of the deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This is in addition to the $200 that must be made available on the business day following deposit § 229.12(d).

[4] The remainder of the deposit must be made available for cash withdrawal at the start of business the following day § 229.12(d).

Figure B:Permanent Funds Availability Schedules

Illustrates availability of different types of checks deposited separate days, under the permanent schedules

[1] The first $200 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).

[2] Checks must be made available for check writing purposes by the second business day following deposit § 229.12(b).

[3] $400 of the deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This is in addition to the $200 that must be made available on the business day following deposit § 229.12(d).

[4] The remainder of the deposit must be made available for cash withdrawal at the start of business the following day § 229.12(d).

Extension of the Schedule for Certain Deposits

Section 229.12(e) provides that banks in Alaska, Hawaii, Puerto Rico, or the Virgin Islands receiving checks drawn on or payable through banks located in another state may extend the availability schedules for checks by one day. This exception, however, does not apply to checks drawn on banks in these states or territories and deposited in banks located in the continental U.S.

Exceptions – §229.13

The regulation provides six exceptions that allow banks to exceed the maximum hold periods in the availability schedules. The regulation regards the exceptions as "safeguards" to the maximum availability time frames because they are intended to offer the institution a means of reducing risk based on the size of the deposit, past performance of the depositor, lack of depositor performance history, or belief that the deposit may not be collectible. These exceptions include:

- New accounts;
- Deposits in excess of $5,000 on any one day;
- Checks that have been returned unpaid and are being redeposited;
- Deposits to accounts that have been repeatedly overdrawn;
- Cases in which the bank has a reasonable cause to believe the check being deposited is uncollectable; and
- Emergency conditions.

While banks may exceed the time frames for availability in these cases, the exceptions may generally not be invoked if the deposit would ordinarily receive next-day availability.

New Accounts Exception

An account is considered a "new account" under §229.13(a) for the first 30 days after it is established. An account is not considered "new" if each customer on the account had another established account at the bank for at least 30 calendar days. The new account exception applies only during the 30-day period, beginning on the date the account is established, and does not cover all deposits made to the account.

Although the regulation exempts new accounts from the availability schedules for checks, next-day availability is required for deposits of cash and for electronic payments. Additionally, the first $5,000 of a day's aggregate deposits of government checks (including federal, state, and local governments), cashier's, certified, teller's, depository or traveler's checks must be given next-day availability. The amount in excess of $5,000 must be made available no later than the ninth business day following the day of deposit.

To qualify for next-day availability, deposits into a new account must generally be made in person to an employee of the depository bank. If the deposits are not made in person to an employee of the depository bank, such as an ATM deposit, availability may be provided on the second business day after the day of deposit. U.S. Treasury check deposits, however, must be given next-day availability regardless of whether they are made at staffed teller stations or proprietary ATMs. Banks are not required to make the first $200 of a day's deposits of checks or funds from "on us" checks available on the next business day.

Large Deposit Exception (Deposits over $5,000)

Under §229.13(b), the large deposit exception, a depository bank may extend hold schedules when deposits other than cash or electronic payments exceed $5,000 on any one day. A hold may be applied to the amount in excess of $5,000. To apply the rule, the depository bank may aggregate deposits made to multiple accounts held by the same customer, even if the customer is not the sole owner of the accounts.

Redeposited Check Exception

Under §229.13(c), the depository bank may delay the availability of funds from a check if the check had previously been deposited and returned unpaid. This exception does not apply to checks that were previously returned unpaid because of a missing indorsement or because the check was postdated when presented.

Repeated Overdraft Exception

Section 229.13(d) provides that if a customer's account, or accounts, have been repeatedly overdrawn during the preceding six months, the bank may delay the availability of funds from checks. A customer's account may be considered "repeatedly overdrawn" in two ways. First, the exception may be applied if the account (or accounts) have been overdrawn, or would have been overdrawn had checks or other charges been paid, for six or more banking days during the preceding six months.

Second, the exception may be applied to customers who incur overdrafts on two banking days within the preceding six month period if the negative balance in the account(s) is equal to or greater than $5,000. This exception may also apply if the account would have been overdrawn by $5,000 or more had checks or other charges been paid.

Reasonable Cause to Doubt Collectability Exception

This exception, in §229.13(e), may be applied to all checks. To trigger this exception, the depository institution must have "reasonable cause" to believe that the check is not collectible and must disclose the basis for the extended hold to the customer. For example, reasonable cause may include communication with the paying bank indicating that:

- There has been a stop payment placed on the check;
- There are insufficient funds in the drawer's account to cover the check; or

- The check will be returned unpaid.

The "reasonable cause" exception may also be invoked in cases where:

- The check is deposited six months after the date of the check (stale date);
- The check is postdated (future date);
- The depository bank believes that the depositor may be engaged in check kiting.

The "reasonable cause" exception may ***not be*** invoked because of:

- The race or national origin of the depositor; or
- The fact that the paying bank is located in a rural area and the depository bank will not have time to learn of nonpayment of the check before the funds have to be made available under the availability schedules in place.

Whenever this exception is used, the bank must notify the customer, in writing, at the time of deposit. If the deposit is not made in person or the decision to place the hold is based on facts that become known to the bank at a later date, the bank must mail the notice by the first business day after the day the deposit is made or the facts become known. The notice must indicate that availability is being delayed and must include the reason that the bank believes the funds are uncollectable. If a hold is placed on the basis of confidential information, as when check kiting is suspected, the depository bank need only disclose to the customer that the hold is based on confidential information that the check may not be paid.

If the bank asserts that the hold was placed due to confidential information, the bank must note the reason on the notice it retains as a record of compliance. The depository bank must maintain a record of each exception notice for a period of two years. This record should contain a brief description of the facts or any documents supporting the "reasonable cause" exception.

Overdraft and Returned Check Fees

Under §229.13(e)(2), if a depository bank invokes the "reasonable cause" exception and does not inform the customer in writing at the time of the deposit, the bank may not charge the customer any overdraft or returned check fees resulting from the hold if:

- The deposited check is paid by the paying bank; and
- The overdraft or returned check would not have occurred had the depository bank not imposed the reasonable cause hold.

However, the depository bank may assess overdraft or returned check fees if, on the exception hold notice, it states that the customer may be entitled to a refund of any overdraft or return check fees imposed and describes how the customer may obtain such a refund. It must then refund the fees upon request.

Emergency Conditions

Section 229.13(f) of the regulation also permits institutions to suspend the availability schedules under emergency conditions. Emergency situations include:

- Any interruption of communication facilities;
- Suspension of payments by another depository institution;
- War; or
- Any emergency condition beyond the control of the receiving depository institution.

Notice of Exception

Whenever a bank invokes one of the exceptions (excluding new accounts) to the availability schedules, it must notify the customer in writing in accordance with §229.13(g). Banks may send notices that comply solely with §229.13(g)(1), or may comply with two alternative notice requirements discussed below.

General Notice Requirements

Banks complying with §229.13(g)(1) must send notices which include:

- The customer's account number;
- The date of the deposit;
- The amount of the deposit that will be delayed;
- The reason the exception was invoked; and
- The day the funds will be available for withdrawal (unless unknown, as in an emergency situation).

If the deposit is made at a staffed facility, the written exception notice may be given to the person making the deposit regardless of whether the "depositor" is the customer who holds the account. If the deposit is not made at a staffed facility, the exception notice may be mailed to the customer no later than the business day following the banking day of deposit. If however, the depository bank discovers a reason to delay the funds, subsequent to the time the notice should have been given, the bank must notify the customer of the hold as soon as possible, but not later than the business day after the facts become known. In certain instances, exception holds based on "emergency" situations do not require notification to customers. For example, if deposited funds, subject to holds placed during an "emergency", become available for withdrawal before the notices are required to be sent, the depository bank is not required to send the notices to its customers.

Exception Notice for Nonconsumer Accounts

If most check deposits to a nonconsumer account permit the bank to invoke either the large dollar or redeposited check exception, the bank may send a notice complying with §229.13(g)(1), or may send a one-time notice in accordance with §229.13(g)(2). The one-time notice must be sent when the first exception is invoked, or can be delivered before that time. The notice must state:

- The reason the exception may be invoked; and
- The time period when the funds will generally be made available.

Exception Notice for Repeated Overdrafts

If most check deposits to an account permit the bank to invoke the repeated overdraft exception, the bank may send a notice complying with §229.13(g)(1), or may send a notice in accordance with §229.13(g)(3). The notice must be sent when the overdraft exception is first invoked. The notice must state:

- The customer's account number;
- The fact that funds are being delayed because the repeated overdraft exception will be invoked;
- The time period the exception will be invoked; and
- The time period when the funds will generally be made available.

Availability of Deposits Subject to Exceptions

For exceptions (other than new accounts), §229.13(h) allows the depository bank to delay availability for a "reasonable" time beyond the schedule. Generally, a "reasonable" period will be considered to be no more than one business day for "on-us" checks, five business days for checks. If a depository bank extends its availability beyond these time frames, it must be able to prove that such a delay is "reasonable".

Payment of Interest – §229.14

General Rule

A depository bank must begin accruing interest on interest-bearing accounts no later than the business day on which it receives provisional credit for the deposited funds. A depository bank typically receives credit on checks within one or two days following deposit. A bank receives credit on a cash deposit, an electronic payment, and a check that is drawn on itself on the day the cash, check or electronic payment is received. If a nonproprietary ATM is involved, credit is usually received on the day the bank that operates the ATM credits the depository bank for the amount of deposit.

Section 229.14(a)(1) permits a bank to rely on the availability schedule from its Federal Reserve Bank, Federal Home Loan Bank, or correspondent bank to determine when the depository bank receives credit. If availability is delayed beyond what is specified in the schedule, a bank may charge back interest, erroneously paid or accrued, on the basis of that schedule.

Section 229.14(a)(2) permits a depository bank to accrue interest on checks deposited to all of its interest-bearing accounts based on an average of when the bank receives credit for all checks sent for payment or collection. For example, if a bank receives credit on 20 percent of the funds deposited by check as of the business day of deposit (e.g., "on us" checks), 70 percent as of the business day following deposit, and ten percent on the second business day following deposit, the bank can apply these percentages to determine the day interest must begin to accrue for check deposits on all interest-bearing accounts, regardless of when the bank received credit for funds deposited in any particular account. Consequently, a bank may begin accruing interest on a uniform basis for all interest-bearing accounts, without having to track the type of check deposited to each account.

Nothing in §229.14(a) limits a depository bank policy that provides that interest can only accrue on balances that exceed a specified amount, or on the minimum balance maintained in the account during a given period. However, the balance must be determined according to the date the depository bank receives credit for the funds. This section also does not limit any policy providing that interest can accrue sooner than required by the regulation.

Money market deposit accounts, savings deposits, and time deposits, are not subject to the general rule concerning the timing of interest payment. However, for simplicity of operation, a bank may accrue interest on such deposits in the same manner that it accrues interest on transaction accounts.

Exemption for Certain Credit Unions

Section 229.14(b) contains an exemption from the payment of interest requirements for credit unions that do not begin to accrue interest or dividends on their member accounts until a later date than the day the credit union receives credit for those deposits, including cash deposits. These credit unions are exempt from §229.14(a) as long as they provide notice of their interest accrual policies in accordance with §229.16(d).

Section 229.14(c) provides an exception to the general rule in §229.14(a) for checks that are returned unpaid. Essentially, interest need not be paid on funds deposited in an interest-bearing account by a check that has been returned unpaid, regardless of the reason for return.

General Disclosure Requirements – §229.15

Form of Disclosure

A bank must disclose its specific availability policy to its customers. The required disclosures must be clear and conspicuous, and must also be in writing under §229.15(a). Disclosures, other than those posted at locations where

employees accept consumer deposits, at ATMs or on preprinted deposit slips, must be in a form that the customer may keep. These disclosures must not contain information unrelated to the requirements of the regulation. If other account terms are included in the same document, disclosures pertinent to this regulation should be highlighted such as, under a separate heading.

Uniform Reference to Day of Availability

§229.15(b) requires banks to refer to the day funds will be available for withdrawal in a uniform manner in all of their disclosures. Disclosures must refer to when funds will be available for withdrawal as on "the_____ business day after" the day of deposit. The first business day is the business day following the banking day the deposit was received, and the last business day is the day on which the funds are made available.

Multiple Accounts and Multiple Account Holders

A bank does not need to give multiple disclosures to customers who have more than one account if the accounts are subject to the same availability policies. In addition, the bank does not have to give separate disclosures to joint account holders. A single disclosure to one of the holders of the joint account is permissible under §229.15(c).

Dormant or Inactive Accounts

Section 229.15(d) provides that the bank does not have to give disclosures to customers who have dormant or inactive accounts.

Specific Availability Policy Disclosure – §229.16

A bank must provide its customers with a disclosure that describes its funds availability policy. The disclosure must reflect the policy followed by the institution in most cases; however, the institution may impose longer delays on a case-by-case basis or by invoking one of the exceptions in §229.13, provided this is reflected in the disclosure.

Content of Specific Availability Policy Disclosure

The specific availability policy disclosure in §229.16(b) must include, as applicable, the following:

- A summary of the bank's availability policy;
- A description of the categories of deposits or checks
- used by the bank when it delays availability, how to determine the category to which a particular deposit or check belongs, and when each category will be available for withdrawal (including a description of the
- bank's business days and when a deposit is considered received);
- A description of any of the exceptions in §229.13 that may be invoked by the bank, including the time the deposited funds will generally become available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions;
- A description of any case-by-case policy of delaying availability which may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy (see specific requirements under §229.16(c)(1)); and
- A description of how the customer can differentiate between a proprietary and nonproprietary ATM, if the bank makes funds from deposits at nonproprietary ATMs available later than funds from deposits at proprietary ATMs.

Longer Delays on a Case-by-Case Basis

A bank that has a policy of making deposited funds available for withdrawal sooner than required, may extend the time when funds are available up to the time periods allowed under the regulation on a case-by-case basis. However, the bank must include the following in its specific policy disclosure under §229.16(c):

- A statement that the time when deposited funds are available for withdrawal may be extended in some cases, and the latest time deposited funds will be available for withdrawal;
- A statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until after the time periods stated in the bank's availability policy; and
- A statement that customers should ask if they need to know when a particular deposit will be available for withdrawal.

When a depository bank extends the time that funds will be available for withdrawal, on a case-by-case basis, it must provide the depositor with a written notice. The notice shall include the following information:

- The customer's account number;
- The date of the deposit;
- The amount of the deposit being delayed; and
- The day the funds will be available for withdrawal.

The notice must be provided at the time of the deposit, unless the deposit is not made in person to an employee of the depository bank, or when the decision to delay availability is made after the time of the deposit. If notice is not given at the time of the deposit, the depository bank must mail or deliver the notice to the customer no later than the first business day following the banking day the deposit is made.

A depository bank that extends the time when funds will be available for withdrawal on a case-by-case basis and does not furnish the depositor with written notice at the time of deposit

may not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks or other debits to the account, if:

- The overdraft or return of the check or other debit would not have occurred except for the fact that the deposited funds were delayed under §229.16(c)(1) of the regulation; and
- The deposited check was paid by the paying bank.

However, the depository bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the disclosure required in §229.16(c)(2) and, when required, refunds any such fees upon the request of the customer. The overdraft and returned check notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the delay is paid, and state how to obtain a refund.

Credit Union Notice of Interest Payment Policy

Under §229.16(d), if a credit union begins to accrue interest or dividends on all deposits made in an interest-bearing account, including cash deposits, at a later time than the day specified in §229.14(a), the institution's specific policy disclosures must contain an explanation of when interest or dividends on deposited funds will begin to accrue.

Initial Disclosures – §229.17

New Accounts

Section 229.17(a) states a bank must provide potential customers with the disclosures described in §229.16 before an account is opened.

Additional Disclosure Requirements – §229.18

Deposit Slips

Under §229.18(a), all preprinted deposit slips given to customers must include a notice that deposits may not be available for immediate withdrawal.

Location Where Employees Accept Consumer Deposits

Section 229.18(b) provides that a bank must post, at a conspicuous place at each location where its employees receive deposits to consumer accounts, a notice that sets forth the time periods applicable to the availability of funds deposited.

Automated Teller Machines

Under §229.18(c), a depository bank must post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal. A depository bank that operates an off-premises ATM from which deposits are removed not more than two times each week, as described in §229.19(a)(4), must disclose at or on the ATM the days in which deposits made at the ATM will be considered received.

Upon Request

Section 229.18(d) states a bank must provide a copy of its specific availability policy disclosure described in §229.16 to any person who requests it.

Changes in Policy

Thirty days prior to implementation, a bank must send notification of a change to the bank's availability policy to all account holders, if adversely affected by the change. Under §229.18(e), changes that result in faster availability may be disclosed no later than 30 days after implementation.

Miscellaneous – §229.19

When Funds are Considered Deposited

Section 229.19(a) provides rules that govern when funds are considered deposited for purposes of Subpart B of the regulation. The time that funds must be made available for withdrawal is measured from the day the deposit is "received." Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds mailed to the depository bank are considered deposited on the banking day they are received by the depository bank. The funds are received by the depository bank at the time the mail is delivered to the bank, even if the mail is initially delivered to a mail room, rather than the check processing area.

Funds, however, may also be deposited at an unstaffed facility such as a night depository or lock box. Funds deposited at a night depository are considered deposited on the banking day the deposit is removed, and the contents of the deposit are accessible to the depository bank for processing. For example, some businesses deposit their funds in a locked bag at the night depository late in the evening and return to the bank the following day to open the bag. Other depositors may have an agreement with their bank that the deposit bag must be opened under the dual control of the bank and the depositor. In these cases, the funds are considered deposited when the customer returns to the bank and opens the deposit bag.

Funds deposited through a lock box arrangement are considered deposited on the day the deposit is removed from the lock box and are accessible to the depository bank for processing. A lock box is typically used by a corporation for the collection of bill payments or other check receipts.

The regulation contains a special rule for off-premise ATMs that are not serviced daily. Funds deposited at these ATMs are considered deposited on the day they are removed from the ATM, if the ATM is not serviced more than two times each week. This special provision is geared toward those banks whose practice is to service remote ATMs infrequently. If a

depository bank uses this provision, it must post a notice at the ATM informing depositors that funds deposited at the ATM may not be considered received on the date of deposit.

Funds deposited on a day the depository bank is closed, or after the bank's cut-off hour, may be considered made on the next banking day. Generally, a bank may establish a cut-off hour of 2:00 p.m. or later for receipt of deposits at its main office or branch offices. A cut-off hour of 12:00 noon or later may be established for deposits made to ATMs, lock boxes, night depositories, or other off-premises facilities. (As specified in the commentary to §229.19(a), the noon cut-off period relates to the local time of the branch or other location of the depository bank where the account is maintained or the local time of the ATM or off-premise facility).

Different cut-off hours may be established for different types of deposits. For example, a 2:00 p.m. cut-off for receipt of check deposits and a later time for receipt of wire transfers is permissible. Location can also play a role in the establishment of cut-off hours. For example, a different cut-off hour may be established for ATM deposits than for over-the-counter deposits, or for different teller stations at the same branch. With the exception of the 12:00 noon cut-off hour for deposits at ATMs and off-premise facilities, no cut-off hour for receipt of deposits can be established earlier than 2:00 p.m.

When Funds Must Be Made Available

Section 229.19(b) discusses funds availability at the start of a business day. Generally, funds must be available for withdrawal by the later of 9:00 a.m. or the time a depository bank's teller facilities including ATMs are available for customer account withdrawals. (Under certain circumstances, there is a special exception for cash withdrawals-see §229.12(d)). Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10:00 a.m., funds must be available for withdrawal by 10:00 a.m. If a bank has 24 hour ATM service, funds must be available by 9:00 a.m. for ATM withdrawals.

The start of business is determined by the local time where the branch or depository bank holding the account is located. For example, if funds in an account at a west coast bank are first made available at the start of business on a given day, and a customer attempts to withdraw the funds at an east coast ATM, the depository bank is not required to make funds available until 9:00 a.m. west coast time (12:00 noon east coast time).

Effects of the Regulation on Policies

Section 229.19(c) describes the effects of the regulation on the policies of a depository bank. Essentially, a depository bank is permitted to provide availability to its customers in a shorter time than that prescribed in the regulation. It may also adopt different funds availability policies for different segments of its customer base, as long as each policy meets the schedules in the regulation. For example, it may differentiate between its corporate and consumer customers, or may adopt different policies for its consumer customers based on whether a customer has an overdraft line of credit associated with the account.

The regulation does not affect a depository bank's right to accept or reject a check for deposit, to charge back the customer's account based on a returned check or notice of nonpayment, or to claim a refund for any credit provided to the customer.

Nothing in the regulation requires a depository bank to have its facilities open for customers to make withdrawals at specific times or on specific days. For example, even though the special cash withdrawal rule set forth in §229.12(d) states that a bank must make up to $400 available for cash withdrawals no later than 5:00 p.m. on specific business days, if a bank does not participate in an ATM system and does not have any teller windows open at or after 5:00 p.m., the bank need not join an ATM system or keep offices open. In this case, the bank complies with this rule if the funds that are required to be available for cash withdrawal at 5:00 p.m. on a particular day are available for withdrawal at the start of business on the following day. Similarly, if a depository bank is closed for customer transactions, including ATMs, on a day funds must be made available for withdrawal, the regulation does not require the bank to open.

If a bank has a policy of limiting cash withdrawals at ATMs to $250 per day, the regulation would not require that the bank dispense $400 of the proceeds of the customer's deposit that must be made available for cash withdrawal on that day.

Some small financial institutions do not keep cash on their premises and offer no cash withdrawal capability to their customers. Others limit the amount of cash on-premises for bonding purposes, and reserve the right to limit the amount of cash that a customer can withdraw on a given day, or require advance notice for large cash withdrawals. Nothing in the regulation is intended to prohibit these practices if they are applied uniformly and are based on security, operating, or bonding requirements, and are not dependent upon the length of time the funds have been in the customer's account, as long as the permissible hold has expired. The regulation, however, does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

Calculated Availability for Nonconsumer Accounts

Section 229.19(d) contains the rules for using calculated availability on nonconsumer accounts. Under calculated availability, a specified percentage of funds from check deposits may be made available to the customer on the next business day, with the remaining percentage deferred until

subsequent days. The determination of the percentage of deposited funds that will be made available each day is based on the customer's typical deposit mix as determined by a sample of the customer's deposits. Use of calculated availability is permitted only if, on average, the availability 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.

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)

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" test and the "forward collection" test. Under the "two-day" test a check is received by the depository bank two 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[3] 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."[4]

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.

3 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.

4 A bank may not vary the language of the legal equivalence legend.

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. 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:[5]

- 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.

5 If a consumer submits an incomplete complaint, the bank must so inform the consumer and must tell the consumer what information is missing.

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 §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.[6] 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

6 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.

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 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)]
   - Checks [§229.12(b)(1)]
   - 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)]
   - 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 $200 and $400 [§229.10(c)(1)(vii), and §229.12(d)]

1. Determine the financial institution's procedures for complying with the $200 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 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 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).

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

Redeposited Checks [§229.13(c)]

1. Determine if the financial institution has procedures and a special hold policy for redeposited checks.
2. If yes, determine if the institution refrains from imposing this exception solely because of a missing indorsement or because the check was postdated.
3. 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).
4. Determine if the notice was provided within the prescribed time frames of §229.13(g)(1) or (g)(2).

Repeated Overdrafts [§229.13(d)]

1. Determine whether the financial institution has procedures or a special hold policy for customers with repeated overdrafts.
2. If yes, review the financial institution's definition for accounts "repeatedly overdrawn" and determine whether it meets the regulatory definition in §229.13(d).
3. 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.
4. 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.
5. 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).
6. 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.
7. 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).
8. 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)]

1. Determine if the financial institution has procedures or a special policy for placing "reasonable cause" holds.
2. If yes, determine who initiates "reasonable cause" holds.
3. Obtain a listing of accounts or checks where this exception was applied. Review the exception notice given to the customer.
4. Determine if the reason for invoking the exception was "reasonable".
5. Review the content of the notice and determine if it meets the requirements of §229.13(g)(1).
6. Determine if notice was given within the required time frames. [§229.13(g)(1)]
7. 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)]

1. 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.
2. Determine whether the institution invokes this exception only under the conditions specified in §229.13(f).
3. 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 time for checks is five business days. A reasonable period for on-us checks is one business day. [§229.13(h)(3), 229.13(h)(4)]

Miscellaneous Provisions

Special Deposit Slips [§229.10(c)(3)]

1. 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)]
2. 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.

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",[7] 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 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

7 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.

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

Expedited Recredit for Consumers – §229.54

1. Determine whether any financial institution customer has raised a Check 21-related claim of loss since the last examination. If yes, review for the following. [In financial institutions where multiple Check 21-related claims have been raised and resolved, the examiner need only review a

sampling sufficient to ensure that the bank's processing is consistent and in compliance with Subpart D.]

- *Necessary pre-conditions – consumer must allege **all** of these* [§§229.54(a)(1)-(4)]
  - Was the consumer's account charged for a substitute check *that was provided to the consumer*? [The consumer need not be in possession of the substitute check at the time of claim submission]
  - Was the consumer's account not properly charged? [Alternatively, a consumer's account could be properly charged yet still give rise to a warranty claim, for example, in the case of a substitute check image that is illegible.]
  - Did the consumer suffer a resulting financial loss?
  - Was the production of the original check or a sufficient copy necessary to determine whether or not the consumer's claim was valid?
- *Procedural steps for consumer's claim*
  - Did the consumer submit a timely claim? [§229.54(b)(1)]
  - Did the claim contain a description of the claim, a statement and estimate of loss, the reason why the original check or a sufficient copy is necessary, and sufficient information for the bank to investigate? [§229.54(b)(2)]
  - If a consumer attempted to make a claim but failed to provide all of the necessary information (as listed above), did the bank inform the consumer that the claim was incomplete and identify the information that was missing? [§229.54(b)(2)(D)(ii)]
  - Was the claim submitted in a form acceptable to the financial institution? Did the bank compute the time for action accurately? [§229.54(b)(3)]
- *Procedural steps for financial institution response*
  If the financial institution concluded that (1) all necessary prerequisites to the filing of a consumer claim existed; and (2) that the consumer followed the appropriate steps in filing the claim, verify that the bank provided the following appropriate response:

  *Claim deemed **valid**:*
  In the event of a valid consumer claim, did the bank
  - Recredit the account for the amount of the loss, up to the amount of the substitute check (plus interest, if applicable), no later than the end of the business day after the banking day on which the bank made its determination [§229.54(c)(1) (i)];
  - Draft a notice of recredit stating (1) the amount of the recredit, (2) the date on which funds will be available for withdrawal [§229.54(e)(1)(i) and (ii)]; and
  - Send the notice no later than the business day after the banking day on which the bank recredit occurs? [§229.54(e)(1)]

  *Claim deemed **invalid**:*
  In the event of an invalid consumer claim, determine whether the bank
  - Sent a notice stating that the claim was invalid and include the original check or a sufficient copy [§229.54(e)(2)(i)];
  - Demonstrated to the consumer that the substitute check was properly charged (or that the consumer's warranty claim is not valid) [§229.54(e)(2)(ii)]; and
  - Included the information or documents (in addition to the original check), if any, relied upon by the bank in making its determination (or a statement that the consumer may request such) [§229.54(e)(2)(iii)].

  *Claim **not resolved** within initial 10 days, pending further investigation:*
  If the bank could not resolve the claim before the end of the 10th business day after the banking day on which the bank received the claim, determine whether the bank
  - Recredited the consumer's account for the amount of the loss, up to the lesser of the amount of the substitute check or $2,500 (plus interest, if applicable) [§229.54(c)(3)(i)(A)];
  - Drafted a notice of recredit stating (1) the amount of the recredit, (2) the date on which funds will be available for withdrawal; [§229.54(e)(1)(i) and (ii)]
  - Recredited the consumer's account for the remaining amount of the loss, if any, up to the amount of the substitute check (plus interest, if applicable), no later than the end of the 45th calendar day after the banking day on which the bank received the claim [§229.54(c)(3)(ii)]; and
  - Sent the notice of recredit no later than the business day after the banking day on which the bank recredit occurs. [§229.54(e)(1)]

  *Claim resulting in **reversal of recredit***
  In some instances it may be necessary for a bank to reverse a recredit made previously to a consumer's account (plus any interest paid, if applicable). If such a circumstance has occurred, determine whether the bank
  - Concluded that the consumer's claim was not valid [§229.54(c)(4)(i)];

- Drafted a notice of reversal of recredit [§229.54(e)(3)], accompanied by the following:
  - The original check or a sufficient copy [§229.54(e)(2)(i)];
  - Information or explanation to demonstrate to the consumer that the substitute check was properly charged (or that the consumer's warranty claim is not valid) [§229.54(e)(2)(ii)];
  - Information or documents (in addition to the original check or a sufficient copy), if any, on which the bank relied in making its determination (or a statement that the consumer can request such) [§229.54(e)(2)(iii)];
  - A description of the amount of the reversal, including both the amount of the recredit and the amount of interest paid on the recredited amount, if any, being reversed [§229.54(e)(3)(i)]; and
  - The date on which the bank made the reversal [§229.54(e)(3)(ii)].
- Sent the notice no later than the business day after the banking day on which the bank made the reversal [§229.54(e)(3)].

- *Availability of recredited funds*
  Under circumstances detailed above, where the financial institution determined that it was appropriate to recredit its consumer customer's account, determine whether the bank took the following actions:
  - Next day availability – Did the bank make any recredited amount available for withdrawal no later than the start of the business day after the banking day on which the recredit was provided? [§229.54(d)(1)]
  - Safeguard exceptions – If necessary for reasons of (1) new account status, (2) overdrawn account status, or (3) well-reasoned suspicion of fraud, did the bank invoke its right to delay immediate availability of recredited funds? If so, was the delay invoked because the bank had not yet determined the validity of the claim? Were the funds made available no later than the business day after the banking day on which the final determination was made **OR** the 45th calendar day after the bank received the claim, whichever occurred earlier? [§229.54(d)(2)]
  - Overdraft fees – If the bank chose to invoke its right to delay immediate availability of recredited funds, did it refrain from imposing an overdraft fee until the appropriate five-day period had elapsed? [§229.54(d)(3)]

References

Expedited Funds Availability Act

Part 229: Availability of Funds and Collection of Checks (FRB Regulation CC)

FIL 116-2004: Final Amendments to the Federal Reserve Board's Regulation CC

FIL 54-2004 Check Clearing for the 21st Century Act

FIL 28-97: Availability of Funds and Collection of Checks

FIL 67-96: Delayed Availability of Funds

Job Aids

Check 21

The FDIC along with the other FFIEC member agencies has developed a computer based training package that may be used to gain familiarity with the Check 21.

This "InfoBase" is accessible through the following link to the FFIEC website: http://www.ffiec.gov/exam/check21/default.htm. It features a 30 minute audio slide presentation, frequently asked questions, and links to other resources. The slide presentation includes discussion about the examination procedures that the FDIC and other FFIEC agencies will use to evaluate compliance with Check 21.

Specific Types of Check Schedules

The flow charts on the following pages detail applicable availability schedules for deposits.

Case-By-Case Hold – The time frames listed in the flow charts are the maximum amounts of time that a bank may delay the availability of a deposit. Most banks have a policy of making funds from deposits available sooner than the time periods allowed by the regulation. These banks may, on a case-by-case basis, delay the availability of funds up to the time frames established by the regulation (those shown in the flow charts). When a bank imposes a case-by-case hold, a written notice including the following information must be given to the depositor:

1. The account number
2. The date of the deposit
3. The amount of the deposit that is being delayed; and
4. The day the funds will be available for withdrawal

Exception Hold – Another type of hold that may be placed is an exception hold. Section 229.13 discusses the types of exceptions that are allowed. When a bank places an exception hold, a written notice must be provided to the depositor (the notice is not required for the New Account Exception). The exception hold notice must contain the same information as the case-by-case hold notice as well as the reason the exception was invoked. If a bank invokes the Emergency Conditions Exception and the emergency is not over by the time periods set forth in the flow chart for that exception, then the additional time is added once the emergency has ended.

NOTE: Exception holds do not apply to cash deposits and electronic payments.

Cash Withdrawal Rule – The bank may extend by one business day the time that funds deposited in an account by certain checks are available for withdrawal by cash or similar means (including electronic payment, issuance of a cashier's or teller's check, etc.). The bank shall, however, make $400 of these funds available for withdrawal by cash or similar means not later than 5:00 p.m. on the business day on which the funds would have been available. The flow charts show that for many deposits, the first $200 of the deposit must be given next day availability while availability of the remaining portion of the deposit may be delayed. The $400 which must be made available in accordance with the cash withdrawal rule is in addition to the funds which must be made available in accordance with the first $200 rule. The instances where the cash withdrawal rule applies are denoted with an * on the flow charts.

TIP: If a branch makes its decision for holds 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.

Cash

Electronic Payments

U.S. Treasury Check

U.S. Postal Money Order

Federal Reserve Bank (FRB) or Federal Home Loan Bank (FHLB) Check

State or Local Government Check

Cashier's, Certified, or Teller's Check

"On Us" Check

NEW ACCOUNT EXCEPTION

LARGE DEPOSIT EXCEPTION