



FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

March 12, 1991

DALLAS, TEXAS 75222

Notice 91-20

TO: The Chief Operating Officer of
each financial institution in the
Eleventh Federal Reserve District

SUBJECT

**Amendments to Regulation CC
(Availability of Funds and Collection of Checks)**

DETAILS

The Board of Governors of the Federal Reserve System has adopted in final form, with minor technical changes, its previously published interim rule amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act.

The amendments extend the availability schedules for deposits at nonproprietary automated teller machines for a period of two years. The Regulation CC amendments have a retroactive effective date of September 1, 1990.

ATTACHMENT

Attached is a copy of the Board's notice as it appears on pages 7799-7802, Vol. 56, No. 38, of the Federal Register dated February 26, 1991.

MORE INFORMATION

For further information, please contact Robert L. Whitman, (214) 698-4357, at the Dallas Office; Eloise Guinn, (915) 521-8201, at the El Paso Branch; Luke E. Richards, (713) 652-1544, at the Houston Branch; or Herb Barbee, (512) 978-1402, at the San Antonio Branch. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 651-6289.

Sincerely yours,

Robert D. McTeer, Jr.

FEDERAL RESERVE SYSTEM**12 CFR Part 229**

[Regulation CC; Docket No. R-0717]

RIN 7100-AB01

Availability of Funds and Collection of Checks**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

SUMMARY: The Board is adopting in final form, with minor technical changes, its interim rule amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act (see the Cranston-Gonzales National Affordable Housing Act, Public Law 101-625, section 1001). The amendments extend the availability schedules for deposits at nonproprietary automated teller machines for a period of two years. The amendments to the Expedited Funds Availability Act were signed into law on November 28, 1990, with a retroactive effective date of September 1, 1990.

EFFECTIVE DATE: September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), or Kathleen M. Connor, Senior Financial Services Analyst (202/452-3917), Division of Reserve Bank

Operations and Payment Systems; Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division. For information regarding modifications to disclosures or 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, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Expedited Funds Availability Act ("Act") specifies the time periods within which funds deposited at ATMs must be made available for withdrawal. Under the temporary schedule (which was effective from September 1, 1988, to August 31, 1990), the rules that applied to deposits at nonproprietary ATMs¹ were different from those that applied to deposits at proprietary ATMs because of operational differences in the way these deposits are processed. During consideration of the Act, banks reported to Congress on the processing limitations associated with accepting deposits at nonproprietary ATMs. They indicated that the account-holding bank does not have the information necessary to place holds on nonproprietary ATM deposits because the deposits are removed and processed by the ATM operator rather than the account-holding bank. Given these limitations, the Act

¹ A *nonproprietary ATM* is defined in the Act as one that is not proprietary. In the Act, *proprietary ATM* means an automated teller machine that is (1) located at or adjacent to a branch of the receiving institution or in close proximity, as defined by the Board, or (2) owned by, operated exclusively for, or operated by the receiving institution

allowed the account-holding bank to treat such deposits as though they were composed of nonlocal checks under the temporary schedule. At that time, Congress anticipated that the processing limitations that necessitated the special availability rule for nonproprietary ATM deposits under the temporary schedule would be addressed by the time the permanent schedule became effective in September 1990. Therefore, under the permanent schedule, deposits at nonproprietary ATMs generally had to be made available for withdrawal within the same time periods as deposits made at staffed teller facilities.

During the past two years, ATM networks, banks, and the Board have investigated a number of potential alternatives both to address the processing limitations and to facilitate compliance with the permanent schedule. A viable operational solution to address the processing limitations has not been identified. All of the identified solutions are costly and would likely result in increased fees for customers who make deposits at nonproprietary ATMs. The possible operational solutions would degrade the efficiency of shared ATM networks and may slow the collection of checks, which would be contrary to the intent of the Act.

In addition, banks and ATM operators have expressed concern that the potential for fraud will increase if banks must comply with the permanent availability schedule for nonproprietary ATMs. Under the permanent availability schedule, second-business-day availability is required for local checks. Thus, an account-holding bank that could not ascertain the composition of deposits at nonproprietary ATMs would

have to provide second-business-day availability for all deposits made at nonproprietary ATMs in order to ensure compliance with the availability schedules, even though longer holds could apply with respect to similar deposits, i.e., nonlocal checks, made at a staffed teller facility. Thus, deposits of nonlocal checks at nonproprietary ATMs would be available for withdrawal several days before the checks could be returned if not paid, and therefore such deposits would be an attractive vehicle for check fraud. Substantial increases in operating costs or fraud losses could lead some institutions to cease accepting deposits at nonproprietary ATMs, thereby limiting a convenient consumer banking service.

Based on this research and analysis, the Board submitted two reports² to Congress that recommended that the Congress amend the Act to treat nonproprietary ATM deposits under the permanent schedule in the same manner as such deposits were treated under the temporary schedule; i.e., permit banks to make deposits at nonproprietary ATMs available for withdrawal as if they were nonlocal checks (not later than the fifth business day following the banking day of deposit). ATM networks and participating institutions also have made this recommendation to the Congress.

On November 28, 1990, the President signed into law the Cranston-Gonzales National Affordable Housing Act (Pub. L. 101-625; section 1001), which amended the Expedited Funds Availability Act to extend the schedules applicable to deposits at nonproprietary ATMs for a two-year period. The Board implemented and requested comment on interim rules to conform Regulation CC to this recent amendment of the Act (55 FR 50816, December 11, 1990).

The Board received letters on the interim rule from 24 commenters (six commercial banks, five trade associations, four savings institutions, three Federal Reserve Banks, two credit unions, two bank holding companies, and two corporations). Twenty-three commenters supported the amendments and one commenter opposed them as overly complicating Regulation CC. Most of the commenters restated the concerns discussed above that were raised previously by banks and by the Board to Congress. Sixteen commenters expressed concern that viable cost-

effective technology that would eliminate the processing limitations associated with nonproprietary ATM deposits would not be available by November 1992, when the special treatment for these deposits would expire. Thirteen commenters expressed concern about the increased potential for fraud, and twelve noted that banks would probably cease accepting deposits at nonproprietary ATMs if a solution is not found within two years. One commenter noted that, if banks generally cease to accept nonproprietary ATM deposits after November 1992, the rule could have anti-competitive effects for small banks because larger banks with strong branch networks could continue to do business in a large area, whereas small banks without such extensive branching networks could not do so without nonproprietary ATM deposits. Eight commenters encouraged the Board to renew its request to Congress for a permanent statutory extension of the nonproprietary ATM availability schedules. The Board has reviewed the comments and adopted the interim rule with minor technical changes.

Section 229.12 of Regulation CC sets forth the permanent availability schedule under which funds deposited in an account by local and nonlocal checks must be made available for withdrawal. A new § 229.12(f) has been added to provide a special rule for deposits made at nonproprietary ATMs. This rule does not apply to deposits made at proprietary ATMs. Section 229.12(f) provides that during the period from September 1, 1990, through November 27, 1992, a depository bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks under the permanent schedule, i.e., make them available by the fifth business day after the banking day of deposit. Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit, and nonlocal checks deposited at a nonproprietary ATM must continue to be made available by the fifth business day following the banking day of deposit.

The Board received two comments that addressed the regulatory language of § 229.12(f)(2)(i)(B). That section in the interim rule provided that after November 28, 1992, checks described in § 229.10(c)(1) that normally receive next-day availability would receive second-day availability when deposited in nonproprietary ATMs. Section

229.10(c)(1) describes certain "on us" checks, the first \$100 of the aggregate amount deposited on any one banking day, as well as government checks, cashier's checks, and other types of checks that may pose a lower risk of return. One commenter noted that "on-us" checks should be excluded from § 229.12(f)(2)(i)(B) because, by definition, a check deposited into a nonproprietary ATM would never meet the conditions specified in § 229.10(c)(1)(vi) for next-day availability of on-us checks.³ Another commenter noted that the second-day availability rule of § 229.12(f)(2)(i)(B) should also apply to the first \$100 of a day's deposit, as provided in § 229.10(c)(1)(vii). Accordingly, the Board has amended § 229.12(f) to exclude on-us checks from coverage and to include the first \$100 of a day's deposit. In addition, the Board has amended § 229.12(f) to clarify that "next-day" checks, such as government checks and cashier's checks, will receive second-day availability even though they are not deposited to a staffed teller station and therefore are technically not "described" in § 229.10(c)(1). The Board has also made revisions to the Commentary to explain the applicability of the "\$100 rule."

The Board also has adopted amendments to other paragraphs of § 229.12 to conform that section to the statutory requirements of the Act. Paragraphs (a), (b), (c), and (d) of § 229.12 were amended to add cross-references to the new paragraph (f) and, for clarification purposes, cross-references to other paragraphs as well. In addition, in paragraph (b), which lists the types of deposits that must be accorded second-day availability under the permanent schedule, the Board has removed the language, "a check drawn on the Treasury of the United States that is deposited at a nonproprietary ATM." Deposits of these checks are now governed by the provisions of new paragraph (f) and are subject to a five-day availability schedule until November 27, 1992, and a second-day availability schedule after that date.

Section 229.16(b)(5) requires banks wishing to take advantage of the extended hold for deposits at nonproprietary ATMs to disclose this to

² The reports on nonproprietary ATMs were transmitted to Congress in October 1989 and July 1990. An earlier report submitted in October 1988 provided background information on the processing of deposits at nonproprietary ATMs but did not include a legislative recommendation because there was limited research available at that time.

³ Section 229.10(c)(1)(vi) provides next-day availability for certain "on-us" checks, i.e., checks deposited in a branch of the depository bank drawn on the same or another branch of the same bank. Deposits of checks at an off-premise ATM, whether or not proprietary to the depository bank, are not considered deposits made to a branch of the depository bank, and thus could never be classified as "on-us" checks.

their customers in their initial disclosures. Model Clause C-10, which can be used to make this disclosure, has been revised to reflect the new rules for nonproprietary ATM deposits. Conforming changes have also been made to the Commentary to appendix C and the Commentary to § 229.16. In addition, the list of model forms, clauses, and notices in appendix C has been updated to reflect the new title to Model Clause C-10.

Section 229.18(e) requires banks to disclose changes in their availability policies to their consumer account holders. Changes other than those that result in faster availability must be disclosed 30 calendar days before they are implemented. Accordingly, banks wishing to take advantage of the extended hold for nonproprietary ATM deposits must provide 30-day advance notice to their consumer account holders. This requirement may be fulfilled by mailing Model C-10 prefaced with language indicating the effective date of the change.

The Board received two comments regarding the specifics of the disclosure requirements of the interim rule. One commenter requested that the Board provide the full text of a change-in-terms letter that banks may send to customers, rather than merely providing the model clause language. Another commenter requested that the Board allow a standard disclosure at any ATM used as a non-proprietary ATM stating the maximum hold for nonproprietary deposits, rather than requiring a change-in-terms disclosure to each individual customer. The commenter argued that this option should be permissible under the Act because the shortened nonproprietary ATM schedules are a statutory change, not merely a bank policy change.

The Board has not implemented the changes suggested by these commenters. The Board believes that most banks that want to place five-day holds on deposits at nonproprietary ATMs have already made the necessary disclosures based on the interim rule and that it is not necessary to provide a full model disclosure letter at this time. In addition, the Board has not provided that a standard disclosure at ATMs may replace individual disclosures. Section 605(c)(2) of the Act requires that a bank send written notice 30 days before implementing any changes that would lengthen the availability schedule for consumer accounts. That section of the Act applies to policy changes stemming from changes in the statute as well as those made for other reasons.

Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) requires

publication of a rule 30 days before its effective date unless the agency finds that there is good cause to do otherwise. The Board believes it is necessary for the final rule to be effective as of September 1, 1990, as was the interim rule, rather than 30 days after publication. This effective date is necessary so that the regulation conforms to the statutory requirements, which were effective September 1, 1990, and so that banks that permit their customers to make deposits at nonproprietary ATMs can rely on the Board's regulation in providing availability in accordance with the amended requirement. There was no opportunity for the Board to publish the rule prior to the effective date of the amendment to the Act. The Board finds that, for the reasons stated above, there is good cause under 5 U.S.C. 553(d)(3) to make the final rule effective on September 1, 1990, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. The rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a significant negative economic impact on small institutions, but rather will decrease the risk to all depository banks by enabling them to impose longer holds on deposits made to nonproprietary ATMs. There are no significant alternatives to the rule, within the Board's regulatory authority under the Act, that would further reduce the risk to small entities resulting from deposits accepted at nonproprietary ATMs.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 229 is 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 § 229.12, paragraph (a) and the introductory text to paragraph (b) are revised, paragraph (b)(3) is removed, paragraphs (b)(4) and (b)(5) are designated as (b)(3) and (b)(4), newly redesignated paragraph (b)(4) is revised, paragraph (c)(1) introductory text and the first and third sentences of paragraph (d) are revised, and a new paragraph (f) is added to read as follows:

§ 229.12 Permanent availability schedule.

(a) *Effective date.* Except as provided in paragraph (f)(2) of this section, the permanent availability schedule contained in this section is effective September 1, 1990.

(b) *Local checks and certain other checks.* Except as provided in paragraphs (d), (e), and (f) of this section, a depository bank shall make funds deposited in an account by a check available for withdrawal not later than the second business day following the banking day on which funds are deposited, in the case of—

* * * * *

(4) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to in this paragraph (b)(4) is a local check that is not governed by the availability requirements of § 229.10(c).

(c) *Nonlocal checks—(1) In general.* Except as provided in paragraphs (d), (e), and (f) of this section, a depository bank shall make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day on which funds are deposited, in the case of—

* * * * *

(d) *Time period adjustment for withdrawal by cash or similar means.* A depository bank may extend by one business day the time that funds deposited in an account by one or more checks subject to paragraphs (b), (c), or (f) of this section are available for withdrawal by cash or similar means. * * * A depository bank shall, however, make \$400 of these funds available for withdrawal by cash or similar means not later than 5:00 p.m. on the business day on which the funds are available

under paragraphs (b), (c), or (f) of this section. * * *

(f) Deposits at nonproprietary ATMs. (1)(i) A depository bank shall make funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the fifth business day following the banking day on which the funds are deposited.

(ii) Paragraph (f)(1) of this section is effective September 1, 1990, through November 27, 1992.

(2)(i) A depository bank shall make funds deposited in an account at a nonproprietary ATM available for withdrawal not later than the second business day following the banking day on which the funds are deposited, in the case of—

- (A) Cash;
(B) A check or checks described in § 229.10(c)(1) (i) through (v) and (vii), even though the check or checks are not deposited in person to an employee of the depository bank; and
(C) A check described in paragraph (b) of this section.

(ii) A depository bank shall make funds deposited in an account by a check described in paragraph (c) of this section at a nonproprietary ATM available for withdrawal not later than the fifth business day following the banking day on which the funds are deposited.

(iii) Paragraph (f)(2) of this section is effective November 28, 1992.

Appendix C to Part 229—[Amended]

3. Appendix C is amended as set forth below:

a. In the listing following the first paragraph of Appendix C, the entry for Model Clause C-10 is revised to read as follows:

C-10 Automated teller machine deposits (permanent schedule, extended hold)

b. In model clause C-10, the heading and the first sentence under the subheading "Deposits at Automated Teller Machines" are revised to read as follows: C-10—Automated Teller Machine Deposits (Permanent Schedule, Extended Hold)

Deposits at Automated Teller Machines

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the fifth business day after the day of your deposit. * * *

Appendix E to Part 229—[Amended]

4. Appendix E is amended as set forth below:

a. In the Commentary to § 229.12, a new sentence is added to the end of paragraph (a), the second paragraph of paragraph (b) is revised, and a new paragraph (f) is added to read as follows:

Section 229.12 Permanent Availability Schedule

(a) Effective date. * * * Paragraph (f) provides special effective dates for deposits made at nonproprietary ATMs.

(b) Local checks and certain other checks. * * *

In addition, the proceeds of Treasury checks and U.S. Postal Service money orders not subject to next-day (or second-day) availability under § 229.10(c); checks drawn on Federal Reserve Banks and Federal Home Loan Banks; checks drawn by a state or unit of general local government; and cashier's, certified, and teller's checks not subject to next-day (or second-day) availability under § 229.10(c) and payable in the same check processing region as the depository bank, must be made available for withdrawal by the second business day following deposit. * * *

(f) Deposits at nonproprietary ATMs. The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. During the period from September 1, 1990 through November 27, 1992, all deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit (i.e., such deposits may be treated in the same manner as deposits of nonlocal checks under the permanent schedule). For example, during that time period, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week.

Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit. In addition, the first \$100 of the aggregate deposit at a nonproprietary ATM on any one banking day must be made available for withdrawal on the second business day after the banking day of deposit (rather than on the next day, as required by § 229.10(c)(1)(vii) for deposits at staffed teller stations and proprietary ATMs). If a customer makes a deposit at a nonproprietary ATM and one or more deposits to the same account on the same day at another location, such as a staffed teller station, the \$100 rule is applied to the aggregate of all deposits made on that day. In this situation, the \$100 rule is applied first to funds for which the \$100 must be available for withdrawal on the next day (e.g., funds deposited at a staffed teller station) and then to funds deposited at nonproprietary ATMs for which the \$100 must be made available for withdrawal on the second day. For example, if a customer deposits a \$75 nonlocal check at a staffed

teller station and a \$100 nonlocal check at a nonproprietary ATM on the same banking day, \$75 must be available for withdrawal on the next business day (as required by § 229.10(c)(1)(vii)) and an additional \$25 must be available for withdrawal on the second business day after the banking day of deposit (as required by this paragraph). Nonlocal checks deposited at a nonproprietary ATM after November 28, 1992, must continue to be made available for withdrawal by the fifth business day following the banking day of deposit.

b. In the Commentary to § 229.16, the first sentence of the seventh paragraph of paragraph (b) is revised to read as follows:

Section 229.16 Specific Availability Policy Disclosure

(b) * * *

A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under § 229.12(f)(1) must explain this in the initial disclosure. * * *

c. In the Commentary to Appendix C, under the subheading "Model C-10," the first sentence is revised to read as follows:

Appendix C.—Model Forms, Clauses, and Notices

Model C-10. This clause must be incorporated in the specific availability-policy disclosure by banks that reserve the right to delay availability of deposits at nonproprietary ATMs until the fifth business day following the date of deposit, as permitted by § 229.12(f)(1). * * *

By order of the Board of Governors of the Federal Reserve System, February 20, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-4460 Filed 2-25-91; 8:45 am]

BILLING CODE 6210-01-M