



FEDERAL RESERVE BANK
OF DALLAS

TONY J. SALVAGGIO
FIRST VICE PRESIDENT

DALLAS, TEXAS
75265-5906

February 21, 1994

Notice 94-19

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

SUBJECT

Operating Circular 17
(Electronic Check Presentment Services)

DETAILS

The Federal Reserve Bank of Dallas is renaming and reissuing its Bulletins as Operating Circulars in order to conform to the language used in the Uniform Commercial Code. Accordingly, Bulletin 17 is being reissued as Operating Circular 17 (Electronic Check Presentment Services).

In connection with this reissue, Operating Circular 17 has been expanded to include Check Truncation, Extended MICR Capture, and Basic Electronic Presentment services. Also, there are several revisions that do not alter the meaning of the document.

ENCLOSURE

Enclosed is Operating Circular 17. Please file it in your Operating Circulars (Bulletins) binder and discard the old version.

MORE INFORMATION

For more information, please contact Johnny Johnson, (214) 922-5427, at the Dallas Office; Eloise Guinn, (915) 521-8201, at the El Paso Office; Luke Richards, (713) 652-1544, at the Houston Office; or Herb Barbee, (210) 978-1402, at the San Antonio Office.

For additional copies of this Bank's notice or Operating Circular 17, please contact the Public Affairs Department at (214) 922-5254.

Sincerely,

Operating Circular

F e d e r a l R e s e r v e B a n k o f D a l l a s

17

**Electronic Check
Presentment Services**

Scope

Operating Circular 17 contains the terms and conditions under which this Bank provides electronic check presentment services to financial institutions in the Eleventh Federal Reserve District. Any institution using these services shall, by such action, agree to the terms and conditions set forth herein.

Table of Contents

Operating
Circular
17

ELECTRONIC CHECK PRESENTMENT SERVICES

	Paragraphs
General	1–2
Definitions	3–4
Basic Service	5
Presentment	6–8
Settlement	9
Reserve Bank Warranties and Liability	10–16
Indemnification by Institution	17
Fees	18
Termination	19–20
Miscellaneous	21–22
Right to Amend	23
Appendix A: Check Truncation Service	
Appendix B: Extended MICR Service	
Appendix C: Basic Electronic Presentment Service	
Appendix D: Off-Peak Basic Electronic Presentment Service	

GENERAL

1. This Operating Circular and its appendixes set forth the terms under which we provide certain electronic check presentment services to a paying bank. These services generally entail the presentment of a check via electronic transmission of data obtained from its MICR (magnetic ink character recognition) line, with the check itself being kept by us or delivered subsequent to the electronic presentment. We may also, from time to time, offer other electronic presentment services by special agreement.

2. This Operating Circular constitutes a special collection agreement, as authorized by Regulation J of the Board of Governors of the Federal Reserve System, and a truncation agreement, as authorized by Regulation CC of the Board of Governors. Services provided hereunder are performed in conjunction with the services provided pursuant to our Operating Circular 8, *Collection of Cash Items*, and are also governed by Regulation J, Regulation CC, and our Operating Circular 16, *Electronic Access*.

DEFINITIONS

3. The definitions set forth in or adopted by Regulation J apply in this Operating Circular, except as otherwise provided. As between this Bank and a paying bank receiving services hereunder, references to this Operating Circular include any appendix hereto describing a service being provided to the paying bank. Many terms used in this Operating Circular have specialized meanings that have developed through law, custom, or commercial usage. Unless otherwise stated, references to “this Bank,” “we,” “us,” and “our” are to the Federal Reserve Bank of Dallas and its Branches at El Paso, Houston, and San Antonio.

4. As used in this Operating Circular, unless the context requires otherwise,

- A. “Institution” means a paying bank that subscribes to one or more of the services provided pursuant to this Operating Circular.
- B. “Deliver” or “delivery” means to cause information, a notice, an instruction, or an eligible item to be received.
- C. “Eligible item” means a cash item drawn on, or payable at or through, the institu-

tion that (1) contains in the MICR line the symbol, routing number, or account number designating the item as an eligible item, (2) is in an amount less than the cutoff amount, if any, agreed to by this Bank and the institution, and (3) otherwise complies with all other eligibility requirements that we may specify. A photocopy is an eligible item.

- D. “MICR-line information” means the information inscribed in the MICR line on an eligible item.
- E. “Over-the-counter item” means an eligible item that has already been presented to the institution, or to its agent for receiving presentment, that is delivered to us for processing in accordance with this Operating Circular. Notwithstanding any other provision of this Operating Circular, the electronic transmission of MICR-line data obtained from an over-the-counter item does not constitute presentment of the item, and we are not a collecting bank with respect to such item.
- F. “Receive” or “receipt” means when MICR-line information, an eligible item, a notice, an instruction, or a request comes to the attention of the entity to which it is directed or is tendered at the place and in the manner designated for receipt. MICR-line information that we transmit but that is not actually received because of the failure of the institution or its agent to manage its electronic connection in accordance with the terms of this Operating Circular is deemed to be received at the time of transmission.
- G. “Record,” when referring to MICR-line information on an eligible item, means to reproduce the information in a form suitable for electronic transmission.
- H. “Transmit” or “transmission,” when referring to MICR-line information we have recorded, means sending such information electronically to the institution or its agent for receiving such information or making such information available in a file that can be accessed electronically by the institution or its agent.

BASIC SERVICE

5. As provided in this Operating Circular, we record MICR-line information for each eligible item, perform repair or key-entry services for an eligible item rejected during processing, and present each eligible item to the institution by transmitting the MICR-line information that we have recorded. We may also perform a variety of related check services in accordance with one or more of the appendixes to this Operating Circular. The procedures with which this Bank and the institution are to comply in providing or receiving a particular service are set forth in the applicable appendix and in procedures that we may publish.

PRESENTMENT

6. We record MICR-line information obtained from eligible items and transmit it to the institution, together with our sequence number for each item, the total dollar amount of the items for which information is being transmitted, and the date the information was recorded. MICR-line information is transmitted, in accordance with the time schedule that we specify, on each of our banking days that we receive eligible items, except that if the institution is closed on a day that is a banking day for us, we transmit the information on the next day that is a banking day for both the institution and us. The institution shall establish a cutoff hour no earlier than 2:00 p.m. (local time for the institution) for receipt of MICR-line information. The institution shall give us prompt notice of its failure to receive MICR-line information on a day that is a banking day for both the institution and us.

7. For purposes of Regulation J, Regulation CC, and our Operating Circular 17, the receipt of MICR-line information obtained from an eligible item, other than an over-the-counter item, by the institution or its agent for such purpose constitutes presentment of the item. The institution waives any right it may have with respect to exhibition or production of an eligible item presented under this Operating Circular.

8. If we are unable for any reason to transmit MICR-line information, we may elect to handle any affected eligible items outside the terms of this Operating Circular. If we elect to do so, we will handle the eligible items as cash items pursuant to our Operating Circular 8, and any issue relating to the items will be governed by that Operating Circular.

SETTLEMENT

9. We debit the account of the institution or its designated correspondent for the total dollar amount of eligible items for which the MICR-line information has been transmitted to the institution that day, as provided in our Operating Circular governing the collection of cash items. The amount of the debit may include both over-the-counter item amounts and the amounts of items that we have presented to the institution. If the institution is closed for a midweek or nonstandard holiday and we are open, we debit the institution in accordance with our standard procedure for midweek closing and nonstandard holidays. If we are unable to obtain payment for an eligible item and we exercise our right of charge-back under Section 210.13 of Regulation J, we may remove the item from our retention files and return it.

RESERVE BANK WARRANTIES AND LIABILITY

10. With respect to MICR-line information transmitted to the institution under this Operating Circular, we warrant to the institution that, except as provided in paragraphs 11 and 12, the MICR-line information transmitted accurately represents the information inscribed on the MICR line of the eligible item.

11. If we repair or key-enter MICR-line information with respect to an eligible item because we have difficulty in recording the information, we warrant that such MICR-line information accurately represents the amount and routing number information as it appears on the item.

12. Notwithstanding any provision of Regulation CC or state law, we make no warranties with respect to account number or check number information that we transmit to the institution under this Operating Circular. The institution is encouraged to validate the accuracy of the account number and check number information it receives from us.

13. Our recording, transmitting, repairing, or key-entering MICR-line information shall not constitute a breach of any warranty imposed by law with respect to alteration of an item. In addition, we are not responsible for determining whether an eligible item is properly payable under applicable law, including but not limited to determining (a) the genuineness of the signature of any drawer appearing on an eligible

item; (b) whether any or all required signatures appear on an eligible item; (c) whether an eligible item is stale; (d) whether an eligible item is postdated; (e) whether an eligible item is properly indorsed or bears genuine indorsement; (f) whether a stop-payment order has been issued for an eligible item; and (g) whether an eligible item is a photocopy and, if so, whether it has been prepared and submitted in proper fashion.

14. With respect to any claim arising out of our recording and transmission of MICR-line information to the institution, our liability is governed by Section 210.6 of Regulation J. With respect to any other action that we take or service that we perform pursuant to this Operating Circular, we act as agent of the institution and are not liable to the institution except for our breach of the warranties expressly set forth herein or for our own lack of good faith or failure to exercise ordinary care.

15. Our liability for breach of any warranty set forth in this Operating Circular or imposed under applicable law, or for our lack of good faith or failure to exercise ordinary care, is limited to the actual amount of the eligible item or the amount of the MICR-line information transmitted by us with respect to the item, whichever is greater, reduced by an amount that could not have been realized by the use of ordinary care. We do not have or assume any liability to any person other than the institution.

16. The institution shall give us prompt written notice of any claim by or against the institution that may give rise to a claim against us hereunder.

INDEMNIFICATION BY INSTITUTION

17. The institution shall indemnify, hold harmless, and defend this Bank from any claim, demand, loss, liability, or expense, including attorneys' fees and expenses of litigation, made against us by any person (including but not limited to any other bank or any business entity, clearinghouse, or governmental authority) or incurred by us in connection with our performance of services hereunder as agent of the institution, but excluding any claim, demand, loss, liability, or expense that results from our failure to exercise ordinary care or act in good faith. The institution's indemnification obligation specifically extends to but is not limited to claims, demands, loss, liability, or expense

arising in connection with any allegation that we have acted as a collecting bank in handling an over-the-counter item. The institution's indemnification obligation shall survive the termination of services provided pursuant to this Operating Circular.

FEES

18. Fees for our electronic presentment services are set forth in a fee schedule that we publish and amend from time to time. Such fees are charged to an account on our books designated by the institution.

TERMINATION

19. We or the institution may terminate the services provided under this Operating Circular by giving not less than 30 days' prior written notice to the other party. In addition, we may, upon notice to the institution, immediately terminate provision of the services hereunder if we, in our sole discretion, determine that the financial condition of the institution poses a risk to us if we continue to provide the services.

20. We may refuse to accept an item for electronic presentment to the institution if we believe that the institution has failed to comply with the terms of this Operating Circular, Regulation J, Regulation CC, or Operating Circular 8. In addition, if at any time we, in our sole discretion, determine that the amount of one or more eligible items is excessive in relation to the financial condition of the institution, we may refuse to handle any such item under this Operating Circular.

MISCELLANEOUS

21. If either party is delayed in acting beyond the time limits provided in this Operating Circular because of interruption of communication or computer facilities, suspension of payments by a bank, war, emergency conditions, failure of equipment, or other circumstances beyond its control, the time for acting is extended for the time necessary to complete the action, if the party exercises such diligence as the circumstances require.

22. It is the responsibility of the institution to ensure that it has obtained all necessary resolutions, signature cards, and authorizations from customers whose items will be processed pursuant to this Operating Circular. The institution is

also responsible for obtaining all necessary approvals from its board of directors and from the appropriate governing or regulatory bodies before receiving services hereunder.

RIGHT TO AMEND

23. We reserve the right to withdraw or amend this Operating Circular and any of its appendixes at any time without notice.

APPENDIX A
CHECK TRUNCATION SERVICE

GENERAL

A-1. This Appendix sets forth the terms of our Check Truncation Service. The agreement under which this service is provided to an institution consists of our Operating Circular 17 (*Electronic Check Presentment Services*), including this Appendix, and the institution's request for the service, submitted as provided in paragraph A-15.

SERVICE DESCRIPTION

A-2. We record MICR-line information from an eligible item and present the item by transmission of the MICR-line information. In addition, for an institution subscribing to our Check Truncation Service, we will

- (a) provide this service for any eligible item in a fine sort package;
- (b) return an eligible item;
- (c) retain an eligible item for 90 days;
- (d) retain a microfilm copy of the eligible item for seven years, unless a longer period of time is required by state law;
- (e) respond to a request for information with respect to an eligible item.

The terms under which these services are provided are set forth more specifically in this Appendix and in procedures that we may prescribe.

DEFINITIONS

A-3. In addition to the definitions set forth in Operating Circular 17, unless the context requires otherwise,

- (a) "Instruction to return" means a notice of dishonor or nonpayment.
- (b) "Request for information" means a request that we (i) provide additional information with respect to an eligible item, (ii) transmit a facsimile copy of an eligible item, or (iii) make available an eligible item or a copy thereof.
- (c) "Eligible item" means a cash item described in the request for service submitted as provided in paragraph A-15.

MICROFILMING

A-4. We make a microfilm copy of the front and back of each eligible item for which the Check Truncation Service is provided.

RETURN OF ELIGIBLE ITEMS

A-5. If the institution wishes to return an eligible item that has been presented electronically, it must deliver to us an instruction to return the item. The instruction must be delivered by a

APPENDIX A *(continued)*

method that we prescribe and must be received by us within the applicable time frames specified in Regulations J and CC and the Uniform Commercial Code. The instruction must contain the MICR-line information that we transmitted to the institution with respect to the item, the date we recorded the information, our sequence number for the item, and the reason for return.

A-6. For purposes of Regulations J and CC, the Uniform Commercial Code, and our Operating Circular 17, our receipt of an instruction to return an eligible item constitutes return of the item by the institution. As a returning bank, we will then return the item and, in accordance with our published availability schedules, make the appropriate credit to the account maintained or used by the institution for such purpose.

A-7. A properly submitted instruction to return an item of \$2,500 or more will also serve as a request for us to give notice of nonpayment to the depository bank under Section 229.33 of Regulation CC. For a notice of nonpayment to be delivered to the depository bank by 4:00 p.m. (local time for the depository bank), we must receive the instruction no later than 11:00 a.m. that day.

A-8. We assume no responsibility for determining whether the institution has acted in a timely fashion with respect to returning an item or providing notice of nonpayment to a depository bank.

RETENTION OF PAID ITEMS

A-9. An eligible item that has not been returned is retained by us for 90 calendar days from the date on which we first transmit the MICR-line information ("retention period"). During the retention period, we make the eligible item available to the institution as provided herein. The eligible item is destroyed after expiration of the retention period.

A-10. We retain the microfilm copy of an eligible item for seven years from the date on which we first transmit the MICR-line information ("storage period"), unless a longer period of time is required by state law. During the storage period, we make the microfilm copy available to the institution as provided herein. The microfilm copy is destroyed after expiration of the storage period.

A-11. Upon termination of services under this Appendix, we, at our discretion,

- (a) either retain all items and microfilm copies of items then being held for the institution for the remainder of the retention period or storage period;
- (b) or deliver all such items and copies to the institution.

REQUESTS FOR INFORMATION

A-12. During the retention period or storage period for an eligible item, the institution may submit a request for information with respect to the item. The request must contain the MICR-line information that we recorded from the item, the date we recorded the information, and our sequence number for the item. We will respond to the request by sending the item, or a facsimile or microfilm copy thereof, to the institution no later than the end of our second banking day after the day we receive the request. During the retention period, if we receive a request by 10:00 a.m. on a banking day for us, we will attempt to respond to the request by 2:00 p.m. that day, but we make no representation or warranty that we will do so. A request for information submitted before the eligible item has been finally paid does not constitute dishonor of the item.

APPENDIX A *(continued)*

A-13. We make available an eligible item, or a microfilm copy thereof, only as provided in the preceding paragraph or in response to the order of a court of competent jurisdiction, a grand jury subpoena, or other legal process. If we believe that we may be compelled to provide an item or a copy to other than the institution, we shall promptly notify the institution. It shall be the responsibility of the institution to determine whether the item or copy should be produced and to assert any defense to such production. The institution is responsible for the cost of producing any item or copy, as well as the cost of defending against such production.

WARRANTY

A-14. We warrant that an eligible item processed hereunder will be held by us in accordance with this Appendix and will not be sent to the institution except as provided herein.

REQUESTS FOR SERVICE

A-15. Any institution wishing to receive our Check Truncation Service must submit a written request in a form that we prescribe.

APPENDIX B
EXTENDED MICR SERVICE

GENERAL

B-1. This Appendix sets forth the terms of our Extended MICR (E-MICR) Service, under which an eligible item is shipped to an institution two days after electronic presentment is made. The agreement under which this service is provided to an institution consists of our Operating Circular 17 (*Electronic Check Presentment Services*), including this Appendix, and the institution's request for the service, submitted as provided in paragraph B-16.

SERVICE DESCRIPTION

B-2. We record MICR-line information from an eligible item and present the item by transmission of the MICR-line information. In addition, for an institution subscribing to our E-MICR Service, we will

- (a) provide this service for any eligible item in a fine sort package;
- (b) return an eligible item;
- (c) respond to a request for information with respect to an eligible item;
- (d) ship the eligible item to the institution;
- (e) if requested by the institution, retain a microfilm copy of the eligible item for seven years, unless a longer period of time is required by state law.

The terms under which these services are provided are set forth more specifically in this Appendix and in procedures that we may prescribe.

DEFINITIONS

B-3. In addition to the definitions set forth in Operating Circular 17, unless the context requires otherwise,

- (a) "Instruction to return" means a notice of dishonor or nonpayment.
- (b) "Request for information" means a request that we (i) provide additional information with respect to an eligible item, (ii) transmit a facsimile copy of an eligible item, or (iii) make available an eligible item or a copy thereof.
- (c) "Eligible item" means a cash item described in the request for service submitted as provided in paragraph B-16.

MICROFILMING

B-4. If requested by the institution, we make a microfilm copy of the front and back of each eligible item for which the E-MICR Service is provided.

B-5. We retain the microfilm copy of an eligible item for seven years from the date on which we first transmit the MICR-line information ("storage period"), unless a longer period of time is required by state law. During the storage period, we make the microfilm copy available to the institution as provided herein. The microfilm copy is destroyed after expiration of the storage period.

APPENDIX B *(continued)*

B-6. During the storage period for a microfilm copy of an eligible item, the institution may submit a request for information with respect to the copy. The request must contain the MICR-line information that we recorded from the item, the date we recorded the information, and our sequence number for the item. We will respond to the request by sending a microfilm copy of the item to the institution no later than the end of our second banking day after the day we receive the request.

B-7. We make available a microfilm copy of an eligible item only as provided in the preceding paragraph or in response to the order of a court of competent jurisdiction, a grand jury subpoena, or other legal process. If we believe that we may be compelled to provide a copy to other than the institution, we shall promptly notify the institution. It shall be the responsibility of the institution to determine whether the copy should be produced and to assert any defense to such production. The institution is responsible for the cost of producing any copy, as well as the cost of defending against such production.

B-8. Upon termination of services under this Appendix, we, at our discretion,

- (a) either retain all microfilm copies of items then being held for the institution for the remainder of the storage period;
- (b) or deliver all such copies to the institution.

RETURN OF ELIGIBLE ITEMS

B-9. If the institution wishes to return an eligible item that has been presented electronically but has not yet been shipped to the institution, it must deliver to us an instruction to return the item. The instruction must be delivered by a method that we prescribe and must be received by us within the applicable time frames specified in Regulations J and CC and the Uniform Commercial Code. In no event, however, will an instruction be effective if it is received after 11:00 a.m. on the first banking day after the day the MICR-line information from the item is transmitted to the institution. The instruction must contain the MICR-line information that we transmitted to the institution with respect to the item, the date we recorded the information, our sequence number for the item, and the reason for return.

B-10. For purposes of Regulations J and CC, the Uniform Commercial Code, and our Operating Circular 17, our receipt of an instruction to return an eligible item constitutes return of the item by the institution as long as we receive the instruction before the time specified in the preceding paragraph. As a returning bank, we will then return the item and, in accordance with our published availability schedules, make the appropriate credit to the account maintained or used by the institution for such purpose.

B-11. A properly submitted instruction to return an item of \$2,500 or more will also serve as a request for us to give notice of nonpayment to the depository bank under Section 229.33 of Regulation CC. For a notice of nonpayment to be delivered to the depository bank by 4:00 p.m. (local time for the depository bank), we must receive the instruction no later than 11:00 a.m. that day.

B-12. We assume no responsibility for determining whether the institution has acted in a timely fashion with respect to returning an item or providing notice of nonpayment to a depository bank.

SHIPMENT OF ITEMS

B-13. An eligible item processed under this Appendix will be shipped to the institution on our

APPENDIX B *(continued)*

second banking day after the day on which we transmit to the institution the MICR-line information with respect to the item.

REQUESTS FOR INFORMATION

B-14. An institution may request information with respect to an eligible item as long as we receive the request no later than 10:00 a.m. on our first banking day after the day on which we transmit to the institution the MICR-line information with respect to the item. If we receive a request by 10:00 a.m. on a banking day for us, we will attempt to respond to the request that day, but we make no representation or warranty that we will do so. A request for information submitted before the eligible item has been finally paid does not constitute dishonor of the item.

ITEM NOT AVAILABLE

B-15. The institution is advised that after 5:00 p.m. on our first banking day after the day we transmit MICR-line information with respect to an eligible item, the item may be in transit between our office and the institution, or may otherwise be unavailable, and the item and the information it contains may not become available until the institution actually receives the item.

REQUESTS FOR SERVICE

B-16. Any institution wishing to receive our E-MICR Service must submit a written request in a form that we prescribe.

APPENDIX C

BASIC ELECTRONIC PRESENTMENT SERVICE

GENERAL

C-1. This Appendix sets forth the terms of our Basic Electronic Presentment (BEP) Service, under which an eligible item is shipped to an institution on the day electronic presentment is made. The agreement under which this service is provided to an institution consists of our Operating Circular 17 (*Electronic Check Presentment Services*), including this Appendix, and the institution's request for the service, submitted as provided in paragraph C-6.

SERVICE DESCRIPTION

C-2. We record MICR-line information from an eligible item and present the item by transmission of the MICR-line information. In addition, for an institution subscribing to our BEP Service, we will

- (a) provide this service for any eligible item in a fine sort package;
- (b) ship the eligible item to the institution.

The terms under which these services are provided are set forth more specifically in this Appendix and in procedures that we may prescribe.

DEFINITIONS

C-3. In addition to the definitions set forth in Operating Circular 17, unless the context requires otherwise, "eligible item" means a cash item described in the request for service submitted as provided in paragraph C-6.

SHIPMENT OF ITEMS

C-4. An eligible item processed under this Appendix will be shipped to, or made available for pickup by, the institution or its agent on the banking day we transmit the MICR-line information with respect to the item to the institution, or its agent for receiving such information.

ITEM NOT AVAILABLE

C-5. The institution is advised that on the day we transmit MICR-line information with respect to an eligible item, the item will, for some period of time, be in transit between our office and the institution, or will otherwise be unavailable, and the item and the information it contains will not become available until the institution actually receives the item.

REQUESTS FOR SERVICE

C-6. Any institution wishing to receive our BEP Service must submit a written request in a form that we prescribe.

APPENDIX D

OFF-PEAK BASIC ELECTRONIC PRESENTMENT SERVICE

GENERAL

D-1. This Appendix sets forth the terms of our Off-Peak Basic Electronic Presentment (BEP/OP) Service, under which an eligible item is shipped to an institution on the day after electronic presentment is made. The agreement under which this service is provided to an institution consists of our Operating Circular 17 (*Electronic Check Presentment Services*), including this Appendix, and the institution's request for the service, submitted as provided in paragraph D-16.

SERVICE DESCRIPTION

D-2. We record MICR-line information from an eligible item and present the item by transmission of the MICR-line information. In addition, for an institution subscribing to our BEP/OP Service, we will

- (a) provide this service for any eligible item in a fine sort package;
- (b) return an eligible item;
- (c) respond to a request for information with respect to an eligible item;
- (d) ship the eligible item to the institution or make it available for pickup;
- (e) if requested by the institution, retain a microfilm copy of the eligible item for seven years, unless a longer period of time is required by state law.

The terms under which these services are provided are set forth more specifically in this Appendix and in procedures that we may prescribe.

DEFINITIONS

D-3. In addition to the definitions set forth in Operating Circular 17, unless the context requires otherwise,

- (a) "Instruction to return" means a notice of dishonor or nonpayment.
- (b) "Request for information" means a request that we (i) provide additional information with respect to an eligible item, (ii) transmit a facsimile copy of an eligible item, or (iii) make available an eligible item or a copy thereof.
- (c) "Eligible item" means a cash item described in the request for service submitted as provided in paragraph D-16.

MICROFILMING

D-4. If requested by the institution, we make a microfilm copy of the front and back of each eligible item for which the BEP/OP Service is provided.

D-5. Unless the microfilm copy is delivered to the institution pursuant to the institution's instructions, we retain the microfilm copy of an eligible item for seven years from the date on which we first transmit the MICR-line information ("storage period"), unless a longer period of time is required by state law. During the storage period, we make the microfilm copy available

APPENDIX D *(continued)*

to the institution as provided herein. The microfilm copy is destroyed after expiration of the storage period.

D-6. During the storage period for a microfilm copy of an eligible item, the institution may submit a request for information with respect to the copy. The request must contain the MICR-line information that we recorded from the item, the date we recorded the information, and our sequence number for the item. We will respond to the request by sending a microfilm copy of the item to the institution no later than the end of our second banking day after the day we receive the request.

D-7. We make available a microfilm copy of an eligible item only as provided in the preceding paragraph or in response to the order of a court of competent jurisdiction, a grand jury subpoena, or other legal process. If we believe that we may be compelled to provide a copy to other than the institution, we shall promptly notify the institution. It shall be the responsibility of the institution to determine whether the copy should be produced and to assert any defense to such production. The institution is responsible for the cost of producing any copy, as well as the cost of defending against such production.

D-8. Upon termination of services under this Appendix, we, at our discretion,

- (a) either retain all microfilm copies of items then being held for the institution for the remainder of the storage period;
- (b) or deliver all such copies to the institution.

RETURN OF ELIGIBLE ITEMS

D-9. If the institution wishes to return an eligible item that has been presented electronically but has not yet been shipped to the institution, it must deliver to us an instruction to return the item. The instruction must be delivered by a method that we prescribe and must be received by us within the applicable time frames specified in Regulations J and CC and the Uniform Commercial Code. In no event, however, will an instruction be effective if it is received after 5:00 p.m. on the day the MICR-line information from the item is transmitted to the institution. The instruction must contain the MICR-line information that we transmitted to the institution with respect to the item, the date we recorded the information, our sequence number for the item, and the reason for return.

D-10. For purposes of Regulations J and CC, the Uniform Commercial Code, and our Operating Circular 17, our receipt of an instruction to return an eligible item constitutes return of the item by the institution as long as we receive the instruction before the time specified in the preceding paragraph. As a returning bank, we will then return the item and, in accordance with our published availability schedules, make the appropriate credit to the account maintained or used by the institution for such purpose.

D-11. A properly submitted instruction to return an item of \$2,500 or more will also serve as a request for us to give notice of nonpayment to the depository bank under Section 229.33 of Regulation CC.

D-12. We assume no responsibility for determining whether the institution has acted in a timely fashion with respect to returning an item or providing notice of nonpayment to a depository bank.

APPENDIX D *(continued)*

SHIPMENT OF ITEMS

D-13. An eligible item processed under this Appendix will be shipped to, or made available for pickup by, the institution on our banking day after the day we transmit to the institution the MICR-line information with respect to the item.

REQUESTS FOR INFORMATION

D-14. An institution may request information with respect to an eligible item as long as we receive the request no later than 5:00 p.m. on the day we transmit to the institution the MICR-line information with respect to the item. We will attempt to respond to the request that day, but we make no representation or warranty that we will do so. A request for information submitted before the eligible item has been finally paid does not constitute dishonor of the item.

ITEM NOT AVAILABLE

D-15. The institution is advised that after 5:00 p.m. on the day we transmit MICR-line information with respect to an eligible item, the item may be in transit between our office and the institution, or may otherwise be unavailable, and the item and the information it contains may not become available until the institution actually receives the item.

REQUESTS FOR SERVICE

D-16. Any institution wishing to receive our BEP/OP Service must submit a written request in a form that we prescribe.