



FEDERAL RESERVE BANK OF DALLAS

Station K, Dallas, Texas 75222

Circular No. 84-77
July 9, 1984

TO: All depository institutions in the Eleventh Federal Reserve District

ATTENTION: Operations Officer

SUBJECT: Request for public comment on a proposed amendment to Regulation J -- Collection of Checks and Other Items and Wire Transfer of Funds

SUMMARY: The Board of Governors of the Federal Reserve System is requesting public comment on a proposed amendment to Regulation J that would strengthen the current requirement that payor depository institutions provide notice when they are returning unpaid large dollar checks presented through the Federal Reserve. The amendment would require the payor institution to provide timely notice to the depository institution at which the check was originally deposited that the check is being returned unpaid. Federal Reserve Banks would enhance the notification service currently provided to assist payor institutions in meeting this requirement, and also would make the service available to depository institutions for checks collected outside the Federal Reserve.

The proposed amendment to Regulation J would reduce the risk to depository institutions associated with returned checks and thus may provide depository institutions an opportunity to make funds available sooner to their depositors.

Interested parties are invited to submit comments to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C., 20551. Comments must be received by August 31, 1984 and should refer to Docket No. R-0522.

ATTACHMENTS: Board's press release and material as submitted for publication in the Federal Register.

MORE INFORMATION: Robert L. Whitman, (214) 698-4357 at the Head Office; Robert W. Schultz, (915) 544-4730 at the El Paso Branch; Vernon L. Bartee, (713) 659-4433 at the Houston Branch; or John A. Bullock, (512) 224-2141 at the San Antonio Branch.

ADDITIONAL COPIES: Public Affairs Department, Extension 6289

FEDERAL RESERVE press release



For immediate release

June 22, 1984

The Federal Reserve Board today published for public comment a proposed amendment to Regulation J--Collection of Checks and Other Items and Wire Transfer of Funds--that would require a depository institution upon which a check is drawn (payor institution) to provide notification to the depository institution in which the check is first deposited (institution of first deposit) that a large dollar check is being returned. The Board requested comment by August 31.

Under the proposed amendment, payor institutions would be required to provide notification directly to the institution of first deposit when they are returning checks of \$2,500 and above that are collected through the Federal Reserve System. The proposal generally would require the payor institution to notify the institution of first deposit within 48 hours after the time by which the payor institution must return the check. If a payor institution fails to exercise ordinary care in providing timely and accurate notification to the institution of first deposit, the payor institution could be liable, under the proposal, for losses, up to the amount of the item, incurred by the institution of first deposit.

To assist payor institutions in meeting this requirement, Reserve Banks would enhance the current notification service. The proposal also outlines the fee structure to be applied to this service.

The proposed amendment to Regulation J would reduce the risk to depository institutions associated with returned checks and thus may provide depository institutions an opportunity to make funds available sooner to their depositors.

The Board's notice is attached.

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Attachment

FEDERAL RESERVE SYSTEM

12 C.F.R. Part 210

[Docket No. R-0522]

Federal Reserve Bank Check Collection System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board of Governors is requesting public comment on an amendment to Regulation J that would strengthen the current requirement that payor depository institutions provide notice when they are returning unpaid large dollar checks presented through the Federal Reserve. The amendment would require the payor institution to provide timely notice to the depository institution at which the check was originally deposited that the check is being returned unpaid. The Federal Reserve Banks would enhance the notification service they currently provide to assist payor institutions in meeting this requirement, and also would make the service available to depository institutions for checks collected outside the Federal Reserve.

DATE: Comments must be received by August 31, 1984.

ADDRESS: Comments, which should refer to Docket No. R-0522, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding the Availability of Information, 12 C.F.R. § 261.6(a).

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202-452-2231), or Bill Brown, Manager (202-452-3760), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202-452-3625),

Joseph R. Alexander, Attorney (202-452-2489), or Robert G. Ballen, Attorney (202-452-3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Background. Significant attention has been focused in recent months on the issue of delayed availability, that is, the practice of some depository institutions to delay a depositor's ability to withdraw funds deposited by check for extended periods of time. Although the risk of loss to depository institutions associated with returned items is relatively small in the aggregate, many institutions point to the potential losses they could incur on particular returned checks as the reason for their delayed availability policies. The Board, in conjunction with other federal banking regulators, recently urged institutions to review their policies on making funds available to customers and to consider taking into account factors that indicate the degree to which a given situation presents a risk of loss. (See joint release of Federal Financial Institutions Regulators, March 22, 1984.) These factors include the length of time the account has been maintained, the past experience with the depositor, the identity of the drawer, the type of check, and the location of the payor institution. The Board recognizes that many institutions may be unwilling to modify their hold policies unless some effort is made to reduce what these institutions believe is their exposure to potential losses as a result of returned checks.

The procedure for returning unpaid checks is cumbersome, labor intensive and time consuming. As a rule, depository institutions return unpaid checks to their immediate endorsers rather than directly to the institution at which the item was first deposited. This practice exists because of several factors, including legal obstacles to direct returns in five jurisdictions^{1/} and operational considerations such as lack of transportation and settlement arrangements between the institution returning the check and the institution of first deposit.

^{1/} Nevada, New Jersey, Oregon, Wisconsin, and the District of Columbia have not adopted § 4-212(2) of the Uniform Commercial Code, which authorizes the payor institution to return an unpaid check directly to the institution of first deposit.

The Reserve Banks have been considering possible enhancements to the return item process as a part of the Federal Reserve's responsibility for improving the efficiency of the payments mechanism. For example, the Dallas Reserve Bank has been experimenting with enhancements to its return item service that include returning unpaid checks directly to institutions of first deposit that are located in the Dallas Reserve Bank's District. It is anticipated that it will take some time to complete the analysis of the ongoing Dallas experiment and to determine whether it would be cost effective to offer the direct return service in other Districts. At this juncture, modification to the Federal Reserve's current requirement that payor institutions provide notification when they return unpaid large dollar checks appears to be an effective way of reducing risk to institutions of first deposit.

Current requirement. Federal Reserve Bank operating circulars currently require a payor institution returning a check in the amount of \$2500 or more that has been presented to it by a Reserve Bank to provide a notification of nonpayment to the presenting institution, which is generally the Reserve Bank. When the Reserve Bank receives a notification from a payor institution, the Reserve Bank initiates a notification to the institution that sent the check to the Reserve Bank for collection.

The current procedure is not entirely satisfactory for several reasons. There is no requirement that the payor institution notify the institution of first deposit directly that the check is being returned, and there are no time periods specified for providing a notification. As a result, often the returned check gets to the institution of first deposit at the same time as or before the notification. In addition, Regulation J and the operating circulars do not specify the liability an institution incurs if it fails to provide a notification. As a result, the Board understands that notices are given for fewer than half of the large dollar checks returned through the Federal Reserve. Finally, even when a notification is provided, the information contained in the notification is often not sufficiently helpful to the institution of first deposit.

Proposed notification requirement. The Board believes that an enhanced notification of nonpayment requirement can provide the institution of first deposit with meaningful information about the check that is being returned unpaid.

This information would enable the institution of first deposit that receives such a notice to take steps to protect itself from potential loss. (Such measures may include extending a hold it may have placed on the account or placing a hold on other funds of the depositor.)

The information that would be required to be provided in the notification would be specified. The information could include: (1) the name of the payor institution, (2) the name of the payee, (3) the amount of the check, (4) the reason for return, (5) the date of the endorsement of the institution of first deposit, (6) the account number of the depositor, (7) the branch at which the check was first deposited and (8) the trace number on the check. The account number of the depositor, the branch at which the check was deposited and the trace number on the check could be provided in the notification only if the institution of first deposit had placed such information on the check. In cases where the Federal Reserve initiated the notification or the payor institution initiated the notification through the Federal Reserve's Communications System, the notification would follow a standard format.

Under the proposal, the payor institution would be required to provide a notification of nonpayment to be received by the institution of first deposit by midnight of the second banking day following the banking day by which the payor institution is required to dishonor the check. For example, if the Federal Reserve presents a check to a payor institution on Monday, that institution generally is required to determine whether to pay or return the check by midnight Tuesday. If the institution determines to return the check, it must take steps to ensure that notification of return is received by the institution of first deposit by midnight Thursday. The Board believes this time frame is appropriate in order to provide payor institutions time to take advantage of the most cost-effective means of providing notice.

Under the proposal, a payor institution could satisfy the notification requirement in one of four ways. First, the payor institution could return the unpaid check such that it is received by the institution of first deposit by midnight of the second banking day following the payor institution's midnight deadline for dishonor of the check. This alternative would generally be feasible when the payor institution is returning a check to a nearby institution of first deposit, either directly

or perhaps through a local clearinghouse. Second, the payor institution could itself provide a notification directly to the institution of first deposit. The notice could be given by telephone or other telecommunications network such as BankWire, SWIFT, Telex or the Federal Reserve's Communications System, which would pass the message on to the institution of first deposit. Third, the payor institution could provide its Reserve Bank with all of the required information concerning the unpaid check. The Reserve Bank would then advise the institution of first deposit that the check is being returned and provide it with the appropriate information. Fourth, for checks collected through the Federal Reserve, a payor institution could return the check to the Reserve Bank with instructions that the Reserve Bank initiate a notification to the institution of first deposit. The Reserve Bank would then provide the appropriate information on the check to the institution of first deposit.

Institutions exercising either of these latter two options would be required to provide the information or the check (as the case may be) to the Reserve Bank in advance of the time by which notification would have to be received by the institution of first deposit. These deadlines would be specified in the Reserve Bank's operating circular.

Under the proposal, if a payor institution that had received a large dollar check from a Reserve Bank fails to exercise ordinary care in providing timely and accurate notification to the institution of first deposit, the payor institution would be liable for losses incurred by the institution of first deposit up to the amount of the item if timely and accurate notification would have enabled the institution of first deposit to take steps to avoid a loss. (Several courts already have applied this standard in cases involving the failure of a payor institution to provide notification of return.) On the other hand, a payor institution that did not provide timely and accurate notification would not incur liability if, after exercising ordinary care, it had not been able to determine the identity of the institution of first deposit because of an illegible endorsement.

Similarly, in cases where the Reserve Bank assists the payor institution in providing notification, the Reserve Bank would be liable for a loss incurred by the institution of first

deposit up to the amount of the item if the loss would have otherwise been avoided had the Reserve Bank exercised ordinary care in providing the notification. If the payor institution returns the check to the Reserve Bank in accordance with established deadlines and requests the Reserve Bank to initiate the notification, the Reserve Bank would incur the same liability to the institution of first deposit as would the payor institution.

It is proposed that a three tiered fee structure apply to the services offered by the Reserve Bank. If the institution provides notification through the use of an online Fedwire message, a fee of \$2.25 per advice would be charged. This fee is based upon the estimated cost of providing the service, including any notifications that the Reserve Bank must make by telephone to the institution of first deposit. If the payor institution telephones the Reserve Bank and requests it to provide the required information to the institution of first deposit, a fee of \$4.25 would be charged. This fee reflects additional labor costs involved in transcribing the information provided by the payor institution and potential liability Reserve Banks may incur as a result of possible errors in transcription. Finally, if the payor institution returns a check collected through the Federal Reserve to the Reserve Bank with instructions to provide notification to the institution of first deposit, a fee of \$4.25 would be charged. This fee includes the costs of sorting, reading the endorsements, initiating the wire advice, and potential Reserve Bank liability. It is appropriate to charge the payor institution for these services because the Reserve Bank is assisting the payor institution in fulfilling its responsibility to provide notification and because its customer is usually responsible for the returned check.

When the payor institution makes use of the Federal Reserve's notification service, the institution of first deposit would be able to specify to the Reserve Bank whether the institution desires to receive notification of dishonor via the telephone or the Federal Reserve's Communication System. The institution of first deposit would also be able to specify the department (or other entity) that should receive the notice.

It is proposed that the notification requirement apply to returned checks of \$2500 and above. The current notification requirement applies to checks \$2500 and above.

Although checks in amounts of \$2500 and above comprise approximately 2 percent of all returns, they account for over 50 percent of the dollars associated with returned checks. Finally, when the Board proposed to strengthen the liability provisions of the current notification requirement in May, 1981, many of the public commenters opposed raising the dollar cut off to which the notice requirement would apply. Although the Board is recommending that the notification requirement initially apply to returned checks of \$2500 or more, the impact of the proposal will be evaluated over time to determine the feasibility of lowering the \$2500 cut off.

It should be noted that the proposed notification requirement could only apply to the checks originally collected through the Federal Reserve. (It is estimated that approximately one-third of all checks written are collected through the Federal Reserve.) Legislation would be necessary to extend the notification requirement to checks originally collected outside the Federal Reserve.

The Board expects that the notification requirement will provide significant improvements in the return item process in the near term. At the same time, the Board recognizes that this is an interim solution, and further initiatives will be required to achieve long term comprehensive solutions to the processing of return items. These initiatives are likely to include development and implementation of endorsement standards, evaluation of extension of the midnight deadline for small dollar checks, assessment of technology to substitute automation for the largely manual handling of returns, and consideration of electronic means to speed the flow of payment information. The Federal Reserve intends to continue to take an active role in working with the industry and Congress to pursue these improvements.

In addition to other aspects of the proposal, the Board specifically requests comment on the following questions:

- (1) Should a payor institution be required to provide notification of nonpayment such that it is received by the institution of first deposit by midnight of the payor institution's next banking day, rather than by midnight of the second banking day as

proposed, following the banking day by which the payor institution is required to dishonor the check?

- (2) Should the notice be required to be received by the institution of first deposit by the close of the institution's business day (i.e., 2:00 p.m.) rather than by midnight of the banking day?
- (3) Will the information specified in the proposal to be required be useful to the institution of first deposit? Is there any information other than that specified in the proposal that should be included in the notification?
- (4) For notifications that are not handled by the Federal Reserve, should the institution of first deposit be permitted to specify the department of the institution (or other entity) that should receive the notification? Should this information be required to be placed on the check?
- (5) If the day the payor institution provides notice to the institution of first deposit is not a business day for the institution of first deposit, should the regulation provide that receipt of notice on the institution of first deposit's next business day constitutes timely notice?
- (6) Is \$2500 and over the appropriate cut off?
- (7) What is the appropriate standard of payor institution liability for failure to comply with the notification requirements?
 - (a) The proposal adopts the current standards of liability contained in the Uniform Commercial Code for

failure to exercise ordinary care (i.e. liability up to the amount of the item) or failure to act in good faith (i.e. liability for consequential damages). Should the proposal adopt the U.C.C. standards or should some other standards of liability apply?

- (b) Should the payor institution be liable for the institution of first deposit's court costs and reasonable attorney's fees?
- (8) What impact will the proposal have on institutions' delayed availability policies?
- (9) What do institutions of first deposit and payor institutions estimate will be their internal costs resulting from this proposal? What do intermediary institutions estimate will be their savings because they will no longer be required to pass notifications to their prior endorsers?
- (10) Is it desirable to enact legislation establishing a notification requirement for all checks above a certain amount and not just those collected through the Federal Reserve.
- (11) In view of the information required, is it desirable to establish an endorsement standard to identify better institutions of first deposit?

The impact of this proposal on small entities has been considered in accordance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. § 603). The proposal should not result in a significant burden on small depository institutions because all depository institutions currently are required to provide notification of nonpayment of checks of \$2500 or more collected through the Federal Reserve. That is, a payor institution currently is required to incur the cost of providing notice of nonpayment of such checks to the presenting institution. Under the proposal, a payor institution would be required to provide this notice of nonpayment directly to the institution of first deposit rather than to the presenting

institution. Moreover, it is proposed that the Reserve Banks would provide an enhanced notification service which would serve to reduce the operational effect the proposal may have. Finally, the proposal imposes no new reporting or recordkeeping requirements on depository institutions.

Pursuant to its authority under section 13 of the Federal Reserve Act, (12 U.S.C. 342); section 16 of the Federal Reserve Act (12 U.S.C. 248(o), 360); and section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), the Board proposes to amend 12 CFR 210 (Regulation J) as follows:

In § 210.12, the last sentence of the section is designated as paragraph (d), and new paragraph (c) is added after paragraph (b) to read as follows:

(c) Notification of Nonpayment. (1) A paying bank that receives a cash item in the amount of \$2,500 or more directly or indirectly from a Reserve Bank (other than an item indorsed by, or for credit to, the U.S. Treasury) shall provide notice to the first bank to which the item was transferred for collection ("depository bank") that the paying bank is returning the item unpaid.

(2) The paying bank shall provide the notice specified above such that it is received by the depository bank by midnight of the second banking day of the paying bank following the deadline for return of the item as specified in paragraph (a) of this section. Such notice may be provided through any means, including return of the cash item so long as the cash item is received by the depository bank by midnight of the second banking day of the paying bank following the deadline for return of the item as specified in paragraph (a) of this section.

(3) The information contained in the notice shall be in accordance with uniform standards and procedures specified by the operating circular of the Reserve Bank from which the item was received.

(4) A paying bank that fails to exercise ordinary care in meeting the requirements of this paragraph shall be liable to the depository bank for losses incurred by the depository bank, up to the amount of the item, reduced by the amount of the loss that the depository bank would have incurred

even if the paying bank had used ordinary care. A paying bank that fails to act in good faith in meeting the requirements of this paragraph may be liable for other damages, if any, suffered by the depositary bank as a proximate consequence. A paying bank providing notice under this paragraph shall not be liable for mistake, neglect, negligence, misconduct, insolvency or default of any other bank or person.

(5) Notwithstanding the provisions of section 210.6 of this subpart, a Reserve Bank that fails to exercise ordinary care in undertaking to provide the notice required in this paragraph on a paying bank's behalf shall be liable to the depositary bank for losses incurred by the depositary bank, up to the amount of the item, reduced by the amount of the loss that the depositary bank would have incurred even if the Reserve Bank had used ordinary care. A Reserve Bank that fails to act in good faith in undertaking to provide the notice required in this paragraph on a paying bank's behalf may be liable for other damages, if any, suffered by the depositary bank as a proximate consequence. A Reserve Bank providing notice under this paragraph shall not be liable for mistake, neglect, negligence, misconduct, insolvency or default of any other bank or person, including the paying bank.

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By order of the Board of Governors, June 22, 1984.

William W. Wiles
Secretary of the Board