

Compliance for Deposit Operations
Regulation CC:
Expedited Funds Availability Act

Pennsylvania Association of Community Bankers
November 2020

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Section 1: Background and Introduction

Background

Congress passed the Expedited Funds Availability Act in 1987. The act, which is implemented by Regulation CC, was effective September 1, 1988, and seeks to assure prompt availability of funds and to expedite the return of checks.

Regulation CC is divided into four subparts:

- Subpart A defines terms and outlines enforcement authority.
- Subpart B specifies schedules within which banks must make funds available for withdrawal. Subpart B also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest.
- Subpart C includes rules to speed the collection and return of checks. These rules cover the expeditious return 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. We will not cover this material today.
- Subpart D incorporates the amendments enacted by the Check 21 Act that relate to substitute checks.

Comment Regarding This Manual

There is no longer a differentiation regarding local and non-local checks. The Federal Reserve Board has proposed a rewrite of the regulation to remove all references to local and non-local checks, as this is the current reality. This change has not taken place; however, we have eliminated all references to local and non-local within this manual.

We believe that this reflects the real world situation in which banks find themselves. However, the manual does not reflect the current language in the regulation itself.

This manual does not include approximately 100 pages of changes that occurred in 2018, as they are “back office” issues, and not primary compliance topics. If that information is required, please let us know and we will provide it.

Section 2: Definitions [12 C.F.R. § 229.2]

Definitions

Account

A deposit that is a transaction account as defined by Regulation D: Reserve Requirements of Depository Institutions. Account generally includes accounts at a bank from which the account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, electronic payment, or other similar means for the purpose of making payments or transfers to third persons or others.

The term “account” also includes accounts at a bank from which the account holder may make third party payments at an automated teller machine (ATM), remote service unit, or other electronic device, including by debit card.

An account may be in one of these forms:

- A demand deposit account
- A negotiable order of withdrawal account
- A share draft account
- An automatic transfer account
- Any other transaction account as defined by Regulation D

The term does not include savings deposits as defined by Regulation D, even though such accounts permit third-party transfers. “Account” does not include an account where the account holder is a bank, where the account holder is an office of a bank or an office of a foreign bank that is located outside the United States, or where the direct or indirect account holder is the Treasury of the United States.

For purposes of Subpart D (Check 21 amendments), an account means any deposit defined by Regulation D, including a demand deposit or other transaction account and a savings deposit or other time deposit.

Automated Clearinghouse (ACH)

A facility that processes debit and credit transfers under rules established by the Federal Reserve Bank or under rules of an automated clearinghouse association.

Automated Teller Machine (ATM)

An electronic device at which a person may make deposits to an account by cash or check and perform other account transactions.

Available for Withdrawal

Deposited funds are considered available for withdrawal if available for all uses generally permitted to the customer for actually and finally collected funds under the bank's account agreement or policies, such as for payment of checks drawn on the account, certification of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

Bank

The term "bank" includes the following:

- A federally insured bank or a bank that is eligible to apply to become a federally insured bank
- A federally insured mutual savings bank
- A federally insured savings bank
- A federally insured credit union or a credit union that is eligible to make application to become an insured credit union
- A member of the Federal Home Loan Bank system
- An agency or a branch of a foreign bank

For purposes of check collection guidelines, substitute checks and the related timeframes within which deposited funds must be made available for withdrawal, the term "bank" also includes any person engaged in the business of banking, including a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank.

For purposes of substitute checks, the term "bank" also includes the Treasury of the United States or the United States Postal Service to the extent that the Treasury or the Postal Service acts as a paying bank.

The term "bank" includes all of a bank's offices in the United States, but not offices located outside the United States.

Banking Day

That part of any business day on which an office of a bank is open to the public for carrying on substantially all of its banking functions.

Business Day

A calendar day other than a Saturday, a Sunday, or a federal holiday. If January 1, July 4, November 11 or December 25 falls on a Sunday, the following Monday is not a business day.

Cash

United States coins and currency.

Cashier's Check

A check that meets all of the following conditions:

- Drawn on a bank
- Signed by an officer or employee of the bank on behalf of the bank as drawer
- A direct obligation of the bank
- Provided to a customer of the bank or acquired from the bank for remittance purposes

Certified Check

A check which the drawee bank certifies by signature on the check of an officer or other authorized employee of the bank that either:

- The signature of the drawer on the check is genuine and the bank has set aside funds that are equal to the amount of the check and will be used to pay the check
- The bank will pay the check upon presentment.

Check

A check is any of the following:

- A negotiable demand draft drawn on or payable through or at an office of a bank
- A negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank
- A negotiable demand draft drawn on the Treasury of the United States
- A demand draft drawn on a state government or unit of general local government that is not payable through or at a bank
- A United States Postal Service money order
- A traveler's check drawn on or payable through or at a bank
- An original check and a substitute check

The term "check" does not include a noncash item or an item payable in a medium other than United States money. A draft may be a check, even though it is described on its face by another term, such as money order. For purposes of check collection, substitute checks and the timeframes in which deposited funds must be made available for withdrawal, the term "check" also includes a demand draft that is nonnegotiable.

Consumer Account

Any account used primarily for personal, family, or household purposes.

Depository Bank

The first bank to which a check is transferred, even if it is also the paying bank or the payee. A check deposited in an account is deemed to be transferred to the bank holding the account into which the check is deposited, even though the check is physically received and endorsed first by another bank.

Electronic Payment

A wire transfer or an ACH credit transfer.

Forward Collection

The process by which a bank sends a check on a cash basis to a collecting bank for settlement or to the paying bank for payment.

Good Faith

Honesty in fact and observance of reasonable commercial standards of fair dealing.

Interest Compensation

An amount of money calculated at the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest compensation is payable, divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the last preceding day for which there is a published rate.

Merger Transaction

A merger transaction is either:

- A merger or consolidation of two or more banks
- The transfer of substantially all of the assets of one or more banks or branches to another bank in consideration of the assumption by the acquiring bank of substantially all of the liabilities of the transferring banks, including the deposit liabilities

Noncash Item

An item that would otherwise be a check, except that:

- A passbook, certificate, or other document is attached
- It is accompanied by special instructions, such as a request for special advice of payment or dishonor
- It consists of more than a single thickness of paper, except a check that qualifies for handling by automated check processing equipment
- It has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank

Nonproprietary ATM

An ATM that is not a proprietary ATM.

Participant

A bank that meets both of the following:

- Is located in the geographic area served by a check clearinghouse association
- Both collects and receives for payment checks through the check clearinghouse association, either directly or through another participant

Paying Bank

A paying bank is any of the following:

- The bank by which a check is payable, unless the check is payable at another bank and is sent to the other bank for payment or collection
- The bank at which a check is payable and to which it is sent for payment or collection
- The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable
- The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank
- The state or unit of general local government on which a check is drawn and to which it is sent for payment or collection

For purposes of check collection guidelines, substitute checks and the related timeframes within which deposited funds must be made available for withdrawal, the term “paying bank” includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank. It also includes the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection. Finally, it also includes the Treasury of the United States or the United State Postal Service for a check that is payable by that entity and that is sent to that entity for payment or collection.

Proprietary ATM

- An ATM that meets one of the following:
- Owned or operated by, or operated exclusively for, the depository bank
- Located on the premises (including the outside wall) of the depository bank
- Located within 50 feet of the premises of the depository bank, and not identified as being owned or operated by another entity

If more than one bank owns or operates an ATM, it is considered proprietary to the bank that operates it.

Qualified Returned Check

A returned check that is prepared for automated return to the depository bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink. A qualified returned check need not contain other elements of a check drawn on the depository bank, such as the name of the depository bank.

Remotely Created Check

A check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. For purposes of this definition, “account” means an account as defined above, as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

Returning Bank

A bank (other than the paying or depository bank) handling a returned check or notice in lieu of return.

Routing Number

A bank’s routing number is either:

- The number printed on the face of a check in fractional form or in nine-digit form
- The number in a bank’s endorsement in fractional or nine-digit form

Similarly Situated Bank

A bank of similar size, located in the same community, and with similar check handling activities as the paying bank or returning bank.

State

A state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands. For purposes of substitute checks and Subpart A of the regulation, a state also includes Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and any other territory of the United States.

Teller's Check

A check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

Traveler's Check

An instrument for the payment of money that meets all of the following:

- Is drawn on or payable through or at a bank
- Is designated on its face by the term “traveler’s check” or by any substantially similar term or is commonly known and marketed as a traveler’s check by a corporation or bank that is an issuer of traveler’s checks
- Provides for a specimen signature of the purchaser to be completed at the time of purchase
- Provides for a countersignature of the purchaser to be completed at the time of negotiation

United States

The states, including the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

Unit of General Local Government

Any city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special-purpose units of government, such as school districts or water districts.

Wire Transfer

An unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt, or on a day stated in the order, that is transmitted by electronic or other means through Fedwire, the Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. Wire transfer does not include an electronic fund transfer as defined in the Electronic Fund Transfer Act.

Section 3: Administrative Enforcement [12 C.F.R. § 229.3]

If the regulatory agencies determine that a bank has failed to comply with any of the requirements of Regulation CC, they may issue an order prohibiting any bank, any Federal Reserve Bank, or any other person subject to their authority from engaging in any activity or transaction that directly or indirectly involves the noncomplying bank. This prohibition could include any activity or transaction involving the receipt, payment, collection, and clearing of checks and any related function of the payment system with respect to checks.

Section 4: General Availability of Funds

Background

Subpart B of the regulation addresses the timeframes in which deposited items must be available for withdrawal by the customer. These timeframes depend upon a variety of factors, including the type of item(s) deposited, the manner of deposit, and whether or not a check is deposited into the payee's account.

When Funds Are Considered Deposited [12 C.F.R. § 229.19(a)]

The time funds must be made available for withdrawal is also determined, in part, by the day the deposit was made. The following are the regulation's guidelines for determining when funds are considered deposited:

1. Funds deposited at a staffed facility or an ATM are considered deposited when they are received at the staffed facility or ATM.
2. Funds mailed to the bank are considered deposited on the day they are received by the bank.
3. Funds deposited to a night depository, lock box, or similar facility are considered deposited on the day on which the deposit is removed from the facility and is available for processing by the depository bank.
4. Funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depository bank are considered deposited on the day the funds are removed from the ATM, if funds normally are removed from the ATM not more than two times each week.
5. Funds may be considered deposited on the next banking day, in the case of funds that are deposited:
 - a. On a day that is not a banking day for the depository bank, or
 - b. After a cut-off hour set by the bank for the receipt of deposits of 2:00 p.m. or later, or, for the receipt of deposits at ATMs or off-premises facilities (such as night depositories or lock boxes), of 12:00 noon or later. Different cut-off hours may be established for different types of deposits or receipt of deposits at different locations. However, these cut-off hours cannot be earlier than 2:00 p.m. or 12:00 noon, as applicable.

Cutoff

A bank is not required to remain open until 2:00 p.m. If a bank closes before 2:00 p.m., deposits received after the closing may be considered received on the next banking day. Further, the term "banking day" is defined as the portion of a business day on which a bank is open to the public for substantially all of its banking functions. A day, or a portion of a day, is not necessarily a banking day merely because the bank is open for only limited functions, such as keeping drive-in or walk-up teller windows open, when the rest of the bank is closed to the public.

For example, a banking office that usually provides a full range of banking services may close at 12:00 noon but leave a drive-in teller window open for the limited purpose of receiving deposits and making cash withdrawals. Under those circumstances, the bank is considered closed and may consider deposits received after 12:00 noon as having been received on the next banking day. The fact that a bank may reopen for substantially all of its banking functions after 2:00 p.m., or that it continues its back office operations throughout the day, would not affect this result.

A bank may not, however, close individual teller stations and reopen them for next-day's business before 2:00 p.m. during a banking day.

Availability at Start of Business Day [12 C.F.R. § 229.19(b)]

The regulation includes guidelines for determining the “start” of the business day. If funds must be made available for withdrawal on a business day, the funds must be available for withdrawal by the later of:

- 9:00 a.m.
- The time the depository bank's teller facilities, including ATMs, are available for customer account withdrawals

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 customer withdrawal beginning at 10:00 a.m. If the bank has ATMs that are available 24 hours a day, rather than establishing 12:01 a.m. as the start of the business day, the regulation sets 9:00 a.m. as the start of the day for ATM withdrawals.

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

Next-Day Availability Guidelines [12 C.F.R. § 229.10]

The time funds must be made available for withdrawal is determined, in part, by the type of item deposited into a customer's account. The following types of funds that can be deposited into an account receive next day availability. In all cases, next day availability means the first business day after the banking day.

Cash Deposits	
Requirements for Next Day Availability	What Makes the Deposit Second Day Available
<ul style="list-style-type: none"> Made in person to an employee of the depository institution 	Not made in person to an employee of the depository institution

Electronic Payments	
Requirements for Next Day Availability	What Makes the Deposit Second Day Available
<ul style="list-style-type: none"> Payment is made in actually and finally collected funds Information on the account and amount to be credited. 	Not applicable

Note: U.S. Treasury and NACHA rules generally require that electronic payments to an account must be made available on the same business day they are received.

Treasury Checks	
Requirements for Next Day Availability	What Makes the Deposit Second Day Available
<ul style="list-style-type: none"> • A check drawn on the Treasury of the United States • Deposited in an account held by a payee of the check 	Not applicable

U.S. Postal Service Money Orders Federal Reserve Bank or Federal Home Loan Bank Checks	
Requirements for Next Day Availability	What Makes the Deposit Second Day Available
<ul style="list-style-type: none"> • Deposited into an account held by the payee of the money order or check • In person to an employee of the depository institution 	A violation of either of the next day conditions

Cashier's, Certified, or Teller's Checks	
Requirements for Next Day Availability	What Makes the Deposit Second Day Available
<ul style="list-style-type: none"> • In an account held by a payee of the check • In person to an employee of the depository bank • With a special deposit slip or deposit envelope, if required by the depository bank 	A violation of any of the next day conditions

Note: A check deposited in a branch of the depository bank and drawn on the same or another branch of the same bank ("on-us" check) if both branches are located in the same state.

Check Drawn On State or Unit of Local Government	
Requirements for Next Day Availability	What Makes the Deposit Second Day Available
<ul style="list-style-type: none"> • In an account held by a payee of the check • In a depository bank located in the state that issued the check, or the same state as the unit of general local government that issued the check • In person to an employee of the depository bank • With a special deposit slip or deposit envelope, if required by the depository bank 	A violation of any of the next day conditions

Minimum Available Deposit

Regardless of the situation, the depository institution must make available the lesser of:

- \$200 (\$225 beginning 7/1/20), or
- The aggregate amount deposited on any one banking day to all accounts of the customer by check or checks not subject to next-day availability

Special Deposit Slip

Some deposits types (indicated above) may require the deposit to be made with a special deposit slip or deposit envelope that identifies the type of check in order to receive next-day or second-day availability. This requirement would generally be based on the bank's mainframe system requirements, or on the bank's overall Regulation CC policy regarding next day availability.

If a bank requires the use of a special deposit slip or deposit envelope, it must either:

- Provide the special deposit slip or deposit envelope to its customers
- Inform its customers how the slip or envelope may be prepared or obtained and make the slip or envelope reasonably available

Availability Schedule [12 C.F.R. § 229.12]

Generally, funds deposited by any other check into an account must be available for withdrawal not later than the second business day following the banking day on which funds are deposited.

Withdrawals by Cash or Similar Means

The regulation includes a special cash withdrawal rule to provide a depository bank with additional time to learn of the nonpayment of a check before it must make funds available to its customer.

A bank may extend by one business day the time that funds deposited in an account by one or more checks subject to the permanent availability schedule are available for withdrawal by cash or similar means. Similar means include electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay. Similar means do not include the granting of credit to a bank, a Federal Reserve Bank, or a Federal Home Loan Bank that presents a check to the depository bank for payment.

A bank is required, however, to make \$400 (\$450 beginning 7/1/20) 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 normally be available under the permanent availability schedule. This \$400 (\$450 beginning 7/1/20) is in addition to the \$200 (\$225 beginning 7/1/20) that must be made available the day after the date of deposit.

This one-day-availability extension applies only to the permanent availability schedule for local checks, and does not apply to checks that meet the next-day or second-day availability guidelines listed above.

Extensions for Certain Depository Banks

The availability timeframes established by the permanent schedule may be extended by one business day:

- If the deposit is into an account at a branch of a depository bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands, and
- If the item deposited is a check drawn on or payable at or through a paying bank not located in the same state as the depository bank

This one-day-availability extension applies only to the permanent availability schedule and does not apply to checks that meet the next-day (or second-day) availability guidelines listed above.

Deposits at Nonproprietary ATMs

The regulation also provides special rules for deposits at nonproprietary ATMs. Funds deposited in an account at a nonproprietary ATM by cash or check of any kind must be available for withdrawal not later than the fifth business day following the banking day on which the funds are deposited.

For example, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day or second-day availability, must be made available for withdrawal not later than Monday of the following week.

The requirement to make up to \$200 (\$225 beginning 7/1/20) of an aggregate daily deposit available for withdrawal on the next business day after the banking day of deposit does not apply to deposits at a nonproprietary ATM.

Section 5: New Account and Exception Holds

[12 C.F.R. § 229.13]

Introduction

Generally, “exception holds” allow the bank to extend the applicable availability time period by five business days unless the bank can justify a longer period. Note that the bank carries the burden of proving that a reasonable delay should be extended.

The specific “exception holds” allowed by the regulation are discussed on the next page.

New Accounts

An account is considered a new account during the first 30 calendar days after the account is established. An account is not considered a new account if each customer on the account has had, within 30 calendar days before the account is established, another transaction account at the bank for at least 30 calendar days.

New accounts have very specific and unique funds availability guidelines. During the new account exception period, the availability schedule for checks does not apply. Unlike the other exceptions, the regulation provides no maximum timeframes within which the proceeds of these deposits must be made available for withdrawal.

Maximum times within which funds must be available for withdrawal during the new account period are provided, however, for certain other deposits.

1. Deposits received by cash and electronic payments must be made available for withdrawal on the business day following the banking day of deposit or receipt.
2. The first \$5,000 (\$5,525 beginning 7/1/20) of the following types of deposits must be made available for withdrawal in accordance with the next-day or second-day availability guidelines:
 - a. Treasury checks
 - b. U.S. Postal Service money orders
 - c. Checks drawn on Federal Reserve Banks and Federal Home Loan Banks
 - d. State and local government checks
 - e. Cashier’s, certified, and teller’s checks and, for the purposes of the new account exception only, traveler’s checks

Thus, the first \$5,000 (\$5,525 beginning 7/1/20) of the proceeds of these check deposits must be made available on the next business day following deposit if the deposit is made in person to an employee of the depository bank, and the other conditions of next-day availability are met. Funds must be made available on the second business day after deposit for deposits that are not made over-the-counter but meet the other

conditions of second-day availability. Proceeds of Treasury check deposits must be made available on the next business day after deposit if deposited into the payee's account, even if the check is not deposited in person to an employee of the depository bank.

3. Funds in excess of the first \$5,000 (\$5,525 beginning 7/1/20) deposited by these types of checks on any one banking day must be available for withdrawal not later than the ninth business day following the banking day of deposit.

The requirement that on-us checks and the first \$200 (\$225 beginning 7/1/20) of a day's deposit be made available for withdrawal on the next business day do not apply during the new account period.

Large Deposit Exception Hold

What are the conditions for using this hold type?	The amount of the check deposits must exceed \$5,000 (\$5,525 beginning 7/1/20) on any banking day.
What is the date of deposit?	The banking day that the deposit is actually posted to the account.
What portion of the deposit may be held?	The amount of any check deposit that exceeds \$5,000 (\$5,525 beginning 7/1/20) on any one banking day.
What portion of the deposit may NOT be held?	The amount up to \$5,000 (\$5,525 beginning 7/1/20) is not subject to this hold type. It may be subject to another hold type.
What about the first \$200 (\$225 beginning 7/1/20) of the deposit?	Not subject to this rule, as \$5,000 (\$5,525 beginning 7/1/20) is being made available.
How long can we hold the item(s)?	7 business days.
Can we aggregate all of the customer's accounts for this hold?	Yes, as long as there is a common owner. The owners do not have to match perfectly.
Other rules?	When the large deposit exception is applied to deposits composed of a mix of checks that would otherwise be subject to differing availability schedules, the bank may choose the portion of the deposit to which it applies the exception
What about cash deposits?	Cannot use this hold type.
What about electronic deposits?	Cannot use this hold type.

Redeposited Checks Exception Hold

The redeposited check exception addresses the increased risk to a depository bank that checks that have been returned once for uncollectibility will be uncollectible when they are presented to the paying bank a second time. This exception generally applies to all checks. This exception does not apply to the following:

1. A check that has been returned due to a missing endorsement and redeposited after the missing endorsement has been obtained, if the reason for the return indicated on the check states that it was returned due to a missing endorsement
2. A check that has been returned because it was postdated if:
 - a. The reason for the return indicated on the check states that it was returned because it was postdated
 - b. The check is no longer postdated when redeposited

What are the conditions for using this hold type?	Must be re-depositing a check.
What is the date of deposit?	The banking day that the deposit is actually re-deposited to the account.
What portion of the deposit may be held?	The entire amount of the re-deposited check.
What portion of the deposit may NOT be held?	The entire amount is subject to this hold.
What about the first \$200 (\$225 beginning 7/1/20) of the deposit?	Not subject to this rule, as the availability was given upon initial deposit.
How long can we hold the item(s)?	7 business days.
Can we aggregate all of the customer's accounts for this hold?	Not applicable.
Other rules?	None.
What about cash deposits?	Cannot use this hold type.
What about electronic deposits?	Cannot use this hold type.

Repeated Overdrafts Exception Hold

If any account, or combination of accounts, of a bank's customer has or have been repeatedly overdrawn, the availability guidelines do not apply to checks deposited into any of the accounts for a period of six months after the last overdraft. The regulation provides two tests to determine what constitutes repeated overdrafts.

First Test. Under the first test, a customer's accounts are considered repeatedly overdrawn if, on six or more banking days within the preceding six months, the available balance in any account held by the customer is negative or the balance would have become negative if checks or other charges to the account had been paid rather than returned.

This test can be met based on separate occurrences (e.g., checks that are returned for insufficient funds on six different days) or based on one occurrence (e.g., a negative balance that remains on the customer's account for six banking days). If a bank dishonors a check that otherwise would have created a negative balance, however, the incident is considered an overdraft only on that day.

Second Test. The second test addresses substantial overdrafts. Such overdrafts increase the risk to a bank of dealing with the repeated overdrafter. Under this test, a customer incurs repeated overdrafts if, on two or more banking days within the preceding six months, the available balance in any account held by the customer is negative in an amount of \$5,000 or more or would have become negative in an amount of \$5,000 or more if checks or other charges to the account had been paid.

Applicability. This exception relates not only to overdrafts caused by checks drawn on the account, but also to overdrafts caused by other debit charges (e.g., ACH debits, point-of-sale transactions, returned checks, account fees, etc.). If the potential debit is in excess of available funds, the exception applies regardless of whether the items were paid or returned unpaid.

An overdraft resulting from an error on the part of the bank or from the imposition of overdraft charges for which the customer is entitled to a refund cannot be considered in determining whether the customer is a repeated overdrafter. In addition, this exception excludes accounts with overdraft lines of credit, unless the credit line has been exceeded or would have been exceeded if the checks or other charges to the account had been paid.

What are the conditions for using this hold type?	Must meet one of the tests above.
What is the date of deposit?	The banking day that the deposit is actually deposited to the account.
What portion of the deposit may be held?	The entire amount of the check.
What portion of the deposit may NOT be held?	The entire amount is subject to this hold.
What about the first \$200 (\$225 beginning 7/1/20) of the deposit?	Not subject to this rule.
How long can we hold the item(s)?	7 business days.
Can we aggregate all of the customer's accounts for this hold?	Not applicable.
Other rules?	None.
What about cash deposits?	Cannot use this hold type.
What about electronic deposits?	Cannot use this hold type.

Reasonable Cause to Doubt Collectability Exception Hold

In the case of certain check deposits, if the bank has reasonable cause to believe the check is uncollectible, it may extend the time funds must be made available for withdrawal. This exception generally applies to all checks.

Reasonable cause to believe a check is uncollectible requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. This belief cannot be based on the fact that the check is of a particular class or is deposited by a particular class of person.

For example, a bank cannot invoke this exception simply because the check is drawn on a paying bank in a rural area and the bank knows it will not have the opportunity to learn of nonpayment of that check before funds must be made available under the availability schedules. Similarly, a bank cannot invoke the reasonable cause exception based on the race or national origin of the depositor.

Overdraft and Returned Check Fees. If a bank invokes this exception and does not provide a written notice to the customer at the time of deposit, it cannot assess any overdraft fee (such as an NSF charge) or charge interest for use of overdraft credit, if the check is paid by the paying bank and these charges would not have occurred had the exception not been invoked.

A bank may assess an overdraft fee under these circumstances, however, if it includes in the exception notice a statement that the fee may be subject to refund and if it refunds the charges upon the request of the customer. The notice must state that the customer may be entitled to a refund of any overdraft fees that are assessed if the check being held is paid and must indicate where such requests for a refund of overdraft fees should be directed.

What are the conditions for using this hold type?	Must have a reasonable belief that the check will not be paid.
What is the date of deposit?	The banking day that the deposit is actually deposited to the account.
What portion of the deposit may be held?	The entire amount of the check.
What portion of the deposit may NOT be held?	The entire amount is subject to this hold.
What about the first \$200 (\$225 beginning 7/1/20) of the deposit?	Not subject to this rule.
How long can we hold the item(s)?	7 business days.
Can we aggregate all of the customer's accounts for this hold?	Not applicable.
Other rules?	Cannot discriminate against a class of checks. For instance "credit card check" is not an acceptable reason under this rule.
What about cash deposits?	Cannot use this hold type.
What about electronic deposits?	Cannot use this hold type.

Emergency Conditions Exception Hold

Certain emergency conditions may arise that delay the collection or return of checks or that delay the processing and updating of customer accounts. A bank may extend the holds placed on deposits of checks that are affected by delays due to the following circumstances:

- An interruption of communications or computer or other equipment facilities
- A suspension of payments by another bank
- A war
- An emergency condition beyond the control of the bank, if the bank exercises such diligence as the circumstances require

For example, if a bank learns that a check has been delayed in the process of collection due to severe weather conditions or other causes beyond its control, an emergency condition covered by this section may exist and the bank may place a hold on the check to reflect the delay.

What are the conditions for using this hold type?	Must have an emergency condition, based on the rules above.
What is the date of deposit?	The banking day that the deposit is actually deposited to the account, which may be delayed by the emergency.
What portion of the deposit may be held?	The entire amount of the check.
What portion of the deposit may NOT be held?	The entire amount is subject to this hold.
What about the first \$200 (\$225 beginning 7/1/29) of the deposit?	Not subject to this rule.
How long can we hold the item(s)?	It depends on the emergency condition. You will have to tell them how long the delay will be.
Can we aggregate all of the customer's accounts for this hold?	Not applicable.
Other rules?	None.
What about cash deposits?	Due to the nature of this hold type, these may be delayed.
What about electronic deposits?	Due to the nature of this hold type, these may be delayed.

Availability of Deposits Subject to Exceptions [12 C.F.R. § 229.13(h)]

General Guidelines

If a bank invokes any exception, other than the new account exception, it may extend the time within which funds must be made available under the availability schedules by a reasonable period of time. A reasonable period of time is considered to be an extension of up to:

- One business day for on-us checks
- Five business days for all other checks

Under certain circumstances, however, a longer extension may be reasonable. In these cases, the burden is placed on the bank to establish that a longer period is reasonable.

For example, assume a bank extended the hold on a check deposit by five business days, based on its reasonable cause to believe that the check is uncollectible. On the day before the extended hold is scheduled to expire, the bank receives a notification from the paying bank that the check is being returned unpaid. Under these circumstances, the bank may determine that a longer hold is warranted if it decides not to charge back the customer's account based on the nonpayment notification. If the bank decides to extend the hold, the bank must send a second exception hold notice, indicating the new date that the funds will be available for withdrawal.

Next-Day Items

Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, and cashier's, certified, and teller's checks may be treated as standard checks under the large deposit, redeposited check, repeated overdraft, or reasonable cause exception. Availability under these exceptions may be delayed by a reasonable period beyond the delay that would have been permitted, had the checks not been subject to the next-day or second-day availability requirement. The additional hold (five days) is added to the normal two day schedule that would normally apply

Emergency Conditions

In the case of the application of the emergency conditions exception, the bank may extend the hold placed on a check by a reasonable period of time following the latter of the end of the emergency or the time the funds would normally be required to be available for withdrawal.

Notice of Exception [12 C.F.R. § 229.13(g)]

If the bank employs the exceptions listed above, other than the new account exception, it must provide the depositor with a written notice of the delayed availability of the funds. The notice must include the following information:

- A number or code, which need not exceed four digits, that identifies the customer's account

- Date of the deposit
- Amount of the deposit that is being delayed
- Reason the exception was invoked
- Day the funds will be available for withdrawal, unless the emergency conditions exception has been invoked and the bank in good faith does not know when the funds will be available

Timing of Notice

The notice of the delayed availability must be provided at the time of deposit, unless the deposit was not made in person to an employee of the bank or the facts leading to the delay were not discovered until after the deposit was made. If notice is not given at the time of deposit, then the bank must mail or deliver the notice not later than the first business day following the decision to delay availability.

Emergency Conditions

Under emergency conditions, a notice is not required to be sent if availability occurs prior to when the notice must be sent. For example, suppose a computer failure occurs and is brought back up during the very early hours of the following morning. Availability would be restored prior to being required to send the notice.

One-Time Exception Notice

Banks are allowed to provide nonconsumer accounts a single notice to the customer that extends the time when funds deposited will be available for withdrawal for exceptions due to large deposits and redeposited checks. This single notification will be allowable if each type of exception cited in the notice will be invoked for most checks deposited into the account. It can be given at or prior to the time of deposit or mailed or delivered the first business day following the decision to delay availability. The notice must include the following:

- Reason the exception was invoked
- Time period within which deposits subject to the exception will be available for withdrawal

Notice of Repeated Overdrafts Exception

Banks are also allowed to provide both consumer and nonconsumer accounts a single notice to the customer that extends the time when funds deposited will be available for withdrawal based on the repeated overdrafts exception. This notice must be provided for each time period during which the exception will be in effect. It can be given at or prior to the time of deposit or mailed or delivered the first business day following the decision to delay availability. The notice must include the following:

- Account number of the customer

- Fact that the availability of funds deposited in the account will be delayed because the repeated overdraft exception will be invoked
- Time period within which deposits subject to the exception will be available for withdrawal
- Time period during which the exception will apply

Record Retention

Each time the bank invokes the reasonable cause exception, it must retain written records that include a brief statement of the facts giving rise to the bank's reason to doubt the collectibility of the check. This statement is to be retained with the bank's copy of the exception hold notice provided to the customer.

Section 6: Case-by-Case Holds [12 C.F.R. § 229.16(c)]

Introduction

Banks that make deposited funds available for withdrawal sooner than required by the regulation (for example, providing their customers with immediate or next-day availability for deposited funds) may delay the time when funds are available for withdrawal from time to time determined on a case-by-case basis, provided they include notice of this in their specific availability policy disclosure.

Disclosure Requirements

In addition to stating what their specific availability policy is in most cases, banks that may delay or extend the time when deposits are available on a case-by-case basis must also include the following in their specific policy disclosure:

- Statement that the time when deposited funds are available for withdrawal may be extended in some cases and the latest time following a deposit that funds will be available for withdrawal
- Statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until later than the time periods stated in the bank's availability policy
- Statement that customers should ask if they need to be sure about when a particular deposit will be available for withdrawal

Availability Requirements

A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of the regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required for checks, the reason for the delay need not be based on the exceptions provided by the regulation.

If the delay exceeds the time periods permitted under the permanent availability schedule, however, then it must be based on an "exception hold" allowed by the regulation and the bank must comply with the exception hold notice requirements. A bank that imposes delays on a case-by-case basis may use the one-time notice provisions for large deposits, redeposited checks, and repeated overdrafts discussed above.

Notification Requirements

When a bank extends the time when funds will be available for withdrawal on a case-by-case basis, a written notice must be provided to the customer. This notice must include the following information:

- A number or code, which need not exceed four digits, that identifies the customer's account
- Date of the deposit
- Amount of the deposit that is being delayed
- Day the funds will be available for withdrawal

The notice of the delayed availability must be provided at the time of deposit, unless the deposit was not made in person to an employee of the bank or the facts leading to the delay were not discovered until after the deposit was made. If notice is not given at the time of deposit, then the bank must mail or deliver the notice not later than the first business day following the banking day the deposit is made.

Overdraft and Returned Check Fees

Generally, the regulation prohibits a bank from assessing 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 customer was not provided the case-by-case hold notice at the time of deposit, and, 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 by the case-by-case hold, and
- The deposited check was paid by the paying bank

However, a bank may assess these fees if the customer was not provided the case-by-case hold notice at the time of deposit, provided that both of the following are met:

- Notification, stating 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 how to obtain such a refund, is included with the hold notice subsequently provided to the customer
- When required, refunds of any such fees are made upon the request of the customer

Section 7: Disclosures and Miscellaneous Issues

Background

Subpart B of Regulation CC also requires the development of a bankwide funds availability policy and a variety of disclosures to be delivered to a customer explaining the policy, describing any changes to the policy, and detailing the delayed availability of funds should a case-by-case hold be placed on a deposit. In addition, this part of the regulation contains miscellaneous guidelines, such as the proper methods of the payment of interest on deposited funds, employee training requirements, and civil liabilities for failure to comply with availability or disclosure requirements.

General Disclosure Requirements [12 C.F.R. § 229.15]

Form of Disclosures

All disclosures are to be written clearly and conspicuously. Except for those disclosures that are posted at locations where employees accept consumer deposits and at ATMs and the notice on preprinted deposit slips, the disclosures must be in a form the customer can keep.

The disclosures must be grouped together and should not contain any information not related to the disclosures required by the regulation. If contained in a document that sets forth other account terms, the disclosures must be highlighted within the document by, for example, use of a separate heading.

Uniform Reference to Day of Availability

The disclosure must describe funds as being available for withdrawal on “the ____ business day after” the day of deposit. In this calculation, 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

One disclosure may be delivered to a customer who holds multiple accounts if the accounts are subject to the same availability policies. Similarly, a bank need not give separate disclosures to each customer on a jointly held account.

Dormant or Inactive Accounts

Disclosures are not required to be delivered to a customer who holds a dormant or inactive account.

Specific Availability Policy Disclosures [12 C.F.R. § 229.16]

The bank is required to provide a disclosure describing its policy as to when funds deposited in an account are available for withdrawal. The disclosure must reflect the policy followed by the bank in most cases. Longer delays on a case-by-case basis may be imposed or one of the exceptions may be invoked, provided this information is included in the disclosure.

Content of Specific Availability Policy Disclosure

A bank's specific availability policy disclosure must contain the following information, as applicable:

- Summary of the bank's availability policy
- Description of any 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.
- Description of any of the exceptions that may be invoked by the bank, including the time following a deposit that funds generally will be available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions
- Description of any case-by-case policy of delaying availability that may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy
- Description of how the customer can differentiate between a proprietary and a nonproprietary ATM, if the bank makes funds from deposits at nonproprietary ATMs available for withdrawal later than funds from deposits at proprietary ATMs

Initial Disclosures [12 C.F.R. § 229.17]

The bank must provide a potential customer with its specific availability policy disclosure prior to opening a new account. As simple as this may seem, many banks will fail to realize that a quick review of the disclosure at account opening will prevent many problems that can occur later.

Additional Disclosure Requirements [12 C.F.R. § 229.18]

Deposit Slips

The bank must include on all preprinted deposit slips furnished to its customers a notice that deposits may not be available for immediate withdrawal.

Locations Where Employees Accept Consumer Deposits

Banks are also required to post conspicuously in 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 in a consumer account.

Automated Teller Machines

The bank also must provide or post a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

If a bank operates an off-premises ATM from which deposits are removed not more than two times each week, the days on which deposits made at the ATM will be considered received must also be disclosed at or on such an ATM.

Upon Request

The bank must provide a notice containing its specific availability policy disclosure on verbal or written request from any person.

Policy Changes

A bank also must send a notice to holders of consumer accounts at least 30 calendar days before implementing a change to its availability policy regarding its consumer accounts. If a change expedites the availability of funds, notification may occur not later than 30 calendar days after implementation.

Payment of Interest [12 C.F.R. § 229.14]

Banks are required to begin accruing interest on interest-bearing accounts not later than the day on which the bank receives credit for the funds deposited. A bank generally receives credit on checks within one or two days following deposit. A bank receives credit on a cash deposit, an electronic payment, and the deposit of a check that is drawn on the depository bank itself on the day the cash, electronic payment, or check is received. In the case of a deposit at a nonproprietary ATM, credit is generally received on the day the bank that operates the ATM credits the depository bank for the amount of the deposit.

Determining When Credit Is Received

It may be difficult for a bank to track which day the depository bank receives credit for specific checks in order to accrue interest properly on the account to which the check is deposited. This difficulty may be pronounced if the bank uses different means of collecting checks based on the time of day the check is received, the dollar amount of the check, and/or the paying bank to which it must be sent. Thus, for the purpose of the interest accrual requirement, a bank may rely on an availability schedule from its Federal Reserve Bank, Federal Home Loan Bank, or correspondent

to determine when the bank receives credit. If availability is delayed beyond that specified in the availability schedule, a bank may charge back interest erroneously accrued or paid on the basis of that schedule.

Alternative Method

The regulation also permits a bank to accrue interest on checks deposited to all of its interest-bearing accounts based on when the bank receives credit on all checks sent for payment or collection. For example, if a bank receives credit on 20 percent of the funds deposited in the bank by check as of the business day of deposit (e.g., on-us checks), 70 percent as of the business day following deposit, and 10 percent on the second business day following deposit, the bank may apply these percentages to determine the day interest must begin to accrue on check deposits to all interest-bearing accounts. These percentages may be applied regardless of when the bank received credit on the funds deposited in any particular account. Thus, a bank may begin accruing interest on a uniform basis for all interest-bearing accounts, without the need to track the type of check deposited to each account.

Checks Returned Unpaid

A bank is not required to pay interest or dividends on funds deposited by a check that is returned unpaid.

Miscellaneous [12 C.F.R. § 229.19]

Effect on Bank Policies

In order to prevent any misconceptions, Regulation CC specifically states that it does not:

1. Prohibit a bank from making funds available sooner than prescribed by the regulation
2. Affect a bank's right to:
 - a. Accept or reject a check for deposit
 - b. Revoke any settlement with respect to a check accepted by the bank for deposit
 - c. Charge back the customer's account for the amount of a check based on the return of the check or a receipt of notice of nonpayment
 - d. Claim a refund of such credit
 - e. Charge back funds made available to its customers for an electronic payment for which the bank has not received payment in actually and finally collected funds
3. Require a bank to open or otherwise make its facilities available for customer transactions on a given business day
4. Supersede any bank policy that limits daily cash withdrawals from customer accounts, if that policy meets all the following criteria:

- a. Not a disguised delayed funds availability policy based on delays longer than allowed by the regulation
- b. Applied without discrimination to all customers
- c. Related to security, operating, or bonding requirements of the bank

Use of Calculated Availability

The bank may provide availability to its nonconsumer accounts based on a sample of checks representative of the average composition of the customer's deposits, as long as the resulting terms for availability are equivalent to or more prompt than the availability requirements of the regulation.

Holds on Other Funds

A bank that receives a check for deposit in an account may place a hold on any funds of the customer at the bank, but only if both of the following are met:

- The amount of funds held does not exceed the amount of the check.
- The funds are made available for withdrawal within the times specified by the regulation.

For example, a bank decides to place a hold on funds in a customer's nontransaction account, rather than a transaction account, for deposits made to the customer's transaction account. In this case, the bank may place a hold on the nontransaction account, but only for an amount that does not exceed the amount of the deposit and for a length of time that does not exceed the time periods permitted by Regulation CC.

If a bank cashes a check for a customer over the counter, other than a check drawn on the bank (on us check), it can place a hold on funds in an account of the customer, but only if both of the following are met:

- The amount of funds held does not exceed the amount of the check.
- The funds are made available for withdrawal within the times specified by the regulation.

A bank may not, however, place a hold on any account when an on-us check is cashed over the counter. On-us checks are considered finally paid when cashed.

Employee Training and Compliance

Each bank must establish procedures to assure compliance with the requirements of Regulation CC. In addition, each employee who performs duties affected by the regulation must be provided with a statement of the procedures applicable to those duties.

Effect of Merger Transaction

Banks that have merged may be considered to be separate banks for one year following the

date of the merger transaction. However, a customer of any bank included in the merger that has an established account with that bank may not be treated as a new account holder for any of the other banks included in the merger. Also, a deposit in any branch of the merged bank is considered deposited in the bank as a whole.

Relation to State Law [12 C.F.R. § 229.20]

Any state law effective before September 1, 1989, that requires stricter availability guidelines than Regulation CC will supersede and apply to all federally insured banks within the state. In addition, the availability guidelines of Regulation CC supersede any inconsistent state law.

Civil Liability [12 C.F.R. § 229.21]

Any bank that fails to comply with the funds availability and disclosure requirements of the regulation or with any provision of a state law that supersedes these requirements is liable for the sum of:

- All actual damages sustained by a person as a result of the failure
- Such additional amounts as the court may allow, including not less than \$100 nor more than \$1,000 (\$1,100 beginning 7/1/20) for individual actions and not more than one percent of the bank's net worth or \$500,000 (\$552,500 beginning 7/1/20), whichever is less, for class actions
- Costs of the action, including reasonable attorney's fees, if the action is successful

Class Action Awards

In determining the amount of any award in any class action, the courts will consider the following, among other relevant factors:

- Amount of any damages awarded
- Frequency and persistence of failures of compliance
- Resources of the bank
- Number of persons adversely affected
- Extent to which the failure of compliance was intentional

Bona Fide Errors

To prevent strict liability, the regulation provides that a bank is not liable in any action if it demonstrates from the majority of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. For example, bona fide errors include clerical, calculation, computer malfunction and programming, and printing errors.

An error of legal judgment with respect to the bank's obligation under the funds availability and disclosure guidelines is not a bona fide error.

Record Retention

The bank must maintain evidence of compliance with the funds availability and disclosure requirements of the regulation for not less than two years, or until final disposition if action is taken against the bank. The bank may store the records on microfiche, microfilm, magnetic tape, or through other methods capable of accurately retaining and reproducing information.

Section 8: Collection of Checks

Background

In order for banks to be able to meet the availability schedules of Regulation CC, the Federal Reserve Board was charged with improving the overall payment system. Where Subpart B dealt with the duties and responsibilities of the bank of first deposit (the depository bank) to its customers, Subpart C deals with the check collection process and the duties and responsibilities of the parties involved, including paying banks, returning banks, and depository banks.

As mentioned earlier in this manual, this subject is now 100+ pages, and is omitted from this presentation.

Section 9: Substitute Checks

Background

The Check Clearing for the 21st Century Act (Check 21 Act) became effective on October 28, 2004.

The Check 21 Act facilitates the broader use of electronic check processing without mandating that any bank change its current check collection practices. The Check 21 Act accomplishes this by authorizing the use of a new negotiable instrument called a “substitute check” to facilitate check truncation and electronic check exchange. The Check 21 Act also provides that a properly prepared substitute check is the legal equivalent of the original check for all purposes. A substitute check is a paper reproduction of the original check that can be processed just like the original check. The Check 21 Act does not require any bank to create substitute checks or to accept checks electronically.

The Check 21 Act does not require any bank to use electronic check processing, receive electronic presentment, or create substitute checks, nor would the Check 21 Act make electronic check images or electronic check information the legal equivalent of original checks. However, after the effective date of the Check 21 Act, any bank or other person that requires an original check must accept a legally equivalent substitute check in satisfaction of that requirement. The characteristics of a substitute check are such that a bank that receives a substitute check would be able to process that substitute check to the same extent that it could process the original check. As a result, for the most part, banks would not be required to change their check processing equipment or practices because of the Check 21 Act, and there would be no need for a bank to sort original checks and substitute checks separately during the check collection process.

Certain provisions of the Check 21 Act will affect all banks, even those that do not choose to create substitute checks. For example, a bank that simply received a substitute check created by another bank, or a paper or electronic representation of a substitute check, would make the substitute check warranties when it delivered that item for presentment, collection, or return or provided that item to its customer. Any bank that receives consideration for a substitute check, or a representation of a substitute check, that it transfers, presents, or returns also is responsible for indemnifying any person that suffers a loss due to the receipt of a substitute check instead of the original check. Moreover, a bank that provides a substitute check to a consumer might be required to provide an expedited recredit to the consumer if the consumer incurred a loss due to receipt of the substitute check rather than the original check. Finally, a bank must provide a disclosure that describes substitute checks and substitute check rights to consumers who receive paid checks with their periodic account statements and consumers who receive substitute checks on a case-by-case basis.

Definitions

The amendments to Regulation CC, resulting from Check 21, created several new definitions. While the new definitions are included in 12 C.F.R. § 229.2 of the regulation, those specifically related to substitute checks are included in this section of the manual.

Claimant Bank

A bank that submits a claim for a recredit for a substitute check to an indemnifying bank under the expedited recredit for banks rules in this Subpart.

Collecting Bank

Any bank, except the paying bank, handling a check for forward collection.

Consumer

A natural person who:

- With respect to a check handled for forward collection, draws the check on a consumer account
- With respect to a check handled for a return, deposits the check into or cashes a check against a consumer account

Customer

A person having an account with a bank.

Indemnifying Bank

A bank that provides an indemnity with respect to a substitute check.

Magnetic Ink Character Recognition Line (MICR Line)

The numbers, which may include the routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with American National Specifications for Placement and Location of MICR Printing, X9.13 (hereinafter ANS X9.13) for an original check and American National Specifications for an Image Replacement Document – IRD, X9.100-140 (hereinafter ANS X9.100-1400 for a substitute check.

Original Check

The first paper check issued with respect to a particular payment transaction.

Paper or Electronic Representation of a Substitute Check

Any copy of or information related to a substitute check that a bank handles for forward collection or return, charges to a customer's account, or provides to a person as a record of a check payment made by the person.

Person

A natural person, corporation, unincorporated company, partnership, government unit or instrumentality, trust or any other entity or organization.

Reconverting Bank

The bank that creates a substitute check or with respect to a substitute check created by a person that is not a bank, the first bank that transfers, presents, or returns that substitute check or, in lieu thereof, the first paper or electronic representation of that substitute check.

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 that contains all the information appearing on the MICR line of the original check at the time that the original check was issued and any additional information that was encoded on the original check's MICR line before an image of the original check was captured; conforms in paper stock, dimension, and otherwise with ANS X9.100-140; and is suitable for automated processing in the same manner as the original check.

Sufficient Copy and Copy

A sufficient copy is a copy of an original check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or is otherwise sufficient to determine whether or not a claim is valid. A copy of an original check means any paper reproduction of an original check, including a paper printout of an electronic image of the original check, a photocopy of the original check, or a substitute check.

Transfer and Consideration

In addition to having the meanings set forth in the U.C.C., the term transfer, with respect to a substitute check or a paper or electronic representation of a substitute check, means delivery of the substitute check or other representation of the substitute check by a bank to a person other than a bank. A bank that transfers a substitute check or a paper or electronic representation of a substitute check directly to a person other than a bank has received consideration for the substitute check or other paper or electronic representation of the substitute check if it has charged, or has the right to charge, the person's account or otherwise has received value for the original check, a substitute check, or a representation of the original check or substitute check.

Truncate

To remove an original check from the forward collection or return process and send to a recipient, in lieu of such original check, a substitute check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without the subsequent delivery of the original check.

Truncating Bank

The bank that truncates the original check or the first bank that transfers, presents, or returns, in lieu of such original check, a substitute check or, by agreement with the recipient, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without the subsequent delivery of the original check in a case where a person other than a bank truncates the original check.

General Provisions Governing Substitute Checks [12 C.F.R. § 229.51]

Legal Equivalence

Any bank that provides the warranties as noted in this Subpart for a substitute check entitles a substitute check to become the legal equivalent of an original check for all persons and purposes as long as the substitute check:

- Accurately represents all of the information on the front and back of the original check at the time the original check was truncated
- The substitute check bears the legend, “This is a legal copy of your check. You can use it in the same way you would use an original check.”

Reconverting Bank Duties

Any bank that is acting as a reconverting bank must ensure that a substitute check bears all endorsements applied by parties that previously handled the check in any form for forward collection or return, preserves any previous reconverting bank identifications in identifying itself as the reconverting bank, and identifies the bank that originally truncated the check in accordance with ANS X9.100-140 and appendix D of the regulation.

Substitute Check Warranties [12 C.F.R. § 229.52]

Content and Provision of Warranties

Any bank that transfers, presents, or returns a substitute check, including a paper or electronic representation, for which it receives consideration warrants to the warranty recipient parties that:

- The substitute check meets all requirements for legal equivalence, and
- No depository bank, drawee, drawer, or endorser will receive presentment or return of, or otherwise be charged for, the substitute check, the original check, or a paper or electronic

representation of the substitute check or original check such that the person will be asked to make payment based on a check that it has already paid.

Warranty Recipients

Any person that is presented, transferred or returned a substitute check or a paper or electronic representation of such substitute check receives the warranties described above. This includes any subsequent recipient, which could include a collecting or returning bank, the depository bank, the drawer, the drawee, the payee, the depositor, and any endorser, regardless of whether they received the substitute check or a paper or electronic representation of a substitute check.

Substitute Check Indemnity [12 C.F.R. § 229.53]

Any bank that transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check for which it receives consideration shall indemnify the recipient and any subsequent recipient for any loss incurred by any recipient of a substitute check if that loss has occurred due to the receipt of a substitute check instead of an original check. A subsequent recipient includes a collecting or returning bank, the depository bank, the drawer, the drawee, the payee, the depositor, and any endorser.

Indemnity Amount

If a loss resulted from a breach of a substitute check warranty, the amount of the indemnity shall be the amount of any loss (including interest, costs, reasonable attorney's fees, and other expenses of representation) caused by the warranty breach.

If the loss did not result from a warranty breach of a substitute check, the amount of the indemnity shall be the sum of:

- The amount of the loss, up to the amount of the substitute check
- Interest and expenses related to the substitute check. This can also include costs and reasonable attorney's fees and other expenses of representation

Comparative Negligence

If a loss resulted from comparative negligence, the indemnity amount shall be reduced in proportion to the amount of negligence or bad faith attributable to the indemnified person. This provision does not reduce the rights of any consumer or any other person under the U.C.C. or other applicable provision of state or federal law.

Effect of Producing the Original Check or a Sufficient Copy

In an event where the indemnifying bank produces the original check or a sufficient copy, the indemnifying bank shall be liable only for losses that are incurred up to the time that the bank provides the original check or sufficient copy to the indemnified person and shall have the right to the return of any funds it has paid in excess of those losses.

Providing an original check or sufficient copy shall not absolve the indemnifying bank from liability under any warranty that the bank has provided under this part or other applicable law.

Subrogation of Rights

An indemnifying bank shall be subrogated to the rights of the person that it indemnifies to the extent of the indemnity it has provided and may not attempt to recover from another person based on a warranty or other claim.

Each indemnified person must comply with all reasonable requests for assistance from an indemnifying bank in connection with any claim the indemnifying bank brings against a warrantor or other person related to a check that forms the basis for the indemnification.

Expedited Recredit for Consumers [12 C.F.R. § 229.54]

Similar to the rights afforded under the Electronic Funds Transfer Act (Regulation E) relating to unauthorized electronic fund transfers, Check 21 adds new provisions offering a recredit to consumers in relation to substitute checks.

Circumstances Giving Rise to a Claim

A consumer may make a claim for a recredit with respect to a substitute check if the consumer asserts in good faith that:

- The bank holding the consumer's account charged that account for a substitute check that was provided to the consumer. The consumer need not be in possession of that substitute check at the time he or she submits a claim
- The substitute check was not properly charged to the consumer account or the consumer has a warranty claim with respect to the substitute check
- The consumer suffered a loss
- The consumer requires a production of the original check or a sufficient copy to determine whether or not the substitute check in fact was improperly charged or whether the consumer's warranty claim is valid

The commentary notes that a consumer may make a claim for expedited recredit only for a substitute check that he or she has received and for which the bank has charged his or her deposit account. Receipt of images of multiple substitute checks per page in a periodic statement, for

example, would not generally entitle the consumer to make an expedited recredit claim. However, a consumer who subsequently receives a substitute check in response to a request for a copy could make a claim as long as other criteria are met. Finally, checks used to access loan accounts that are converted to substitute checks would not give rise to a claim, unless such a check was returned unpaid and the bank charged the consumer's deposit account for the amount of the returned check.

Procedures for Making Claims

Timing of Claims

To make a claim, the consumer shall contact the bank holding the consumer's account by the end of the 40th calendar day after the later of the calendar day on which the bank mailed or delivered, by a means agreed to by the consumer:

- A periodic statement that contains information concerning the transaction giving rise to the claim; or
- The substitute check giving rise to the claim

In certain extenuating circumstances, the bank shall extend the 40-calendar-day period by a reasonable amount of time if the consumer cannot submit his or her claim within the 40-calendar-day period. Extenuating circumstances could include, for example, extended travel or illness of the consumer.

If the bank requires a written claim to be submitted, the claim is considered timely if an oral claim was received within the time frames described above and the written claim is received by the 10th business day after the banking day on which the bank received the oral claim.

Content of Claims

Whether oral or written, a claim made by a consumer shall include the following:

- A description of the consumer's claim, including the reason the consumer believes his or her account was improperly charged, or the nature of the warranty claim with respect to a substitute check
- A statement by the consumer that he or she suffered a loss and an estimate of that loss
- A reason the production of the original check or a sufficient copy is necessary to determine whether or not the charge was proper or a warranty claim is valid
- Sufficient information to allow the bank to identify the substitute check and investigate the claim

The bank shall inform the consumer that a claim is not complete and identify the information necessary if the consumer fails to provide all the information required to make a claim.

Form and Submission of Claims; Computation of Time for Bank Action

If a bank requires a written claim to be submitted, it must permit the consumer to submit the

claim electronically; notify the consumer of the time frame in which a written claim must be submitted following an oral claim; and compute the time periods for responding to a claim from the date on which the bank received the written claim.

Action on Claims

Valid Claims

A bank receiving a claim has several options in responding to the claim. If the bank determines that a claim is valid, the bank shall:

- Recredit the consumer's account for the amount of the consumer's loss, up to the amount of the substitute check, plus interest if the account is an interest-bearing account, no later than the end of the business day after the banking day on which the bank makes that determination
- Send a notice to the consumer no later than the business day after the banking day on which the bank recredits the consumer's account. The notice shall describe the amount of the recredit and the date on which the recredited funds will be available for withdrawal

Invalid Claims

If the bank determines the consumer's claim is invalid, the bank shall send a notice to the consumer no later than the business day after the banking day on which the bank makes that determination. This notice shall include the original check or a sufficient copy; demonstrate to the consumer that the charge was proper or that the warranty claim is not valid; and include any information or documents that the bank relied on in making its determination or a statement that the consumer may request copies of such information or documents.

Recredit Pending Investigation

If a bank has not determined whether the consumer's claim is valid or invalid before the end of the 10th business day after the banking on which the bank received the claim, it shall (by the end of that business day):

- Recredit the consumer's account for the amount of the consumer's loss, up to the lesser of the amount of the substitute check or \$2,500, plus interest on that amount if the account is interest-bearing
- Send a notice to the consumer in accordance with the rules for a valid claim

In these circumstances, a bank has no later than the end of the 45th calendar day after the banking day on which the bank received the claim to either recredit the consumer with the remaining amount of the consumer's loss, up to the amount of the substitute check, plus interest, if applicable, or determine that the consumer's claim is not valid. Regardless of the bank's decision, a notice must be sent to the consumer, depending on whether the claim is valid or invalid, in accordance with the appropriate timing and content requirements of the applicable action.

Reversal of Recredit

A bank may reverse a recredit that it made, in accordance with a valid claim or a recredit pending investigation, to a consumer's account, plus interest that the bank has paid, if any, on that amount, if the bank:

- Determines the claim was not valid
- Notifies the consumer that it has reversed an amount it previously recredited no later than the business day after the banking on which the bank made the reversal. This notice shall include the original check or a sufficient copy; demonstrate to the consumer that the charge was proper or that the warranty claim is not valid; and include any information or documents that the bank relied upon in making its determination or a statement that the consumer may request copies of such information or documents. In addition, the notice shall describe the amount of the reversal, including both the amount of the recredit (including interest, if any) and the amount of interest paid on the recredited amount, if any, and the date on which the bank made the reversal.

Availability of Recredit

With the exception of the "safeguard exceptions" described below, any recredit made under this part by a bank shall make the funds available for withdrawal no later than the start of the business day after the banking day on which the bank provides the recredit (i.e., Next-day availability).

Safeguard Exceptions

A bank may delay a provisional recredit made under the recredit pending investigation rules 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 oral or written claim if:

- The consumer submits the claim during the 30-calendar-day period beginning on the banking day on which the consumer opened the account
- Without regard to the charge that gave rise to the recredit claim:
 - On six or more business days during the six-month period ending on the calendar day on which the consumer submitted the claim, the balance in the consumer account was negative or would have been negative if checks or other charges to the account had been paid
 - On two or more business days during such six-month period, the balance in the consumer account was negative or would have become negative in the amount of \$5,000 or more if checks or other charges to the account had been paid

- The bank has reasonable cause to believe that the claim is fraudulent, based on the facts that would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent. A bank may not invoke this exception based on the fact that the check in question or the consumer is of a particular class.

Overdraft Fees

A bank that delays the availability of funds provided as a recredit in accordance with the regulation may not impose an overdraft fee with respect to drafts drawn by the consumer on such recredited funds until the fifth calendar day after the calendar day on which the bank sent the notice to the consumer advising the consumer of a recredit.

Other Claims Not Affected

Any claim made under any other provision of law, such as a claim for wrongful dishonor of a check under the U.C.C. shall not be affected by the bank providing a recredit under the regulation. In addition, the bank shall not be absolved from liability for additional damages, such as damages under the substitute check indemnity rules or other liability contained in this Subpart (i.e., 12 C.F.R. § 229.56).

Expedited Recredit for Banks [12 C.F.R. § 229.55]

Circumstances Giving Rise to a Claim

A bank that has an indemnity claim against an indemnifying bank with respect to a substitute check may make an expedited recredit claim if:

- The claimant bank or a bank that the claimant bank has indemnified
 - Has received a claim for expedited recredit from a consumer
 - Would have been subject to such a claim if the consumer had been charged for the substitute check
- The claimant bank is obligated to provide an expedited recredit with respect to such a substitute check or otherwise has suffered a resulting loss
- The production of the original check or a sufficient copy is necessary to determine the validity of the charge to the consumer account or the validity of any warranty claim connected with such a substitute check

Procedures for Making Claims

A claimant bank shall send its claim to the indemnifying bank by the end of the 120th calendar day after the date of the transaction that gave rise to the claim. The claimant bank's claim shall include:

- A description of the consumer's claim or the warranty claim, related to the substitute check, including the reason the bank believes that the substitute check may not be properly charged to the consumer account
- A statement that the claimant bank is obligated to recredit a consumer account under the expedited recredit for consumers rules in the regulation or otherwise has suffered a loss and an estimate of the amount of that recredit or loss, including interest where applicable
- The reason why production of the original check or a sufficient copy is necessary to determine the validity of the charge to the consumer account or the warranty claim
- Sufficient information to allow the indemnifying bank to identify the substitute check and investigate the claim

A claimant bank sending a copy of the substitute check to the indemnifying bank for a recredit shall take reasonable steps to ensure that the copy cannot be mistaken for the legal equivalent of the check for forward collection.

Form and Submission of Claim; Computation of Time

An indemnifying bank may require the claimant bank to submit the claim in writing. An indemnifying bank that requires a written submission:

- May permit the claimant bank to submit the written claim electronically
- Shall inform a claimant bank that submits an oral claim of the written claim requirement at the time of the oral claim
- Shall compute the 10-day time period for acting on the claim from the date on which the bank received the written claim

Action on Claims

An indemnifying bank shall act on a claim no later than the tenth business day after the banking day on which the bank receives a claim. To act on a claim, the indemnifying bank shall:

- Recredit the claimant bank for the amount of the claim, up to the amount of the substitute check, plus interest if applicable
- Provide to the claimant bank the original check or a sufficient copy
- Provide information to the claimant bank regarding the reason the indemnifying bank is not obligated to either provide a recredit or provide a copy of the check.

Recredit Does Not Abrogate Other Liabilities

Providing a recredit to a claimant bank does not absolve the indemnifying bank from liability for claims brought under any other law or from additional damages under substitute check indemnity or liability rules in this Subpart.

Indemnifying Bank's Right to a Refund

An indemnifying bank is entitled to a refund from a claimant bank if the claimant bank subsequently reverses a recredit it previously made to a consumer account or otherwise receives reimbursement for a substitute check that formed the basis of its claim. The claimant bank shall promptly refund to the indemnifying bank the amount of the reversal or reimbursement obtained by the claimant bank, up to the amount previously advanced by the indemnifying bank.

The indemnifying bank is entitled to repayment of any amount provided to the claimant bank that exceeds the amount of the losses the claimant bank incurred up to the time the indemnifying bank had provided the claimant bank with the original check or a sufficient copy of a substitute check under the action on claim section above.

Liability [12 C.F.R. § 229.56]

In general, any person that breaches a warranty or fails to comply with any requirement of the substitute check regulations with respect to any other person shall be liable to that person for an amount equal to the sum of:

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

The amount of damages a person receives above shall be reduced by any amount that the person receives and retains as a recredit.

Any person that incurs damages resulting from that person's negligence or failure to act in good faith shall receive the amount described above, which is reduced in proportion to the amount of negligence or bad faith attributable to that person. This provision does not reduce the rights of any consumer or any other person under the U.C.C. or other applicable provision of state or federal law.

Timeliness of Action

A bank may delay its action beyond the time limits required or permitted under the regulation if the delay is caused by an interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank and if the bank exercises due diligence.

Jurisdiction

Any person may bring action to enforce a claim in any United States district court or in any other court of competent jurisdiction. Such claims shall be brought within one year of the date on which the person's cause of action accrues. A cause of action accrues as of the date the injured

person first learns, or should have learned, of the facts and circumstances giving rise to the cause of action, including the identity of the warranting or indemnifying bank against which such action is brought.

Notice of Claims

A warranting or indemnifying bank is discharged from liability in an action to enforce a claim to the extent of any loss caused by the delay in giving notice of a claim if a person does not give notice of a claim to the warranting or indemnifying bank within 30 calendar days after that person has reason to know of both the claim and the identity of the warranting or indemnifying bank. A timely consumer recredit claim notice would constitute timely notice.

Consumer Awareness [12 C.F.R. § 229.57]

To make consumers aware of their rights relating to substitute checks, the regulation requires that banks provide a consumer with a disclosure that describes that a substitute check is the legal equivalent of an original check and explains the consumer's recredit rights that apply when a consumer believes a substitute check was not properly charged to his or her account. A model disclosure may be found in appendix C-5A of the regulation. A bank is deemed to comply with the disclosure content requirement(s) for which it uses the model language, provided the information in the disclosure accurately describes the bank's policies and practices.

Any bank that provides paid original checks or paid substitute checks with a consumer's periodic statement shall provide the consumer with a consumer awareness disclosure. For existing customers as of October 28, 2004, a bank needed to provide this disclosure no later than the first regularly scheduled communication with the consumer after that date. New customers after that date shall be provided with the disclosure at the time the customer relationship is initiated (i.e., account opening). This requirement does not apply if the bank provided with the account statement only a document containing multiple images of checks per page.

Consumers who receive substitute checks on an occasional basis shall receive this disclosure from a bank no later than the time at which the bank provides a substitute check in response to a consumer's request for a substitute check or when a bank provides a returned substitute check to the consumer. A bank must provide a copy of this disclosure each time it provides a substitute check to a consumer on an occasional basis, regardless of whether the bank previously provided the disclosure to the consumer.

For multiple account holders, a bank need not provide separate disclosures to each customer on a jointly held account.

The consumer awareness disclosure may be provided by a bank by any means through which the recipient has agreed to receive account information. Electronic images of an original check or a substitute check may be provided to the consumer if the recipient has agreed to receive that information electronically.

Appendix A: Substitute Check Policy Disclosure

Substitute Checks and Your Rights

What Is A Substitute Check?

To make check processing faster, federal law permits banks to replace original checks with “substitute checks.” These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: “This is a legal copy of your check. You can use it the same way you would use the original check.” You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

What Are My Rights Regarding Substitute Checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to (*amount, not lower than \$2,500*) of your refund (plus interest if your account earns interest) within (*number of days, not more than 10*) business days after we received your claim and the remainder of your refund (*plus interest if your account earns interest*) not later than (*number of days, not more than 45*) calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How Do I Make A Claim For A Refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at (*contact information, for example phone number, mailing address, e-mail address*). You must contact us within (*number of days, not less than 40*) calendar days of the date that we mailed (or otherwise delivered by a means to which

you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include:

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect)
- An estimate of the amount of your loss
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss

A copy of the substitute check [and/or] the following information to help us identify the substitute check: *(identifying information, for example the check number, the name of the person to whom you wrote the check, the amount of the check)*