



FEDERAL RESERVE BANK
OF DALLAS

WILLIAM H. WALLACE
FIRST VICE PRESIDENT
AND CHIEF OPERATING OFFICER

January 9, 1990

DALLAS, TEXAS 75222

Circular 90-01

To: The Chief Executive Officer of all
member banks and others concerned in
the Eleventh Federal Reserve District

SUBJECT

Proposed Amendments to Regulation CC
Proposals to Modify Notice of Nonpayment Service
Proposed Preemption Determination - California

DETAILS

The Federal Reserve Board has issued for public comment proposals relating to its Regulation CC, Availability of Funds and Collection of Checks.

The proposed amendments include shortening the time requirements for giving notice of nonpayment, changes to the model forms, and other technical and clarifying amendments to the regulation and its Official Commentary. A proposed modification to the Federal Reserve's notice of nonpayment service would take effect only if the Board ultimately adopts an amendment to the regulation that would shorten the time requirement for providing notice of nonpayment. Comment on these proposals is requested by February 16, 1990.

Additionally, the Board has issued a proposed preemption determination regarding California's funds availability law upon which comment is requested by January 16, 1990.

Copies of the proposed amendments (Docket Numbers R-0679, R-0680, and R-0644) are attached.

MORE INFORMATION

For more information, please contact Jack Clymer (214) 651-6337 or Dean A. Pankonien at (214) 651-6228. For additional copies of this circular, please contact the Public Affairs Department at (214) 651-6289.

Sincerely,

A handwritten signature in cursive script that reads "William H. Wallace".

file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Thompson, Manager (202/452-2934), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division. For information regarding modifications to Appendix C, contact Thomas J. Noto, Staff Attorney (202/452-3667), or Jane E. Ahrens, Staff Attorney (202/452-3667), Division of Consumer and Community Affairs. For the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001-4010). The regulation requires banks¹ to make funds available to their customers for withdrawal within specified time frames, to disclose their funds availability policies to their customers, and to handle returned checks expeditiously. Section 229.33(a) of the regulation requires a paying bank to provide notice of nonpayment of any returned check in the amount of \$2,500 or more. This notice must be received by the depository bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. This requirement generally ensures that the depository bank would receive the notice prior to the time it must make funds available for withdrawal under the temporary availability schedule.

Some banks have expressed concern that, under the permanent availability schedule, which becomes effective September 1, 1990, depository banks often would not receive notice of nonpayment of large-dollar returned checks prior to the time that funds must be made available for withdrawal. Therefore, the Board is requesting comment on alternatives to shorten the current time requirements for giving notice of nonpayment. In addition, the Board is issuing proposed revisions to

12 CFR Part 229

[Regulation CC; Docket No. R-0679]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to its Regulation CC, Availability of Funds and Collection of Checks. The regulation requires banks to make funds available to their customers within specified times, to disclose their funds availability policies to their customers, and to handle returned checks expeditiously. The proposals include shortening the time requirements for giving notice of nonpayment, proposed changes to the model forms, and other technical and clarifying modifications to the regulation and its Official Commentary (Appendix E to the regulation).

DATES: Comments must be submitted on or before February 16, 1990.

ADDRESSES: Comments, which should refer to Docket No. R-0679, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public

¹ The regulation defines "bank" to include all depository institutions, including commercial banks, savings and loan associations, and credit unions. A "depository bank" is defined as the first bank to which a check is transferred. A "paying bank" is generally the bank by, at, or through which a check is payable and to which it is sent for collection. A "returning bank" is a bank (other than the paying or depository bank) that handles a returned check or a notice in lieu of return.

the deposit deadlines for the Federal Reserve notice of nonpayment service that would take effect if the time requirements for notice of nonpayment were to be shortened. (See Docket R-0680 elsewhere in today's Federal Register.) Further, in response to various questions that have been raised by banks regarding the regulation, the Board is issuing for comment proposed technical and clarifying amendments. The proposed changes to shorten the time for giving notice of nonpayment and the proposed technical and clarifying amendments are described below.

Section 229.2(k) Definition of "check." The Board has been requested to clarify the status of ACH debit transfers under Regulation CC. The Board is proposing a revision to the Commentary to the definition of "check" to state explicitly that an ACH debit transfer is not a check.

Section 229.2(r) Definition of "local check." The Board adopted final rules regarding the issuance of bank payable through checks in July 1989. Under the new rules, effective February 1, 1991, bank payable through checks are required to contain the words "payable through" followed by the name of the payable through bank. Two sentences in the Commentary to the definition of "local check" refer to bank payable through checks that do not contain a designation of the payable through bank. The Board proposes to delete these sentences and to revise the Commentary to indicate that, in the case of bank payable through checks, the depository bank can rely on the first four digits of the nine-digit routing number of the paying bank that is printed on the face of the check to determine whether the check is local or nonlocal.

Section 229.2(u) Definition of "noncash item." The Board is proposing a revision to the Commentary to "noncash item" to clarify that if a bank handles an item in the same manner as it would handle a cash item, the item does not qualify as a noncash item.

Section 229.3(a) Enforcement agencies. As part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Congress amended the Expedited Funds Availability Act regarding the enforcement agency for savings associations. The Board is proposing a conforming amendment to Regulation CC to provide that the Director of the Office of Thrift Supervision has authority to enforce compliance with Regulation CC by savings associations.

Section 229.13(h)(4) Availability of deposits subject to exceptions. The

regulation provides that if a bank invokes an exception hold under § 229.13(b) through (f), it may extend the availability schedule by a reasonable period of time. Currently, the regulation provides that a four business day extension is a reasonable period and that a longer extension may also be reasonable, but the bank has the burden of so establishing. The four day period is designed to provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned. Thus, under the temporary schedule, a bank invoking an exception hold under § 229.13 may normally hold local checks until the seventh business day after deposit and nonlocal checks until the eleventh business day after deposit. When the permanent schedule becomes effective on September 1, 1990, these periods will shorten to six and nine business days, respectively.

Because there will be no significant payment system improvements applicable to the return of checks before the permanent schedule becomes effective, it is unlikely that depository banks will learn of the return of many checks subject to a § 229.13 exception faster they do today.* The Board, therefore, believes it may be appropriate to extend the reasonable hold period. The Board is requesting comment on a proposal to extend the reasonable hold period from four days to five days for local checks and from four days to six days for nonlocal checks, thereby retaining the existing exception hold periods of seven and eleven days, respectively. The Board requests comment on whether such a change would obviate the need to revise disclosures and the need to extend the reasonable hold period, based on current returned check experience.

Section 229.18(e) Changes in policy. The temporary schedule allows case-by-case holds under § 229.16(c) to be imposed for up to seven business days for nonlocal checks. Unless a longer time is reasonable, exception holds under § 229.13 can be imposed for eleven business days. If the Board does not revise § 229.13 as discussed above, these periods will be reduced under the permanent schedule to five and nine business days, respectively. Banks that provided disclosures referencing the longer time periods permitted under the temporary schedule would have to notify their consumer account-holders of the change in accordance with

* Although the Board is requesting comment on whether to shorten the time within which to provide notice of nonpayment of large-dollar checks, many checks subject to § 229.13 exception holds are not subject to the notice of nonpayment requirement.

§ 229.18(e). The Board proposes to revise the Commentary to § 229.18(e) to provide guidance on how this change could be disclosed. The notice must be provided by October 1, 1990. (If the Board adopts the proposed changes to § 229.13(h) lengthening reasonable exception holds, the proposed Commentary language to § 229.18(e) as well as the changes to the model forms in Appendix C discussed below would be revised accordingly.)

Section 229.19(a) When funds are considered deposited. Under § 229.19(a)(5) (ii), funds deposited at an ATM or off-premise facility after the depository bank's cut-off hour of 12:00 noon or later are considered deposited on the next banking day. The Board has been asked whether the 12:00 noon cut-off is determined by the local time of the ATM or off-premise facility or the local time of the branch holding the customer's account.

The Commentary to the definitions of "banking day" and "business day" states, "A deposit made at an ATM or off-premise facility (such as a remote depository or a lock box) is considered made at the branch holding the account into which the deposit is made for the purpose of determining the day of deposit * * * The day of deposit for such funds is determined by the banking day at the account-holding branch at the time the funds are received at the ATM." Similarly, the Commentary to § 229.19(b) regarding availability of funds at the start of business on a day funds are available for withdrawal states that the start of business is determined by the local time of the account-holding branch. Consistent with these provisions, the Board proposes to clarify that the depository bank may establish a cut-off hour for deposits at ATMs or other off-premise facilities of no earlier than 12:00 noon local time of the account-holding branch.

Under the proposal, an East Coast bank that permits its customers to make deposits at ATMs nationwide may establish a 12:00 noon Eastern Time cut-off for receipt of ATM deposits by its customers. Thus, deposits made by customers of the East Coast bank at West Coast ATMs after 9:00 a.m. Pacific Time can be considered received on the next banking day. Conversely, a West Coast bank must consider all deposits made at East Coast ATMs by 3:00 p.m. Eastern Time (12:00 noon Pacific Time) received on that banking day.

The Board specifically requests comment on the operational and customer service implications of this proposal, and whether the cut-off should be determined by the local time of the

ATM, rather than the local time of the account-holding branch. Depending on whether the account-holding branch is east or west of the ATM in which the deposit is made, the earliest cut-off time permitted under the proposal could be either earlier or later than 12:00 noon local time of the ATM. If the time zone of the ATM is west of that of the account-holding branch, the proposal may adversely affect the customer's availability of funds, because the cut-off hour for considering deposits received on a given banking day may be earlier than 12:00 noon local time of the ATM. However, if the time zone of the ATM is east of that of the account-holding branch, the proposal would limit the time for the ATM processor to remove the deposits from the ATM, verify and process them, and put them in the forward collection stream.

Section 229.19(c) Effect on policies of depository bank. The Board is proposing a revision to the Commentary to § 229.19(c) to clarify the relationship between the availability schedules and the depository bank's right to charge back its customer's account for a returned check. The revised Commentary would state explicitly that the depository bank may charge back its customer's account upon receipt of a returned check or notice of nonpayment, even if the check or notice is received after the time by which the proceeds of the check must otherwise be made available for withdrawal under the provisions of the regulation.

Section 229.30(c) Extension of deadline. Increasingly, banks are providing banking services to the public on Saturdays and/or Sundays. These days are not regarded as banking days under Regulation CC, because Saturdays and Sundays are not "business days," but they may be regarded as banking days for the purposes of the Uniform Commercial Code ("UCC"). Banks that are open on Saturday may not have couriers leaving on Saturday to deliver returned checks, and even if they did, the returning or depository bank to which the returned checks were sent might not be prepared to receive or process checks until Sunday night or Monday morning.

Prior to the implementation of Regulation CC, these banks could meet a UCC Saturday night midnight deadline for checks presented on Friday by mailing their returned checks on Saturday. Since the implementation of Regulation CC, however, these banks have been subject to expeditious return requirements that generally may not be met by mailing returned checks. For checks presented on Fridays, these

banks cannot meet both a UCC Saturday midnight deadline and the expeditious return requirements of Regulation CC without establishing special courier runs on Saturday evening to deliver returned checks to returning or depository banks. Such runs would often be in addition to runs during the day on Sunday delivering forward collection checks to the same banks in their capacity as collecting or paying banks in the forward collection process. (The Federal Reserve Banks and many correspondent banks accept deposits on Sunday afternoon or evening so that mailing returns is not necessary to meet the Sunday night midnight deadline for Saturday presentments.)

To address this problem, the Board is proposing to extend the Saturday night midnight deadline if the returned checks reach the receiving bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during the receiving bank's next processing cycle for returned checks following the Saturday midnight deadline.

Section 229.33(a) Notice of nonpayment. This section requires a paying bank to provide notice of nonpayment of any returned check in the amount of \$2,500 or more. Currently, this notice must be received by the depository bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. This requirement generally ensures that the depository bank would receive the notice prior to the time it must make funds available for withdrawal under the temporary availability schedule.

Some banks have expressed concern that, under the permanent availability schedule, which becomes effective September 1, 1990, depository banks often would not receive notice of nonpayment of large-dollar returned checks prior to the time that funds must be made available for withdrawal. Specifically, under the permanent schedule, the first \$5,000 of the deposit of a local check must be made available to the customer for withdrawal by the second business day following deposit. The amount in excess of \$5,000 may be held for a longer period of time under the large-deposits exception (see § 229.13(b)). Because it generally takes at least a day for a check to be sent from the depository bank to the paying bank, the depository bank generally would not receive notice of nonpayment of a large-dollar local check until the third business day following deposit (which would be the second business day following presentment to the paying

bank). Because funds must be made available for withdrawal before the depository bank has an opportunity to learn of the return of the check, the depository bank is at increased risk of loss from insolvent or fraudulent depositors. (Generally, this problem would not exist for nonlocal checks, because the depository bank would receive notice of nonpayment of these checks before the funds must be made available for withdrawal under the permanent availability schedule.)

In a recent survey on the impact of the Expedited Funds Availability Act and Regulation CC conducted by a number of depository institution trade associations in coordination with the Federal Reserve, approximately nine percent of the respondents reported an increase in fraud losses as a result of the Act and regulation.³ Although the Board is concerned that this percentage may increase, the Board believes that because banks are still adjusting to the changes in returned check procedures prompted by Regulation CC, further significant operational changes to the check return system may be premature. Nevertheless, some bankers have suggested shortening the time within which notice of nonpayment must be provided to the depository bank. Therefore, the Board requests comment on whether the risks inherent in the requirement that funds be made available to the customer for withdrawal prior to the time the depository bank has an opportunity to learn of the return of large-dollar local checks are sufficient to warrant accelerating the time within which notice of nonpayment must be provided to the depository bank.

If shortening the time within which the depository bank receives notice of nonpayment is warranted, how early can the paying bank initiate such notice? Today, paying banks generally post checks to their customers' accounts on the evening of the day of presentment. In many banks, however, the decision to return a check is not made at the time of posting, but is dependent on subsequent bank management review, which may entail contacting the customer. In these cases, the decision to return a check unpaid may not be made until early afternoon on the day following presentment. Shortening the time in which notice can be given could require these decisions to be made earlier in the day, particularly for West Coast paying

³See The 1989 Report to Congress Under the Expedited Funds Availability Act, Board of Governors of the Federal Reserve System, June 1989.

banks if notices must be given so that they are received at East Coast depository banks prior to their close of business on the day following presentment. (A paying bank giving notice warrants that it has returned or will return the check.) Shortening the time in which decisions to return checks must be made may, in turn, increase the number of checks returned causing other difficulties or inconveniences for paying banks' customers, increased risks to depository banks, as well as additional burdens on the check return system.

One approach to the East Coast-West Coast time zone problem would be to apply the notice requirement only to large-dollar local checks that are returned unpaid. If the earlier notice requirement applied only to large-dollar local checks, rather than to both local and nonlocal checks, the paying bank would generally have additional time within which to initiate the notice, because it would not be subject to time zone constraints. This greater flexibility is reduced for some paying banks in the 15 check processing regions that cover multiple time zones.

The Board requests comment on the ability of paying banks to provide notice of nonpayment for local and/or nonlocal checks that would be received by the depository bank (1) late in the day (e.g., 4:00 p.m. or 8:00 p.m.) on the next business day following the banking day on which the check is presented, or (2) earlier than 4:00 p.m. (e.g., 10:00 a.m. or 1:00 p.m.) on the second business day following the banking day on which the check is presented.

The Board also requests comment on the extent to which shortening the time within which notice of nonpayment must be provided would affect the manner by which the paying bank provides notice. For example, some paying banks currently rely on the return of local checks to the depository bank to fulfill the notice requirement. If the notice of nonpayment requirement was made earlier than 2:00 p.m. on the second business day following presentment, paying banks could not rely on receipt of the physical check to satisfy the notice requirement for many local checks, particularly local checks not returned through a clearing house arrangement.

In addition, the Board requests comment on the benefits to the depository bank of receiving notice of nonpayment at these earlier times. Do depository banks act on notices of nonpayment promptly when they are received, or do they defer action until that evening's account processing? How promptly, and by what means (e.g., by phone or by written notice) is the

depositor notified of the receipt of the notice of nonpayment by the depository bank? If notice of nonpayment must be provided by late in the day on the business day following presentment (e.g., by 8:00 p.m.) would depository banks have staff available at that time to accept and act on the notices? If notices are sent to a correspondent bank that indorses as depository bank, would the correspondent bank be able to relay an earlier notice to the original depository bank?

Docket R-0680 in today's Federal Register proposes changes to the Federal Reserve's notice of nonpayment service that may be adopted if the Board were to adopt a more stringent requirement in § 229.33 regarding the timing of notices of nonpayment. The Board also requests comment on the extent to which other service providers could continue to offer notice of nonpayment services to facilitate compliance by paying banks with an earlier notice requirement.

Section 229.34(a) Warrant of Returned Check The regulation provides that a paying or returning bank that transfers and receives settlement for a notice in lieu of return warrants that the original check has not and will not be returned. The Board has been asked to clarify that the paying or returning bank is warranting that the original check has not and will not be returned for payment, as opposed to being returned to the depository bank for other purposes, such as to provide evidence of a forgery, that do not call for payment of the check under § 229.32. The Board proposes to amend the Commentary accordingly.

Section 229.35(a) Indorsement Standards. Since September 1988, when Regulation CC became effective, the quality of indorsements has varied widely. In some cases, banks that handle returned checks have found indorsements to be illegible, even though the indorsements may meet the informational requirements of the regulation. There are several reasons indorsements may be unclear, such as very small type size, or poor imprinting mechanisms, which may result in faint or indistinct indorsements.

Currently under § 229.35 and Appendix D, the duty of an indorsing bank to apply a legible indorsement is implied, but not explicit. The Board believes that the requirement that an indorsing bank should be responsible for ensuring that its indorsement is legible should be made explicit and is proposing to make this duty explicit in the regulation and the Commentary.

Section 229.36(e) Issuance of payable through checks. In July 1989, the

Board amended Regulation CC to require certain information to be printed on checks payable by a bank and payable through another bank ("bank payable through checks"). Section 229.36(e) now requires such checks to contain the name, address, and first four digits of the routing number of the bank by which the check is payable, and the phrase "payable through" followed by the name and address of the payable through bank.

The Board has received inquiries as to whether it would be permissible for a bank that holds checking accounts and processes checks at a central location but that has widely-dispersed branches to label all of its checks as "payable through" a single branch and include the name, address, and four-digit routing symbol of another branch. These checks would be payable by and through the same bank,⁴ and therefore the provisions of § 229.36(e) would not apply. If the Board were to allow such a practice, the result would be to lead depositors and depository banks to believe mistakenly that the check is a bank payable through check for which availability must be assigned based on the location of the branch whose four-digit routing symbol appears on the check rather than on the location of the central office whose nine-digit routing number is encoded on the MICR line of the check.

The Board, therefore, is proposing an amendment to the regulation and the Commentary to provide that a bank is responsible for damages under § 229.38 to the extent that a check payable by it and not payable through another bank is labelled as provided in § 229.36(e).

Appendix C Model forms. The Board is proposing several revisions to the model forms and clauses in Appendix C and to the accompanying Commentary. Several of these changes are designed to reflect the availability periods under the permanent schedule and the recent revisions to the regulation regarding payable-through checks. Other changes are designed to provide additional guidance regarding the disclosure of availability times for electronic payments or to clarify existing language. The Commentary to Appendix C would be revised to make clear that banks may rely on earlier versions of the model forms though they are encouraged to update their forms when reordering new supplies.

⁴ "Bank" is defined in § 229.2(e) to include all of a bank's offices in the United States. Therefore, all of a bank's U.S. branches would be considered part of a single bank.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (12 U.S.C. 601-612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (12 U.S.C. 603(b)), a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary material above. The proposed rules require no additional reporting or record-keeping requirements nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposals will apply to all depository institutions, regardless of size, but should not place a significant burden on small institutions. These proposals are aimed primarily at reducing risk to depository banks under the permanent availability schedules and clarifying Regulation CC in response to questions that the Board has received from depository institutions. The Board does not believe that adoption of the proposals will result in any significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 229

Banks, Banking; Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 229 is proposed to be amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

2. In § 229.3, paragraph (a)(2) is revised to read as follows:

§ 229.3 Administrative enforcement.

(a) Enforcement agencies. * * * (2) Section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

3. In § 229.13, paragraph (h)(4) is revised to read as follows:

§ 229.13 Exceptions.

(h) Availability of deposits subject to exceptions. * * *

(4) For the purposes of paragraphs (h)(1), (h)(2), and (h)(3) of this section, an extension of up to five business days for local checks and six business days for nonlocal checks is a reasonable period. A longer extension may be reasonable, but the bank has the burden of so establishing.

4. In § 229.30, paragraph (c) is revised to read as follows:

§ 229.30 Paying bank's responsibility for return of checks.

(c) Extension of deadline. The deadline for return or notice of nonpayment under the UCC or Regulation J (12 CFR part 210) is extended:

(1) If a paying bank, in an effort to expedite delivery of a returned check to a bank, uses a means of delivery that would ordinarily result in the returned check being received by the bank to which it is sent on or before the receiving bank's next banking day following the otherwise applicable deadline; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next banking day; or

(2) If the deadline falls on a Saturday that is a banking day, as defined in the UCC, for the paying bank, and the paying bank uses a means of delivery that would ordinarily result in the returned check being received by the bank to which it is sent prior to the receiving banks' cut-off hour for its next processing cycle after midnight Saturday night.

5. In § 229.35, paragraph (a) is revised to read as follows:

§ 229.35 Indorsements.

(a) Indorsement standards. A bank (other than a paying bank) that handles a check for collection or a returned check shall legibly indorse the check in accordance with the indorsement standard set forth in appendix D to this part.

6. In § 229.36, a new sentence is added to the end of paragraph (e) concluding text as follows:

§ 229.36 Presentment and issuance of checks.

(e) Issuance of payable through checks. * * *

(1) * * *

(2) * * *

* * * A bank is responsible for damages under § 229.38 of this part to the extent that a check payable by it and not payable through another bank is labelled as provided in this section.

Appendix C—[Amended]

7. Appendix C is amended as set forth below:

a. The first paragraph of model forms C-1, C-2, and C-3 is revised to read as follows:

at [bank name and location]

Our policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

b. In model form C-3, the heading is revised, and under the subheading "Longer Delays May Apply," the second sentence of the first paragraph and the last sentence of the last paragraph are revised to read as follows:

C-3. Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions (permanent schedule).

Longer Delays May Apply

* * * Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit. * * *

* * * They will generally be available no later than the ninth business day after the day of your deposit. * * *

c. In model forms C-4, C-5, C-6, and C-7, a new paragraph and a subheading is added immediately preceding the subheading "Next-Day Availability," and the first sentence under the subheading "Next-Day Availability" is revised to read as follows:

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you.
Wire transfers.

Checks drawn on [bank name] (unless [any limitations related to branches in different states or check-processing regions]).

d. In model forms C-4, C-6, and C-7, the second paragraph under the subheading "Other Check Deposits" is revised to read as follows:

Other Check Deposits

If the first four digits of the routing number (1234 in the examples above) are [local numbers], then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows.

e. In model form C-5, two new sentences are added at the beginning of the second paragraph under the subheading "Other Check Deposits" to read as follows:

Other Check Deposits

Some checks are marked "payable through" and have a four or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal.

f. In forms C-2, C-3, C-4, C-5, and C-6, under the subheading "Special Rules for New Accounts," the second paragraph is deleted, and the third paragraph is revised to read as follows:

Special Rules for New Accounts

Funds from electronic direct deposits into your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

g. In form C-7, under the subheading "Special Rules for New Accounts," the second, third, and fourth sentences of the first paragraph are deleted and the

second paragraph is revised to read as follows:

Special Rules for New Accounts

Funds from electronic direct deposits into your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

h. In model clause C-8, the last sentence is deleted.

i. Model clauses C-19 and C-19A are deleted.

Appendix E—[Amended]

8. Appendix E is amended as set forth below:

a. In the Commentary to § 229.2, the first sentence of the last paragraph of paragraph (k) is revised, the last two sentences of paragraph (r) are removed and a new sentence is added to the end, and a new sentence is added to the end of the first paragraph of paragraph (u) as follows:

Section 229.2 Definitions

(k) Check * * *
The definition of "check" does not include an instrument payable in a foreign currency (i.e., other than United States money as defined in 31 U.S.C. 5101), a credit card draft (i.e., a sales draft used by a merchant or a draft generated by a bank as a result of a cash advance), or an ACH debit transfer.

(r) Local Check * * * In these cases, the depository bank may rely on the first four digits of the nine-digit routing number of the paying bank that is printed on the face of the check to determine whether the check is local or nonlocal.

(u) Noncash item. * * * To qualify as a noncash item, an item must be handled as such and may not be handled as a cash item.

b. In the Commentary to § 229.13, in paragraph (h), the second sentence of the first paragraph, the first sentence of the second paragraph, and the fourth paragraph are revised to read as follows:

Section 229.13 Exceptions

(h) Availability of deposits subject to Exceptions. * * * This provision establishes that an extension of up to five business days for local checks and six business days for nonlocal checks is reasonable. * * *

For example, assume a bank extended the hold on a local check deposit by five business days based on its reasonable cause to believe that the check is uncollectible. * * *

Five business days for local checks and six business days for nonlocal checks, in addition to the time period provided in the schedule, should provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned.

c. In the Commentary to § 229.18, a new paragraph is added after the last paragraph of paragraph (e) to read as follows:

Section 229.18 Additional Disclosure Requirements

(e) Changes in policy * * *

In disclosing the changes (due to the implementation of the permanent schedule) in the maximum periods for case-by-case and exception holds, a bank may provide notice in any form that is clear and conspicuous. For example, banks could use language such as the following on account statements (or on inserts) to disclose the change in policy: "Our disclosure on funds availability described certain limited circumstances in which funds from deposits would not be available until the seventh or the eleventh business day following the day of your deposit. Effective September 1, 1990, those periods will be reduced, respectively, to five and nine business days."

d. In the Commentary to § 229.19, the third sentence of the fifth paragraph of paragraph (a) is revised, and two new sentences are added to the end of the second paragraph of paragraph (c) to read as follows:

Section 229.19 Miscellaneous

(a) When funds are considered deposited. * * *

* * * For receipt of deposits at ATMs or off-premise facilities, such as night depositories or lock boxes, the depository bank may establish a cut-off hour of 12:00 noon or later (local time of the branch or other location of the depository bank at which the account is maintained). * * *

* * * (c) Effect on policies of depository bank. * * *. For example, even if a check is returned or a notice of nonpayment is received after the time by which funds must be made available for withdrawal in accordance with this regulation, the depository bank may charge back the

customer's account for the full amount of the check. (See § 229.33(d) and Commentary.)

e. In the Commentary to § 229.30, the heading and first two paragraphs of paragraph (c) are revised to read as follows:

Section 229.30 Paying Bank's Responsibility for Return of Checks

(c) *Extension of deadline.* This paragraph permits extension of the midnight deadline, but not of the duty of expeditious return, in two circumstances:

(1) A paying bank may have a courier that leaves after midnight to deliver its forward collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches either the depository bank or the returning bank to which it is sent on that bank's banking day following the expiration of the midnight deadline or other applicable time for return. The extension also applies if the check reaches the bank to which it is sent later than the close of that bank's banking day, if highly expeditious means of transportation are used. For example, a West Coast paying bank may use this further extension to ship a returned check by air courier directly to an East Coast depository bank even if the check arrives after the close of the depository bank's banking day.

(2) A paying bank may observe a banking day, as defined in the UCC, on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the UCC midnight deadline for checks received on Friday might force the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depository bank to which the returned checks were sent ("receiving bank") might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the receiving bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during the receiving bank's next processing cycle following the Saturday midnight deadline.

The time limits that are extended in each case are the paying bank's midnight deadline in UCC sections 4-301 and 4-302 and § 210.12 of Regulation J (12 CFR 210.12). As these extensions are designed to speed (§ 229.30 (c) (1)), or at least not slow § 229.30(c)(2)), the overall return of checks, no modification or extension of the expeditious return requirements in § 229.30(a) is required.

f. In the Commentary to § 229.34, the first sentence of paragraph (a) is revised to read as follows:

Section 229.34 Warranties by Paying Bank and Returning Bank

(a) *Warranty of returned check.* This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and

payable through another bank, the bank by which the check is payable, within the deadline under the UCC, Regulation J, or § 229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the original check has not been and will not be returned for payment (see the Commentary to § 229.30(f)).

g. In the Commentary to § 229.35, a new sentence is added before the last sentence of the first paragraph of paragraph (a) as follows:

Section 229.35 Indorsements

(a) *Indorsement standards.* The regulation places a duty on banks to ensure that their indorsements are legible.

h. In the Commentary to § 229.36, two new sentences are added after the first sentence in the second paragraph of paragraph (e), and the second sentence is revised to read as follows:

Section 229.36 Presentment and Issuance of Checks

(e) *Issuance of payable through checks.*

Similarly, a bank may be liable under § 229.38 if a check payable by it that is not payable through another bank is labelled as provided in this section. (All of a bank's offices within the United States are considered part of the same bank; see § 229.2(e).) For example, a bank by which a check is payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under subpart B, that would not have occurred had the check, in the case of a payable through check, met the requirements of this paragraph, or, in the case of a check that is not payable through another bank, not been mislabelled.

i. In the Commentary to Appendix C, under the subheading "Modes C-1 through C-7 generally," the last paragraph is revised and a new paragraph is added at the end thereof to read as follows:

Appendix C—Model Forms, Clauses, and Notices

Models C-1 through C-7 generally.

While § 229.10(b) of the regulation requires next-day availability for electronic payments, Treasury regulations (31 CFR part 210) and ACH association rules require that preauthorized credits ("direct deposits") be made available on the day the bank receives the funds. Model Forms C-1 through C-7 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the first business day following deposit. Banks with different policies should revise the forms to reflect the availability given in most cases for wire transfers.

Banks that have used earlier versions of the model forms or clauses (such as those forms that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after deposit) are protected from civil liability under § 229.21(e). Banks are encouraged, however, to use current versions of the forms when reordering supplies of forms.

By order of the Board of Governors of the Federal Reserve System, December 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29007 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0680]

Proposals to Modify the Reserve Banks' Notice of Nonpayment Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed service modifications.

SUMMARY: The Board is publishing for comment proposals to modify the deadlines for the notice of nonpayment service offered by Federal Reserve Banks. Modification of the current deadlines may be adopted if the Board adopts an amendment to Regulation CC shortening the time requirement for providing notice of nonpayment to the depository bank.

DATE: Comments must be submitted on or before February 16, 1990.

ADDRESSES: Comments, which should refer to Docket No. R-0680, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Thompson, Manager (202/452-2934), Division of Federal Reserve Bank Operations; or Stephanie Martin, Attorney (202/452-3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Currently, Regulation CC requires paying banks to provide notice of nonpayment to the depository bank by 4:00 p.m. (local time of the depository bank) on the second day following presentment for checks of \$2,500 or more. Although this requirement reduces risk inherent in the return process, some banks have expressed concern that, under the permanent availability schedule, which becomes effective

September 1, 1990, the instances in which depository banks will not receive notice of nonpayment of large-dollar returned checks prior to the time that funds must be made available for withdrawal will increase. Specifically, under the permanent schedule, the \$5,000 of the deposit of a local check must be made available to the customer for withdrawal by the second business day following deposit. Even though the amount in excess of \$5,000 can be held for a longer period of time under the large-deposits exception [§ 229.13(b)], the depository bank's risk exposure may increase because it would generally not receive notice of nonpayment of a large-dollar local check until after the first \$5,000 of the check must be made available for withdrawal.

The Board is requesting comment on whether the regulation should be revised to reduce the time within which notice of nonpayment must be provided to the depository bank [See Docket R-0679 elsewhere in today's Federal Register]. The Board proposes that, if it amends Regulation CC to reduce the time within which notice of nonpayment must be given, the Reserve Banks would revise the deposit deadlines for the large-dollar notice of nonpayment service in support of this change. At this time, the Board is not proposing any fee changes; however, fees may need to be increased for notices of nonpayment originated by telephone or physical check if the processing is moved into a high-cost peak processing time. Any revised Reserve Bank deadlines would be structured to facilitate compliance with the regulatory requirement for receipt of notices of nonpayment, if the Board adopts such an amendment. Because no specific time requirement for depository bank receipt of notices of nonpayment is being proposed, following is a discussion of how the Federal Reserve service, might be modified to assist banks in meeting any new requirements.

If the regulation is modified to reduce the time within which notice must be given to 4:00 p.m. on the business day following the banking day on which the check is presented to the paying bank, the Reserve Banks would retain their current deadlines for the notice of nonpayment service; however, the paying bank would be required to provide the physical checks or information to its Reserve Bank one day earlier than is currently the case.

Origination method	Deadline
Wire.....	12:00 noon on due date.
Telephone call to Fed.....	9:00 a.m. on due date.

Origination method	Deadline
Physical check to Fed.....	9:00 a.m. on due date.

The Board recognizes that the deadlines for providing notice by 4:00 p.m. on the day following presentment generally would preclude use of the Federal Reserve notification service based on providing use of the Federal Reserve notification service based on providing the Reserve Bank with the typical check or making a telephone call to the Reserve Bank because most paying banks may not be able to make their return decision and then deliver the check or call the Reserve Bank by 9:00 a.m. on the day following presentment.

The times for both deposit and delivery of notices are based on local times of the paying bank's Reserve Bank and of the depository bank, respectively. The 12:00 noon deadline for wire origination is necessary because the Federal Reserve guarantees that a wire notice sent by a West Coast paying bank to an East Coast depository bank at 12:00 noon Pacific Time (PT) (3:00 p.m. Eastern Time (ET)) would be delivered to the depository bank by 4:00 p.m. ET. The Reserve Banks would be unable to guarantee delivery for notices initiated later than 12:00 noon PT. The 9:00 a.m. deadline for notices originated by telephone or physical check is necessary to allow the Federal Reserve sufficient time to process manually the notice information.

Alternatively, the Federal Reserve could establish the deadlines in Eastern Time. This could allow for later deadlines for non-West Coast paying banks; however, West Coast paying banks would still be constrained by the proposed deadlines. If the Board were to adopt a time than 4:00 p.m. for receipt of the notice by the depository bank, the deadlines could be moved to a later time, accordingly; however, because the Federal Reserve service is provided via Fedwire, the cutoff for Federal Reserve provision of the notice would provide for receipt by the close of Fedwire, regardless of whether the legal requirement allowed for a later time. This constraint generally would not allow sufficient time for a bank located remotely from its local Reserve Bank office to originate notice by providing the physical checks to the Reserve Bank. In recognition of this, the Federal Reserve is investigating whether alternatives, such as fax delivery of a copy of the physical check, could provide a feasible service substitution for the paying bank; however, difficulty

in producing legible facsimiles may preclude this alternative.

If the Board adopts an amendment to § 229.33(a) of Regulation CC requiring that notice of nonpayment be provided to the depository bank by 4:00 p.m. on the day following presentment to the paying bank, the Board requests comment on whether the Federal Reserve notice of nonpayment service should be modified as described in the alternatives above. In addition, the Board requests commenters to provide suggestions regarding alternatives for paying banks to meet the deadline for providing notice of nonpayment from the physical check or via telephone call.

If the regulation were modified to require that notice of nonpayment be provided to the depository bank by 10:00 a.m. on the second business day after presentment to the paying bank, the Board proposes to modify the notice of nonpayment service to provide same-day notice at the following new deadlines:

Origination method	Current deadline	Proposed deadline
Wire.....	12:00 noon local time on due date.	9:00 a.m. Eastern Time on due date.
Telephone call to Fed.	9:00 a.m. local time on due date.	4:00 p.m. local time on day before due date.
Physical check to Fed.	9:00 a.m. local time on due date.	12:01 a.m. local time on due date.

These proposed deadlines are based on a combination of Fedwire processing hours and check processing flows. The 9:00 a.m. Et wire deadline allows for information to be entered after the opening of Fedwire so that it can be delivered to the depository bank by 10:00 a.m. local time. The 4:00 p.m. local time on the day before the due date for telephone origination would allow paying banks to notify the Federal Reserve during business hours, when staff is generally available to accept the telephone calls. The Federal Reserve could provide a later deadline for receipt of the telephone notice, but this would likely result in higher prices because additional staff would be necessary to handle relatively small volumes. The 12:01 a.m. local time deadline for receiving physical checks from which the Federal Reserve would provide notice is tied to existing transportation arrangements for delivering checks to the local Reserve Bank office.

If the Board adopts an amendment to Section 229.33(a) of Regulation CC requiring that notice of nonpayment must be provided to the depository bank on the second business day after presentment to the paying bank at 10:00

a.m., the Board requests comment on whether the Federal Reserve notice of nonpayment service be modified as described above.

By order of the Board of Governors of the Federal Reserve System, December 7, 1989.
William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29010 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

Funds Availability Act provides standards for determining whether state law governing funds availability supersedes or is preempted by federal law. Under Regulation CC, the Board may issue preemption determinations with respect to state law upon request.

DATE: Comments must be submitted on or before January 16, 1990.

ADDRESSES: Comments, which should refer to Docket No. R-0644, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room G-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Thompson, Manager (202/452-2934), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202-452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of Expedited Funds Availability Act ("Act") (12 U.S.C. 4001-4010). The regulation requires banks to make funds available to their customers within specified time frames and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (section 608) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1989, that requires a shorter hold for a category of checks than is required under federal law will supersede the federal provision.

Provisions of state law governing funds availability that permit a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC are considered inconsistent with and are preempted by Regulation CC. In addition, state disclosure and notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Reg. CC; Docket No. R-0644]

RIN 7100-AB01

Availability of Funds and Collection of Checks; Proposed Preemption Determination

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed interpretation.

SUMMARY: The Board is publishing for comment an official Board interpretation concerning a preemption determination under its Regulation CC, Availability of Funds and Collection of Checks, for the laws of California relating to commercial banks, branches of foreign banks, savings and loan associations, and savings banks. The Expedited

related to the availability of funds is preempted by federal law upon request of a state, bank, or other interested party.

Discussion

On August 18, 1988, the Board issued for public comment a proposed preemption determination for California (53 FR 32359, August 24, 1988). California has different funds availability regulations governing (1) commercial banks and branches of foreign banks, (2) savings and loan associations and savings banks, (3) credit unions, and (4) industrial loan companies. The California State Banking Department and the State of California Department of Savings and Loan requested, in their comments, that the Board defer adoption of preemption determinations with regard to commercial banks, branches of foreign banks, savings and loan associations, and savings banks until the emergency regulations promulgated by those departments in October 1988 were adopted in final form. In November 1988, the Board published a summary of the comments received and a final preemption determination for the California funds availability law with respect to credit unions and industrial loan companies (54 FR 44325, November 2, 1988).

California's final regulations regarding commercial banks and branches of foreign banks became effective on April 12, 1989, and its final regulations regarding savings and loan associations and savings banks were approved on March 8, 1989. The new regulations are significantly different from those that were in effect when the Board issued its first proposed preemption determination in August 1988. Therefore, the Board is now requesting comment on revised preemption determinations with respect to the final state regulations. Generally, both sets of California regulations adopt the provisions of Regulation CC, but expand coverage to include certain non-transaction accounts. In addition, the State Banking Department regulations provide for shorter availability than Regulation CC in some cases and supersede the federal law in those cases.

List of Subjects in 12 CFR Part 229

Banks, banking; Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 229 is proposed to be amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

2. In appendix F, the California preemption determination is amended by revising the second and third sentences of the second paragraph, and by adding, within the reserved sections, preemption determinations for Commercial Banks and branches of Foreign Banks and for Savings Institutions.

Appendix F—Official Board Interpretations; Preemption Determinations

* * * * *

California

* * * * *

* * * The regulations applicable to commercial banks and branches of foreign banks located in California (Cal Admin. Code tit. 10, §§ 10.190401-10.190402) were promulgated by the Superintendent of Banks. The regulations applicable to savings banks and savings and loan associations (Cal. Admin. Code tit. 10, §§ 106.200-106.202) were adopted by the Savings and Loan Commissioner. * * *

* * * * *

Commercial Banks and Branches of Foreign Banks

Coverage. The California State Banking Department regulations, which apply to California state commercial banks, California national banks, and California branch offices of foreign banks, provide that a depository bank shall make funds deposited into a deposit account available for withdrawal as provided in Regulation CC with certain exceptions. The funds availability schedules in Regulation CC apply only to "accounts" as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts (other than time accounts), as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under § 229.19(e) of Regulation CC, Holds on other funds, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

Availability Schedules. Temporary schedule. Regulation CC provides that, until September 1, 1990, nonlocal checks must be made available for withdrawal by the seventh business day after the banking day of deposit, except for

certain nonlocal checks listed in Appendix B-1, which must be made available within a shorter time (by the fifth business day following deposit for those California checks listed.) Under the temporary schedule in the California regulations, a depository bank with a four-digit routing symbol of 1210 ("1210 bank") or of 1220 ("1220 bank") that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch¹ must make the funds available for withdrawal by the fourth business day after the day of deposit. The California regulations provide that 1210 and 1220 banks must make deposited checks drawn on nonlocal in-state thrifts (defined as savings and loan associations, savings banks, and credit unions) available by the fifth business day after deposit. In addition, California law provides that all other depository banks must make deposited checks drawn on a nonlocal in-state commercial bank or foreign bank branch available by the fifth business day after deposit and checks drawn on nonlocal in-state thrifts available by the sixth business day after deposit. To the extent that these schedules provide for shorter holds than Regulation CC and its Appendix B-1, the state schedules supersede the federal schedules.² For example, the California four-day schedule that applies to checks drawn on in-state nonlocal commercial banks or foreign bank branches and deposited in a 1210 or 1220 bank would be shorter than and would supersede the federal schedules.

The California regulations do not specify whether the state schedules apply to deposits of checks at nonproprietary ATMs. Under the temporary schedules in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal by

¹ The California regulation uses the term "paying bank" when describing the institution on which these checks are drawn, but does not define "paying bank" or "bank." Regulation CC's definitions of "paying bank" and "bank" include savings institutions and credit unions as well as commercial banks and branches of foreign banks. However, because the California regulation makes separate provisions for checks drawn on savings institutions as credit unions, the Board interprets the term "paying bank," as used in the California regulation, to include only commercial banks and foreign bank branches.

² Appendix B-1 of Regulation CC provides that the federal schedules will be the same as the California schedules (5 days) in the following cases: a depository bank bearing a 1210 routing number receiving for deposit checks bearing a 3220 or a 3223 routing number, and a depository bank bearing a 1220 routing number receiving for deposit checks bearing a 3210 routing number. In the cases where federal and state law are the same, the state law is not preempted by, nor does it supersede, the federal law.

the seventh business day following deposit. To the extent that the California schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the nonproprietary ATMs specified in § 229.11(d).

Permanent schedule. Regulation CC provides that, as of September 1, 1990, nonlocal checks must be made available for withdrawal by the fifth business day after the banking day of deposit. Under the permanent schedule in the California regulations, a depository bank with a four-digit routing symbol of 1210 or of 1220 that receives for deposit a check drawn a nonlocal, in-state commercial bank or foreign bank branch must make the funds available for withdrawal by the fourth business day after the day of deposit. These state schedules provide for shorter hold periods than and thus supersede the federal schedules.

Second-day availability. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Availability at start of day. The California regulations do not specify when during the day funds must be made available for withdrawal. Section 229.19(b) of Regulation CC provides that funds must be made available at the start of the business day. In those cases where federal and state law provide for holds for the same number of days, to the extent that the California regulations allows funds to be made available later in the day than does Regulation CC, the federal law would preempt state law.

Exceptions to the availability schedules. The California regulations do not provide for any exceptions to the availability schedules, nor do they indicate that any federal exceptions apply to those deposits for which the state schedules supersede the federal schedules. Under the state preemption standards of Regulation CC (see § 229.20(c) and accompanying Commentary), for deposits covered by the state availability schedules, a state

exception may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depository bank may further extend the hold under any federal exception that can be applied to the deposit. In those cases where the California schedules supersede Regulation CC, no exception holds may be applied because there are no state provisions for lengthening the state hold periods.

Disclosures. California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code Section 866.2 requires disclosures that differ from those required by Regulation CC and, therefore, is preempted to the extent that it applies to "accounts" as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

Savings Institutions

Coverage. The California Department of Savings and Loan regulations, which apply to California savings and loan associations and California savings banks, provide that a depository bank shall make funds deposited into a transaction or non-transaction account available for withdrawal as provided in Regulation CC. The funds availability schedules in Regulation CC apply only to "accounts" as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under § 229.19(e) of Regulation CC, Holds on other funds, the federal availability schedules may apply to savings, time,

and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

Availability Schedules: Second-day availability. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Temporary and Permanent Schedules. Other than the provisions of Section 867 as discussed above, California law incorporates the Regulation CC availability requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the California regulation is not preempted by, nor does it supersede, the federal law.

Disclosures. California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal. The Department of savings and Loan regulations provide, however, that for those accounts covered by state law but not by federal law, disclosures in accordance with Regulation CC will be deemed to comply with the state law disclosure requirements.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. To the extent that California Financial Code § 866.2 requires disclosures that differ from those required by Regulation CC

and apply to "accounts" as defined in Regulation CC, the California law is preempted by Regulation CC. To the extent that the Department of Savings and Loan regulations permitting reliance on Regulation CC disclosures survive the preemption of California Financial Code Section 866.2, they are not preempted by, nor do they supersede, the federal law. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

By order of the Board of Governors of the Federal Reserve System, December 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29011 Filed 12-12-89; 8:45 am]

BILLING CODE 6210-01-M