

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 10240]
June 2, 1988

REGULATION CC

**Text of Final Regulation on Availability of Funds
and Collection of Checks, Effective September 1, 1988**

*To the Chief Executive Officers of All Depository
Institutions in the Second Federal Reserve District:*

An overview of Regulation CC ("Availability of Funds and Collection of Checks") of the Board of Governors of the Federal Reserve System, to implement the Expedited Funds Availability Act, was sent to you with our Circular No. 10239, dated May 25, 1988. The full text of the regulation (which will become effective on September 1, 1988), together with (1) the overview, (2) a discussion of comments received on the proposed regulation, (3) the official staff commentary on the regulation, and (4) a notice on new returned-check services that will be introduced to assist institutions in complying with the new regulation, has been published in the *Federal Register* of May 27, 1988.

Enclosed is a copy of this material, as published in the *Federal Register*. Additional copies may be obtained from our Circulars Division (Tel. No. 212-720-5216). Questions on the new regulation related to disclosure requirements, compliance, or availability schedules should be directed to our Compliance Examinations Department (Tel. No. 212-720-8136); other questions should be directed as follows:

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E. GERALD CORRIGAN,
President.

Federal Reserve

**Friday
May 27, 1988**

Part II

**Federal Reserve
System**

12 CFR Part 229

**Availability of Funds and Collection of
Checks; Final Rule**

Federal Reserve Bank Services; Notice

<i>Contents:</i>	<i>Pages</i>
1. Overview	19372-19384
2. Discussion of comments on proposed regulation	19384-19433
3. Text of final Regulation CC	19433-19462
4. Commentary	19463-19489
5. Notice on Federal Reserve Bank Services.....	19490-19496

FEDERAL RESERVE SYSTEM

[Docket No. R-0620]

12 CFR Part 229**Regulation CC; Availability of Funds and Collection of Checks****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

SUMMARY: The Board has adopted a new rule (Regulation CC) to implement the Expedited Funds Availability Act. This rule sets out the requirements that banks and other depository institutions make funds deposited into accounts available according to specified time schedules and disclose funds availability policies to their customers. Regulation CC also establishes rules designed to speed the return of unpaid checks.

The Board has also submitted the collection of information requirements in Regulation CC to the Office of Management and Budget (OMB) for its review under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). The information collection requirements are contained in Regulation CC and published in this notice. Additional supporting documents may be obtained from the Board clearance officer listed below. Any comments on the collection requirements should be sent to the OMB desk officer listed below. OMB's usual practice is not to take any action on an information collection until at least ten working days after notice in the *Federal Register*, but occasionally the public interest requires more rapid action.

EFFECTIVE DATE: September 1, 1988, except for 12 CFR 229.12, which is effective on September 1, 1990. After September 1, 1990, 12 CFR 229.11 will no longer be effective.

FOR FURTHER INFORMATION CONTACT: For information regarding Subparts A and C contact Joseph R. Alexander, Senior Attorney, (202/452-2489), or Stephanie Martin, Attorney, (202/452-3198), Legal Division.

For information on §§ 229.10 through 229.14, and §§ 229.19 through 229.21 of Subpart B, contact Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations, (202/452-3874).

For information on §§ 229.15 through 229.18 of Subpart B, contact Gerald P. Hurst, Senior Counsel, (202/452-3667), Kathleen S. Brueger, Attorney, (202/452-2412), or Thomas J. Noto, 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, (202/452-3254).

Federal Reserve Board Clearance Officer, Nancy Steele, Division of Research and Statistics, (202/452-3822).

OMB Desk Officer, Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202/395-7340).

SUPPLEMENTARY INFORMATION:**Overview**

Delayed availability—the holds that some banks¹ place on checks deposited into their customers' accounts before the funds may be withdrawn—was a subject of growing concern in the Congress for a number of years. Many argued that the holds placed by many banks were unduly long, and that depositors have a right to prompt access to their funds. Banks that impose holds responded that their availability schedules reflect the time needed for the collection and return of checks returned unpaid by the paying bank and provide a measure of protection against the risk that the bank could not recover funds from the depositor if those funds had already been withdrawn from the depositor's account.

The Congress concluded that federal legislation was required to address delayed availability practices and passed the Expedited Funds Availability Act (the "Act") (Title VI of Pub. L. 100-86, enacted on August 10, 1987). The Act seeks to ensure prompt availability of funds and to expedite the return of checks; the Board is directed to issue regulations to implement the Act, which becomes effective on September 1, 1988.

The Act includes specific and detailed provisions requiring banks to: (1) Make funds available to their customers within specified time frames, (2) pay interest on interest-bearing transaction accounts not later than the day the bank receives provisional credit, and (3) disclose their funds availability policies to their customers. These statutory provisions provide the Board with little

¹ Regulation CC terminology corresponds with the terminology of the Uniform Commercial Code, with some modifications. "Bank" is defined to include all depository institutions. A "paying bank" is the bank on which the check is drawn. In the case of payable through drafts, the payable through bank is the paying bank. A "returning bank" is an intermediary bank handling a returned check. A "depository bank" is the bank in which the check was first deposited. (See § 229.2 of Regulation CC for the complete definitions of these terms.)

flexibility in developing rules to implement the Act's requirements.

The Act requires that cash deposits, wire transfers, and certain check deposits that Congress believes pose little risk to the depository bank, such as Treasury checks and cashier's checks, generally be made available for withdrawal by the business day after the day of deposit. The time when the depository bank must make other check deposits available for withdrawal depends on whether the check is "local" or "nonlocal" to the depository bank. A local check is a check deposited in a depository bank that is located in the same Federal Reserve check processing region as the paying bank. A nonlocal check is a check deposited in a different check processing region than the paying bank. There are a total of 48 Federal Reserve check processing offices in the United States, and the territory served by each office constitutes a check processing region.

Under the temporary schedule that becomes effective on September 1, 1988, a depository bank must make the proceeds of local checks available for withdrawal by the third business day following deposit; that is, the proceeds of local checks deposited on a Monday must be available for withdrawal by the following Thursday. The depository bank must make the proceeds of nonlocal checks available for withdrawal by the seventh business day following deposit; that is, the proceeds of a Monday deposit must be available for withdrawal by Wednesday of the following week. On September 1, 1990, these time periods are reduced. At that time, proceeds of local and nonlocal checks must be available for withdrawal by the second and fifth business day following deposit, respectively. Special rules are provided for cash withdrawals, deposits at nonproprietary automated teller machines, and deposits made in banks outside the continental United States.

Congress provided several exceptions to the availability schedules. When a bank invokes one of these exceptions, it may extend the hold on a customer's account beyond the statutory schedule by a reasonable period of time, as determined by Regulation CC.

The statute requires banks to disclose their availability policies to their customers and inform their customers that deposited funds may not be available for immediate withdrawal. Banks are required to provide disclosures to new customers prior to opening an account or upon request. In addition, disclosures are required on preprinted deposit slips, at staffed

locations where consumers make deposits, and at automated teller machines. Banks must also provide notice to their consumer customers whenever their availability policies change.

The Act gives the Board authority to make improvements in the check collection and return systems in order to shorten the time within which depository banks learn of the nonpayment of checks, and thereby reduce the number of situations when the bank will be required by law to make funds available to its customers before it learns a check has been dishonored. The Board's authority is broad and general, and extends to checks that are not cleared through the Federal Reserve System. Previously, the Federal Reserve generally had the authority to regulate only those checks it collected.

The Board issued for public comment a proposed regulation and proposed Federal Reserve Bank services to implement the Act on December 3, 1987. (52 FR 47,112 (Dec. 11, 1987).) Over 1,000 comments have been received on the proposals.² Many of these comments

² Approximately two-thirds of the commenters were commercial banks or bank holding companies. Ten percent of the comments were received from savings and loan associations, eight percent from corporations, five percent from credit unions, and the remainder from trade associations, clearinghouses, consumer groups, and others.

were very thorough, and provided excellent analyses of issues raised in the proposal. A number of commenters stated that the proposal did a good job implementing the Act's requirements, and provided guidance that is essential for industry compliance. The commenters, however, expressed concern over the complexity of the Act and regulation, and the increased costs and risks to the banking industry due to the disclosure and funds availability requirements. In particular, many commenters were concerned with the risks inherent in the requirement to provide next-day availability for certain check deposits. This, as well as a number of other concerns, relate to statutory requirements the Board has little or no flexibility to modify.

The Board and Board staff considered all comments received, and discussed aspects of the proposed regulation with the Consumer Advisory Council and the Return Item Advisory Group, which is a joint Federal Reserve/banking industry group, as well as representatives of both industry and consumer groups. Two consulting firms were retained to assess the effect of certain aspects of the proposal on the banking industry. Based on the analysis of the issues raised by the public comments and this additional input, the Board made a number of changes to the proposed regulation. Other provisions of the proposed regulation, including some of those criticized by commenters, were retained

either because they are required by the Act, or because they are important to carry out the purposes of the Act.

Discussion

Regulation CC (12 CFR Part 229), Availability of Funds and Collection of Checks, contains three subparts. Subpart A defines terms and provides for administrative enforcement. Generally, the terms in the regulation are defined as they are in the Act. The Board has adopted a number of changes for the sake of clarity, to conform the terminology to that which is familiar to the banking industry, to define terms not defined in the Act, and to carry out the purposes of the Act.

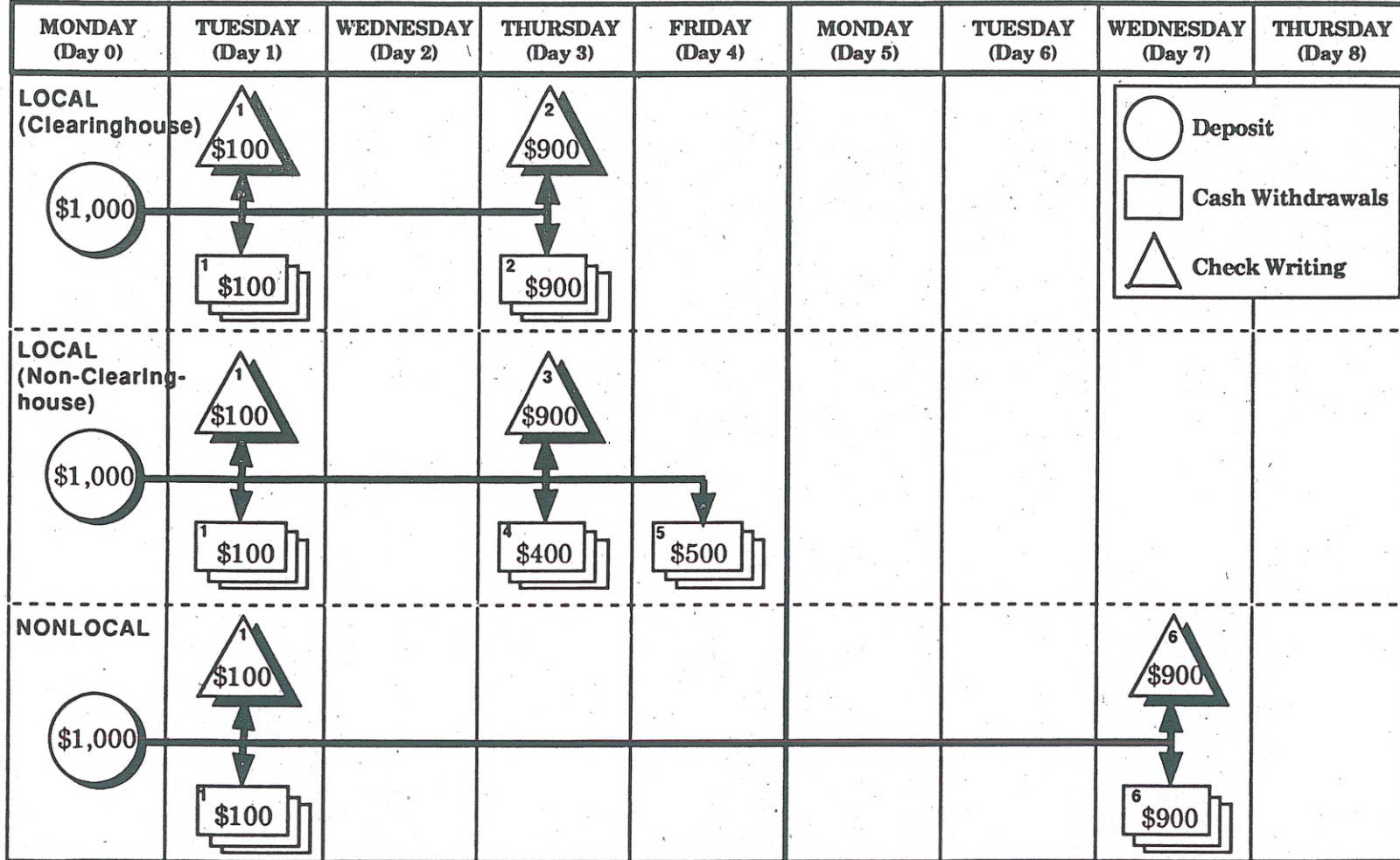
Subpart B specifies schedules within which banks must make funds available for withdrawal. The regulation reflects the availability schedules provided in the Act. Thus, deposits of cash and electronic payments, as well as certain check deposits, must be made available for withdrawal on the next business day following deposit. Longer schedules are provided for other checks, based on whether the checks are local or nonlocal. The following charts depict the schedules for these checks. The schedules for local and nonlocal checks, and in limited instances certain checks that must be given next-day availability, are subject to several exceptions to protect the depository bank in higher risk situations.

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Temporary Funds Availability Schedules

Figure 1

Illustrates availability of different types of checks under the temporary schedules



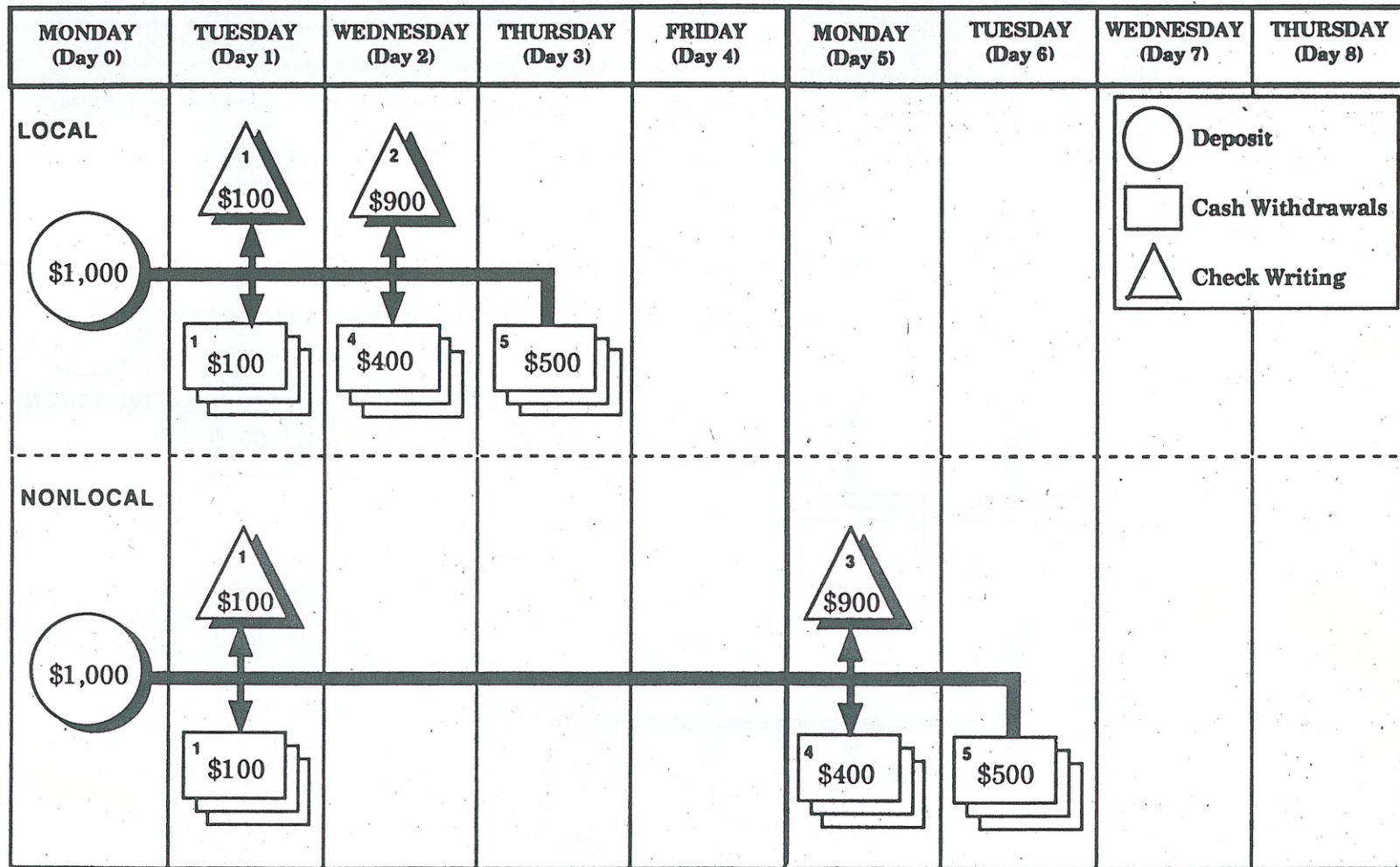
- 1 The first \$100 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).
- 2 For local checks cleared through a local clearinghouse, the remainder of the deposit must be made available for either cash withdrawal or check writing purposes by the third business day following the day of deposit § 229.11(b)(1).
- 3 For local checks cleared outside a local clearinghouse, the remainder of the deposit must be made available for check writing purposes by the third business day following the day of deposit § 229.11(b)(2).

- 4 For local checks cleared outside a local clearinghouse, \$400 of the deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This amount is in addition to the \$100 that must be made available on the business day following the day of deposit § 229.11(b)(2).
- 5 The remainder of the deposit must be available for cash withdrawal at the start of business on the following day § 229.11(b)(2).
- 6 For nonlocal checks, the remainder of the deposit must be made available for either cash withdrawal or check writing purposes by the seventh business day following the day of deposit § 229.11(b)(2).

Permanent Funds Availability Schedules

Figure 2

Illustrates availability of different types of checks deposited the same day, under the permanent schedules.

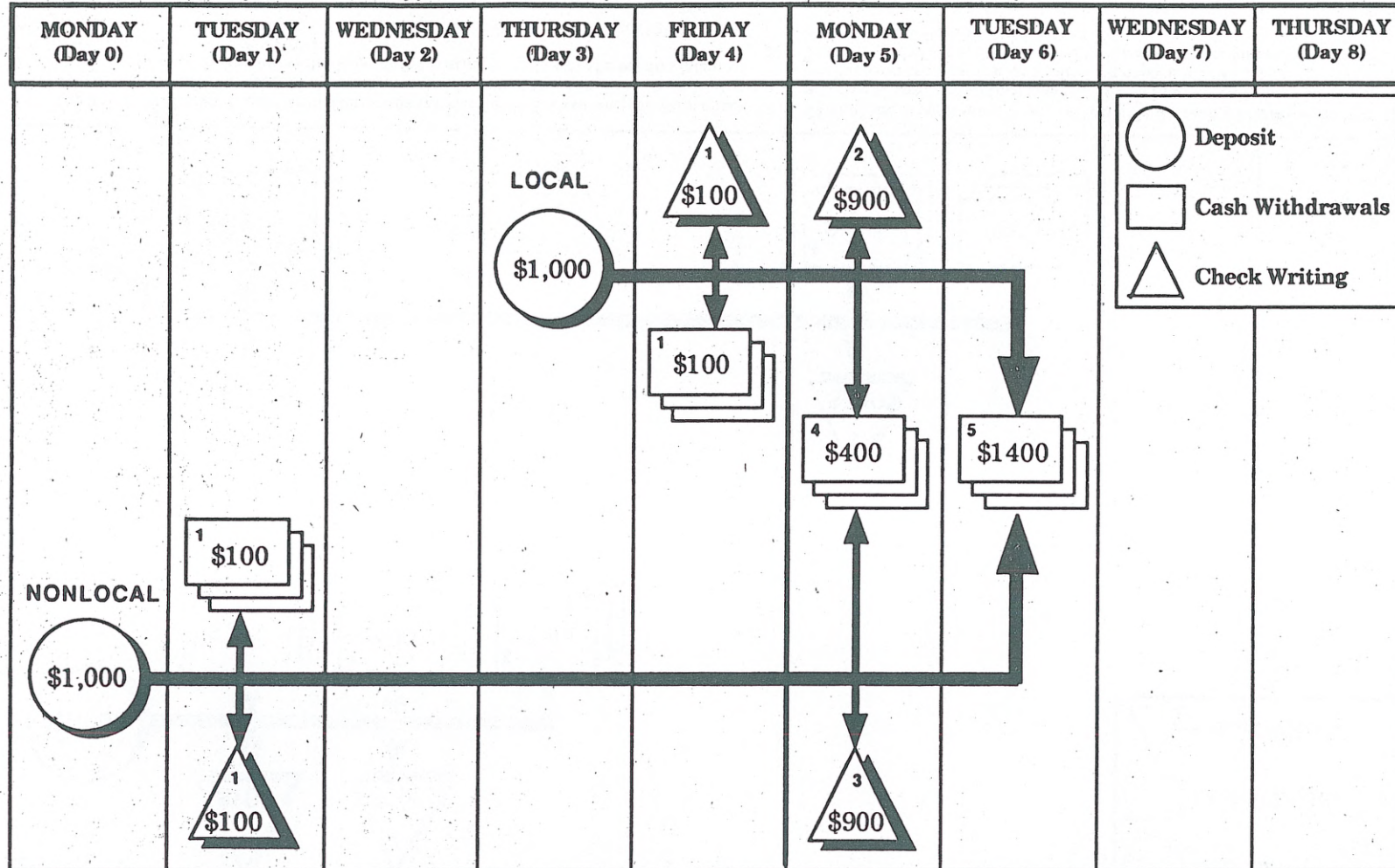


- 1 The first \$100 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).
- 2 Local checks must be made available for check writing purposes by the second business day following deposit § 229.12(b).
- 3 Nonlocal checks must be made available for check writing purposes by the fifth business day following deposit § 229.12(c).
- 4 \$400 of the deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This is in addition to the \$100 that must be made available on the business day following deposit § 229.12(d).
- 5 The remainder of the deposit must be made available for cash withdrawal at the start of business the following day § 229.12(d).

Permanent Funds Availability Schedules

Figure 3

Illustrates availability of different types of checks deposited on separate days, under the permanent schedule.



- 1 The first \$100 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).
- 2 Local checks must be made available for check writing purposes by the second business day following deposit § 229.12(b).
- 3 Nonlocal checks must be made available for check writing purposes by the fifth business day following deposit § 229.12(c).
- 4 \$400 of the deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This applies to the aggregate amount of deposits that must be made available on a specified day, and is in addition to the \$100 that must be made available on the business day following deposit § 229.12(d).
- 5 The remainder of the deposit must be made available for cash withdrawal at the start of business the following day § 229.12(d).

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Subpart B also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest. The Act and regulation require banks to disclose their specific policy as to when deposited funds will be available for withdrawal to existing customers, to any person opening a new account, and to any person upon request. In addition, banks are required to disclose their availability policies in locations where consumer deposits are accepted by bank employees, and to provide reminders at ATMs and on preprinted deposit slips that deposited funds may not be available for immediate withdrawal.

Subpart C includes rules to speed the collection and return of checks. These rules cover the expeditious return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns by the paying bank, check indorsement standards, and other related changes to the check collection system. The Board adopted the indorsement standard required by the regulation (Appendix D to Regulation CC) on April 4, 1988. (53 FR 11,832 (April 4, 1988).) A discussion of the impact of Subpart C on the check collection system is summarized at the end of this overview.

Significant Changes in the Final Regulation CC

The following describes the substantive differences between the proposed regulation and the final Regulation CC. Other significant issues and comments received on the regulation are highlighted later in this document.

1. Availability Schedules and Exceptions

Treasury Accounts. At the request of the Treasury, accounts held by the United States Treasury, such as Treasury General Accounts and Treasury Tax and Loan Deposit Accounts, are not subject to the availability and disclosure requirements of Subpart B of the regulation. (§ 229.2(a).)

Noncash Items. The Act and regulation exclude noncash items from the definition of check. Thus, noncash items are not subject to the funds availability requirements of the statute and regulation. A number of commenters asked the Board to clarify that accepting checks on a collection basis is permitted under the regulation, and that such checks are not subject to the regulation's availability requirements.

While the regulation does not generally authorize banks to take checks for collection as an alternative to taking them for deposit subject to the statutory schedules, it does permit certain current bank practices of taking checks for collection. For example, at the request of a customer, a bank may take a check on a collection basis, handle the check as a noncash item, and send it directly to the paying bank with special payment instructions. This practice enables a bank's customer to know whether a check is being paid or dishonored. Taking checks for collection under these circumstances is not subject to the availability schedules in the Act. (§ 229.2(u).)

Deposits of next-day checks at unstaffed facilities. The Act provides next-day availability for cash deposits and certain check deposits to accounts at a depository bank "staffed by individuals employed by such institution." (The Act does not require, however, that Treasury checks and "on us" ³ checks be deposited at a staffed teller station in order to receive next-day availability.) The proposed regulation required that these deposits be made available on the next business day, whether or not they were deposited in person to an employee of the bank. The Board requested comment on whether this expansion of the Act's requirement would pose any operational problems.

Commenters strongly opposed this expansion of the next-day availability requirement, indicating that it would be very difficult to make funds available on a next-day basis for deposits made at automated teller machines (ATMs) and other facilities other than staffed teller stations. They stated that it is often not possible to collect and verify deposits made at unstaffed locations in time to make the funds available at the start of business on the following day. To address the operational concerns of the banks, the final regulation conditions the receipt of next-day availability to deposits (other than the deposit of Treasury checks and on us checks) "made in person to an employee of the depository bank," in accordance with the Act. The Board believes that extending the hold on these deposits to the local and nonlocal schedules is not warranted by these operational concerns. Thus, the regulation provides that deposits that are eligible for next-day availability that do not meet this condition must be made available for withdrawal by the start of the second

business day following deposit. (§ 229.10(c).)

ATM cut-off hours. In addition to the next-day availability requirements, commenters cited other provisions of the proposed regulation that would be very difficult to implement operationally with respect to accepting deposits at, and permitting withdrawals from, ATMs. Some of their concerns focused on what constitutes the start and close of a day for the purpose of ATM withdrawals and deposits. The proposed regulation enabled banks to establish a cut-off hour of 2:00 p.m. or later for deposits considered received on a given day. To provide greater flexibility in the servicing of ATMs, the final regulation allows a cut-off time as early as 12:00 noon for the receipt of deposits at ATMs and other off-premise facilities. (§ 229.19(a).)

Start of business. The regulation generally requires that funds be made available for withdrawal at the start of business on the day specified in the schedule. The proposed regulation provided that the start of business was generally the time the branch opens to the public, and, in the case of ATMs, not later than 7:00 a.m. In response to comments that customer accounts often cannot be updated with the day's opening balance by 7:00 a.m., the regulation has been modified to require a 9:00 a.m. start of business for ATM withdrawals. (§ 229.19(b).)

Notice of reasonable cause to doubt collectibility exception. The Act and regulation provide an exception to the availability schedules for instances where a depository bank has reasonable cause to doubt whether a particular check will be collected. Commenters expressed concern regarding the manner in which the reason this exception is invoked must be disclosed, as required by the Act, if the reason relates to confidential information, such as the pending insolvency of the drawer of the check or the paying bank. The Commentary to the regulation has been expanded to provide guidance on how the bank must disclose, in the notice it provides its customer, the reason this exception has been invoked. The revised Commentary provides that in such cases, the bank may disclose to the customer that the exception is being applied based on confidential information. The bank is required to include in its records a brief statement of the facts upon which the determination to invoke this exception was based. (§ 229.13(e) and § 229.13(g).)

Cash Withdrawal Limitation. Certain banks limit the amount of cash a customer may withdraw on any day at

³ Checks drawn on the depository bank.

ATMs and/or staffed teller facilities. The proposed regulation did not prohibit these limitations as long as the bank's policy is applied without discrimination to all customers of the bank, is not dependent on the length of time the funds have been in the account (as long as the hold has expired), and is related to security requirements or bonding limitations of the bank. Commenters believed this policy is overly restrictive, particularly in the case of policies related to ATM cash withdrawal limits. The final regulation does not prohibit cash withdrawal limitations at ATMs if the bank's policy is not dependent on the length of time the funds have been in the account, and in the case of limits on over-the-counter cash withdrawals, is applied without discrimination to all customers, and is related to security, operating, or bonding requirements of the bank. The regulation does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law. (§ 229.19(c).)

Repeated Overdrafter. The proposal contained an exception to the availability schedules for deposits to accounts of repeated overdrafters. Commenters suggested that the proposed exception would be very difficult operationally to implement. The final rule is revised in an effort to simplify the application of this exception. The exception now defines a repeated overdrafter as a customer that overdraws its account, or bounces checks, on six or more banking days during a six-month period, or on two or more banking days during a six-month period in the amount of \$5,000 or more. (§ 229.13(d).)

Time Period for Exceptions. The proposed regulation allowed a bank to extend the availability schedule by not more than four business days when it invokes an exception to the regulation's availability schedule. The final regulation allows a bank to extend the schedule by a reasonable period of time, and states that an extension of up to four business days is a reasonable period. An extension of more than four days may be reasonable, but the bank has the burden of so establishing. (§ 229.13(h).)

Relation to State Law. The Act provides that a state law supersedes federal law if it requires that funds be made available more promptly than required by federal law. Other provisions of state law that are inconsistent with the Act or regulation are preempted. This standard is broader than those of other consumer statutes, such as the Electronic Fund Transfer Act and Fair Credit Billing Act, which

provide for preemption of provisions of state law that are inconsistent, "and then only to the extent of the inconsistency."

The proposed regulation included standards that would be applied to determine whether state law relating to the time funds must be available for withdrawal are inconsistent with federal law, and thus preempted. The proposal did not, however, provide standards for determining whether state disclosure requirements related to funds availability are inconsistent. The Board provided, in the regulation, that disclosures or notices concerning availability provisions of state law relating to transaction accounts are preempted by the requirements of Regulation CC. (229.20(c).)

2. Interest Accrual

Use of Fractional Availability. The Act requires that a bank begin to accrue interest on interest-bearing accounts not later than the day it receives provisional credit on the funds deposited. To facilitate compliance with this requirement, the final regulation permits a bank to begin accruing interest on check deposits based on the average availability the bank receives on such deposits on a bank-wide basis. (229.14(a).)

3. Disclosures

Case-by-Case Hold Policy. The proposed regulation required as a general rule that banks disclose their specific policy in a way that would allow customers to determine when a particular deposit would be available for withdrawal. The proposed regulation provided a simplified alternative disclosure for banks that generally make funds available on the business day following the day of deposit, and place holds only on a case-by-case basis. This proposed alternative disclosure required a bank to disclose that it usually provides next-day availability, although from time to time it may hold deposits for a longer specified time, and that if a longer hold was imposed, the customer would be notified. The proposal required that the bank furnish the notice that availability of a deposit was going to be delayed at the time the deposit was made. A bank could provide notice of the delay later, if the bank informed the customer that a hold might be placed at the time of the deposit, and then notified the customer by the end of that day if a hold was in fact going to be placed on the deposit.

Generally, the commenters favored an alternative disclosure for banks that had case-by-case hold policies. Several commenters, however, asked that the

ability to use the case-by-case disclosure not be limited to banks with a policy of next-day availability. In addition, commenters objected to the timing of the notice requirement when a bank imposed a case-by-case hold. Specifically, commenters stated that a teller may not know whether a check will be held, and thus would not be able to inform the customer of the possibility of a hold at the time of the deposit. In addition, commenters stated that the requirement that the bank notify the customer of any hold on the day of the deposit was too restrictive.

The Board adopted modifications to the proposed disclosure requirements to address these concerns. The modified disclosure rule does not limit the case-by-case alternative to banks that generally give next-day availability. Instead, the rule allows any bank that generally makes funds available for withdrawal sooner than is required in the regulation to use this alternative disclosure.

A bank that extends a hold on a case-by-case basis must provide notice to its customer within the same time frames as the notice that is required when an exception to the availability schedules is invoked. Thus, a bank would be required to provide a notice at the time of deposit if the deposit is made at a staffed teller station and the decision to extend the hold is made at the time of deposit. Otherwise, the bank must mail the notice of the hold to the customer not later than the business day following the day of deposit. In addition, the final rule also parallels the requirement applicable to the reasonable cause exception by prohibiting a bank that does not provide a notice of a hold at the time of the deposit from imposing service fees or charges for overdrafts or returned checks resulting from the hold, if the check subject to the hold is in fact paid. (§ 229.16(c).)

ATM Notice. The proposed regulation contained special notice requirements for ATMs at which customers of banks other than the bank to which the ATM is proprietary are able to make deposits. The proposed notice included a requirement to identify the bank to which the ATM is proprietary. These requirements generated concerns as to consumer confusion, competitive effect, disclosure burden, and effect on state law. The final regulation eliminates the requirement to identify the bank to which an ATM is proprietary at the ATM, but a bank that extends the time period applicable to deposits at nonproprietary ATMs must explain its policy in its initial disclosure and either provide a list of proprietary or

nonproprietary ATMs with that disclosure, or identify the bank's name on all proprietary ATMs. (§ 229.18(c).)

Branch Location Notice—Drive-Through Teller Windows. The Act requires that a notice of time periods applicable to the availability of funds be posted in each location where employees accept deposits. The proposed regulation required this notice to be posted in the lobby at some place where customers would be likely to see it before making their deposits, and required that the notice also be posted at any drive-through teller windows. Commenters noted the practical problems the drive-through requirement would generate and the fact that the Act itself is silent on the matter. The requirement that this notice be posted at drive-through teller windows has been eliminated in the final regulation. (§ 229.18(b).)

Change in Terms Notice. The proposed regulation required that notices of changes in availability policy be sent to all customers. The final regulation limits this requirement to consumer accounts, consistent with the statutory requirement. In addition, the Commentary provides that banks are not required to send a change in terms notice if the Board revises Appendix B, which lists the routing numbers of certain nonlocal checks that are subject to prompter availability than the nonlocal schedule. (§ 229.18(e).)

4. Check Return Rules

Standards for expeditious return. The proposed regulation required paying and returning banks to return checks expeditiously, using the forward collection process as the standard for expeditious return. A number of commenters stated that this standard was uncertain, particularly in comparison to the current midnight deadline rule, and expressed concern that litigation in this area may increase as a result. These commenters asked that a more definitive standard for expeditious return be provided.

The forward collection standard, rather than a specific number of days for return, was proposed as the standard for expeditious return to facilitate compliance for banks, particularly country banks or banks returning checks to country banks, that require a longer period of time to return checks to a depository bank. In order to respond to commenters' concerns, the final regulation contains a second test of what constitutes expeditious return by a paying or returning bank. Under this second test, a bank satisfies its return requirements if it returns a check so that the check would normally be received

by the depository bank within two days after the check is presented in the case of a local paying bank or four days after the check is presented in the case of a nonlocal paying bank with respect to the depository bank. If a check is not received within these time frames, the return would still be expeditious if the return process met the forward collection standard. The Board believes that the combination of these rules will speed the return of checks so that the majority of checks can be collected and returned within the temporary statutory availability schedules. At the same time, it provides a workable standard that can be implemented by paying banks and correspondent banks offering check return services. (§§ 229.30(a) and 229.31(a).)

Expeditious Return—Notice Option. Under the proposed regulation, a bank could fulfill its responsibilities to return checks expeditiously by providing a notice of nonpayment expeditiously, with the check returned in a slower manner. Commenters opposed this notice alternative, stating that notices are often inaccurate, and consequently the depository bank often cannot charge back the customer's account with confidence based on a notice. Commenters did not believe that this notice alternative was warranted, and stated that the paying bank should be required to return the check itself in an expeditious manner. The final regulation eliminates notice as an option for meeting the duty of expeditious return. (§ 229.30(a).)

Unidentifiable Depository Bank. The proposed regulation permitted a paying or returning bank to send a returned check to a bank that handled that check for forward collection, even if the collecting bank does not agree to act as a returning bank. In response to comments that it was unreasonable to impose expeditious return requirements on banks that did not hold themselves out as returning banks, the final regulation limits this option for return to cases where the paying or returning bank is unable to identify the depository bank with respect to a returned check. In these cases, the bank may send the check to a bank that handled the check for forward collection, if the bank advises the collecting bank that it is unable to identify the depository bank. Checks that must be returned in this manner are not subject to the expeditious return requirements. (§§ 229.30(b) and 229.31(b).)

Notice in Lieu of Return. If a check is unavailable for return, a paying or returning bank can send in its place a notice in lieu of return. The depository bank must treat this notice as it would a

returned check. The proposed regulation permitted electronic notices in lieu of return. Commenters stated that allowance for electronic notices in lieu would entail significant accounting and reconciliation problems. The final regulation requires a notice in lieu of return be in the form of a copy of the returned check, and if no such copy is available, a written notice. (§§ 229.30(f) and 229.31(f).)

Midnight deadline extension for checks of \$100 or less. One of the objectives of the proposed regulation was to reduce the volume of checks that are returned. Over one-half of all returned checks are in amounts of \$100 or less. Many of these returns are automatically redeposited, and over 60 percent are paid on the second presentment. To eliminate many of these returns entirely, the proposed regulation allowed the paying bank to hold checks of \$100 or less for an additional two business days beyond its midnight deadline in an effort to secure payment.

Most of the respondents that commented on this provision opposed its inclusion in the final regulation. Banks asserted that this practice would create accounting and reconciliation problems, as well as the customer relations problems arising from the imposition of returned check charges. Banks also argued that unlike an automatic redeposit service, where the depository bank makes the decision to redeposit the check and incur the risk that the check may be returned a second time, this provision placed the decision to hold the checks an additional two days on the paying bank, although the risks remain with the depository bank or its customer. Very few commenters indicated that they would use this optional authority. Therefore, the Board has deleted from the final regulation the provision to hold low-dollar checks an additional two business days, in an effort to obtain payment.

Notice of Nonpayment. Notice of large-dollar returns is now required only for those checks collected through the Federal Reserve. The proposal expanded this requirement to all checks of \$2,500 or more, regardless of the channel through which they were cleared, and reduced the time within which notice must be received by the depository bank. Commenters generally supported this requirement, but recommended several modifications. A number of technical changes have been made to the final regulation. These include changes that address cases in which the paying bank cannot determine with reasonable certainty from the check all of the required information for

the notice, as well as locations at which depository banks must accept notices of nonpayment. The final regulation also addresses the depository bank's duty to notify its customer that a check is being returned, and the paying bank's responsibility for giving notice of nonpayment and subsequently returning the check. (§§ 229.33 and 229.34(b).)

Indorsements. The final regulation includes indorsement standards and rules for depository banks, subsequent collecting banks, and returning banks. The Board approved these indorsement standards on April 4, 1988. One subsequent modification to the indorsement standard was made to eliminate the requirement that the depository bank indorsement avoid the MICR clear band along the bottom of the check. (§ 229.35(a); Appendix D.)

Inquiry to Paying Bank. To address the concerns of the banking industry regarding the risks inherent in providing next-day availability for cashier's, certified, and teller's checks, the proposed regulation included a duty on the paying bank to respond to inquiries regarding the authenticity of official checks that it issued. The final regulation eliminates this requirement, due to operational difficulties noted by the commenters.

Liability—Responsibility for Back of the Check. The final regulation defines the liability of the paying and depository bank for untimely returns due to unreadable indorsements caused by material on the back of the check. The paying bank is responsible for the condition of the back of the check when it is issued. Thus, an unreadable indorsement due to a carbon band, printed contract, or other material on the back of the check at the time it is issued is the responsibility of the paying bank. The depository bank is responsible for the condition of the check after issuance and before acceptance by the depository bank, such as indorsements or other stamps placed on the check by its customer or a prior indorser. (§ 229.38(d).)

Liability—Bona Fide Errors. Under the proposed regulation, a bank would not be liable for a violation of the return rules of Subpart C if the violation were due to a bona fide error. The liability standard in the final regulation provides that a bank is required to exercise ordinary care and act in good faith, without the shield of the bona fide errors provision. The bona fide errors shield is not necessary, as the standards for negligence liability incorporate the purpose of the bona fide error provision. (§ 229.38(a).)

Exclusions. Under the proposed regulation, U.S. Postal Service money

orders, checks drawn on the account of the U.S. Treasury, and checks indorsed by, or for credit to, the Treasury, were excluded from the expeditious return requirements of Subpart C. At the request of the Treasury, the final regulation eliminates the exclusion for checks indorsed by, or for credit to, the Treasury. The final regulation also excludes checks drawn on a state or local government from the expeditious return requirement. (§ 229.42.)

Variation by Agreement. A number of commenters asked that banks be explicitly permitted to vary the requirements of the regulation by agreement, as is permitted under the Uniform Commercial Code. There are a number of situations where an allowance for variation by agreement would be useful. For example, a depository bank may wish to limit its liability to its depositor, or a paying bank to its customer, for late return due to material on the back of the check by the depositor or customer that obscures the depository bank's indorsement. The final regulation permits variation by agreement for the provisions of Subpart C check return rules. Persons that are not party to the agreement, however, are not bound by the variations of the regulation's requirements. Banks are not authorized to vary the requirements of the funds availability and disclosure requirements of Subpart B by agreement. (§ 229.37.)

Transition Rule for Merged/Acquired Banks. Commenters stated that it would be extremely difficult to comply with certain requirements of the regulation for a period of time following a merger or acquisition of a bank. These difficulties arise from having to treat the banks that have merged as one entity, before the operations of the banks have been consolidated. New provisions have been added to the regulation to provide a one-year transition period for merged/acquired banks, during which they may be treated as separate banks for certain purposes. (§§ 229.19(g) and 229.40.)

Federal Reserve Bank Services (Docket No. R-0621)

Returned check services. The Board has adopted new Federal Reserve Bank returned check services designed to facilitate bank compliance with the regulatory requirements to return checks expeditiously, effective September 1, 1988. These services were published for public comment in December 1987. (52 FR 47,171 (Dec. 11, 1987).) Under the new services, Federal Reserve Banks will accept and process any returned check, and return the check directly to the local depository bank or a processing center designated by the depository bank,

bypassing any intermediary collecting banks in the indorsement chain. Direct return of checks will reduce the time required to return checks to the depository bank. In contrast, today a Federal Reserve Bank only accepts and processes returned checks that it collected, and returns each check to the bank that deposited the check with the Reserve Bank for forward collection.

Reserve Banks will also accelerate their processing of returned checks. Beginning September 1, 1988, local returns will be processed on an overnight basis and dispatched with the forward collection checks the next morning. Nonlocal returns will be prepared for high-speed processing ("qualified") by the first Federal Reserve office and dispatched to the second Federal Reserve office the following night. The Federal Reserve offices will also accept returned checks that have been qualified by the paying bank or prior returning bank, and dispatch them as quickly as forward collection checks. Today, local returns are processed during the day, and dispatched one day later. Moreover, nonlocal returns are processed manually by two Reserve Bank offices, adding an extra day to the return process.

With the introduction of new returned check services, returns will be priced explicitly, with the returned check fees assessed on the paying or returning bank depositing returns with the Federal Reserve Bank. Forward collection fees will be reduced due to the elimination of the return cost component. Currently, the Federal Reserve does not explicitly price returned checks; instead, the costs of handling returns are incorporated in the Reserve Banks' forward collection fees. Reserve Banks will also offer a same-day notification service for all large-dollar returned checks. Beginning on January 1, 1989, any depository bank that has an on-line electronic connection with funds transfer capabilities with the Federal Reserve must receive large-dollar notices of nonpayment electronically.

The Board has approved additional 1988 expenditures to implement the new returned check service offerings, not to exceed \$15,000,000 in capital expenditures and \$15,000,000 in operating expenditures. The costs of providing these services will be recovered by the Reserve Banks through the fees assessed for the services.

Truncation and extended MICR capture services. As part of the December 1987 package, the Board proposed to make the truncation service being piloted by six Reserve Banks a permanent service that could be offered

by all Reserve Banks. In truncation, the MICR-line information on the check is captured and presented to the paying bank electronically, while the paper checks are retained by the presenting bank. Although initially Reserve Banks would provide a truncation service to paying banks who request this service on a local basis only, eventually the Federal Reserve System intends to provide a national interbank truncation service; that is, truncation at the first Federal Reserve Bank to receive the check. Private sector service providers would be able to participate in a nationwide network under the rules of the National Association for Check Safekeeping (NACS). One Reserve Bank is now engaged in interbank truncation on a pilot basis, under the NACS rules.

The benefits of truncation include expeditious check processing and return and a reduction in the number of times the paper check is handled. The benefits of truncation will increase as checks are truncated earlier in the collection process. The Board also requested comment on a proposed service that offers many of the same benefits of truncation without stopping the flow of the paper check—the extended MICR capture service. Under this service, which has also been provided on a pilot program basis, Reserve Banks would deliver payment information by electronic transmission or magnetic tape, provide returned check and retrieval service, and deliver the checks to the paying bank several days later using less time-critical transportation.

The Board approved an expansion of the Federal Reserve's truncation and extended MICR capture pilot programs to permanent services for all Federal Reserve offices, effective July 15, 1988. (See Docket R-0621, published elsewhere in today's Federal Register, for additional information on truncation and extended MICR capture services.)

Effect of the Proposal

Cost effect. The requirements of the Act and regulation will result in several benefits to the public. Transaction account customers will be given specific information on when funds will be made available for withdrawal, which should help them better manage their accounts. In addition, many customers will gain earlier access to their funds.

A number of commenters indicated, however, that the overall costs to the banking industry to implement the availability and disclosure requirements will be quite significant. For many banks, these requirements will result in higher operating expenses and lost investment income due to earlier withdrawal of collected balances. There

is also a potential for increases in bad check losses that may result from the availability requirements. In particular, the commenters stated that banks will be exposed to an unacceptable level of risk from the requirement that certain check deposits, such as cashier's checks and certified checks, be made available for withdrawal at the start of the next business day following deposit, regardless of the amount. The next day availability of these checks, however, is a requirement of the Act.

While the improvements to the check return system provided in Subpart C of the regulation may increase costs to the banking industry in the short term as banks adjust to the new processing environment, these initiatives may result in a reduction of the overall cost of processing returns in the long run. Returns will be received by the depository bank more quickly than they are today, reducing the bank's risk from providing prompt availability of funds to its customers. Returned checks will be handled by a smaller number of intermediary banks, due to the direct return provisions in the regulation. The availability and disclosure requirements may result in a reduction in the number of returns, because funds may be available for withdrawal sooner, and customers would know more precisely when they may withdraw funds from their accounts. Most importantly, the new indorsement standard should facilitate the more efficient processing of returns by making the depository bank more readily identifiable. Future enhancements to the indorsement standard would allow all parties in the check collection system to automate their return processing completely, thus further lowering costs.

Competitive Effect. An important factor considered in the development of the regulatory framework for expedited returns and related Reserve Bank services was the effect on competition in the check collection system. In this regard, the Board requested comment on whether there are any returned check services or other procedural changes for returning banks that the Federal Reserve did not propose that might assist the returning bank in providing returned check services.

Commenters' primary concerns with the implementation of the proposed Federal Reserve services centered around the potential for the Federal Reserve to become the predominant provider of returned check services, given the availability schedules and deadlines that will be provided by the Federal Reserve Banks. Several commenters urged that the Federal Reserve delay offering returned check

services or, at a minimum, delay unbundling returned check costs from forward collection prices until correspondent banks and other interested parties could develop their own returned check products and get some experience with the market pricing mechanism. There were also comments suggesting that the Federal Reserve has an unfair competitive advantage due to its role as regulator and service provider, and its lower price structure, due, in part, to the fact that the Federal Reserve does not incur certain costs, such as presentment fees, that the private sector must pay.

The Board implemented the requirements in Subpart C of Regulation CC to improve the check return process effective September 1, 1988, in conjunction with the effective date of the funds availability and disclosure requirements mandated by the Act. Industry representatives indicated that implementation of these improvements concurrent with the effective date of the funds availability requirements is important to minimize risks to the depository bank from making funds available on a more prompt basis.

To enable banks to comply with these requirements, the Federal Reserve Banks will begin offering returned check services that would meet the requirements in the Act on September 1, 1988. Handling of returned checks by the Federal Reserve must be explicitly priced with the introduction of these new services, since return costs cannot be recovered through the Federal Reserve Banks' forward collection fees as they are today. Some returned checks handled by the Federal Reserve under the new services will not have been collected through the Federal Reserve, and thus will not have been subject to the Federal Reserve's forward collection fees. In addition, paying banks and returning banks will be able to deposit returned checks with the Federal Reserve in various ways that result in different costs being incurred by the Reserve Banks. To provide correspondent banks with as much advance notice as possible in order to develop competing returned check services, the Board published, on April 4, 1988, estimated price ranges and deadlines for the new Federal Reserve returned check services. It is the Board's belief that the proposed services meet the standards that the Federal Reserve has established for priced services, as they will recover costs; yield clear public benefits by speeding the handling of returned checks; and because initially, adequate returned check

services are unlikely to be provided by the private sector.

Educational Efforts

During the public comment period, Federal Reserve Banks conducted over 220 seminars throughout the country to explain the requirements of the proposed regulation, and better prepare the public to comment on the Board's proposals. Approximately 17,500 participants attended these seminars, representing over 9,000 depository institutions. The Federal Reserve Banks plan to conduct additional seminars in June, to assist the industry in preparing for the regulatory and operational changes to be effective on September 1. In addition, Federal Reserve staff is working closely with various industry groups with similar seminars they plan to offer their constituencies.

Effect of the New Return Rules on the Check Collection System

The following is an explanation of the current process for returning checks and a description of the responsibilities of paying, returning, and depository banks now and in the future, under the check return requirements of Regulation CC. This overview should assist the reader in better understanding the effect of the proposed changes to expedite the return of checks on paying banks, returning banks, and depository banks.

In contrast to the forward collection process, the returned check process is a slow, relatively labor intensive, and costly operation. A study prepared for the Bank Administration Institute concluded that, while the forward collection process takes an average 1.6 days to complete, the return process takes an average of 5.2 days. (*Return Items Study, Final Report*, prepared for the Bank Administration Institute by J.D. Carreker and Associates, Inc. (May 1985), "BAI Study.") The BAI study found that, during the return process, the average returned check is handled by 3.4 banks: the paying bank, an average of 1.4 returning banks, and the depository bank. Even though less than one percent (the study estimated 0.86 percent) of all checks are returned, the absolute volume of returns (the study estimated 350 million annually) is relatively large.

The BAI Study found that approximately 40 percent of returned checks take seven days or longer to complete the collection and return cycle and 15 percent take 10 days or longer. Under the temporary schedules, the proceeds of local checks must be available for withdrawal on or before the third business day after deposit and the proceeds of nonlocal checks must be

available for withdrawal on or before the seventh business day after deposit. Under the permanent schedule, proceeds of local checks must be available for withdrawal on or before the second business day after deposit and proceeds of nonlocal checks must be available for withdrawal on or before the fifth business day after deposit. Approximately one-third of the checks handled by the Federal Reserve Banks would be considered nonlocal under the Act.

Both correspondent banks and Federal Reserve offices frequently act as returning banks between the paying and depository banks in the return process. Correspondent banks may route forward collection checks for payment either through the Federal Reserve or through private channels. Thus, the return process currently may include one or more correspondents and the Federal Reserve before the returned check reaches the depository bank. The more intermediate processing steps a returned check must pass through on its route to the depository bank, the greater the probability that additional time will be necessary to complete the process.

Many checks are collected through local clearing arrangements, clearinghouses, and direct exchange arrangements. Such arrangements consist of two or more banks agreeing to exchange checks drawn on each other. There are many such arrangements, and they are a very efficient and fast means of collecting and returning certain checks. The returned check processes of local clearinghouses should be largely unaffected by the Board's proposals, although the individual participants are subject to the provisions of the Act.

The Paying Bank

Current. Today, the paying bank's principal duty when returning a check is to assure timely dispatch of the check back to the presenting bank. The U.C.C. and the Federal Reserve's Regulation J specify that the paying bank must dispatch a check it has determined not to pay by midnight of the banking day following the day the paying bank received the check for payment (the "midnight deadline"). This obligation may be satisfied by dispatching the returned check by courier or by mail. The return of checks presented for payment through clearinghouses is usually subject to the rules of the clearinghouse and these checks are dispatched accordingly.

Typically, paying banks receive checks for payment throughout the day: from correspondents, the Federal Reserve, or through a clearinghouse. Checks received on a Monday, for

example, would be posted to customers' accounts on Monday night and any checks that are not to be paid (due to insufficient funds, account closed, etc.) are rejected from the system and reports are prepared for management review. The actual decision to return a check can be made automatically as a matter of bank policy or following review by management on Tuesday. The checks to be returned are then sent by courier with the bank's forward collection checks, by mail or courier to other collecting banks, or by messenger to the clearinghouse. The return process in this example must begin by midnight Tuesday to conform to the U.C.C. Because the return process must begin by midnight, many paying banks return checks by mail when a courier leaving after midnight would be faster. If a check to be returned was presented by the Federal Reserve and is for \$2,500 or more, the paying bank is also obligated to provide notice of return to the depository bank by midnight of the third banking day following receipt (Thursday in this example). Receipt of the physical check by the depository bank within this time frame would fulfill this notification requirement.

Many paying banks currently receive checks from more than one collecting bank and, therefore, dispatch returned checks to each of those banks. If the paying bank does not deposit checks for collection with the bank to which it is returning checks, these checks are usually returned through the mail. In some cases, mail is also used by paying banks to transport returns to the bank to which it sends its forward collection checks in order to ensure compliance with the midnight deadline. The paying bank currently has little incentive to make an effort to speed the return process and is generally not concerned about the return process after a returned check has been dispatched timely.

New return rules. A major impetus for change in the role of the paying bank will be the responsibility placed on the paying bank by § 229.30 of the regulation. This section states that the return process must be accomplished in an "expeditious manner," thus providing the incentive to the paying bank to take steps to speed the flow of returned checks. Under this new duty, the paying bank must dispatch returned checks with the same speed and diligence that it would dispatch forward collection checks received for deposit by noon on the banking day after the day of presentment of the returned check. This means that a check presented to the paying bank on Monday that is not paid must be dispatched as quickly as a

check deposited in that bank on Tuesday morning that is drawn on the depository bank. A paying bank also returns a check expeditiously under the new rules if it returns a local check to the depository bank within two business days following presentment, or a nonlocal check within four business days following presentment. The Federal Reserve will provide new deadlines for deposit of returned checks and other new or enhanced services, to assist paying banks in meeting the regulation's new duties.

Some of the changes in the return process from the perspective of the paying bank will be:

1. In many cases, paying banks will dispatch returns by the same manner, and at the same time, as they send forward collection checks. This will usually mean that returns will be sent via courier rather than mail. The paying bank will be required to meet the deposit deadlines and sorting requirements set by any returning bank to which the returned check is sent.

2. Additional options will be available to send returns. Returns would not be required to follow the indorsement chain through which the check was originally collected. This means that the paying bank could return all checks to a single returning bank rather than sending them to multiple presenting banks. Paying banks could return checks to the depository bank or to a bank agreeing to process returns, including the Federal Reserve. If the paying bank cannot identify the depository bank from the indorsement, it may find it necessary to send that returned check back to the presenting bank. The Federal Reserve would accept returned checks from all paying banks and explicitly charge for this service. Other returning banks are likely to establish similar services.

3. Paying banks will have the option to prepare a returned check for automated processing by high-speed equipment. This option will be used only when the paying bank is sending the returned check to a returning bank. The bank can produce a "qualified returned check" (QRC) by enclosing a returned check in a carrier envelope or attaching a strip to the bottom of the check, and encoding the carrier or strip with the nine-digit routing number of the depository bank, a special returned check identifier, and the amount of the check. By creating QRCs, the paying bank facilitates expeditious return of the check to the depository bank. Preparation of QRCs by paying banks also reduces the cost of the overall return process because returning banks will be able to handle these checks more efficiently. To encourage paying banks

to prepare QRCs, the Federal Reserve will provide later deposit deadlines at lower prices for QRCs than for returned checks that are not qualified. The Board believes that correspondent banks will adopt a similar strategy.

4. Paying banks will be required to provide notice of nonpayment on all returned checks of \$2,500 or more, regardless of the channel of collection, at an earlier time than required today. Notices will have to be received by the depository bank by 4:00 p.m. (local time) on the second business day following presentment of a check to the paying bank. This means that if a decision is made to return a check of \$2,500 or more that was presented on Monday, the paying bank must ensure that the notice is received by the depository bank no later than 4:00 p.m. Wednesday. The Federal Reserve will provide timely notice to the depository bank provided that the message is originated by Fedwire by noon on the due date or that the physical returned check or a telephone message is given to the Federal Reserve by 9:00 a.m. on the due date.

Returning Banks, Including Federal Reserve Banks

Current. Returning banks currently receive returned checks from paying banks and from other returning banks, and subsequently send those returned checks to depository banks and to other returning banks. Banks that act as collecting banks during the forward collection process also act as returning banks during the return process. Generally, a returning bank receives a returned check from the bank to which it sent the check for collection or payment. The returning bank then sends the returned check to its prior indorser. In sending the returns to its prior indorser, returning banks are under a duty similar to the duty applicable to paying banks to dispatch returned checks by the midnight deadline. One of the advantages to the practice of returning through the indorsement chain is that parties in the return process have established account relationships that were used during the forward collection process. The payment for the returned check is typically a reversal of the payment made during the forward collection process.

The Federal Reserve functions as a returning bank in the current return process only for checks that it handled in the forward collection process. The Federal Reserve receives returned checks from paying banks and sends them to depository banks and other returning banks. Approximately 43 percent of the returns currently handled

by the Federal Reserve are sent to correspondent banks acting as returning banks. In some Federal Reserve regions, where correspondent banking is particularly active, the Federal Reserve office currently sends well over 50 percent of the returns it handles to correspondents in their role as returning banks.

New return rules. Under the regulation, returning banks will be held to a standard similar to paying banks. That is, returning banks must handle returned checks in an "expeditious manner," i.e., returned checks must be processed and dispatched in the same general manner as forward collection checks or returned to the depository bank within the two day/four day time period established for paying banks. This means that returning banks must process returned checks in a much shorter time frame than is typical today.

Federal Reserve Banks will establish new deposit deadlines for returned checks that closely parallel those for forward collection checks. It is expected that other returning banks will also establish new deposit deadlines for returned checks. While these deadlines need not be the same as for checks received for forward collection, returning banks may wish to establish these deadlines so as to permit paying or other returning banks to send returned checks to them on the same courier as forward collection checks. Returning banks may return a check directly to the depository bank or to another returning bank as long as the route chosen for the return is expeditious.

Returning banks would have the option, but not be required, to convert returns to QRCs. If a returning bank chooses to prepare a QRC, it may take a day to do so beyond the time when the check would otherwise have been dispatched. An extra day is not available when returning directly to the depository bank, because preparation of a QRC would not speed the return of such checks.

It is anticipated that one of the most significant changes in the return processing system for non-Federal Reserve returning banks will be the effect of the Federal Reserve's direct return policy. Federal Reserve offices will no longer send returned checks to other non-Federal Reserve returning banks. This potential shift in volume (about 43 percent of current Federal Reserve return volume) could significantly reduce the number of returned checks that are handled by these returning banks.

The Depository Bank

Current. The depository bank receives returned checks from both paying and returning banks. Generally, a returned check is received from the bank used by the depository bank for forward collection. Depository banks also receive notices of nonpayment on checks of \$2,500 or more collected through the Federal Reserve.

New return rules. The depository bank's requirement to place a standard indorsement on the check is critical to improvements in the return process. By following the new indorsement standard and imprinting a complete, legible indorsement on the check, the depository bank will greatly assist paying and returning banks in identifying the depository bank and, therefore, in processing the return promptly. To comply with the standard, most depository banks will need to replace their current indorsement plates. Some banks may want to work with corporate customers that encode checks prior to deposit to have the corporate customer place the depository bank's indorsement on the check according to the new standard. Some small depository banks may want to arrange with their correspondent to have the correspondent place its indorsement on the check as the depository bank indorsement. Failure to follow the indorsement standard may increase the risk of loss to the depository bank because paying and returning banks may be relieved of liability for delay in return if the delay is due to a nonstandard indorsement.

Depository banks may receive returns from returning banks with which the depository bank currently does not have a forward check collection relationship. Many depository banks will, for the first time, begin receiving returned checks directly from the Federal Reserve. If the depository bank requests courier delivery of its returned checks at a location where the Federal Reserve does not currently provide courier service, the depository bank may be charged for the transportation.

Some depository banks that currently are charged by a returning bank for returned checks will begin receiving returned checks without a per item charge. Depository banks must pay, in same-day funds, for returned checks on the day the checks are received. If paying banks and returning banks that return checks directly do not wish to receive same-day payment by wire transfer, cash, or Federal Reserve net settlement, or if the paying or returning bank does not maintain an account relationship with the depository bank,

the banks may agree as to the form of payment. The form of payment may be a check or an ACH payment.

Depository banks that have an electronic connection with the Federal Reserve with funds transfer capability will have to receive notices of nonpayment electronically after January 1, 1989.

Under the new check return rules, depository banks will receive returned checks and notices of nonpayment earlier than they do today, and will receive notices of nonpayment on all large-dollar returned checks, instead of only those checks which were collected through the Federal Reserve.

Future regulatory initiatives. The rules contained in Subpart C of the regulation will significantly improve the check return process. Under the temporary schedule, these rules will facilitate the return of most checks before the time the depository bank must make funds available for withdrawal. A significant percentage of checks will not be returned to the depository bank before the time funds must be made available, however, under the permanent availability schedule, which takes effect in 1990. The Board will review whether further modifications to the check return rules should be proposed, providing for an even more expeditious return of checks, after assessing the effect of the new requirements on the check return system.

Changes to the forward collection process are also being considered. On April 4, 1988, the Board requested public comment on whether a paying bank should be required to pay checks presented before its cut-off hour, on the day of presentment and without the imposition of presentment fees. This proposal has the potential to speed the collection of some checks. In December 1987, the Board requested comment on actions the Board should take to limit certain delayed disbursement practices. The Board will consider specific proposals to limit the delayed disbursement of "official" checks in the near future.

Section-by-Section Analysis

The Board received 940 comment letters on Docket No. R-0620, a proposed regulation (Regulation CC, 12 CFR Part 229) to clarify the provisions of the Expedited Funds Availability Act, to provide detailed rules to facilitate compliance with the availability and disclosure requirements, and to make several substantive changes to the current law on the collection of checks and the Board's current Regulation J (12 CFR Part 210) to encourage faster return

of unpaid checks, thus minimizing the losses that could result from compliance with the availability schedules.

The comments to Docket No. R-0621 (proposed new Federal Reserve Bank Services) will be summarized in a separate document.

The following list shows the 940 commenters by category:

Category of commenter	Number of comments
Commercial banks.....	573
Savings and loan institutions	107
Credit unions	49
Bank holding companies	52
Trade associations	36
Clearinghouses	13
Corporations (banking-related business).....	69
Corporations (other)	8
Consumer groups	1
Individuals.....	6
Federal government.....	4
State government.....	5
Federal Home Loan Banks	10
Other (legal, educational community)....	7
	940

The following list shows the 940 commenters by Federal Reserve District:

Federal Reserve District	Number of commenters
1. Boston	21
2. New York	60
3. Philadelphia.....	25
4. Cleveland	59
5. Richmond	74
6. Atlanta	82
7. Chicago	207
8. St. Louis	34
9. Minneapolis.....	32
10. Kansas City.....	75
11. Dallas.....	129
12. San Francisco	142
	940

A number of comment letters from members of the same trade association or subsidiaries of the same holding company were identical. A group of 47 commercial banks who are members of the Independent Bankers Association of America sent identical letters. Thirty commercial banks affiliated with the holding company MCorp sent identical letters, as did 23 commercial banks affiliated with First Republic Bank Corp.

Section 229.2 Definitions.

"ACCOUNT"

The proposed rule defined "account" as a deposit as defined in 12 CFR 204.2(a)(1)(i) that is a transaction account as described in 12 CFR 204.2(e). The definition briefly described such accounts and gave examples, such as a demand deposit account, a negotiable

order of withdrawal account, a share draft account, an automatic transfer account, and any other transaction account that is not a time or savings deposit under 12 CFR Part 204. The definition of "account" excluded accounts where the account holder is a bank.

The Board received 26 comments on the definition of "account." Seven commenters supported the definition as it appeared in the proposal. Seven commenters requested that business accounts be excluded because corporate customers can already bargain for availability. Six commenters opposed the exclusion of interbank accounts because such an exclusion would be unfair to banks that use correspondents and would limit the ability of depository banks to manage funds.

Section 602(1) of the Act states that the term "account" means "a demand deposit account or other similar transaction account at a depository institution." The Board believes that this term is intended to include both consumer and corporate accounts.

As for interbank accounts, most banks generally give better availability to checks deposited in accounts held by other banks than that required in the schedules, with the exception of next-day availability checks. Furthermore, banks should be familiar with the requirements of the Act and therefore do not need disclosures. To require disclosures to account-holding banks would be difficult because a depository bank may modify its collection schedules for transit checks on a fairly frequent basis. In addition, the Act would be difficult to apply to interbank accounts in certain situations. For example, nonlocal cashier's, certified, and teller's checks generally would not be deposited into interbank accounts with special deposit slips, which the correspondent could require under the regulation as a condition for giving next-day availability. For these reasons, the final regulation excludes interbank accounts from the definition of "account."

The commenters also raised other issues concerning the definition of "account." Four commenters requested that the regulation set out the CFR definitions of "deposit" and "transaction account" rather than refer to them. The final regulation clarifies the definition of "account" with a description and examples. The Board did not set out the CFR definitions as well because to do so would lengthen the regulation unnecessarily.

One commercial bank requested that the availability schedules extend to money market deposit accounts, which

are not transaction accounts under the Board's Regulation D. The final regulation continues to exclude nontransaction accounts, such as money market deposit accounts, because of the Act's limiting language in section 602(1), which refers to transaction accounts held by depository institutions.

Two commenters raised questions concerning the "account" definition. A commercial bank asked whether the definition included accounts in savings and loan institutions used to deposit transit items. Such accounts are interbank accounts and are excluded from coverage. A savings and loan institution asked whether the definition included a savings account from which funds are automatically transferred to cover overdrafts in a NOW account. Such automatic transfer or "ATS" accounts are included in 12 CFR 204.2(e) as transaction accounts and therefore would be accounts under this regulation.

The definition in the final regulation also excludes accounts held by the Treasury of the United States as well as accounts of foreign offices of domestic and foreign banks. The Board does not believe that the Congress intended the Act to apply to U.S. Treasury accounts and has therefore excluded them from the definition of "account" with the consent of the U.S. Treasury. The language of the Commentary has been revised to clarify that, for purposes of Subpart C, the definition applies to accounts maintained by certain nondepository institutions including Federal Reserve Banks, Federal Home Loan Banks, and private banks, and to make other clarifications.

"AUTOMATED TELLER MACHINE" ("ATM")

The proposed rule defined "automated teller machine" or "ATM" as an electronic or mechanical device at which a natural person may make deposits by cash or check to accounts and perform other transactions.

One commercial bank suggested that the definition of "ATM" specifically define "natural person" to include corporations and partnerships. This change is not necessary because "natural person" as used in the ATM definition refers to the person who performs functions at the machine, not the account-holding entity.

Two commenters asked that the ATM definition be revised to explicitly state that an ATM does not include night depositories or any device that does not accept deposits, such as a cash dispenser. The proposed definition clearly excludes cash dispensers in that it defines ATM as any device that accepts deposits and performs other

functions. These facilities are not intended to be included under the definition of ATM. The Board has clarified the definition to provide that only electronic, and not mechanical, devices are considered ATMs. The Commentary notes that night depositories and cash dispensers are not considered ATMs.

In addition, the final regulation changed the provision that an ATM is a device at which a natural person may "make deposits by cash or checks to accounts" to provide that an ATM is a device at which a natural person may "make deposits to an account by cash or check."

"AVAILABLE FOR WITHDRAWAL"

The proposed regulation defined "available for withdrawal" with respect to funds deposited as any use generally permitted to the depositor for actually and finally collected funds under the bank's account agreement and policies, such as for payment of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

The Board received six letters commenting on the definition of "available for withdrawal." One commenter objected to the definition in general terms, and one suggested that the time funds are available for withdrawal should be the time data on the deposit are available for processing. The Board has retained the definition of "available for withdrawal" generally as it appeared in the proposal, except that "any use" has been changed to "all uses," and the definition and Commentary have been changed to clarify that a bank may certify a check when funds are available for withdrawal even if the check has not been delivered to the paying bank. To allow a bank to hold funds until data on the deposit are available for processing would undermine the Act's goal of minimizing hold periods for all customers.

One commenter believed that the definition should not preclude a depository bank from charging the customer interest whenever the bank has to make funds available before receiving provisional credit. The final regulation does not include such a change because the Act does not condition availability on whether or not the depository bank has received credit for the deposited checks. To charge the customer interest for funds made available before provisional credit is received would be contrary to purposes of the Act.

One commenter suggested that the statute is unclear as to whether the Congress meant "available for withdrawal" to include withdrawal of cash or whether it meant withdrawal only by check unless cash was specified. The Board believes that the statute is clear in its intent to provide availability to customers by cash and by check except for the explicit cash rules in §§ 229.11(b)(2), and 229.12(d).

Two commercial banks requested that the Board clarify that a bank is not in violation of the Act or the regulation if it holds funds that are subject to garnishment, tax levy, or court order restricting disbursements from the account. The Commentary has been amended to clarify that funds may be available for withdrawal even if they are subject to legal process preventing withdrawal.

"BANK"

The Act defines "depository institution" as an institution defined in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act, or an office, branch, or agency of a foreign bank located in the United States. The definition in the proposed regulation changed the term "depository institution" to "bank" and explicitly set out the terms of the cited clauses of the Federal Reserve Act. The proposal also defined "bank" to include a "branch" of a "foreign bank" as defined in section 1(b) of the International Banking Act. The proposed definition required that a bank be located in the United States and that the term "bank" included all of a bank's offices in the United States.

Three commercial banks requested that the Board include private banks and industrial banks within the definition of "bank." The Board believes that the language of the Act (section 602(12)) which defines "depository institution" (equivalent to "bank" in the regulation) clearly limits the definition of "bank" for purposes of Subpart B. Given the Act's broad mandate to the Board to improve and regulate the check processing system, however, the Board has expanded the definition of "bank" for the purposes of Subpart C, and in connection therewith, Subpart A. For check collection system improvements to function properly, they must apply to checks deposited in all types of banks. This is necessary because all paying banks that return checks will not be able to differentiate the manner of return based on type of depository bank. The final regulation has been revised to provide that, for purposes of Subpart C, and in connection therewith, Subpart A, the term "bank" includes any person engaged in the business of banking,

including a Federal Reserve Bank and a Federal Home Loan Bank. This definition would include private bankers and could include certain industrial banks. These institutions will be subject to the expedited return provisions of Subpart C and appropriate provisions of Subpart A.

"BANKING DAY" and "BUSINESS DAY"

The proposed regulation defined "business day" as a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. The definition stated that if January 1, July 4, November 11, or December 25 falls on a Sunday, the next Monday is not a business day. The proposal defined "banking day" as that part of any business day on which the bank is open to the public for carrying on substantially all of its banking functions.

The Board received 44 comments on the definitions of "banking day" and "business day." Twenty-five commenters suggested that when the depository bank and the paying bank are in the same state, a state holiday should not be a business day. (Twelve of the 24 letters were from Hawaiian institutions which celebrate four nonstandard state holidays.) Such a rule would be difficult to administer and would create confusion for customers and out-of-state banks. Therefore, the final regulation retains the definition of "business day" as it appeared in the proposal.

Nine commenters stated that "business day" should be defined the same as "banking day" so that a bank will never have to make funds available on a day it is not open for business. The Act provides, in section 602(3), that "business day" means any day other than a Saturday, Sunday, or legal holiday. The Act anticipates that the way banks count days for purposes of the availability schedules will be uniform for every bank; the commenters' suggestion would allow the schedules to vary depending on whether or not the bank is open. The reason for having the banking/business day dichotomy is because banking days are relevant to when a deposit is considered received, and business days, which are more uniform than banking days, are more appropriate when counting the days in which funds must be available. The statutory availability schedules are based on check collection and return times which are not related to the

banking days of the depository bank. Therefore, the final regulation does not incorporate this suggestion.

Two commenters agreed with the proposed definitions. Two other commenters suggested that "banking day" be defined as "that day, as normally communicated to deposit customers, on which the bank routinely posts deposits to customer accounts." The Board considers the definition of "banking day" in the proposed rule to be more complete and clearer to the customer than the suggested definition. The final regulation, therefore, retains the proposed definition of "banking day."

Another commenter suggested that all banks be put on the same holiday schedule. The Board believes that regulating when a bank can and cannot be open would be unnecessary for the purposes of the Act at this time.

Two community banks pointed out that some small banks close on Wednesday and open on Saturday due to community needs. The commenters stated that the definition of business day is a burden to such banks. The Board recognizes that community banks and credit unions often do not keep standard business hours but does not believe that the definition will create undue burden for community banks. Because the regulation does not force any bank to be open at any particular time, but only requires that all banks make funds available according to the availability schedules through whatever medium is open to the public on the day funds must be available (e.g., over the counter or ATM), the Board believes that any burden on banks with nonstandard hours will be minimal.

Another commenter noted that if a legal holiday falls on a Saturday, the previous Friday should not be a business day. The Board did not exclude Fridays before Saturday holidays from the definition of "business day" because it is often the case that customers need access to their accounts on the day before a holiday, particularly on December 31 when many account holders need to settle their year-end finances. Even if a depository bank is closed on a Friday before a Saturday holiday, customers should have funds available for check-writing purposes or for cash withdrawals from ATMs on that day.

Three letters contained comments that because branches often do not have on-line communication with on-premise ATMs, the banking day for an ATM should be governed by whether the main office of the bank is open, not by whether any particular branch is open.

The Commentary to the final regulation has been revised to clarify that for deposits made at an ATM, if the day is a banking day for the account-holding branch of the depository bank, then it is a banking day for the ATM. Even if the depository bank branch has no on-line contact with a proprietary ATM, the branch may still arrange to have access to the ATM to verify deposits.

No changes have been made to the definitions of "business day" and "banking day" in the regulation.

"CASHIER'S CHECK"

The proposed regulation defined "depository check" as a cashier's check, certified check, or teller's check.

The Board received 140 comments in response to the definition of "depository check." Twenty-one commenters requested that the Board change the term "depository check" to "official check." The Board recognizes that the term "depository check" caused confusion in the banking. The final regulation deletes the term "depository check" and refers specifically to cashier's checks, certified checks, and teller's checks.

One hundred three letters suggested that in order for a cashier's, certified, or teller's check to receive next-day availability it should be labeled "Official Check" on its face so that the depository bank can easily identify it as eligible for next-day availability.

To require that all cashier's, certified, and teller's checks be labeled "Official Check" would not avoid fraud—the dishonest depositor would label all deposited checks "Official" in hopes that the depository bank would automatically give them next-day availability. The Board recognizes the fact that sometimes it is hard to determine whether or not a particular check is a cashier's, certified, or teller's check, but believes that the "Official" label would provide a false sense of security. The Board believes that it is better that bank personnel be trained to look at the check itself rather than look at the label on the check. There is nothing in the regulation that prevents an issuing bank from voluntarily labeling a cashier's, certified, or teller's check as an official check, and many such checks are so labeled. Such a label, however, is not a prerequisite for next-day availability.

Twelve commenters suggested that the identification problem be solved by requiring all cashier's, certified, and teller's checks to have a unique MICR code. The only free position on the MICR-line is position 44, which, under this regulation, must now be used to identify a qualified returned check.

Therefore, the final regulation does not require a special MICR code for cashier's, certified, and teller's checks.

The Board has also amended the definition of cashier's check to exclude checks drawn by a bank on itself or another bank used to pay vendors or employees; the Board does not believe that these checks serve the same function as checks provided to customers.

"CHECK"

The proposed regulation defined "check" as a negotiable demand draft that is drawn on or payable through or at an office of a bank, or drawn on the Treasury of the United States, a state government, a Federal Reserve Bank, or a Federal Home Loan Bank; a United States Postal Service money order; or a traveler's check. The definition provided that "check" does not include a noncash item and that a draft may be a "check" even though it is described on its face as a "money order." The definition further provided that for purposes of Subpart C, the term "check" also includes a demand draft of the type described in the definition that is nonnegotiable.

One hundred sixty-one comment letters suggested that changes be made to the definition of "check." Eighty commenters opposed the inclusion of warrants drawn on state or local governments. These commenters argued that there is no means to ensure that a state or local government will act expeditiously in paying warrants, and even if the issuing government is subject to the paying bank rules of expeditious return, it is unlikely that it would comply. Some commenters suggested that if warrants are to be considered checks, they should be labeled with a warning that delays may be caused by the issuing government that are beyond the depository bank's control. Only four commenters favored inclusion of warrants. One state treasurer requested clarification on the status of drafts drawn on a state agency and presented to the state treasury for payment. The commenter also noted that a state court had ruled that state warrants are nonnegotiable drafts.

The final regulation includes state warrants in the definition of "check." Because some units of general local government also draw checks on themselves, the final regulation has been revised to include these instruments in the definition of check as well. The regulation does not impose the duty of expeditious return on the state or local governments that issue warrants. Many warrants are used to pay state unemployment compensation and other vital payments to consumers. The Board

believes that the Act intended to cover these and other instruments that are the functional equivalent of checks.

Thirty-three commenters requested that the definition explicitly state that the regulation applies only to checks drawn on or payable through or at a bank located within the United States. The proposed regulation required checks to be drawn on entities which are located in the United States (the U.S. Treasury, state governments, Federal Reserve Banks, and Federal Home Loan Banks) or drawn on or payable through or at banks, which must be, under the regulation's definition of "bank," located in the United States. Accordingly, the Board has not made this revision to the definition.

Commenters also addressed the status of drafts drawn on nonbank entities, such as bank holding companies, which are payable through or at a bank. Nineteen commenters requested that such items be included in the definition of "check." Six commenters requested that they *not* be included, two of whom stated that if a nonbank entity can not obtain a routing number, then items drawn on those entities should be noncash items. Section 602(7) of the Act explicitly states that "check" includes negotiable demand drafts drawn on or payable through a bank, which the Board expanded to include payable at drafts for reasons stated in the Commentary. Therefore, in the final regulation, all drafts that are payable through or at a bank, even if drawn on a nonbank entity, remain within the definition of "check." One commercial bank requested that any item drawn on a savings and loan institution, a credit union, or a brokerage house be excluded from the definition of "check"—this suggestion was clearly contrary to the Act's definition.

Thirteen commenters opposed defining payable through drafts as "checks." They argued that the risk of return of such items is high, particularly with drafts drawn on insurance companies which tend to be held for long periods of time before being returned. The Act's definition of "check," however, clearly states that payable through drafts are checks. Therefore, payable through drafts are defined as "checks" in the final regulation.

One commenter requested that the definition provide that a check must be payable in United States dollars. Because items drawn in foreign currency are not normally handled by banks as cash items, the final regulation has been amended to provide that the term "check" does not include an item

payable in a medium other than United States money.

One commercial bank asked that the phrase "and which the Federal Reserve Banks agree by regulation or operating letter to handle as a cash item" be added to the end of the definition. The U.S. Treasury requested that the Board add the words "a negotiable demand draft drawn on a Federal Reserve Bank including fiscal agency checks." The Board considered both suggestions, but decided that the first creates undue uncertainty in the definition of "check," as some banks might not be aware of these checks which the Federal Reserve Bank collects, and the second is not needed because checks drawn on Federal Reserve Banks, including fiscal agency checks, are already within the definition of "check" and need no explicit mention.

One commercial bank asked that the Board require all checks to be pre-encoded with the paying bank's routing number and the drawer's account number. The definition of "noncash item" states that any check without the paying bank's routing number encoded in magnetic ink may be treated as a noncash item. As for encoding the drawer's account number, the Board believes that the drawer's account number is not necessary to speed the return of checks by paying banks or to aid depository banks in granting availability under the Act.

The definition in the final regulation has also been amended to clarify that the definition of "check" does not include traveler's checks drawn on banking offices outside of the United States or checks payable in foreign currencies. The Commentary to this definition has also been revised extensively for clarity.

"CHECK CLEARINGHOUSE ASSOCIATION"

The proposed regulation defined "check clearinghouse association" as any arrangement by which participants exchange checks in a specified area. The definition also stated that a "check clearinghouse association" may include arrangements using the premises of a Federal Reserve Bank, but it does not include the handling of checks for forward collection or return by a Federal Reserve Bank.

The Board received 127 comments on the definition of "check clearinghouse association." Eighty-three commenters stated that the Board should limit the definition of "check clearinghouse association" to a local, metropolitan, or regional area as indicated section 602(8) of the Act. Thirty-one commenters (all of which were affiliated with the same

bank holding company) agreed with the definition as proposed, and seven commenters thought that members of a clearinghouse should be local to each other regardless of their location. Two commenters suggested that the definition should be decided by each association and its local Federal Reserve Bank. The Board rejected this suggestion in favor of a uniform definition. The Board has, however, changed the definition to accord more closely with the statutory language.

Three commenters requested clarification of other aspects of the definition of "check clearinghouse association." One commercial bank asked for clarification of the status of associate clearinghouse members. The regulation's definition of "participant," which closely parallels the definition in the Act (section 602(19)), provides that a "participant" is a bank that is located in the geographic area served by a check clearinghouse association and both collects and receives for payment checks through the check clearinghouse association either directly or through an intermediary. Therefore, associate clearinghouse members would be considered participants under the definition of "check clearinghouse association." The regulation has been clarified to indicate that banks that exchange checks through an intermediary are only participants if the intermediary is a participant.

A savings and loan institution asked that the definition be amended to state that the term "clearinghouse" does not apply to two banks that directly present and return checks to each other. The Board has added a provision that a check clearinghouse association must be an arrangement between three or more banks. The Board does not believe that the definition of "check clearinghouse association" was intended to apply to direct exchanges between any two banks.

One commercial bank requested that a "clearinghouse" be limited to those organizations with well-defined members and rules. The Board believes, however, that the Congress intended a broader definition of "check clearinghouse association." The Commentary has been expanded to explain that the definition includes informal arrangements regardless of whether the participants have formally constituted themselves as an association, provided that the participants generally exchange checks among each other.

The Commentary to this definition has been revised extensively for clarity.

"CHECK PROCESSING REGION"

The proposed regulation defined "check processing region" as the geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities.

The sole comment on "check processing region" was from a commercial bank which agreed with the definition but requested that the Board provide a map of regions. The definition in the final regulation is unchanged, and the final regulation does not include a map; however, maps are generally available at local Reserve Banks.

"CONSUMER ACCOUNT"

The proposed regulation and the Act (section 602(10)) defined "consumer account" as any account used primarily for personal, family, or household purposes.

One commercial bank requested that the Board redefine "consumer account" as "any account held by an individual." The Board has retained the language of the Act and the proposed regulation; however, a Commentary to the provision has been added. The definition of "consumer account" is relevant only for certain requirements of Subpart B.

"DEPOSITARY BANK"

The proposed regulation defined "depository bank" as the first bank to which a check is transferred even though it is also the paying bank or the payee. The definition provided that for the purposes of Subpart C, the term also included a Federal Reserve Bank or a Federal Home Loan Bank to which a check is transferred by a person other than a bank.

Because the definition of "bank" has been revised in the final regulation to include Federal Reserve Banks and Federal Home Loan Banks for the purposes of Subpart C, the second sentence in the definition of "depository bank" has been dropped as superfluous.

Four commenters agreed with the proposed definition of "depository bank," and one commenter suggested the term be changed to "receiving bank." After considering other terms for "depository bank" such as "receiving bank" and "bank of first deposit," the Board decided to keep the term "depository bank," which is consistent with the terminology of the Uniform Commercial Code.

The definition has been changed to clarify an issue that was raised by eleven commenters—that the depository bank for deposits at shared ATMs is the bank with the account relationship with the depositor, not necessarily the owner/operator of the ATM. The

definition now provides that when a check is deposited in an account, the depository bank is the bank holding the account into which the check is deposited even if the check is physically received by another bank first.

"ELECTRONIC PAYMENT"

The proposed regulation defined "electronic payment" as a wire transfer or an ACH credit transfer.

The Board received 71 comments on the definition of "electronic payment." Seventeen of the commenters favored explicit exclusion of electronic credit and debit card transfers. The Commentary to the definition of "electronic payment" has been expanded to explain that point-of-sale transactions would not be covered by this definition unless the transactions were effected by wire transfer or ACH credit transfer.

Many letters included comments on the inclusion of ACH credits within the definition. Twenty-two commenters opposed the inclusion of ACH credits on the grounds that they are governed by other rules, which already provide for better than next-day availability. (Two opposed the inclusion of *any* wire transfers.) Twenty commenters requested that the regulation should provide same-day availability for all electronic payments. Six commenters agreed with the proposed definition. The U.S. Treasury requested that the Board add the provision "Treasury regulations governing the availability of electronic funds transfers (wire and ACH) including 31 CFR Part 210, to the extent not inconsistent, supersede 12 CFR Part 229."

The Board has retained ACH credits within the definition of "electronic payment" and has left the wording of the definition as it appeared in the proposal. The Board recognizes that existing rules offer better than next-day availability for ACH credits, but also recognizes that there is no liability for violating existing rules. This regulation does not override Treasury regulations or ACH association rules that require prompter availability. Existing rules for ACH credits will not be superseded, instead the regulation will provide a floor for liability.

The commenters raised other ACH issues as well. Two commenters asked for clarification of the status of ACH debits, and one asked whether banks must accept all forms of ACH transfers. The Commentary clarifies that ACH debits are not affected by this regulation. There is no provision in the regulation that requires any bank to accept any particular type of deposit. (See § 229.19(c)(2)(i).)

One commenter suggested that electronic payments and wire transfers should not be considered any different from checks. Sections 602(25) and 603(a) of the Act, however, make special provision for "wire transfers" and specify that they are to be given next-day availability, which clearly indicates that the Congress meant for them to be treated differently from checks.

The Commentary to the term electronic payment has been revised for clarity.

"LOCAL CHECK" AND "LOCAL PAYING BANK"

The proposed regulation defined "local check" as a check drawn on or payable through or at a local paying bank. The definition also provided that a depository bank may rely on the check's routing number, as listed in Appendix A, to determine whether a check is a local check.

The proposed regulation defined "local paying bank" as a paying bank to which a check is sent for forward collection that is located in the same check processing region as the branch or proprietary ATM of the depository bank in which that check was deposited.

The Board received 42 comments on the definition of "local paying bank" and three on the definition of "local check." Sixteen commenters requested that the Board clarify that a paying bank is "located" in the same check processing region as the depository bank branch only when the second through fourth digits of the routing number on the deposited check are the same as the second through fourth digits of the routing number on checks drawn on the depository bank branch. The commenters reasoned that because checks are cleared and returned by processing facilities that are indicated by routing numbers, the suggested approach would be consistent with the Board's statement in the Commentary that "the Act makes a clear connection between availability and the time it takes for checks to be cleared and returned." The commenters raised the question of whether the routing number on the deposited check should be compared to the routing number associated with the depository bank's physical location or the routing number printed on checks drawn on the depository bank (which may be the routing number of the depository bank's check processing center located in a different check processing region from the depository bank).

Section 602(13) of the Act defines "local originating depository institution" (equivalent to "local paying bank" in the regulation) as "any originating

depository institution which is located in the same check processing region as the receiving depository institution" (equivalent to "depository bank" in the regulation). The Board believes the Congress intended that, generally, "local" checks are those deposited into depository banks that are physically located in the same check processing region as the paying bank to which a check is sent for collection. The Act anticipates that customers will be able to determine which checks are local. The customer is much more likely to know a bank's physical location than to know the location associated with a bank's routing number.

The Board also recognizes, however, that it may be difficult for the depository bank to determine in which check processing region a paying bank is located without relying on the encoded routing number. Many banks will perform an automated sort of local and nonlocal checks using machine-readable routing numbers. Therefore, the definition of "local check" allows (but does not require) the depository bank to rely on the routing number of the deposited check. (It is not a burden to the depository bank to determine in which check processing region its own branch is physically located.) The Board has amended the definition to provide that it is the physical location of the depository bank that must be compared with the paying bank's routing number, and that the depository bank can rely on the routing number only if the check is sent for payment or collection based on the routing number.

Two savings and loan institutions asked whether all of a bank's branches are local to each other if they are in different check processing regions but send all checks to a central location for processing. Under the current routing number policy, if branches are in different check processing regions, they must have different routing numbers. Therefore, as outlined above, only those branches within the same region would be local to each other. As one bank holding company commented, banks with branches in the same state but different check processing regions must either have more than one hold policy for intrastate checks or provide local availability statewide.

Five commenters agreed with the definition of "local paying bank" and two agreed with the definition of "local check" as it appeared in the proposal. Six commenters were concerned with the inequities in sizes of check processing regions. They noted that in the western part of the country, check processing regions can cover huge areas

and that it would be unfair to include out-of-state checks in the definition of "local" even if the paying bank is located in the same region. A related comment from three Hawaiian savings and loan institutions voiced a similar concern; the commenters felt that mainland checks should not be local to Hawaiian banks even though drawn within the same check processing region. Similarly, a New York commercial bank asked that checks drawn on banks in Puerto Rico and the Virgin Islands not be considered local in New York. The Board recognizes the distance problems, but the Act defines "check processing region" (section 602(9)) as the geographical area served by a Federal Reserve Bank check processing center or such larger area as the Board may prescribe. The Board has not enlarged the areas identified as check processing regions, but given the provisions of the Act, neither has it changed the regulation to accommodate these comments.

A branch of a bank located in Guam pointed out that Appendix A contained the routing numbers 1214 and 3214 for Guam, Saipan and Pacific locations. Because these locations are not within the United States as defined by the Act (section 602(23)) and the regulation, these routing numbers have been deleted from Appendix A.

Five commenters said that it would be difficult to educate tellers and customers regarding check processing regions and the local/nonlocal distinction. These commenters advocated an in-state/out-of-state distinction instead. One clearinghouse suggested that in states where no Federal Reserve office exists, the primary clearinghouse should be designated as the logical territory for local availability schedules. Because of the provisions of the Act noted above, the Board has not adopted these suggestions.

The definition of local paying bank has also been revised to clarify that where a check is deposited in a nonproprietary ATM, both the nonproprietary ATM and the branch of the depository bank holding the customer's account must be in the same check processing region as the paying bank for the paying bank to be a local paying bank. The Commentary to these definitions has also been revised extensively for clarity.

"MERGER TRANSACTION"

The Board received 14 comments requesting clarification of the status of merged or acquired banks under the availability schedules and the return rules of Subpart C. The commenters asked that the Board provide a

transition period in which the two banks are considered separate entities while their operating systems are integrated. The Board addressed this issue by defining merger transaction in § 229.2 and adding §§ 229.19(g) and 229.40 to provide that merged banks may be treated as separate banks for a period of up to one year. Examples of the effect of these changes are included in the Commentary to §§ 229.19 and 229.40. The Board believes that a one-year transition period is necessary because it is often difficult for merged or acquired banks to integrate their systems immediately.

"NONCASH ITEM"

The proposed regulation defined "noncash item" as an item that would otherwise be a check, except that: a passbook, certificate, or other document is attached; it is accompanied by special instructions, such as a request for special advice of payment or dishonor; it consists of more than a single thickness of paper, except a check that qualifies for handling by automated check processing equipment; or it has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

The Board received 24 comments on the definition of "noncash item." Twenty-three of the commenters requested that the regulation specifically state that credit card drafts are noncash items. The Commentary to the definition of "check" specifically excludes credit card drafts. Therefore, the availability schedules do not apply to credit card drafts, and there is no need to include them in the definition of "noncash item."

One commercial bank requested that unreadable or misencoded checks be included in the definition of "noncash item." The Board did not incorporate this suggestion in the final regulation. Unreadable checks may become reject items at any point in the check collection process. A rule that allowed the status of an item to change from check to noncash item at an undetermined point in the check collection process would be unworkable.

In addition, the Board added language to the Commentary clarifying that checks sent for collection with special instructions are noncash items.

"PARTICIPANT"

The Commentary has been revised to clarify the term "participant" as it relates to a clearinghouse participant.

"PAYING BANK"

The Act defines "originating depository institution" as the branch of

a depository institution on which a check is drawn. The proposed regulation substituted the term "paying bank," which was defined as: the bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection; the bank at or through which a check is payable and to which it is sent for payment or collection; the bank whose routing number appears on a check in magnetic ink or in fractional form and to which the check is sent for payment or collection; the Federal Reserve Bank or Federal Home Loan Bank by which a check is payable; or the state on which a check is drawn.

The Board received 72 comments on the definition of "paying bank." Eleven commenters agreed with the proposed definition.

Fifty commenters objected to the inclusion of payable through banks within the definition of "paying bank." Three of the commenters requested that the Board ask the Congress to amend the Act to provide longer availability schedules for payable through drafts or, alternatively, that payable through drafts be noncash items. A joint comment from four consumer groups noted that consumers will be confused if payable through drafts drawn on local credit unions are treated as nonlocal, and thus requested that the burden of conforming to local schedules be placed on the institutions using the payable through drafts. Commenters pointed out that the statutory definition of "originating depository institution" (equivalent to "paying bank" in the regulation) was "the branch of a depository institution on which a check is drawn" (section 602(17)). The Act's definition does not explicitly include payable through or payable at banks. The commenters favored limiting the definition to the drawee bank, because it is the drawee bank that will make the decision whether or not to pay a check.

The Board believes that the Act does not clearly specify the treatment of payable through drafts for the purpose of availability, or other purposes. In defining the "originating depository institution" in section 602(17) as the "institution on which a check is drawn" the Act does not define the term "drawn." Although in a technical sense the institution on which a check is drawn can refer to the institution holding the drawer's account, the term can be used more generically to designate the person to whom a draft is directed and who is requested to pay the amount specified. *E.g.*, Black's Law Dictionary 44 (5th ed. 1979). A

depository institution through which a draft is payable can be viewed as a paying bank with respect to that draft. *E.g., Berman v. United States National Bank*, 197 Neb. 268, 249 N.W.2d 187 (1976).

The Board finds that the structure of the statute itself shows that the Congress did not intend the "institution on which a check is drawn" in section 602(17) to be used in a technical sense, and that this phrase can reasonably be read to include the institution through which a check is payable. Section 602(7) of the Act defines the term "check" to include negotiable demand drafts "drawn on or payable through an office of a depository institution located in the United States." As noted above, under section 602(17) of the Act, the "originating depository institution" is defined to mean the branch of a depository institution on which a check is drawn.

Under other provision of the Act, a check deposited in an account is either local or nonlocal, and subject to differing maximum hold periods, based on whether the originating depository institution is local or nonlocal with respect to the depository institution in which the check is deposited. Whether an originating depository institution is local or nonlocal depends upon whether it is located in the same Federal Reserve check processing region as the depository institution in which the check is deposited. Thus, for each check subject to the Act, Congress clearly intended that there be an originating depository institution.

Some checks covered by the Act are written on accounts held at organizations that are not depository institutions, *i.g.*, an insurance company, but are payable through a depository institution. If the term "drawn" in the definition of "originating depository institution" is viewed narrowly, such a draft would be neither a local nor nonlocal check and thus not subject to the Act, since it would be "drawn" on no depository institution. This interpretation would conflict with the Act's definition of check, which the Board believes is intended to cover all drafts payable through depository institutions. In order to resolve this conflict, such drafts must be viewed as being "drawn" on the payable through institution for purposes of section 602(17). In addition, it is clear that Congress did not intend the technical definitions found in state laws governing negotiable instruments to govern interpretation of the Act's provisions. To the contrary, the Act establishes a comprehensive federal framework for

the collection and payment of checks and expressly defines many terms, like "check," in ways that vary from accepted definitions under state laws such as the Uniform Commercial Code. The Act expressly provides that its provisions and the implementing regulations supersede any provision of state law that is inconsistent with the Act.

In short, the term "depository institution on which a check is drawn" in section 602(17) can be read as referring both to the institution at which a customer's funds are held and to the institution through which a draft may be payable. Therefore, where a depositor writes a draft on funds held in one depository institution and where the draft is payable through another depository institution, such as many credit union share drafts, it is unclear from the terms of the statute which institution Congress intended to be the originating depository institution. Where a term is capable on its face of more than one interpretation, construction of that term must depend on the legislative history and purposes of the statute. Based on a review of the fundamental objectives of the statute, the Board finds that these kinds of drafts were also intended to be viewed as drawn on the payable through institution for purposes of determining whether they are local or nonlocal checks.

Under the Board's final rule, credit union share drafts payable through another bank but sent to the credit union on which they were drawn would be considered local or nonlocal based on the location of the credit union. On the other hand, if these drafts were sent to the payable through bank, because they bear the routing number of the payable through bank or because the credit union refused to accept payable through drafts delivered to it, the determination is made based on the location of the payable through bank. As a practical matter, because credit unions using payable through share drafts place the routing number of the payable through bank on their drafts, most of these drafts would be sent to the payable through bank for collection and would be considered nonlocal even though they are deposited in a bank located in the Federal Reserve check processing region where the credit union on which the draft is drawn is located. This approach is consistent with the Act's designation of checks as local or nonlocal based on the time required for the collection and return of the checks.

The approach of basing the determination as to whether a payable through share draft is local or nonlocal

on the location of the credit union would expose the bank receiving the share draft for deposit to increased risks of check fraud, because drafts sent to the payable through institution for collection routinely would be returned after funds would have to be made available under the availability schedules for local checks in the Act. Comments on the proposed rules to implement the Act indicated that sophisticated groups would be likely to take advantage of this opportunity to defraud depository institutions. If the determination of whether the payable through share draft is local or nonlocal is based on the location of the credit union, banks seeking to minimize the losses due to such fraud might be reluctant to accept these share drafts for deposit thereby reducing the acceptance of share drafts. Some commenters are apparently concerned that the treatment of payable through share drafts as nonlocal checks in many cases would reduce the acceptance of these instruments more than their acceptance will be reduced by the potential for increased fraud. On balance, the Board does not believe that this potential for a lower level of acceptance of credit union share drafts offsets the risks of increased fraud to other banks warrants a different approach to the treatment of payable through share drafts.

In addition, treatment of credit union payable through drafts as local or nonlocal depending on the location of the credit union on which they are drawn would greatly complicate the tasks of banks taking share drafts for deposit. Banks must have some reliable method of readily establishing whether a check is local or nonlocal for availability purposes. Because the Act defines the local/nonlocal distinction in terms of Federal Reserve check processing regions, the only practical method available at this time of identifying local and nonlocal checks for purposes of check processing is to rely on the routing numbers that appear on checks, which can be read by automated check processing equipment. Similarly, the only practical way to disclose to customers the difference between local and nonlocal checks is through the use of these routing numbers. In the case of payable through share drafts, the routing number appearing on the draft is that of the payable through bank, not the credit union.

In arriving at a final rule, the Board considered and rejected several alternative approaches to the treatment of credit union share drafts payable through another bank. First, as suggested by some comments, the Board

could have provided that a share draft deposited in an account at a bank is local or nonlocal based on the location of the credit union, even though the share draft is sent to a payable through bank for collection. This approach was rejected because it would expose depository banks to increased risks of check fraud, would be difficult to disclose, and would be difficult to implement as more fully described above.

A second alternative, suggested by one commenter, was to prohibit the use by credit unions and other banks of drafts payable through a nonlocal bank. This alternative would have addressed the risk, disclosure, and operating problems, but has been rejected at this time because it would have been more disruptive than the approach adopted by the Board. The Board, nevertheless, remains concerned about the remote disbursement aspects of the use of nonlocal payable through banks, and may reconsider this issue in the future.

A third alternative was to consider the drawee bank as the paying bank for payable through drafts and hold the drawee bank (usually a credit union) liable for any losses suffered by the depository bank due to the fact that the depository bank had to give local availability on a check that was sent to a nonlocal bank for collection. This alternative only addressed the risk issue and did not deal with the disclosure and operating issues.

After the close of the comment period but before adoption of the final regulation, the Board received affidavits from a trade association. The affidavits were from a payable through bank and a processor that serves payable through banks for a large number of credit union share drafts. These affidavits described these banks' share draft processing operations and speculated that under the check collection improvements required by Subpart C collection and return of share drafts deposited in banks that were not local to the payable through bank might be returned within the local schedules, if certain conditions were met. The Board believes that even if these time frames are met for the checks described, a significant number of credit union share drafts that are payable through nonlocal banks would not be collected and returned within the local schedules. Consequently, the Board believes that the approach taken in the proposal is the fairest alternative and has retained payable through banks in the final regulation's definition of "paying bank."

Although the Board believes that the definition of paying bank as initially proposed provides for the appropriate

treatment of payable through share drafts, the Board notes that future changes in the share draft program could result in reductions in the schedules applicable to such share drafts. For example, if these checks were truncated early in the collection process and were identified by a "truncation eligible" identifying number in the MICR-line, such checks might be collected and returned more swiftly than other checks that are payable through nonlocal banks, and therefore could be included in the reduced schedules provided for in § 229.11(c)(2) or 229.12(c)(2) and included in Appendix B to the regulation. Further, the truncation identifier would facilitate disclosures and internal bank operations.

Two commenters asked that the Board clarify that the payable through bank's duties under the Uniform Commercial Code be changed, i.e., that payable through banks should not be subject to paying bank liabilities. The Board believes that because the payable through or payable at bank would not be making the decision whether to pay a check, it should not be liable for wrongful dishonor. As explained in the Commentary to the final regulation, however, the payable through or payable at bank would be responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable through or payable at bank may contract with the payor with respect to these Subpart C responsibilities. (See Commentary and Comment Summary for Subpart C.)

Five commenters requested that the Board clarify the status of a state government that issues warrants drawn on itself. As stated in the regulation, the definition of "paying bank" includes a state. The definition has been revised to include units of general local government because commenters indicated that some units of general local government draw checks on themselves. The Board believes that it is important that the availability schedules apply to these checks because they include payments that are important to bank customers. It is necessary to include state and local governments in the definition of paying bank so that determinations can be made as to whether checks drawn on them are local checks or nonlocal checks, if the checks do not meet the requirements for next-day availability. Checks drawn on states and units of general local government are excluded from the coverage of Subpart C because the Act does not clearly impose liability on states for failure to meet their duties under Subpart C. Without such liability, imposing the duties of Subpart C on

states or units of general local government would have little effect.

One credit union requested that the Board provide a transition period for credit unions who use nonlocal payable through banks so that they can modify their practices. The Board did not make such a provision because section 603(c)(3) of the Act provides that the temporary availability schedules go into effect on September 1, 1988. As explained in the Regulatory Flexibility Analysis, the Board will not make exceptions in the regulation for specific types of institutions.

One commenter said that to condition the definition of "paying bank" on the "sending" of a check may cause uncertainty under future truncation arrangements where checks are not actually "sent." The Board has not changed the definition but has clarified in the Commentary that truncation arrangements do not affect the definition.

The Commentary to the definition of "paying bank" has also been revised to clarify that a check sent to a bank for payment based on that bank's routing number on the check is the paying bank with respect to that check even if the check is fraudulent and is not drawn on the paying bank.

"PROPRIETARY ATM"

The proposed regulation defined "proprietary ATM" as an ATM that is (1) owned or operated by, or operated exclusively for, the depository bank; (2) located on the premises (including the outside wall) of the depository bank; or (3) within 50 feet of the premises of the depository bank. The definition further provided that an ATM is not considered to be proprietary to more than one unaffiliated bank; if the criteria of provisions (1) through (3) are met by more than one bank with respect to any ATM, the ATM would be proprietary to the bank that satisfied the lowest-numbered criterion. The definition stated that if more than one bank meets the owned or operated criterion, the ATM is considered proprietary to the bank that operates it.

The Board received 103 comments, the majority from commercial banks, on the definition of proprietary ATM. Four commenters agreed with the proposed definition. One commercial bank asked that the Board make no distinction between proprietary and nonproprietary ATMs. This request is clearly contrary to the Act, which explicitly defines "proprietary ATM" in section 602(16) and provides for different availability requirements depending on whether an

ATM is proprietary or nonproprietary in section 603(e).

Fifty-seven commenters said that the Board should require disclosure of ownership as a part of the definition. Two commenters felt that posting the name of the proprietary bank on every ATM would be confusing to customers who use shared ATM networks. In an attempt to minimize disclosure burden and consumer confusion, and in recognition of the fact that some states do not allow identification of the proprietary bank on an ATM, the Board's final regulation does not require that the name of the proprietary bank be posted at each ATM. Section 229.16(b)(5) of the regulation has been amended to provide that a depository bank's disclosure statement shall contain a description of how the customer can differentiate between a proprietary and a nonproprietary ATM, if the bank imposes delays on deposits at nonproprietary ATMs longer than on deposits at proprietary ATMs.

Twenty-eight commenters requested clarification of the criterion that states that a proprietary ATM is one that is within 50 feet of the premises of the depository bank. One bank holding company suggested that the question of whether an ATM is proprietary should be determined solely by the owned/operated criterion and not by the location of the ATM. Because section 602(16)(A)(ii) of the Act provides that a proprietary ATM is one that is in close proximity, as defined by the Board, to the depository bank, the Board retained the 50-foot criterion but added the phrase "and not identified as being owned or operated by another entity" for clarification.

Three commenters requested that the Board define and clarify the distinctions between owning and operating an ATM. The Board has revised the Commentary accordingly.

Twenty-four commenters asked that the Board either strike or clarify the provision that an ATM is not considered to be proprietary to more than one unaffiliated bank. The Board has revised the definition to address the concerns of the commenters. The final regulation's definition eliminates the "unaffiliated" provision and the provisions regarding the priority rules governing the three criteria. The Board believes that the final definition is clearer and easier to apply than the definition originally proposed. Based on a question asked by seven commenters, the Commentary clarifies that some ATMs may not be proprietary to any bank.

One commenter suggested that an on-premise ATM should not be proprietary to the bank that owns it if another bank

services it. The regulation provides that if more than one bank meets the owned or operated criterion, the ATM is considered proprietary to the bank that operates it.

A commercial bank asked whether an ATM that is jointly owned but operated by a third-party contractor is proprietary to both owners/operators. The Commentary has been expanded to explain that where the ATM is jointly owned, and operated by a nonbank servicer, the ATM is proprietary to the owners.

Another commercial bank asked whether the lead bank in an ATM network is the proprietary bank for those ATMs owned and operated by franchisees. Under the regulation's priority rules, if the franchisee is the owner/operator, the franchisee, not the lead bank, is the proprietary bank.

Three commenters asked the Board to clarify whether an ATM that is proprietary to one bank within a holding company is automatically proprietary to all affiliated banks. As stated above, the final regulation does not include the "unaffiliated" provision, therefore, in this situation, the ATM would not be proprietary to all affiliated banks.

The Commentary has also been revised to clarify that the operator of an ATM is the person that puts deposited checks into the forward collection stream and to make other clarifications.

"QUALIFIED RETURNED CHECK"

The proposed regulation defined "qualified returned check" ("QRC") as a check that is prepared for handling by automated check processing equipment for return to the depository bank. The definition provided that a qualified returned check must be encoded in magnetic ink with the routing number of the depository bank, the dollar amount of the check, and a return identifier in the form of a "2" in position 44 of the MICR-line.

The Board received 24 comments on the definition of "qualified returned check." Nineteen commenters suggested that the bank that creates a QRC should encode its routing number on the check in order to leave an audit trail. The Board believes that it would be beneficial for the creator of a QRC to print its name and routing number on the QRC, either on the envelope or strip, but believes that the costs to the industry of doing so might outweigh the benefits of being able to identify the creating bank. The Board has not included this requirement in the final regulation because of the uncertain expense and burden to the qualifying bank.

One commercial bank was opposed to any provision for QRCs in the regulation. The commenter cited operational difficulties associated with carrier envelopes and adhesive strips and generally opposed the use of QRCs. The Board believes that, overall, the preparation of QRCs for automated processing speeds up the return system, despite the occasional operational problem. Because of the importance of shortening check return times, the Board will continue to encourage the creation of QRCs in the final regulation.

A bank holding company requested that the Commentary state that a QRC may be automated by use of electronic media accompanying the returned check as an alternative to the stripping process. The Board rejected this proposal because, at this time, electronic media may not be readily usable by returning banks generally.

A savings and loan institution commented that it is not necessary to encode the dollar amount of the check on a QRC. The definition has retained the dollar amount requirement as this is necessary for high speed processing of the check.

The definition in the regulation has been amended to delete the content requirements for the MICR encoding on QRCs. These requirements have been moved to §§ 229.30 and 229.31 so that a returned check may be a QRC even if there is an encoding mistake. Clarifying changes have also been made to the Commentary.

"RETURNING BANK"

The proposed regulation defined "returning bank" as a bank (other than the paying or depository bank but including a Federal Reserve Bank or Federal Home Loan Bank) handling a returned check or notice in lieu of return.

Because the definition of "bank" has been revised in the final regulation to include Federal Reserve Banks and Federal Home Loan Banks for the purposes of Subpart C, and in connection therewith, Subpart A, the clause including such banks as "returning banks" has been deleted as superfluous.

Two commenters noted that the definition of "returning bank" specifically excluded the depository bank, but the Commentary on "returning bank" did not. The Commentary has been amended to correspond to the language of the regulation.

The definition of returning bank has been revised in the regulation and the accompanying Commentary to clarify that a returning bank is considered a

collecting bank for the purpose of the U.C.C. midnight deadline applicable to collecting banks.

"SIMILARLY SITUATED BANK"

The proposed regulation defined "similarly situated bank" as a bank of similar size, located in the same community, and with similar check payments activities as the paying bank or returning bank.

One trade association asked the Board to clarify the meaning of the phrase "similar check payment activities" which is part of the "similarly situated bank" definition. The definition of similarly situated bank and the Commentary to § 229.30(a)(2) have been expanded to explain that two banks have similar check payment activities if they handle a similar volume of checks.

"TELLER'S CHECK"

The proposed regulation defined "teller's check" as a check drawn by a bank on another bank.

The Board received five comments on the definition of "teller's check." Two commenters favored giving next-day availability to checks drawn by banks on bank holding companies and suggested that such checks be included in the definition of "teller's checks." The Board agrees that such checks are the functional equivalent of teller's checks and has redefined "teller's check" to be any check drawn by a bank on another bank or payable through or at a bank. The Board believes that any check drawn by a bank, even if drawn on a nonbank, that is payable through or at a bank is generally as low-risk as checks drawn by a bank on another bank because the drawing bank is responsible for the check. Such checks usually appear to be teller's checks to those who purchase and accept them.

One Federal Home Loan Bank suggested that a special provision for next-day availability for Federal Home Loan Bank checks drawn by other banks would not be necessary as they are already included in the definition of "teller's check" as a check drawn on one bank by another. Because the definition of "bank" includes Federal Home Loan Banks for the purposes of Subpart C, but not Subpart B, checks drawn on Federal Home Loan Banks must be specified separately in § 229.10(c).

A commercial bank asked that the term "teller's check" be changed to "bank draft." The Board decided that "bank draft," which is sometimes used in place of "teller's check," can easily be misinterpreted to mean any draft drawn by a bank. The Board prefers the narrower term "teller's check" for checks drawn by one bank on another.

Another commercial bank commented that if teller's checks are to be treated the same as cashier's checks for availability purposes, then stop payment of teller's checks should not be allowed, and Article 3 of the Uniform Commercial Code should be amended accordingly. The Board is aware of the stop payment problem associated with the use of teller's checks and other "near-cash-equivalent" items. The Board may address this issue in the future, but to do so at this time would be premature. The definition also has been revised and a Commentary added to exclude checks drawn by a bank to pay employees and vendors.

"TRAVELER'S CHECKS"

The definition of "traveler's check" has been revised to clearly limit it to traveler's checks drawn on a bank and to exclude the references to the denominations of these checks. A Commentary has been added to aid banks in identifying traveler's checks.

"WIRE TRANSFER"

The definition of "wire transfer" and the Commentary have been revised to more clearly exclude point-of-sale and related transactions.

Miscellaneous Comments

One commenter requested that the Board define "insufficient funds" and "uncollected funds." Another asked the Board to define "hold." The Board believes that these are commonly-used terms that need no explicit definition in the regulation.

The Board received 21 comments on the issue of whether the regulation allows banks to send cash items for collection. Fifteen commenters favored sending cash items for collection, two were opposed, and three requested clarification on this issue. The Congress clearly did not intend for banks to be able to evade the statutory availability schedules. (See Commentary and Comment Summary to "noncash item.")

Three commenters asked that the final regulation contain a letter or number for each definition. The Board has amended the regulation accordingly.

Section 229.10 Next-Day Availability.

(a) *Cash deposits.* The Board received 504 letters that commented on § 229.10. Those 504 letters contained 179 comments in response to § 229.10(a) on cash deposits. The proposed rule stated that a bank shall make funds deposited in an account by cash available for withdrawal not later than the business day after the banking day on which the cash is deposited. The proposed rule differed from the Act's language, which

provides next-day availability for cash only when deposited at a staffed facility. The Board proposed to expand next-day availability for cash deposits to include deposits made to unstaffed locations because current law generally provides for next-day availability for cash deposits, and the Board was not aware of any impediments to providing such availability at unstaffed locations such as proprietary ATMs, night depositories, lobby deposit boxes, or through the mail. The Board requested comment on any problems this requirement may pose for depository banks.

Many commenters opposed the proposed rule on cash deposits. Of the 179 commenters that discussed this issue, only 15 favored next-day availability for all cash deposits. Ninety-nine commenters asked for at least one additional day before giving availability to deposits made at unstaffed locations. Commenters cited verification problems at off-premise ATMs and drop boxes. Commenters explained that it is generally not possible to collect and verify deposits made at off-premise unstaffed locations in time to make funds available the next morning. Fifty-one commenters stated that the 2:00 p.m. cut-off hour is too late to give the depository bank enough time to collect from and balance off-premise ATMs. These commenters also noted that night deposit boxes are for the convenience of customers who make late evening deposits, and that the bank usually empties them out early in the morning. The commenters stated that it would not be fair to require banks to give next-day availability for cash deposits to night depositories made after the morning pick-up but before the 2:00 p.m. cut-off hour. Many commenters suggested that cash deposits be considered received when the ATM or depository is serviced by the bank.

Twelve commenters cited § 4-106 of the U.C.C., which provides that each branch is considered a separate bank for determining the time at which a bank must carry out an action. The commenters argued that the cash deposit rule should accord with the U.C.C. (i.e., a cash deposit to an off-premise facility should not be considered made to the depository bank until actually received at the depository bank), or should at least apply to only cash deposits made in the same state where the account is located.

Because of the operational difficulties in making cash deposited at unstaffed facilities available the day after deposit, the Board has revised this paragraph and the accompanying Commentary to

require that cash deposits at unstaffed facilities be available for withdrawal on the second business day after the banking day of deposit. (See also discussion of modification to provision related to cut-off times in § 229.19(a).)

(b) *Electronic payments.* The comments the Board received on § 229.10(b), electronic payments, are covered in the definitions section under "electronic payment." This paragraph and the Commentary have been revised to provide that an electronic payment is received when the bank has received both actually and finally collected funds and the information on the account and the amount to be credited. The Commentary has also been revised to clarify that this paragraph does not affect Treasury or ACH association rules on the availability of ACH payments.

(c) *Certain check deposits.* The Commentary to § 229.10(c) has been revised to reflect changes to the regulation, discussed below, concerning deposits of certain checks at unstaffed facilities. As in the case of cash, commenters indicated that these checks should not be given next-day availability unless deposited at staffed facilities in accordance with the Act.

(c)(1)(i) *Treasury checks.* Twenty-five commenters responded specifically to § 229.10(c)(1)(i), which provides next-day availability to checks drawn on the Treasury of the United States and deposited in an account held by the payee of the check. One trade association agreed with the proposed rule. A commercial bank opposed the rule because of the high risk of forgery of Treasury checks. Twenty-four commercial banks, citing the long delays of government check returns, requested that the Treasury or the Federal Reserve provide a telephone inquiry service through which a depository bank could verify a Treasury check. A savings and loan institution requested that next-day availability be limited to those Treasury checks deposited by direct deposit (ACH).

The Board has made no changes to § 229.10(c)(1)(i) of the proposed rule. The statutory language (section 603(a)(2)(A) of the Act) is clear and indicates that next-day availability be given to Treasury checks regardless of whether or not they are deposited at a staffed facility. The Board recognizes the risk of forgery, but does not believe that Treasury checks are more susceptible to forgery than any other type of check that requires next-day availability.

The Board has elected not to establish any duty on issuers of next-day checks (government entities or banks) to respond to inquiries concerning those

checks. The Board was concerned with the burden on paying banks to implement procedures to respond promptly to such inquiries, especially given the short time in which such a service would have to be established. The Board will continue to study the need for and feasibility of an inquiry service in cooperation with the banking industry.

The Commentary to this provision has been revised for clarity.

(c)(1)(ii) *U.S. Postal Service money orders.* Section 229.10(c)(1)(ii) of the proposed regulation provided next-day availability for U.S. Postal Service money orders deposited into an account held by a payee of the money order. The Act does not address U.S. Postal Service money orders, but the Board proposed to add them as next-day checks because they are functionally equivalent to other next-day checks and do not present greater risk of loss to banks.

Twenty-two commenters opposed the addition of U.S. Postal Service money orders to the next-day availability list. The commenters cited reasons such as high risk of forgery and theft, untimely returns, and lack of holder in due course status under U.C.C. § 3-805. Four commenters agreed with the inclusion of U.S. Postal Service money orders, and one commenter requested that the Board publish a directory of routing numbers for these items. U.S. Postal Service money orders generally bear the routing number "0000 0800 2." Appendix A has been expanded to include a list of routing numbers designating certain categories of checks that must be accorded next-day availability.

The Board believes that U.S. Postal Service money orders are no more prone to forgery and theft than other types of next-day checks. The Board believes that U.S. Postal Service money orders are used for payments that are important to the recipients of the payments and should be covered by the availability schedules. Section 229.10(c)(1)(ii) of the final regulation has been revised to require U.S. Postal Service money orders to be deposited at staffed facilities in order to obtain next-day availability.

(c)(1)(iii) *Federal Reserve Bank and Federal Home Loan Bank checks.* Section 229.10(c)(1)(iii) of the proposed regulation provided next-day availability for checks drawn on a Federal Reserve Bank or Federal Home Loan Bank and deposited in an account held by a payee of the check. The Act does not address Federal Reserve Bank or Federal Home Loan Bank checks, but the Board proposed to add them as next-day checks. Section 602(11) of the Act provides that the term "depository

check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board. The Board determined that Federal Reserve Bank and Federal Home Loan Bank checks are often used as the functional equivalent of cashier's, certified, and teller's checks, and, in the case of fiscal agency checks, Treasury checks.

Three commenters agreed with the proposed rule. Twenty-four commenters opposed the inclusion of Federal Reserve Bank and Federal Home Loan Bank checks. The commenters cited reasons similar to those cited for opposition of the inclusion of U.S. Postal Service money orders—forgery, theft, and untimely returns. Ten commenters requested that Federal Home Loan Bank checks drawn outside the depository bank's Federal Reserve district be considered nonlocal checks because of their longer return time. Two Federal Home Loan Banks noted that inclusion of their checks as next-day checks would decrease the acceptability of their checks by depository banks. Two commenters stated that no checks should be added to the next-day list unless they are subject to the new account exception.

The Board believes that Federal Home Loan Bank and Federal Reserve Bank checks, like U.S. Postal Service money orders, are no more prone to forgery and theft than other types of next-day checks. The likelihood of return of such checks is generally less than the likelihood of return of cashier's, teller's, and certified checks from banks. Return times for Federal Reserve Bank and Federal Home Loan Bank checks are generally equal to or faster than return times for cashier's, certified, and teller's checks. Furthermore, checks drawn on Federal Reserve Banks and Federal Home Loan Banks by other banks are not significantly more risky than those drawn by the Federal Reserve Bank or Federal Home Loan Bank. Consequently, the Board determined that Federal Reserve Bank and Federal Home Loan Bank checks are the functional equivalents of cashier's, certified, and teller's checks and therefore should be subject to the next-day availability requirements in the final regulation.

Section 229.10(c)(1)(iii) of the final regulation has been revised to require that Federal Reserve Bank and Federal Home Loan Bank checks be deposited at staffed facilities in order to obtain next-day availability.

One bank holding company requested that the Board publish a directory of Federal Reserve Bank, Federal Home Loan Bank, and U.S. Postal Service

money order routing numbers. The Board has included these routing numbers in Appendix A to the final regulation.

(c)(1)(iv) *State and local government checks.* Section 229.10(c)(1)(iv) of the proposed regulation provided next-day availability for a check drawn by a state or local government that is deposited: in an account held by the payee of the check; in a depository bank located in the same state that issued the check or the same state as the unit of local government that issued the check; and with a special deposit slip, if such slips are required by the depository bank under § 229.10(c)(2).

The Board received 13 comments on this provision. Four commercial banks agreed with the requirement that to receive next-day availability, the check must be deposited in a depository bank located in the same state as the state or unit of local government that issued the check.

Eight commercial banks and one bank holding company opposed giving state and local government checks next-day availability, largely because such checks are a high forgery risk. Sections 603(a)(2)(B) and (C) of the Act, however, specifically grant next-day availability to state and local government checks. The Act contains a requirement for next-day availability that was not included in the proposed regulation, i.e., that the check must be deposited to a staffed facility. In view of the risk of fraud and the technical problems of giving next-day availability to ATM deposits (discussed below), the Board has amended the regulation to permit a bank to require that to receive next-day availability, state and local government checks must be deposited in person to an employee of the depository bank.

Section 229.10(c)(1)(iv) has been revised to permit a bank to require the use of special deposit envelopes as well as special deposit slips.

(c)(1)(v) *Cashier's, certified, or teller's checks.* Section 229.10(c)(1)(v) of the proposed regulation provided next-day availability for depository checks that are deposited in an account held by the payee of the check and deposited with a special deposit slip, if such slips are required by the depository bank under § 229.10(c)(2). Because the term "depository check" has been eliminated from the regulation, the final regulation refers to these checks by name, i.e., cashier's checks, certified checks, and teller's checks.

The Board received 99 comments on the depository check provision. Sixty-one commenters opposed next-day availability for cashier's, certified, and teller's checks. Most of the commenters

were concerned about the risk of fraud with such checks. The commenters noted that these checks are often forged or stolen and that the depository bank would undergo great risk by making funds available before knowing whether the check was genuine.

Other commenters suggested that the Board should put more limitations on the conditions under which cashier's, certified, and teller's checks must be given next-day availability. Twenty-six commercial banks suggested that only checks drawn by a bank on itself should receive next-day availability. Five commenters suggested that only those cashier's, certified, and teller's checks that are local checks to the depository bank should get next-day availability. A credit union and a bank holding company suggested that next-day availability for these checks be required only when deposited in accounts that are at least six months old.

Section 603(a)(2)(F) of the Act specifically grants next-day availability to cashier's, certified, and teller's checks. The Act contains a requirement for next-day availability that was not included in the proposed regulation, i.e., that the check must be deposited to a staffed facility. In view of the risk of fraud and the technical problems of giving next-day availability to ATM deposits (discussed below), the Board has amended the regulation to permit a bank to require that cashier's, certified, and teller's checks must be deposited in person to an employee of the depository bank to receive next-day availability. Given the Act's specific requirements for next-day availability, the Board believes it would be inappropriate to include any of the other limitations suggested by the commenters.

One commercial bank suggested the regulation explicitly exclude personal money orders from next-day availability. The Board believes that such language is unnecessary because, generally, personal money orders are not covered by the definitions of cashier's, teller's, or certified checks, and therefore would not be afforded next-day availability. Personal money orders are generally signed by the purchasing customer, not by an officer of the issuing bank and therefore are not cashier's checks subject to the requirement for next-day availability.

The regulation has also been revised to permit a bank to require the use of special deposit envelopes as well as special deposit slips.

(c)(1)(vi) *"On us" checks.* Section 229.10(c)(1)(vi) of the proposed regulation provided next-day availability for checks deposited in a branch of the depository bank and

drawn on the same or another branch of the depository bank if both branches are located in the same state or the same check processing region.

The Board received 20 comments on this provision. One bank holding company agreed with the provision (but disagreed with giving next-day availability to any other type of check). Fourteen commenters requested that the provision remain as proposed regarding the treatment of payable through drafts, i.e., that payable through drafts not be considered on us checks for the payable through bank.

The Act and final regulation afford next-day availability to checks deposited to and drawn on the same bank, i.e., on us checks do not include payable through drafts deposited in the payable through bank. The Board believes that to treat payable through drafts as on us checks for the payable through bank would create risks for the payable through bank, because the time necessary to verify that the check will be paid by the drawee of the check would often extend beyond the opening of business the next day when funds must be made available. The treatment of payable through drafts as on us checks for the drawee bank and not for the payable through bank is different from the treatment of payable through drafts under the definition of "paying bank." The final regulation treats the payable through banks as the paying bank for payable through drafts. (See Commentary and Comment Summary on the definition of "paying bank.") These two rules are consistent in that they both minimize the risk of fraud for the depository bank.

Two commercial banks and one savings and loan institution suggested that on us checks should have an extra day before funds are made available so that the depository bank has extra time to verify the signature of the drawer. Given the Act's specific requirements for next-day availability for on us checks (section 603(a)(2)(E)), the Board believes it would be inappropriate to add another day to the statutorily mandated availability schedule.

Two commenters asked whether a statewide bank that covers two check processing regions must give next-day availability to on us checks when the check is deposited at a branch in a different check processing region from the branch on which the check is drawn. Under the Act and the regulation, as long as the two branches are in the same state or the same check processing region, the on us check must be given next-day availability.

Accordingly, § 229.10(c)(1)(vi) has not been revised, although the Commentary to it has been revised for clarity.

(c)(1)(vii) *\$100 rule*. Section 229.10(c)(1)(vii) of the proposed regulation provided that the depository bank give next-day availability to the lesser of \$100 or the aggregate amount deposited on any one banking day by check or checks other than checks subject to § 229.10(c)(1) (i) through (vi).

The Board received 71 comments on the \$100 dollar rule. Thirty-four commenters opposed the \$100 rule. The major reasons given for opposition were risk and operational burden. The commenters complained that to require depository banks' to provide automatically up to \$100 on the day after deposit is an invitation to fraud. Many commenters also noted that it is extremely difficult for banks to keep track of the \$100 and the rest of the deposited funds separately.

In addition to the commenters who explicitly opposed the \$100 rule, 14 others pointed out the operational problems that banks will have in complying with the rule. Because many banks, automated systems lack the capacity to track the \$100 separately from the rest of the deposit, the commenters predicted that depository banks would either have to make \$100 available every day or would have to make the entire deposit available on the business day after deposit. The commenters considered either option to be excessively risky for the depository bank.

The Board appreciates the risks and burdens of the \$100 rule, but given the Act's provision that a depository bank give next-day availability to "the first \$100 deposited by check or checks on any one business day" (section 603(a)(2)(D)), the Board has retained the \$100 rule in the final regulation.

Three commenters suggested that the aggregation of deposits for the purposes of the \$100 rule be on a per-customer, not a per-account basis. The commenters pointed out that if aggregation is done on a per-account basis, a customer could evade the \$100 limitation by making deposits to multiple accounts on the same day. The Board concurs with the commenters, and has clarified that aggregation may be across all deposits by check or checks on any one banking day to all accounts of the customer. Similarly, two commenters asked that the regulation clarify that the \$100 rule applies to the aggregate of all the deposits on one banking day, not to each individual deposit. The language of the regulation clearly states that aggregation for the \$100 rule may be across all of a

customer's deposits during one banking day.

Two commenters suggested that next-day checks should be included in the aggregation for purposes of the \$100 rule. In the Board's view, the Act provides for next-day availability of up to \$100 of local and nonlocal checks deposited *in addition to* the next-day checks described in § 229.10(c)(1) (i) through (vi). The final regulation and the Commentary have been revised to clarify the relation between the \$100 rule and other availability requirements.

Five commenters asked whether the depository bank must make \$100 available on the next day if the customer receives at least \$100 cash back on the deposit at the time of deposit. The Commentary has been amended to clarify that, in such a case, the depository bank need not make another \$100 available the next day. Similarly, four commenters suggested that the \$100 rule should not apply to deposits which the depository bank has applied towards a negative balance. The Commentary has been modified to explain that if the account to which the deposit is made has a negative book balance or negative available balance at the time of deposit, the \$100 that must be available on the next business day may be made available by applying the \$100 to the negative balance rather than by withdrawal by cash or check the next day.

Five commenters asked whether a bank has discretion to choose from which deposited check the \$100 is to be deducted. It is the Board's view that the bank may choose from which local or nonlocal check or checks the \$100 is deducted as long as the remaining balance is made available for withdrawal according to the appropriate local or nonlocal schedule.

Two commenters suggested that the \$100 rule should be waived in the cases where the depository bank makes the entire amount of the deposit available when provisional credit is received. The Board believes this suggestion is contrary to the Act and has not incorporated it into the final regulation. Under such a rule, in certain cases the depository bank would not receive next-day provisional credit from its correspondent and would not give next-day availability to any portion of the deposit even for checks that are next-day checks under the Act.

(c)(2) *Checks not deposited in person*. A new paragraph has been added concerning checks not deposited at staffed facilities. Certain checks, including U.S. Postal Service money orders, state and local government checks, Federal Home Loan Bank and

Federal Reserve Bank checks, and cashier's, certified, and teller's checks, must be deposited in person to an employee of the depository bank in order to receive next-day availability. This new paragraph provides that when these checks are not deposited in person to an employee of the depository bank, they must be made available on the second business day after deposit.

(c)(3) *Special deposit slip*. Section 229.10(c)(2) of the proposed regulation provided that, as a condition to giving next-day availability, a depository bank may require that a state or local government check or a depository check be deposited with a special deposit slip that identifies the type of check. The paragraph also provided that if a depository bank requires a special deposit slip, it must make the slips readily available to its customers. Because the term "depository check" has been eliminated from the regulation, the final regulation (in § 229.10(c)(3)) refers to these checks by type, i.e., cashier's checks, certified checks, and teller's checks.

The Board received 92 comments on the special deposit slip provision. Fifty commenters disapproved of the provision. Most of the commenters stated that special deposit slips are a useless alternative for the depository bank and predicted that few banks would take advantage of the provision. The commenters cited problems such as the increased expense of printing the new slips and reprogramming sorting systems, inconvenience to both banks and customers, and confusion on the part of customers who must determine when to use the special slip. Many commenters stated that they would not use the special deposit slips, but would instead resort to a manual sorting system which will increase costs and slow up processing.

The Board recognizes the disadvantages of special deposit slips. The use of special deposit slips is optional, not mandatory, in both the Act and the final regulation. Special deposit slips may be used by banks that wish to identify checks that cannot be identified as next-day checks by their routing number.

Fifteen commenters requested that the special deposit slip provision be expanded to include all next-day checks for which next-day availability is conditioned on the check being deposited into an account held by a payee of the check. The commenters pointed out that in an automated system, the depository bank can not ascertain whether the next-day check has been deposited into an account of

payee. The Act clearly states that state and local government, cashier's, certified, and teller's checks are the only checks for which a bank can require a special deposit slip for next-day availability. The Board believes that it would not be appropriate to expand on the statutory limitations. Furthermore, Treasury checks and other next-day checks for which special deposit slips may not be required can be identified from their routing numbers by high speed equipment.

Fourteen commenters asked for clarification regarding the teller's duty to inform the customer that a special deposit slip may be required for next-day availability. The regulation does not impose an affirmative duty on the teller to alert a customer that a special deposit slip may be appropriate, as long as the bank has notified the customer in its general disclosure statement that special deposit slips are required for next-day availability of state and local government, cashier's, certified, and teller's checks, and the special slips are made readily available to the customer. If a bank agrees to prepare a deposit for a customer, however, it must use a special deposit slip when appropriate.

Thirteen commenters expressed concern over the potential misuse, either intentional or accidental, of special deposit slips by customers. The commenters suggested that the depository bank should be able to maintain control of the special deposit slips, i.e., not provide free access to the slips in the lobby but keep them behind the teller counter. A bank may retain some control over the dispensation of special deposit slips as long as the slips are reasonably and freely available and that customers are informed as to where in the branch the slips can be obtained.

This section and the Commentary to it have been revised to permit the use of special deposit envelopes for use at ATMs and other unstaffed facilities. The Commentary has also been revised to clarify the requirement that special deposit slips be available for customers.

Other comments on § 229.10—Account of payee requirement. The Board received 18 comments on the requirement that Treasury checks, U.S. Postal Service money orders, Federal Reserve Bank and Federal Home Loan Bank checks, state and local government checks, and cashier's, teller's, and certified checks be deposited into an account held by a payee of the check to get next-day availability. Seven commenters agreed with the requirements as proposed.

Five commenters addressed the situation where there is more than one payee on a check. Two commenters

suggested that the regulation should require joint payee checks to be indorsed by all payees with the signature guaranteed for any payee who is not a joint holder of the account into which the check is deposited. Three commenters requested that the regulation require that all payees of the check must also be holders of the account for the check to get next-day availability. Another commenter asked that the regulation require the check to be deposited into an account held by one of the payees, not necessarily all of the payees.

The language of the Act is somewhat different from the language of the proposed regulation. The Act provides that the check be "endorsed only by the person to whom it was issued." This statutory provision could be interpreted to include a check that has been indorsed in blank and deposited to the account of a third party. The Board believes that the Act intends to allow the depository bank to limit next-day availability to those next-day checks that are deposited to an account of a payee, and reworded the provision in the regulation accordingly. The final regulation requires only that the check be deposited in an account of a payee; all joint payees need not be holders of the account as long as all joint payees have indorsed the check. Two commenters requested that the Board clarify that "payee" means the named payee on the check, not transferees. The Commentary has been amended to require that checks be deposited in the account of an original payee of the check.

Availability based on provisional credit. Forty-five commenters suggested that depository banks should be able to make funds available on the date on which the depository bank receives provisional credit for the deposited checks rather than on the day after deposit. Many of the commenters stated that if banks give availability to uncollected funds, they will be in essence making loans to the account holders. Others commented that it was unfair for a depository bank to have to make funds available to its customers before the bank to which the checks are sent in the forward collection chain makes funds available to the depository bank.

In most cases, banks receive next-day provisional credit for checks, therefore the statutory local and nonlocal availability schedules would actually be longer than the time by which funds would be made available. In certain cases, however, provisional credit would not be received on the day after deposit and the statutory next-day

availability requirements would not be met (e.g., for nonlocal cashier's, certified, and teller's checks). Because the Act clearly provides for next-day availability for certain checks, the Board decided it would not be appropriate to allow depository banks to extend availability for such checks. Depository banks are free, however, to give better availability to local and nonlocal checks than is required by the Act and the regulation.

Certain Federal Reserve Bank practices. Three commercial banks commented that the Federal Reserve Bank in their district requires all in-district banks to make a separate sort of all checks under \$100 drawn on in-district banks. Because of this practice, out-of-district banks get faster availability on low-dollar checks than do in-district banks. Given the requirement of § 229.10(c)(1)(vii) that up to \$100 of local and nonlocal checks be given next-day availability, the commenters requested that their local Federal Reserve Bank process in-district, low-dollar checks as fast as out-of-district, low-dollar checks. The Federal Reserve Bank's policy will be changed accordingly.

Record of losses. Two commenters suggested that banks should keep a record of losses that are attributable to the availability schedules. The Board suggests that such records may be useful for banks to keep, but has not required that they be kept under the regulation.

Calculation of reserves. Four commenters asked whether pay-outs of uncollected funds should be included as "cash items in process of collection" for calculation of reserves. Alternatively, the commenters asked if such pay-outs should be included as "vault cash" that would serve as a portion of maintained reserves. Cash items in the process of collection are a deduction from reservable deposits for uncollected funds. Similarly, a withdrawal of funds from an account is a deduction from reservable deposits. (See 12 CFR 204.) Including withdrawals of uncollected funds as cash items in the process of collection could result in a double deduction that would be inappropriate. Similarly, accounts paid out in withdrawals are not available to meet depositors' claims and therefore should not be considered as vault cash.

General comments. Several banks did not comment specifically on a particular provision, but instead made general comments on next-day availability. Twelve commenters voiced opposition to next-day availability in general (some opposed the local and nonlocal schedules as well) on the grounds that

such availability will induce an unacceptable level of fraud. Two commenters noted that remote community banks will be especially hard-hit by the next-day availability requirements because all of their checks are processed at a central processing facility, which increases the length of the collection and return process. Two commenters requested a delay in the implementation date for next-day availability to give banks time to update their computer systems before exposing themselves to liability for next-day availability. Due to the language of the Act requiring that all depository banks provide next-day availability as provided in § 229.20 and that such availability is to be implemented on September 1, 1988, the Board has retained the requirements for next-day availability subject to the changes discussed above.

Sections 229.11 and 229.12 Temporary and Permanent Availability Schedules.

Section 229.11(a) and Section 229.12(a) Effective date. The proposed regulation provided that the temporary availability schedule is to be effective from September 1, 1988, through August 31, 1990, and the permanent availability schedule is effective September 1, 1990. The Act mandated these effective dates, but provided in sections 603(b)(4) and 603(c)(3) that the Board could accelerate the implementation of the permanent schedule. The Board requested comment on whether the permanent schedule should become effective earlier than September 1, 1990. Of the 260 comments received on whether the schedules should be implemented earlier, 248 were opposed. In view of the operational problems that banks would face if the schedules were to be implemented earlier than provided in the Act, the Board has decided not to change the effective dates of the availability schedules.

Nine commenters suggested that the Board eliminate the two-tiered schedule approach and implement one schedule, either the temporary or a compromise between the temporary and permanent, in 1989.

Twelve commenters opposed the schedules in general. Three of these commenters noted that the schedules are workable only for banks that have their own data processing capture system and that many thrifts and credit unions operate real-time and cannot capture float. The Board has not modified the final regulation in accordance with these comments because the statutory scheme includes a temporary and a permanent schedule and sets the latest possible dates by

which each must be effective. The Board has attempted to minimize the disruption from moving to shorter schedules as much as possible in the regulation.

Three commenters asked if banks can, on their own, meet the statutory schedules before they become effective. Banks may provide better availability than mandated by the statute at any time.

Sixty-three commenters requested that the Board delay implementation of both the temporary and permanent schedules. Most of the commenters asked that the delay be for as long as it takes for the check return system to be improved. Others requested extra time to make software changes or to redesign their checks. Because of the requirements of the Act, the final regulation does not delay the implementation of the schedules.

Section 229.11(b)(1) and section 229.12(b) Local checks and certain other checks.

The proposed regulation provided that U.S. Treasury checks and U.S. Postal Service money orders that are not subject to next-day availability under § 229.10 and all local checks must be made available the third business day following the banking day of deposit during the temporary schedule and the second business day following the banking day of deposit under the permanent schedule.

The Board received two comments on the general local check provisions. One commercial bank pointed out that the local schedules should also apply to state and local government checks, Federal Reserve Bank and Federal Home Loan Bank checks, and cashier's, certified, and teller's checks that are not subject to next-day availability under § 229.10. The Board has amended §§ 229.11(b) and 229.12(b) to explicitly include these checks. (The Board also made similar amendments to the sections governing availability of nonlocal checks, §§ 229.11(c) and 229.12(c).)

One savings and loan institution requested that local availability should be given only to a local check deposited into an account of a payee of the check. The Board has not incorporated this suggestion into the final regulation because the Act (sections 603(b)(1) and 603(c)(1)) clearly does not intend that such a requirement be a prerequisite of availability under the local schedules.

Sections 229.11(b)(1) and 229.12(b) and the corresponding Commentary sections have been revised to clarify the treatment of next-day checks that are

local checks and do not meet the requirements for next-day availability.

Section 229.11(b)(2) and section 229.12(d) Time period adjustment for withdrawal by cash or similar means.

Clearinghouse association rule. The proposed regulation provided that a depository bank may extend by one business day the time that funds deposited into an account by a local check under the temporary schedule or by local or nonlocal check under the permanent schedule are available for withdrawal by cash or similar means. Under the temporary schedule, however, the extension would not apply to checks drawn on a paying bank that is a participant in the same check clearinghouse association as the depository bank.

The Board received five comments on the same-clearinghouse provision. Three commercial banks and one savings and loan institution commented that it would be difficult for tellers and customers to determine whether the paying bank of a deposited check is in the same check clearinghouse association as the depository bank and that this provision should be dropped. Depository banks may, but are not required to, provide a list of the members of the bank's clearinghouse association to its tellers and customers.

A Hawaiian savings and loan institution commented that there is no difference in return times to Hawaiian depository banks between a local check drawn on a mainland bank processed through a clearinghouse and a nonlocal nonclearinghouse check. The commenter suggested eliminating the clearinghouse limitation for nonmainland banks. The Board has retained the provision in the final regulation because it was included in the Act (section 603(c)(1)(B)(i)). A depository bank can avoid having to make a clearinghouse/nonclearinghouse determination by not taking the one-day extension for cash availability. (See discussion of the definition of check clearinghouse association in the Comment Summary.)

Cash or similar means. The time period adjustment rules of §§ 229.11(b)(2) and 229.12(d) of the proposed regulation allowed, in certain cases, a one-day extension to the availability schedules for withdrawal by cash or "similar means." The Board included the phrase "similar means" to cover other irrevocable debits to the customer's account such as electronic payments, issuance of cashier's and teller's checks, certification of checks, and over-the-counter payment of checks to third parties.

The Board received 28 comments on the phrase "similar means." Twenty-six commenters approved of the "similar means" language. Two commercial banks asked whether "similar means" included cashing checks for third parties. The Commentary has been amended to clarify that cashing checks drawn on the customer's account may be included in "similar means."

\$400 rule. The time period adjustment rules of §§ 229.11(b)(2) and 229.12(d) of the proposed regulation provided that although the depository bank may, in certain cases, extend the availability schedule by one day for withdrawals by cash or similar means, the depository bank must 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 otherwise available under the applicable availability schedule. The regulation also provides that the \$400 is in addition to the \$100 available under § 229.10(c)(1)(vii).

The Board received 46 comments on the \$400 requirement. Forty-five commenters opposed the rule. Many commenters stated that they did not have the technology to make a midday update to their computer system and therefore would have to make the entire \$400 available at the start of the day. Others commented that the distinction between cash and check-writing availability would be confusing to customers. A few commenters predicted that banks will close earlier to avoid having to pay the \$400 at 5:00 p.m. The Board has retained the provision in the final regulation because it was included in the Act (section 603(b)(3)(B) and (c)(1)(B)(ii)). The depository bank can avoid having to make a midday update by providing availability by cash or similar means (of either the entire amount of the deposit or of the \$400) earlier than is required by the Act and the regulation. The \$400 rule remains available under the regulation for those depository banks who can implement it.

One commercial bank noted that § 229.11(b)(2) of the regulation referred only to deposits of "a local check." The commenter noted that the language should be amended to include deposits of one or more local checks. The Board has amended the final regulation accordingly.

Section 229.11(c) and section 229.12(c) Nonlocal checks.

The proposed regulation provided that a depository bank must make funds deposited by nonlocal checks available for withdrawal not later than the seventh business day following the banking day of deposit under the

temporary schedule and the fifth business day after the banking day of deposit under the permanent schedule. These sections have been revised to clarify the treatment of next-day checks that do not meet the requirements for next-day availability.

The regulation also provided that nonlocal checks specified in the corresponding Appendix (B-1 for temporary schedule, B-2 for permanent schedule) must be made available for withdrawal not later than the times prescribed in that Appendix.

The Board received 11 comments regarding Appendices B-1 and B-2. Five commenters suggested that depository banks should have to make one initial disclosure of the Appendix B schedules with update disclosures as the Appendix B schedules are revised. These commenters suggested that the Board should make changes to Appendix B at a specified time each year so that banks can plan their update notices. A related comment by a savings and loan institution asked whether, in fact, the Board would actually make changes to Appendix B. The Board does not anticipate making any changes to Appendix B-1 after publication of the final regulation. If the Board decides at a future date that frequent revisions to Appendix B-2 will be necessary, it will establish regular procedures to do so. Banks are only required to disclose the reduction in schedules, contained in Appendix B, to customers upon request.

Three commenters pointed out that Appendix B contained reduced schedules for certain processing territories but not for others that process checks just as fast. The Board has revised Appendix B to eliminate many of the inconsistencies.

One commercial bank noted that under the availability schedule, because of the clearinghouse rule, it would be possible that a depository bank would have to make funds deposited by a nonlocal check available in full before funds deposited by a local nonclearinghouse check are available in full. The commenter suggested that the Board add language to § 229.11(c)(2) to provide that to the extent that the provisions of Appendix B-1 require that the proceeds of deposited checks be made available to depositors on the third business day, the time period adjustment as set forth in § 229.11(b)(2) would apply. The Board has revised Appendix B-1 so that no nonlocal schedule requires that funds be available for withdrawal earlier than the fourth business day after deposit.

Section 229.11(d) Deposits at nonproprietary ATMs.

The proposed regulation provided that, under the temporary schedule, funds deposited to a nonproprietary ATM by cash or check must be available for withdrawal not later than the seventh business day after the banking day of deposit. Two commercial banks commented that the Board should clarify that § 229.11(d) supersedes § 229.10 for such deposits. The Commentary has been amended to clarify that, under the temporary schedule, next-day availability does not apply to deposits to nonproprietary ATMs.

Section 229.11(e) and section 229.12(e) Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands.

The proposed regulation provided that the depository bank may extend the time periods set forth in the temporary and permanent schedules by one business day in the case of any check that is deposited in an account at a branch located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands and is deposited by a check drawn on or payable through or at a paying bank not located in the same state as the depository bank.

The Board received 39 comments on this extension provision. One trade association approved of the rule. Thirty-three commenters requested that the special extension rule apply in both directions, i.e., that depository banks in the continental U.S. will also be able to extend the schedules an extra day for checks drawn on or payable through or at a paying bank located in Hawaii, Alaska, Puerto Rico, or the Virgin Islands. The Board did not include reciprocity of this provision in the final rule. The language of the Act (section 603(d)(2)) allowed the extension to work in one direction only. The Board believes that it would be inappropriate to expand on the statutory language.

One commercial bank commented that the extra day for Alaskan depository banks is not necessary for checks drawn on banks in the state of Washington served by the same Federal Reserve office. A Hawaiian savings and loan institution commented that a local check deposited into a Hawaiian bank drawn on a mainland bank can never be returned before funds must be made available, even if the checks are handled expeditiously. The commenter requested a longer extension for these checks. Given the language of the Act, the Board did not either add to or

subtract from the extension as it appeared in the proposed regulation.

One savings and loan institution asked that the Board clarify that the extension applies only when the paying bank is located in a different state than the depository bank branch where the deposit is made. The regulation and Commentary have been revised to clarify that deposits must be made in a branch located in one state and drawn on a paying bank located in another state. The Board also made clarifying changes in this provision of the regulation.

Other comments on sections 229.11 and 229.12. Six commenters asked that the Board allow banks to vary the availability schedules by agreement with business customers. The Board believes that such a practice would be inconsistent with the Act's intent to provide a ceiling for holds on deposited funds applicable to both consumer and business accounts. A depository bank can give better availability than the schedules or can use calculated availability for nonconsumer accounts as provided in § 229.19(d). Neither the Act nor the regulation will allow a bank to provide worse than statutory availability, even if the customer agrees.

One commercial bank commented that if the regulation requires a bank to adopt a single hold policy for all its branches, it would give an unfair advantage to multiple-charter bank holding companies that can tailor hold policies based on a smaller area. The Board believes that regulation does not provide an unfair advantage to bank holding companies. Section 229.19(c) provides that a depository bank may provide different availability policies to different segments of its customer base.

Sections 229.10, 229.11, and 229.12 ATM issues.

In addition to the comments addressed to specific sections dealing with the availability schedules, the Board also received 286 comments on how the availability schedules in general would affect the use and operation of ATMs.

Eighty commenters discussed the problems with giving expedited availability to deposits at nonproprietary ATMs. The commenters stated that deposits at nonproprietary ATMs are usually processed before the bank that holds the account is notified. The commenters suggested that for nonproprietary ATM deposits that are verified off-premise, the depository bank needs more time, particularly under the permanent schedule, so that the deposit information can be delivered.

The Board recognizes the problems faced by depository banks that accept deposits at nonproprietary ATMs. The Act, generally provides that deposits at nonproprietary ATMs be accorded the same availability as deposits at proprietary ATMs under the permanent schedule. The Conference Report on the Act states that "the conferees believe it is reasonable to expect the owners and operators of such ATMs to develop the necessary technology to make such differentiations within a reasonably short time."

In related comments, 29 commenters stated that because ATMs cannot distinguish between cash and different types of checks, particularly Treasury checks, participants in ATM networks will have to increase their staff and upgrade their communications systems at a tremendous cost. Many commenters did not think that these changes could be made by the time the permanent schedule goes into effect. The commenters were concerned that if an ATM cannot distinguish between different types of deposits, the bank would have to make all ATM deposits available on the next day, when Treasury checks must be available for withdrawal under the temporary schedule. Seventy-four commenters predicted that most banks will discontinue taking deposits at nonproprietary, or in some cases all, ATMs.

The Board has revised the final regulation to require that cash, U.S. Postal Service money orders, Federal Reserve Bank and Federal Home Loan Bank checks, state and local government checks, and cashier's, certified, and teller's checks must be deposited to a staffed location to receive next-day availability. The Board has also interpreted the term "branch to exclude an off-premise ATM; thus on us checks deposited to an off-premise ATM would not have to be given next day availability. Treasury checks deposited to a proprietary ATM, however, must receive next-day availability.

In addition, former § 229.12(e) concerning availability of deposits at nonproprietary ATMs under the permanent schedule has been deleted as unnecessary due to changes in treatment of deposits of next-day checks at ATMs generally. This paragraph had provided for second-day availability for deposits of next-day checks at nonproprietary ATMs. Under the final rule these checks are subject to second-day availability when deposited at any ATM. (See § 229.20(c)(2).)

Section 229.13 Exceptions.

(a) New Accounts.—(1) Deposits to new accounts. The Act provides that in certain instances a depository bank may delay availability of a deposit beyond the statutory schedules by invoking an exception. The first such exception is for new accounts. Section 229.13(a)(1) of the proposed regulation provided that a deposit in a new account is subject to the next-day availability requirements of § 229.10 (a) and (b) for cash and electronic payments. The proposed regulation also provided that new account deposits would be subject to the requirements of § 229.20(c)(1) (i) through (v) (governing next-day availability for Treasury checks, U.S. Postal Service money orders, Federal Reserve Bank and Federal Home Loan Bank checks, state and local government checks, and cashier's, certified, and teller's checks, and for the purposes of the new account exception only, traveler's checks) only with respect to the first \$5,000 of funds deposited on any one banking day; any amount of the deposit over \$5,000 must be available on the ninth business day following the banking day of deposit. The proposed regulation provided that deposits to new accounts would not be subject to the next-day availability requirements of § 229.10(c)(1) (vi) and (vii) (governing on us checks and the \$100 rule), § 229.10(c)(2) (second-day availability), the temporary schedules of § 229.11, or the permanent schedules of § 229.12.

The Board received 306 comments on the new account exception. Sixty-four commenters questioned the inclusion of traveler's checks in the next-day availability requirement for the first \$5,000 of the deposit. The commenters pointed out that this provision is inconsistent with § 229.10 because traveler's checks do not get next-day availability when deposited into established accounts. The Board recognizes the inconsistency, but has retained the traveler's check provision because it is a requirement of the Act (section 604(a)(1)(c)).

Thirty commenters objected to the next-day availability requirement in the new account exception. The commenters favored eliminating this requirement with respect to certain check deposits. One commercial bank favored eliminating next-day availability for cash and electronic payments under the exception as well. The Board did not amend these provisions in the final regulation because the language of the Act in section 604(a)(3) specifically provides for next-day availability for up to \$5,000 of certain checks deposited to

new accounts, and section 604(a)(1) provides for next-day availability for deposits of cash and electronic payments to accounts subject to this exception.

Three commercial banks asked the Board to clarify whether the \$5,000 refers to total deposits made throughout the new account period or for each day's deposits. The language of the regulation is clear in that it refers to "the first \$5,000 of funds deposited on any one banking day," not throughout the entire new account period. Although the Act is not explicit on this point, the Board believes that it was the intent of the Act to apply the \$5,000 rule to deposits on any one banking day under the new account exception.

Two commercial banks and one savings and loan institution requested that the Board clarify the length of the hold period for deposits subject to the new account exception. As the regulatory language states, the depository bank may institute a nine-day hold on portions of certain deposits for which \$5,000 must be available on the day-after deposit. For deposits covered by § 229.10(c)(1) (vi) and (vii) (on us checks and checks subject to the \$100 rule), and checks subject to the temporary and permanent availability schedules of §§ 229.11 and 229.12, there is no schedule of availability for deposits to new accounts.

(2) *When an account is considered new.* Section 229.13(a)(2) of the proposed regulation provided that an account is considered new during the first 30 calendar days after it is established. The proposed regulation also provided that an account is not considered new if the customer had, within 30 calendar days before the account is established, another account at the depository bank for at least 30 days.

One hundred eighty-six commenters indicated that a 30-day period is not long enough to determine the validity of a new account. Suggestions for the length of the new account period ranged from 60 days to six months. Many commenters requested that the depository bank be able to lengthen the new account period if the account showed unusual activity indicating a potential for fraud, if the account had been overdrawn within the 30-day period, or for deposits made after the 30-day period that exceed the previous average balance. Twenty-six commenters stated generally that the depository bank should have more discretion over the hold period.

Section 604(a) of the Act specifically requires a 30-day period for the new account exception, or such shorter period as the Board may establish. The

Board, following the statutory provision, has retained the 30-day period for the new account exception in the final regulation.

Thirty-one commenters suggested that the regulation should consider an account to be new if any holder of the account is new, even if another joint holder is an established customer. One commercial bank commented that the opposite should be the case, i.e., that an account should not be considered new if any holder of the account is an established customer. The Board believes that the intent of the new account exception is to protect depository banks from the risk involved when dealing with an unknown customer. As long as any holder of an account may withdraw funds from the new account, that customer presents the kind of risk that the Act intends to address. Therefore, the Board has amended the regulation and the Commentary to provide that an account is not considered new if each customer on the account has had another established account at the depository bank within the previous 30 days.

Nine commenters suggested that if a previous joint account holder opens an individual account, the individual account should be considered new, because the behavior of the customer is different as a joint holder than as an individual holder. The Board did not incorporate this suggestion into the final regulation. The Board believes that the Act does not intend banks to invoke the new account exception when the customer on the account is not new. Section 604(a) of the Act provides that the new account exception applies to any account established at a bank by a new depositor. Under the statutory language, a new name on an account constitutes a new depositor, and the new account exception would apply, but the name of an existing account holder on an account, including a joint account holder, would not yield a new account.

Two trade associations asked whether a corporate account would be considered new every time there are new corporate signers on the account. Because the holder of the account is the corporation, not the individual signers, the account would not be new every time the signers changed. The commenters also asked whether an individual account opened by a corporate signer would be considered new if the corporate account had been established for at least 30 days. Because the corporate signer is not the holder of the corporate account, any individual account opened by the corporate signer could be considered new.

A bank holding company commented that if a customer's established account is not in good standing or not of the same type as the newly-opened account, the new account exception should apply. The Board believes this limitation of new accounts would be contrary to the intent of the Act.

Sixteen commenters favored elimination of all distinctions between new and established customers by treating every account as new when opened. The commenters complained that the exception involved too much technological complexity and that the new account periods would be difficult if not impossible to track under current computer systems. The Board has retained the customer distinctions due to the statutory language in section 604(a) of the Act, which applies the new account exception to accounts established by a "new depositor."

The Commentary has been revised to include a number of examples of when accounts are considered to be new accounts. In addition, other clarifying changes have been made to the Commentary.

Twenty-nine commenters requested that the Board allow banks to rely on the customer's representation as to whether the customer has had an established account within the last 30 days. The commenters explained that many banks can not cross-reference common names on accounts through their computer systems. The Board has clarified in the Commentary that the depository bank can rely on the representation of the customer for this information.

One commercial bank suggested that a reactivated dormant account should be considered new. A dormant account that is reopened is not a new account, and the Commentary has been revised to clarify this point.

One banking-related corporation commented that the new account exception should apply to accounts held by escrow companies into which they deposit checks which they hold in escrow for clients who own the entire beneficial interest in the deposit. The commenter noted that while the escrow company, as account holder, is not a new customer, the clients who hold the beneficial interest in the deposits are generally new customers to both the escrow company and the depository bank. Because the Act and regulation consider the actual account holder to be the depositor, the escrow company, not the escrow company's client, is the customer for the purposes of the regulation. Therefore, the escrow

company's accounts would not be subject to the new account exception.

In addition to these issues, clarifying changes were made to the language of the new account exception in the regulation.

(b) Large Deposits. The proposed regulation provided that the temporary and permanent schedules of §§ 229.11 and 229.12 would not apply to the aggregate amount of deposits by one or more checks that is in excess of \$5,000 on any one banking day. The regulation also provided that for customers that have multiple accounts, a depository bank may apply this exception to the aggregate amount deposited to all accounts of the customer if all the holders of each account are the same. The regulation did not allow a depository bank to aggregate the deposits in both individual and joint accounts for the purpose of this exception.

The Board received 150 letters that contained comments on the large deposit exception. Five commenters opposed the exception in general on the grounds that it is too complex and is not workable given current technology. Sixty-five commenters requested that the Board allow a depository bank to aggregate a day's deposits across all accounts on which the customer's name appears, regardless of the other names on the accounts. Only one commenter agreed with the provision as it appeared in the proposed regulation. The risk to the depository bank associated with large deposits is similar whether the customer makes the deposit to one account or allocates the deposit over several accounts. The Board has amended the regulation and the Commentary to provide that the depository bank may apply the large deposit exception to the aggregate amount deposited to all accounts of the customer, even if not all the holders of the customer's accounts are the same.

Fifty-six commenters requested that the large dollar exception apply to deposits subject to next-day availability. Four commenters asked whether next-day checks could count toward the \$5,000 for aggregation purposes. The language of the Act (section 604(b)), however, clearly excludes next-day deposits from the large dollar exception. The Board, therefore, has not applied the large deposit exception to these next-day checks in the final regulation. Additionally, next-day checks cannot be counted toward the \$5,000 aggregation because they cannot be held under the exception. The Commentary has been expanded to provide an illustrative example to clarify the operation of the large deposit exception.

Twenty-one commenters suggested that the Board lower the \$5,000 cut-off point. Many of the commenters suggested that the cut-off should be \$2,500, which is consistent with the large-dollar notice of nonpayment requirement of § 229.33(a). Section 604(b)(1) of the Act specifically provides that the large-dollar cut-off be set at \$5,000. To be consistent with the Act, the Board has not lowered the dollar cut-off in the final regulation. For the same reason, the Board has not incorporated other suggestions by the commenters, such as applying the exception to the whole deposit rather than just the amount over \$5,000 and aggregating funds deposited over a longer period of time than one banking day.

Two commenters requested that banks be able to vary the terms of the exception with corporate customers, and two other commenters requested that the exception not apply to corporate accounts at all. The Act clearly anticipates that the exceptions will apply to all accounts, both consumer and corporate, but the decision to invoke an exception is optional. A depository bank may choose not to apply the large deposit exception to a corporate account with routinely large deposits.

(c) Redeposited checks. The proposed regulation provided that the temporary and permanent schedules of §§ 229.11 and 229.12 would not apply to a check that has been returned unpaid and redeposited by the customer or the depository bank. The proposed regulation provided that this exception would not apply to checks that have been returned due to a missing indorsement and redeposited after the indorsement had been obtained, if the reason for return stamp on the check states that it was returned due to a missing indorsement; or to a check that has been returned because it was postdated, if the check is no longer postdated when redeposited.

The Board received 56 comments on the redeposited check exception. Three commenters agreed with the provision as it appeared in the proposed regulation, and two commenters opposed the exception on general terms because it would be too complex and costly for banks to implement.

Forty-two commenters asked that the exception be extended to checks returned because of a missing indorsement or because they were postdated. The commenters stated that checks may be signed imperfectly or postdated on purpose and that the regulation should discourage such practices. The Board believes that the

exceptions in the Act were meant to address the risk problems of depository banks rather than customer discipline. The final regulation retains the exclusion of postdated and misindorsed checks from the redeposited check exception because generally these two types of checks do not have as high a risk of return as do checks that have already been returned once for insufficient funds.

One commercial bank requested that if a check is returned because it is postdated, the reason for return should indicate so or else this exception could apply to that check. The regulation and the Commentary have been revised to state that a bank may rely on the reason for return indicated by the paying bank.

One commercial bank suggested that the Board clarify that the availability schedules for all redeposited checks should begin as of the date of redeposit. The Commentary has been amended to clarify this point.

Two commenters asked whether this exception applied to next-day availability checks, and two commenters asked whether the \$100 rule applied to redeposited checks. Under section 604(b) of the Act, the redeposited check exception does not apply to any of the next-day availability provisions. The Commentary to the final regulation has been revised to clarify that a bank must give next-day availability to a redeposited check that falls under the schedules set out in § 229.10, and must provide up to \$100 the next day for local and nonlocal redeposited checks. The depository bank will have presumably charged back the customer's account when the check was first returned.

(d) Repeated Overdrafts. The proposed regulation provided that if any account or combination of accounts of a depository bank's customer has been repeatedly overdrawn, then for a period of six months after the last such instance, the temporary and permanent schedules of §§ 229.11 and 229.12 do not apply to any of the accounts. The proposed regulation considered an account to be "repeatedly overdrawn" if there have been three or more instances within a given six-month period in which the balance of the account has become negative, or would have become negative if checks or other charges had been paid. The proposed regulation defined "instance" as a period of up to three consecutive banking days during which an account is negative due to overdrafts, or during which additional checks or other charges to the account are returned or rejected. The proposed regulation also provided that a separate

instance occurs if an account has a negative balance for more than three consecutive banking days or if charges or checks are rejected or returned over a period of longer than three consecutive banking days.

The Board received 263 letters that contained comments on the repeated overdraft exception. Sixteen commenters agreed with the exception as proposed, and 26 commenters opposed the exception in general terms. These commenters complained that the proposal was too confusing, difficult to implement, and in some cases, too lenient. Four commenters said that the definition of "instance" was unclear and asked for a simplified rule. Thirty-six commenters requested that each bank be able to use its own discretion in determining what accounts are repeatedly overdrawn. Many of these commenters were concerned that the proposed exception was too lenient for commercial accounts, for which three overdraft "instances" within six months would be excessive.

Other commenters offered suggestions as to how the definition of "repeated overdraft" should be changed. Sixty-five commenters suggested that the proposed six-month period in which the "instances" are counted should be lengthened to a one-year period. Fifty-nine commenters stated that it was impossible, under many current operating systems, for a bank to track groups of three consecutive days of overdraft. The commenters suggested that an "instance" should be one day, not a group of consecutive days. Similarly, 48 commenters suggested that each check that causes, or would have caused had it been paid, an overdraft should be regarded as an "instance."

Twenty commenters suggested that the overdraft exception contain a dollar-amount trigger (e.g., three instances of overdraft or one \$5,000 overdraft would satisfy the exception). One commercial bank suggested a sliding scale of allowable number of overdrafts according to the age of the account.

The final regulation reflects changes in the overdraft exception which incorporate many of the commenters' suggestions and make the exception less confusing and easier to implement. The final rule retains the six-month period, following the language of the Conference Report on the Act, which states that a reasonable definition of a repeatedly overdrawn account is one that is overdrawn on three separate and distinct occasions within any six-month period. The final regulation no longer defines "instance" in terms of consecutive days, but instead focuses on the number of days and the amount of

the overdraft. Specifically, the final regulation provides that a depository bank may consider a customer's account to be "repeatedly overdrawn" if on six or more banking days within a six-month period, the balance of the account is negative, or would have become negative if checks or other charges to the account had been paid; or if on two or more banking days within a six-month period, the balance of the account is negative, or would have become negative if checks or other charges to the account had been paid, in the amount of \$5,000 or more.

Seven commenters asked the Board to clarify whether an instance occurs when a customer writes a check overdrawing the account or when a customer's deposited check is returned and the consequent charge-back overdraws the account. Three commenters asked whether overdrafts caused by overdraft fees could be included. The revised Commentary explains that all of the instances described above would constitute an overdraft instance for the purposes of the repeated overdraft exception. Overdrafts covered by overdraft lines of credit may not be counted in determining whether the repeated overdraft exception applies.

Five commenters asked whether the initial six-month period for counting overdrafts starts on September 1, 1988, or six months before that date. The Commentary has been revised to clarify that the depository bank may consider overdraft activity that occurred prior to September 1, 1988.

One commenter asked whether the six-month period in which deposits can be held is rolling or distinct, (e.g., once a six-month hold period starts, must the depository bank wait until the six months is over before recalculating the number of overdrafts?). The regulation provides that the six months is a rolling period and that a bank may invoke the exception immediately after the last overdraft.

Three commenters asked whether an overdraft must exceed total deposited funds or only available funds. The Commentary has been revised to clarify that an overdraft occurs when either the total deposited balance or the available balance is exceeded.

Four commenters asked whether this exception applied to next-day availability checks. Under section 604(b) of the Act, the repeated overdraft exception does not apply to any deposits subject to next-day availability.

(e) *Reasonable cause to doubt collectibility.* Section 229.13(e)(1) of the proposed regulation provided that the temporary and permanent schedules of §§ 229.11 and 229.12 and the next-day

availability provisions of § 229.10(c)(1) (iii) and (v) for Federal Reserve Bank and Federal Home Loan Bank checks and cashier's, certified, and teller's checks do not apply with respect to any deposited check that the depository bank has reason to believe is uncollectible from the paying bank. The proposed regulation provided that the existence of facts that would cause a well-grounded belief in the mind of a reasonable person that the check is uncollectible is required, and that such belief shall not be based on the fact that the check is of a particular class or is deposited by a particular class of persons. The proposed regulation required that the reason for the bank's belief that the check is uncollectible shall be included in the notice required under § 229.13(g).

The Board received 158 letters containing comments on § 229.13(e)(1). Two commenters agreed with the provisions of the reasonable cause exception, and one commenter objected to the provision in general terms.

One hundred forty-three commenters opposed the requirement that the depository bank must include the reason why it has reasonable cause to doubt a check's collectibility in the notice to the customer. The commenters pointed out that if the bank's reason for doubting collectibility is that it believes the depositor may be engaging in check fraud, to specify the reason in the notice could at worst expose the bank to liability in a libel suit and at best do severe damage to customer relations. The commenters also noted that if a bank doubts collectibility based on confidential knowledge of the possible failure of the paying bank, disclosure of the reason could cause a run on the paying bank. Many commenters asked the Board to provide model language that the depository bank may use in the notice. A few commenters suggested that the depository bank should have immunity from libel suits if it follows the Board's model language or acts in good faith using reasonable judgment.

The Commentary has been amended to clarify the situations in which the reasonable cause exception can be invoked and a depository bank's responsibility to provide its customer with the reason that this exception is invoked. In certain limited cases, the depository bank may indicate that the exception is being invoked on the basis of confidential information. Model notice form C-13A in Appendix C includes language that the bank may use in cases to describe the reason it believes a check is uncollectible. (See Commentary to § 229.13(e).)

A number of commenters made suggestions as to specific reasons why a depository bank might believe a check is uncollectible. One commenter requested that counter checks and checks with the same maker and payee should be subject to the exception. The Board does not believe that either of these types of checks necessarily gives reasonable cause to doubt collectibility. One commenter suggested that a mutilated check should be covered by the reasonable cause exception. Damage to or loss of a check may give a bank reason to doubt the check's collectibility, and this reason is listed in model form C-13A.

Five commenters suggested that the depository bank should be able to use a statistical base to determine the likelihood of collecting a particular check. Section 604(c)(2) of the Act provides that the determination to invoke a reasonable cause exception may not be based on any class of checks or persons. The final regulation tracks the Act's language. The Commentary has been amended to clarify that a depository bank, however, may look at all the facts concerning a deposited check when determining whether to invoke an exception, as long as its decision is not based on the class of check or class of depositor.

Six commenters suggested that this exception should apply to all next-day availability checks. Similarly, five commercial banks commented that the \$100 rule should not apply to checks held under the reasonable cause exception. Under section 604(c)(1) of the Act, the only next-day checks that can be held under the reasonable cause exception are cashier's, certified, and teller's checks. The regulation includes checks drawn on Federal Reserve Banks and Federal Home Loan Banks in the reasonable cause exception because the Board believes that in many cases, such checks are functionally equivalent to teller's checks. All other next-day availability checks, as well as the \$100 rule, are not subject to the reasonable cause exception.

One trade association requested that the Board define "uncollectible funds." The Board does not believe that further definition of "uncollectible funds" is necessary.

Section 229.13(e)(2) of the proposed regulation provides that the depository bank shall not assess any fee for any subsequent overdraft (including the use of a line of credit) or return of a check or other unpaid charge under the following conditions: the depository bank has extended the time by which deposited funds will be available under the reasonable cause exception, the

depositor was not provided with written notice of the extended hold required by § 229.13(g) at the time of deposit, the overdraft or return of the check or other unpaid charge would not have occurred except for the fact that the funds so deposited were not available but would have been available if the exception were not invoked, and the check was finally paid by the paying bank.

The Board received 93 comments on § 229.13(e)(2). All of the commenters suggested that the depository bank should be allowed to assess a fee, then refund the fee if the conditions listed in § 229.13(e)(2) occur. The commenters noted that it is not feasible, under most banks' computer systems, to track overdraft fees as the proposed regulation would require. The final regulation makes the provision easier for the depository banks to implement, yet preserves the customers' rights. The final regulation and Commentary have been revised to provide that the depository bank may assess an overdraft fee under the conditions listed in § 229.13(e)(2) if it notifies the customer, in the notice of exception required under § 229.13(g), that the customer may be entitled to a refund of overdraft fees that were assessed due to the application of this exception if the check is paid and how to obtain such refund, and refunds any such fees upon request of the customer.

(f) *Emergency conditions.* The proposed regulation provided that the temporary and permanent schedules of §§ 229.11 and 229.12 do not apply to funds deposited by check in a depository bank in the case of an interruption of communications facilities, or computer or other equipment failure; a suspension of payments by another bank; a war; or an emergency condition beyond the control of the depository bank, if the depository bank exercises such diligence as the circumstances require.

The Board received 100 comments on the emergency conditions exception. Seventy-four commenters suggested that the regulation should include an explicit exception for a weather-related emergency. Three commercial banks commented that the emergency exception should explicitly include transportation delays and equipment failures. Two commenters asked whether a lost cash letter constitutes an emergency. The final regulation does not specify the exceptions requested by the commenters because weather, transportation, equipment, and lost cash letter emergencies that are beyond the bank's control are already included in the emergency exception. The Commentary has been amended to

clarify that a delay due to emergency conditions beyond the bank's control, such as severe weather, which causes delay in the collection of checks, may qualify for an extended hold under the emergency exception.

Fourteen commenters opposed the exclusion of next-day availability checks from the emergency exception. The regulation does not apply the emergency exception to next-day checks because section 604(d) of the Act provides that the emergency exception applies only to the temporary and permanent schedules. The Commentary has been revised to clarify that if next-day checks are not posted to a customer's account under certain emergency conditions, such as computer malfunction, the depository bank may not be liable on those checks under the bona fide error provision of § 229.21(c).

Two commenters asked that the Board define "emergency" more clearly. The final regulation has not expanded the definition of "emergency." The language of the regulation tracks the Act's language in section 604(d), which the Board believes is sufficiently clear and flexible to meet most emergencies.

(g) *Notice of exception.*—(1) *In general.* Section 229.13(g)(1) of the proposed regulation provided that if a depository bank extends the time for availability of deposits under the exceptions contained in §§ 229.13 (b) through (f), the depository bank shall provide notice to the customer of the reason the exception was invoked and the day funds will be available for withdrawal. This paragraph also provides that the depository bank need not include the day funds will be available for withdrawal in the notice if it in good faith does not know, at the time notice must be provided, the duration of the emergency and, consequently, when funds will be available for withdrawal.

The Board received 168 letters containing comments on § 229.13(g). Forty-two commenters objected to the requirement that if an exception is invoked, a notice must be given upon receipt of every deposit. The commenters suggested that, in many cases, a one-time notice would be sufficient. For example, a depository bank could make one general disclosure of its hold policy for large-dollar deposits and redeposited checks, and could make one notice per six-month period in the case of a hold under the repeated overdraft exception. The Act, however, provides in section 604(f) that separate notice of an extended hold must be provided to the customer for each deposit that is subject to the hold,

except for those deposits held under the new account exception. The final regulation follows the Act's provisions and requires a notice upon each deposit held under § 229.13 (b) through (f).

Four savings and loan institutions commented that a notice of exception would not be necessary for deposits that are under \$100 because the deposit would have to be available the next day under § 229.10(c)(1)(vii). The Board believes that if funds are not held under § 229.13, no notice is required.

One commercial bank asked whether documentation of the reason for invoking the exception must be included in the notice. The Act and the regulation only require that the reason for invoking the exception must be included, not extensive documentation of the facts which substantiate the reason. The depository bank may, however, wish to retain such documentation for its own records. Furthermore, as explained in the Commentary to the § 229.21(g) record retention requirements, a bank must retain a copy of each notice of a hold under the reasonable cause exception, and a brief description of the facts that gave rise to the reasonable cause to doubt collectibility.

Two commercial banks suggested that the notice should include the name of the drawer instead of the payee as provided in model form C-7 of the proposed regulation. The model forms for hold notices in Appendix C (C-13 and C-13A) of the final regulation have been amended to specify the name of the drawer.

Section 229.13(g)(1) and the Commentary have been revised to clarify that other information required in this notice includes the customer's account number and the date of the deposit.

(2) *Timing of Notice.* Section 229.13(g)(2) of the proposed regulation required the depository bank to provide notice of a hold in writing to the customer at the time of deposit, if the deposit is made in person to an employee of the depository bank. The proposed regulation further provided that in the case of any other deposit, or if the facts upon which the bank bases its determination to invoke a hold only become known to the bank after the deposit is made, the bank shall mail the notice to the depositor as soon as practicable, but not later than the first business day following the calendar day the facts become known to the bank or the day the deposit is made, whichever is later. The regulation also provided, however, that for funds held under the emergency conditions exception, the depository bank is not required to send

notice if the funds will become available before the notice must be sent.

Under the proposed regulation, a depository bank is deemed to have knowledge of the facts upon which the determination is made when the facts are brought to the attention of the person(s) responsible for making the determination, and, in any event, from the time when the facts would have been brought to their attention if the bank had exercised due diligence.

Thirty-four commenters stated that a teller should not be expected to make the determination of whether an exception should be invoked. The commenters said that hold decisions will always be made by officers and notice mailed by the end of the next business day as required in the regulation. Four commenters suggested that the teller should be allowed to inform the customer of a possible hold in the event a subsequent determination to place a hold is made by a bank official. Ten commenters were opposed to the notice requirement altogether because tellers are unable to make the hold determination, and the time frame allowed for ATM deposit and mail deposit determinations is not long enough.

The final regulation contains the same requirements regarding the timing of the notice as the proposed regulation. These requirements are based on section 604(f) of the Act. The Board believes that the notice requirements are flexible enough to allow the depository bank to rely on its officers and not its tellers to make hold decisions and still meet the timing requirements.

Thirty-three commenters asked that the Board delete the phrase "as soon as practicable" because it is confusing and redundant. The final regulation retains the phrase "as soon as practicable" because it is a requirement of section 604(f)(3) of the Act.

Thirty-one commenters requested that the Board clarify that notice given at the time of deposit is sufficient if given to the person making the deposit, even if that person is not the account-holder. The Commentary has been amended to clarify that notice of a hold may be given to the person making the deposit.

A number of commenters were confused about when the notice must be sent in cases when the deposit is not made to an employee or when the facts upon which the hold is based become known after the deposit is made.

Twenty commenters apparently confused the notice requirements of § 229.13(g) with those of § 229.16(b)(2) and requested that the bank be allowed to send notice by the next business day after deposit, which was permitted

under the proposed regulation for purposes of § 229.13(g), but not for § 229.16(b)(2). Six commenters requested specifically that the timing of the notice requirements in the two sections be made consistent. Section 229.16(b) of the final regulation has been revised so that the timing requirements in § 229.16(b)(2) match those of § 229.13(g).

Thirty-one commenters asked that the depository bank be allowed to mail the notice by the close of the next *banking* day as opposed to the next business day, when the bank might not be open. Some of the commenters based their request on the Commentary to the definitions of "banking day" and "business day," which states that when dealing with a bank's duty to perform some action, the focus should be on the banking day. The final regulation has retained the duty to send the notice on the next business day because it is important for customers to receive these notices as quickly as possible. If a bank knows it will be closed on a business day, it can mail out the exception notices on the day of deposit rather than the next business day.

Twelve commenters opposed the notice provision because the cost of compliance will be high. The commenters remarked that instead of invoking exceptions, banks will refuse to accept checks for deposit or will accept them on a collection basis. A bank's ability to send an item for collection, however, is limited by the definition of "noncash item." (See the discussion in the Commentary to the definition of "noncash item.") Nevertheless, the regulation does not prevent a depository bank from refusing to take a check for deposit.

Four commenters requested that a depository bank be able to give notice by telephone or by leaving a message on a telephone answering machine, if notice was not given to the customer at the time of the deposit. Two commenters asked whether a bank can place a hold after it has received the deposit if it is unable to contact the customer by telephone. While the bank may wish to notify the customer of a hold by telephone, such notice would be *in addition* to the written notice required by § 229.13(g). Both the Act and the regulation require a written notice to be given so that both the bank and the customer have an accurate record of exceptions to the availability schedules.

With respect to the requirement to use due diligence in ascertaining the facts upon which a hold is based, four commenters asked that the Board either define or delete the phrase "due diligence." The final regulation retains

the phrase "due diligence" without a definition. "Due diligence" depends on the reasonableness of an action in particular circumstances. It would be inappropriate to define the term by regulation.

Five commenters suggested that when describing a deposit made to an employee of the depository bank, the regulation's language is too broad and that the Board should add the word "appropriate" before employee. The Board believes that reference to a deposit to an employee of the depository bank makes it sufficiently clear that the employee is an appropriate employee.

One bank holding company requested that the depository bank be able to vary the time of notice by agreement with its customer. The Act provides that the notice rules apply to all accounts and does not allow variation of this, or other Subpart B requirements, by the depository bank. The regulation follows the provisions of the Act and makes the notice requirement mandatory and not subject to variation by agreement.

(3) *Record retention.* Section 229.13(g)(3) of the proposed regulation provided that a depository bank shall retain a record, in accordance with § 229.21(g), of each notice provided pursuant to its application of the reasonable cause exception under § 229.13(e).

Two commenters raised questions about the nature of the records a bank is required to keep. The final regulation and Commentary have been revised to provide that a bank must retain, in addition to each reasonable cause notice, a brief statement of the facts giving rise to the bank's reason to doubt the collectibility of the check. Such records must be kept for two years, or such longer time as provided in the record retention requirements of § 229.21(g).

(h) *Availability of deposits subject to exceptions.* The proposed regulation provided that if an exception applies under § 229.13 (b) through (e), the depository bank may extend the temporary or permanent availability schedule by not more than four business days. The proposed regulation also provided that if a depository bank invokes an exception with respect to a check that is subject to § 229.10(c)(1) (i) through (v), the depository bank may extend availability by not more than four business days after the funds would have been available had the check been subject to the temporary or permanent schedules. Furthermore, the proposed regulation provided that if a depository bank invokes a hold under the emergency conditions exception, it shall make the funds available not later than

four business days after the emergency has ceased or after the day the funds must be available under the temporary or permanent schedules, whichever is later.

The Board received 78 comments that responded to proposed § 229.13(h). One savings and loan institution agreed with the provision as proposed. Most of the commenters suggested lengthening the four-day hold period. Twenty-three commenters suggested that the depository bank should be allowed to extend the hold period upon receipt of a notice of nonpayment. Ten commenters requested that the four-day period be extended in all cases. The commenters, suggestions for the length of the hold period ranged from five to ten days; some commenters wished to leave the length to the depository bank's discretion. Fifteen commenters suggested that the hold period be based on a reasonableness standard rather than a prescribed number of days. The final regulation has been amended to reflect concerns raised by these commenters. The final regulation provides that the depository bank may extend the hold on deposits under § 229.13 (b) through (f) for a reasonable period of time. Under the final regulation, four days is deemed to be a reasonable period of time; for holds longer than four days, the depository bank must establish that such longer hold is reasonable.

The Commentary has been revised to clarify the application of the revised regulation and that § 229.13(h) does not apply to the new account exception.

Other commenters raised questions as to how the four-day hold should be implemented. Four commenters asked the Board to clarify that, even if a depository bank usually gives next-day availability for all deposits, the four days are added to the statutory availability schedule when invoking an exception, not to the bank's usual availability schedule. Both the final regulation and the Commentary state that this is the case.

Seven commercial banks asked whether, when a depository bank receives a notice of nonpayment, the bank can apply a hold even if funds have already been made available. As explained in the Commentary to § 229.13(h), a bank can apply a hold in such a case.

One commercial bank asked whether the hold period would apply to all of the customer's accounts. The Act and regulation allow the depository bank to hold only that portion of the deposit that is subject to an exception. The rest of the deposit and funds in all other accounts of the customer must be made

available according to the availability schedules. Subject to § 229.19(e), in certain cases a depository bank may place a hold on funds in another account instead of on funds in the account to which the deposit was made.

Section 229.14 Payment of interest.

Section 229.14 of the proposed regulation provided that a depository bank shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the depository bank receives provisional credit for the funds. The proposed regulation allowed a depository bank to rely on the availability schedule of its Federal Reserve Bank, Federal Home Loan Bank, or correspondent bank to determine the time provisional credit is actually received. The proposed regulation also provided a special rule for credit unions based on section 606(b) of the Act. The special rule provided that the requirement that interest accrual be based on receipt of provisional credit does not apply to credit unions that begin accrual of interest at a later date with respect to all funds, including cash, deposited in the account and that provide notice of its interest or dividend payment policy in the manner required under § 229.18. The proposed regulation did not require a bank to pay interest or dividends on funds deposited by a check that is returned unpaid.

The Board received 80 comment letters that responded to proposed § 229.14. Two commenters favored the section as proposed.

Many of the commenters stated that they would have technological problems in implementing the rule. Five commenters complained that many computer systems can not make the distinction between when a check is available for withdrawal and when provisional credit has been received for a check, thus the depository bank will have to pay interest based on the day of deposit, which would significantly increase costs. Some commenters stated that most computer systems are not able to distinguish between funds availability and interest availability, thus forcing banks to make all funds available as of the date of provisional credit. Five commenters suggested that interest should accrue on the day funds must be available, thereby allowing banks to compete on the basis of their availability schedules. Six commenters requested that the depository bank be able to accrue interest according to a formula based on the fractional availability schedule under which the

depository bank receives provisional credit.

The Board recognizes that some banks may be required to make software programming changes to implement the payment of interest rules. The provision that interest must accrue when the depository bank receives credit is mandated by the Act (section 606) and remains part of the final regulation. The final regulation has been revised to allow accrual of interest based on fractional availability for all accounts. (Under § 229.19(d) of the proposed regulation, calculated availability was permitted for nonconsumer accounts.) A depository bank may accrue interest on a uniform basis for all interest-bearing accounts based on the availability of funds the depository bank usually receives from the paying or collecting banks to which it sends checks for payment or collection, without the need to track the type of check deposited to each account.

Four commenters noted that the date of provisional credit from a Federal Reserve Bank or from a correspondent bank often depends on which deadline the depository bank's courier meets, which is not always known to the depository bank. Thirty-four commenters requested that the Board allow the depository bank to charge back the interest paid to accounts when the depository bank misses the Federal Reserve Bank or correspondent bank deadline and subsequently does not receive provisional credit on the date on which the accrual of that interest was based. Similarly, one commercial bank asked whether the depository bank can adjust the interest paid when provisional credit is delayed due to an equipment failure or weather delay. The final regulation requires that banks pay interest as of the day they receive credit. The Commentary has been amended to clarify that if a bank does not receive credit as soon as it expected, it may charge back the interest it paid before actually receiving credit. The final regulation and the Commentary have also been revised to refer to "credit" instead of provisional credit. Under revised § 229.36(d), credit given during the forward collection process is considered to be final credit.

Three commenters requested that the Board clarify that a depository bank can begin paying interest sooner than the time specified in the regulation. Similarly, two commercial banks suggested that the interest provision should include savings and time deposits as well as accounts as defined in Subpart A. The commenters noted that it will be difficult to keep track of

two types of interest payments. The language of § 229.14 and the Commentary to the final regulation clearly state that interest on accounts must accrue not later than the times specified and that a bank may voluntarily pay interest to accounts not covered by the regulation, such as savings and time deposits, at the same time as they pay interest to transaction accounts.

Three commenters asked the Board to clarify that accounts must continue to meet minimum or average balance requirements before interest will be paid. The Commentary has been amended to clarify that such requirements are not superseded by the regulation.

Two commenters asked whether "interest" includes earnings credits applied to non-interest-bearing accounts for balances maintained. The Commentary has been revised to clarify that "interest" does not include the absorption of expenses incident to providing a normal banking function or forbearance from charging a fee in connection with a banking service, and thus earnings credits are not interest payments.

One commercial bank asked when interest should accrue for deposits of on us checks (which the depository bank does not send for collection), and another commercial bank asked when interest should accrue for ACH credits. The regulation has been amended to provide that the depository bank must accrue interest on the day on which it receives credit. As explained in the Commentary to the final regulation, a bank receives credit on a cash deposit, an electronic payment, or an on us check on the day the cash, electronic payment, or check is received.

Some commenters were concerned that the payment of interest provision would give a competitive advantage to the Federal Reserve Banks. Seven commenters pointed out that the regulation will cause banks to value low per-item charges more than faster availability from correspondents because the advantages of faster availability will be passed along to the bank's customers. The commenters believed that the Federal Reserve Banks will gain an advantage because of their low per-item costs. The Board believes that one of the purposes of the Act is to require that this interest be passed back to customers and that the interest payment provision is mandated by the Act.

Four commenters suggested that if depository banks must pay interest as of the provisional credit date, the Federal

Reserve Bank or correspondent bank should also have to pay interest to the depository bank as of that date. For the reasons explained under the definition of "account," the regulation does not apply to interbank accounts, and therefore, Federal Reserve Banks and other correspondent banks are not subject to § 229.14 for deposits made by other banks. Furthermore, a correspondent bank would be prohibited from paying "interest" because such payments would generally constitute payment of interest on a demand deposit.

Six commenters opposed the special rule for credit unions because it gives credit unions an unfair advantage over other banks. The special credit union rule is provided in section 606(b) of the Act and is part of the final regulation. The rule was included in the Act because the Congress, as stated in the Conference Report, intended "to accommodate the unique operating procedures of credit unions whose traditional accounting practices often [include] partial dividends on funds not on deposit for an entire dividend period." The Congress did not intend that individual credit unions change existing practices to avoid compliance.

One bank holding company requested that the depository bank should be able to agree with the customer to waive the payment of interest rule in return for the bank's expenditures for transportation costs and other collection services. The Board does not believe it would be appropriate to allow such a waiver. Transportation and other collection expenses represent a cost of doing business for the depository bank. The Act confers certain rights to bank customers, such as prompt payment of interest, which would be undermined should the Board allow banks to offset their operating costs against interest payments to customers.

One commercial bank suggested that the Board add the words "regardless of the reason for return" to the end of § 229.14(c), which provided that banks need not pay interest on "funds deposited by a check that is returned unpaid." The Board has not changed § 229.14(c) in the final regulation but has added this phrase to the Commentary for clarification.

The Commentary to this section has also been revised to clarify that this section is not intended to affect interest accrual or payment policies unrelated to the time that funds have been on deposit, provided that deposits are considered made in such accrual or payment policies based on the receipt of credit or as required by this section.

*Sections 229.15-229.18 Disclosures.***Disclosures Generally**

The proposed regulation required banks to make a number of disclosures to their customers. These disclosures were:

- Disclosure of the bank's specific availability policy to existing account customers, to customers prior to opening a new account, and to any person upon request;
- Reminder notices regarding availability on deposit slips, and at automated teller machines, and at all locations where bank employees accept deposits; and
- Notice when a hold is placed that varies from the policy normally followed by a bank on a case-by-case basis, or as a result of one of the exceptions to the regulation's availability schedules, and when there are changes in a bank's availability policy.

Approximately three-fourths of the 940 comments received on the proposed regulation addressed the disclosure requirements. Several commenters objected to the disclosure requirements generally. Twenty-eight commenters complained that too many disclosures were required and that requiring banks to make so many disclosures would result in a considerable cost burden. Fourteen commenters suggested that banks should be given additional time to prepare for compliance with the disclosure requirements. Ten commenters stated that customers would not understand the required disclosures because of the numerous conditions and exceptions in the regulation's availability schedules.

Even though the Board has made some changes to the disclosure requirements in the proposed regulation, the Board has not significantly reduced the disclosure requirements. The number of disclosures, the detail required as a result of the conditions and exceptions to the availability schedules, and the September 1, 1988 effective date, are all aspects of the disclosure scheme mandated by the Act and therefore have not been modified by the Board in the final regulation.

Section 229.15 General disclosure requirements.

Under the proposed regulation, banks are required to make disclosures clearly and conspicuously in writing. Except for the notices posted at branches and ATMs and printed on deposit slips, disclosures must be in a form that the customer may keep. (The final regulation substitutes the phrase

"posted at locations where employees accept consumer deposits" for "posted at branches." See Comment Summary to § 229.18(b).) The proposed regulation also provided that the disclosures shall appear together, shall not contain information that is not directly related to information required by Subpart B, and shall be highlighted if they appear as part of a larger document. In addition, the proposed regulation required that banks utilize a prescribed uniform reference to the day of availability in their disclosures. Furthermore, the proposed regulation outlined the disclosure requirements for multiple account holders or accounts, and included an exception for disclosures for dormant or inactive accounts.

Fifteen commenters asked that the Board clarify in the regulation that banks using the model forms properly will be in compliance with the notice requirements of the regulation. The Board has revised Appendix C to include language that makes clear that banks are deemed to be in compliance if they make proper use of the forms.

Seven commenters were concerned about how banks should handle making the disclosures to customers who have specified that they want no mail sent concerning their accounts. The Commentary to the final regulation addresses this issue and makes clear that a special mailing is not required.

Four commenters stated that disclosures should not be provided to commercial account holders. The Act (section 605(c)) requires that disclosures be given to "customers," and does not distinguish between consumer and commercial customers for purposes of the disclosures generally.

Eight commenters asked the Board to clarify what accounts are intended to be covered by the dormant or inactive accounts exception. Two asked that banks be allowed to use their own standards for determining what accounts are dormant or inactive for purposes of this section. The Board has included material in the Commentary to the final regulation to indicate that whether an account is dormant or inactive for purposes of this section depends on whether the account is considered dormant or inactive by the bank for other purposes.

Section 229.16 Content of specific availability policy disclosure.

The proposed regulation outlined two alternative methods for banks to use in disclosing their specific availability policies. Section 229.16(a) addressed the situation where a bank imposes blanket holds on check deposits, with the length of the delays varying by the type of

deposit. Section 229.16(b) was designed as an alternative disclosure method for banks that, as a general rule, provide customers with next-day availability, and place holds only on a case-by-case basis. The alternative provided for a somewhat simplified disclosure, but banks following this alternative would be required to notify the customer when a case-by-case hold was placed on a deposit. The bank was to either give notice of the hold at the time of deposit, or tell the customer at the time of the deposit that a hold might be placed and then notify the customer by the end of the day of deposit if a hold was placed.

Eleven commenters suggested that the Board should allow a bank to disclose, as its hold policy, the maximum delays that could be imposed on deposits under the regulation, even though the bank does not, in fact, have such a policy. The Board did not include this as a disclosure alternative in the final regulation. The Board believes that allowing banks to disclose something other than the policy that the banks actually follow in most cases would be inconsistent with the statutory requirement that banks disclose their "specific policy" as to when deposited funds will be available for withdrawal. (See section 605(c)(1) of the Act.)

The Board has added a disclosure requirement for banks that elect to impose longer delays on customers' deposits at nonproprietary ATMs than are imposed on deposits at proprietary ATMs. These banks must describe how customers can differentiate between a proprietary and a nonproprietary ATM. (See § 29.16(b)(5).) This disclosure requirement has been substituted in the final regulation for the proposed regulation's special notice at ATMs that are nonproprietary to certain banks, but at which customers of those banks could make deposits. (See the discussion of comments to § 229.18(c), regarding the notice at or on ATMs.)

With regard to the case-by-case disclosure alternative, two commenters asked whether this approach could be used by banks that normally give availability on the second business day after deposit (instead of just by those that give availability on the next business day), or by banks who might impose blanket holds only on certain categories, such as ATM deposits. One commenter asked that the Board clarify what bank policies would qualify as case-by-case policies.

In the final regulation, the Board has modified the disclosure provisions to clarify that any bank may choose to delay certain deposits on a case-by-case basis and thus provide a case-by-case

disclosure as part of their specific availability policy. (See §§ 229.16 (a), (b), and (c).) Under the revised provisions, any bank that generally makes funds available for withdrawal sooner than the time periods set as the federal maximums may make the case-by-case disclosures and impose case-by-case holds. The case-by-case disclosure is no longer a separate disclosure alternative; the disclosure of a case-by-case hold policy is part of the specific availability policy requirements. (See § 229.16(c)(1).)

The notice requirements that were part of the case-by-case disclosure alternative in the proposed regulation generated numerous comments. One hundred four commenters asked that the Board delete the requirement of a case-by-case hold notice on the same day a case-by-case hold is placed. Some of these commenters argued that banks using the case-by-case disclosure alternative are already making funds available to their customers in less time than required by the statutory time frames. Others stated that this notice requirement might encourage banks to implement the full statutory holds in order to avoid the requirement. Twenty-seven commenters wrote that the same-day notice requirement was too burdensome on banks when the decision to delay availability is made after the customer leaves the bank lobby. One commenter questioned the statutory basis for the notice requirement since the case-by-case hold would be within the time periods by which the Act and regulation require funds to be made available.

With regard to the details of the same-day notice requirement, 15 commenters expressed concern as to how often it would be possible to actually reach a customer by phone, and six asked how banks could prove that an attempt had been made. Twenty-six commenters suggested that a good-faith effort by the bank to reach a customer by phone (with a follow-up notice by mail suggested by 17) should be sufficient to satisfy the same-day notice requirement. Thirty-four commenters suggested that banks should be allowed to shift the burden to customers to check back to ascertain whether the bank decided to place a hold after the deposit is made and the customer had left the bank. Nineteen commenters suggested that notice by mail should be allowed, or that the case-by-case notice rules should mirror those rules applicable to exception holds. Ten commenters suggested that the deadline for the notice should be extended an additional

day, because deposits are sometimes not processed until late in the evening.

The Board has made a number of revisions and clarifications in the final regulation and Commentary concerning the case-by-case notice. The most significant adjustment is that the requirements for the case-by-case hold notice are now the same as the requirements for the exception hold notice under § 229.13, except that no reason for the case-by-case hold need be given. (See § 229.16(c)(2).) The requirement that the customer be told of the possibility of a hold at the time of a deposit has been eliminated, as has the requirement of same-day notice of an actual hold if the customer is not told of a hold at the time of deposit. As with the exception hold notice provisions in § 229.13, a provision has been added to the case-by-case provisions stating that a bank that fails to provide a customer with a notice of a case-by-case hold at the time of deposit may be prohibited from imposing overdraft or returned check fees that result from the hold being placed. (See § 229.16(b)(c)(3).)

Among the other comments on the case-by-case notice requirements in the proposal, six commenters asked that the language in § 229.16(b)(2) of the regulation, which provides that notice should be sent on the "banking" day the deposit is made, be changed to refer to the "calendar" day on which the "banking" day occurs since the definition of "banking" day includes only a portion of a day on which a bank is open for business. The changes to the notice rules discussed above eliminate the problems raised by these commenters. Six commenters also asked that the Board clarify that banks may provide the required notice to whomever makes the deposit, even if that person is not the account holder. The Board has clarified in the Commentary that a bank may give notice to whomever makes the deposit. Four commenters asked that deposits by armored car be clarified to be mail deposits, not in-person deposits for notice purposes. The Board has clarified this point in the Commentary. Two commenters suggested that the generic deposit slip notice required on all deposit slips should satisfy the requirement of notice of hold at the time of deposit. The Board believes that the notice requirements for a case-by-case hold are clear, and that a generic notice is not sufficient.

The specific availability policy disclosure provisions also called for disclosure of a bank's cut-off hours. Three commenters expressed confusion as to whether banks with different business cut-off times at different

locations or ATMs must state all of their cut-off times in their disclosure. The Board has clarified in the Commentary that such banks need only disclose the cut-off time that generally applies, and indicate that other cut-off times may apply and state the earliest cut-off time that might apply.

In the final regulation, the disclosure required by § 229.14(a), of a credit union's interest payment policy when the credit union does not accrue dividends on cash or check deposits from the date of receiving credit on a deposited check, has been added to § 229.16 as paragraph (d). In the proposed regulation, the disclosure was included as an additional disclosure requirement in § 229.18. The Board believes that since the disclosure must be included in the credit union's initial disclosure of its specific availability policy, it is most appropriately included in § 229.16.

A number of commenters asked that additional model forms be created by the Board for all of the requirements of § 229.16. Three suggested that the Board create a form for banks that place holds on a selective basis if holds are placed only on a small percentage of checks and customers are told when holds are placed. Eleven commenters expressed interest in a form that would allow disclosure of the maximum availability schedule while indicating that actual availability might be faster. One commenter suggested that the Board create a version of model form C-4 that would incorporate the new accounts exception (as found in proposed model forms C-6 and C-7). The Board has revised model form C-4, modified the other model forms, and added model clauses to address some of the concerns raised by commenters.

Section 229.17 Initial disclosures.

This section of the regulation addressed when banks must provide the specific availability policy disclosure discussed in § 229.16. Under the Act and final regulation, the disclosure must be given to all existing account holders no later than October 31, 1988, and prior to opening an account.

Some of the comments received reflected confusion as to whether it was permissible to send the disclosure out prior to the September 1, 1988 effective date. One commenter asked that the deadline for providing notices to existing customers be extended until November 30, 1988. The final regulation and Commentary allow banks to send notices out prior to September 1, 1988.

The Board has revised the Commentary to clarify that if the

required disclosures are sent to the customer separate from the first scheduled mailing to the customer after September 1, 1988, such as the mailing of the customer's statement, the separate mailing must be made prior to the statement being mailed. The Board has also revised the Commentary to clarify that a bank may disclose in its availability policy disclosure both the policy that it will follow from September 1, 1988 to August 31, 1990, and the policy that it will follow on September 1, 1990 and beyond. The Board did not make changes to the deadline for notices being sent because the October 31, 1988 date is set by the Act.

Five commenters asked that institutions be exempted from the requirements of this section if their state law has already required them to provide an availability policy disclosure that they believe is similar to the one required by the Act. The Board has indicated that disclosures that meet the requirement of this section can satisfy the required disclosure to existing accounts even if they were previously given, and that banks must review their disclosures and make their own determinations.

Several commenters asked for clarification as to when disclosures need be given when an account is opened and, particularly, when the account is being opened due to a telephone request. The Board has clarified the timing requirements in the Commentary.

Section 229.18 Additional disclosure requirements.

(a) *Notice on deposit slips.* This section of the proposed regulation required a bank that delays availability on deposits to include a notice on all preprinted deposit slips furnished to its customers that deposits may not be available for immediate withdrawal.

The overriding concern expressed in the comments on this section was the banks' responsibility for the deposit slip disclosure when customers obtain deposit slips from third parties. Twenty-two commenters asked that the final regulation clarify that banks are only responsible for the notice on deposit slips that they supply their customers.

Nine commenters asked the Board to clarify what exact language is required on the deposit slip, where the language should appear on the slip, and the type-size. Two commenters asked that this notice be standardized so that printing costs could be minimized. The model form in the proposed regulation included optional language and used the term "banks" instead of the more generic "financial institutions."

Eleven commenters argued that this disclosure is unnecessary. Four commenters were unclear as to whether this notice requirement would apply to banks using the case-by-case alternative. Six commenters stated that this requirement would be expensive to implement, and nine asked if customers may exhaust their existing stock of deposit slips before they start using slips carrying the notice. A few commenters thought that the Board was requiring that a bank's entire availability policy be printed on deposit slips.

The Board revised the Commentary to clarify various aspects of the deposit slip disclosure requirement, such that supplies of deposit slips held by customers need not be replaced and that banks have no disclosure responsibility as to slips ordered from third-parties. The Board has also standardized the model notice.

(b) *Notice at branch locations.* This section of the proposed regulation required a bank to post at each location where its employees receive deposits to consumer accounts, a notice that sets forth the time periods applicable to the availability of funds deposited in a consumer account.

Four commenters wrote that this disclosure will be burdensome, costly, and counterproductive. Two commenters questioned whether this notice had to be at each drive-in bay or at night depository locations. In addition, two asked that the regulation specifically indicate that this notice is not required at each teller window in a branch. The final regulation makes clear that a notice is not required at drive-in windows or night depositories and that a notice is not required at each teller window in a branch.

Two commenters asked what type of notice must be given by banks using the case-by-case alternative disclosure, and the Board was asked to provide a model form for such banks. The final regulation includes a model form for the case-by-case alternative.

One commenter noted that while the proposed regulation referred to disclosure at all "branch locations," the Act (Section 605(d)) and the Commentary refer to "each location where deposits are accepted by employees" and that in unit-banking states, such as Colorado, locations where deposits are accepted are not considered to be branches. The Board has made clarification to this notice and has substituted the Act's language of "locations where employees accept deposits" for "branch" locations. The Board also has created a model form to accommodate banks using the case-by-case alternative.

(c) *Notice at or on ATMs.* This section of the proposed regulation required the owner or operator of an ATM to post or provide a notice at the ATM stating that funds deposited in the ATM may not be available for immediate withdrawal. The proposed regulation also required an additional disclosure if an ATM could be used for deposits by customers of banks to whom the machine is considered nonproprietary. In those situations, the proposed regulation required that the bank to which the ATM is proprietary be identified at or on the ATM and a notice be posted stating that funds may not be available until the seventh business day after deposit.

The requirements of this section generated a number of comments. Most of the commenters were critical of the additional notice requirements for nonproprietary ATMs. Nine expressed concern regarding the requirement that ATMs be identified because such identification would directly contradict some state laws. One commenter suggested that a product or trade name be allowed for identification purposes instead of the institution's name.

Twelve commenters criticized the requirement that the possibility of a seven-day hold be disclosed, on the grounds that posting such a notice at ATMs would confuse and mislead customers who may not be sure whether the hold applies to them or not, and who may, as a result, be discouraged from using ATMs altogether. Some of these commenters asked that there be a uniform notice for proprietary and nonproprietary machines. Four commenters suggested that the ATM disclosure be required to be on the ATM deposit envelopes so that proprietary and nonproprietary machines would look the same. Two commenters suggested requiring banks to list all proprietary ATMs in their initial disclosure instead of having a special notice at the ATMs. Three commenters were confused as to whose responsibility it would be to post the ATM notice in a shared network situation.

The Board eliminated the requirement of a special notice at all ATMs that accept deposits to accounts in banks for which the ATM is considered nonproprietary. A bank that imposes longer delays on deposits at nonproprietary ATMs must, however, make the disclosure required in § 229.16(b)(5). (See the previous discussion of this point in the Comment Summary to § 229.16.)

The final regulation has been revised to provide that a depository bank that

operates an off-premises ATM from which deposits are removed not more than two times each week shall disclose at or on the ATM the days on which deposits made at the ATM will be considered received. See § 229.18(c)(2).)

(e) *Change in policy notice.* This section requires banks to send notices to customers at least 30 days before implementing a change to the bank's availability policy, unless the change expedites the availability of funds, in which case the change must be disclosed not later than 30 days after implementation. Three commenters suggested that the Board should require notice only when there is a material change in policy because, with regard to commercial accounts, minor changes in availability are frequently made and the disclosure requirement could prove to be a disincentive to banks to make these adjustments for faster availability. One commenter also asked that notice not be required if a change is the result of the Board's updating of Appendix B. In the final regulation, the Board has clarified that only consumer account holders need to receive the change in terms notice. In addition, the Commentary makes clear that no notice is required when a change is due to a Board change to Appendix B.

The Commentary to the final regulation discusses a bank's change-in-terms responsibilities when it has disclosed the ATMs that are proprietary or nonproprietary to it for purposes of its customers making deposits, as required by § 229.19(b)(5). The Commentary states that a bank must provide a change-in-terms notice only when a machine that was proprietary becomes nonproprietary, or if the bank had previously disclosed the nonproprietary machines that would result in a longer delay in availability and a new nonproprietary machine is added. In any event, the Commentary states that a notice concerning ATMs is required only once per year.

(f) *Interest policy disclosure.* This section of the proposed regulation required that if a credit union begins to accrue interest or dividends on all deposits made in an interest-bearing account later than the business day on which it receives provisional credit for the funds, its full availability policy disclosure must contain an explanation of when the credit union begins to accrue interest or dividends on deposits. The three comments received on this requirement suggested that the Board clarify whether the disclosure must be made when interest is accrued based on the Reserve Bank's or correspondent banks' availability schedule.

As discussed previously, the Board has moved the credit union interest payment policy from § 229.18 to § 229.16(d).

Section 229.19 Miscellaneous.

(a) *When deposits are considered made.* Section 229.19(a) of the proposed regulation provided that a deposit mailed to the depository bank is considered made when it is received by the depository bank. The section also provides that a deposit is considered made on the next banking day in the case of a deposit that is made on a day that is not a banking day for the depository bank or after a cut-off hour set by the depository bank for the receipt of deposits of 2:00 p.m. or later. The proposed regulation allowed different cut-off hours to be established for receipt of different types of deposits or for receipt of deposits at different locations.

The Board received 175 comment letters in response to proposed § 229.19. Of those 175 letters, 93 contained comments on § 229.19(a). Thirty-eight commenters said that the 2:00 p.m. cut-off hour is too late for ATM deposits. The commenters stated that the 2:00 p.m. cut-off does not allow the depository bank enough time to collect and process deposits in off-premise ATMs by the end of the banking day. The commenters were especially concerned with giving next-day availability to checks which have not been verified. The final regulation addresses this problem by permitting an earlier cut-off hour (12 noon) for deposits to ATMs and other off-premise facilities. (The next-day availability problem has also been addressed in part by the changes to § 229.10 regarding deposits to unstaffed facilities.)

Three commercial banks made similar comments regarding remote branches of depository banks. The commenters explained that some remote branches send their deposits to a central processing facility where they are processed the following day. The commenters pointed out that, in cases of next-day availability, the branches would have to make funds available before they are posted to the customer's account. The final regulation has not changed the cut-off hour for deposits to staffed locations, even if the location is a branch that is far from its central processing facility. Section 603(a) of the Act specifically provided for next-day availability on certain deposits at staffed locations. The Board believes that to allow an early morning cut-off hour for staffed branches would be contrary to the intent of the Act. If a branch uses a central processing facility

to post deposits, it must be responsible for transmitting and receiving information to and from that facility to meet the statutory availability schedules.

Twenty-three commenters suggested that night depositories and lock boxes should not be subject to a 2:00 p.m. cut-off hour because they are generally meant to be used as overnight depositories and are emptied out early in the morning. The Board has amended the final regulation and Commentary to provide that funds deposited to a night depository, lock box, or similar facility are considered deposited on the day on which the deposit is removed from such facility and is available for processing by the depository bank.

Eleven commenters suggested that mailed deposits be considered made when they are received at a particular location specified or permitted by the depository bank. The final regulation provides that funds mailed to the depository bank are considered deposited on the day they are received by the depository bank. The Commentary to the final regulation explains that funds are received at the depository bank at the time the mail is delivered to the bank, even if it is initially delivered to a mail room, rather than a check processing area.

Three commenters asked whether the 2:00 p.m. cut-off applies to mailed deposits. If a depository bank receives a mailed deposit after 2:00 p.m., it may consider that deposit received on the next banking day as provided in § 229.19(a)(5) of the final regulation.

Eight commenters requested that the Board allow an earlier cut-off hour (or later starting hour) in emergency situations. The Board did not include such a provision in the final regulation because the regulation already permits a bank to close any of its facilities before the § 229.19(a) cut-off hour or open any of its facilities after the § 229.19(b) starting hour. The regulation only requires that if any facilities are open at or after the cut-off hour or at or before the starting hour, those deposits at those facilities are subject to the cut-off or starting hour. Furthermore, deposits that are not posted due to an emergency situation may be subject to the emergency exception contained in § 229.13(f).

Three commenters asked whether a depository bank is required to remain open until 2:00 p.m. on all of its banking days. Section 229.19(c)(3) of the final regulation expressly provides that the regulation does not require a bank to open on any particular day. The Commentary to § 229.19 has been

revised to clarify that a bank does not have to remain open to any particular hour.

One bank holding company explicitly approved of the provision that different cut-off hours may be established for different types of deposits or for different locations. One commercial bank asked whether, if a depository bank establishes different cut-off hours at different locations, it must disclose the cut-off hour at every location. The final regulation does not require a bank to post the cut-off hour at each ATM. Disclosure of ATM cut-off hours may be in the form of a written notice as provided in § 229.16(b).

One commercial bank suggested that § 229.19(a), which describes when a deposit is considered received, should go in the definitions section (§ 229.2). The Board did not move paragraph (a) because it contains substantive provisions which are not appropriate for the definitions section.

Section 229.19(a) and the Commentary have also been revised to clarify when funds deposited at staffed facilities and ATMs are considered deposited.

(b) *Availability at the start of business day.* Section 229.19(b) of the proposed regulation provided that, except for deposits subject to the time period adjustments of §§ 229.11(b)(2) and 229.12(d), funds that must be available on a business day must be available by the later of 7:00 a.m. (local time) or the time the depository bank's teller facilities (including ATMs) are available for customer account withdrawals.

The Board received 84 comments on § 229.19(b). One trade association approved of the 7:00 a.m. starting hour. One commercial bank objected to requiring funds to be available at the opening of the business day. The Act, however, provides that when funds must be available for withdrawal on any business day, such funds shall be available at the start of such business day (section 607(b)). The final regulation includes this requirement as well.

Sixty-one commenters complained that the 7:00 a.m. starting hour is too early for the banks to be able to update ATMs in time to make funds available. The final regulation and Commentary have been amended to change the 7:00 a.m. starting hour to 9:00 a.m.

Fifteen commenters asked the Board to clarify that "local time" means local time at the branch that holds the customer's account. The regulation and Commentary have been amended to clarify that 9:00 a.m. refers to local time of the branch of the depository bank that holds the customer's account.

Five commercial banks suggested that the 7:00 a.m. (now 9:00 a.m.) rule should not apply to deposits that must be made available on a business day which is not a banking day for the depository bank. The final regulation does not incorporate this suggestion because the Act and regulation require funds to be available based on business days, not banking days. (See Commentary and Comment Summary of "business day" and "banking day" definitions.) The regulation does not require a bank to be open on every business day, but only to update its ATMs by the start of every business day.

(c) *Effect on policies of depository bank.* Section 229.19(c) of the proposed regulation provided that the regulation does not prohibit a bank from providing better availability than is required by the regulation. The paragraph also provided that the regulation does not affect a bank's right to accept or reject a check for deposit; to revoke provisional settlement of a check; charge back the customer's account for a check based on return of the check or receipt of a notice of nonpayment; or claim a refund of provisional credit; and to charge back funds made available to a customer for an electronic payment for which the bank has not received actually and finally collected funds. Furthermore, the paragraph provided that the regulation does not require a bank to open or otherwise make its facilities available for customer transactions on a given business day. In addition, the proposed regulation provided that § 229.19(c) does not supersede any policy of a bank that limits the amount of cash a customer may withdraw at an ATM or staffed teller station on any one day, as long as that policy is applied without discrimination to all customers, is not dependent on the time the funds have been deposited in the account, as long as the funds have been on deposit for the time periods specified in the regulation's schedules, and is related to security requirements or bonding limitations of the bank.

The Board received 48 comments on § 229.19(c). Forty-six commenters objected to the nondiscrimination requirements of the paragraph. The commenters stated that banks impose different ATM withdrawal limits on customers based on creditworthiness, account history, or other similar factors. The commenters asked that the regulation continue to allow banks to give higher withdrawal limits at ATMs for established good customers. The Board has revised the regulation and Commentary to provide that the nondiscrimination requirements apply only to withdrawal requests made in

person to an employee of the depository bank, not to withdrawals from ATMs. In addition, the final regulation and Commentary have been revised to allow a bank to limit, for operational reasons, cash withdrawals made over the counter.

Two commenters asked whether a bank's common law right to close an account is affected by the regulation. Similarly, one commenter asked whether the regulation preserved a bank's right of set-off. Nothing in the regulation revokes these rights.

(d) *Use of calculated availability.* Section 229.19(d) of the proposed regulation provided that a depository bank may provide availability to, and begin to accrue interest on, its nonconsumer accounts based on a sample of checks that represents the average composition of the customer's deposits, provided that the terms for availability or interest payment based on the sample are equivalent to or more prompt than the availability and interest payment requirements of the regulation.

The Board received one comment, from a commercial bank, on § 229.19(d). The commenter asked that the Board provide guidelines on how often a bank should revise its calculated availability and how a proper check sample should be selected. The Board does not believe more specificity is required, as long as the depository bank bases its calculated availability on the customer's typical deposit mix and updates its calculations if the typical deposit mix changes.

This paragraph has been revised by deleting references to payment of interest, which is now covered by § 229.14(d). The Commentary has been revised to reflect the limitation of this paragraph to availability.

(e) *Holds on other funds.* Section 229.19(e) of the proposed regulation provided that a depository bank that receives a check for deposit in an account or purchases a check for cash, other than a check drawn on that bank and presented over the counter for payment in cash, may place a hold on any funds of the customer at the bank if the amount of funds that are held do not exceed the amount of the check, and the funds are made available for withdrawal within the times specified in the availability schedules.

The Board received eight comments on § 229.19(e). Three commenters agreed with the provision. Five commercial banks asked the Board to clarify that the provision does not apply to holds that a bank puts on funds for reasons other than protecting itself from returned checks. Under the definition of "available for withdrawal" in § 229.2(d),

funds are considered available for withdrawal even though they cannot actually be withdrawn due to a court order or other legal process. (See Commentary discussion on § 229.2, the definition of "available for withdrawal.")

(f) *Employee training and compliance.* Section 229.19(f) of the proposed regulation required each bank to provide a statement detailing the requirements of Subpart B to all employees who perform duties relating to the requirements of Subpart B. The proposed regulation also required each bank to establish procedures to ensure that the bank complies with the requirements of Subpart B and to provide each employee who performs duties relating to Subpart B with a statement of the procedures applicable to that employee. In addition, the proposed regulation required each bank to conduct an internal review, at least once each year, to determine its employees' compliance with the procedures the bank has established under § 229.19(f).

The Board received 79 comments on § 229.19(f). Forty commenters requested that the Board eliminate the requirement that a bank must provide a statement to employees of both the requirements of the regulation and the procedures established by the bank to comply with the regulation. The commenters asked that the banks be given more discretion in training their staff. The final regulation requires only that a bank inform employees how they should comply with the regulation but need not provide a separate statement describing the provisions of the regulation.

Twenty-seven commenters requested that the Board eliminate the internal review requirement because such a requirement is burdensome and not required by the Act. To accommodate banks' needs for flexibility in monitoring compliance with this regulation, the final regulation does not include the internal review provision.

Twelve commenters asked the Board to provide a model statement which the banks could give to their employees. The Board has not provided such a statement because it believes that each bank needs to tailor its employee statements to its own operating system.

(g) *Effect of merger transaction.* A new paragraph has been added providing for a one year transition period for certain sections of Subpart B for merged banks. (See discussion in Commentary to definition of "merger transaction," § 229.2(t).)

Section 229.20 Relation to state law.

(a) *In general.* The proposed regulation provided that a state law in effect on or before September 1, 1989, that requires funds deposited in an account at a state-chartered bank to be made available for withdrawal in a shorter time than is provided by the regulation, shall supersede the provisions of the regulation to the extent that the state law's provisions relate to the time by which deposited funds are available for withdrawal. The proposed regulation also provided that such a state law shall apply to all federally-insured banks located within the state. In addition, the proposed regulation provided that no state funds availability law that becomes effective after September 1, 1989, shall supersede the Act and Subparts A and B of the regulation, but that unamended provisions of state law shall remain in effect.

The Board received 27 comments in response to proposed § 229.20. Three commenters requested that the federal law govern in all cases to avoid confusion. One trade association pointed out that if the federal law did not preempt all state laws, banks with multi-state operations would be forced to acquire separate computer systems for each state. The intent of the Act is to provide customers with prompt funds availability; it would be contrary to this intent to allow the federal law to preempt state laws which provide faster availability. The Act explicitly provides (in section 608(a)) that state laws in effect on September 1, 1989, that improve on the federal availability schedules, shall supersede the federal schedules. Therefore, the final regulation has retained this provision.

One savings and loan institution commented that all federally-insured banks should be required to follow federal law, regardless of state law provisions. A trade association stated the opposing view that all banks within one state, both state and federally-insured, should be subject to the same laws. Section 608(a)(2) of the Act and § 229.20(a)(2) of the regulation explicitly provide that federally-insured banks are subject to the provisions of state law that supersede federal law. The Commentary to § 229.20 has been revised to clarify that if a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally-insured banks in the state.

Four commenters pointed out that some state availability laws cover nontransaction accounts. The commenters predicted that having a state law that applies to some accounts and a federal law that applies to others would create much confusion for banks and customers. The Act and the regulation provide the states with one year after the Act and regulation take effect to make changes to state laws governing transaction accounts. A state may make amendments to availability laws governing nontransaction accounts, such as savings or time deposits, at any time.

(b), (c), and (d) *Preemption of inconsistent state law and preemption standards.* The proposed regulation provided that except as provided in paragraph (a), the Act, Subpart B, and, in connection therewith, Subpart A of the regulation supersede any inconsistent provision of state law. The proposed regulation also provided that any interested party may request that the Board make a preemption determination. The regulation then defined an inconsistent state law, for the purposes of preemption determinations, as one that provides for longer availability schedules than those required by the Act or one that provides an exception that addresses the same type of risk as the exceptions in the regulation, but is a different exception or allows a different exception hold period.

One commercial bank commented that federal law should preempt state disclosure provisions as well as availability schedules. The Board believes that the disclosure provisions of the Act and regulation supersede state disclosure provisions with respect to accounts. Section 608(b) of the Act provides that, except for state availability laws in effect by September 1, 1989, the Act and regulations prescribed under the Act shall supersede any provision of the law of any state which is inconsistent with the Act or such regulations. The Board has revised the regulation and Commentary to provide that a state law may be inconsistent with federal law if it provides for disclosures or notices concerning availability provisions of state law relating to accounts. As explained in the Commentary, however, state disclosure laws that apply to deposits other than accounts, such as savings or time deposits, are not inconsistent with the Act or the regulation.

Two commercial banks commented that the proposed regulation was unclear about whether an entire body of state law would be preempted or just

that part that contained an inconsistency. One of the commenters preferred the former interpretation and one the latter. Under the final regulation, if a provision of any state law is inconsistent with the Act and the regulation under certain circumstances, the entire provision of state law is superseded. The Board realizes that, in some cases, a state law might provide faster availability than the federal law for some deposits and slower for others and that preempting the entire state law will eliminate the faster availability. The Commentary to the final regulation explains that superseding these state laws in their entirety avoids the necessity of forming very complex hybrids of state and federal law that could not have been contemplated by the state or federal legislatures.

One trade association asked the Board to clarify that shorter state holds should supersede federal law only as to categories of checks defined by federal law. It would be possible for a state law to give faster availability than federal law to a certain type of check (e.g., an in-state check) that is not a separate category of check under the federal law. Such a state law would supersede federal law for all in-state checks, whether the checks are local or nonlocal under the federal law.

The Commentary has also been revised to indicate that state law may supersede federal law even if no preemption determination has been issued by the Board.

Section 229.21 Civil liability.

The proposed regulation provided that a depository bank that fails to comply with Subpart B or any state law that supersedes Subpart B would be subject to civil liability for damages to the injured party or for class action awards. In addition, the proposed regulation provided that a bank is not liable if it demonstrates by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. The proposed regulation also provided that any actions under § 229.21 could be brought in any U.S. District Court, or in any other court of competent jurisdiction, within one year after the violation occurred. Furthermore, under the proposed regulation, a bank would not incur liability if it acted in good faith reliance on a Board rule, regulation, or interpretation. Section 229.21 would not apply to claims arising under Subpart C or to actions for wrongful dishonor. Finally, § 229.21 would require banks to retain records evidencing their

compliance with Subpart B for at least two years.

The Board received 17 comments in response to proposed § 229.21. One commenter asked that the liability provisions be delayed for one year to allow the banks to have a transition period to adapt to the new schedules. The Act (section 613) specifies, however, that the civil liability provisions are to take effect on September 1, 1988, at the same time as the rest of Subpart B. The regulation follows the effective dates as set forth in the Act.

One commercial bank asked if the Federal Reserve Banks are subject to the same liability provisions as depository banks under Subpart B. As explained in the definition of "bank" and the accompanying Commentary, a Federal Reserve Bank is not a bank for purposes of Subpart B, and therefore, is not subject to the liability provisions of § 229.21. The Federal Reserve Banks do not receive a competitive advantage vis-a-vis other correspondent banks because the regulation does not apply to interbank accounts held by correspondent banks other than the Federal Reserve Banks.

One commercial bank requested that the Board delete the reference to state law in the liability section because the federal government cannot create a private right of action under a state law. The reference to state law remains in the final regulation, and the Commentary has been revised to clarify that the regulation creates liability only for those state laws that supersede federal law and thereby become, in effect, the federal law.

Two commercial banks asked that the Board give additional guidance on what constitutes a bona fide error. The Board believes that the determination of a bona fide error is based on the facts of each particular case, but has expanded the Commentary to include an example of a bona fide error.

One commenter asked that the Board clarify that the regulation confers subject matter jurisdiction, not personal jurisdiction or venue. The Commentary has been amended accordingly.

Seven commenters responded to the record retention requirement. Five commenters asked that the Board specify what records should be kept. One commenter believed that the requirement was overly burdensome for the banks, and another suggested that the burden of proof for violations be on the customer so that the bank can avoid costly documentation and record retention. The Board believes that depository banks are better suited to keeping records of their compliance with

the regulation than are the customers of the depository bank. The regulation is not specific as to what records must be kept to allow each bank to tailor its record retention to its own operations. The Commentary to the final regulation explains that a bank's records should show that its procedures reasonably ensure the customer's receipt of required notices and disclosures.

One savings and loan institution made several comments on § 229.21. The commenter asked that the Board define "preponderance of the evidence." Because the phrase is a legal term of art, the Board believes that such a definition is unnecessary.

The commenter also requested that the Board not allow a plaintiff to recover against a bank under both federal and state law. As explained above, if a state law preempts the regulation, the state law becomes, in effect, the federal law. Therefore, there can be no duplicative violations as described by the commenter.

The commenter also raised two other issues. One issue was whether a defendant sued in state court under § 229.21 can remove the case to a federal court. The other issue was whether a person may use a bank's failure to comply with Subpart B defensively in the bank's collection suit where the bank's action is commenced more than one year after the occurrence. The Board believes that the resolution of these issues depends on the facts of the particular case and that such questions are best left to the courts.

The final regulation has been revised to apply the provisions of § 229.21 to any bank, rather than any depository bank.

Effective Date of Subpart C. Forty-one commenters requested that the effective date of Subpart C of Regulation CC be delayed beyond September 1, 1988. Of the 41 commenters who requested a delay in the effective date, nine specifically stated that additional time would be necessary to comply with the indorsement standard, and four indicated that it would be difficult and expensive for banks to modify their return item operations by September 1, 1988. Six commenters suggested that Subpart C should be extended by one year, two requested 90 days, one suggested six months, and one suggested 60 days.

In response to the specific concerns raised by the commenters, the Board adopted a modified indorsement standard on April 4, 1988, so that banks would have more lead time to comply with the new requirements. The final standard is more flexible than the proposed standard, thereby minimizing

the operational and cost impact. The objective of the September 1, 1988, effective date is to implement improvements to the check return system simultaneously with the implementation of the funds availability schedules, in order to reduce the risk to the depository bank that a check would be returned after funds have been withdrawn. Therefore, the Board decided to implement Subpart C, as well as Subparts A and B, of Regulation CC, on September 1, 1988.

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

(a) *Return of checks.—Expeditious Return Rule.* A total of 155 comments were received on the proposal to require the paying bank to return unpaid checks expeditiously. The proposed standard for determining whether return of a check was expeditious was based on how a "similarly situated bank" would handle a forward collection check of the same dollar amount drawn on the depository bank. The Board requested comment on whether the duty of the paying bank should be stated in a more concrete manner, e.g., a paying bank must return a check so that it reaches the depository bank on the second business day following the day of presentment for local checks and the third business day following the day of presentment for nonlocal checks.

Fifty commenters supported the rule as proposed, with the forward collection test as the standard for expeditious return, rather than basing the standard on returning the check in a specified number of days. Many commenters indicated that a standard based on a specific number of days for the return to reach the depository bank would be inappropriate because the paying bank loses control of the timing of the return process after the returned check is dispatched by the paying bank.

Most of the commenters who expressed concern with the proposed regulation believed that the concept of requiring a paying bank to complete the return process in an expeditious manner was not clear. Thirty-nine commenters suggested that the standard be more specific in order to avoid possible litigation for claims of late return against the paying bank.

Twenty-five commenters suggested that the concept of return by expeditious means could be retained, but that an alternative be provided that would incorporate a more specific time frame for completing the return process. The provision of a specific time frame would provide a "safe harbor" within which a paying bank could plan and conduct its return item operations. Commenters

suggested several different alternatives. Twelve commenters suggested that the standard require the paying bank to select a method and route of return so that the returned check ordinarily would reach the depository bank within two business days following the date of presentment for local checks and four business days for nonlocal checks. Thirteen commenters suggested a two business day/three business day standard for local and nonlocal checks, respectively. Several commenters suggested that, even when the standard specifies a set number of days for the returned checks to reach the depository bank, the standard should not impose a duty on the paying bank for actions beyond the control of the paying bank.

In response to the commenters' concerns about the uncertainty of the forward collection test contained in the proposal, the final rule provides a two-day/four-day test as an alternative which the paying bank may use to comply with its duty to return a check in an expeditious manner. This test specifies time limits within which the depository bank must receive a returned check after the check has been presented for payment to the paying bank. The two-day/four-day test provides that a paying bank must return the check so that it would normally be received by the depository bank within specified times, depending on whether the paying bank is a local paying bank or a nonlocal paying bank with respect to the depository bank. For a local paying bank, the check is returned expeditiously if it is returned to the depository bank by 4:00 p.m. (local time of the depository bank) of the second business day after the banking day on which the check was presented to the paying bank. For a nonlocal paying bank, the deadline to complete the return is 4:00 p.m. of the fourth business day after the banking day on which the check was presented to the paying bank. The rule retains the forward collection test from the proposal with certain modifications so that a paying bank satisfies its duty of expeditious return if it meets either the two-day/four-day test or the forward collection test.

Thirty-one commenters believed the "similarly situated bank" concept was confusing, ambiguous, or vague. One commenter stated that the similarly situated bank standard is at best ambiguous and at worst not determinable because in many areas there are no other banks of similar size. Some commenters stated that use of such a standard would create the kind of uncertainty that is likely to result in dispute and litigation. A trade association stated that the similarly

situated bank criterion was unclear and would prove to be unworkable. It was suggested that the standard should be based on how the paying bank, not a similarly situated bank, would handle a forward collection check of the same dollar amount drawn on the depository bank.

Under the forward collection test, the determination of what constitutes expeditious return is based on a community standard for the handling of forward collection checks. Under the proposal, if a bank handled forward collection checks less expeditiously than the community standard, it must improve its procedures for handling returns, but a bank that uses a more expeditious means of handling forward collection checks could not use the less efficient community standard. Commenters stated that this rule penalized banks that use highly efficient means for forward collection, such as direct send arrangements, that are not used by similarly situated banks, by holding these banks to a higher standard for returns. The final regulation provides that banks with highly efficient means of forward collection of checks drawn on a particular depository bank are not required to use that means for returned checks, if similarly situated banks use less efficient means.

In order for paying banks to determine what the expeditious return rule means for a particular check, the proposed rule indicated that returned checks be handled like a check received for deposit by the paying bank before noon on the day following presentment. Some commenters suggested the "before noon" language be deleted because it is difficult for banks to determine whether checks were deposited before or after noon for establishing compliance with the expeditious means standard in case of a disputed return. Other commenters suggested that "before noon" be modified to state "by noon." One commenter stated that the noon requirement penalized banks with early afternoon dispatch of forward collection checks because the processing time available to them is compressed. The regulation has been revised to state "by noon."

Some commenters suggested clarification as to how the paying bank would receive compensation from the returning bank, and the methods by which returning banks would compensate each other. One commenter suggested, in light of the concerns raised, that this section of the regulation be monitored and revisited, if necessary before 1990. Payment for returned

checks by returning banks is addressed by § 229.31(c).

Return to a Collecting Bank. The proposal permitted a paying bank to return a check to a bank that handled the check for forward collection. Commenters objected to imposing expeditious return responsibilities on banks that do not agree to offer returned check services. In the final regulation, the Board added paragraph 229.30(b), "Unidentifiable depositary bank." This paragraph limits the right of a paying bank to return a check to a prior collecting bank that does not hold itself out as a returning bank to circumstances in which the paying bank cannot identify the depositary bank with respect to a given check, or where the bank cannot obtain payment for the returned check from the depositary bank. (See discussion of § 229.35(b).) This paragraph also clarifies the duties, rights, and responsibilities of paying banks when they cannot identify the depositary bank from the indorsements on the returned check. The Board expects these cases to be infrequent. Return of checks under this section is not subject to the requirements for expeditious return by the paying bank, although the returned check remains subject to the midnight deadline.

Notice of Nonpayment. The proposed regulation allowed the paying bank to meet its expeditious return duty by sending a notice of nonpayment and then returning the physical check in a reasonably prompt manner. The Board requested comment on whether this option should be available as an alternative to expeditious return of the physical check.

One hundred ninety-one commenters commented on allowing notice of nonpayment as an effective alternative to expeditious return of the physical check. One hundred twenty commenters objected to this alternative, based on the fact that these notices would be insufficient to meet the needs of the depositary bank. Forty-two commenters indicated that, although the notice would be a beneficial addition, it should not replace an expeditious return of the check itself. The inaccuracy of notices was an underlying reason for opposition, expressed explicitly by 17 commenters. One commenter stated that 30 percent of all notices currently received are inaccurate, and another commenter indicated that 20 percent of notices received today are inaccurate. Three commenters stated that notice as a means of expeditious return would unnecessarily clutter the nation's wire notification systems. Twenty-four commenters stated that these notices

would result in settlement problems between banks and their customers or between returning and depositary banks. Two commenters requested that banks be allowed to place extended hold periods on funds until the physical check is received. Thirty respondents commented that notices should only be allowed for exception circumstances. Sixteen commenters expressed a fear that allowing notice would remove the incentive for a paying bank to deliver the returned check in a timely manner. Eleven commenters indicated that notice should only be permitted on large-dollar checks.

Thirty-eight commenters were in favor of notice as a means of expeditious return, and 33 had mixed reactions. Twenty-eight of the commenters that had mixed reactions specifically stated that notice as a means of expeditious return would only be acceptable if the returned check followed within a specified time period, usually two to four days. One commenter supported the provision because it allows for a cheaper but timely return of the physical check; one commenter favored the provision because it compensates for unavoidable delays in the return of the physical returned check; one commenter favored the incentive that these notices create for conversion to truncation; one commenter stated that depositary banks do not need the returned check at all and that the notice alone is sufficient; and two commenters supported the provision because it gives paying banks options as to a means of return.

Many of the comments made on notice of nonpayment as an alternative to expeditious return also referred to § 229.30(f), "Notice in lieu of return." There appeared to be some confusion between the two provisions. Notice as an alternative to expeditious return offers paying banks the opportunity to notify the depositary bank, in an expeditious manner, of a returned check rather than send the physical returned check in the same expeditious manner; the returned check would follow in a reasonably prompt manner. Notice in lieu of return, on the other hand, allows for notice to be delivered when a check is lost or otherwise unavailable. See discussion of § 229.30(f), "Notice in lieu of return."

Public comment on notice of nonpayment as a means of expeditious return indicated that such a provision would impose operational burdens on depositary banks, such as settlement problems, delays in receiving the physical returned check, and inaccurate information. The comments indicated that these inefficiencies would not be

offset by the benefits of allowing such notification. Because the benefits of the notice alternative are uncertain, the Board eliminated notice of nonpayment as an option for meeting the duty of expeditious return.

Paying bank's preparation of Qualified Returned Checks (QRCs). A total of 131 comments were received on the question of whether the paying bank should be required to prepare QRCs for returns being sent through a returning bank. Seventy-one of the commenters opposed requiring paying banks to prepare QRCs. Most commenters based their opposition on the cost involved, and stated that the paying bank should be allowed to make its own decision to minimize costs. Smaller banks in particular noted that such a requirement could prove operationally infeasible and exceptionally expensive.

Some commenters noted that it may not be necessary to prepare a QRC in order to return a check expeditiously. One commenter opposed the requirement that paying banks be required to prepare QRCs because it believes that the regulation should avoid all potential delays in seeking to fashion an expeditious return system.

There were 54 responses in favor of requiring paying banks to prepare QRCs for all returned checks sent to returning banks. Many of the commenters, especially smaller banks, responded favorably on the premise that preparation of QRCs by paying banks would expedite the return process. One commenter noted that most banks have some type of encoding equipment, and because QRCs speed the return process, paying banks should be required to qualify returned checks. Some commenters noted that the indorsement standard must be in place before such a requirement is imposed. Some commenters argued that an extra day should be granted to paying banks to prepare QRCs, similar to the extra day proposed in § 229.31 to allow returning banks to prepare QRCs destined to other returning banks.

Under the final regulation, a paying bank may, but is not required to, convert the returned check to a qualified returned check. The Board believes that requiring all paying banks to prepare QRCs is not warranted at this time. When the indorsement standard is fully implemented, the preparation of QRCs will be less difficult. Further, the importance of preparing QRCs early in the return process may increase when the statutory schedules are reduced in 1990.

Eight commenters suggested that the paying bank should be allowed an extra

day to prepare a QRC, because it is immaterial to the depository bank which institution prepared the QRC as long as the returned check is not delayed in transit. One commenter noted that the paying bank is the first bank in the return chain and should logically be the first bank provided with an incentive to create a qualified return.

Although paying banks may wish to prepare qualified returned checks because they will be handled at a lower cost by returning banks, the extension is not available to paying banks because a paying bank has more time available to dispatch the check. Ordinarily, paying banks will be able to convert a check to a qualified returned check any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning. The Commentary has been revised extensively to reflect the changes to the paying bank's duty to return checks expeditiously. This paragraph also has been amended to specify the MICR-encoding requirements of QRCs. These requirements were previously in the definition of QRC. The Commentary also clarifies that an encoding error does not result in failure to create a QRC.

(b) *Extension of deadline for small-dollar checks.* A total of 187 comments were received on the proposal that paying banks be given the option to retain checks of \$100 or less, which were to be returned, for two business days in an effort to obtain payment. Under the proposal, the paying bank must reexamine the basis for nonpayment before actually returning the check. The objective of this proposal was to reduce the number of returned checks that must be handled by the check collection system.

There were 45 comments in favor of the proposal. One trade association stated that it had no objection to this general concept, but was not confident that the two-day extension would be lengthy enough to make a significant difference in the volume of returned checks. Some of the commenters that favored the proposal suggested that a returned check held in an effort to obtain payment should be stamped "Presented twice—do not redeposit" if it was eventually returned to the depository bank.

One hundred twenty-eight commenters opposed the proposal, and strong opposition was voiced by several smaller banks. One commenter stated, "Community banks are strongly opposed to allowing paying banks the option to hold checks of \$100 or less. This practice

could expose the small business customer of the depository bank to undue risk if the paying bank is allowed this option. Automatic redeposit by the depository bank is the only acceptable alternative."

Nine commenters said this procedure should be either mandated or eliminated, but should not be optional because of the uncertainty regarding whether and when returned checks may be returned to them. One commenter suggested that the dollar limit of the returned checks to be held should be raised to \$150; one commenter suggested that the limit be reduced to \$50; and one commenter suggested that the period of hold be extended to three days. Some commenters suggested that banks should not hold multiple checks deposited in the same account at the same bank.

The proposed regulation's provision to extend the deadline for return of small-dollar checks did not generate a great deal of support among the commenters. There appeared to be some hesitation, even among the supporters of the concept, with respect to the practical benefits to be gained at this time from implementation of this provision. Based on the comments received, the Board believes that extension of the midnight deadline for these small-dollar checks is not warranted at this time, and that elimination of this provision will not adversely affect the efficiency of the returned check system. Thus, this provision has been deleted from the final regulation. (The paragraph on returns involving unidentifiable depository banks has been substituted in its place.) The Board believes that the concept of holding small-dollar checks has the potential to reduce the volume of returned checks that must be handled and will work with the banking industry to explore alternative solutions.

(c) *Extension of deadline for expedited delivery.* Seventeen comments were received on the proposal that paying banks be allowed to extend the midnight deadline in order to send returned checks by courier provided that such action does not delay the return process. All of the commenters generally supported the proposal. One commenter suggested that the exception should only apply when a bank qualifies the returned check for high-speed processing.

One commenter asked that the Board explain what constitutes a "highly expeditious means of transportation," for the purposes of the extension of the midnight deadline requirement. The Commentary addresses this issue, clarifying that highly expeditious means of transportation pertains primarily to

air courier arrangements from west coast banks to east coast banks.

(d) *Identification of returned check.* A total of 45 responses were received on the proposal to make mandatory the practice of indicating the reason for return on the returned checks. All of the commenters generally were in favor of the proposal to identify returned checks as returned checks. Three commenters stated that it was unnecessary to require a returned check to indicate on its face that it is a "returned check" because the reason for return is adequate indication that it is a returned check.

The major issue raised by the commenters was whether "refer to maker" constituted a "reason" and was, therefore, an allowable reason for return under this section. Most of the 22 commenters that addressed this subject believed that "refer to maker" was an acceptable reason for return; however, five commenters were opposed to allowing the use of "refer to maker" as an acceptable reason for return. One commenter recommended that a check being returned for cause have that cause clearly identified and that the regulation prohibit "refer to maker" or some similar wording that does not precisely identify the problem to the depository bank and its customer. One commenter opposed banning the use of "refer to maker" because it saw no benefit to such an action. Another commenter pointed out potential liability problems with affixing a specific reason for returning a check and stated that, if this proposed requirement is adopted, the regulation should specifically provide that "refer to maker" is acceptable.

One commenter requested that a list of acceptable reasons be included in the Commentary. The Board believes that such a list is unnecessary and might prove to be restrictive. Another commenter asked what a bank could do if there is no reason stamped on a returned check when it is received. Under § 229.38, a paying bank may be liable for damages, if any, due to its failure to include the reason for return on a returned check.

The Board adopted the regulation as proposed. The Commentary has been modified to provide that a check is identified as a returned check by a reason for return stamp, even though the stamp does not specifically state that the check is a returned check. A reason such as "refer to maker" is permissible in appropriate cases.

(e) *Depository bank without accounts.* Two comments were received on the proposal that checks being returned to banks without accounts need not be returned expeditiously. One commenter

concluded with the proposal as stated. One commenter pointed out that paying and returning banks will rarely be certain that a particular depository bank does not maintain accounts. Accordingly, banks will not be able to use this exception, except perhaps as a defense after the fact. The Board believes that paying and returning banks in a given local area, who would be most likely to encounter checks being returned to a bank without accounts, would probably be aware of the fact that the bank has no accounts and would benefit from the proposed rule.

The Commentary has been modified to reflect that the expeditious return requirements apply to checks deposited into a Federal Reserve Bank, Federal Home Loan Bank, certain industrial banks, and private banks, which are not depository banks within the meaning of Subpart B of the regulation, but do maintain accounts.

(f) *Notice in lieu of return.* The proposed regulation provided that if a check is unavailable for return, a paying or returning bank can send in its place a notice in lieu of return. The depository bank must treat this notice as it would a returned check. The proposed regulation permitted electronic notices in lieu of return. Two hundred fourteen respondents commented on the regulation's provision allowing notice in lieu of return. One hundred ninety-nine commenters opposed this provision as proposed, and five commenters had mixed reactions. Sixty-eight commenters indicated that all notices must be followed by the physical checks, indicating that copies are insufficient, and 75 commenters specified that notices should be followed by either the returned check or a copy. Sixteen commenters specifically opposed allowing notices to carry dollar value. Other specific comments are discussed in conjunction with the summary of comments on § 229.30(a), "Return of checks or notice of nonpayment," because there was some confusion among commenters regarding the distinctions between the two provisions.

Forty-six commenters responded to the question on whether electronic notice in lieu of return would create accounting problems. Thirty-four commenters indicated that electronic notices would lead to significant accounting and reconciliation problems. Most commenters indicated that the returned check or at least a copy was necessary when settling for returned checks. Since the returned check would not be available in circumstances where notice in lieu of return is permitted, some commenters noted that the

regulation should require the return of a copy of the check, in order to ease the burden on paying banks.

The Board modified the notice in lieu of return requirement in the final regulation and Commentary such that if a check is lost or otherwise unavailable for return, it may be returned by sending a copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in § 229.33(b). Thus, electronic notice has been excluded.

(g) *Reliance on routing number.* A total of eight comments were received on the proposal to permit paying banks to rely on any routing number of the depository bank as it appears on the check in the depository bank's indorsement, or in magnetic ink in a QRC. The paying bank must act in good faith but does not have to resolve any inconsistency.

All of the commenters agreed with the proposal. The rule was adopted as proposed, but the Commentary has been modified to delete the reference to routing numbers appearing on QRCs in magnetic ink, since the paying bank does not receive checks drawn on it which have already been qualified.

Section 229.31 Returning bank's responsibility for return of checks.

(a) *Return of checks.* Twenty-two comments were received on the requirement that a returning bank handle returned checks in an expeditious manner. The proposed rule provided the same "similarly situated bank" standard proposed in § 229.30(a) for paying banks.

Eight commenters supported the requirement as proposed. One trade association commented that the proposal was an appropriate standard for returning banks, even if the paying bank rule was modified to provide that a check is returned expeditiously when it is returned to the depository bank within a specified number of days. This commenter believed that a fixed schedule standard should not apply to returning banks. Another trade association, which suggested that a fixed return schedule should be established for paying banks under § 229.30(a), suggested that the returning bank's responsibility should be to meet its published schedule, thereby allowing paying banks to choose a returning bank based on the returning bank's stated ability to meet a schedule.

Four commenters specifically objected to the reference to similarly situated banks in this section for the same reasons commenters opposed this standard for paying banks. Several other

commenters expressed their overall opposition to the similarly situated bank standard in their comments on § 229.30(a).

One commenter stated that returning banks should be required to have formal agreements with paying banks in order to be considered a returning bank. Four commenters favored a rule which would specify that sending a returned check through a Federal Reserve Bank would satisfy the returning bank's duty of expeditious return. Another commenter suggested a provision allowing a correspondent bank to accept both forward collection and returned checks, without designating itself as a returning bank. This bank then could send the returns to a Federal Reserve Bank without processing and without incurring the duties and liabilities of a returning bank. Two commenters wanted to retain the right of charge-back, primarily because of expected accounting difficulties.

One commenter stated that the expeditious return standard should correspond to the U.C.C. and be based on dispatch of the returned checks by midnight of the day following receipt of the return by the returning bank. Another commenter urged that expeditious return be defined to mean return of a check by any means resulting in receipt of the check by the receiving bank earlier than if the check had been mailed to that bank prior to the midnight deadline.

The Board revised this paragraph so that the standards for return of checks by returning banks are similar to those for paying banks. Returning banks are required to return checks expeditiously. As in the case of a paying bank, a returning bank's return is expeditious if it meets either the two-day/four-day test or the forward collection test, which are similar tests to those set out in § 229.30(a). While a returning bank will not have first-hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, share liability with paying banks for late return based on the delays caused by each. The Board also clarified the similarly situated bank standard for returning banks.

A clarification was added to the Commentary noting that a returning bank agrees to handle a check for expeditious return if it: (1) publishes an availability schedule for return of checks and accepts the check for return, (2) handles a check for return that it did not handle for forward collection, or (3) otherwise agrees to handle a check for expeditious return.

One commenter was concerned about the effects of rejects and holdovers on the "expeditious" return standard. Although some rejects and holdovers are common in the check collection process, the Board believes that whether these are the result of negligence must be determined on a case-by-case basis and therefore did not address this issue in the final regulation and Commentary.

The Board did not adopt a standard for expeditious return that was based on the returning bank returning checks within its published availability schedule. Such a standard would allow a returning bank not to meet the regulation's requirements without acting in an expeditious manner and would slow the overall return process. It is important that returning banks participate in accelerating the check return system.

2:00 p.m. Cut-Off. Fifty-five comments were received on the proposal that the returning bank may set a cut-off hour for receipt of returned checks earlier than its cut-off hour for forward collection checks, but no earlier than 2:00 p.m. Thirty-one commenters agreed that the proposed 2:00 p.m. cut-off time was appropriate and would not restrict the flow of returned checks. One commenter noted that any later cut-off hour could be detrimental to operations at a returning bank and could contribute to either delays in dispatching return letters or a reduction in quality and accuracy. Twelve other commenters preferred a later cut-off time. Suggested cut-off times were generally between 3:00 p.m. and 5:00 p.m. Three commenters preferred an earlier deadline (noon). One commenter did not want the regulation to specify an earliest cut-off time for the acceptance of returned checks.

The Board adopted a cut-off hour for returning banks of 2:00 p.m. or later, as proposed. The Commentary was modified to clarify the setting of cut-off times for returned checks.

Extension of Deadline for Qualified Returned Checks. Ninety-six respondents commented on paragraph (b) of proposed § 229.31, which provided the returning bank a day beyond the time otherwise required to handle a returned check in order to prepare a QRC, if the returned check is being sent to another returning bank. The Board requested comment on whether returning banks should also be permitted a day to create QRCs for checks being returned directly to depositary banks.

Thirty commenters generally supported the proposal that returning banks be allowed an extra day to qualify any returned check, including

returned checks going directly to the depositary bank. Many of these commenters discussed the operational difficulty of separating the returned checks going to other returning banks from those going directly to depositary banks. There was some sentiment among a few of the commenters that the extra time to prepare QRCs for returned checks going to depositary banks would be acceptable, provided the overall time it takes to complete the return process is not lengthened. Forty-nine commenters were opposed to providing the returning bank an extra day to qualify those returns being returned directly to the depositary bank, because qualifying these returns would not speed the return process.

The Board adopted, as part of § 229.31(a), a modified rule that a returning bank may extend its deadline for return of checks to other returning banks by one day in order to prepare QRCs under the forward collection test, but the extra day to qualify returns does not extend the time for the return under the two-day/four-day test. The Board did not provide an extra day to qualify all returned checks, because the benefits that accrue from qualifying returned checks (i.e., the ability of subsequent banks to process the returns on an automated basis), do not apply to returns that are sent directly to the depositary bank. Therefore, the Board concluded that expanding this provision to all returned checks would delay the return of many checks, without providing sufficient offsetting benefits.

(b) Unidentified depositary bank. Two comments addressed proposed § 229.31(c), which provided that a collecting bank may not refuse to accept the return of a check that it handled for forward collection.

One commenter was concerned that this paragraph would allow a paying or returning bank to send all of its returned checks to the collecting bank. The collecting bank then is put in the position of a returning bank, even if it does not offer returned check services. It was suggested that the collecting bank not be required to accept the return, although it remains liable as an indorser. Three commenters suggested that the regulation specify the returning bank's responsibility for handling returned checks if it was not involved in the forward collection process for that check and cannot determine the depositary bank.

The right of a returning bank to send a returned check to a bank that collected the check has been restricted to instances in which it is unable to identify the depositary bank. The final regulation clarifies the returning bank's

responsibilities when a returning bank that was not involved in the forward collection of a check cannot identify the depositary bank from the indorsements on the returned check. This section is similar to § 229.30(b), but is applicable to returning banks.

(c) Settlement. Three comments were received on the requirement for a returning bank to settle for a returned check in the same way that it would settle for a forward collection check. One commenter stated that the proposal was appropriate. Another commented that the removal of the right of charge-back was the best incentive to expedite the return process. One commenter was opposed to the requirement because it would create a new class of deferments with a resulting increase in the number of entries to "cash items in process" accounts and transactions to reconcile. This commenter wanted to allow the continuation of the current practice of charging when returns are shipped, and where there are no accounts to charge, to use an ACH debit.

One commenter wanted clarification as to how and when the paying bank is paid by the returning bank for a returned check, and how returning banks compensate each other.

This paragraph was adopted as proposed, except that it provides that settlement is final when made, rather than provisional until receipt of the returned check by the depositary bank. (See Commentary to §§ 229.31(c) and 229.35(b) for a discussion of the elimination of the concept of provisional credit.) The Commentary was modified to note that a returning bank may settle by means of availability schedules and may vary the settlement method it uses by agreement with paying banks or other returning banks.

(d) Charges. This paragraph proposed to permit any returning bank to impose a fee on the paying bank for its services. Several Illinois banks requested that the Board clarify that this provision preempts a nonuniform provision in the Illinois Uniform Commercial Code prohibiting Illinois banks from charging any person other than the drawer a fee on a returned check for insufficient funds or no account. These commenters stated that if Illinois law is not preempted, Illinois banks would be placed at a competitive disadvantage in providing returned check services. Although under § 229.40, "Relation to State Law," the Illinois statute appears to be clearly preempted, the Commentary was modified to acknowledge that this paragraph preempts state laws that prevent returning banks from charging fees for

handling, returned checks. The Commentary was revised to indicate that a depository bank may not impose a charge for honoring its obligations under § 229.35(b).

(e) *Depository bank without accounts.* No comments were received on this section, which is similar to § 229.30(e), and relieves the returning bank of the duty to return expeditiously to banks without accounts. This section was adopted as originally proposed. The Commentary was modified to reflect that the expeditious return requirements apply to checks deposited in a Federal Reserve Bank, Federal Home Loan Bank, certain industrial banks, and private banks.

(f) *Notice in lieu of return.* This paragraph of § 229.31 for the returning bank was modified to be consistent with § 229.30(f), which contains a similar rule for the paying bank.

(g) *Reliance on routing number.* One comment was received on this paragraph, which is similar to § 229.30(g), and permits a returning bank to rely on the routing number of the depository bank appearing on a returned check. The commenter stated that it believed the proposal was appropriate. This section was adopted as proposed (renumbered from § 229.31(f) to § 229.31(g)).

Section 229.32 Depository bank's responsibility for returned checks.

(a) *Acceptance of returned checks.* Forty-three comments were received on this paragraph, which defined the places a depository bank must accept returned checks and written notices of nonpayment. The proposal provided four options where a bank must receive returned checks: (1) At any office consistent with the address in the bank's indorsement; (2) if no address appears in the indorsement, at any office associated with the routing number in the indorsement; (3) if no routing number or address appears in the indorsement, at any office of the bank; and (4) at any location at which the bank accepts checks as a paying bank.

Twenty-four commenters recommended that option 4 be deleted from the locations a bank must accept returned checks. Commenters believed that this provision could be interpreted to require a bank to accept returned checks at any branch at which it accepts checks presented over the counter for payment, which would be very difficult, if not impossible, for many banks to administer. Commenters wanted to be able to designate where they would receive returned checks, by designating in their indorsement the location where

checks should be returned. Thrift institution and small bank commenters asked that the rule be clarified to permit return to a processing center or a third-party agent. Two commenters objected to receiving returns without a preexisting arrangement with the returning bank.

The Board modified the list of places where a bank must accept returned checks and written notices of nonpayment to clarify that the depository bank may specify a location, either through an address or a routing number, in its indorsement. In addition, the regulation was clarified to require that returned checks must be accepted at the location at which the bank requests presentation of forward collection checks, rather than any location the bank pays checks as a paying bank. The Commentary was modified to reflect that returns cannot be presented at every branch of a bank, merely because checks are paid over the counter. Delivery of returned checks to the bank's forward collection presentation point furthers the efficiency of the check return process by enabling banks to send returned checks by the same means of transportation as forward collection checks. Two commenters recommended that the regulation prohibit a paying bank or returning bank from delivering QRCs intermixed with forward collection checks, except by agreement with the depository bank. The final regulation provides that a depository bank may require that returned checks must be separated from forward collection checks.

Fifteen commenters suggested that the Federal Reserve develop, maintain, and distribute a directory of locations at which banks will accept returns. The Board believes that, in most cases, banks should be able to tell from the indorsement where the depository bank prefers to accept returned checks. Failing that, the paying or returning bank may contact the depository bank to determine where the depository bank would prefer to accept returned checks.

(b) *Payment.* Twenty-five comments were received on the proposal that the depository bank must pay for a returned check at the close of business on the day on which it receives the check. The proposal provided that payment must be made by debit to an account of the depository bank on the books of the returning bank, cash, wire transfer, or any other form of payment acceptable to the returning or paying bank.

Six commenters expressed agreement with the proposal as stated, and most commenters supported the proposal generally. Five commenters wanted to

include net settlement as an optional form of payment. One commenter stated that the Board should encourage payment to be made by net settlement at the Federal Reserve because it is the most cost effective and expeditious means of payment. Another commenter was concerned that errors in return letters paid by net settlement arrangements could cause account balance problems. Net settlement is an optional form of payment for returned checks, and a bank need not enter into net settlement arrangements if it is concerned about errors. Both the proposed and final Commentary include net settlement as an option for payment by the depository bank. The Commentary was modified to state that a wire transfer should indicate the purpose of the payment.

Four commenters wanted to be able to delay payment for a day if there is no preestablished agreement between the returning bank and depository bank. The Board noted that the provision of prompt payment, combined with the elimination of the right of charge-back, is necessary to provide an incentive to the returning bank to speed the return process.

One commenter suggested limiting same-day payment requirements to amounts over \$20,000; with lesser amounts being paid through the ACH system. Five other commenters suggested that next-day ACH credits be allowed as a means of payment. They stated that the ACH mechanism provides a low-cost, effective means that would be particularly appropriate for low-dollar value payments such as returned checks. The Commentary states that a returning bank may agree to accept payment later than the day it delivers the returned checks to the depository bank. Thus, payment could be made through the ACH system, by agreement with the returning bank. Two commenters discussed fees and questioned which party should pay the cost of settlement for returned checks.

One commenter stated that it was unable to send a wire transfer after 12:30 p.m., and would have problems making same-day payment after that time if returned checks were received. The Board recognizes that in some cases it may be difficult for depository banks to meet their payment responsibilities. Depository banks may establish a cut-off hour for receipt of returned checks, generally not earlier than 2:00 p.m., and treat returned checks received after that hour as being received on the next banking day. In addition, the Commentary provides that if the depository bank is unable to make

payment on the day that it receives returned checks, because the paying or returning bank is closed due to a holiday or because the time when the depository bank received the check is after the close of Fedwire, payment can be made on the next banking day.

A large commercial bank suggested that the concept of prompt payment proposed for returned checks should be expanded to apply to payment for forward collection checks presented by private sector banks. The Board incorporated this suggestion in the concept of same-day payment, which was issued for public comment on April 4, 1988 (Federal Register, April 11, 1988).

The Board requested comment on whether a penalty provision is required to ensure that payment for returned checks is made as required. There were 68 comments received on this question.

Thirty-three commenters supported the concept of establishing a penalty provision in the regulation in order to encourage prompt payment by depository banks. Two commenters suggested that the penalty for lost funds should be computed by the formula contained in the New York Clearing House Compensation Rules; however, claims valued at less than \$100 per day should not be pursued.

Thirty-three commenters were opposed to establishing provisions for a penalty for late payment. Several commenters believed a penalty would not be necessary and recommended a wait-and-see approach. These commenters recommended that, if problems develop, a penalty provision could be adopted at a later time. One trade association did not believe a penalty provision was necessary, particularly because most payments will be made via net settlement arrangements. One commenter stated that a penalty requirement was unnecessary, but that the returning bank should have an option to request an interest adjustment when excessive delays occur.

The Board believes that an explicit penalty provision in the regulation is not needed at this time. A bank that does not make same-day payment without making a good faith effort to do so may be liable for damages suffered as a proximate consequence under § 229.38(a). Language indicating that a depository bank becomes accountable for the amount of a returned check has been deleted as unnecessary in light of the bank's duty to pay.

(c) *Recovery by depository bank from collecting bank.* There was one favorable comment received on the proposal that the depository bank can

recover any payment not yet received from a collecting bank if it pays for the returned check. This section was deleted as unnecessary because changes to the final regulation eliminate the concept of provisional credit. Subsequent paragraphs have been renumbered.

(c) *Misrouted returned checks and notices of nonpayment.* Section 229.32(d) of the proposal required a bank that received a misrouted returned check to act as a returning bank and send the returned check to the depository bank, if it can be identified, or to the presenting bank. (This paragraph was renumbered as § 229.32(c).) Twenty-six comments were received on this paragraph.

Three commenters generally supported this proposal. Thirteen commenters stated that the bank that received a misrouted returned check should always have the option of returning the check to the sending bank. One of those commenters suggested that the regulation should require the receiving bank to return the misrouted returned check to the sending bank. Two additional commenters stated that a bank that received a misrouted returned check should be allowed to send the check to the local Federal Reserve office.

Two commenters objected to holding the bank receiving a misrouted returned check to a standard of expeditious return, including liability for failure to handle the check in accordance with § 229.31. One commenter believed it was inappropriate to demand a bank to pay for and process misrouted returned checks as proposed. This commenter maintained that if the receiving bank chooses to forward the returned check, it should be relieved of any associated liability, with the exception of gross negligence. One commenter suggested that a bank should be compensated for the cost of researching and rerouting a returned check incorrectly returned to it.

One commenter asked that the regulation clarify the liability of the paying bank, depository bank, and the bank that received the misrouted returned check. One commenter requested clarification on settlement for misrouted returned checks. Another commenter suggested that banks be provided an incentive to expedite return if they receive a misrouted returned check.

One commenter suggested that a misrouted return check be sent back to the paying bank. The paying bank is readily identifiable on the check, whereas the sender may not be. Also, the check ultimately may have to go back to the paying bank so it can be returned through the forward collection

chain. Thus, sending misrouted returned checks directly to the paying bank would expedite the return process.

The Board modified this section to provide that the recipient of a misrouted returned check shall either promptly forward the returned check to the depository bank (either directly or through a returning bank) or send the returned check back to the sender. The Board believes that it is inappropriate to impose the responsibilities of a returning bank on the bank that receives a misrouted return, and has clarified that the bank receiving a misrouted returned check is required to act promptly but is not required to meet the expeditious return requirements of § 229.31(a). The Commentary also clarifies the duty of a bank receiving a misrouted returned check.

(d) *Charges.* In response to a number of comments requesting clarification with respect to the fees banks may charge other banks for handling returned checks, a new paragraph was added to provide that a depository bank may not impose a charge for accepting and paying checks being returned to it. The Commentary for this paragraph notes that a returning bank may charge a fee for handling returned checks received in a mixed return letter even though some checks contained in the return letter are being returned to the returning bank.

Section 229.33 Notice of nonpayment.

(a) *Requirement.* Two hundred sixty-three respondents commented on the appropriate dollar limit for notice of nonpayment. Two hundred thirteen commenters indicated that the \$2,500 limit that is contained in the Regulation J notice of nonpayment requirement should be maintained; 46 opposed retaining the \$2,500 limit; and four had mixed reactions. Twenty-eight of the commenters opposing the \$2,500 limit suggested that a higher limit be implemented to decrease the number of notices that must be provided, and 21 commenters supported lowering the limit in order to protect depository banks from the potential increase in fraud that may result from shorter availability schedules.

Based on the strong preference of the commenters, the Board has adopted a \$2,500 limit for notices of nonpayment. The Board believes that a higher limit of \$5,000 would significantly increase the risks to banks while not providing significant relief operationally, since only a small portion of returns are between \$2,500 and \$5,000. A \$1,000 limit would greatly increase the number of returned checks subject to the notice of

nonpayment rule beyond the increase in the volume of notices that will result from the expansion of the rule to cover all large-dollar returned checks, rather than only those returned checks that were collected originally through the Federal Reserve. Seven commenters requested that the dollar limit be reexamined within the next two to three years in order to ensure the validity of the limit chosen.

Ten commenters supported expanding the notice of nonpayment requirement to all large-dollar returned checks, rather than retaining the current requirement, which is limited to checks processed through the Federal Reserve. No commenters opposed this provision, and one gave a mixed comment. The Board adopted the requirement contained in the proposed regulation that all large-dollar checks be subject to the notice of nonpayment requirement.

Forty-six respondents commented on the requirement that large-dollar notices of nonpayment be received by the depository bank by 4:00 p.m. on the second business day following presentment, compared to the requirement in Regulation J that the notice be received by midnight of the third day following presentment. Forty commenters either opposed or had mixed reactions to this requirement. Twenty-seven of these commenters suggested shortening the time frame to the day following presentment, in order to increase the likelihood that the notice will arrive before the depository bank must make funds available for withdrawal. Of those 27 commenters, 16 premised their suggestion by requiring that all institutions have an electronic connection with the Federal Reserve for the purpose of receiving notices of nonpayment. The Board does not believe that it would be appropriate to require by regulation that all banks have electronic connections with the Federal Reserve. Four commenters specifically requested that the time frames be extended so that banks with branches who use one returned check processing center, or smaller institutions that utilize an outside processor for return services, have adequate time to review their returned checks before sending notices.

The Board adopted the time requirement for notice of nonpayment as proposed. The regulation's time frame provides more than a one-day improvement in the receipt of notices of nonpayment compared to the current requirement. This offers a significant improvement, and addresses the concerns of commenters that stressed the need for an acceleration in the timing of the notice requirement.

Although these commenters requested even further reductions in the time frames, shorter time frames would be difficult for smaller institutions at this time. The Commentary has also been revised to clarify that in many cases the return of a check will constitute adequate notice and to refer to the new warranties for notices.

(b) *Content of notice.* Seventy respondents commented on the requirement in § 229.33(b) that "if a paying bank cannot identify the depository bank, it should send the notice of nonpayment to the first bank that it can identify that handled the check during forward collection." Forty-four commenters opposed this provision, citing that it would be more efficient to return the check or a copy through the forward collection indorsement chain, rather than increasing the volume of notices of nonpayment with incomplete notices that are of questionable value. Twenty-three commenters favored this provision since it would encourage an expeditious return of the returned check information.

Because notices of nonpayment that are sent to collecting banks when the depository bank cannot be identified are of questionable usefulness, the Board has eliminated this requirement in the final regulation. The Commentary indicates that a paying bank may wish to send a notice to a prior collecting bank in these cases, since the collecting bank may be able to identify the depository bank, or may in fact be the depository bank.

Eighty-seven commenters provided varied comments regarding the content requirements of the notice. Nine commenters requested exemptions from the notice of nonpayment requirements. Three commenters suggested that banks in a clearinghouse arrangement be exempt from the notice requirements and six commenters requested exemption from providing notice in instances where the minimum amount of information cannot be determined. Because the return of the check itself may serve as the required notice of nonpayment, in many cases no notice other than the return of the check will be necessary. This may be the case for large-dollar checks that are returned through a clearinghouse arrangement, if the check will normally be received by the depository bank within the time limits for notice. With regard to providing notice where not all required information is available, the Board believes that it is important to require notice of nonpayment regardless of the discernible information so that banks do not become lax about determining

information. In addition, an incomplete notice may still be useful to the depository bank in determining the check that is being returned. Therefore, the final regulation does not excuse a paying bank from providing notice of nonpayment if not all required information is available. The final regulation requires banks to provide all available information and, if there is doubt, provide the information to the extent possible and identify that uncertain information with question marks.

Thirty-one commenters requested that a standardized form be used for all notifications. The regulation specifies the standard information to be included in all notices, but does not dictate a particular format for the transmission of such notices.

(c) *Acceptance of notice.* Sixty-one commenters opposed the provision regarding acceptance of notice. The proposed requirement, adopted from Regulation J, was for acceptance of all nonwritten notices of returned checks at either the telephone or telegraph number of the head office or branch designated in the indorsement, at the number of the return item unit, or any other number held out by the bank for receipt of notice of nonpayment. No priority rule was provided regarding acceptance at these locations.

Commenters were concerned that costly delays might result from notifications being received by the bank at locations where the bank was unable to handle them, especially if delivery is allowed to any branch. Forty-seven commenters filed identical comments stating that notice should be given only to the location specified in the indorsement. Seven commenters requested that paying banks be required to notify the return item unit designated in the indorsement and, only if no such number exists, provide the notice to another location specified in the regulation. Two commenters recommended that notices of nonpayment be required to be in writing, except by agreement of the depository bank and paying bank. Three commenters specifically requested that the reference to telephone receipt of notice be removed from this paragraph because they opposed the provision allowing telephone notification.

The proposed regulation required depository banks to accept telephone notification. One hundred seventeen commenters supported telephone notification, while 16 opposed and nine expressed mixed opinions. Of those opposing telephone notification, two commenters cited that phone

notification offers no legal proof of notice, another demanded that only certain language be permitted, and two indicated that these notices create incomplete and unreliable information. Of those commenters with mixed reactions, four commenters indicated telephone notices should only be allowed if a previous agreement has been made between the returning and the depository banks; two commenters suggested that phone notification only be permitted for large-dollar returns; and five indicated that the returned check or a written notice should follow the telephone notification. Telephone notification is an important tool for returning banks who must notify quickly, especially those who do not have on-line notification capabilities.

One hundred nine commenters requested that there be a requirement for telephone notification to be made to a specific area of the bank or to a specific employee. The proposed regulation does not indicate any specific location or person at which a depository bank must accept telephone notices. Commenters who requested that notification be made to the location specified by the bank expressed concern that, under the proposed regulation, the wrong area of a bank could receive the notice, which may result in late or misplaced notifications.

The regulation continues to require banks to accept telephone notices because many banks rely on the ability to give telephone notice. To address the concerns raised by these commenters, the final regulation allows a bank to limit the locations at which notices of nonpayment may be given to those designated by the depository bank, either in its indorsement, or at any other location held out by the bank for receipt of notices. If no telephone number appears in the indorsement, or if the number is illegible, notices can be given at the general purpose telephone number of the bank's head office or branch indicated in the indorsement. Depository banks are required to accept written notices as specified in § 229.32(a). The Commentary clarifies that banks may establish agreements to vary the location and manner in which notices are received.

Five commenters suggested that the Federal Reserve establish a directory of locations at which depository banks wish to receive notices of nonpayment. Since the provision of a telephone directory is not a regulatory issue, it is not addressed in the final regulation. The Federal Reserve will work with the industry to determine the need for such a directory service.

(d) *Notification to customer.* The proposed regulation included a paragraph addressing the liability of a depository bank to its customer resulting from failure to charge back based on a notice, if the notice contained sufficient information for charge-back.

The fourteen commenters who addressed this paragraph either opposed the rule, or expressed concern regarding how the rule would operate. Five commenters who opposed this paragraph indicated that a depository bank should await the receipt of the physical check prior to charge-back. Four commenters requested that a provision be added stating that a depository bank is only liable for loss if the notice complies with the minimum notice requirements under § 229.33(b). Three commenters suggested modifying the provision so that the bank delaying the charge-back or failing to send notice is liable to the customer for actual damages, rather than for "any loss" as is currently suggested.

The paragraph and the Commentary have been modified to require a depository bank that receives a returned check or notice of nonpayment to notify its customer by its midnight deadline or a later reasonable time. In addition, a warranty provision for notice of nonpayment was added based on concerns raised by the commenters. (See § 229.34(b).) No liability is imposed by the final rule for failure to charge back the customer's account based on the receipt of a notice of nonpayment. Receipt of a notice alerts the customer of the pending return of the check, and thus provides the benefits of expedited return to the customer. The Commentary has also been revised to note that this notice may be combined with a notice that the bank is invoking the reasonable cause exception.

Section 229.34 Warranties by paying bank and returning bank.

(a) *Warranty of returned check.* The proposed regulation incorporated the warranties of timely return of § 210.12(b) of Regulation J (12 CFR 210.12(b)) and added warranties that the paying or returning bank is authorized to return the check and that the returned check has not been materially altered.

Fifty-five commenters commented on this paragraph of the proposed regulation. Of these, 51 commenters favored this paragraph with suggested clarifications and/or modifications; three had mixed reactions to this paragraph; and only one commenter was opposed to this paragraph as proposed.

Of those that commented favorably, 17 suggested that the reference in subparagraph (a)(3) to "returned check"

should be clarified to indicate: "The warranty should only apply during the time the check being returned is in the possession of the paying or returning bank. The warranty should not cover alterations made in the collection process."

Twenty-six commenters suggested that the Board require the same warranties for notice in lieu as it required for the physical return of a check. Twelve other commenters requested that this paragraph be amended to provide for warranties with respect to a notice in lieu similar to those provided for a returned check and with respect to the accuracy of information contained in such notice.

In addition, one commenter believed that paying and returning banks should be required to provide warranties with respect to encoding errors, such as in connection with the preparation of a QRC. Another commenter suggested that this paragraph require that the paying bank warrant the information contained on the notice of nonpayment and the notice in lieu of return.

One commenter suggested that the regulation include the applicable statute of limitation periods for making breach of warranty claims and a provision identical to U.C.C. § 4-207(4) should be added with respect to losses caused or resulting from delays (even within the statute of limitations period) in making claims.

One commenter was concerned with the returning bank's warranty that the paying bank returned the check timely and stated that such a warranty would inappropriately shift the risk of litigation of late return claims from the paying bank to the returning bank. It was further argued that, while the returning bank could recover under the warranty provision from a prior returning bank or the paying bank, many of these claims would result in negotiated settlements, particularly as they often involve a multi-party, multi-state bank collection chain. The commenters also stated that this result would be inconsistent with repeated assurances contained elsewhere in the proposed regulation that a bank is not responsible for default or misconduct of another bank.

This commenter further indicated that paragraphs (a) (2) and (3) also required clarification. The following questions were raised as points of confusion:

- What kind of circumstances would constitute a breach of warranty that the returning bank is "authorized" to return the check?
- Does the warranty concerning material alteration apply with respect to alteration which occurred at any time,

alteration which occurred only after the check entered the bank collection system, or alteration which occurred after the check was presented to the paying bank?

• Does material alteration refer only to the traditional information (e.g., payee amount, date) or does it include, for example, obliteration of indorsement information that would identify a bank as having handled (and perhaps mishandled) the check?

Another commenter stated that the creation of warranties on the part of the paying or returning bank is a significant change in the payment system. While these warranties would basically track the warranties of the forward collection process, the commenter believed analysis of the impact of such warranties on the return process deserved further study prior to their becoming effective. This commenter further argued that payable through banks should not be placed in the position of making the warranties for or on behalf of the credit union on which a check is drawn. This commenter requested that the Board conduct a thorough study of the impact of this new warranty scheme prior to it becoming effective.

The Board believes that the regulation's warranty system enables banks to make claims against prior banks in the return indorsement chain to the party responsible for the breach of warranty, and has retained the proposed warranties. This process is similar to that which occurs in the forward collection process, and the laws and procedures applicable to these warranties address many of the issues raised by the commenters. The Commentary clarifies that the warranty of timely return only warrants compliance with the paying bank's midnight deadline and does not extend to whether a paying bank has complied with the expeditious return requirements of § 229.30(a). The Board added a warranty for notice in lieu in § 229.34(a)(4), that the check itself has not and will not be returned, to provide protections to the depository bank similar to those ordinarily provided through a separate indemnity agreement. The Board did not extend the warranty to encoding errors in preparing QRCs because paying and returning banks preparing a QRC may be liable for these errors under the liability provisions of § 229.38.

(b) *Warranty of notice of nonpayment.* Seventy-nine commenters requested clarification of the paying bank's liability for notice of nonpayment. The comments indicated that the regulation should state that if a

depository bank receives a notice of nonpayment, it is entitled to rely on that notice in dealing with its customers unless and until a notice of cancellation is received, whether or not the returned check is received in a timely manner.

Three commenters specifically suggested that warranties should be provided in the context of the notice of nonpayment to ensure that depository banks may rely on such notices. Such warranties would parallel those applicable to the return of a check including (1) the notice is accurate based on information obtained from the check; (2) the party providing the notice is authorized to do so; and (3) the notice is timely and complies with the requirements of the Board's regulations. Similar warranties would also apply to a cancellation of a notice of nonpayment. In the case of the return of a returned check in the amount of \$2,500 or more, one commenter suggested the paying bank should warrant that notice has been given in accordance with the requirement of the large-dollar notice.

The proposed regulation included a provision in § 229.33(e) that required a paying bank that gives notice of nonpayment and subsequently determines to pay the check to provide a second notice as soon as reasonably possible indicating that it is a second notice cancelling the previous notice. Nineteen commenters were in favor of adding to this provision a clarification of the liabilities associated with cancellation. Such a statement would indicate that a paying bank that cancels a notice of nonpayment is responsible for loss suffered by the depository bank that acted in good-faith reliance on such cancellation.

In response to the comments received, the Board adopted a new warranty of notice of nonpayment that the paying bank will return the check, that it is authorized to send the notice, and that the check has not been materially altered. This warranty does not include a warranty that the notice is accurate and timely under § 229.33, rather the accuracy and timeliness of the notice are subject to the liability provisions of § 229.38. The Commentary to § 229.33(a) clarifies that the paying or returning bank that sends a notice of nonpayment and subsequently decides not to return the check might wish to send a cancellation of that notice to mitigate damages.

(c) *Damages.* The proposed regulation adopted the warranty damages of U.C.C. § 4-207(3), which states that damages for breach of these warranties shall not exceed the consideration received by the paying or returning bank plus

finance charges and expenses related to the returned check, if any.

Eight commenters supported this paragraph of the proposed regulation. Six commenters indicated that this paragraph should clarify the extent that "expenses" includes reasonable attorneys' fees and court costs. These commenters indicated that given the damage limitation contained in the regulation and the dollar amounts that will often be involved, if reasonable attorneys' fees and court costs are not permitted, the loss in many instances will be borne by the party initially incurring the loss, regardless of the merits, because it will not be cost-justified for that party to pursue the issue. Moreover, it was believed that failure to provide for reasonable attorneys' fees and court costs will have a disproportionately discriminatory impact on individuals and smaller banks.

Other commenters supported the inclusion of reasonable attorneys' fees for other reasons as well. One commenter indicated that in many cases, the paying bank returns a check "late" to "see if it can get away with it." The commenter explained that, if the depository bank challenges the timeliness of the return under Regulation J, the Federal Reserve has a mechanism to process and resolve these claims on a timely basis. However, no similar mechanism exists for returned checks cleared outside the Federal Reserve System, where paying banks often return checks late and then refuse to reimburse the depository bank for its loss. In essence, the commenter suggested that paying banks take a "sue me" position. For small-dollar checks drawn on paying banks located in other parts of the country, the cost and expense of litigation might exceed the amount of the check at issue. The commenter believed the threat of a paying bank having to pay the attorneys' fees and costs of suit to the depository bank will likely cause the paying bank to honor the breach of warranty claim without the need for litigation. Similarly, the depository bank will not be reluctant to bring suit to enforce the breach of warranty if the depository bank knows that the court must award attorneys' fees and costs of suit as part of the damages. Another commenter believed that "finance charges" should be defined to mean, at a minimum, interest charged at the legal rate.

The Board adopted this paragraph as proposed such that damages for breach of these warranties shall not exceed the consideration received by the paying or returning bank plus finance charges and

expenses related to the returned check, if any. This limits the amount of damages that may be claimed to the dollar value of the returned check plus finance charges and expenses related to the returned check. The Commentary references U.C.C. 4-207(3) to provide courts guidance in interpreting this provision. The official comment 5 to U.C.C. § 4-207(3) indicates that in appropriate cases expenses could include attorneys, fees.

(d) *Tender of defense.* The proposed regulation provided that, if a returning bank is sued for breach of a warranty under this section, it may give a prior returning bank or the paying bank written notice of the litigation, and the bank notified may then give similar notice to any other prior returning bank or the paying bank. If the notice states that the paying or returning bank notified may come in and defend and that if the paying or returning bank notified does not do so, it will, in any action against it by the paying or returning bank giving the notice, be bound by any determination of fact common to the two litigations; then, unless after reasonable receipt of the notice the paying or returning bank notified does come in and defend, it is so bound.

Four commenters commented on this paragraph of the proposed regulation; two commenters supported this provision and two had mixed reactions. The commenters that favored adoption of this paragraph indicated that "seasonable" should be substituted for "reasonable" before "receipt of notice" in the second sentence. The Board corrected the typographical error noted by the commenters.

Both commenters with mixed reactions indicated that under § 229.34, paying and/or returning banks are required to warrant to subsequent returning banks and the depository bank that the paying bank made a timely return. The commenters believed that this would give the depository bank and its customer a cause of action against the last returning bank, but that bank may have difficulty obtaining jurisdiction over the paying bank in the same action. The commenters requested clarification of whether the tender of defense provision will be effective against a paying bank in another jurisdiction.

The Board believes that although a depository bank may bring an action against the last returning bank, the tender of defense provisions will permit claims to be asserted against paying banks.

Section 229.35 Indorsements.

(a) *Indorsement standards.* This paragraph of the proposed regulation required a bank, Federal Reserve Bank, or Federal Home Loan Bank other than a paying bank that handles a check during forward collection or a returned check, to indorse the check according to the indorsement standard provided in Appendix D.

Five hundred fifty-nine commenters commented on the indorsement standard. Five hundred forty-one commenters agreed that an indorsement standard is necessary to expedite the return process; however, 346 commenters expressed concern that the standard as proposed was too rigid. One hundred nineteen commenters indicated that it would be difficult to implement the proposed standard by September 1, 1988, due to the extensive equipment changes required to comply with the technical requirements of the proposed standard. In addition, commenters indicated that the technical modifications required by the proposed indorsement standard were unnecessarily burdensome and would be expensive for the banking industry to implement.

In response to these comments, the Board adopted technical modifications to the proposed indorsement standard to make the standard more flexible and to minimize both the operational and cost effects of the technical requirements of the standard. In making these modifications, Board staff consulted with banks, equipment manufacturers, and check printers to ensure that the modifications adequately addressed the specific concerns raised by the commenters. These modifications were adopted by the Board on April 4, 1988.

After distribution of the indorsement standard adopted by the Board on April 4, 1988, the Board subsequently modified the indorsement standard to delete the reference to avoiding the MICR clear band in the depository bank indorsement standard. This change was made as a result of telephone inquiries received by Board staff. The reference to avoiding the MICR clear band was adopted from the draft standards currently under review by the American National Standards Institute ("ANSI"). It was discovered that ANSI's intent is to retain this area for future use, but that no current use for this area exists. In order to decrease the burden of complying with the standard, the Board has eliminated reference to avoiding the MICR clear band. If a future use for this area is developed, the Board will consider modifying the standard to avoid the MICR clear band at that time.

(b) *Liability of a bank handling a check.* Section 229.35(b), "Contract of indorser," of the proposed regulation provided that a paying or returning bank makes the contract of indorser and may have the rights of a holder with respect to each returned check it handles. No comments were received on this paragraph.

The paragraph on contract of indorser has been replaced by a new paragraph entitled "Liability of a bank handling a check." This paragraph is similar to the corresponding paragraph in the proposal, but it does not incorporate the U.C.C. contract of indorsement.

(c) *Indorsement by a bank.* This paragraph was added because commenters were concerned that the term "pay any bank" commonly used in bank indorsement was not part of the proposed standard. The "pay any bank" language is intended to limit the transfer of a check to banking channels unless it is returned to the original depositor or a bank takes specific action to transfer the check to a nonbank. This restriction is thought desirable to protect the interests of the depositor or any collecting bank that has a security interest in the check in case the check is lost or stolen and transferred to an innocent party who becomes a holder in due course. In these cases, the restrictive indorsement "pay any bank" gives notice to third parties of potential adverse claims against the check. While the limitation on transfer to banking channels may be desirable, there does not appear to be any need to rely on specific words to accomplish this result. Because banks routinely place restrictive indorsements on the checks they handle, a new paragraph 229.35(c), "Indorsement by a bank," has been added to the final regulation to provide that any bank indorsement would be considered restrictive unless a bank takes specific action otherwise. Thus, third parties would be placed on notice of potential adverse claims by the bank indorsement itself without additional language. Accordingly, "pay any bank" is not part of the standard, and the use of this language in indorsements is discouraged for depository banks and prohibited for subsequent collecting banks.

(d) *Indorsement for depository bank.* This paragraph was added to address issues raised by the commenters with regard to who must indorse checks.

Twenty-five commenters expressed concern over who must indorse the checks. Several commenters questioned whether small banks (particularly credit unions) must indorse checks as the depository bank. They suggested that a small bank be permitted to act as a

corporate depositor and agree with its correspondent to have the correspondent place the correspondent's indorsement on the back of the check as the depositary bank indorsement. This approach could be beneficial to both the depositary bank and returning banks, particularly if the depositary bank wants its returned checks to be delivered to the correspondent. Similar comments were raised with regard to bank holding companies that want the returns destined to their subsidiary banks to go to one location rather than to each subsidiary. This issue also arises in the context of nonproprietary ATMs or lock box arrangements whose operators process checks for which they are not the bank of account.

Because the indorsement standard is being proposed to expedite the return process, the Board believes that the indorsement placed on the check as the depositary bank indorsement should reflect the location where the returned checks and notices of nonpayment under § 229.33 should be directed. If the bank of account agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notices of nonpayment for the bank of account, the indorsement placed on the check as the depositary bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator. A paying or returning bank sending a returned check or notice of nonpayment to the bank indorsing the check as the depositary bank in accordance with the regulation will have complied with its expeditious return and notification responsibilities. The bank of account that handles the check but agrees to the placement of another bank's indorsement as the depositary bank may physically indorse the check in an ink color other than purple outside of the area designated for the depositary bank. Otherwise, the bank of account and the bank indorsing as the depositary bank may agree that the bank of account will be responsible for the check without requiring the bank of account to place an indorsement on the check itself.

Section 229.36 Presentment of checks.

(a) *Presentment of checks.* Sixteen commenters commented on the proposed provision that a check payable at or through a paying bank is considered to be drawn on that bank for the purposes of determining the time for return or notice of nonpayment. (The majority of comments on the payable through issue were submitted under § 229.2.) Nineteen respondents opposed the treatment of a payable through bank

as a paying bank; three commenters supported the rule; and four had mixed reactions. Twelve commenters specifically stated that payable through drafts should not be subjected to the duties of expeditious return. See the Commentary to § 229.2 for a summary of the Board's action on this issue.

The final rule treats the payable at or through bank as the bank on which the check is drawn for the purposes of the expeditious return and notice of nonpayment under Subpart C, but not for purposes of a payor bank's midnight deadline or wrongful dishonor under the U.C.C.

(b) *Receipt at bank office or processing center.* Fourteen respondents commented on the proposal that a check is considered received by the paying bank when it is received at any branch or head office identified on the check by name without address, at any branch or head office consistent with the name and address on the check, at any address of the bank associated with the routing number on the check, or at a location to which delivery is requested by the paying bank. Commenters were unsure whether this paragraph referred to only the receipt of forward collection checks or to the delivery of returned checks as well. This paragraph governs only the receipt of forward collection checks by the paying bank.

Eight commenters opposed the provision as written, three were in favor, and three had mixed reactions. The commenters opposing this provision cited the need to set a priority for the locations for receipt so that checks are not delivered to any location affiliated with the institution. Three commenters requested that the first priority for receipt be locations identified by the routing number of the paying bank on the check. Three commenters suggested that it be clearly stated that the regulation will override provisions in the U.C.C. which deal with the receipt of presentment.

The Board has modified this paragraph so that receipt at a location to which delivery is requested by the paying bank is the first location defined for presentment. The Commentary also suggests that paying banks, concerned with presentment to specific locations, specify particular addresses on their checks rather than just general addresses or the name of the bank.

(c) *Truncation.* Seven commenters commented on the provision to permit truncation by agreement with the paying bank, given that truncation does not extend the paying bank's time for return. Two commenters supported the provision as written, two were opposed,

and three expressed mixed opinions. Two commenters indicated that the definition of truncation is too narrow and should be extended to more than just depositary and collecting banks so that there is a degree of flexibility in potential participants. One commenter cited that truncation would only be effective if aspects of the U.C.C. governing liabilities associated with indorsements, signatures, etc., were changed to encourage the use of truncation.

The Board believes that this paragraph, as proposed, provides flexibility to allow potential participants to implement truncation agreements. Therefore, the Board adopted this paragraph as proposed. The Board plans to continue to evaluate these provisions in the future to determine whether they are adequate to facilitate the development of truncation programs.

(d) *Liability of bank during forward collection.* A new paragraph has been added to provide that settlements during the forward collection process are final when made instead of provisional. This change is consistent with the treatment of settlements for returned checks under § 229.31(c), including the removal of charge-back under that section. It is also consistent with the scheme of the expeditious return system under §§ 229.30(a) and 229.31(a) under which checks are not returned up the forward collection path. This paragraph also clarifies that this finality of settlement does not affect a bank's liability under certain provisions of the U.C.C.

Section 229.37 Variation by agreement.

A number of commenters asked that the Board include a provision in the final regulation authorizing banks to vary the requirements of the regulation by agreement. They stated that such variations are explicitly authorized by the U.C.C., and that similar authority is needed in this regulation, because many provisions of the regulation relate to U.C.C. requirements.

This section was added to parallel U.C.C. § 4-103(1). The Board emphasizes that agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under § 229.38 to entities not party to the agreement. This section is consistent with the limits on truncation agreements in § 229.36(c). The Commentary to the regulation includes examples of situations where variation by agreement is permissible. Variation by agreement is not authorized with respect to the requirements of Subpart B of the regulation.

Section 229.38 Liability.

(a) *Standard of care; liability; measure of damages.* The proposed regulation established a standard of care that applies to any bank covered by the requirements of Subpart C and is similar to the standard imposed by U.C.C. §§ 1-203 and 4-103(1). A bank not fulfilling this standard of care is liable to the depository bank, the owner of the check, or another party to the check. The measure of damages stated was derived from U.C.C. §§ 4-103(5) and 4-202(3). This paragraph also stated that it did not affect a paying bank's liability to its customer. The Board requested specific comment on whether a bank's liability under this paragraph should be limited to the depository bank and owner of the check.

Ninety-eight commenters commented on this paragraph of the proposed regulation. Among these commenters, 53 generally favored the Board's proposal with technical changes, while 19 had mixed reactions, and 26 opposed this part of the proposal as written. Eighty-seven commenters addressed the issue of whether a bank's liability under this paragraph should be limited to the depository bank and owner of the check. Forty-five commenters stated that liability should apply to the depository bank, owner of the check, or another party to the check. On the other hand, 42 commenters indicated that the bank's liability should be limited to the depository bank and owner of the check.

One commenter indicated that because a bank is liable under the Act and regulation only if it failed to exercise ordinary care or act in good faith, a bank's failure to comply with the requirements of the regulation would not necessarily result in liability. Accordingly, the commenter believed there would be a certain degree of uncertainty for other parties as to whether recovery will be realized against a particular bank that violated the regulation. Moreover, the commenter indicated that losses will be shifted from banks failing to comply with the requirements of the regulation (albeit not in a negligent or bad faith manner) to innocent parties that have fully complied with the regulations.

At the state level, the commenter believed it was important that the Board's regulations be interpreted consistently by the state courts in each state. In this regard, it was suggested that the Board consider including language in the regulation encouraging state courts to certify to the Board issues concerning the interpretation of this regulation. In addition, the Board was encouraged to indicate in the regulation

that it is prepared to file, and will file, amicus briefs in state courts to ensure consistent interpretation of its regulation across the country. This commenter believed that such Board involvement in state court proceedings was particularly appropriate, because Subpart C represented a significant new federal overlay applicable to legal relationships previously governed primarily by state law and regulated by state courts.

Another commenter indicated that one of the most critical issues currently facing California banks is the recent influx of "bad faith" suits in which punitive damage awards of, for instance, \$20 million have been made as a result of a bank's alleged breach of its "implied warranty of good faith and fair dealing" to its customers. The commenter indicated that the California legislature recently amended California law to slow the pace of similar cases, which represented a true crisis to the California banking community. According to this commenter, California law (Financial Code § 866.4) currently limits banks' liability for failure to comply with California's funds availability laws to actual damages plus additional action and the lesser of \$500,000 or one percent of net worth. In view of this information, the commenter made three requests:

- (1) That no reference be made anywhere in the regulation to a standard of "good faith," rather, that the negligence, reasonableness and/or due diligence standard be used;
- (2) That the regulation state specifically that it does not establish a standard of or otherwise impose an implied or express warranty of good faith and fair dealing not otherwise existing under applicable state law;
- (3) That § 229.38 explicitly state that the amount of damages will be subject to applicable state law.

Of those commenters opposed to this section as proposed, one commenter believed that the proposal imposed liability for consequential damages upon a showing of "lack of good faith." The commenter believed that this is different language from that found in U.C.C. § 4-103(5) which requires an affirmative finding of "bad faith" before subjecting a bank to liability for consequential damages and from the language in the Act which provides for such damages only "where there is bad faith." (See section 611(f) of the Act.) The commenter asked if this change in language was intentional and recommended that the language in the regulation parallel that of the Act.

Another commenter believed that an "ordinary care" standard does not

provide banks with a clear standard by which they may measure their conduct, and suggested that the Board adopt a "good faith" standard instead. Another commenter indicated that under U.C.C. §§ 1-203 and 4-103(1), standards of care are imposed upon each bank handling the check. This should not change, and liability should be assigned to any bank causing a delay in the handling of the check.

Another commenter indicated that it may be very difficult to comply 100 percent of the time considering the complexities of the Act. Consequently, it was noted that the following questions should be addressed in the regulation or commentary. What will "ordinary care" mean? What will "good faith" mean? If a returned check is lost, how is the determination of whether the bank exercised care made?

Another commenter was concerned that the Federal Reserve may be the responsible party for delaying a returned check and would not be subject to the liability provisions of this section. The Board notes that the Federal Reserve is subject to the same duties and liabilities under the regulation as any returning bank.

One commenter failed to see the need for § 229.38, since the U.C.C. already establishes a standard of care for check return obligation. This standard has been clarified by a large number of judicial decisions. The commenter believed that, by combining this proposed regulation with the expeditious return requirement of Subpart C, an issue of fact will be created in every lawsuit seeking damages under its terms.

Another commenter believed that liability should not be imposed on a bank that misroutes a returned check due to the inaccurate identification of the depository bank. Another commenter indicated that good faith encoding errors in processing QRCs should not create liability on the part of the bank that encoded the check. Another commenter indicated that "standard of care" should be a responsibility of all institutions involved in the returned check process.

Of those that supported this provision, nine indicated that under the QRC process, a misrouted return is a definite liability of the paying bank and agreed that this liability should extend at the very least to the depository bank, the depositor, and the issuer of the check. Three commenters indicated that in order to clearly determine the identity of the paying/returning bank that has misencoded a QRC, the bank creating a QRC be required to encode its routing

number on the front of the check. These commenters indicated that liability for actual and direct damages (including court costs and attorneys' fees) should extend to all injured parties. Six other commenters generally agreed that the provisions of paragraph (a) were adequate. Fifteen commenters recommended this paragraph contain a provision similar to the following: "provided the bank had handled the return of an item in a manner consistent with standard industry practices, the fact that the bank has not returned the item in strict accordance with this regulation shall not be deemed to create a presumption that the bank has failed to exercise ordinary care or to act in good faith."

One commenter recommended that the regulation clarify that qualifying banks are responsible for losses caused by delays due to improper qualification. Improper qualification may cause a check to be misrouted, delaying its return to the depository bank. The commenter suggested that, if the depository bank shows that the check would have been returned before it released funds but for the delay caused by the improper qualification, the qualifying bank should be held liable for the resulting loss.

Another commenter suggested clarification in that the U.C.C. states that a collecting bank exercises ordinary care if it acts by its midnight deadline. A similar standard should be adopted by this paragraph so that "ordinary care" is not left to interpretation. Likewise, good faith should be tied to the U.C.C. definition of "good faith," which is "honesty in fact." Another commenter supported this paragraph but indicated that it should be limited to the depository bank and its customer. However, other banks may share in the paying bank's liability if they failed to exercise ordinary care.

Two other commenters suggested that the liability under § 229.38(a) should be restricted to the depository bank or the owner of the check and that the Commentary be expanded to state that in the fifth sentence the term "notice" in the phrase "for loss or destruction of a check or notice in transit" refers to a notice of nonpayment or notice in lieu of return.

One other commenter suggested that the Board modify this provision so as to discourage litigation by (1) placing the burden of proof on the party seeking to recover; (2) where a party seeks to recover a sum in excess of the amount of the check, establish a high evidentiary standard such as "clear and convincing evidence;" (3) include the U.C.C. definition of "good faith" (i.e., honesty in

fact) and emphasize in the commentary that an error in legal judgment, gross negligence, or other circumstances not involving actual dishonesty do not constitute a lack of good faith; (4) identify in the Commentary some of the most prevalent factual circumstances arising in check collection litigation and clarify whether a loss has been incurred and whether such loss is attributable to delayed returns under those circumstances; and (5) clarify that the depository bank cannot refuse to make full settlement by offsetting alleged losses from alleged late returns against the settlement due.

Another commenter agreed that a bank's liability for failure to use reasonable care in handling a check should apply only in favor of the depository bank or owner of the check. This would eliminate the requirement to involve intermediary banks in such disputes.

Other commenters questioned how the depository bank would revoke settlement should a dispute arise when settling directly with a drawee bank when an account relationship did not exist. Another commenter indicated that interpretation and limits of liability to determine "fault" must be considered (e.g., unreadable indorsements). It was suggested that returns delivered in error to a financial institution should be under special consideration.

The Board believes that it is important to the expeditious return requirements of this regulation for banks to be liable for any losses due to their negligence in handling checks. This approach is consistent with the current treatment of collecting bank liability under the U.C.C. The Board also believes that it is important to return the liability for other damages in laws where a bank fails to act in good faith. The Commentary indicates that these standards are derived from U.C.C. standards, and therefore U.C.C. case law will provide guidance in their interpretation. The Board also recognizes that litigation under these standards will often involve complex fact situations and does not believe that it can address the variety of situations that may arise. Nevertheless, the Commentary has been revised in an attempt to clarify a depository bank's duty to seek recovery from its customer and that a depository bank is generally not negligent for making funds available to its customer. The Board will monitor developments in liability under this standard to see if future revisions are necessary.

Bona fide errors. Under the proposal, a depository bank was shielded from liability under this paragraph for a violation of a requirement of this

subpart if it could demonstrate, by a preponderance of evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. An error in legal judgment, however, would not constitute a bona fide error.

Nine commenters commented on this paragraph. Of these, one comment was favorable, three were mixed, and five were opposed to the paragraph as proposed. One commenter suggested that the Board broaden the interpretation of bona fide error recognizing the manual processing and training issues involved in complying with the regulation's requirements. One commenter stated that errors in legal judgment should be included in the definition of bona fide error. Another commenter requested that the Board establish procedures to answer questions via telephone and to promptly respond to written ruling requests concerning Regulation CC and affected Regulation J provisions because banks are not shielded from errors in legal judgment.

Another commenter questioned the applicability of the bona fide errors provisions to Federal Reserve Banks, given the fact that the Act limits this shield to depository institutions. One commenter stated that this provision was somewhat unclear and confusing, and suggested that it should describe the liability for bank errors or omissions in each case covered by Subpart C, particularly the liability of a bank for failure to properly indorse a check. One commenter recommended that this provision be deleted from the final rule.

On further review, the Board believes that the bona fide error provision is not necessary under Subpart C, as the standards for negligence liability incorporate the purpose of the bona fide error provision. Therefore, the Board has deleted this provision from the final regulation.

(b) *Paying bank's failure to make timely return.* Section 229.30(a) of the proposed regulation imposed requirements on the paying bank for expeditious return of a check and left in place the U.C.C. time limits, which may allow return at a different time. This paragraph clarified that the paying bank could be liable for failure to meet either standard but not for failure to meet both.

Eight commenters commented on this paragraph of the Board's proposal. Five commenters favored the proposal as written, and three commenters suggested clarifications to the proposal. One commenter indicated that this paragraph should be clarified to ensure that litigants may plead in the

alternative under both the U.C.C. and the Board's regulation.

Another commenter indicated that under current laws, the definition of late return is explicit. The proposed regulation removed the standards for judging what constituted a late return. The commenter believed that disputes over expeditious return and late returns are inevitable and suggested that the Board clarify this definition in the final regulation and/or Commentary. One other commenter questioned the liability of other returning banks when holding a returned check causes the returned check to be late. The Board notes that the current U.C.C. midnight deadline requirement is explicit only in the case of paying banks.

Of those generally supporting this paragraph as proposed, two commenters favored a charge-back to the customer's account even if the returned check is not returned timely, upon receipt of the physical check or a copy. One commenter recommended that the proposed regulation be amended to authorize a check of \$2,500 or more be charged back against the reserve account of the drawee bank, if a depository bank submits an affidavit proving this loss was a result of failure to receive a notice, if such notice as now required by Regulation J was not given by the drawee bank. The Board believes that automatic charge-back would be inappropriate, because the determination of liability would involve the review of the facts of each case.

This paragraph is designed to shield a bank from double liability under the U.C.C. and this regulation for a single error. It has been adopted substantially as proposed.

(c) *Comparative negligence.* This paragraph of the proposed regulation established a "pure" comparative negligence standard for liability under Subpart C of the regulation. This comparative negligence rule may have particular application where a paying or returning bank delays returning a check because of difficulty in identifying the depository bank. Nine commenters commented on this paragraph. Of those that commented, three were opposed, five had mixed reactions, and one commenter supported this paragraph as proposed.

Of those opposed, one commenter indicated that this rule created a nightmare in resolving disputes. For example, if a bank returned a returned check late and the depository bank suffered a loss, the depository bank would make claim on the paying bank for a late return. The paying bank would invariably claim that the depository bank was negligent in allowing its

customer to withdraw the money and, therefore, the paying bank would not be liable for the late return. In essence, the commenter believed that this proposed comparative negligence section introduced an alien "personal injury" concept into the laws governing commercial paper, bank deposits, and collections.

Another commenter indicated that the Board was circumspect in exercising its authority by proposing such a comparative negligence rule, and only time will tell how the adoption of the comparative negligence doctrine will affect predictability, speedy dispute resolution, and efficiency in the check collection system. One other commenter believed the comparative negligence standard is unworkable as it eliminated the clear framework of liability, which characterizes the current system. The commenter indicated that rather than help resolve disputes, comparative negligence will result in the introduction of too many variables to enable resolution without costly litigation. The commenter believed that the prevailing party in any dispute under this paragraph should be entitled to both costs and reasonable attorneys' fees.

One commenter stated that the concept of comparative negligence, if applied in all instances, will result in much needless litigation between banks with the attendant costs and delays involved in adversary proceedings. This commenter suggested that losses of \$5,000 or less resulting from indorsement, returned check, or notice problems be shared equally by the banks handling a returned check, and allocation of losses exceeding \$5,000 be determined by a comparative negligence standard. Another commenter indicated that it was unclear how the comparative negligence and "bona fide errors" provisions interrelate.

Another commenter indicated that it would be difficult to determine when a returned check was late. The commenter questioned whether a paying or returning bank must establish proof that a returned check was qualified, delayed by research for a routing number, sent on a courier after midnight, or held for two days as a small-dollar item. It was suggested that the Federal Reserve set a standard for reasonableness on claims of late returns to better manage potential disputes.

One commenter suggested that the Board undertake a thorough analysis of the comparative negligence standard in cooperation with the National Conference of Commissioners on Uniform State Law before adoption of this provision. One commenter agreed that comparative negligence is a fair

standard which is generally used today in settlements, although the commenter foresaw possible problems in determining percentages of negligence and bad faith.

Today, under a general negligence standard, a party may not be liable if the other party was negligent; therefore comparative negligence is not a new concept in commercial law. The Board believes that a comparative negligence standard equitably balances the interests of all parties, and provides greater incentives for compliance with the requirements of this subpart, particularly the indorsement standards. Therefore, the Board adopted this paragraph of the regulation as proposed.

(d) *Responsibility for back of check.* This paragraph was added to clarify the responsibility for damages under paragraph (a) when the condition of the back of the check adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35.

(e) *Timeliness of action.* This paragraph incorporated the standard of U.C.C. § 4-108(2) with the addition of "failure of equipment" and "interruption of computer facilities" as causes of delay. Seventeen commenters commented on this portion of the proposed regulation. Of these, one commenter supported, and 16 opposed, this paragraph as proposed. Commenters opposed to this provision indicated that the causes of delay for "equipment failure" and "interruption of computer facilities" are too vague and requested that more specific definitions be provided in the Commentary in order to prevent abuses.

The Board adopted this paragraph of the regulation essentially as proposed. No examples were included in the Commentary concerning equipment failures because to do so might have the effect of establishing equipment standards for the banking industry and would therefore be beyond the scope of the original proposal.

(f) *Exclusion.* This paragraph of the proposed regulation provided that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611(a) and 611(b) of the Act (12 U.S.C. 4010 (a) and (b)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Two commenters commented on this paragraph—one favored and one opposed. The Board revised this paragraph to exclude the bona fide error provisions of the Act from Subpart C.

(g) *Jurisdiction.* The proposed regulation provided for the jurisdiction and statute of limitations for civil

actions for violations of this subpart. Four commenters commented on this paragraph. Two supported the paragraph as proposed, and two had mixed reactions to the proposal.

One commenter questioned whether it was appropriate to use the limited resources of the federal courts to resolve disputes concerning small-dollar checks. Another commenter believed that this provision indicated that any action "may" be brought within one year. If the intent is to preclude any action brought after one year, the commenter preferred to remove any ambiguity by stating that no action *shall* be brought after one year. The commenter was also concerned that the provision made no exception for cross claims and third-party claims, which are prevalent in check collection litigation. The commenter indicated that in view of the warranty and comparative negligence provisions contained in the proposed regulation, it appears that the defendant in an action brought under § 229.38 should have an additional 60 to 90 days to bring in a third party or file an independent action, after the defendant is served.

One commenter supporting this paragraph indicated that it would be helpful if the Board clarified jurisdiction (or the lack thereof) and whether the appropriate long-arm statute is applicable. In addition, it was recommended that, to the extent already not incorporated, the exceptions to providing notice of dishonor found in U.C.C. § 3-511 apply under the regulation as well (i.e., check return rules, notice of nonpayment).

This paragraph was revised to refer to action under this subpart instead of this section in order to include actions brought under other sections of this subpart such as § 229.35(b). The Commentary has been revised to clarify that this paragraph covers subject matter jurisdiction.

(h) *Reliance on Board rulings.* This paragraph of the proposed regulation shielded banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. In addition to the regulation, banks may also rely on the Commentary of this regulation, which will be issued as an official Board interpretation. One commenter commented in support of this paragraph. The Board adopted this paragraph essentially as proposed.

Section 229.39 Insolvency of bank.

Two respondents commented on this provision of the proposed regulation dealing with instances in which banks

fail without having made final settlement for checks. One comment supported the provision. One commenter opposed this rule, citing doubt as to whether the Federal Reserve Board has the right to preempt federal statutes on the insolvency of banks.

The Board believes that this provision is consistent with the Board's authority to regulate the check collection system under the Act. Therefore, the Board has adopted this section essentially as proposed. The Commentary to this section has been expanded to clarify its operation.

Section 229.40 Effect of merger transaction.

Several commenters stated that it would be extremely difficult to comply with certain requirements of the regulation for a period of time following a merger or acquisition of a bank. These difficulties arise from having to treat the banks that have merged as one entity before the operations of the banks have been consolidated. This section has been added to the regulation to provide a one-year transition period for merged/acquired banks, during which they may be treated as separate banks.

Section 229.41 Relation to state law.

This section of the proposed regulation specified that state law relating to the collection of checks would be preempted to the extent that it is inconsistent with this regulation. Thus, the proposed regulation was not a complete replacement for state laws relating to the collection or return of checks. Sixteen commenters commented on this section.

Of these, 14 supported this section as proposed with suggestions for clarification and/or modification, while two of the commenters opposed the proposed section. Five commenters urged that the regulation and/or Commentary define explicitly those provisions of the U.C.C. that are preempted and those that are not.

One commenter suggested that this section include a standard defining the extent to which any "inconsistency" must exist before it is deemed preempted, which would include examples and descriptions of such inconsistencies. Of specific concern was the interrelationship between the accountability rules under the U.C.C. and the liability rules under the proposed regulation. In addition, two commenters suggested that the procedures applied in Subpart B to resolve inconsistencies between the proposed regulation, the U.C.C., and other state laws should be equally applicable to issues arising in this

subpart. One commenter opposed to the proposed section suggested that the Board examine the laws of each state for conflicts with the regulation and encourage respective state legislators to change the laws and/or ensure that banks within each state are aware of any inconsistencies.

One commenter suggested that, once the regulation is implemented, the Board seriously consider consolidating Regulation CC, Regulation J, and the U.C.C. into one comprehensive regulation governing check collection and return, seeking input from banking, consumer, and other interested groups, such as the National Conference of Commissioners on Uniform State Law.

The Board believes that the preemption determination procedures established in § 229.20 with respect to Subpart B requirements are not warranted with respect to state law determinations under Subpart C, because this subpart does not impose punitive damages for violations in contrast to the liability provisions of Subpart B. The Commentary to the various sections of this subpart generally address the relation between these requirements and provisions of the U.C.C.

Section 229.42 Exclusions.

This section of the proposed regulation specified that checks drawn upon the account of the United States Treasury, or indorsed by the Treasury, and U.S. Postal Service money orders are excluded from the coverage of the expeditious return requirements of Subpart C of this regulation. Twenty-six commenters commented on this section of the proposed regulation. Twenty-two commenters opposed and four supported the section as proposed.

The majority (16) of commenters opposed to this provision stated that it is not appropriate to exclude checks drawn on the U.S. Treasury, checks indorsed by or to the credit of the U.S. Treasury, or U.S. Postal Service money orders from the expeditious return requirements of this subpart. One commenter believed that government checks should have the same statute of limitations as other checks for returns due to indorsement problems, etc. In addition, several other commenters indicated that government entities whose checks must be made available in one day should be required to comply with all provisions of Subpart C as well as the midnight deadline of the U.C.C., or be given the same availability as nonlocal checks, because under the regulation such checks represent potentially the greatest risk to banks.

Other commenters suggested that there should be no differentiation between the rules applicable to Treasury checks, cashier's checks, certified checks, and teller's checks, and that the issuers of any of these checks should be required to provide notice to the depository bank of the pending return. One commenter suggested that all governmental entities (city, local, state, and federal) be required to comply with the expeditious return rules contained in this subpart. The Board did not subject Treasury checks to the expeditious return requirements, due to the fact that return of these checks is currently subject to Treasury rules rather than the U.C.C. midnight deadline requirement applicable to the return of checks. The Board has also excluded checks drawn on a state or unit of general local government that are not payable through or at a bank from the expeditious return and notice of nonpayment requirements of Subpart C, because the Board's authority under the Act to regulate these checks is not clear.

Three commenters stated that depository banks that do not hold transaction accounts should also be excluded from the Subpart C requirements. These banks, however, would not be subject to the expeditious return or notice of nonpayment requirements, since they do not act as a paying bank.

At the request of the U.S. Treasury, the Board eliminated the exclusion for checks indorsed to or for credit to the account of the U.S. Treasury.

Inquiry to Paying Bank. The proposed regulation required paying banks to respond promptly to a telephone or telegraph inquiry from a depository bank with respect to whether a cashier's or certified check drawn upon it had been issued, certified, or payment stopped thereon, or whether the check had been paid, returned or notice of nonpayment given, and confirm information on the face of the check including the amount and payee. With respect to a teller's check, the proposed regulation required the drawing bank to respond to such an inquiry. Under the proposal, the paying or drawing bank did not guarantee payment of the check by responding to an inquiry.

A total of 310 commenters responded to this section of the proposed regulation. One hundred ninety-three favored the concept of requiring paying banks to respond to inquiries but suggested certain conditions and modifications. Fifty commenters indicated mixed reactions to this provision, and 67 commenters generally opposed this section as unworkable operationally. Specifically, 78

commenters indicated that the provision would not protect depository banks completely because many forgeries and counterfeits would go undetected. In addition, if a stop payment was issued after the inquiry had been made, the depository bank would be unaware of that fact. Furthermore, depository banks would not know where to direct the inquiry within the paying bank to obtain reliable information, or may not be able to contact or receive a response from the paying bank within a reasonable time. Twenty-five commenters recommended that issuers of cashier's, certified, and teller's checks be required to print a telephone number on the face of the check and require all verification inquiries to be directed to that specific telephone number.

Sixty-one commenters were also concerned that differing time zones and the requirement that cashier's, certified, and teller's check proceeds be made available at the opening of business on the day after deposit may result in the depository bank making funds available before it had the opportunity to contact the paying bank and obtain a response. Seventy-nine commenters further indicated that the information provided by the paying bank should not be guaranteed because of problems with recordkeeping and proof, and because telephone messages are too unreliable. Fifty commenters indicated that having access to reliable information at the paying bank may be difficult because many banks do not have the sophisticated systems necessary to centralize all information from branches that issue cashier's, certified, or teller's checks. Designing and implementing such a system could be very expensive and many banks could not do it by September 1, 1988. On the other hand, several other commenters indicated that currently such systems are maintained and could be expanded to meet this requirement.

Because a significant number of banks would have difficulty complying with this inquiry requirement by September 1, 1988, the Board eliminated this provision from the regulation. The Board expects that many banks will respond to inquiries absent a regulatory requirement to do so. The Board may consider, however, adopting this or a similar provision at a later date.

Final Regulatory Flexibility Analysis. Of the items required to be contained in a final regulatory flexibility analysis by 5 U.S.C. 604(a), the first (a statement of the need for and objectives of the rule) and second (a summary of the issues raised by the commenters, the Board's assessment of the issues, and the changes made to the proposed rule in

response to the comments) are contained elsewhere in this preamble.

The third item required for a final regulatory flexibility analysis is a description of significant alternatives to the rule consistent with the objectives of applicable statutes and designed to minimize any significant economic effect of the rule on small entities considered by the Board, and why these alternatives were rejected. In the initial regulatory flexibility analysis, which was published with the proposal (52 FR 47112, 47148 (Dec. 11, 1987)), the Board noted that it had considered exempting very small banks, those that fall below the threshold for filing reports of deposit under the Board's Regulation D (12 CFR Part 204), from Regulation CC's requirements, but did not do so because the availability schedules (which by statute apply to all banks regardless of size) and the expeditious return requirements could be made to work only if all banks were subjected to the same rules.

Of all the comments received, only 20 mentioned the burden on small banks. These commenters, however, did not offer any significant alternatives other than to suggest that the Board exempt small banks from the regulation. As noted previously, the Board had considered this approach and rejected it. No commenters specifically addressed the difficulties in exempting small banks identified by the Board in the initial regulatory flexibility analysis: that the Act does not provide any exemptions for small banks from its availability and disclosure requirements; in order to minimize the risks to all banks (large and small) that must make funds available to their customers according to these expedited schedules, all paying banks, regardless of size, must be subjected to the expedited return provisions of Subpart C. Exemption of small banks from the expeditious return requirements would mean that small banks would be permitted to continue to use inefficient manual processing of returns. When this inefficient return process is combined with the expedited availability mandated by the Act, the result could be increased losses for banks that accept for deposit checks drawn on small banks. Accordingly, the Board has determined to implement Regulation CC without any exemption for small banks.

The Board notes that some very small institutions, especially credit unions, do not maintain accounts as that term is defined in Regulation CC. These institutions are not subject to the expedited availability and disclosure requirements of the Act or of the

regulation. Further, any institution that does not offer accounts subject to check or draft (again, primarily small credit unions) would not be subject to the expeditious return requirements of Subpart C of the regulation. Finally, the Act provides relief to certain credit unions, generally those that are small and lack sophisticated operations, from certain interest accrual requirements.

A number of small businesses other than banks requested that the Board specifically address the effect of its proposed indorsement standard on small businesses that use or make checks with a carbon band. This issue was addressed in the final regulatory flexibility analysis that accompanied the Board's adoption of the indorsement standard in April. (53 FR 11832, 11836 (Apr. 11, 1988).)

Paperwork Reduction Act Notice. The Board has submitted the disclosure requirements and model forms of Regulation CC to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and OMB's regulation on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). (OMB Docket number: 7100-0234.)

A detailed description of the disclosure requirements, including why the Board has adopted them, the institutions that will be subject to them, and how frequently disclosures will be required, is contained elsewhere in this notice. The model forms are set forth in Appendix C to Regulation CC.

The Board estimates that the disclosure requirement will result in a one-time reporting burden of 3.2 million hours and an annual reporting burden of 2.3 million hours for all institutions subject to the requirements. State member banks and other institutions subject to the Board's jurisdiction under § 229.3 will incur a reporting burden of approximately 375,000 hours (one-time) and 218,000 hours (annual); the balance of the reporting burden will be included in the information collection budgets of the other agencies identified in § 229.3 of Regulation CC in proportion to the burden associated with the institutions subject to their jurisdiction.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, effective September 1, 1988, Title 12, Chapter II, Part 229 of the Code of Federal Regulations is revised to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

Subpart A—General

- 229.1 Authority and purpose; organization.
- 229.2 Definitions.
- 229.3 Administrative enforcement.

Subpart B—Availability of Funds and Disclosure of Funds Availability Policies

- 229.10 Next-day availability.
- 229.11 Temporary availability schedule.
- 229.12 Permanent availability schedule.
- 229.13 Exceptions.
- 229.14 Payment of interest.
- 229.15 General disclosure requirements.
- 229.16 Specific availability policy disclosure.
- 229.17 Initial disclosures.
- 229.18 Additional disclosure requirements.
- 229.19 Miscellaneous.
- 229.20 Relation to state law.
- 229.21 Civil liability.

Subpart C—Collection of Checks

- 229.30 Paying bank's responsibility for return of checks.
- 229.31 Returning bank's responsibility for return of checks.
- 229.32 Depository bank's responsibility for returned checks.
- 229.33 Notice of nonpayment.
- 229.34 Warranties by paying bank and returning bank.
- 229.35 Indorsements.
- 229.36 Presentment of checks.
- 229.37 Variation by agreement.
- 229.38 Liability.
- 229.39 Insolvency of bank.
- 229.40 Effect of merger transaction.
- 229.41 Relation to state law.
- 229.42 Exclusions.

Appendix A—Routing Number Guide to Local Checks and Certain Checks That Are Subject to Next-Day Availability.

Appendix B-1—Reduction of Schedules for Certain Nonlocal Checks Under the Temporary Schedule.

Appendix B-2—Reduction of Schedules for Certain Nonlocal Checks Under the Permanent Schedule.

Appendix C—Model Forms, Clauses, and Notices.

Appendix D—Indorsement Standards.

Appendix E—Commentary.

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

Subpart A—General

§ 229.1 Authority and purpose; organization.

(a) *Authority and purpose.* This part (Regulation CC; 12 CFR Part 229) is issued by the Board of Governors of the Federal Reserve System ("Board") to implement the Expedited Funds Availability Act ("Act"), which is contained in Title VI of Pub. L. 100-86.

(b) *Organization.* This part is divided into subparts and appendices as follows—

(1) Subpart A contains general information. It sets forth—

(i) The authority, purpose, and organization;

(ii) Definition of terms; and

(iii) Authority for administrative enforcement of this part's provisions.

(2) Subpart B of this part contains rules regarding the duty of banks to make funds deposited into accounts available for withdrawal, including both temporary and permanent availability schedules. Subpart B of this part also contains rules regarding exceptions to the schedules, disclosure of funds availability policies, payment of interest, liability of banks for failure to comply with Subpart B of this part, and other matters.

(3) Subpart C of this part contains rules to expedite the collection and return of checks by banks. These rules cover the direct return of checks, the manner in which the paying bank and returning banks must return checks to the depository bank, notification of nonpayment by the paying bank, rules regarding indorsement and presentment, the liability of banks for failure to comply with Subpart C of this part, and other matters.

§ 229.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) "Account" means a deposit as defined in 12 CFR 204.2(a)(1)(i) that is a transaction account as described in 12 CFR 204.2(e). As defined in these sections, "account" generally includes accounts at a bank from which the account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, electronic payment, or other similar means for the purpose of making payments or transfers to third persons or others. "Account" also includes accounts at a bank from which the account holder may make third party payments at an ATM, remote service unit, or other electronic device, including by debit card, but the term does not include savings deposits or accounts described in 12 CFR 204.2(d)(2) even though such accounts permit third party transfers. An account may be in the form of—

- (1) A demand deposit account,
- (2) A negotiable order of withdrawal account,
- (3) A share draft account,
- (4) An automatic transfer account, or
- (5) Any other transaction account described in 12 CFR 204.2(e).

"Account" does not include an account where the account holder is a bank, where the account holder is an office of an institution described in

paragraphs (e)(1) through (e)(6) of this section or an office of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101) that is located outside the United States, or where the direct or indirect account holder is the Treasury of the United States.

(b) "Automated clearinghouse" or "ACH" means a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on automated clearinghouse items or under rules of an automated clearinghouse association.

(c) "Automated teller machine" or "ATM" means an electronic device at which a natural person may make deposits to an account by cash or check and perform other account transactions.

(d) "Available for withdrawal" with respect to funds deposited means available for all uses generally permitted to the customer for actually and finally collected funds under the bank's account agreement or policies, such as for payment of checks drawn on the account, certification of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

(e) "Bank" means—

(1) An "insured bank" as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or a bank that is eligible to apply to become an insured bank under section 5 of that Act (12 U.S.C. 1815);

(2) A "mutual savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(3) A "savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(4) An "insured credit union" as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or a credit union that is eligible to make application to become an insured credit union under section 201 of that Act (12 U.S.C. 1781);

(5) A "member" as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422);

(6) An "insured institution" as defined in section 401 of the National Housing Act (12 U.S.C. 1724) or an institution that is eligible to make application to become an insured institution under section 403 of that Act (12 U.S.C. 1726); or

(7) A "branch" of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101).

For purposes of Subpart C and, in connection therewith, Subpart A, the term "bank" also includes any person engaged in the business of banking,

including a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. Unless otherwise specified, the term "bank" includes all of a bank's offices in the United States, but not offices located outside the United States.

(f) "Banking day" means that part of any business day on which an office of a bank is open to the public for carrying on substantially all of its banking functions.

(g) "Business day" means a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

(h) "Cash" means United States coins and currency.

(i) "Cashier's check" means a check that is—

(1) Drawn on a bank;

(2) Signed by an officer or employee of the bank on behalf of the bank as drawer;

(3) A direct obligation of the bank; and

(4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

(j) "Certified check" means a check with respect to which the drawee bank certifies by signature on the check of an officer or other authorized employee of the bank that—

(1) (i) The signature of the drawer on the check is genuine; and

(ii) The bank has set aside funds that—

(A) Are equal to the amount of the check, and

(B) Will be used to pay the check; or

(2) The bank will pay the check upon presentment.

(k) "Check" means—

(1) A negotiable demand draft drawn on or payable through or at an office of a bank;

(2) A negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;

(3) A negotiable demand draft drawn on the Treasury of the United States;

(4) A demand draft drawn on a state government or unit of general local government that is not payable through or at a bank;

(5) A United States Postal Service money order; or

(6) A traveler's check drawn on or payable through or at a bank.

The term "check" does not include a noncash item or an item payable in a medium other than United States money. A draft may be a "check" even though it is described on its face by another term, such as "money order." For purposes of Subpart C, and in connection therewith, Subpart A, of this part, the term "check" also includes a demand draft of the type described above that is nonnegotiable.

(l) "Check clearinghouse association" means any arrangement by which three or more participants exchange checks on a local basis, including an entire metropolitan area. The term "check clearinghouse association" may include arrangements using the premises of a Federal Reserve Bank, but it does not include the handling of checks for forward collection or return by a Federal Reserve Bank.

(m) "Check processing region" means the geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities.

(n) "Consumer account" means any account used primarily for personal, family, or household purposes.

(o) "Depository bank" means the first bank to which a check is transferred even though it is also the paying bank or the payee. A check deposited in an account is deemed to be transferred to the bank holding the account into which the check is deposited, even though the check is physically received and indorsed first by another bank.

(p) "Electronic payment" means a wire transfer or an ACH credit transfer.

(q) "Forward collection" means the process by which a bank sends a check on a cash basis to the paying bank for payment.

(r) "Local check" means a check drawn on or payable through or at a local paying bank. A depository bank may rely on the routing number that appears on a check in magnetic ink to determine whether a check is a local check if the check is sent for payment or collection based on the routing number.

(s) "Local paying bank" means a paying bank to which a check is sent for payment or collection that is located in the same check processing region as the physical location of—

(1) The branch or proprietary ATM of the depository bank in which that check was deposited; or

(2) Both the branch of the depository bank at which the account is held and the nonproprietary ATM at which the check is deposited.

(t) "Merger transaction" means—

(1) A merger or consolidation of two or more banks; or

(2) The transfer of substantially all of the assets of one or more banks or branches to another bank in consideration of the assumption by the acquiring bank of substantially all of the liabilities of the transferring banks, including the deposit liabilities.

(u) "Noncash item" means an item that would otherwise be a check, except that—

(1) A passbook, certificate, or other document is attached;

(2) It is accompanied by special instructions, such as a request for special advice of payment or dishonor;

(3) It consists of more than a single thickness of paper, except a check that qualifies for handling by automated check processing equipment; or

(4) It has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

(v) "Nonlocal check" means a check payable by, through, or at a nonlocal paying bank.

(w) "Nonlocal paying bank" means a paying bank that is not a local paying bank with respect to the depository bank.

(x) "Nonproprietary ATM" means an ATM that is not a proprietary ATM.

(y) "Participant" means a bank that—

(1) Is located in the geographic area served by a check clearinghouse association; and

(2) Both collects and receives for payment checks through the check clearinghouse association either directly or through another participant.

(z) "Paying bank" means—

(1) The bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection;

(2) The bank at or through which a check is payable and to which it is sent for payment or collection;

(3) The bank whose routing number appears on a check in magnetic ink or in fractional form and to which the check is sent for payment or collection;

(4) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable; or

(5) The state or unit of general local government on which a check is drawn.

(aa) "Proprietary ATM" means an ATM that is—

(1) Owned or operated by, or operated exclusively for, the depository bank;

(2) Located on the premises (including the outside wall) of the depository bank; or

(3) Located within 50 feet of the premises of the depository bank, and not identified as being owned or operated by another entity.

If more than one bank meets the owned or operated criterion of

paragraph (aa)(1) of this section, the ATM is considered proprietary to the bank that operates it.

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

(cc) "Returning bank" means a bank (other than the paying or depository bank) handling a returned check or notice in lieu of return. A returning bank is also a collecting bank for the purpose of U.C.C. 4-202 (1)(e) and (2).

(dd) "Routing number" means—

(1) The number printed on the face of a check in fractional form or in nine-digit form that identifies a paying bank; or

(2) The number in a bank's indorsement in fractional or nine-digit form.

(ee) "Similarly situated bank" means a bank of similar size, located in the same community, and with similar check handling activities as the paying bank or returning bank.

(ff) "State" means a state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands.

(gg) "Teller's check" means a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

(hh) "Traveler's check" means an instrument for the payment of money that—

(1) Is drawn on or payable through or at a bank;

(2) Is designated on its face by the term "traveler's check" or by any substantially similar term or is commonly known and marketed as a traveler's check by a corporation or bank that is an issuer of traveler's checks;

(3) Provides for a specimen signature of the purchaser to be completed at the time of purchase; and

(4) Provides for a countersignature of the purchaser to be completed at the time of negotiation.

(ii) "Uniform Commercial Code," "Code," or "U.C.C." means the Uniform Commercial Code as adopted in a state.

(jj) "United States" means the states, including the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

(kk) "Unit of general local government" means any city, county, parish, town, township, village, or other

general purpose political subdivision of a state. The term does not include special purpose units of government, such as school districts or water districts.

(ll) "Wire transfer" means an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted by electronic or other means through the Federal Reserve Communications System, the New York Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. "Wire transfer" does not include an electronic fund transfer as defined in section 902(f) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(6)).

(mm) Unless the context requires otherwise, the terms not defined in this section have the meanings set forth in the U.C.C.

§ 229.3 Administrative enforcement.

(a) *Enforcement agencies.* Compliance with this part is enforced under—

(1) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the case of—

(i) National banks by the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks) by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) Section 5(d) of the Home Owners Loan Act of 1933 (12 U.S.C. 1464(d)), section 407 of the National Housing Act (12 U.S.C. 1730), and section 17 of the Federal Home Loan Bank Act (12 U.S.C. 1437), by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation) in the case of any institution subject to those provisions; and

(3) The Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any federal credit union or credit union insured by the National Credit Union Share Insurance Fund.

(b) *Additional powers.* (1) For the purposes of the exercise by any agency referred to in paragraph (a) of this section of its powers under any statute referred to in that paragraph, a violation of any requirement imposed under the Act is deemed to be a violation of a requirement imposed under that statute.

(2) In addition to its powers under any provision of law specifically referred to

in paragraph (a) of this section, each of the agencies referred to in that paragraph may exercise, for purposes of enforcing compliance with any requirement imposed under this part, any other authority conferred on it by law.

(c) *Enforcement by the Board.* (1) Except to the extent that enforcement of the requirements imposed under this part is specifically committed to some other government agency, the Board shall enforce such requirements.

(2) If the Board determines that—

(i) Any bank that is not a bank described in paragraph (a) of this section; or

(ii) Any other person subject to the authority of the Board under the Act and this part,

has failed to comply with any requirement imposed by this part, the Board may issue an order prohibiting any bank, any Federal Reserve Bank, or any other person subject to the authority of the Board from engaging in any activity or transaction that directly or indirectly involves such noncomplying bank or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks, and any related function of the payment system with respect to checks).

Subpart B—Availability of Funds and Disclosure of Funds Availability Policies

§ 229.10 Next-day availability.

(a) *Cash deposits.* (1) A bank shall make funds deposited in an account by cash available for withdrawal not later than the business day after the banking day on which the cash is deposited, if the deposit is made in person to an employee of the depository bank.

(2) A bank shall make funds deposited in an account by cash available for withdrawal not later than the second business day after the banking day on which the cash is deposited, if the deposit is not made in person to an employee of the depository bank.

(b) *Electronic payments.*—(1) *In general.* A bank shall make funds received for deposit in an account by an electronic payment available for withdrawal not later than the business day after the banking day on which the bank received the electronic payment.

(2) *When an electronic payment is received.* An electronic payment is received when the bank receiving the payment has received both—

(i) Payment in actually and finally collected funds; and

(ii) Information on the account and amount to be credited.

A bank receives an electronic payment only to the extent that the bank has received payment in actually and finally collected funds.

(c) *Certain check deposits.*—(1)

General rule. A depository bank shall make funds deposited in an account by check available for withdrawal not later than the business day after the banking day on which the funds are deposited, in the case of—

(i) A check drawn on the Treasury of the United States and deposited in an account held by a payee of the check;

(ii) A U.S. Postal Service money order deposited—

(A) In an account held by a payee of the money order; and

(B) In person to an employee of the depository bank.

(iii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank and deposited—

(A) In an account held by a payee of the check; and

(B) In person to an employee of the depository bank;

(iv) A check drawn by a state or a unit of general local government and deposited—

(A) In an account held by a payee of the check;

(B) In a depository bank located in the state that issued the check, or the same state as the unit of general local government that issued the check;

(C) In person to an employee of the depository bank; and

(D) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depository bank under paragraph (c)(3) of this section.

(v) A cashier's, certified, or teller's check deposited—

(A) In an account held by a payee of the check;

(B) In person to an employee of the depository bank; and

(C) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depository bank under paragraph (c)(3) of this section.

(vi) A check deposited in a branch of the depository bank and drawn on the same or another branch of the same bank if both branches are located in the same state or the same check processing region; and,

(vii) The lesser of—

(A) \$100, or

(B) The aggregate amount deposited on any one banking day to all accounts of the customer by check or checks not subject to next-day availability under paragraphs (c)(1) (i) through (vi) of this section.

(2) *Checks not deposited in person.* A depository bank shall make funds deposited in an account by check or checks available for withdrawal not later than the second business day after the banking day on which funds are deposited, in the case of a check deposit described in and that meets the requirements of paragraphs (c)(1) (ii), (iii), (iv), and (v), of this section, except that it is not deposited in person to an employee of the depository bank.

(3) *Special deposit slip.* (i) As a condition to making the funds available for withdrawal in accordance with this section, a depository bank may require that a state or local government check or a cashier's, certified, or teller's check be deposited with a special deposit slip or deposit envelope that identifies the type of check.

(ii) If a depository bank requires the use of a special deposit slip or deposit envelope, the bank must either provide the special deposit slip or deposit envelope to its customers or inform its customers how the slip or envelope may be prepared or obtained and make the slip or envelope reasonably available.

§ 229.11 Temporary availability schedule.

(a) *Effective date.* The temporary availability schedule contained in this section is effective from September 1, 1988, through August 31, 1990. For the permanent availability schedule, which is effective September 1, 1990, see § 229.12.

(b) *Local checks and certain other checks.*—(1) *In general.* A depository bank shall make funds deposited in an account by a check available for withdrawal not later than the third business day following the banking day on which funds are deposited, in the case of—

(i) A local check;

(ii) A check drawn on the Treasury of the United States that is not governed by the availability requirements of § 229.10(c);

(iii) A U.S. Postal Service money order that is not governed by the availability requirements of § 229.10(c); and

(iv) 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)(1)(iv) of this section is a local check that is not governed by the availability requirements of § 229.10(c).

(2) *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

local checks are available for withdrawal by cash or similar means unless the checks are drawn on or payable at or through a local paying bank that is a participant in the same check clearinghouse association as the depository bank. Similar means include electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, but do not include the granting of credit to a bank, Federal Reserve Bank, or Federal Home Loan Bank that presents a check to the depository bank for payment. 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 third business day following the banking day on which the funds are deposited. This \$400 is in addition to the \$100 available under § 229.10(c)(1)(vii).

(c) *Nonlocal checks*—(1) *In general.* A depository bank shall make funds deposited in an account by a check available for withdrawal not later than the seventh business day following the banking day on which funds are deposited, in the case of—

(i) A nonlocal check; and
(ii) 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; a cashier's, certified, or teller's check; or a check deposited in a branch of the depository bank and drawn on the same or another branch of the same bank, if any check referred to in this paragraph (c)(1)(ii) is a nonlocal check that is not governed by the availability requirements of § 229.10(c).

(2) *Reduction in schedule for certain check deposits.* Nonlocal checks specified in Appendix B-1 to this part must be made available for withdrawal not later than the times prescribed in that Appendix.

(d) *Deposits at nonproprietary ATMs.* 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 seventh business day following the banking day on which the funds are deposited.

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The depository bank may extend the time periods set forth in this section by one business day in the case of any deposit, other than a deposit described in § 229.10, that is—

(1) Deposited in an account at a branch of a depository bank if the branch is located in Alaska, Hawaii,

Puerto Rico, or the U.S. Virgin Islands; and

(2) Deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depository bank.

§ 229.12 Permanent availability schedule.

(a) *Effective date.* The permanent availability schedule contained in this section is effective September 1, 1990.

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

(1) A local check;
(2) A check drawn on the Treasury of the United States that is not governed by the availability requirements of § 229.10(c);

(3) A check drawn on the Treasury of the United States that is deposited at a nonproprietary ATM;

(4) A U.S. Postal Service money order that is not governed by the availability requirements of § 229.10(c); and

(5) 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)(5) is a local check that is not governed by the availability requirements of § 229.10(c).

(c) *Nonlocal checks.*—(1) *In general.* 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—

(i) A nonlocal check; and
(ii) 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; a cashier's, certified, or teller's check; or a check deposited in a branch of the depository bank and drawn on the same or another branch of the same bank, if any check referred to in this paragraph (c)(1)(ii) is a nonlocal check that is not governed by the availability requirements of § 229.10(c).

(2) *Nonlocal checks specified in Appendix B-2 to this part* must be made available for withdrawal not later than the times prescribed in that Appendix.

(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) or (c) of this section are available for withdrawal

by cash or similar means. Similar means include electronic payment, issuance of a cashier's or teller's check, or certification of a check, or other irrevocable commitment to pay, but do not include the granting of credit to a bank, a Federal Reserve Bank, or a Federal Home Loan Bank that presents a check to the depository bank for payment. A 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) and (c) of this section. This \$400 is in addition to the \$100 available under § 229.10(c)(1)(vii).

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The depository bank may extend the time periods set forth in this section by one business day in the case of any deposit, other than a deposit described in § 229.10, that is—

(1) Deposited in an account at a branch of a depository bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and

(2) Deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depository bank.

§ 229.13 Exceptions.

(a) *New accounts.* (1) A deposit in a new account—

(i) Is subject to the requirements of § 229.10 (a) and (b) to make funds from deposits by cash and electronic payments available for withdrawal on the business day following the banking day of deposit or receipt;

(ii) Is subject to the requirements of § 229.10(c)(1) (i) through (v) and § 229.10(c)(2) only with respect to the first \$5,000 of funds deposited on any one banking day; but the amount of the deposit in excess of \$5,000 shall be available for withdrawal not later than the ninth business day following the banking day on which funds are deposited; and

(iii) Is not subject to the availability requirements of §§ 229.10(c)(1) (vi) and (vii), 229.11, and 229.12.

For purposes of this paragraph, checks subject to § 229.10(c)(1)(v) include traveler's checks.

(2) An account is considered a new account during the first 30 calendar days after the account is established. An account is not considered a new account if each customer on the account has had, within 30 calendar days before the account is established, another account

at the depository bank for at least 30 calendar days.

(b) *Large deposits.* Sections 229.11 and 229.12 do not apply to the aggregate amount of deposits by one or more checks to the extent that the aggregate amount is in excess of \$5,000 on any one banking day. For customers that have multiple accounts at a depository bank, the bank may apply this exception to the aggregate deposits to all accounts held by the customer, even if the customer is not the sole holder of the accounts and not all of the holders of the accounts are the same.

(c) *Redeposited checks.* Sections 229.11 and 229.12 do not apply to a check that has been returned unpaid and redeposited by the customer or the depository bank. This exception does not apply—

(1) To a check that has been returned due to a missing indorsement and redeposited after the missing indorsement has been obtained, if the reason for return indication on the check states that it was returned due to a missing indorsement; or

(2) To a check that has been returned because it was post dated, if the reason for return indicated on the check states that it was returned because it was post dated, and if the check is no longer postdated when redeposited.

(d) *Repeated overdrafts.* If any account or combination of accounts of a depository bank's customer has been repeatedly overdrawn, then for a period of six months after the last such overdraft, §§ 229.11 and 229.12 do not apply to any of the accounts. A depository bank may consider a customer's account to be repeatedly overdrawn if—

(1) On six or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative if checks or other charges to the account had been paid; or

(2) On two or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative, in the amount of \$5,000 or more, if checks or other charges to the account had been paid.

(e) *Reasonable cause to doubt collectibility.*—(1) *In general.* If a depository bank has reasonable cause to believe that the check is uncollectible from the paying bank, then § 229.10(c)(1) (iii) and (v); § 229.10(c)(2) to the extent that it applies to a check drawn on a Federal Reserve Bank or a Federal Home Loan Bank, or a cashier's, teller's, or certified check; § 229.11; and § 229.12 do not apply with respect to a check deposited in an account at a depository

bank. Reasonable cause to believe a check is uncollectible requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. Such belief shall not be based on the fact that the check is of a particular class or is deposited by a particular class of persons. The reason for the bank's belief that the check is uncollectible shall be included in the notice required under paragraph (g) of this section.

(2) *Overdraft and returned check fees.* A depository bank that extends the time when funds will be available for withdrawal as described in paragraph (e)(1) of this section, and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks of other debits to the account, if—

(i) The overdraft or return of the check would not have occurred except for the fact that the deposited funds were delayed under paragraph (e)(1) of this section; and

(ii) The deposited check was paid by the paying bank.

Notwithstanding the foregoing, the depository bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice of exception required in paragraph (g) of this section and, when required, refunds any such fees upon the request of the customer. The overdraft and returned check notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the exception is paid and how to obtain a refund.

(f) *Emergency conditions.* Sections 229.11 and 229.12 do not apply to funds deposited by check in a depository bank in the case of—

(1) An interruption of communications or computer or other equipment facilities;

(2) A suspension of payments by another bank;

(3) A war; or

(4) An emergency condition beyond the control of the depository bank, if the depository bank exercises such diligence as the circumstances require.

(g) *Notice of exception.*—(1) *In general.* When a depository bank extends the time when funds will be available for withdrawal based on the application of an exception contained in paragraphs (b) through (f) of this section, it must provide the depositor with a written notice. The notice shall include the following information—

(i) The account number of the customer;

(ii) The date and amount of the deposit;

(iii) The amount of the deposit that is being delayed;

(iv) The reason the exception was invoked; and

(v) The day the funds will be available for withdrawal, unless the emergency conditions exception in paragraph (f) of this section has been invoked, and the depository bank, in good faith, does not know the duration of the emergency and, consequently, when the funds must be made available at the time the notice must be given.

(2) *Timing of notice.* (i) The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not made in person to an employee of the depository bank, or, if the facts upon which a determination to invoke one of the exceptions in paragraphs (b) through (f) of this section to delay a deposit only become known to the depository bank after the time of the deposit. If the notice is not given at the time of the deposit, the depository bank shall mail or deliver the notice to the customer as soon as practicable, but no later than the first business day following the day the facts become known to the depository bank, or the deposit is made, whichever is later.

(ii) If the availability of funds is delayed under the emergency conditions exception provided in paragraph (f) of this section, the depository bank is not required to provide a notice if the funds subject to the exception become available before the notice must be sent under paragraph (g)(2)(i) of this section.

(3) *Record retention.* A depository bank shall retain a record, in accordance with § 229.21(g), of each notice provided pursuant to its application of the reasonable cause exception under paragraph (e) of this section, together with a brief statement of the facts giving rise to the bank's reason to doubt the collectibility of the check.

(h) *Availability of deposits subject to exceptions.* (1) If an exception contained in paragraphs (b) through (f) of this section applies, the depository bank may extend the time periods established under §§ 229.11 and 229.12 by a reasonable period of time.

(2) If a depository bank invokes an exception under paragraph (e) of this section based on its reasonable cause to doubt collectibility of a check that is subject to § 229.10(c)(1) (iii) or (v) or § 229.10(c)(2) to the extent that it applies to a check drawn on a Federal Reserve Bank or a Federal Home Loan Bank, or a

cashier's, teller's, or certified check, the depository bank shall make the funds available for withdrawal not later than a reasonable period after the day the funds would have been required to be made available had the check been subject to §§ 229.11 or 229.12.

(3) If a depository bank invokes an exception under paragraph (f) of this section based on an emergency condition, the depository bank shall make the funds available for withdrawal not later than a reasonable period after the emergency has ceased or the period established in §§ 229.11 and 229.12, whichever is later.

(4) For the purposes of paragraphs (h) (1), (2), and (3) of this section, an extension of up to four business days is a reasonable period. An extension of more than four business days may be reasonable, but the bank has the burden of so establishing.

§ 229.14 Payment of interest.

(a) *In general.* A depository bank shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the depository bank receives credit for the funds. For the purposes of this section, the depository bank may—

(1) Rely on the availability schedule of its Federal Reserve Bank, Federal Home Loan Bank, or correspondent bank to determine the time credit is actually received; and

(2) Accrue interest or dividends on funds deposited in interest-bearing accounts by checks that the depository bank sends to paying banks or subsequent collecting banks for payment or collection based on the availability of funds the depository bank receives from the paying or collecting banks.

(b) *Special rule for credit unions.* Paragraph (a) of this section does not apply to any account at a bank described in § 229.2(e)(4), if the bank—

(1) Begins the accrual of interest or dividends at a later date than the date described in paragraph (a) of this section with respect to all funds, including cash, deposited in the account; and

(2) Provides notice of its interest or dividend payment policy in the manner required under § 229.16(d).

(c) *Exception for checks returned unpaid.* This subpart does not require a bank to pay interest or dividends on funds deposited by a check that is returned unpaid.

§ 229.15 General disclosure requirements.

(a) *Form of disclosures.* A bank shall make the disclosures required by this subpart clearly and conspicuously in

writing. Disclosures, other than those posted at locations where employees accept consumer deposits and ATMs and the notice on preprinted deposit slips, must be in a form that the customer may keep. The disclosures shall be grouped together and shall not contain any information not related to the disclosures required by this subpart. If contained in a document that sets forth other account terms, the disclosures shall be highlighted within the document by, for example, use of a separate heading.

(b) *Uniform reference to day of availability.* In its disclosure, a bank shall describe funds as being available for withdrawal on "the _____ business day after" the day of deposit. In this calculation, the first business day is the business day following the banking day the deposit was received, and the last business day is the day on which the funds are made available.

(c) *Multiple accounts and multiple account holders.* A bank need not give multiple disclosures to a customer that holds multiple accounts if the accounts are subject to the same availability policies. Similarly, a bank need not give separate disclosures to each customer on a jointly held account.

(d) *Dormant or inactive accounts.* A bank need not give availability disclosures to a customer that holds a dormant or inactive account.

§ 229.16 Specific availability policy disclosure.

(a) *General.* To meet the requirements of a specific availability policy disclosure under §§ 229.17 and 229.18(d), a bank shall provide a disclosure describing the bank's policy as to when funds deposited in an account are available for withdrawal. The disclosure must reflect the policy followed by the bank in most cases. A bank may impose longer delays on a case-by-case basis or by invoking one of the exceptions in § 229.13, provided this is reflected in the disclosure.

(b) *Content of specific availability policy disclosure.* The specific availability policy disclosure shall contain the following, as applicable—

(1) A summary of the bank's availability policy;

(2) A description of any categories of deposits or checks used by the bank when it delays availability (such as local or nonlocal checks); how to determine the category to which a particular deposit or check belongs; and when each category will be available for withdrawal (including a description of the bank's business days and when a deposit is considered received);

(3) A description of any of the exceptions in § 229.13 that may be invoked by the bank, including the time following a deposit that funds generally will be available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions;

(4) A description, as specified in paragraph (c)(1) of this section, of any case-by-case policy of delaying availability that may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy; and

(5) A description of how the customer can differentiate between a proprietary and a nonproprietary ATM, if the bank makes funds from deposits at nonproprietary ATMs available for withdrawal later than funds from deposits at proprietary ATMs.

(c) *Longer delays on a case-by-case basis—(1) Notice in specific policy disclosure.* A bank that has a policy of making deposited funds available for withdrawal sooner than required by this subpart may extend the time when funds are available up to the time periods allowed under this subpart on a case-by-case basis, provided the bank includes the following in its specific policy disclosure—

(i) A statement that the time when deposited funds are available for withdrawal may be extended in some cases, and the latest time following a deposit that funds will be available for withdrawal;

(ii) A statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until later than the time periods stated in the bank's availability policy; and

(iii) A statement that customers should ask if they need to be sure about when a particular deposit will be available for withdrawal.

(2) *Notice at time of case-by-case delay.—(i) In general.* When a depository bank extends the time when funds will be available for withdrawal on a case-by-case basis, it must provide the depositor with a written notice. The notice shall include the following information—

(A) The account number of the customer;

(B) The date and amount of the deposit;

(C) The amount of the deposit that is being delayed; and

(D) The day the funds will be available for withdrawal.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not

made in person to an employee of the depository bank or the decision to extend the time when the deposited funds will be available is made after the time of the deposit. If notice is not given at the time of the deposit, the depository bank shall mail or deliver the notice to the customer not later than the first business day following the banking day the deposit is made.

(3) **Overdraft and returned check fees.** A depository bank that extends the time when funds will be available for withdrawal on a case-by-case basis and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks or other debits to the account, if—

(i) The overdraft or return of the check or other debit would not have occurred except for the fact that the deposited funds were delayed under paragraph (c)(1) of this section; and

(ii) The deposited check was paid by the paying bank.

Notwithstanding the foregoing, the depository bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice required in paragraph (c)(2) of this section and, when required, refunds any such fees upon the request of the customer. The overdraft and returned check notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the delay is paid and state how to obtain a refund.

(d) **Credit union notice of interest payment policy.** If a bank described in § 229.2(e)(4) begins to accrue interest or dividends on all deposits made in an interest-bearing account, including cash deposits, at a later time than the day specified in § 229.14(a), the bank's specific policy disclosures shall contain an explanation of when interest or dividends on deposited funds begin to accrue.

§ 229.17 Initial disclosures.

(a) **New accounts.** Before opening an account, a bank shall provide a potential customer with the applicable specific availability policy disclosure described in § 229.16.

(b) **Existing accounts.** (1) In the first regularly scheduled mailing to customers after September 1, 1988, but not later than October 31, 1988, a bank shall send to existing customers the specific availability policy disclosure described in § 229.16, unless the bank has previously given disclosures that meet the requirements of that section.

(2) If the disclosure required by paragraph (b)(1) of this section is included with a disclosure of other account terms and conditions, the bank must direct the customer's attention to the availability disclosures by, for example, the use of an insert or a letter.

(3) The disclosure required by paragraph (b)(1) of this section may not be included in a mailing of promotional material, such as a solicitation for a new product or service, unless the mailing also includes the customer's account statement.

§ 229.18 Additional disclosure requirements.

(a) **Deposit slips.** A bank shall include on all preprinted deposit slips furnished to its customers a notice that deposits may not be available for immediate withdrawal.

(b) **Locations where employees accept consumer deposits.** A bank shall post in a conspicuous place in each location where its employees receive deposits to consumer accounts a notice that sets forth the time periods applicable to the availability of funds deposited in a consumer account.

(c) **Automated teller machines.** (1) A depository bank shall post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

(2) A depository bank that operates an off-premises ATM from which deposits are removed not more than two times each week, as described in § 229.19(a)(4), shall disclose at or on the ATM the days on which deposits made at the ATM will be considered received.

(d) **Upon request.** A bank shall provide to any person, upon oral or written request, a notice containing the applicable specific availability policy disclosure described in § 229.16.

(e) **Changes in policy.** A bank shall send a notice to holders of consumer accounts at least 30 days before implementing a change to the bank's availability policy regarding such accounts, except that a change that expedites the availability of funds may be disclosed not later than 30 days after implementation.

§ 229.19 Miscellaneous.

(a) **When funds are considered deposited.** For the purposes of this subpart—

(1) Funds deposited at a staffed facility or an ATM are considered deposited when they are received at the staffed facility or ATM;

(2) Funds mailed to the depository bank are considered deposited on the day they are received by the depository bank;

(3) Funds deposited to a night depository, lock box, or similar facility are considered deposited on the day on which the deposit is removed from such facility and is available for processing by the depository bank;

(4) Funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depository bank are considered deposited on the day the funds are removed from the ATM, if funds normally are removed from the ATM not more than two times each week; and

(5) Funds may be considered deposited on the next banking day, in the case of funds that are deposited—

(i) On a day that is not a banking day for the depository bank; or

(ii) After a cut-off hour set by the depository bank for the receipt of deposits of 2:00 p.m. or later, or, for the receipt of deposits at ATMs or off-premise facilities, of 12:00 noon or later. Different cut-off hours later than these times may be established for receipt of different types of deposits, or receipt of deposits at different locations.

(b) **Availability at start of business day.** Except as otherwise provided in §§ 229.11(b)(2) and 229.12(d), if any provision of this subpart requires that funds be made available for withdrawal on any business day, the funds shall be available for withdrawal by the later of—

(1) 9:00 a.m. (local time of the depository bank); or

(2) The time the depository bank's teller facilities (including ATMs) are available for customer account withdrawals.

(c) **Effect on policies of depository bank.** This part does not—

(1) Prohibit a depository bank from making funds available to a customer for withdrawal in a shorter period of time than the time required by this subpart;

(2) Affect a depository bank's right—

(i) To accept or reject a check for deposit;

(ii) To revoke any settlement made by the depository bank with respect to a check accepted by the bank for deposit, to charge back the customer's account for the amount of a check based on the return of the check or receipt of a notice of nonpayment of the check, or to claim a refund of such credit; and

(iii) To charge back funds made available to its customer for an electronic payment for which the bank has not received payment in actually and finally collected funds;

(3) Require a depository bank to open or otherwise to make its facilities available for customer transactions on a given business day; or

(4) Supersede any policy of a depository bank that limits the amount of cash a customer may withdraw from its account on any one day, if that policy—

(i) Is not dependent on the time the funds have been deposited in the account, as long as the funds have been on deposit for the time period specified in §§ 229.10, 229.11, 229.12, or 229.13; and—

(ii) In the case of withdrawals made in person to an employee of the depository bank—

(A) Is applied without discrimination to all customers of the bank; and

(B) Is related to security, operating, or bonding requirements of the depository bank.

(d) *Use of calculated availability.* A depository bank may provide availability to its nonconsumer accounts based on a sample of checks that represents the average composition of the customer's deposits, if the terms for availability based on the sample are equivalent to or more prompt than the availability requirements of this subpart.

(e) *Holds on other funds.* A depository bank that receives a check for deposit in an account or purchases a check for cash, other than a check drawn on that bank and presented over the counter for payment in cash, may place a hold on any funds of the customer at the bank, if—

(1) The amount of funds that are held do not exceed the amount of the check; and

(2) The funds are made available for withdrawal within the times specified in §§ 229.10, 229.11, 229.12, and 229.13.

(f) *Employee training and compliance.* Each bank shall establish procedures to ensure that the bank complies with the requirements of this subpart, and shall provide each employee who performs duties subject to the requirements of this subpart with a statement of the procedures applicable to that employee.

(g) *Effect of Merger Transaction.* For purposes of this subpart, except for the purposes of the new accounts exception of § 229.13(a), and when funds are considered deposited under § 229.19(a), two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

§ 229.20 Relation to state law.

(a) *In general.* Any provision of a law or regulation of any state in effect on or before September 1, 1989, that requires funds deposited in an account at a bank chartered by the state to be made available for withdrawal in a shorter time than the time provided in Subpart

B, and, in connection therewith, Subpart A, shall—

(1) Supersede the provisions of the Act and Subpart B, and, in connection therewith, Subpart A, to the extent the provisions relate to the time by which funds deposited or received for deposit in an account are available for withdrawal; and

(2) Apply to all federally insured banks located within the state. No amendment to a state law or regulation governing the availability of funds that becomes effective after September 1, 1989, shall supersede the Act and Subpart B, and, in connection therewith, Subpart A, but unamended provisions of state law shall remain in effect.

(b) *Preemption of inconsistent law.* Except as provided in paragraph (a), the Act and Subpart B, and, in connection therewith, Subpart A, supersede any provision of inconsistent state law.

(c) *Standards for preemption.* A provision of a state law in effect on or before September 2, 1989, is not inconsistent with the Act, or Subpart B, or in connection therewith, Subpart A, if it requires that funds shall be available in a shorter period of time than the time provided in this subpart. Inconsistency with the Act and Subpart B, and in connection therewith, Subpart A, may exist when state law—

(1) Permits a depository bank to make funds deposited in an account by cash, electronic payment, or check available for withdrawal in a longer period of time than the maximum period of time permitted under Subpart B, and, in connection therewith, Subpart A; or

(2) Provides for disclosures or notices concerning funds availability relating to accounts.

(d) *Preemption determinations.* The Board may determine, upon the request of any state, bank, or other interested party, whether the Act and Subpart B, and, in connection therewith, Subpart A, preempt provisions of state laws relating to the availability of funds.

(e) *Procedures for preemption determinations.* A request for a preemption determination shall include the following—

(1) A copy of the full text of the state law in question, including any implementing regulations or judicial interpretations of that law; and

(2) A comparison of the provisions of state law with the corresponding provisions in the Act and Subparts A and B of this part, together with a discussion of the reasons why specific provisions of state law are either consistent or inconsistent with corresponding sections of the Act and Subparts A and B of this part.

A request for a preemption determination shall be addressed to the Secretary, Board of Governors of the Federal Reserve System.

§ 229.21 Civil liability.

(a) *Civil liability.* A bank that fails to comply with any requirement imposed under Subpart B, and in connection therewith, Subpart A, of this part or any provision of state law that supersedes any provision of Subpart B, and in connection therewith, Subpart A, with respect to any person is liable to that person in an amount equal to the sum of—

(1) Any actual damage sustained by that person as a result of the failure;

(2) Such additional amount as the court may allow, except that—

(i) In the case of an individual action, liability under this paragraph shall not be less than \$100 nor greater than \$1,000; and

(ii) In the case of a class action—

(A) No minimum recovery shall be applicable to each member of the class; and

(B) The total recovery under this paragraph in any class action or series of class actions arising out of the same failure to comply by the same depository bank shall not be more than the lesser of \$500,000 or 1 percent of the net worth of the bank involved; and

(3) In the case of a successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) *Class action awards.* In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) The amount of any damages awarded;

(2) The frequency and persistence of failures of compliance;

(3) The resources of the bank;

(4) The number of persons adversely affected; and

(5) The extent to which the failure of compliance was intentional.

(c) *Bona fide errors.*—(1) *General rule.* A bank is not liable in any action brought under this section for a violation of this subpart if the bank demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) *Examples.* Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to the

bank's obligation under this subpart is not a bona fide error.

(d) *Jurisdiction.* Any action under this section may be brought in any United States district court or in any other court of competent jurisdiction, and shall be brought within one year after the date of the occurrence of the violation involved.

(e) *Reliance on Board rulings.* No provision of this subpart imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, regardless of whether such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after the act or omission has occurred.

(f) *Exclusions.* This section does not apply to claims that arise under Subpart C of this part or to actions for wrongful dishonor.

(g) *Record retention.* (1) A bank shall retain evidence of compliance with the requirements imposed by this subpart for not less than two years. Records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information.

(2) If a bank has actual notice that it is being investigated, or is subject to an enforcement proceeding by an agency charged with monitoring that bank's compliance with the Act and this subpart, or has been served with notice of an action filed under this section, it shall retain the records pertaining to the action or proceeding pending final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

Subpart C—Collection of Checks

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

(a) *Return of checks.* If a paying bank determines not to pay a check, it shall return the check in an expeditious manner as provided in either paragraphs (a)(1) or (a)(2) of this section.

(1) *Two-day/four-day test.* A paying bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depository bank not later than 4:00 p.m. (local time of the depository bank) of—

(i) The second business day following the banking day on which the check was presented to the paying bank, if the paying bank is a local paying bank with respect to the depository bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank, if the paying bank is a nonlocal paying bank

with respect to the depository bank. If the last business day on which the paying bank may deliver a returned check to the depository bank is not a banking day for the depository bank, the paying bank meets the two-day/four-day test if the returned check is received by the depository bank on or before the depository bank's next banking day.

(2) *Forward collection test.* A paying bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

(i) Of similar amount as the returned check;

(ii) Drawn on the depository bank; and

(iii) Deposited for forward collection in the similarly situated bank by noon on the banking day following the banking day on which the check was presented to the paying bank. Subject to the requirement for expeditious return, a paying bank may send a returned check to the depository bank, or to any other bank agreeing to handle the returned check expeditiously under § 229.31(a). A paying bank may convert a check to a qualified returned check. A qualified returned check must be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a "2" in position 44 of the MICR line as a return identifier, in accordance with the American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (Sept. 1983). This paragraph does not affect a paying bank's responsibility to return a check within the deadlines required by the U.C.C., Regulation J (12 CFR Part 210), or § 229.30(c).

(b) *Unidentifiable depository bank.* A paying bank that is unable to identify the depository bank with respect to a check may send the returned check to any bank that handled the check for forward collection even if that bank does not agree to handle the check expeditiously under § 229.31(a). A paying bank sending a returned check under this paragraph to a bank that handled the check for forward collection must advise the bank to which the check is sent that the paying bank is unable to identify the depository bank. The expeditious return requirements in § 229.30(a) do not apply to the paying bank's return of a check under this paragraph.

(c) *Extension of deadline for expedited delivery.* The deadline for return or notice of nonpayment under the U.C.C. or Regulation J (12 CFR Part 210) is extended 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. The 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.

(d) *Identification of returned check.* A paying bank returning a check shall clearly indicate on the face of the check that it is a returned check and the reason for return.

(e) *Depository bank without accounts.* The expeditious return requirements of paragraph (a) of this section do not apply to checks deposited in a depository bank that does not maintain accounts.

(f) *Notice in lieu of return.* If a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in § 229.33(b). The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other requirements of this subpart.

(g) *Reliance on routing number.* A paying bank may return a returned check based on any routing number designating the depository bank appearing on the returned check in the depository bank's indorsement.

§ 229.31 Returning bank's responsibility for return of checks.

(a) *Return of checks.* A returning bank shall return a returned check in an expeditious manner as provided in either paragraphs (a)(1) or (a)(2) of this section.

(1) *Two-day/four-day test.* A returning bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depository bank not later than 4:00 p.m. (local time) of—

(i) The second business day following the banking day on which the check was presented to the paying bank if the paying bank is a local paying bank with respect to the depository bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank if the paying bank is a nonlocal paying bank with respect to the depository bank.

If the last business day on which the returning bank may deliver a returned check to the depository bank is not a banking day for the depository bank, the returning bank meets this requirement if the returned check is received by the depository bank on or before the depository bank's next banking day.

(2) *Forward collection test.* A returning bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

(i) Of similar amount as the returned check;

(ii) Drawn on the depository bank; and

(iii) Received for forward collection by the similarly situated bank at the time the returning bank received the returned check, except that a returning bank may set a cut-off hour for the receipt of returned checks that is earlier than the similarly situated bank's cut-off hour for checks received for forward collection, if the cut-off hour is not earlier than 2:00 p.m.

Subject to the requirement for expeditious return, the returning bank may send the returned check to the depository bank, or to any bank agreeing to handle the returned check expeditiously under § 229.31(a). The returning bank may convert the returned check to a qualified returned check. A qualified returned check must be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a "2" in position 44 of the MICR line as a return identifier, in accordance with the American National Standard Specification for Placement and Location of MICR Printing, X9.13 (Sept. 1983). The time for expeditious return under the forward collection test, and the deadline for return under the U.C.C. and Regulation J (12 CFR part 210), are extended by one business day if the returning bank converts a returned check to a qualified returned check. This extension does not apply to the two-day/four-day test specified in paragraph (a)(1) of this section or when a returning bank is returning a check directly to the depository bank.

(b) *Unidentifiable depository bank.* A returning bank that is unable to identify the depository bank with respect to a returned check may send the returned check to—

(1) Any collecting bank that handled the check for forward collection if the returning bank was not a collecting bank with respect to the returned check; or

(2) A prior collecting bank, if the returning bank was a collecting bank with respect to the returned check; even if that collecting bank does not agree to handle the returned check expeditiously under § 229.31(a). A returning bank sending a returned check under this paragraph must advise the bank to which the check is sent that the returning bank is unable to identify the depository bank. The expeditious return requirements in paragraph (a) of this section do not apply to return of a check under this paragraph. A returning bank that receives a returned check from a paying bank under § 229.30(b), but which is able to identify the depository bank, must thereafter return the check expeditiously to the depository bank.

(c) *Settlement.* A returning bank shall settle with a bank sending a returned check to it for return by the same means that it settles or would settle with the sending bank for a check received for forward collection drawn on the depository bank. This settlement is final when made.

(d) *Charges.* A returning bank may impose a charge on a bank sending a returned check for handling the returned check.

(e) *Depository bank without accounts.* The expeditious return requirements of paragraph (a) of this section do not apply to checks deposited with a depository bank that does not maintain accounts.

(f) *Notice in lieu of return.* If a check is unavailable for return, the returning bank may send in its place a copy of the front and back of the returned check, or, if no copy is available, a written notice of nonpayment containing the information specified in § 229.33(b). The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other requirements of this subpart.

(g) *Reliance on routing number.* A returning bank may return a returned check based on any routing number designating the depository bank appearing on the returned check in the depository bank's indorsement or in magnetic ink on a qualified returned check.

§ 229.32 Depository bank's responsibility for returned checks.

(a) *Acceptance of returned checks.* A depository bank shall accept returned checks and written notices of nonpayment—

(1) At a location at which presentment of checks for forward collection is requested by the depository bank; and

(2) (i) At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;

(ii) If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check; or

(iii) If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank. A depository bank may require that returned checks be separated from forward collection checks.

(b) *Payment.* A depository bank shall pay the returning or paying bank returning the check to it for the amount of the check prior to the close of business on the banking day on which it received the check ("payment date") by—

(1) Debit to an account of the depository bank on the books of the returning or paying bank;

(2) Cash;

(3) Wire transfer; or

(4) Any other form of payment acceptable to the returning or paying bank;

provided that the proceeds of the payment are available to the returning or paying bank in cash or by credit to an account of the returning or paying bank on or as of the payment date. If the payment date is not a banking day for the returning or paying bank or the depository bank is unable to make the payment on the payment date, payment shall be made by the next day that is a banking day for the returning or paying bank. These payments are final when made.

(c) *Misrouted returned checks and written notices of nonpayment.* If a bank receives a returned check or written notice of nonpayment on the basis that it is the depository bank, and the bank determines that it is not the depository bank with respect to the check or notice, it shall either promptly send the returned check or notice to the depository bank directly or by means of a returning bank agreeing to handle the returned check expeditiously under § 229.31(a), or send the check or notice back to the bank from which it was received.

(d) *Charges.* A depository bank may not impose a charge for accepting and paying checks being returned to it.

§ 229.33 Notice of nonpayment.

(a) *Requirement.* If a paying bank determines not to pay a check in the amount of \$2,500 or more, it shall provide notice of nonpayment such that the notice is 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. If the day the paying bank is required to provide notice is not a banking day for the depositary bank, receipt of notice on the depositary bank's next banking day constitutes timely notice. Notice may be provided by any reasonable means, including the returned check, a writing (including a copy of the check), telephone, Fedwire, telex, or other form of telegraph.

(b) *Content of notice.* Notice must include the—

- (1) Name and routing number of the paying bank;
- (2) Name of the payee(s);
- (3) Amount;
- (4) Date of the indorsement of the depositary bank;
- (5) Account number of the customer(s) of the depositary bank;
- (6) Branch name or number of the depositary bank from its indorsement;
- (7) Trace number associated with the indorsement of the depositary bank; and
- (8) Reason for nonpayment.

The notice may include other information from the check that may be useful in identifying the check being returned and the customer, and, in the case of a written notice, must include the name and routing number of the depositary bank from its indorsement. If the paying bank is not sure of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy with question marks.

(c) *Acceptance of notice.* The depositary bank shall accept notices during its banking day—

(1) Either at the telephone or telegraph number of its return check unit indicated in the indorsement, or, if no such number appears in the indorsement or if the number is illegible, at the general purpose telephone or telegraph number of its head office or the branch indicated in the indorsement; and

(2) At any other number held out by the bank for receipt of notice of nonpayment, and, in the case of written notice, as specified in § 229.32(a).

(d) *Notification to customer.* If the depositary bank receives a returned check or notice of nonpayment, it shall send notice to its customer of the facts by midnight of the banking day following the banking day on which it received the returned check or notice, or within a longer reasonable time.

(e) *Depositary bank without accounts.* The requirements of this section do not apply to checks deposited in a

depositary bank that does not maintain accounts.

§ 229.34 Warranties by paying bank and returning bank.

(a) *Warranties.* Each paying bank or returning bank that transfers a returned check and receives a settlement or other consideration for it warrants to the transferee returning bank, to any subsequent returning bank, to the depositary bank, and to the owner of the check, that—

- (1) The paying bank returned the check within its deadline under the U.C.C., Regulation J (12 CFR Part 210), or § 229.30(c) of this part;
- (2) It is authorized to return the check;
- (3) The check has not been materially altered; and
- (4) In the case of a notice in lieu of return, the original check has not and will not be returned.

These warranties are not made with respect to checks drawn on the Treasury of the United States, a state, or a unit of general local government.

(b) *Warranty of notice of nonpayment.* Each paying bank warrants to the transferee bank, to any subsequent transferee bank, to the depositary bank, and to the owner of the check that—

- (1) The paying bank returned or will return the check within its deadline under the U.C.C., Regulation J (12 CFR Part 210), or § 229.30(c) of this part;
- (2) It is authorized to send the notice; and
- (3) The check has not been materially altered.

These warranties are not made with respect to checks drawn on a state or a unit of general local government.

(c) *Damages.* Damages for breach of these warranties shall not exceed the consideration received by the paying or returning bank, plus finance charges and expenses related to the returned check, if any.

(d) *Tender of defense.* If a returning bank is sued for breach of a warranty under this section, it may give a prior returning bank or the paying bank written notice of the litigation, and the bank notified may then give similar notice to any other prior returning bank or the paying bank. If the notice states that the paying or returning bank notified may come in and defend, and that if the paying or returning bank notified does not do so, it will in any action against it by the paying or returning bank giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the paying or returning bank

notified does come in and defend, it is so bound.

§ 229.35 Indorsements.

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

(b) *Liability of bank handling check.* A bank that handles a check for forward collection or return is liable to any bank that subsequently handles the check to the extent that the subsequent bank does not receive payment for the check because of suspension of payments by another bank or otherwise. This paragraph applies whether or not a bank has placed its indorsement on the check. This liability is not affected by the failure of any bank to exercise ordinary care, but any bank failing to do so remains liable. A bank seeking recovery against a prior bank shall send notice to that prior bank reasonably promptly after it learns the facts entitling it to recover. A bank may recover from the bank with which it settled for the check by revoking the settlement, charging back any credit given to an account, or obtaining a refund. A bank may have the rights of a holder with respect to each check it handles.

(c) *Indorsement by a bank.* After a check has been indorsed by a bank, only a bank may acquire the rights of a holder—

- (1) Until the check has been returned to the person initiating collection; or
- (2) Until the check has been specially indorsed by a bank to a person who is not a bank.

(d) *Indorsement for depositary bank.* A depositary bank may arrange with another bank to apply the other bank's indorsement as the depositary bank indorsement, provided that any indorsement of the depositary bank on the check avoids the area reserved for the depositary bank indorsement as specified in Appendix D. The other bank indorsing as depositary bank is considered the depositary bank for purposes of Subpart C of this part.

§ 229.36 Presentment of checks.

(a) *Payable through and payable at checks.* A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious return and notice of nonpayment requirements of this subpart.

(b) *Receipt at bank office or processing center.* A check is considered

received by the paying bank when it is received:

(1) At a location to which delivery is requested by the paying bank;

(2) At an address of the bank associated with the routing number on the check, whether in magnetic ink or in fractional form;

(3) At any branch or head office, if the bank is identified on the check by name without address; or

(4) At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address.

(c) *Truncation.* A bank may present a check to a paying bank by transmission of information describing the check in accordance with an agreement with the paying bank. A truncation agreement may not extend return times or otherwise vary the requirements of this part with respect to parties interested in the check that are not party to the agreement.

(d) *Liability of bank during forward collection.* Settlements between banks for the forward collection of a check are final when made; however, a collecting bank handling a check for forward collection may be liable to a prior collecting bank, including the depository bank, and the depository bank's customer.

§ 229.37 Variation by agreement.

The effect of the provisions of Subpart C may be varied by agreement, except that no agreement can disclaim the responsibility of a bank for its own lack of good faith or failure to exercise ordinary care, or can limit the measure of damages for such lack or failure; but the parties may determine by agreement the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

§ 229.38 Liability.

(a) *Standard of care; liability; measure of damages.* A bank shall exercise ordinary care and act in good faith in complying with the requirements of this subpart. A bank that fails to exercise ordinary care or act in good faith under this subpart may be liable to the depository bank, the depository bank's customer, the owner of a check, or another party to the check. The measure of damages for failure to exercise ordinary care is the amount of the loss incurred, up to the amount of the check, reduced by the amount of the loss that party would have incurred even if the bank had exercised ordinary care. A bank that fails to act in good faith under this subpart may be liable

for other damages, if any, suffered by the party as a proximate consequence. Subject to a bank's duty to exercise ordinary care or act in good faith in choosing the means of return or notice of nonpayment, the bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, or for loss or destruction of a check or notice of nonpayment in transit or in the possession of others. This section does not affect a paying bank's liability to its customer under the U.C.C. or other law.

(b) *Paying bank's failure to make timely return.* If a paying bank fails both to comply with § 229.30(a) and to comply with the deadline for return under the U.C.C., Regulation J (12 CFR Part 210), or § 229.30(c) in connection with a single nonpayment of a check, the paying bank shall be liable under either § 229.30(a) or such other provision, but not both.

(c) *Comparative negligence.* If a person, including a bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§ 229.35), accepting a returned check or notice of nonpayment (§§ 229.32(a) and 229.33(c)), or otherwise, the damages incurred by that person under § 229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

(d) *Responsibility for back of check.* A paying bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check when issued by it or its customer adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A depository bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. Responsibility under this paragraph shall be treated as negligence of the paying or depository bank for purposes of paragraph (c) of this section.

(e) *Timeliness of action.* If a bank is delayed in acting beyond the time limits set forth in this subpart 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, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

(f) *Exclusion.* Section 229.21 of this part and § 611 (a), (b), and (c) of the Act (12 U.S.C. 4010 (a), (b), and (c)) do not apply to this subpart.

(g) *Jurisdiction.* Any action under this subpart may be brought in any United States district court, or in any other court of competent jurisdiction, and shall be brought within one year after the date of the occurrence of the violation involved.

(h) *Reliance on Board rulings.* No provision of this subpart imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, regardless of whether the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after the act or omission has occurred.

§ 229.39 Insolvency of bank.

(a) *Duty of receiver.* A check or returned check in, or coming into, the possession of a paying, collecting, depository, or returning bank that suspends payment, and which is not paid, shall be returned by the receiver, trustee, or agent in charge of the closed bank to the bank or customer that transferred the check to the closed bank.

(b) *Preference against paying or depository bank.* If a paying or depository bank finally pays a check or returned check and suspends payment without making a settlement for the check with the prior bank which is or becomes final, the prior bank has a preferred claim against the paying or depository bank.

(c) *Preference against collecting, paying, or returning bank.* If a collecting, paying, or returning bank receives settlement from a subsequent bank for a check or returned check, which settlement is or becomes final, and suspends payments without making a settlement for the check with the prior bank, which is or becomes final, the prior bank has a preferred claim against the collecting or returning bank.

(d) *Finality of settlement.* If a paying or depository bank gives, or a collecting, paying, or returning bank gives or receives, a settlement for a check or returned check and thereafter suspends payment, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of a certain time or the happening of certain events.

§ 229.40 Effect of merger transaction.

For purposes of this subpart, two or more banks that have engaged in a

merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

§ 229.41 Relation to state law.

The provisions of this subpart supersede any inconsistent provisions of the U.C.C. as adopted in any state, or of any other state law, but only to the extent of the inconsistency.

§ 229.42 Exclusions.

The expeditious return (§§ 229.30(a) and 229.31(a)) and notice of nonpayment (§ 229.33) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

Appendix A.—Routing Number Guide to Local Checks and Certain Checks That Are Subject to Next-Day Availability

Each bank is assigned a routing number by Rand McNally & Co., as agent for the American Bankers Association. The routing number takes two forms: a fractional form and a nine-digit form. A paying bank is normally identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink in a strip along the bottom of the check).

The first four digits of the nine-digit routing number and the denominator of the fractional routing number form the "Federal Reserve routing symbol," which identifies the Federal Reserve District, the Federal Reserve office, and the clearing arrangements used by the paying bank. Because the Expedited Funds Availability Act and Regulation CC define local and nonlocal checks in terms of the Federal Reserve office serving the paying bank, it is possible to determine whether a check is local or nonlocal by referring to the Federal Reserve routing symbol.

Following are two lists: a list of next-day availability checks and a list of Federal Reserve routing symbols associated with each Federal Reserve office. A depository bank should refer to the routing numbers listed below for the Federal Reserve office that serves the territory in which the branch of deposit is located. Checks with these

Federal Reserve routing symbols are considered local checks.

First Federal Reserve District

[Federal Reserve Bank of Boston]

Head Office

0110 ¹	2110 ²
0113	2113
0114	2114
0115	2115
0116	2116
0117	2117

Windsor Locks office

0111	2111
0118	2118
0119	2119
0211 ³	2211 ³

Lewiston Office

0112	2112
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Second Federal Reserve District

[Federal Reserve Bank of New York]

Head Office

0210	0260
0223	2215
0215	2216
0216	2260

Buffalo Branch

0220	2220
0223	2223

Cranford Office

0212	2212
0270	

Jericho Office

0214	2214
0219	2219
0280	2280

Utica Office

0213	2213
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¹ The first two digits identify the Federal Reserve District. Thus 01 identifies the First Federal Reserve District (Boston), and 12 identifies the Twelfth District (San Francisco).

² Adding 2 to the first digit denotes a thrift institution. Thus 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

³ Banks in Fairfield County, Connecticut are members of the Federal Reserve Bank of New York and therefore have Second District routing numbers. Their checks, however, are processed by the Windsor Locks office. Thus, checks drawn on banks with 0211 or 2211 routing numbers would not be local checks for Second District depository banks.

Third Federal Reserve District

[Federal Reserve Bank of Philadelphia]

Head Office

0310	2310
0311	2311
0312	2312
0313	2313
0319	2319
0360	2360

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

0410	2410
0412	2412

Cincinnati Branch

0420	2420
0421	2421
0422	2422
0423	2423

Pittsburgh Branch

0430	2430
0432	2432
0433	2433
0434	2434

Columbus Office

0440	2440
0441	2441
0442	2442

Fifth Federal Reserve District

[Federal Reserve Bank of Richmond]

Head Office

0510	2510
0514	2514

Baltimore Branch

0520	2520
0521	2521
0522	2522
0540	2540
0550	2550
0560	2560
0570	2570

Charlotte Branch

0530	2530
0531	2531

Columbia Office

0532	2532
0539	2539

Charleston Office

0515	2515
0519	2519

Sixth Federal Reserve District
[Federal Reserve Bank of Atlanta]

Head Office
0610 2610
0611 2611
0612 2612
0613 2613

Birmingham Branch
0620 2620
0621 2621
0622 2622

Jacksonville Branch
0630 2630
0631 2631
0632 2632

Nashville Branch
0640 2640
0641 2641
0642 2642

New Orleans Branch
0650 2650
0651 2651
0652 2652
0653 2653
0654 2654
0655 2655

Miami Branch
0660 2660
0670 2670

Seventh Federal Reserve District
[Federal Reserve Bank of Chicago]

Head Office
0710 2710
0711 2711
0712 2712
0719 2719

Detroit Branch
0720 2720
0724 2724

Des Moines Office
0730 2730
0739 2739

Indianapolis Office
0740 2740
0749 2749

Milwaukee Office
0750 2750
0759 2759

Eighth Federal Reserve District
[Federal Reserve Bank of St. Louis]

Head Office
0810 2810
0812 2812
0815 2815
0819 2819
0865 2865

Little Rock Branch
0820 2820
0829 2829

Louisville Branch
0813 2813
0830 2830
0839 2839
0863 2863

Memphis Branch
0840 2840
0841 2841
0842 2842
0843 2843

Ninth Federal Reserve District
[Federal Reserve Bank of Minneapolis]

Head Office
0910 2910
0911 2911
0912 2912
0913 2913
0914 2914
0915 2915
0918 2918
0919 2919
2910 2960

Helena Branch
0920 2020
0921 2921
0929

Tenth Federal Reserve District
[Federal Reserve Bank of Kansas City]

Head Office
1010 3010
1011 3011
1012 3012
1019 3019

Denver Branch
1020 3020
1021 3021
1022 3022
1023 3023
1070 3070

Oklahoma City Branch
1030 3030
1031 3031
1039 3039

Omaha Branch
P1040 3040
1041 3041
1049 3049

Eleventh Federal Reserve District
[Federal Reserve Bank of Dallas]

Head Office
1110 3110
1111 3111
1113 3113
1119 3119

El Paso Branch
1120 3120
1122 3122
1123 3123
1163 3163

Houston Branch
1130 3130
1131 3131

San Antonio Branch
1140 3140
1149 3149

Twelfth Federal Reserve District
[Federal Reserve Bank of San Francisco]

Head Office
1210 3210
1211 3211
1212 3212
1213 3213
1214 3214

Los Angeles Branch
1220 3220
1221 3221
1222 3222
1223 3223
1224 3224

Portland Branch
1230 3230
1231 3231
1232 3232
1233 3233

Salt Lake City Branch
1240 3240
1241 3241
1242 3242
1243 3243

Seattle Branch
1250 3250
1251 3251
1252 3252

U.S. Treasury Checks and Postal Money Orders
0000 0050 5 0000 0119 3
0000 0051 8 0000 0800 2

Federal Reserve Offices

0110 0001 5 0620 0019 0
0111 0048 1 0630 0019 9
0112 0048 8 0640 0010 1
0210 0120 8 0650 0021 0
0220 0026 6 0660 0010 9
0214 0950 9 0710 0030 1
0213 0500 1 0720 0029 0
0310 0004 0 0730 0033 8
0410 0001 4 0740 0020 1
0420 0043 7 0750 0012 9
0430 0030 0 0810 0004 5
0440 0050 3 0820 0013 8
0510 0003 3 0830 0059 3
0520 0027 8 0840 0003 9
0530 0020 6 0910 0008 0
0539 0008 9 0920 0026 7
0519 0002 3 1010 0004 8
0610 0014 6 1020 0019 9

1030 0024 0
1040 0012 6
1110 0003 8
1120 0001 1
1130 0004 9
1140 0072 1

1210 0037 4
1220 0016 6
1230 0001 3
1240 0031 3
1250 0001 1

Federal Home Loan Banks

0110 0053 6
0420 0091 6
0430 0143 5
0610 0876 6
0710 0450 1
0730 0091 4

0740 0101 9
1011 0194 7
1119 1083 0
1210 0070 1
1250 0050 3

Appendix B-1—Reduction of Schedules for Certain Nonlocal Checks Under the Temporary Schedule

A depository bank that is located in the following check processing territories shall make funds deposited in an account by a nonlocal check described below available for withdrawal not later than the number of business days following the banking day on which funds are deposited, as specified below.

Federal Reserve office	Number of business days following the banking day funds are deposited
<i>Boston</i> Depository banks (0110, 2110) to: 0210, 0260, 0280, 0310, 0360, 0710, 2260, 2310, 2360, 2710.....	5
<i>Windsor Locks</i> None.	
<i>Lewiston</i> None.	
<i>New York</i> Depository banks (0210, 0260, 2260, 0215, 2215, 0216, 2216) to: 0214, 0219, 0280, 2214, 2219.....	4
Depository banks (0210, 0260, 2260, 0215, 2215, 0216, 2216) to: 0110, 0212, 0213, 0220, 0270, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2212, 2213, 2220, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5
<i>Jericho</i> Depository banks (0214, 2214, 0219, 2219, 0280) to: 0210, 0260, 2260.....	4

Federal Reserve office	Number of business days following the banking day funds are deposited
Depository banks (0214, 2214, 0219, 2219, 0280) to: 0110, 0212, 0213, 0215, 0216, 0220, 0270, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2212, 2213, 2215, 2216, 2220, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5
<i>Cranford</i> Depository banks (0212, 0270, 2212) to: 0210, 0260, 0280, 2260.....	4
Depository banks (0212, 2212, 0270) to: 0110, 0213, 0214, 0215, 0216, 0219, 0220, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2213, 2214, 2215, 2216, 2219, 2220, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 1810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 33240, 3250.....	5
<i>Buffalo</i> Depository banks (0220, 2220, 0223, 2223) to: 0210, 0212, 0260, 0270, 0280, 2212, 22605.....	4
Depository banks (0220, 2220, 0223, 2223) to: 0110, 0213, 0214, 0215, 0216, 0219, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2213, 2214, 2215, 2216, 2219, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5

Federal Reserve office	Number of business days following the banking day funds are deposited
<i>Utica</i> Depository banks (0213, 2213) to: 0210, 0212, 0260, 0270, 0280, 2212, 2260.....	4
Depository banks (0213, 2213) to: 0110, 0214, 0215, 0216, 0219, 0220, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2214, 2215, 2216, 2219, 2220, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5
<i>Philadelphia</i> Depository banks (0310, 2310, 0360, 2360) to: 0110, 0210, 0220, 0260, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0830, 0840, 0910, 0960, 1010, 1020, 1040, 2110, 2220, 2260, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2830, 2840, 2910, 2960, 3010, 3020, 3040.....	5
<i>Cleveland</i> Depository banks (0410, 2410) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5

Federal Reserve office	Number of business days following the banking day funds are deposited	Federal Reserve office	Number of business days following the banking day funds are deposited	Federal Reserve office	Number of business days following the banking day funds are deposited
<p><i>Cincinnati</i></p> <p>Depository banks (0420, 2420) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0430, 0440, 0441, 0442, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0749, 0750, 0810, 0813, 0830, 0839, 0840, 0863, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2430, 2440, 2441, 2442, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2749, 2750, 2810, 2813, 2830, 2839, 2840, 2863, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....</p>	5	<p><i>Richmond</i></p> <p>Depository banks (0510, 2510) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0515, 0519, 0520, 0521, 0522, 0530, 0531, 0539, 0550, 0560, 0570, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2515, 2519, 2520, 2521, 2522, 2530, 2531, 2539, 2550, 2560, 2570, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140.....</p>	5	<p><i>Charleston</i></p> <p>Depository banks (0519, 2519) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0830, 0840, 0910, 0960, 1010, 1020, 1040, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2830, 2840, 2910, 2960, 3010, 3020, 3040, 3240.....</p>	5
<p><i>Columbus</i></p> <p>Depository banks (0440, 2440) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0810, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....</p>	5	<p><i>Baltimore</i></p> <p>Depository banks (0520, 2520) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0830, 0840, 0910, 0960, 1010, 1020, 1040, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2830, 2840, 2910, 2960, 3010, 3020, 3040, 3240.....</p>	5	<p><i>Atlanta</i></p> <p>Depository banks (0610, 2610) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240.....</p>	5
<p><i>Pittsburgh</i></p> <p>Depository banks (0430, 2430) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....</p>	5	<p><i>Charlotte</i></p> <p>Depository banks (0530, 2530) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0520, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2520, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140.....</p>	5	<p><i>Birmingham</i></p> <p>Depository banks (0620, 2620) to:</p> <p>0651, 2651.....</p> <p>Depository banks (0620, 2620) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....</p>	4
	5	<p><i>Columbia</i></p> <p>Depository banks (0539, 2539) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140.....</p>	5	<p><i>Jacksonville</i></p> <p>Depository banks (0630, 2630) to:</p>	5

Federal Reserve office	Number of business days following the banking day funds are deposited	Federal Reserve office	Number of business days following the banking day funds are deposited	Federal Reserve office	Number of business days following the banking day funds are deposited
0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140.....	5	<p style="text-align: center;"><i>Chicago</i></p> Depository banks (0710, 2710) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3223, 3230, 3240, 3250.....	5	<p style="text-align: center;"><i>Indianapolis</i></p> Depository banks (0740, 2740) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5
<p style="text-align: center;"><i>Miami</i></p> Depository banks (0660, 2660) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0610, 0620, 0630, 0640, 0650, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2610, 2620, 2630, 2640, 2650, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140.....	5	<p style="text-align: center;"><i>Detroit</i></p> Depository banks (0720, 2720) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5	<p style="text-align: center;"><i>Milwaukee</i></p> Depository banks (0750, 2750) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5
<p style="text-align: center;"><i>Nashville</i></p> 0613, 2613..... Depository banks (0640, 2640) to: 0530, 0539, 0610, 0620, 0630, 0650, 0660, 0840, 2530, 2539, 2610, 2620, 2630, 2650, 2660, 2840.....	4	<p style="text-align: center;"><i>Des Moines</i></p> Depository banks (0730, 2730) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5	<p style="text-align: center;"><i>St. Louis</i></p> Depository banks (0810, 2810) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0820, 0830, 0840, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1220, 1223, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2660, 2710, 2720, 2730, 2740, 2750, 2820, 2830, 2840, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3220, 3223, 3240.....	5
<p style="text-align: center;"><i>New Orleans</i></p> Depository banks (0650, 2650) to: 0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5				

Federal Reserve office	Number of business days following the banking day funds are deposited	Federal Reserve office	Number of business days following the banking day funds are deposited	Federal Reserve office	Number of business days following the banking day funds are deposited
<p><i>Little Rock</i></p> <p>Depository banks (0820, 2820) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....</p>	5	<p><i>Minneapolis</i></p> <p>Depository banks (0910, 2910, 0960, 2960) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3240.....</p> <p><i>Helena</i></p> <p>None.</p>	5	<p><i>Oklahoma City</i></p> <p>Depository banks (1030, 3030) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....</p>	5
<p><i>Louisville</i></p> <p>Depository banks (0830, 2830) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0840, 0910, 0960, 1010, 1020, 1040, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2840, 2910, 2960, 3010, 3020, 3040, 3240.....</p>	5	<p><i>Kansas City</i></p> <p>0865, 2865.....</p> <p>Depository banks (1010, 3010) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....</p>	4	<p><i>Omaha</i></p> <p>Depository banks (1040, 3040) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....</p>	5
<p><i>Memphis</i></p> <p>Depository banks (0840, 2840) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0910, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1140, 1240, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2910, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3140, 3240.....</p>	5	<p><i>Denver</i></p> <p>Depository banks (1020, 3020) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1030, 1040, 1110, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3030, 3040, 3110, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....</p>	5	<p><i>Dallas</i></p> <p>Depository banks (1110, 3110) to:</p> <p>0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1120, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3120, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....</p>	5

Federal Reserve office	Number of business days following the banking day funds are deposited
<i>Houston</i>	
Depository banks (1130, 3130) to:	
0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5
<i>San Antonio</i>	
Depository banks (1140, 3140) to:	
0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1120, 1130, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3120, 3130, 3210, 3220, 3223, 3230, 3240, 3250.....	5
<i>El Paso</i>	
Depository banks (1120, 3120) to:	
0110, 0210, 0220, 0260, 0280, 0310, 0360, 0410, 0420, 0430, 0440, 0510, 0519, 0520, 0530, 0539, 0610, 0620, 0630, 0640, 0650, 0660, 0710, 0720, 0730, 0740, 0750, 0810, 0820, 0830, 0840, 0910, 0920, 0960, 1010, 1020, 1030, 1040, 1110, 1130, 1140, 1210, 1220, 1223, 1230, 1240, 1250, 2110, 2220, 2260, 2310, 2360, 2410, 2420, 2430, 2440, 2510, 2519, 2520, 2530, 2539, 2610, 2620, 2630, 2640, 2650, 2660, 2710, 2720, 2730, 2740, 2750, 2810, 2820, 2830, 2840, 2910, 2920, 2960, 3010, 3020, 3030, 3040, 3110, 3130, 3140, 3210, 3220, 3223, 3230, 3240, 3250.....	5
<i>San Francisco</i>	
Depository banks (1210, 3210) to:	
1220, 1223, 3220, 3223.....	5
<i>Los Angeles</i>	
Depository banks (1220, 1223, 3220, 3223) to:	
1210, 3210.....	5

Federal Reserve office	Number of business days following the banking day funds are deposited
<i>Portland</i>	
Depository banks (1230, 3220) to:	
1250, 3250.....	5
<i>Salt Lake City</i>	
None.	
<i>Seattle</i>	
Depository banks (1250, 3250) to:	
1230, 3230.....	5

Appendix B—Reduction of Schedules for Certain Nonlocal Checks Under the Permanent Schedule

A depository bank that is located in the following check processing territories shall make funds deposited in an account by a nonlocal check described below available for withdrawal not later than the number of business days following the banking day on which funds are deposited, as specified below.

Federal Reserve office	Number of business days following the banking day funds are deposited
<i>New York</i>	
Depository banks (0210, 0260, 0280, 2260) to:	
0214, 0219, 2214, 2219.....	3
<i>Jericho</i>	
0210, 0260, 2260.....	3
<i>Cranford</i>	
0210, 0260, 0280, 2260.....	3
<i>Utica</i>	
0210, 0280.....	3
<i>Nashville</i>	
0613, 2613.....	3
<i>Kansas City</i>	
0865, 2865.....	3

Appendix C—Model Forms, Clauses, and Notices

This Appendix contains model disclosure forms, clauses and notices to facilitate compliance with the disclosure requirements of the regulation. Although use of these forms, clauses and notices is not required, banks using them properly to make disclosures required by the regulation are deemed to be in compliance.

- Model Specific Policy Disclosure Forms*
- C-1 Next-day availability
 - C-2 Next-day availability and § 229.13 exceptions

- C-3 Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions (temporary schedule)
 - C-4 Holds to statutory limits on all deposits (temporary schedule)
 - C-5 Holds to statutory limits on all deposits (temporary schedule, includes chart)
 - C-6 Holds on all deposits, but for less time than the statutory limits, and case-by-case holds to the statutory limits (temporary schedule)
 - C-7 Holds to statutory limits on all deposits (permanent schedule)
- Model Clauses*
- C-8 Holds on other funds (check cashing)
 - C-8A Holds on other funds (other account)
 - C-9 Appendix B availability (nonlocal checks)
 - C-10 Automated teller machine deposits (temporary schedule, extended hold)
 - C-11 Cash withdrawal limitation (temporary schedule)
 - C-11A Cash withdrawal limitation (temporary schedule, clearinghouse member)
 - C-11B Cash withdrawal limitation (permanent schedule)
 - C-12 Credit union interest payment policy

- Model Notices*
- C-13 Exception hold notice
 - C-13A Reasonable cause hold notice
 - C-14 Case-by-case hold notice
 - C-15 Notice at locations where employees accept consumer deposits
 - C-15A Notice at locations where employees accept consumer deposits (case-by-case holds)
 - C-16 Notice at automated teller machines
 - C-17 Notice at automated teller machines (delayed receipt)
 - C-18 Deposit slip notice

Model Specific Policy Disclosure Forms

- C-1—Next-day availability
- YOUR ABILITY TO WITHDRAW FUNDS 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. At that time, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.
- For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.
- C-2—Next-day availability and § 229.13 exceptions
- YOUR ABILITY TO WITHDRAW FUNDS 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. At that time, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than \$5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

The first \$5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over \$5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and 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 you do not make the deposit 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.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

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

YOUR ABILITY TO WITHDRAW FUNDS 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. At that time, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except

Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the seventh business day after the day of your deposit. However, the first \$100 of your deposits will be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than \$5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

The first \$5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over \$5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and 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 you do not make the deposit 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.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C-4—Holds to statutory limits on all deposits (temporary schedule)

YOUR ABILITY TO WITHDRAW FUNDS at (bank name and location)

Our policy is to delay the availability of funds that you deposit in your account. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

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, including preauthorized credits, such as social security benefits and payroll payments.

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

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

Cash.

State and local government checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)].

Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)].

Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

Personal check

Pay to the order of _____	_____ 19 _____
	\$ _____
	_____ dollars
(Bank Name and Location) _____	
123456789	0000000000 000

Routing number

Business check

Name of Company Address, City, State	_____ 19 _____
Pay to the order of _____	\$ _____
	_____ dollars
(Bank Name and Location) _____	
000000000	123456789 0000000000 000

Routing number

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. Our policy is to make funds from these checks available as follows.

1. *Local checks.* The first \$100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the third business day after the day of your deposit.

For example, if you deposit a local check of \$700 on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is available on Thursday.

2. *Nonlocal checks.* The first \$100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the seventh business day after the day of your deposit.

For example, if you deposit a \$700 nonlocal check on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is

available on Wednesday of the following week.

If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than \$5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be

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

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

The first \$5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over \$5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and 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 you do not make the deposit 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.

Funds from all other check deposits will be available on the *(number)* business day after the day of your deposit.

C-5—Holds to statutory limits on all deposits (temporary schedule, includes chart)

YOUR ABILITY TO WITHDRAW FUNDS at (bank name and location)

Our policy is to delay the availability of funds that you deposit in your account. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If

you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

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, including preauthorized credits, such as social security benefits and payroll payments.

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

If you make the deposit in person to one of our employees, funds from the following

deposits are also available on the first business day after the day of your deposit:

Cash.

State and local government checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)].

Cashier's certified, and teller's checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)].

Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

Other Check Deposits

To find out when funds from other check deposits will be available, look at the first four digits of the routing number on the check:

Personal check

Pay to the order of _____ 19____
 \$ _____
 _____ dollars
 (Bank Name and Location) _____
 123456789 0000000000 000

Routing number

Business check

Name of Company
 Address, City, State _____
 Pay to the order of _____ 19____
 \$ _____
 _____ dollars
 (Bank Name and Location) _____
 000000000 123456789 0000000000 000

Routing number

Once you have determined the first four digits of the routing number (1234 in the examples above), the following chart will show you when funds from the check will be available:

First four digits from routing number	When funds are available:	When funds are available if a deposit is made on a Monday
(Local numbers)..	\$100 on the first business day after the day of your deposit. Remaining funds on the third business day after the day of your deposit.	Tuesday. Thursday.
All other numbers..	\$100 on the first business day after the day of your deposit.	Tuesday.

First four digits from routing number	When funds are available:	When funds are available if a deposit is made on a Monday
	Remaining funds on the seventh business day after the day of your deposit.	Wednesday of the following week.

If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than \$5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

The first \$5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over \$5,000 will be available on

the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and 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 you do not make the deposit 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.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C-6—Holds on all deposits, but for less time than the statutory limits, and case-by-case holds to the statutory limits (temporary schedule)

YOUR ABILITY TO WITHDRAW FUNDS at (bank name and location)

Our policy is to delay the availability of funds that you deposit in your account. During the delay, you may not withdraw the

funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

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, including preauthorized credits, such as social security benefits and payroll payments.

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

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:
Cash.

State and local government checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)].

Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)].

Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

Personal check

Pay to the order of _____ _____ (Bank Name and Location)		_____ 19 \$ _____ _____ dollars
<div style="border: 1px solid black; display: inline-block; padding: 2px 10px;">123456789</div> 0000000000 000		

Routing number

Business Check

Name of Company Address, City, State		
Pay to the order of _____ _____ (Bank Name and Location)		_____ 19 \$ _____ _____ dollars
000000000	<div style="border: 1px solid black; display: inline-block; padding: 2px 10px;">123456789</div>	0000000000 000

Routing number

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. Our policy is to make funds from these checks available as follows.

1. Local checks. The first \$100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the (number) business day after the day of your deposit.

For example, if you deposit a local check of \$700 on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is available on (day).

2. Nonlocal checks. The first \$100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the (number) business day after the day of your deposit.

For example, if you deposit a \$700 nonlocal check on a Monday, \$100 of the deposit is

available on Tuesday. The remaining \$600 is available on (day).

If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available at the times shown above. Depending on the type of check that you deposit, funds may not be available until the seventh business day after the day of your deposit. However, the first \$100 of your deposits will be available on the first business day after the day of your deposit.

If we are not going to make all funds from your deposit available at the times shown above, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to a bank

employee, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than \$5,000 on any one day

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be

available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

The first \$5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over \$5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and 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 you do not make the deposit 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.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C-7—Holds to statutory limits on all deposits (permanent schedule)

YOUR ABILITY TO WITHDRAW FUNDS at (bank name and location)

Our policy is to delay the availability of funds that you deposit in your account. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

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, including preauthorized credits, such as social security benefits and payroll payments

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

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

Cash.

State and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

Personal check

Pay to the order of _____	_____ 19 _____
	\$ _____
	_____ dollars
(Bank Name and Location) _____	
123456789	0000000000 000

Routing number

Business check

Name of Company Address, City, State	_____ 19 _____
Pay to the order of _____	\$ _____
	_____ dollars
(Bank Name and Location) _____	
000000000	123456789 0000000000 000

Routing number

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. Our policy is to make funds from these checks available as follows.

1. *Local checks.* The first \$100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the second business day after the day of your deposit.

For example, if you deposit a local check of \$700 on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is available on Wednesday.

2. *Nonlocal checks.* The first \$100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the fifth business day after the day of your deposit.

For example, if you deposit a \$700 nonlocal check on a Monday, \$100 of the deposit is

available on Tuesday. The remaining \$600 is available on Monday of the following week.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than \$5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open. The first \$5,000 from a deposit of U.S. Treasury checks will be available on the first business day after the day of your deposit. The excess over \$5,000 will be available on the ninth business day after the day of your deposit. Funds from wire transfers into your account will be available on the first business day after the day we receive the transfer.

Funds from deposits of cash and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and 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 you do not make the deposit 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.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

Model Clauses

C-8—Holds on Other Funds (Check Cashing)

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it. For example, if we cash a \$100 local check for you, \$100 of funds already in your account will not be available until the (number) business day after the day we cashed the check.

C-8A—Holds on Other Funds (Other Account)

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

C-9—Appendix B Availability (Nonlocal Checks)

3. *Certain other checks.* We can process nonlocal checks drawn on financial institutions in certain areas faster than usual. Therefore, funds from deposits of checks drawn on institutions in those areas will be available to you more quickly. Call us if you would like a list of the routing numbers for these institutions.

C-10—Automated Teller Machine Deposits (Temporary 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 seventh business day after the day of your deposit. This rule does not apply at ATMs that we own or operate.

[A list of our ATMs is enclosed.]

or

[A list of ATMs where you can make deposits but that are not owned or operated by us is enclosed.]

or

[All ATMs that we own or operate are identified as our machines.]

C-11—Cash withdrawal limitation (temporary schedule)

1. *Local checks.* The first \$100 from a deposit of local checks will be available on the first business day after the day of your

deposit to pay checks you have written to others. All of the remaining funds will be available on the third business day after the day of your deposit to pay checks you have written to others.

The first \$100 will also be available for withdrawal in cash on the first business day after the day of your deposit. An additional \$400 of the deposit may be withdrawn in cash at or after (time no later than 5:00 p.m.) on the third business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the fourth business day after the day of your deposit.

For example, if you deposit a local check of \$700 on a Monday, \$100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The rest is available to pay checks on Thursday. At or after (time no later than 5:00 p.m.) on Thursday you may withdraw another \$400 of the deposit in cash, and you may withdraw the rest in cash on Friday.

2. *Nonlocal checks.* The first \$100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit for cash withdrawal and to pay checks you have written to others. The remainder will be available on the seventh business day after the day of your deposit for both of these purposes.

For example, if you deposit a nonlocal check on a Monday, \$100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The remaining funds from the deposit are available on Wednesday of the following week for cash withdrawal and to pay checks written to others.

C-11A—Cash Withdrawal Limitation (Temporary Schedule, Clearinghouse Member)

1. *Local checks.* The first \$100 from a deposit of local checks will be available on the first business day after the day of your deposit for cash withdrawal and to pay checks you have written to others. The remainder generally will be available on the third business day after the day of your deposit for both of these purposes.

For example, if you deposit a local check of \$700 on a Monday, \$100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The remaining \$600 is available on Thursday for cash withdrawal and to pay checks you have written to others.

In some cases, however, depending on the bank on which the check is drawn, special limitations apply to withdrawals in cash. The first \$100 will be available for cash withdrawal on the first business day after the day of your deposit. An additional \$400 of the deposit may be withdrawn in cash at or after (time no later than 5:00 p.m.) on the third business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the fourth business day after the day of your deposit.

In these cases, for example, if you deposit a local check of \$700 on a Monday, \$100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The rest is available to pay checks on Thursday. At or after (time no later than 5:00 p.m.) on Thursday you may withdraw another

\$400 of the deposit in cash, and you may withdraw the rest in cash on Friday.

2. *Nonlocal checks.* The first \$100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit for cash withdrawal and to pay checks you have written to others. The remainder will be available on the seventh business day after the day of your deposit for both of these purposes.

For example, if you deposit a nonlocal check on a Monday, \$100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The remaining funds from the deposit are available on Wednesday of the following week for cash withdrawal and to pay checks written to others.

C-11B—Cash Withdrawal Limitation (Permanent Schedule)

1. *Local checks.* The first \$100 from a deposit of local checks will be available on the first business day after the day of your deposit to pay checks you have written to others. All of the remaining funds will be available on the second business day after the day of your deposit to pay checks you have written to others.

The first \$100 will also be available for withdrawal in cash on the first business day after the day of your deposit. An additional \$400 of the deposit may be withdrawn in cash at or after (time no later than 5:00 p.m.) on the second business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the third business day after the day of your deposit.

For example, if you deposit a local check of \$700 on a Monday, \$100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The rest is available to pay checks on Wednesday. At or after (time no later than 5:00 p.m.) on Wednesday you may withdraw another \$400 of the deposit in cash, and you may withdraw the rest in cash on Thursday.

2. *Nonlocal checks.* The first \$100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit to pay checks you have written to others. All of the remaining funds will be available on the fifth business day after the day of your deposit to pay checks you have written to others.

The first \$100 will also be available for withdrawal in cash on the first business day after the day of your deposit. An additional \$400 of the deposit may be withdrawn in cash at or after (time no later than 5:00 p.m.) on the fifth business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the sixth business day after the day of your deposit.

For example, if you deposit a nonlocal check of \$700 on a Monday, \$100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The rest is available to pay checks on Monday of the following week. At or after (time no later than 5:00 p.m.) on that Monday, you may withdraw another \$400 of the deposit in cash. The rest may be withdrawn in cash on Tuesday of that following week.

C-12—Credit Union Interest Payment Policy
Interest Payment Policy

If we receive a deposit to your account on or before the tenth of the month, you begin earning interest on the deposit (whether it was a deposit of cash or checks) as of the first day of that month. If we receive the deposit after the tenth of the month, you begin earning interest on the deposit as of the first of the following month. For example, a deposit made on June 7 earns interest from June 1, while a deposit made on June 17 earns interest from July 1.

Model Notices

C-13—Exception hold notice

NOTICE OF HOLD

Account number: *(number)*
Date of deposit: *(date)*
Amount of deposit: *(amount)*

We are delaying the availability of \$(*amount being held*) from this deposit. These funds will be available on the (*number*) business day after the day of your deposit.

We are taking this action because:

- A check you deposited was previously returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- The checks you deposited on this day exceed \$5,000.
- An emergency, such as failure of communications or computer equipment, has occurred.
- We believe a check you deposited will not be paid for the following reasons:

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

C-13A—Reasonable cause hold notice

NOTICE OF HOLD

Account number: *(number)*
Date of deposit: *(date)*
Amount of deposit: *(amount)*

We are delaying the availability of the funds you deposited by the following check: (*description of check, such as amount and drawer*)

These funds will be available on the (*number*) business day after the day of your deposit. The reason for the delay is explained below:

- We received notice that the check is being returned unpaid.
- We have confidential information that indicates that the check may not be paid.
- The check is drawn on an account with repeated overdrafts.
- We are unable to verify the endorsement of a joint payee.
- Some information on the check is not consistent with other information on the check.
- There are erasures or other apparent alterations on the check.

- The routing number of the paying bank is not a current routing number.
- The check is postdated or has a stale date.
- Information from the paying bank indicates that the check may not be paid.
- We have been notified that the check has been lost or damaged in collection.
- Other:

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

C-14—Case-by-case hold notice

NOTICE OF HOLD

Account number: *(number)*
Date of deposit: *(date)*
Amount of deposit: *(amount)*

We are delaying the availability of \$(*amount being held*) from this deposit. These funds will be available on the (*number*) business day after the day of your deposit.

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

C-15—Notice at Locations Where Employees Accept Consumer Deposits

FUNDS AVAILABILITY POLICY

Description of deposit	When funds can be withdrawn by cash or check
Cash, wire transfers, cashier's, certified, teller's, or government checks, checks on (<i>bank name</i>) [unless (<i>any limitation related to branches in different check processing regions</i>)], and the first \$100 of a day's deposits of other checks.	The first business day after the day of deposit.
Local checks.....	The third business day after the day of deposit.
Nonlocal checks.....	The seventh business day after the day of deposit.

C-15A—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)

FUNDS AVAILABILITY POLICY

Our general policy is to allow you to withdraw funds deposited in your account on the (*number*) business day after the day we receive your deposit. In some cases, we may delay your ability to withdraw funds beyond the (*number*) business day. Then, the funds will generally be available by the seventh business day after the day of deposit.

C-16—Notice at Automated Teller Machines
AVAILABILITY OF DEPOSITS

Funds from deposits may not be available for immediate withdrawal. Please refer to your institution's rules governing funds availability for details.

C-17—Notice at Automated Teller Machines (Delayed Receipt)

NOTICE

Deposits at this ATM between (*day*) and (*day*) will not be considered received until (*day*). The availability of funds from the deposit may be delayed as a result.

C-18—Deposit Slip Notice

Deposits may not be available for immediate withdrawal.

Appendix D.—Indorsement Standards

1. The depository bank shall indorse a check according to the following specifications:

- The indorsement shall contain—
 - The bank's nine-digit routing number, set off by arrows at each end of the number and pointing toward the number;
 - The bank's name/location; and
 - The indorsement date.
- The indorsement may also contain—
 - An optional branch identification;
 - An optional trace/sequence number;
 - An optional telephone number for receipt of notification of large-dollar returned checks; and
- Other optional information provided that the inclusion of such information does not interfere with the readability of the indorsement.

• The indorsement shall be written in dark purple or black ink.

• The indorsement shall be placed on the back of the check so that the routing number is wholly contained in the area 3.0 inches from the leading edge of the check to 1.5 inches from the trailing edge of the check.¹

2. Each subsequent collecting bank indorser shall protect the identifiability and legibility of the depository bank indorsement by:

- Including *only* its nine-digit routing number (without arrows), the indorsement date, and an optional trace/sequence number;
- Using an ink color other than purple; and
- Indorsing in the area on the back of the check from 0.0 inches to 3.0 inches from the leading edge of the check.

3. Each returning bank indorser shall protect the identifiability and legibility of the depository bank indorsement by:

- Using an ink color other than purple;
- Staying clear of the area on the back of the check from 3.0 inches from the leading edge of the check to the trailing edge of the check.

¹ The leading edge is defined as the right side of the check looking at it from the front. The trailing edge is defined as the left side of the check looking at it from the front. See American National Standards Committee on Financial Services *Specification for the Placement and Location of MICR Printing, X 9.13.*

Appendix E.—Commentary

The Board interpretations, which are labeled "Commentary" and follow each section of Regulation CC, provide background material to explain the Board's intent in adopting a particular part of the regulation; the Commentary also provides examples to aid in understanding how a particular requirement is to work. Under section 611(e) of the Expedited Funds Availability Act (12 U.S.C. 4010(e)), no provision of section 611 imposing any liability shall apply to any act done or omitted in good faith conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

The Commentary is an "interpretation" of a regulation by the Board within the meaning of section 611.

Section 229.2 Definitions

Section 229.2 defines the terms used in the regulation. For the most part, terms are defined as they are in section 602 of the Expedited Funds Availability Act (12 U.S.C. 4001). The Board has made a number of changes for the sake of clarity, to conform the terminology to that which is familiar to the banking industry, to define terms that are not defined in the Act, and to carry out the purposes of the Act. The Board has also incorporated by reference the definitions of the Uniform Commercial Code where appropriate. Some of the Regulation CC's definitions are self-explanatory and therefore are not discussed in this commentary.

(a) *Account*. The Act defines account to mean "a demand deposit account or similar transaction account at a depository institution." The regulation defines "account" in terms of the definition of "transaction account" in the Board's Regulation D (12 CFR Part 204). The definition of "account" in Regulation CC, however, excludes certain deposits, such as nondocumentary obligations (see 12 CFR 204.2(a)(1)(vii)), that are covered under the definition of "transaction account" in Regulation D. The definition applies to accounts with general third party payment powers but does not cover time deposits or savings deposits, including money market deposit accounts, even though they may have limited third party payment powers. The Board believes that it is appropriate to exclude these accounts because of the reference to demand deposits in the Act, which suggests that the Act is intended to apply only to accounts that permit unlimited third party transfers.

The term account also differs from the definition of transaction account in Regulation D because the term "account" refers to accounts held at banks. Under Subparts A and C, the term "bank" includes not only any "depository institution," as defined in the Act, but also any person engaged in the business of banking, such as a Federal Reserve Bank, a Federal Home Loan Bank, or a private banker that is not subject to Regulation D. Thus accounts at these

institutions benefit from the expeditious return requirements of Subpart C.

Interbank deposits, including accounts of offices of domestic banks or foreign banks located outside the United States, and direct and indirect accounts of the United States Treasury (including Treasury General Accounts and Treasury Tax and Loan Deposit Accounts) are exempt from Regulation CC.

(b) *Automated clearinghouse (ACH)*. The Board has defined "automated clearinghouse" as a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular governing automated clearinghouse items or the rules of an ACH association. ACH credit transfers are included in the definition of "electronic payment."

The reference to "credit transfers" and "debit transfers" does not refer to the corresponding credit and debit entries that are part of the same transaction, but to different kinds of ACH payments. In an ACH credit transfer, the originator orders that its account be debited and another account credited. In an ACH debit transfer, the originator, with prior authorization, orders another account to be debited and the originator's account to be credited.

A facility that handles only "wire transfers" (defined elsewhere) is not an ACH.

(c) *Automated teller machine (ATM)* is not defined in the Act. The regulation defines an ATM as an electronic device at which a natural person may make deposits to an account by cash or check and perform other account transactions. Point-of-sale terminals, machines that only dispense cash, night depositories, and lobby deposit boxes are not ATMs within the meaning of the definition, either because they do not accept deposits of cash or checks (e.g. point-of-sale terminals and cash dispensers) or because they only accept deposits (e.g. night depositories and lobby boxes) and cannot perform other transactions. A lobby deposit box or similar receptacle in which written payment orders or deposits may be placed is not an ATM.

A facility may be an ATM within this definition even if it is a branch under state or federal law, although an ATM is not a branch as that term is used in this regulation.

(d) *Available for withdrawal*. Under this definition, when funds become "available for withdrawal," the funds may be put to all uses for which the customer may use actually and finally collected funds in the customer's account under the customer's account agreement with the bank. Examples of such uses include payment of checks drawn on the account, certification of checks, electronic payments, and cash withdrawals. Funds are available for these uses notwithstanding provisions of other law that may restrict the use of uncollected funds (e.g., 18 U.S.C. 1004; 12 U.S.C. 331).

If a bank makes funds available to a customer for a specific purpose (such as paying checks that would otherwise overdraw the customer's account and be returned for insufficient funds) before the funds must be made available under the bank's policy or this regulation, it may nevertheless apply a hold consistent with this

regulation to those funds for other purposes (such as cash withdrawals). For the purposes of this regulation, funds are considered available for withdrawal even though they cannot actually be withdrawn because they are subject to garnishment, tax levy, or court order restricting disbursements from the account.

(e) *Bank*. The Act uses the term "depository institution," which it defines by reference to section 19(b)(1)(A)(i) through (vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i) through (vi)). This regulation uses the term "bank," a term that conforms to the usage the Board has previously adopted in Regulation J. "Bank" is also used in Article 4 of the Uniform Commercial Code.

"Bank" is defined to include depository institutions, such as commercial banks, savings banks, savings and loan associations, and credit unions as defined in the Act, and U.S. branches of foreign banks. For purposes of Subpart C, and in connection therewith, Subpart A, any Federal Reserve Bank, Federal Home Loan Bank, or any other person engaged in the business of banking is regarded as a bank. The phrase "any other person engaged in the business of banking," is derived from U.C.C. § 1-201(4), and is intended to cover entities, such as certain industrial banks and private bankers that handle checks for collection and payment, so that all checks will be covered by the same rules for forward collection and return, even though they may not be covered by the requirements of Subpart B. For the purposes of Subpart C, and in connection therewith, Subpart A, term may also include states and units of general local government to the extent that they pay warrants or other drafts drawn directly on the state or local government itself.

Unless otherwise specified, the term bank includes all of a bank's offices in the United States. The regulation does not cover foreign offices of U.S. banks.

(f) *Banking day* and (g) *Business day*. The Act defines "business day" as any day excluding Saturdays, Sundays, and legal holidays. "Legal holiday," however, is not defined, and the variety of local holidays, together with the practice of some banks to close midweek, makes the Act's definition difficult to apply. The Board believes that two kinds of business days are relevant. First, when determining the day when funds are deposited or when a bank must perform certain actions (such as returning a check), the focus should be on a day that the bank is actually open for business. Second, when counting days for purposes of determining when funds must be available under the regulation or when notice of nonpayment must be received by the depository bank, there would be confusion and uncertainty in trying to follow the schedule of a particular bank, and there is less need to identify a day when a particular bank is open. Most banks that act as intermediaries (large correspondents and Federal Reserve Banks) follow the same holiday schedule. Accordingly, the regulation has two definitions: "business day" generally follows the standard Federal Reserve holiday schedule (which is followed by most large

banks), and "banking day" is defined to mean that part of a business day on which a bank is open for substantially all of its banking activities.

The definition of banking day corresponds to the definition of banking day in U.C.C. § 4-104(1)(c), except that a banking day is defined in terms of a "business day." Thus, if a bank is open on Saturday, Saturday might be a banking day for purposes of the U.C.C., but it would not be a banking day for purposes of Regulation CC because Saturday is never a "business day" under the regulation.

The definition of banking day is phrased in terms of when "an office of a bank is open" to indicate that a bank may observe a banking day on a per branch basis. Deposits made at an ATM are considered made at the branch holding the account into which the deposit is made for purposes of determining the day of deposit.

(h) *Cash* means U.S. coins and currency. The phrase in the Act "including Federal Reserve notes" has been deleted as unnecessary. (See 31 U.S.C. 5103.)

(i) *Cashier's check*. The regulation adds to the second item in the Act's definition of "cashier's check" the phrase, "on behalf of the bank as drawer," to clarify that the term "cashier's check" is intended to cover only checks that a bank draws on itself. The definition of cashier's check includes checks provided to customers for purposes of making payments or to pay withdrawals or provided to others to enable them to make payments. Cashier's checks provided to customers or others are often labeled as "cashier's check," "officer's check," or "official check." The definition does not include checks that a bank draws on itself for other purposes, such as to pay employees and vendors.

(j) *Certified check*. The Act defines a certified check as one to which a bank has certified that the drawer's signature is genuine and that the bank has set aside funds to pay the check. Under the Uniform Commercial Code, certification of a check means the bank's signed agreement that it will honor the check as presented (U.C.C. §§ 3-410, 3-411). The regulation defines "certified check" to include both the Act's and U.C.C.'s definitions.

(k) *Check* is defined in section 602(7) of the Act as a negotiable demand draft drawn on or payable through an office of a depository institution located in the United States, excluding noncash items. The regulation includes six categories of instruments within the definition of check.

The first category is negotiable demand drafts drawn on or payable through or at an office of a bank. As the definition of "bank" includes only offices located in the United States, this category is limited to checks drawn on or payable through or at a banking office located in the United States.

The Act treats drafts payable through a bank as checks, even though under the U.C.C. the payable through bank is a collecting bank to make presentment and is generally not authorized to make payment (U.C.C. § 3-120). The Act does not expressly address items that are payable at a bank. This regulation treats both payable through and payable at demand drafts as checks. The Board believes

that treating demand drafts payable at a bank as checks will not have a substantial effect on the operations of payable at banks—by far the largest proportion of payable at items are not negotiable demand drafts, but time items, such as commercial paper, bonds, notes, bankers' acceptances, and securities. These time items are not covered by the requirements of the Act or this regulation. (The treatment of payable through drafts is discussed in greater detail in connection with the definitions of "local check" and "paying bank.")

The second category is checks drawn on Federal Reserve Banks and Federal Home Loan Banks. Principal and interest payments on federal debt instruments are often paid with checks drawn on a Federal Reserve Bank as fiscal agent of the United States, and these "fiscal agency checks" are indistinguishable from other checks drawn on Federal Reserve Banks. (See 31 CFR Part 355.) Federal Reserve Bank checks are also used by some banks as substitutes for cashier's or teller's checks. Similarly, savings and loan associations often use checks drawn on Federal Home Loan Banks as teller's checks. The definition of check includes checks drawn on Federal Home Loan Banks and Federal Reserve Banks because in many cases they are the functional equivalent of Treasury checks or teller's checks.

The third and fourth categories of instrument included in the definition of check refer to government checks. The Act refers to checks drawn on the U.S. Treasury, even though these instruments are not drawn on or payable through an office of a depository institution, and checks drawn by state and local governments. The Act also gives the Board authority to define functionally equivalent instruments as "depository checks."¹ Thus, the Act is intended to apply to instruments other than those that meet the strict definition of check in section 602(7) of the Act. Checks and warrants drawn by states and local governments are often used for the purposes of making unemployment compensation payments and other payments that are important to the recipients. Consequently, the Board has expressly defined check to include drafts drawn on the U.S. Treasury and drafts or warrants drawn by a state or a unit of general local government on itself.

The fifth category of instrument included in the definition of check is U.S. Postal Service money orders. These instruments are defined as checks, because they are often used as a substitute for checks by consumers, even though money orders are not negotiable under Postal Service regulations. The Board has not provided specific rules for other types of money orders; these instruments are generally drawn on or payable through or payable at banks and are treated as checks on that basis.

The sixth and final category of instrument included in the definition of check is

¹ Section 602(11) of the Act (12 U.S.C. 4001(11)) defines "depository check" as "any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board."

traveler's checks drawn on or payable through or at a bank. "Traveler's check" is defined in paragraph (hh) of this section. Finally, for the purposes of Subpart C, and in connection therewith, Subpart A, the definition of check includes nonnegotiable demand drafts because these instruments are often handled as cash items in the forward collection process.

The definition of check does not include an instrument payable in foreign currency (i.e., other than in United States money as defined in 31 U.S.C. 5101) or a credit card draft.

(1) *Check clearinghouse association*. The Act defines a clearinghouse association as any arrangement by which participants exchange deposited checks on a local basis, including an entire metropolitan area. The definition includes informal arrangements where the participants have not formally constituted themselves as an association. The definition of check clearinghouse association excludes direct exchanges involving only two banks.

The Act defines clearinghouses as local arrangements, which may cover an entire metropolitan area. In some cases, most notably California, a single in different metropolitan areas. For purposes of this regulation, each of those exchanges would be regarded as a separate clearinghouse.

Using the premises of a Federal Reserve Bank to exchange checks does not constitute the handling of checks for collection by the Reserve Bank. Several clearinghouses meet at Reserve Banks to exchange checks among their members.

(m) *Check processing region*. The Act defines this term as "the geographic area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations." The Board has defined check processing region as the territory served by one of the 48 Federal Reserve head offices, branches, or regional check processing centers. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank office. The definition of check processing region is key to determining whether a check is considered local or nonlocal.

(n) *Consumer account* is defined as an account used primarily for personal, family, or household purposes. Both consumer and nonconsumer accounts are subject to the requirements of this regulation, including the requirement that funds be made available according to specific schedules and that the bank make specified disclosures of its availability policies. Section 229.18(b) (notices at branch locations) and § 229.18(e) (notice of changes in policy) apply only to consumer accounts. Section 229.19(d) (use of calculated availability) applies only to nonconsumer accounts.

(o) *Depository bank*. The regulation uses the term depository bank rather than the term "receiving depository institution." "Receiving depository institution" is a term unique to the Act, while "depository bank" is the term used in Article 4 of the U.C.C. and Regulation J.

A depository bank includes the bank in which the check is first deposited. If a foreign office of a U.S. or foreign bank sends checks to its U.S. correspondent bank for forward

collection, the U.S. correspondent is the depository bank since foreign offices of banks are not included in the definition of bank.

If a customer deposits a check in its account at a bank, the customer's bank is the depository bank with respect to the check. For example, if a person deposits a check into an account at a nonproprietary ATM, the bank holding the account into which the check is deposited is the depository bank even though another bank may service the nonproprietary ATM and send the check for collection. (Under § 229.35 the depository bank may agree with the bank servicing the nonproprietary ATM to have the servicing bank place its own indorsement on the check as the depository bank. For the purposes of Subpart C, the bank applying its indorsement as the depository bank indorsement on the check is the depository bank.)

A bank may act as both the depository bank and the paying bank with respect to a check, if the check is drawn on, payable at, or payable through the bank in which it was deposited. A bank is also considered a depository bank with respect to checks it receives as payee. For example, a bank is a depository bank with respect to checks it receives for loan repayment, even though these checks are not deposited in an account at the bank. Because these checks would not be "deposited to accounts," they would not be subject to the availability or disclosure requirements of Subpart B.

(p) *Electronic payment* is defined to mean a wire transfer as defined in § 229.2(11) or an ACH credit transfer. The Act requires that funds deposited by wire transfer be made available for withdrawal on the business day following deposit but expressly leaves the definition of the term wire transfer to the Board. Because ACH credit transfers frequently involve important consumer payments, such as wages, the regulation requires that funds deposited by ACH credit transfers be available for withdrawal on the business day following deposit.

ACH debit transfers, even though they may be transmitted electronically, are not defined as electronic payments because the receiver of an ACH debit transfer has the right to return the transfer, which would reverse the credit given to the originator. Thus, ACH debit transfers are more like checks than wire transfers. Further, bank customers that receive funds by originating ACH debit transfers are primarily large corporations, which would generally be able to negotiate with their banks for prompt availability.

A point-of-sale transaction would not be considered an electronic payment unless the transaction was effected by means of an ACH credit transfer or wire transfer.

(q) *Forward collection* is defined to mean the process by which a bank sends a check to the paying bank for payment as distinguished from the process by which the check is returned after nonpayment. Noncash collections are not included in the term "forward collection."

(r) *Local check* is defined as a check drawn on, payable through, or payable at a local paying bank. A depository bank may rely on the routing number on the check in determining whether the check is local or

nonlocal if the bank collects the check based on the routing number. A check, such as a check drawn on a local bank but payable through a nonlocal bank, could have two paying banks, one local and one nonlocal, depending on where the check is sent for payment or collection.

Appendix A includes a list of routing numbers arranged by Federal Reserve Bank office to enable persons to determine whether or not a check is local.

(s) *Local paying bank* is defined as a paying bank to which a check is sent for forward collection located in the same check processing region as the branch or proprietary ATM of the depository bank. A bank may rely on the routing number on a check in identifying a local check provided that it sends the check for payment or collection based on that routing number; consequently, a person can determine which checks are local by reference to the routing number.

Examples

I. If a check that is drawn on a bank that is located in the same check processing region as the depository bank is payable through a bank located in another check processing region, the check is considered local or nonlocal depending on where the check was sent for payment. If the depository bank sends the check directly to the drawee bank for payment, the check is considered local; if it sends the check to the payable through bank, the check is considered nonlocal.

2. The location of the depository bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited. If the branch of the depository bank located in one check processing region sends a check to the depository bank's central facility in another check processing region, and the central facility is in the same check processing region as the paying bank, the check is still considered nonlocal. (See commentary on definition of "paying bank".)

For deposits at nonproprietary ATMs, a paying bank is a local paying bank only if the paying bank to which a check is sent for forward collection is located in the same check processing region as the location of both the branch of the depository bank at which the account is held, and the nonproprietary ATM at which the check is deposited.

(t) *Merger transaction* is a term used in Subparts B and C in connection with transition rules for merged banks. It encompasses mergers, consolidations, and purchase/assumption transactions of the type that must usually be approved under the Bank Merger Act (12 U.S.C. 1828) or similar statutes; it does not encompass acquisitions of a bank under the Bank Holding Company Act (12 U.S.C. 1842) or section 408 of the National Housing Act (12 U.S.C. 1730a) where an acquired bank maintains its separate corporate existence.

Regulation CC adopts a one-year transition period for banks that are party to a merger transaction during which the merged banks will continue to be treated as separate entities. (See §§ 229.19(g) and 229.40.)

(u) *Noncash item*. The Act defines the term "check" to exclude "noncash items," and

defines noncash items to include checks to which another document is attached, checks accompanied by special instructions, or any similar item classified as a noncash item in the Board's regulation.

The regulation's definition of "noncash item" also includes checks that consist of more than a single thickness of paper (except checks that qualify for handling by automated check processing equipment, e.g. those placed in carrier envelopes) and checks that have not been preprinted or post-encoded in magnetic ink with the paying bank's routing number as well as checks with documents attached or accompanied by special instructions.

A check that has been preprinted or post-encoded with a routing number that has been retired (e.g., because of a merger) for at least three years is a noncash item unless the current number is added for processing purposes by placing the check in an encoded carrier document or adding a strip to the check.

Checks that are accompanied by special instructions are also noncash items. For example, a person concerned about whether a check will be paid may request the depository bank to send a check for collection as a noncash item with an instruction to the paying bank to notify the depository bank promptly when the check is paid or dishonored.

For purposes of forward collection, a copy of a check is neither a check nor a noncash item, but may be treated as either. For purposes of return, a copy is generally a notice in lieu of return. (See §§ 229.30(f) and 229.31(f).)

(y) *Participant* means a bank that is located in the geographic area served by a clearinghouse and that both collects checks drawn on other clearinghouse participants, and receives for payment checks from other clearinghouse participants through the clearinghouse either directly or through another participant. The phrase "through a participant" covers associate members of the clearinghouse, but a bank is not a participant merely because it sends a check to a correspondent that in turn presents the check through a clearinghouse exchange.

(z) *Paying bank*. The regulation uses this term in lieu of the Act's "originating depository institution," and defines it, as in Regulation J (12 CFR Part 210), to include the payor bank, the payable at bank, and the payable through bank.

Under §§ 229.30 and 229.36(a), a bank designated as a "payable through bank" or "payable at bank" is responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable through or payable at bank may contract with the payor with respect to its liability in discharging these responsibilities. The Board believes that the Act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable through bank additional time to forward checks to the payor, and await return or pay instructions from the payor, would delay the return of these checks, increasing the risks to depository banks. Accordingly, for

availability purposes, a check payable through or payable at a bank is considered drawn on the payable through or payable at bank if it is sent to that bank for collection.

If a check is sent for forward collection based on the routing number, the bank associated with the routing number is a paying bank for the purposes of Subpart C requirements, including notice of nonpayment, even if the check is not drawn by a customer of that bank or the check is fraudulent.

The phrase "and to which [the check] is sent for payment or collection" includes sending not only the physical check, but information regarding the check under a truncation arrangement.

Federal Reserve Banks and Federal Home Loan Banks are also paying banks under all subparts of the regulation with respect to checks payable by them, even though such banks are not defined as banks for purposes of Subpart B.

(aa) *Proprietary ATM.* Under the temporary schedule, all deposits at nonproprietary ATMs are treated as deposits of nonlocal checks and deposits at proprietary ATMs are generally treated as deposits at banking offices. The Conference Report on the Act indicates that the special availability rules for deposits received through nonproprietary ATMs are provided because "nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits" (H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987)). Thus, during the temporary schedule, a deposit of any combination of cash and checks at a nonproprietary ATM may be treated as if it were a deposit of nonlocal checks, because the depository bank does not know the makeup of the deposit and consequently is unable to place different holds on cash, local check, and nonlocal check deposits made at the ATM.

A colloquy between Senators Proxmire and Dodd during the floor debate on the Competitive Equality Banking Act (133 Cong. Rec. S11289 (Aug. 4, 1987)) indicates that whether a bank operates the ATM is the primary criterion to determining whether the ATM is proprietary to that bank. Since a bank should be capable of ascertaining the composition of deposits made to an ATM operated by that bank, an exception to the availability schedules is not warranted for these deposits. If more than one bank meets the owns or operates criterion, the ATM is considered proprietary to the bank that operates it. For the purpose of this definition, the bank that operates an ATM is the bank that puts checks deposited into the ATM into the forward collection stream. An ATM owned by one or more banks, but operated by a nonbank servicer, is considered proprietary to the bank or banks that own it.

The Act also includes location as a factor in determining whether an ATM that is either owned or operated by a bank is proprietary to that bank. The definition of proprietary ATM includes an ATM located on the premises of the bank, either inside the branch or on its outside wall, regardless of whether the ATM is owned or operated by that bank. Since the Act also defines a proprietary ATM as one that is "in close proximity" to the

bank, the regulation defines an ATM located within 50 feet of a bank to be proprietary to that bank unless it is identified as being owned or operated by another entity. The Board believes that the statutory proximity test was designed to apply to situations where it would appear to the depositor that the ATM is run by his or her bank, because of the proximity of the ATM to the bank. The Board believes that an ATM located within 50 feet of a banking office would be presumed proprietary to that bank unless it is clearly identified as being owned or operated by another entity.

(bb) *Qualified returned check.* Subpart C requires the paying bank and returning bank(s) to return checks in an expeditious manner. The banks may meet this responsibility by returning a check to the depository bank by the same general means used for forward collection of a check from the depository bank to the paying bank. One way to speed the return process is to prepare the returned check for automated processing. Returned checks can be automated by either the paying bank or a returning bank by placing the return in a carrier envelope or by placing a strip on the bottom of the return, and encoding the envelope or strip with the routing number of the depository bank, the amount of the check, and a special return identifier. Returns are identified by placing a "2" in position 44 of the MICR line. (See American National Standards Committee on Financial Services, *Specification for the Placement and Location of MICR Printing, X9.13* (Sept. 8, 1983) hereinafter referred to as "ANSI X9.13-1983.")

Generally, under the standard of care imposed by § 229.38, a paying or returning bank would be liable for any damages incurred due to misencoding of the routing number, the amount of the check, or return identifier on a qualified returned check unless the error was due to problems with the depository bank's indorsement. (See also discussion of § 229.38(c).) A qualified returned check that contains an encoding error would still be a qualified returned check for purposes of the regulation.

A qualified returned check need not contain the elements of a check drawn on the depository bank, such as the name of the depository bank, as is required under the direct return provision of U.C.C. § 4-212(2). Because indorsements and other information on carrier envelopes or strips will not appear on a returned check itself, banks will wish to retain carrier envelopes and/or microfilm or other records of carrier envelopes or strips with their check records.

(cc) *Returning bank* is defined to mean any bank (excluding the paying bank and the depository bank) handling a returned check. A returning bank may or may not be a bank that handled the returned check in the forward collection process. A returning bank includes a bank that agrees to handle a returned check for expeditious return to the depository bank under § 229.31(a). A returning bank is also a collecting bank for the purpose of a collecting bank's duty to act seasonably under U.C.C. § 4-202.

(dd) *Routing number.* Each bank is assigned a routing number by Rand McNally & Co. as agent for the American Bankers

Association. The routing number takes two forms: a fractional form and a nine-digit form. A paying bank is identified by both the fractional form routing number (which normally appears in the upper right hand corner of the check) and the nine-digit form. The nine-digit routing number of the paying bank is generally printed in magnetic ink near the bottom of the check (the "MICR strip;" see ANSI X9.13-1983). Subpart C requires depository banks and subsequent collecting banks to place their routing numbers in nine-digit form in their indorsements.

(gg) *Teller's check* is defined in the Act to mean a check issued by a depository institution and drawn on another depository institution. The definition in the regulation includes not only checks drawn by a bank on another bank, but also checks payable through or at a bank. This would include checks drawn on a nonbank, as long as the check is payable through or at a bank. The definition explicitly excludes checks used by the bank to pay employees or vendors. (See also Commentary on the definition of "cashier's check.")

(hh) *Traveler's check.* The Act and regulation require that traveler's checks be treated as cashier's, teller's, or certified checks when a new depositor opens an account. (See § 229.13(a); 12 U.S.C. 4003(a)(1)(C).) The Act does not define traveler's check.

One element of the definition states that a traveler's check is "drawn on or payable through or at a bank." Traveler's checks that are not issued by banks may not have any words on them identifying a bank as drawee or paying agent, but may bear unique routing numbers with an 8000 prefix that identifies a bank as paying agent.

Because a traveler's check is payable by, at, or through a bank, it is also a check for purposes of this regulation. When not subject to the next-day availability requirement for new accounts, a traveler's check should be treated as a local or nonlocal check depending on the location of the paying bank. The depository bank may rely on the designation of the paying bank by the routing number to determine whether local or nonlocal treatment is required.

(ii) *Uniform Commercial Code* is defined as the version of the Code adopted by the individual states. For purposes of uniform citation, all citations to the U.C.C. in this part refer to the Official Text as approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

(ll) *Wire transfer.* The Act delegates to the Board the authority to define the term "wire transfer." The regulation defines wire transfer as an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order that is transmitted by electronic or other means over certain networks or on the books of banks and that is used primarily to transfer funds between commercial accounts. Unconditional means that no condition, such as presentation of documents, must be met before the bank receiving the order is to make payment. A

wire transfer may be transmitted by electronic or other means. "Electronic means" include computer-to-computer links, on-line terminals, telegrams (including TWX, TELEX, or similar methods of communication), telephone calls, or other similar methods. Fedwire (the Federal Reserve's wire transfer network), CHIPS (Clearing House Inter-bank Payments System, operated by the New York Clearing House), and book transfers among banks or within one bank are covered by this definition. Credits for credit and debit card transactions are not wire transfers. The term "wire transfer" excludes "electronic fund transfers" as that term is defined by the Electronic Fund Transfer Act.

Section 229.10 Next-Day Availability

(a) *Cash deposits.* This paragraph implements the Act's requirement for next-day availability for cash deposits to accounts at a depository bank "staffed by individuals employed by such institution."² This paragraph, as well as other provisions of this subpart governing the availability of funds, provides that funds must be made available for withdrawal not later than a specified number of "business days" following the "banking day" on which the funds are deposited. Thus, a deposit is only considered made on a banking day, i.e., a day that the bank is open to the public for carrying on substantially all of its banking functions. For example, if a deposit is made at an ATM on a Saturday, Sunday, or other day on which the bank is closed to the public, the deposit is considered received on that bank's next banking day.

Nevertheless, "business days" are used to determine the number of days following the banking day of deposit that funds must be available for withdrawal. For example, if a deposit of a local check were made on a Monday under the temporary schedule, which requires that funds be available for withdrawal on the third business day after deposit, funds must be made available on Thursday regardless of whether the bank was closed on Wednesday for other than a standard legal holiday as specified in the definition of "business day."

Under this paragraph, cash deposited in an account at a staffed teller station on a Monday must become available for withdrawal by the start of business on Tuesday. It must become available for withdrawal by the start of business on Wednesday if it is deposited by mail, at a proprietary ATM (or at a nonproprietary ATM under the permanent schedule), or by other means other than at a staffed teller station.

(b) *Electronic payments.* The Act provides next-day availability for funds received for deposit by wire transfer. The regulation uses the term "electronic payment," rather than "wire transfer," to include both wire transfers and ACH credit transfers under the next-day availability requirement. (See discussion of definitions of "automated clearinghouse,"

"electronic payment," and "wire transfer" in § 229.2.)

The Act requires that funds received by wire transfer be available for withdrawal not later than the business day following the day a wire transfer is received. This paragraph clarifies what constitutes receipt of an electronic payment. For the purposes of this paragraph, a bank receives an electronic payment when the bank receives both payment in finally collected funds and the payment instructions indicating the customer accounts to be credited and the amount to be credited to each account. For example, in the case of Fedwire, the bank receives finally collected funds at the time the payment is made. (See 12 CFR 210.36.) Finally collected funds generally are received for an ACH credit transfer when they are posted to the receiving bank's account on the settlement day. In certain cases, the bank receiving ACH credit payments will not receive the specific payment instructions indicating which accounts to credit until after settlement day. In these cases, the payments are not considered received until the information on the account and amount to be credited is received.

This paragraph also establishes the extent to which an electronic payment is considered made. Thus, if a participant on a private network fails to settle and the receiving bank receives finally settled funds representing only a partial amount of the payment, it must make only the amount that it actually received available for withdrawal.

The availability requirements of this regulation do not preempt or invalidate other rules, regulations, or agreements which require funds to be made available on a more prompt basis. For example, the next-day availability requirement for ACH credits in this section does not preempt ACH association rules and Treasury regulations (31 CFR Part 210), which provide that the proceeds of these credit payments be available to the recipient for withdrawal on the day the bank receives the funds.

(c) *Certain check deposits.* The Act generally requires that funds be made available on the business day following the banking day of deposit for Treasury checks; state and local government checks; cashier's, certified, and teller's checks; and "on us" checks, under specified conditions. (Treasury checks are checks drawn on the Treasury of the United States and have a routing number beginning with the digits "0000.") This section also requires next-day availability for additional types of checks not addressed in the Act. Checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank and U.S. Postal Service money orders must also be made available on the next business day following deposit under specified conditions. For the purposes of this section, all checks drawn on a Federal Reserve Bank or Federal Home Loan Bank are subject to the next-day availability requirement if they are deposited in an account held by a payee of the check and in person to an employee of the depository bank, regardless of the purpose for which the checks were issued.

Deposit in Account of Payee

One statutory condition to receipt of next-day availability of Treasury checks; state and

local government checks; and cashier's, certified, and teller's checks is that the check must be "endorsed only by the person to whom it was issued." The Act could be interpreted to include a check that has been indorsed in blank and deposited into an account of a third party that is not named as payee. The Board believes that such a check presents greater risks than a check deposited by the payee and that Congress did not intend to require next-day availability to such checks. The regulation, therefore, provides that funds must be available on the business day following deposit only if the check is deposited in an account held by a payee of the check. For the purposes of this section, payee does not include transferees other than named payees. The regulation also applies this condition to Postal Service money orders, and checks drawn on Federal Reserve Banks and Federal Home Loan Banks.

Deposit at Staffed Teller Station

In most cases, next-day availability of the proceeds of checks subject to this section is conditioned on the deposit of these checks in person to an employee of the depository bank. If the deposit is made at a proprietary ATM (and at a nonproprietary ATM under the permanent schedule), night depository, or through the mail, rather than at a staffed teller facility, the proceeds of the deposit must be available for withdrawal by the start of business on the second business day after deposit, under paragraph (c)(2) of this section.

The Act and regulation do not condition the receipt of next-day availability to deposits at staffed teller stations in the case of Treasury checks. Therefore, Treasury checks deposited at a proprietary ATM must be accorded next-day availability, if the check is deposited to an account of a payee of the check.

"On Us" Checks

The Act and regulation require next-day availability for on us checks, i.e., checks deposited in a branch of the depository bank and drawn on the same or another branch of the same bank, if both branches are located in the same state or check processing region. Thus, checks deposited in one branch of a bank and drawn on another branch of the same bank must receive next-day availability even if the branch on which the checks are drawn is located in another check processing region but in the same state as the branch in which the check is deposited. For the purposes of this requirement, deposits at facilities that are not located on the premises of a brick-and-mortar branch of the bank, such as off-premise ATMs and remote depositories, are not considered deposits made at branches of the depository bank.

First \$100

The Act and regulation also require that up to \$100 of the aggregate deposit by check or checks not subject to next-day availability on any one banking day be made available on the next business day. For example, if \$70 were deposited in an account by check(s) on a Monday, the entire \$70 must be available for withdrawal at the start of business on Tuesday. If \$200 were deposited by check(s)

² Nothing in the Act or this regulation affects terms of account arrangements, such as negotiable order of withdrawal accounts, which may require prior notice of withdrawal. (See 12 CFR 204.2(e)(2).)

on a Monday, this section requires that \$100 of the funds be available for withdrawal at the start of business on Tuesday. The portion of the customer's deposit to which the \$100 must be applied is at the discretion of the depository bank, as long as it is not applied to any checks subject to next day availability. The \$100 next-day availability rule does not apply to deposits at nonproprietary ATMs.

The \$100 that must be made available under this rule is in addition to the amount that must be made available for withdrawal on the business day after deposit under other provisions of this section. For example, if a customer deposits a \$1,000 Treasury check, and a \$1,000 local check in its account on Monday, \$1,100 must be made available for withdrawal on Tuesday—the proceeds of the \$1,000 Treasury check, as well as the first \$100 of the local check.

A depository bank may aggregate all local and nonlocal check deposits made by the customer on a given banking day for the purposes of the \$100 next-day availability rule. Thus, if a customer has two accounts at the depository bank, and on a particular banking day makes deposits to each account, \$100 of the total deposited to the two accounts must be made available on the business day after deposit. Banks may aggregate deposits to individual and joint accounts for the purposes of this provision.

If the customer deposits a \$500 local check, and gets \$100 cash back at the time of deposit, the bank need not make an additional \$100 available for withdrawal on the following day. Similarly, if the customer depositing the local check has a negative book balance, or negative available balance in its account at the time of deposit, the \$100 that must be available on the next business day may be made available by applying the \$100 to the negative balance, rather than making the \$100 available for withdrawal by cash or check on the following day.

Fees for Withdrawals

A depository bank may not impose a fee on a customer if the fee is based on the fact that the customer has withdrawn funds for which the bank has not received credit, if the funds must be made available for withdrawal under this Subpart.

Special Deposit Slips

Under the Act, a depository bank may require the use of a special deposit slip as a condition to providing next-day availability for certain types of checks. This condition was included in the Act because a number of banks determine the availability of their customers' check deposits in an automated manner by reading the MICR-encoded routing number on the deposited checks. Using these procedures, a bank can determine whether a check is a local or nonlocal check; a check drawn on the Treasury, a Federal Reserve Bank, a Federal Home Loan Bank, or a branch of the depository bank; or a U.S. Postal Service money order. Appendix A includes the routing numbers of certain categories of checks that are subject to next-day availability. The bank cannot require a special deposit slip for these checks.

A bank cannot distinguish whether the check is a state or local government check or

a cashier's, certified, or teller's check by reading the MICR-encoded routing number, because these checks bear the same routing number as other checks drawn on the same bank that are not accorded next-day availability. Therefore, a bank may require a special deposit slip for these checks.

The regulation specifies that if a bank decides to require the use of a special deposit slip (or a special deposit envelope in the case of a deposit at an ATM or other unstaffed facility) as a condition to granting next-day availability under paragraphs (c)(1)(iv) or (c)(1)(v) of this section or second day availability under paragraph (c)(2) of this section, and if the deposit slip that must be used is different from the bank's regular deposit slips, the bank must either provide the special slips to its customers or inform its customers how such slips may be obtained and make the slips reasonably available to the customers.

A bank may meet this requirement by providing customers with an order form for the special deposit slips and allowing sufficient time for the customer to order and receive the slips before this condition is imposed. If a bank provides deposit slips in its branches for use by its customers, it must also provide the special deposit slips in the branches. If special deposit envelopes are required for deposits at an ATM, the bank must provide such envelopes at the ATM.

Generally, a teller is not required to advise depositors of the availability of special deposit slips merely because checks requiring special deposit slips for next-day availability are deposited without such slips. If a bank only provides the special deposit slips upon the request of a depositor, however, the teller must advise the depositor of the availability of the special deposit slips. If a bank prepares a deposit for a depositor, it must use a special deposit slip where appropriate. A bank may require the customer to segregate the checks subject to next-day availability for which special deposit slips could be required, and to indicate on a regular deposit slip that such checks are being deposited, if the bank so instructs its customers in its initial disclosure.

Section 229.11 Temporary Availability Schedule

(a) *Effective date.* Checks, other than those that must be accorded next-day availability, are categorized as either local or nonlocal, with different availability schedules attached to each. These schedules are effective on September 1, 1988, and will be superseded by more stringent schedules on September 1, 1990.

(b) *Local checks and certain other checks.* This paragraph sets forth the maximum hold period that can be placed on local checks during the temporary schedule. The regulation refers to the day on which funds must be available for withdrawal as within a specified number of business days after deposit, rather than after a specified number of intervening business days, as provided in the Act. A depository bank must make funds from the deposit of a local check available on the third business day following the banking day on which the check is deposited. This requirement corresponds to the two

intervening business days specified in the Act. Thus, under the temporary schedule, a local check deposited on a Monday must be available for withdrawal on Thursday, except in the case of deposits at nonproprietary ATMs and deposits to accounts in banks located outside the 48 contiguous states.

The regulation provides that Treasury checks and U.S. Postal Service money orders be treated as local checks, where the conditions to receiving next-day (or second-day) availability in § 229.10(c) are not met. These checks are treated as local checks because they are payable at any Federal Reserve office. Thus, a Treasury check or a postal money order that is indorsed and deposited in an account not held by the payee must be made available in accordance with the schedule for local checks.

Other types of checks described in § 229.10(c), such as checks drawn on a Federal Reserve Bank or Federal Home Loan Bank; state and local government checks; and cashier's, certified, and teller's checks for which next-day availability does not apply (e.g., because they were not deposited in an account of a payee of the check), are treated as either local or nonlocal checks, depending on the check processing region in which they are payable.

Time Period Adjustment for Withdrawal by Cash

The Act provides an adjustment to the availability rules for cash withdrawals. During the temporary schedule, the Act provides that funds from local checks that are drawn on or payable at or through a paying bank that is not a participant in the same check clearinghouse association as the depository bank need not be available for cash withdrawal until 5:00 p.m. on the day specified in the schedule. At 5:00 p.m., \$400 of the deposit must be made available for cash withdrawal. This \$400 is in addition to the first \$100 of a day's deposit, which must be made available for withdrawal at the start of business on the next business day following the banking day of deposit. The remainder of the funds must be available for cash withdrawal at the start of business on the business day following the business day specified in the schedule. This special rule does not, under the temporary schedule, apply to deposits of local checks cleared through a check clearinghouse association or to nonlocal checks.

The Act recognizes that the \$400 that must be provided on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit, and explicitly provides that the Act does not supersede the bank's policy in this regard. The Board believes that the rationale for accommodating a bank's ATM withdrawal limit also applies to other cash withdrawal limits established by that bank. Section 229.19(c)(4) of the regulation addresses the relation between a bank's cash withdrawal limit (for over-the-counter cash withdrawals as well as ATM cash withdrawals) and the requirements of this subpart.

The Board believes that the Congress included this special cash withdrawal rule to provide a depository bank with additional

time to learn of the nonpayment of a check before it must make funds available to its customer. If a customer deposits a local check on a Monday, and that check is returned by the paying bank, the depository bank may receive the returned check on Thursday (the day funds must be made available under the temporary schedule), but may not receive the returned check by the start of business on Thursday. Checks written by the customer that are presented to the depository bank on Thursday are typically not posted to the customer's account until late Thursday night. Any returned checks that have been received on that day are debited to the customer's account before the checks being presented are posted. Thus, for the purpose of checks written by the customer, the fact that a return is not received until sometime during the day on which funds must be made available does not increase the bank's risk.

Nonetheless, the depository bank's risk does increase significantly if the customer withdraws the funds in cash, because the withdrawal may occur before the return is received and posted. The intent of the special cash withdrawal rule is to minimize this risk to the depository bank.

For this rule to minimize the depository bank's risk, it must apply not only to cash withdrawals, but also to withdrawals by other means that result in an irrevocable debit to the customer's account or commitment to pay by the bank on the customer's behalf during the day. Thus, the cash withdrawal rule also includes withdrawals by electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, such as authorization of an on-line point-of-sale debit. The rule would also apply to checks presented over-the-counter for payment on the day of presentment by the depositor or another person. Such checks could not be dishonored for insufficient funds if an amount sufficient to cover the check had become available for cash withdrawal under this rule; however, payment of such checks would be subject to the bank's cut-off hour established under U.C.C. § 4-107. The cash withdrawal rule does not apply to checks and other provisional debits presented to the bank for payment that the bank has the right to return.

(c) *Nonlocal checks.* Under the temporary schedule, funds deposited by nonlocal checks must be made available for withdrawal not later than the seventh business day following the banking day the funds are deposited, except in the case of deposits at nonproprietary ATMs or in accounts of banks located outside the 48 contiguous states. Thus, funds from a nonlocal check deposited on a Monday must be available for withdrawal by Wednesday of the following week. The Act does not establish a special rule for cash withdrawals for nonlocal checks under the temporary schedule. Therefore, subject to § 229.19(c), the full amount of the deposit becomes available for withdrawal at the start of business on the business day specified in the schedule.

Reduction in Schedules

Section 803(d)(1) of the Act (12 U.S.C. 4002(d)(1)) requires the Board to reduce the

statutory schedules for any category of checks where most of those checks would be returned in a shorter period of time than provided in the schedules. The conferees indicated that "if the new system makes it possible for two-thirds of the items of a category of checks to meet this test in a shorter period of time, then the Federal Reserve must shorten the schedules accordingly." H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987).

Reduced schedules are provided for certain nonlocal checks where significant improvements can be made to the Act's schedules. Specifically, shorter schedules are provided for checks deposited in banks located in certain Federal Reserve cities and drawn on or payable at or through banks located in certain other Federal Reserve cities, where transportation arrangements allow for faster collection and return. In addition, shorter schedules are provided for checks drawn on or payable at or through certain banks that are served by two Federal Reserve offices, and for certain checks deposited in and drawn on or payable at or through banks in the New York City metropolitan area, where the proximity of the Federal Reserve offices facilitates faster clearing and return of these checks.

Appendix B-1 sets forth the specific reduction of schedules applicable to banks located in each check processing region.

(d) *Deposits at nonproprietary ATMs.* The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. Notwithstanding other provisions of the regulation concerning availability requirements, during the temporary schedule, a depository bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks. A deposit at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day availability, must be made available for withdrawal not later than Wednesday of the following week. This rule does not apply to deposits made at proprietary ATMs.

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The Act and regulation provide an extension of the availability schedules for check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands. The schedules for local checks, nonlocal checks (including nonlocal checks subject to the reduced schedules of Appendix B), and deposits at nonproprietary ATMs are extended by one business day for checks deposited to accounts in banks located in these jurisdictions that are drawn on or payable at or through a paying bank not located in the same jurisdiction as the depository bank. For example, a check deposited in a bank in Hawaii and drawn on a San Francisco paying bank must be made available for withdrawal not later than the fourth business day following deposit. This extension does not apply to deposits that must be made available for withdrawal on the next business day.

The Congress did not provide this extension of the schedules to checks drawn on a paying bank located in Alaska, Hawaii,

Puerto Rico, or the U.S. Virgin Islands and deposited in an account at a depository bank in the 48 contiguous states. Therefore, a check deposited in a San Francisco bank drawn on a Hawaii paying bank must be made available for withdrawal not later than the third rather than the fourth business day following deposit.

Section 229.12 Permanent Availability Schedule

(a) *Effective date.* The permanent schedule supersedes the temporary schedule on September 1, 1990.

(b) *Local checks and certain other checks.* Under the permanent schedule, local checks must be made available for withdrawal not later than the second business day following the banking day on which the checks were deposited.

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); Treasury checks deposited in nonproprietary ATMs; 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.

Exceptions are made for withdrawals by cash or similar means and for deposits in banks located outside the 48 contiguous states. Thus, the proceeds of a local check deposited on a Monday generally must be made available for withdrawal on Wednesday.

(c) *Nonlocal checks.* Under the permanent schedule, the time period for availability of nonlocal checks is also reduced. Nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit, i.e., proceeds of a nonlocal check deposited on a Monday must be made available for withdrawal on the following Monday. In addition, a check described in § 229.10(c) that does not meet the conditions for next-day availability (or second-day availability) is treated as a nonlocal check, if the check is drawn on or payable through or at a nonlocal paying bank. Adjustments are made to the schedule for withdrawals by cash or similar means and deposits in banks located outside the 48 contiguous states.

As described in the discussion of § 229.11(c), the Board is required to shorten the schedules for any category of check where most of those checks can be returned to the depository bank in a shorter period of time than provided in the schedule. Appendix B-2 sets forth the reductions to the schedule for certain nonlocal checks under the permanent schedule.

(d) *Time period adjustment for withdrawal by cash or similar means.* Unlike the temporary schedule, the Act applies the special cash withdrawal rule to all local and nonlocal checks under the permanent schedule. The regulation implementing this

rule is described in the discussion of the temporary schedule at § 229.11(b). Under the permanent schedule, if the proceeds of local and nonlocal checks become available for withdrawal on the same business day, the \$400 withdrawal limitation applies to the aggregate amount of the funds that became available for withdrawal on that day.

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The extension of the availability schedules provided to check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands under the temporary schedule also applies when the permanent schedule becomes effective. Explanation of this provision is provided in the discussion of § 229.11(d).

Section 229.13 Exceptions

While certain safeguard exceptions (such as those for new accounts and checks the bank has reasonable cause to believe are uncollectible) are established in the Act, the Congress gave the Board the discretion to determine whether certain other exceptions should be included in its regulations. Specifically, the Act gives the Board the authority to establish exceptions to the schedules for large or redeposited checks and for accounts that have been repeatedly overdrawn. These exceptions do not apply to checks or other deposits that must be accorded next-day availability (or second-day availability, if the deposit is not made in person to an employee of the depository bank) under § 229.10.

Many checks will not be returned to the depository bank by the time funds must be made available for withdrawal under the local and nonlocal schedules. In order to reduce risk to depository banks, the Board has exercised its statutory authority to adopt these exceptions to the schedules in the regulation to allow the depository bank to extend the time within which it is required to make funds available. The exceptions provided in this section apply to the schedules for local and nonlocal checks during the temporary and permanent schedules, and, in limited cases, to the next-day availability requirement for certain check deposits.

The Act also gives the Board the authority to suspend the schedules for any classification of checks, if the schedules result in an unacceptable level of fraud losses. The Board will adopt regulations or issue orders to implement this statutory authority if and when circumstances requiring its implementation arise.

(a) *New accounts.*

Definition of New Account

The Act provides an exception to the availability schedule for new accounts. An account is defined as a new account during the first 30 calendar days after the account is opened. An account is open when the first deposit is made to the account. An account is not considered a new account, however, if each customer on the account has a transaction account relationship with the depository bank, including a dormant account, that is at least 30 calendar days old

on September 1, 1988, or at any time thereafter (i.e., an established account), or has had an established account with the depository bank or within the 30 calendar days prior to opening the account.

The following are examples of what constitutes, and does not constitute, a new account:

(1) If the customer has an established account with a bank and opens a second account with the bank, the second account is not subject to the new account exception.

(2) If a customer's account were closed and another account opened as a successor to the original account (due, for example, to the theft of checks or a debit card used to access the original account), the successor account is not subject to the new account exception, assuming the previous account relationship is at least 30 days old. Similarly, if a customer closed an established account and opens a separate account within 30 days, the new account is not subject to the new account exception.

(3) If a customer has a savings deposit or other deposit that is not an account (as that term is defined in § 229.2(a)) at the bank, and opens an account, the account may be subject to the new account exception.

(4) If a person that is authorized to sign on a corporate account (but has no other relationship with the bank) opens a personal account, the personal account is subject to the new account exception.

(5) If a customer has an established joint account at a bank, and subsequently opens an individual account with that bank, the individual account is not subject to the new account exception.

(6) If two customers that each have an established individual account with the bank open a joint account, the joint account is not subject to the new account exception. If one of the customers on the account has no current or recent established account relationship with the bank, however, the joint account is subject to the new account exception, even if the other individual on the account has an established account relationship with the bank.

Rules Applicable to New Accounts

During the new account exception period, the schedules for local and nonlocal checks do not apply, and, unlike the other exceptions provided in this section, the regulation provides no maximum time frames within which the proceeds of these deposits must be made available for withdrawal. Maximum times within which funds must be available for withdrawal during the new account period are provided, however, for certain other deposits. Deposits received by cash and electronic payments must be made available for withdrawal in accordance with § 229.10.

Special rules also apply to deposits of Treasury checks; U.S. Postal Service money orders; checks drawn on Federal Reserve Banks and Federal Home Loan Banks; state and local government checks; cashier's, certified, and teller's checks; and, for the purposes of the new account exception only, traveler's checks. The first \$5,000 of funds deposited to a new account on any one banking day by these check deposits must be made available for withdrawal in accordance

with § 229.10(c). Thus, the first \$5,000 of the proceeds of these check deposits must be made available on the next business day following deposit, if the deposit is made in person to an employee of the depository bank and the other conditions of next-day availability are met. Funds must be made available on the second business day after deposit for deposits that are not made over-the-counter, in accordance with § 229.10(c)(2). (Proceeds of Treasury check deposits must be made available on the next business day after deposit, even if the check is not deposited in person to an employee of the depository bank.) Funds in excess of the first \$5,000 deposited by these types of checks on a banking day must be available for withdrawal not later than the ninth business day following the banking day of deposit. The requirements of § 229.10(c)(1)(vi) and (vii) that "on us" checks and the first \$100 of a day's deposit be made available for withdrawal on the next business day do not apply during the new account period.

Representation by Customer

The depository bank may rely on the representation of the customer that the customer has no established account relationship with the bank, and has not had any such account relationship within the past 30 days, to determine whether an account is subject to the new account exception.

(b) *Large deposits.* Under the large deposit exception, a depository bank may extend the hold placed on local and nonlocal check deposits to the extent that the amount of the aggregate deposit on any banking day exceeds \$5,000. While the first \$5,000 of a day's deposit is subject to the availability provided for local or nonlocal checks, the amount in excess of \$5,000 may be held for an additional period of time as provided in § 229.13(h). Deposits by cash, electronic payment, or checks that must be granted next-day (or second-day) availability under § 229.10 are not subject to this exception for large deposits.

The following example illustrates the operation of the large deposit exception. If a customer deposits a \$10,000 Treasury check and a \$9,000 local check on a Monday, \$10,100 (the proceeds of the Treasury check and the first \$100 of the local check) must be made available for withdrawal on Tuesday. An additional \$4,900 of the proceeds of the local check must be available for withdrawal in accordance with the local schedule (i.e. Thursday under the temporary schedule), and the remaining \$4,000 may be held for an additional period of time under the large deposit exception.

Where a customer has multiple accounts with a depository bank, the bank may apply the large deposit exception to the aggregate deposits to all of the customer's accounts, even if the customer is not the sole holder of the accounts and not all of the holders of the customer's accounts are the same. Thus, a depository bank may aggregate the deposits made to two individual accounts in the same name, to an individual and a joint account with one common name, or to two joint accounts with at least one common name for the purpose of applying the large deposit

exception. Aggregation of deposits to multiple accounts is permitted because the Board believes that the risk to the depository bank associated with large deposits is similar regardless of how the deposits are allocated among the customer's accounts.

(c) *Redeposited checks.* The Act gives the Board the authority to promulgate an exception to the schedule for checks that have been returned unpaid and redeposited. Section 229.13(c) provides such an exception for checks that have been returned unpaid and redeposited by the customer or the depository bank.

This exception addresses the increased risk to the depository bank that checks that have been returned once will be uncollectible when they are presented to the paying bank a second time. The Board, however, does not believe that this increased risk is present for checks that have been returned due to a missing indorsement. Thus, the exception does not apply to checks returned unpaid due to missing indorsements and redeposited after the missing indorsement has been obtained, if the reason for return indicated on the check (see § 229.30(d)) states that it was returned due to a missing indorsement. For the same reason, this exception does not apply to a check returned because it was postdated (future dated), if the reason for return indicated on the check states that it was returned because it was postdated, and if it is no longer postdated when redeposited.

To determine when funds must be made available for withdrawal, the banking day on which the check is redeposited is considered to be the day of deposit. A depository bank that made \$100 of a check available for withdrawal under § 229.10(c)(1)(vii) can charge back the full amount of the check including the \$100 if the check is returned unpaid, but the \$100 must be made available again if the check is redeposited.

(d) *Repeated overdrafts.* The Act gives the Board the authority to establish an exception for "deposit accounts which have been overdrawn repeatedly." This paragraph provides two tests to determine what constitutes repeated overdrafts. Under the first test, a customer's accounts are considered repeatedly overdrawn if, on six banking days within the preceding six months, the available balance in any account held by the customer is negative, or the balance would have become negative if checks or other charges to the account had been paid, rather than returned. This test can be met based on separate occurrences (e.g., checks that are returned for insufficient funds on six different days), or based on one occurrence (e.g., a negative balance that remains on the customer's account for six banking days). If the bank dishonors a check that otherwise would have created a negative balance, however, the incident is considered an overdraft only on that day.

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

become negative in an amount of \$5,000 or more if checks or other charges to the account had been paid.

The exception relates not only to overdrafts caused by checks drawn on the account, but also overdrafts caused by other debit charges (e.g. ACH debits, point-of-sale transactions, returned checks, account fees, etc.). If the potential debit is in excess of available funds, the exception applies regardless of whether the items were paid or returned unpaid. An overdraft resulting from an error on the part of the depository bank, or from the imposition of overdraft charges for which the customer is entitled to a refund under §§ 229.13(e) or 229.16(c), cannot be considered in determining whether the customer is a repeated overdrafter. The exception excludes accounts with overdraft lines of credit, unless the credit line has been exceeded or would have been exceeded if the checks or other charges to the account had been paid.

In determining whether an account is subject to the repeated overdraft exception, a depository bank may consider overdraft activity that occurred prior to the effective date of the regulation.

(e) *Reasonable cause to doubt collectibility.* In the case of certain check deposits, if the bank has reasonable cause to believe the check is uncollectible, it may extend the time funds must be made available for withdrawal. This exception applies to a deposit of a local or nonlocal check, a check drawn on a Federal Reserve Bank or a Federal Home Loan Bank, or a cashier's, certified, or teller's check. If the reasonable cause exception is invoked, the bank must include in the notice to its customer, required by § 229.13(g), the reason that the bank believes that the check is uncollectible.

The following are several examples of circumstances under which the reasonable cause exception may be invoked:

If a bank received a notice from the paying bank that a check was not paid and is being returned to the depository bank, the depository bank could place a hold on the check or extend a hold previously placed on that check, and notify the customer that the bank had received notice that the check is being returned. The exception could be invoked even if the notice were incomplete, if the bank had reasonable cause to believe that the notice applied to that particular check.

The depository bank may have received information from the paying bank, prior to the presentment of the check, that gives the bank reasonable cause to believe that the check is uncollectible. For example, the paying bank may have indicated that payment has been stopped on the check, or that the drawer's account does not currently have sufficient funds to honor the check. Such information may provide sufficient basis to invoke this exception. In these cases, the depository bank could invoke the exception and disclose as the reason the exception is being invoked the fact that information from the paying bank indicates that the check may not be paid.

The fact that a check is deposited more than six months after the date on the check

(i.e. a stale check) is a reasonable indication that the check may be uncollectible, because under U.C.C. § 4-404 a bank has no duty to its customer to pay a check that is more than six months old. Similarly, if a check being deposited is postdated (future dated), the bank may have a reasonable cause to believe the check is uncollectible, because the check is not properly payable under U.C.C. § 4-401. The bank, in its notice, should specify that the check is stale date or postdated.

There are reasons that may cause a bank to believe that a check is uncollectible that are based on confidential information. For example, a bank could conclude that a check being deposited is uncollectible based on its reasonable belief that the depositor is engaging in kiting activity. Reasonable belief as to the insolvency or pending insolvency of the drawer of the check or the drawee bank and that the checks will not be paid may also justify invoking this exception. In these cases, the bank may indicate, as the reason it is invoking the exception, that the bank has confidential information that indicates that the check might not be paid.

The Board has included a reasonable cause exception notice as a model form in Appendix C (C-13A). The model notice includes a number of reasons for which this exception may be invoked. The Board does not intend to provide a comprehensive list of reasons for which this exception may be invoked; another reason that does not appear on the model notice may be used as the basis for extending a hold, if the reason satisfies the conditions for invoking this exception. A depository bank may invoke the reasonable cause exception based on a combination of factors that give rise to a reasonable cause to doubt the collectibility of a check. In these cases, the bank should disclose the primary reasons for which the exception was invoked in accordance with paragraph (g) of this section.

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

If a depository bank invokes this exception with respect to a particular check and does not provide a written notice to the depositor at the time of deposit, the depository bank may not assess any overdraft fee (such as an NSF charge) or charge interest for use of overdraft credit, if the check is paid by the paying bank and these charges would not have occurred had the exception not been invoked. A bank may assess an overdraft fee under these circumstances, however, if it provides notice to the customer, in the notice of exception required by paragraph (g) of this section, that the fee may be subject to refund, and refunds the charges upon the request of the customer. The notice must state that the

customer may be entitled to a refund of any overdraft fees that are assessed if the check being held is paid, and indicate where such requests for a refund of overdraft fees should be directed.

(f) *Emergency conditions.* Certain emergency conditions may arise that delay the collection or return of checks, or delay the processing and updating of customer accounts. In the circumstances specified in this paragraph, the depository bank may extend the holds that are placed on deposits of local and nonlocal checks that are affected by such delays, if the bank exercises such diligence as the circumstances require. For example, if a bank learns that a check has been delayed in the process of collection due to severe weather conditions or other causes beyond its control, an emergency condition covered by this section may exist and the bank may place a hold on the check to reflect the delay. In cases where the emergency conditions exception does not apply, as in the case of next-day checks under § 229.10(c), the depository bank may not be liable for a delay in making funds available for withdrawal if the delay is due to a bona fide error such as an unavoidable computer malfunction.

(g) *Notice of exception.* If a depository bank invokes any of the safeguard exceptions to the schedules listed above, other than the new account exception, and extends the hold on a deposit beyond the time periods permitted in §§ 229.10, 229.11, and 229.12, it must provide a notice to its customer stating the customer's account number, the date of deposit, the reason the exception was invoked, and the day funds will be available for withdrawal.

The requirement that the notice state the day the funds shall be made available may be satisfied if the notice identifies the date the deposit is received and information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual check in the deposit will be available for withdrawal; instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the funds will be available for deposit. Appendix C (C-13) contains a model form of this exception notice.

For deposits made in person to an employee of the depository bank, the notice generally must be given to the person making the deposit, i.e. the "depositor", at the time of deposit. The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, or through the mail, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made.

Notice to the customer also may be provided at a later time, if the facts upon which the determination to invoke the exception do not become known to the depository bank until after notice would otherwise have to be given. In these cases,

the bank must mail the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. A bank is deemed to have knowledge when the facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

If the depository bank extends the hold placed on a deposit due to an emergency condition, the notice requirement generally applies; however, the regulation provides that the bank need not provide a notice if the funds would be available for withdrawal before the notice must be sent. For example, if on the last day of a hold period the depository bank experiences a computer failure and customer accounts cannot be updated in a timely fashion to reflect the funds as available balances, notices are not required if the funds are made available before the notices must be sent.

A depository bank must retain a record of each notice of a reasonable cause exception for a period of two years, or such longer time as provided in the record retention requirements of § 229.21. This record must contain a brief description of the facts on which the depository bank based its judgment that there was reasonable cause to doubt the collectibility of a check. In many cases, such as where the exception was invoked on the basis of a notice of nonpayment received, the record requirement may be met by retaining a copy of the notice sent to the customer. In other cases, such as where the exception was invoked on the basis of confidential information, a further description to the facts, such as insolvency of drawer, should be included in the record.

(h) *Availability of deposits subject to exceptions.* If a depository bank invokes any exception other than the new account exception, the bank may extend the time within which funds must be made available under the schedule by a reasonable period of time. This provision establishes that an extension of up to four business days is a reasonable period. Under certain circumstances, however, a longer extension of the schedules may be reasonable. In these cases, the burden is placed on the depository bank to establish that a longer period is reasonable.

For example, assume a bank extended the hold on a check deposit by four business days based on its reasonable cause to believe that the check is uncollectible. If, on the day before the extended hold is scheduled to expire, the bank receives a notification from the paying bank that the check is being returned unpaid, the bank may determine that a longer hold is warranted, if it decides not to charge back the customer's account based on the notification. If the bank decides to extend the hold, the bank must send a second notice, in accordance with paragraph (g) of this section, indicating the new date that the funds will be available for withdrawal.

With respect to certain checks subject to the next-day (or second-day) availability requirement, the depository bank may extend the time funds must be made available for

withdrawal under the reasonable cause exception by a reasonable period beyond the delay that would have been permitted under the regulation had the checks not been subject to the next-day availability requirement. Thus, for a check drawn on a Federal Reserve Bank or Federal Home Loan Bank, or a cashier's, certified, or teller's check, the additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank.

Four business days, 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.

In the case of the application of the emergency conditions exception, the depository bank may extend the hold placed on a check by not more than a reasonable period following the end of the emergency or the time funds must be available for withdrawal under §§ 229.11 or 229.12, whichever is later.

This provision does not apply to holds imposed under the new account exception. Under that exception, the maximum time period within which funds must be made available for withdrawal is specified for deposits that generally must be accorded next-day availability under § 229.10. This subpart does not specify the maximum time period within which the proceeds of local and nonlocal checks must be made available for withdrawal during the new account period.

Section 229.14 Payment of Interest

(a) *In general.* This section requires that a depository bank begin accruing interest on interest-bearing accounts not later than the day on which the depository bank receives credit for the funds deposited.³ A depository bank generally receives credit on checks within one or two days following deposit. A bank receives credit on a cash deposit, an electronic payment, and the deposit of a check that is drawn on the depository bank itself on the day the cash, electronic payment, or check is received. In the case of a deposit at a nonproprietary ATM, credit is generally received on the day the bank that operates the ATM credits the depository bank for the amount of the deposit.

³ This section implements section 606 of the Act (12 U.S.C. 4005). The Act keys the requirement to pay interest to the time the depository bank receives "provisional credit" for a check. "Provisional credit" is a term used in the U.C.C. that is derived from the Code's concept of "provisional settlement." (See U.C.C. §§ 4-211 and 4-213.) Provisional credit is credit that is subject to charge-back if the check is returned unpaid; once the check is finally paid, the right to charge back expires and the provisional credit becomes "final."

Under Subpart C, a paying bank no longer has an automatic right to charge back credits given in settlement of a check, and the concept of provisional settlement is no longer useful and has been eliminated by the regulation. Accordingly, this section uses the term "credit" rather than "provisional credit," and this section applies regardless of whether a credit would be provisional or final under the U.C.C. "Credit" does not include a bookkeeping entry (sometimes referred to as "deferred credit") that does not represent funds actually available for the bank's use.

Because "account" includes only transaction accounts, other interest-bearing accounts of the depository bank, such as money market deposit accounts, savings deposits, and time deposits, are not subject to this requirement; however, a bank may accrue interest on such deposits in the same way that it accrues interest under this paragraph for simplicity of operation. The Board intends the term "interest" to refer to payments to or for the account of any customer as compensation for the use of funds, but to exclude the absorption of expenses incident to providing a normal banking function or a bank's forbearance from charging a fee in connection with such a service. (See 12 CFR 217.2(d).) Thus, earnings credits often applied to corporate accounts are not interest payments for the purposes of this section.

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

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

This section is not intended to limit a policy of a depository bank that provides that interest only accrues on balances that exceed a specified amount, or on the minimum balance maintained in the account during a given period, provided that the balance is determined based on the date that the depository bank receives credit for the funds. This section is also not intended to limit any policy providing that interest accrues sooner than required by this paragraph.

(b) *Special rule for credit unions.* This provision implements a requirement in section 806(b), and provides an exemption from the payment of interest requirements for credit unions that do not begin to accrue

interest or dividends on their customer accounts until a later date than the day the credit union receives credit for those deposits, including cash deposits. These credit unions are exempt from the payment of interest requirements, as long as they provide notice of their interest accrual policies in accordance with § 229.16(d). For example, if a credit union has a policy of computing interest on all deposits received by the 10th of the month from the first of that month, and on all deposits received after the 10th of the month from the first of the next month, that policy is not superseded by this regulation, if the credit union provides proper disclosure of this policy to its customers.

The Act limits this exemption to credit unions; other types of banks must comply with the payment of interest requirements. In addition, credit unions that compute interest from the day of deposit or day of credit should not change their existing practices in order to avoid compliance with the requirement that interest accrue from the day the credit union receives credit.

(c) *Exception for checks returned unpaid.* This provision is based on section 806(c) of the Act (12 U.S.C. 4005(c)) and provides that interest need not be paid on funds deposited in an interest-bearing account by check that has been returned unpaid, regardless of the reason for return.

Section 229.15 General Disclosure Requirements

(a) *Form of disclosures.* This paragraph sets forth the general requirements for the disclosures required under Subpart B. All of the disclosures must be given in a clear and conspicuous manner, must be in writing, and, in most cases, must be in a form the customer may keep. Disclosures posted at locations where employees accept consumer deposits, at ATMs, and on preprinted deposit slips need not be in a form that the customer may keep. Appendix C of the regulation contains model forms, clauses, and notices to assist banks in preparing disclosures.

Disclosures concerning availability must be grouped together and may not contain any information that is not related to the disclosures required by this subpart. Therefore, banks may not intersperse the required disclosures with other account disclosures, and may not include other account information that is not related to their availability policy within the text of the required disclosures. Banks may, however, include information that is related to their availability policies. For example, a bank may inform its customers that, even when the bank has already made funds available for withdrawal, the customer is responsible for any problem with the deposit, such as the return of a deposited check.

The regulation does not require that the disclosures be segregated from other account terms and conditions. For example, banks may include the disclosure of their specific availability policy in a booklet or pamphlet that sets out all of the terms and conditions of the bank's accounts. The required disclosures must, however, be grouped together and highlighted or identified in some manner, for example, by use of a separate heading for the disclosures, such as "When Deposits are Available for Withdrawal."

(b) *Uniform reference to day of availability.* This paragraph requires banks to disclose in a uniform manner when deposited funds will be available for withdrawal. Banks must disclose when deposited funds are available for withdrawal by stating the business day on which the customer may begin to withdraw funds. The business day funds will be available must be disclosed as "the _____ business day after" the day of deposit, or substantially similar language. The business day of availability is determined by counting the number of business days starting with the business day following the banking day on which the deposit is received, as determined under § 229.19(a), and ending with the business day on which the customer may begin to withdraw funds. For example, a bank that imposes delays of four intervening business days for nonlocal checks must describe those checks as being available on "the fifth business day after" the day of the deposit.

(c) *Multiple accounts and multiple account holders.* This paragraph clarifies that banks need not provide multiple disclosures under the regulation. A single disclosure to a customer that holds multiple accounts, or a single disclosure to one of the account holders of a jointly held account, satisfies the disclosure requirements of the regulation.

(d) *Dormant or inactive accounts.* This paragraph makes clear that banks need not provide disclosure of their specific availability policies to customers that hold accounts that are either dormant or inactive. The determination that certain accounts are dormant or inactive must be made by the bank. If a bank considers an account dormant or inactive for purposes other than this regulation and no longer provides statements and other mailings to an account for this reason, such an account is considered dormant or inactive for purposes of this regulation.

Section 229.16 Specific Availability Policy Disclosure

(a) *General.* This section describes the information that must be disclosed by banks to comply with §§ 229.17 and 229.18(d), which require that banks furnish notices of their specific policy regarding availability of deposited funds. The disclosure provided by a bank must reflect the availability policy followed by the bank in most cases, even though a bank may in some cases make funds available sooner or impose a longer delay.

(b) *Content of specific policy disclosure.* This paragraph sets forth the items that must be included, as applicable, in a bank's specific availability policy disclosure. The information that must be disclosed by a particular bank will vary considerably depending upon the bank's availability policy. For example, a bank that makes deposited funds available for withdrawal on the business day following the day of deposit need simply disclose that deposited funds will be available for withdrawal on the first business day after the day of deposit, the bank's business days, and when deposits are considered received.

On the other hand, a bank that has a policy of routinely delaying on a blanket basis the

time when deposited funds are available for withdrawal would have a more detailed disclosure. Such blanket hold policies might be for the maximum time allowed under the federal law or might be for shorter periods. These banks must disclose the types of deposits that will be subject to delays, how the customer can determine the type of deposit being made, and the day that funds from each type of deposit will be available for withdrawal.

Some banks may have a combination of next-day availability and blanket delays. For example, a bank may provide next-day availability for all deposits except for one or two categories, such as deposits at nonproprietary ATMs and nonlocal personal checks over a specified dollar amount. The bank would describe the categories that are subject to delays in availability and tell the customer when each category would be available for withdrawal, and state that other deposits will be available for withdrawal on the first business day after the day of deposit. Similarly, a bank that provides availability on the second business day for most of its deposits would need to identify the categories of deposits which, under the regulation, are subject to next-day availability and state that all other deposits will be available on the second business day.

Because many banks' availability policies may be complex, banks must give a brief summary of its policy at the beginning of the disclosure. In addition, the bank must describe any circumstances when actual availability may be longer than the schedules disclosed. Such circumstances would arise, for example, when the bank invokes one of the exceptions set forth in § 229.13 of the regulation, or when the bank delays or extends the time when deposited funds are available for withdrawal up to the time periods allowed by the regulation on a case-by-case basis. Also, a bank that must make certain checks available faster under Appendix B (reduction of schedules for certain nonlocal checks) must state that some check deposits will be available for withdrawal sooner because of special rules and that a list of the pertinent routing numbers is available upon request.

The business day cut-off time used by the bank must be disclosed and if some locations have different cut-off times the bank must note this in the disclosure and state the earliest time that might apply. A bank need not list all of the different cut-off times that might apply.

A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under § 229.11(d) must explain this in the initial disclosure. In addition, the bank must provide a list (on or with the initial disclosure) of either the bank's proprietary ATMs or those ATMs that are nonproprietary at which customers may make deposits. As an alternative to providing such a list, the bank may label all of its proprietary ATMs with the bank's name and state in the initial disclosure that this has been done. Similarly, a bank taking advantage of the cash withdrawal limitations of §§ 229.11(b)(2) and 229.12(d), or the provision in § 229.19(e) allowing holds to be

placed on other deposits when a deposit is made or a check is cashed, must explain this in the initial disclosure.

(c) *Longer delays on a case-by-case basis.*—(1) *Notice in specific policy disclosure.* Banks that make deposited funds available for withdrawal sooner than required by the regulation—for example, providing their customers with immediate or next-day availability for deposited funds—and delay the time when funds are available for withdrawal only from time to time determined on a case-by-case basis must provide notice of this in their specific availability policy disclosure. This paragraph outlines the requirements for that notice.

In addition to stating what their specific availability policy is in most cases, banks that may delay or extend the time when deposits are available on a case-by-case basis must: state that from time to time funds may be available for withdrawal later than the time periods in their specific policy disclosure; disclose the latest time that a customer may have to wait for deposited funds to be available for withdrawal when a case-by-case hold is placed; state that customers will be notified when availability of a deposit is delayed on a case-by-case basis; and advise customers to ask if they need to be sure of the availability of a particular deposit.

A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of this regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required by §§ 229.11 or 229.12 for local and nonlocal checks, the reason for the delay need not be based on the exceptions provided in § 229.13. If the delay exceeds the time periods permitted under §§ 229.11 or 229.12, however, then it must be based on an exception provided in § 229.13, and the bank must comply with the § 229.13 notice requirements.

(2) *Notice at time of case-by-case delay.* In addition to including the disclosures required by paragraph (c)(1) of this section in their specific availability policy disclosure, banks that delay or extend the time period when funds are available for withdrawal on a case-by-case basis must give customers a notice when availability of funds from a particular deposit will be delayed or extended beyond the time when deposited funds are generally available for withdrawal. The notice must state that a delay is being imposed and indicate when the funds will be available. In addition, the notice must include the account number, the date and amount of the deposit, and the amount of the deposit being delayed.

If notice of the delay was not given at the time the deposit was made and the bank assesses overdraft or returned check fees on accounts when a case-by-case hold has been placed, the case-by-case hold notice provided to the customer must include a notice concerning overdraft or returned check fees. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that result from the deposited funds not being available if the check that was deposited was in fact paid by the payor bank, and explain how to request a refund of any fees. (See § 229.16(c)(3).)

The requirement that the case-by-case hold notice state the day that funds will be made

available for withdrawal may be met by stating the date or the number of business days after deposit that the funds will be made available. This requirement is satisfied if the notice provides information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual item in the deposit will be available for withdrawal. Instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the held funds will be available for withdrawal.

For deposits made in person to an employee of the depository bank, the notice generally must be given at the time of the deposit. The notice at the time of the deposit must be given to the person making the deposit, that is, the "depositor." The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, through the mail, or by armored car, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made. Notice to the customer also may be provided not later than the close of the business day following the banking day on which the deposit was made if the decision to delay availability is made after the time of the deposit.

(3) *Overdraft and returned check fees.* If a depository bank delays or extends the time when funds from a deposited check are available for withdrawal on a case-by-case basis and does not provide a written notice to its depositor at the time of deposit, the depository bank may not assess any overdraft or returned check fees (such as an insufficient funds charge) or charge interest for use of an overdraft line of credit, if the deposited check is paid by the paying bank and these fees would not have occurred had the additional case-by-case delay not been imposed. A bank may assess an overdraft or returned check fee under these circumstances, however, if it provides notice to the customer in the notice required by paragraph (c)(2) of this section that the fee may be subject to refund, and refunds the fees upon the request of the customer when required to do so. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that are assessed if the deposited check is paid, and indicate where such requests for a refund of overdraft fees should be directed.

(d) *Credit union notice of interest payment policy.* This paragraph sets forth the special disclosure requirement for credit unions that delay accrual of interest or dividends for all cash and check deposits beyond the date of receiving provisional credit for checks being deposited. (The interest payment requirement is set forth in § 229.14(a).) Such credit unions are required to describe their policy with respect to accrual of interest or dividends on deposits in their specific availability policy disclosure.

Section 229.17 Initial Disclosures

(a) *New accounts.* This paragraph requires banks to provide a notice of their availability policy to all potential customers prior to opening an account. The requirement of a notice prior to opening an account requires banks to provide disclosures prior to accepting a deposit to open an account. Disclosures must be given at the time the bank accepts an initial deposit regardless of whether the bank has opened the account yet for the customer. If a bank, however, receives a written request by mail from a person asking that an account be opened and the request includes an initial deposit, the bank may open the account with the deposit, provided the bank mails the required disclosures to the customer not later than the business day following the banking day on which the bank receives the deposit. Similarly, if a bank receives a telephone request from a customer asking that an account be opened with a transfer from a separate account of the customer's at the bank, the disclosure may be mailed not later than the business day following the banking day of the request.

(b) *Existing accounts.* This section requires banks to send a notice of their specific policy with respect to the availability of deposited funds to all existing account holders in the first scheduled mailing to such customers occurring after September 1, 1988. The notice must be sent not later than October 31, 1988. Thus, banks must include a notice in the first statement mailed to customers after September 1, 1988, unless, prior to the mailing of this statement, the bank has provided a notice to its customers of its availability policy that meets the requirements of § 229.16. A bank that has provided availability policy disclosures to its customers, either under a state law or as a matter of bank practices or policy, need not provide disclosures under this section if the disclosures that were previously given comply with the requirements of this regulation. A bank may disclose both its present policy and its policy for September 1, 1990, and beyond in a single notice.

The notice of specific policy may be sent alone in a separate mailing, instead of with an account statement, provided the mailing is made prior to the first statement mailing on the account after September 1, 1988. Banks may not furnish the required notice to customers by including the notice with promotional material, such as a solicitation for health or hospitalization insurance, unless that material is included with the account statement. A bank is permitted to provide the notice by furnishing the customer with a booklet or pamphlet that describes the terms and conditions of the bank's accounts generally. The bank, however, must then direct the customer's attention to the disclosures required by this section by, for example, use of a special insert or a letter.

If a customer has requested that the bank not mail any information regarding the account, the bank need not make a special mailing that includes the disclosure of the bank's specific availability policy. The disclosure should be made available to the customer in accordance with the customer's instructions to the bank for statements and other account information.

Section 229.18 Additional Disclosure Requirements

(a) *Deposit slips.* This paragraph requires banks to include a notice on all preprinted deposit slips. The deposit slip notice need only state, somewhere on the front of the deposit slip, that deposits may not be available for immediate withdrawal. The notice is required only on preprinted deposit slips—those printed with the customer's account number and name and furnished by the bank in response to a customer's order to the bank. A bank need not include the notice on deposit slips that are not preprinted and supplied to the customer—such as counter deposit slips—or on those special deposit slips provided to the customer under § 229.10(c). A bank is not responsible for ensuring that the notice appear on deposit slips that the customer does not obtain from or through the bank.

This paragraph applies to preprinted deposit slips furnished to customers on or after September 1, 1988. A bank need not mail deposit slips to customers to replace the customers' existing supply, and customers on or may continue to use any slips they were sent prior to September 1, 1988. In addition, a bank may mail or deliver to its customers after September 1, 1988, preprinted deposit slips requested by the customers prior to September 1, 1988, even though the deposit slips do not include the required notice.

(b) *Locations where employees accept consumer deposits.* This paragraph describes the statutory requirement that a bank post in each location where its employees accept consumer deposits a notice of its availability policy pertaining to consumer accounts. The notice that is required must specifically state the availability periods for the various deposits that may be made to consumer accounts. The notice need not be posted at each teller window, but the notice must be posted in a place where consumers seeking to make deposits are likely to see it before making their deposits. For example, the notice might be posted at the point where the line forms for teller service in the lobby. The notice is not required at any drive-through teller windows nor is it required at night depository locations, or at locations where consumer deposits are not accepted.

(c) *Automated teller machines.* This paragraph sets forth the required notices for ATMs. Paragraph (c)(1) provides that the depository bank is responsible for posting a notice on all ATMs at which deposits can be made to accounts at the depository bank. The depository bank may arrange for a third party, such as the owner or operator of the ATM, to post the notice and indemnify the depository bank from liability if the depository bank is liable under § 229.21 for the owner or operator failing to provide the required notice.

The notice may be posted on a sign, shown on the screen, or included on deposit envelopes provided at the ATM. This disclosure must be given before the customer has made the deposit. Therefore, a notice provided on the customer's deposit receipt or appearing on the ATM's screen after the customer has made the deposit would not satisfy this requirement.

Paragraph (c)(2) requires a depository bank that operates an off-premises ATM from

which deposits are removed not more than two times a week to make a disclosure of this fact on the off-premises ATM. The notice must disclose to the customer the days on which deposits made at the ATM will be considered received.

(d) *Upon request.* This paragraph requires banks to provide written notice of their specific availability policy to any person upon that person's oral or written request. The notice must be sent within a reasonable period of time following receipt of the request.

(e) *Changes in policy.* This paragraph requires banks to send notices to their customers when the banks change their availability policies with regard to consumer accounts. A notice may be given in any form as long as it is clear and conspicuous. If the bank gives notice of a change by sending the customer a complete new availability disclosure, the bank must direct the customer to the changed terms in the disclosure by use of a letter or insert, or by highlighting the changed terms in the disclosure.

Generally, a bank must send a notice at least 30 calendar days before implementing any change in its availability policy. If the change results in faster availability of deposits—for example, if the bank changes its availability for nonlocal checks from the fifth business day after deposit to the fourth business day after deposit—the bank need not send advance notice. The bank must, however, send notice of the change no later than 30 calendar days after the change is implemented. A bank is not required to give a notice when there is a change in Appendix B (reduction of schedules for certain nonlocal checks).

A bank that has provided its customers with a list of ATMs under § 229.16(b)(5) shall provide its customers with an updated list of ATMs once a year if there are changes in the list of ATMs previously disclosed to the customers.

Section 229.19 Miscellaneous

(a) *When funds are considered deposited.* The time funds must be made available for withdrawal under this subpart is determined by the day the deposit is made. This paragraph provides rules to determine the day funds are considered deposited in various circumstances. Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds mailed to the depository bank are considered deposited on the banking day they are received by the depository bank. The funds are received by the depository bank at the time the mail is delivered to the bank, even if it is initially delivered to a mail room, rather than the check processing area.

In addition to deposits at staffed facilities, at ATMs, and by mail, funds may be deposited at a facility such as a night depository or a lock box. A night depository is a receptacle for receipt of deposits, typically used by corporate depositors when the branch is closed. Funds deposited at a night depository are considered deposited on the banking day the deposit is removed, and the contents of the deposit are accessible to

the depository bank for processing. For example, some businesses deposit their funds in a locked bag at the night depository late in the evening, and return to the bank the following day to open the bag. Other depositors may have an agreement with their bank that the deposit bag must be opened under the dual control of the bank and the depositor. In these cases, the funds are considered deposited when the customer returns to the bank and opens the deposit bag.

A lock box is a post office box used by a corporation for the collection of bill payments or other check receipts. The depository bank generally assumes the responsibility for collecting the mail from the lock box, processing the checks, and crediting the corporation for the amount of the deposit. Funds deposited through a lock box arrangement are considered deposited on the day the deposit is removed from the lock box and are accessible to the depository bank for processing.

A special provision is made for certain off-premise ATMs that are not serviced daily. Funds deposited at such an ATM are considered deposited on the day they are removed from the ATM, if the ATM is not serviced more than two times each week. This provision is intended to address the practices of some banks of servicing certain remote ATMs infrequently. If a depository bank applies this provision with respect to an ATM, a notice must be posted at the ATM informing depositors that funds deposited at the ATM may not be considered received on the day of deposit, in accordance with § 229.18.

This paragraph also provides that a deposit received on a day that the depository bank is closed, or after the bank's cut-off hour, may be considered made on the next banking day. Generally, for purposes of the availability schedules of this subpart, a bank may establish a cut-off hour of 2:00 p.m. or later for receipt of deposits at its head office or branch offices. For receipt of deposits at ATMs or off-premises facilities, such as night depositories or lock boxes, the depository bank may establish a cut-off hour of 12:00 noon or later. This earlier cut-off for ATM or off-premises deposits is intended to provide greater flexibility in the servicing of ATMs and other off-premises facilities.

Different cut-off hours may be established for different types of deposits. For example, a bank may establish a 2:00 p.m. cut-off for the receipt of check deposits, but a later cut-off for the receipt of wire transfers. Different cut-off hours may also be established for deposits received at different locations. For example, a different cut-off may be established for ATM deposits than for over-the-counter deposits, or for different teller stations at the same branch. With the exception of the 12:00 noon cut-off for deposits at ATMs and off-premise facilities, no cut-off hour for receipt of deposits for purposes of this subpart can be established earlier than 2:00 p.m. Nevertheless, a bank is not required to remain open until 2:00 p.m.

(b) *Availability at start of business day.* If funds must be made available for withdrawal on a business day, the funds must be available for withdrawal by the later of 9:00

a.m. or the time the depository bank's teller facilities, including ATMs, are available for customer account withdrawals, except under the special rule for cash withdrawals set forth in §§ 229.11(b)(2) and 229.12(d). Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10:00 a.m., funds must be available for customer withdrawal beginning at 10:00 a.m. If the bank has ATMs that are available 24 hours a day, rather than establishing 12:01 a.m. as the start of the business day, this paragraph sets 9:00 a.m. as the start of the day with respect to ATM withdrawals. The Board believes that this rule provides banks with sufficient time to update their accounting systems to reflect the available funds in customer accounts for that day.

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

(c) *Effect on policies of depository bank.* This subpart establishes the maximum hold that may be placed on customer deposits. A depository bank may provide availability to its customers in a shorter time than prescribed in this subpart. A depository bank may also adopt different funds availability policies for different segments of its customer base, as long as each policy meets the schedules in the regulation. For example, a bank may differentiate between its corporate and consumer customers, or may adopt different policies for its consumer customers based on whether a customer has an overdraft line of credit associated with the account.

This regulation does not affect a depository bank's right to accept or reject a check for deposit, to charge back the customer's account based on a returned check or notice of nonpayment, or to claim a refund for any credit provided to the customer.

Nothing in the regulation requires a depository bank to have facilities open for customers to make withdrawals at specified times or on specified days. For example, even though the special cash withdrawal rule set forth in §§ 229.11(b)(2) and 229.12(d) states that a bank must make up to \$400 available for cash withdrawals no later than 5:00 p.m. on specific business days, if a bank does not participate in an ATM system and does not have any teller windows open at or after 5:00 p.m., the bank need not join an ATM system or keep offices open. In this case, the bank complies with this rule if the funds that are required to be available for cash withdrawal at 5:00 p.m. on a particular day are available for withdrawal at the start of business on the following day. Similarly, if a depository bank is closed for customer transactions, including ATMs, on a day funds must be made available for withdrawal, the regulation does not require the bank to open.

The special cash withdrawal rule in the Act recognizes that the \$400 that must be

made available for cash withdrawal by 5:00 p.m. on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit and explicitly provides that the Act does not supersede a bank's policy in this regard. As a result, if a bank has a policy of limiting cash withdrawals from automated teller machines to \$250 per day, the regulation would not require that the bank dispense \$400 of the proceeds of the customer's deposit that must be made available for cash withdrawal on that day.

Even though the Act clearly provides that the bank's ATM withdrawal limit is not superseded by the federal availability rules on the day funds must first be made available, the Act does not specifically permit banks to limit cash withdrawals at ATMs on subsequent days when the entire amount of the deposit must be made available for withdrawal. The Board believes that the rationale behind the Act's provision that a bank's ATM withdrawal limit is not superseded by the requirement that funds be made available for cash withdrawal applies on subsequent days. Nothing in the regulation prohibits a depository bank from establishing ATM cash withdrawal limits that vary among customers of the bank, as long as the limit is not dependent on the length of time funds have been in the customer's account, provided that the permissible hold has expired.

A number of small banks, particularly credit unions, due to lack of secure facilities, keep no cash on their premises and hence offer no cash withdrawal capability to their customers. Other banks limit the amount of cash on their premises due to bonding requirements or cost factors, and consequently reserve the right to limit the amount of cash each customer can withdraw over-the-counter on a given day. For example, some banks require advance notice for large cash withdrawals in order to limit the amount of cash needed to be maintained on hand at any time.

Nothing in the regulation is intended to prohibit a bank from limiting the amount of cash that may be withdrawn at a staffed teller station, if the bank has a policy limiting the amount of cash that may be withdrawn, and that policy is applied equally to all customers of the bank, is based on security, operating, or bonding requirements, and is not dependent on the length of time the funds have been in the customer's account, as long as the permissible hold has expired. The regulation, however, does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

(d) *Use of calculated availability.* A depository bank may provide availability to its nonconsumer accounts on a calculated availability basis. Under calculated availability, a specified percentage of funds from check deposits may be made available to the customer on the next business day, with the remaining percentage deferred until subsequent days. The determination of the percentage of deposited funds that will be made available each day is based on the customer's typical deposit mix as determined by a sample of the customer's deposits. Use of calculated availability is permitted only if,

on average, the availability terms that result from the sample are equivalent to or more prompt than the requirements of this subpart.

(e) *Holds on other funds.* Section 607(d) of the Act (12 U.S.C. 4006(d)) provides that once funds are available for withdrawal under the Act, such funds shall not be frozen solely due to the subsequent deposit of additional checks that are not yet available for withdrawal. This provision of the Act is designed to prevent evasion of the Act's availability requirements.

This paragraph clarifies that, if a customer deposits a check, the bank may place a hold on any of the customer's funds to the extent that the funds held do not exceed the amount of the check deposited, and the total amount of funds held are made available for withdrawal within the times required in this subpart. For example, if a customer cashes a check (other than an "on us" check) over-the-counter, the depository bank may place a hold on any of the customer's funds to the extent that the funds held do not exceed the amount of the check cashed, as long as the hold does not exceed the hold that could be placed on the check cashed over-the-counter, if the check had been deposited in the account.

(f) *Employee training and compliance.* The Act requires banks to take such actions as may be necessary to inform fully each employee that performs duties subject to the Act of the requirements of the Act, and to establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

This paragraph requires a bank to establish procedures to ensure compliance with these requirements and provide these procedures to the employees responsible for carrying them out.

(g) *Effect of merger transaction.* After banks merge, there is often a period of adjustment before their operations are consolidated. This paragraph accommodates this adjustment period by allowing merged banks to be treated as separate banks for purposes of this subpart for a period of up to one year after consummation of the merger transaction, except that a customer of any bank that is a party to the transaction that has an established account with that bank may not be treated as a new account holder for any other party to the transaction for purposes of the new account exception of § 229.13(a), and a deposit in any branch of the merged bank is considered deposited in the bank for purposes of the availability schedules in accordance with § 229.19(a).

This rule affects the status of the combined entity in a number of areas. For example:

1. When the resulting bank is a "participant" in a check clearinghouse association (§ 229.2 (y) and (l) and § 229.11(b)(2)).
2. When an ATM is a "proprietary ATM" (§ 229.2(aa), § 229.11(d), and § 229.12(b)).
3. When a check is drawn on a branch of the depository bank (§ 229.10(c)(1)(vi)). "Merger transaction" is defined in § 229.2(f).

Section 229.20 Relation to State Law

(a) *In general.* A number of states have enacted laws that govern when banks in

those states must make funds available to their customers. The Act provides that any state law in effect on September 1, 1989, that provides that funds be made available in a shorter period of time than provided in this regulation, will supersede the time periods in the Act and the regulation. The Conference Report on the Act clarifies this provision by stating that any state law enacted on or before September 1, 1989, may supersede federal law to the extent that the law relates to the time funds must be made available for withdrawal. H.R. Rep. No. 261, 100th Cong. 1st Sess. at 182 (1987).

Thus, if a state wishes to adopt a law governing funds availability, it must do so, effective on or before September 1, 1989. Laws adopted after that date will not supersede federal law, even if they provide for shorter availability periods than are provided under federal law. If a state that has a law governing funds availability in effect before September 1, 1989, amends its law after that date, the amendment will not supersede federal law, but an amendment deleting a state requirement will be effective.

If a state provides for a shorter hold for a certain category of checks than is provided for under federal law, that state requirement will supersede the federal provision. For example, most state laws base some hold periods on whether the check being deposited is drawn on an in-state or out-of-state bank. If a state contains more than one check processing region, the state's hold period for in-state checks may be shorter than the federal maximum hold period for nonlocal checks. Thus, the state schedule would supersede the federal schedule to the extent that it applies to in-state, nonlocal checks.

The Act also provides that any state law that provides for availability in a shorter period of time than required by federal law is applicable to all federally insured institutions in that state, including federally chartered institutions. If a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

(b) *Preemption of inconsistent law.* This paragraph reflects the statutory provision that other provisions of state law that are inconsistent with federal law are preempted. Preemption does not require a determination by the Board to be effective.

(c) *Standards for preemption.* This section describes the standards the Board will use in making determinations on whether federal law will preempt state laws governing funds availability. A provision of state law is considered inconsistent with federal law if it permits a depository bank to make funds available to a customer in the same or a longer period of time than the maximum period permitted by the Act and this regulation. For example, a state law that permits a hold of four days or longer for local checks permits a hold that is longer than the maximum under the temporary schedule of the Act and this regulation, and therefore is inconsistent and superseded.

Under a state law, some categories of deposits could be available for withdrawal

sooner or later than the time required by this subpart, depending on the composition of the deposit. For example, the Act and this regulation (§ 229.10(c)(1)(vii)) require next-day availability for the first \$100 of the aggregate deposit of local or nonlocal checks on any day, and a state law could require next-day availability for any check of \$100 or less that is deposited. Under the Act, if either one \$150 check or three \$50 checks are deposited on a given day, \$100 must be made available for withdrawal on the next business day, and \$50 must be made available in accordance with the local or nonlocal schedule. Under the state law, however, the two deposits would be subject to different availability rules. In the first case, none of the proceeds of the deposit would be subject to next-day availability; in the second case, the entire proceeds of the deposit would be subject to next-day availability.

In this example, because the state law would, in some of these situations, permit a hold longer than the maximum permitted by the Act, the provision of state law in this example is inconsistent and superseded in its entirety. The Board recognizes that this standard will eliminate the faster availability that would be obtained for some compositions of deposits if the provision of state law were superseded only partially. Nonetheless, superseding these state law provisions in their entirety avoids the necessity of forming very complex hybrids of state and federal law that could not have been contemplated by the state or federal legislatures.

Similarly, a provision of state law could establish a different method of calculating the exception for large-dollar deposits than the large-deposit exception in this subpart (see § 229.13(b)). Thus, a state law could exempt each check of more than \$5,000 from its availability rules, rather than the Act's exemption of aggregate deposits in excess of \$5,000. Such a provision of state law would allow for longer availability for the portion of a check under \$5,000, and therefore the provision of state law would be superseded.

State laws that provide maximum availability periods for categories of deposits or institutions that are not covered by the Act would not be superseded. Thus, state funds availability laws that apply to funds in time and savings deposits or to deposits in money market mutual funds are not affected by the Act or this regulation.

Generally, state rules governing the disclosure of availability policies and actions applicable to accounts are also superseded. Nevertheless, a state law requiring disclosure of funds availability policies that apply to deposits other than "accounts," such as savings or time deposits, are not inconsistent with the Act or this subpart. Banks in these states would have to follow the state disclosure rules for these deposits.

(d) *Preemption determinations.* The Board may issue preemption determinations upon the request of an interested party in a state. The determinations will relate only to the provisions of Subparts A and B; generally the Board will not issue individual preemption determinations regarding the relation of state

U.C.C. provisions to the requirements of Subpart C.

(e) *Procedures for preemption determinations.* This provision sets forth the information that must be included in a request by an interested party for a preemption determination by the Board.

Section 229.21 Civil Liability

(a) *Civil liability.* This paragraph sets forth the statutory penalties for failure to comply with the requirements of this subpart. These penalties apply to provisions of state law that supersede provisions of this regulation, such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (See Commentary to § 229.20.)

(b) *Class action awards.* This paragraph sets forth the provision in the Act concerning the factors that should be considered by the court in establishing the amount of a class action award.

(c) *Bona fide errors.* A bank is shielded from liability under this section for a violation of a requirement of this subpart if it can demonstrate, by a preponderance of the evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. For example, a bank may make a bona fide error if it fails to give next-day availability on a check drawn on the Treasury because the bank's computer system malfunctions in a way that prevents the bank from updating its customer's account.

(d) *Jurisdiction.* The Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

(e) *Reliance on Board rulings.* This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, model form (if the disclosure actually corresponds to the bank's availability policy), or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on this Commentary, which is issued as an official Board interpretation, as well as on the regulation itself.

(f) *Exclusions.* This provision clarifies that liability under this § 229.21 does not apply to violations of the requirements of Subpart C of this regulation, or to actions for wrongful dishonor of a check by a paying bank's customer.

(g) *Record retention.* Banks must keep records to show compliance with the requirements of this subpart for at least two years. This record retention period is extended in the case of civil actions and enforcement proceedings. Generally, a bank is not required to retain records showing that it has actually given disclosures or notices required by this subpart to each customer, but it must retain evidence demonstrating that its procedures reasonably ensure the customers' receipt of the required disclosures and notices. A bank must, however, retain a copy of each notice provided pursuant to its use of the reasonable cause exception under § 229.13(g) as well as a brief description of the facts giving rise to the availability of that exception.

Section 229.30 Paying Bank's Responsibility for Return of Checks

(a) *Return of checks.* This section requires a paying bank that determines not to pay a check to return the check expeditiously. Generally, a check is returned expeditiously if the return process is as fast as the forward collection process. This paragraph provides two standards for expeditious return, the "two-day/four-day" test, and the "forward collection" test.

Under the "two-day/four-day" test, if a check is returned such that it would normally be received by the depository bank two business days after presentment in the case of a local check, or four business days after presentment in the case of a nonlocal check, the check is considered returned expeditiously. In certain limited cases, however, these times are shorter than the time it would normally take a forward collection check deposited in the paying bank and drawn on the depository bank to be collected. Therefore, the Board has included a "forward collection" test, whereby a check is nonetheless considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward collection checks, even if the check is not received by the depository bank within the two day or four day period.

(1) *Two-day/four-day test.* Under the first test, a paying bank must return the check so that the check would normally be received by the depository bank within specified times, depending on whether the paying bank is a local paying bank or a nonlocal paying bank with respect to the depository bank. Whether a paying bank is local or nonlocal for a particular check is determined using the definition of local paying bank in § 229.2(s).

For a local paying bank, a check is returned expeditiously if it is returned to the depository bank by 4:00 p.m. (local time of the depository bank) of the second business day after the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a local paying bank must be returned to the depository bank by 4:00 p.m. on Wednesday. For a nonlocal paying bank, the deadline to complete return is 4:00 p.m. (local time of the depository bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to a nonlocal paying bank on Monday must be returned to the depository bank by 4:00 p.m. on Friday.

This two-day/four-day test does not necessarily require actual receipt of the check by the depository bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depository bank within the specified time. Thus, the paying bank is not responsible for unforeseeable delays in the return of the check, such as transportation delays.

Often, returned checks will be delivered to the depository bank together with forward collection checks. Where the last day on which a check could be delivered to a depository bank under this two-day/four-day test is not a banking day for the depository bank, a returning bank might not schedule

delivery of forward collection checks to the depository bank on that day. Further, the depository bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depository bank, the check may be delivered to the depository bank before the close of the depository bank's next banking day and the return will still be considered expeditious. Ordinarily, this extension of time will allow the returned checks to be delivered with the next shipment of forward collection checks destined for the depository bank.

The times specified in this two-day/four-day test are based on estimated forward collection times, but take into account the particular difficulties that may be encountered in handling returned checks. It is anticipated that the normal process for forward collection of a check coupled with these return requirements will frequently result in the return of checks before the proceeds of local and nonlocal checks, other than those covered by § 229.10(c), must be made available for withdrawal under the temporary schedules in § 229.11.

Under this two-day/four-day test, no particular means of returning checks is required, thus providing flexibility to paying banks in selecting means of return. The Board anticipates that paying banks will often use returning banks (see § 229.31) as their agents to return checks to depository banks. A paying bank may rely on the availability schedule of the returning bank it uses in determining whether the returned check would "normally" be returned within the required time under this two-day/four-day test, unless the paying bank has reason to believe that these schedules do not reflect the actual time for return of a check.

(2) *Forward collection test.* Under the second, "forward collection" test, a paying bank returns a check expeditiously if it returns a check by means as swift as the means similarly situated banks would use for the forward collection of a check drawn on the depository bank.

Generally, the paying bank would satisfy the "forward collection" test if it uses a transportation method and collection path for return comparable to those used for forward collection, provided that the returning bank selected to process the return agrees to handle the returned check under the standards for expeditious return for returning banks under § 229.31(a). This test allows many paying banks a simple means of expeditious return of checks and takes into account the longer time for return that will be required by banks that do not have ready access to direct courier transportation.

The paying bank's normal method of sending a check for forward collection would not be expeditious, however, if it is materially slower than that of other banks of similar size and with similar check handling activity in its community.

Under the "forward collection" test, a paying bank must handle, route, and transport a returned check in a manner designed to be at least as fast as a similarly situated bank would collect a forward collection check (1) of similar amount, (2) drawn on the depository bank, and (3)

received for deposit by a branch of the paying bank or a similarly situated bank by noon on the banking day following the banking day of presentment of the returned check.

This test refers to similarly situated banks to indicate a general community standard. In the case of a paying bank (other than a Federal Reserve Bank), a similarly situated bank is a bank of similar asset size, in the same community, and with similar check handling activity as the paying bank. (See § 229.2(ee).) A paying bank has similar check handling activity to other banks that handle similar volumes of checks for collection.

Under the forward collection test, banks that use means of handling returned checks that are less efficient than the means used by similarly situated banks must improve their procedures. On the other hand, a bank with highly efficient means of collecting checks drawn on a particular bank, such as a direct presentment of checks to a bank in a remote community, is not required to use that means for returned checks, i.e. direct return, if similarly situated banks do not present checks directly to that depository bank.

Examples

1. If a check is presented to a paying bank on Monday and the depository bank and the paying bank are participants in the same clearinghouse, the paying bank should arrange to have the returned check received by the depository bank by Wednesday. This would be the same day the paying bank would deliver a forward collection check to the depository bank if the paying bank received the deposit by noon on Tuesday.

2. If a check is presented to a paying bank on Monday and the paying bank would normally collect checks drawn on the depository bank by sending them to a correspondent or a Federal Reserve Bank by courier, the paying bank could send the returned check to its correspondent or Federal Reserve Bank, provided that the correspondent has agreed to handle returned checks expeditiously under § 229.31(a). (All Federal Reserve Banks agree to handle returned checks expeditiously.)

The paying bank must deliver the returned check to the correspondent or Federal Reserve Bank by the correspondent's or Federal Reserve Bank's appropriate cut-off hour. The appropriate cut-off hour is the cut-off hour for returned checks that corresponds to the cut-off hour for forward collection checks drawn on the depository bank that would normally be used by the paying bank or a similarly situated bank. A returned check cut-off hour corresponds to a forward collection cut-off hour if it provides for the same or faster availability for checks destined for the same depository banks.

In this example, delivery to the correspondent or a Federal Reserve Bank by the appropriate cut-off hour satisfies the paying bank's duty, even if use of the correspondent or Federal Reserve Bank is not the most expeditious means of returning the check. Thus, a paying bank may send a local returned check to a correspondent instead of a Federal Reserve Bank, even if the correspondent then sends the returned check to a Federal Reserve Bank the following day

as a qualified returned check. Where the paying bank delivers forward collection checks by courier to the correspondent or the Federal Reserve Bank, mailing returned checks to the correspondent or Federal Reserve Bank would not satisfy the forward collection test.

3. If a paying bank ordinarily mails its forward collection checks to its correspondent or Federal Reserve Bank in order to avoid the costs of a courier delivery, but similarly situated banks use a courier to deliver forward collection checks to their correspondent or Federal Reserve Bank, the paying bank must send its returned checks by courier to meet the forward collection test.

4. If a paying bank normally sends its forward collection checks directly to the depository bank, which is located in another community, but similarly situated banks send forward collection checks drawn on the depository bank to a correspondent or a Federal Reserve Bank, the paying bank would not have to send returned checks directly to the depository bank, but could send them to a correspondent or a Federal Reserve Bank.

The dollar amount of the returned check has a bearing on how it must be returned. If the paying bank and similarly situated banks present large-dollar checks drawn on the depository bank directly to the depository bank, but use a Federal Reserve Bank or a correspondent to collect small-dollar checks, generally the paying bank would be required to send its large-dollar returns directly to the depository bank (or through a returning bank, if the checks are returned as quickly), but could use a Federal Reserve Bank or a correspondent for its small-dollar returns.

In meeting the requirements of the forward collection test, the paying bank is responsible for its own actions, but not for those of the depository bank or returning banks.⁴ For example, if the paying bank starts the return of the check in a timely manner but return is delayed by a returning bank (including delay to create a qualified returned check), generally the paying bank has met its requirements. (See § 229.38.) If, however, the paying bank selects a returning bank that the paying bank should know is not capable of meeting its return requirements, the paying bank will not have met its obligation of exercising ordinary care in selecting intermediaries to return the check. The paying bank is free to use a method of return, other than its method of forward collection, as long as the alternate method results in delivery of the returned check to the depository bank as quickly as the forward collection of a check drawn on the depository bank or, where the returning bank takes a day to create a qualified returned check under § 229.31(a), one day later than the forward collection time.

Although paying banks may wish to prepare qualified returned checks because they will be handled at a lower cost by returning banks, the one business day extension provided to returning banks is not available to paying banks because of the longer time that a paying bank has to dispatch the check. Normally, paying banks

⁴ This is analogous to the responsibility of collecting banks under U.C.C. § 4-202(3).

will be able to convert a check to a qualified returned check at any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning.

In effect, under either test, the paying bank acts as an agent or subagent of the depository bank in selecting a means of return. Under § 229.30(a), a paying bank is authorized to route the returned check in a variety of ways:

1. It may send the returned check directly to the depository bank by courier or other means of delivery, bypassing returning banks; or

2. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depository bank under § 229.31(a), regardless of whether or not the returning bank handled the check for forward collection.

If the paying bank elects to return the check directly to the depository bank, it is not necessarily required to return the check to the branch of first deposit. The check may be returned to the depository bank at any location permitted under § 229.32(a).

Except for the extension permitted by § 229.30(c), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under U.C.C. §§ 4-301 and 4-302, which continue to apply. Under section 4-302, a paying bank is "accountable" for the amount of a demand item other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under U.C.C. §§ 3-418 and 4-213(1), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, retaining this requirement gives the paying bank an additional incentive to make a prompt return.

The expeditious return requirement applies to a paying bank that determines not to pay a check. This requirement applies to a payable through or a payable at bank that is defined as a paying bank (see § 229.2(z)) and that returns a check. This requirement begins when the payable through or payable at bank receives the check during forward collection, not when the payor returns the check to the payable through or payable at bank. Nevertheless, a check sent for payment or collection to a payable through or payable at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of U.C.C. § 4-301. (See discussion of § 229.36(a).) The liability section of this subpart (§ 229.38) provides that a paying bank is not subject to both "accountability" for missing the midnight deadline under the U.C.C. and liability for missing the timeliness requirements of this regulation.

This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

1. Section 4-212(2), in that direct return by the paying bank is now permitted in all jurisdictions even though not all jurisdictions have adopted this optional provision. Also,

the paying bank does not have to create a draft on the depository bank.

2. Section 4-301(4), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depository bank or to a returning bank.

3. Section 4-301(1), in that time limits specified in that section may be affected by the additional requirement to make an expeditious return and in that settlement for returned checks is made under § 229.31(c), not by revocation of settlement.

(b) *Unidentifiable depository bank.* In some cases, a paying bank will be unable to identify the depository bank through the use of ordinary care and good faith. The Board expects that these cases will be unusual as skilled return clerks will readily identify the depository bank from the depository bank indorsement required under § 229.35 and Appendix D. In cases where the paying bank is unable to identify the depository bank, the paying bank may, in accordance with § 229.30(a), send the returned check to a returning bank that agrees to handle the returned check for expeditious return to the depository bank under § 229.31(a). The returning bank may be better able to identify the depository bank.

In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks will normally be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the paying bank may send such a returned check to any bank that handled the check for forward collection, even if that bank does not agree to handle the returned check for expeditious return to the depository bank under § 229.31(a). A paying bank returning a check under this paragraph to a bank that has not agreed to handle checks expeditiously must advise that bank that it is unable to identify the depository bank. This information will warn the bank that this check will require special research and handling in accordance with § 229.31(b). The return of a check to a bank that handled the check for forward collection is consistent with § 229.35(b), which requires a bank handling a check to take up the check it is has not been paid.

The sending of a check to a bank that handled the check for forward collection under this paragraph, but that has not agreed to handle returned checks expeditiously, is not subject to the requirements for expeditious return by the paying bank. Often, the paying bank will not have courier or other expeditious means of transportation to the collecting or presenting bank. Although the lack of a requirement of expeditious return will create risks for the depository bank, in many cases the inability to identify the depository bank will be due to the depository bank's, or a collecting bank's, failure to use the indorsement required by § 229.35(a) and Appendix D. If the depository bank failed to use the proper indorsement, it should bear the risks of less than expeditious return. Similarly, where the inability to identify the depository bank is due to indorsements or

other information placed on the back of the check by the depository bank's customer or other prior indorser, the depository bank should bear the risk that it cannot charge a returned check back to that customer. Where the inability to identify the depository bank is due to subsequent indorsements of collecting banks, these collecting banks may be liable for a loss incurred by the depository bank due to less than expeditious return of a check; those banks therefore have an incentive to return checks sent to them under this paragraph quickly.

This paragraph does not relieve a paying bank from the liability for the lack of expeditious return in cases where the paying bank is itself responsible for the inability to identify the depository bank, such as when the paying bank's customer has used a check with printing or other material on the back in the area reserved for the depository bank's indorsement, making the indorsement unreadable. (See § 229.38(d).)

A paying bank's return under this paragraph is also subject to its midnight deadline under U.C.C. § 4-301, Regulation J, and the exception provided in § 229.30(c). A paying bank also may send a check to a prior collecting bank to make a claim against that bank under § 229.35(b) where the depository bank is insolvent or in other cases as provided in § 229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under U.C.C. § 4-207.

(c) *Extension of deadline for expedited delivery.* 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.

The time limits that are extended are the paying bank's midnight deadline in U.C.C. §§ 4-301 and 4-302 and § 210.12 of Regulation J (12 CFR 210.12). As this extension is designed to speed the overall return of checks, no modification or extension of the expeditious return requirements in § 229.30(a) is required.

The paying bank satisfies its midnight deadline under the U.C.C. by dispatching returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the midnight deadline.

This paragraph directly affects U.C.C. §§ 4-301 and 4-302 and § 210.12 of Regulation J (12 CFR 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

(d) *Identification of returned check.* Most paying banks currently use some form of

stamp indicating the reason for return. This paragraph makes this practice mandatory. No particular form of stamp is required, but the stamp must indicate the reason for return. A check is identified as a returned check by a reason for return stamp, even though the stamp does not specifically state that the check is a returned check. A reason such as "Refer to Maker" is permissible in appropriate cases. If the paying bank places the returned check in a carrier envelope, the carrier envelope should indicate that it is a returned check, but need not repeat the reason for return stated in the check if it in fact appears on the check.

(e) *Depository bank without accounts.* Subpart B of this regulation applies only to "checks" deposited in transaction-type "accounts." Thus, a depository bank with only time or savings accounts need not comply with the availability requirements of Subpart B. Collecting banks will not have couriers delivering checks to these banks as paying banks, because no checks are drawn on them. Consequently, the costs of using a courier or other expedited means to deliver returned checks directly to such a depository bank may not be justified. Thus, the expedited return requirement of § 229.30(a) and the notice of nonpayment requirement of § 229.33 do not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in U.C.C. §§ 4-301 and 4-302 and § 210.12 of Regulation J (12 CFR 210.12) would continue to apply to these checks. Returning banks would also be required to act on such checks within their midnight deadline. Further, in order to avoid complicating the process of returning checks generally, banks without accounts are required to use the standard indorsement, and their checks are returned by returning banks and paid for by the depository bank under the same rules as checks deposited in other banks, with the exception of nonpayment requirements of §§ 229.30(a), 229.31(a), and 229.33.

The expeditious return requirements also apply to a check deposited in a bank that is not a depository institution. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not "depository institutions" within the meaning of the Act, and are therefore not subject to the expedited availability and disclosure requirements of Subpart B. These banks do, however, maintain accounts as defined in § 229.2(a), and a paying bank returning a check to one of these banks would be required to return the check to the depository bank, in accordance with the requirements of this section.

(f) *Notice in lieu of return.* A check that is lost or otherwise unavailable for return may be returned by sending a copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in § 229.33(b). The copy or written notice must clearly indicate it is a substitute for the returned check. Notice by telephone, telegraph, or other electronic transmission, other than a legible facsimile or similar image transmission of both sides of the check, does

not satisfy the requirements for a notice in lieu of return. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that the returning and depository banks are informed that the notice carries value. Section 229.34(a)(4) includes a warranty that the original check has not been and will not be returned if a notice in lieu has been returned.

The requirement of this paragraph supersedes the requirement of U.C.C. § 4-301(1) as to the form and information required of a notice of dishonor or nonpayment. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

The notice in lieu of return is subject to the provisions of § 229.30 and is treated like a returned check for settlement purposes. If the original check is over \$2,500, the notice of nonpayment under § 229.33 is still required, but may be satisfied by the notice in lieu of return if the notice in lieu meets the time and information requirements of § 229.33.

If not all of the information required by § 229.33(b) is available, the paying bank may make a claim against any prior bank handling the check as provided in § 229.35(b).

(g) *Reliance on routing number.* Although § 229.35 and Appendix D require that the depository bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depository bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depository bank as it appears on the check (in the depository bank's indorsement) when it is received by the paying bank.

If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depository bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under § 229.38(a).

Section 229.31 Returning Bank's Responsibility for Return of Checks

(a) *Return of checks.* The standards for return of checks established by this section are similar to those for paying banks in § 229.30(a). This section requires a returning bank to return a returned check expeditiously if it agrees to handle the returned check for expeditious return under this paragraph. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depository bank for the purposes of returning the check. A returning bank agrees to handle a returned check for expeditious return to the depository bank if it:

- (1) Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;
- (2) Handles a returned check for return that it did not handle for forward collection; or
- (3) Otherwise agrees to handle a returned check for expeditious return.

As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it meets either of two tests. Under the "two-day/four-day" test, the check

must be returned so that it would normally be received by the depository bank by 4:00 p.m. either two or four business days after the check was presented to the paying bank, depending on whether the paying bank is a local or a nonlocal paying bank with respect to the depository bank. This is the same test as the two-day/four-day test applicable to paying banks. (See Commentary to § 229.30(a).) While a returning bank will not have first hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. In effect, the two-day/four-day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within the specified time following presentation to the paying bank, or a later time as would result from unforeseen delays.

The "forward collection" test is similar to the forward collection test for paying banks. Under this test, a returning bank must handle a returned check in the same manner that a similarly situated collecting bank would handle a check of similar size drawn on the depository bank for forward collection. A similarly situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check handling activity in the same community. A bank has similar check handling activity if it handles a similar volume of checks for forward collection as the forward collection volume of the returning bank.

Under the forward collection test, a returning bank must accept returned checks, including both qualified and other returned checks ("raw returns"), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.

A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but the cut-off hour for returned checks may not be earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks. All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward collection checks received at a corresponding forward collection cut-off hour that provides for the same or faster availability for checks destined for the same depository banks.

Examples

1. If a returning bank receives a returned check by its cut-off hour for returned checks on Monday and the depository bank and the returning bank are participants in the same clearinghouse, the returning bank should arrange to have the returned check received by the depository bank by Tuesday. This would be the same day that it would deliver

a forward collection check drawn on the depository bank and received by the returning bank at a corresponding forward collection cut-off hour on Monday.

2. If a returning bank receives a returned check, and the returning bank would normally collect a forward collection check drawn on the depository bank by sending the forward collection check to a correspondent or a Federal Reserve Bank by courier, the returning bank could send the returned check in the same manner if the correspondent has agreed to handle returned checks expeditiously under § 229.31(a). The returning bank would have to deliver the check by the correspondent's or Federal Reserve Bank's cut-off hour for returned checks that corresponds to its cut-off hour for forward collection checks drawn on the depository bank. A returning bank may take a day to convert a check to a qualified returned check. Where the forward collection checks are delivered by courier, mailing the returned checks would not meet the duty established by this section for returning banks.

A returning bank must return a check to the depository bank by courier or other means as fast as a courier, if similarly situated returning banks use couriers to deliver their forward collection checks to the depository bank.

For some depository banks, no community practice exists as to delivery of checks. For example, a credit union whose customers use payable through drafts does not normally have checks presented to it because the drafts are normally sent to the payable through bank for collection. In these circumstances, the community standard is established by taking into account the dollar volume of the checks being sent to the depository bank, and the location of the depository bank, and determining whether similarly situated banks would normally deliver forward collection checks to the depository bank, taking into account the particular risks associated with returned checks. Where the community standard does not require courier delivery, other means of delivery, including mail, are acceptable.

The expeditious return requirement for a returning bank in this regulation is more stringent in many cases than the duty of a collecting bank to act seasonably under U.C.C. § 4-202 in returning a check. A returning bank is under a duty to act as expeditiously in returning a check as it would in the forward collection of a check. Notwithstanding its duty of expeditious return, its midnight deadline under U.C.C. § 4-202 and § 210.12(a) of Regulation J (12 CFR 210.12(a)), under the forward collection test, a returning bank may take an extra day to qualify a returned check. A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. This paragraph gives a returning bank an extra business day beyond the time that would otherwise be required to return the returned check to convert a returned check to a qualified returned check. The qualified returned check must include the routing number of the depository bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. If the

returning bank is sending the returned check directly to the depository bank, this extra day is not available because preparing a qualified returned check will not expedite handling by other banks.

If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under § 229.38 for losses caused by any negligence. The returning bank would not lose the one-day extension available to it for creating a qualified returned check because of an encoding error.

Under § 229.31(a), the returning bank is authorized to route the returned check in a variety of ways:

1. It may send the returned check directly to the depository bank by courier or other expeditious means of delivery; or
2. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depository bank under this section regardless of whether or not the returning bank handled the check for forward collection.

If the returning bank elects to send the returned check directly to the depository bank, it is not required to send the check to the branch of the depository bank that first handled the check. The returned check may be sent to the depository bank at any location permitted under § 229.32(a).

In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depository bank. (See U.C.C. § 4-202(3) regarding the responsibility of collecting banks.) For example, if the paying bank has delayed the start of the return process, but the returning bank acts in a timely manner, the returning bank may satisfy the requirements of this section even if the delayed return results in a loss to the depository bank. (See § 229.38.) A returning bank must handle a notice in lieu of return as expeditiously as a returned check.

This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

1. Section 4-212(2), in that direct return by the returning bank is now permitted in all jurisdictions even though not all jurisdictions have adopted this optional provision. Also, the returning bank does not have to create a draft on the depository bank.

2. Section 4-202(2), in that time limits required by that section may be affected by the additional requirement to make an expeditious return.

3. Section 4-212(1), in that settlement for returned checks is made under § 229.31(c) and not by charge-back of provisional credit, and in that the time limits may be affected by the additional requirement to make an expeditious return.

(b) *Unidentifiable depository bank.* This section is similar to § 229.30(b), but applies to returning banks instead of paying banks. In some cases a returning bank will be unable to identify the depository bank with respect to a check. Returning banks agreeing to handle checks for return to depository banks under § 229.31(a) are expected to be expert in identifying depository bank indorsements. In the limited cases where the returning bank cannot identify the depository bank, the returning bank may send the returned check

to a returning bank that agrees to handle the returned check for expeditious return under § 229.31(a), or it may send the returned check to a bank that handled the check for forward collection even if that bank does not agree to handle returned checks expeditiously under § 229.31(a).

If the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward collection process, which will be better able to identify the depository bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depository bank. As in the case of paying banks under § 229.30(b), a returning bank's sending of a check to a bank that handled the check for forward collection under § 229.31(b) is not subject to the expeditious return requirements of § 229.31(a).

The returning bank's return of a check under this paragraph is subject to the midnight deadline under U.C.C. § 4-202(2). (See definition of returning bank in § 229.2(cc).)

Where a returning bank receives a check that it does not agree to handle expeditiously under § 229.31(a), such as a check sent to it under § 229.30(b), but the returning bank is able to identify the depository bank, the returning bank must thereafter return the check expeditiously to the depository bank. The returning bank returns a check expeditiously under this paragraph if it returns the check by the same means it would use to return a check drawn on it to the depository bank or by other reasonably prompt means.

As in the case of a paying bank returning a check under § 229.30(b), a returning bank that sends a check to a collecting bank under this paragraph must advise the collecting bank that the returning bank is unable to identify the depository bank.

(c) *Settlement.* Under the U.C.C., a collecting bank receives settlement for a check when it is presented to the paying bank. The paying bank may recover the settlement when the paying bank returns the check to the presenting bank. Under this regulation, however, the paying bank may return the check directly to the depository bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the settlement made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection.

Any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward collection checks. These settlements by returning banks, as well as settlements between banks made during the forward collection of a check, are considered final when made subject to any deferment of availability. (See § 229.36(d).)

A returning bank may vary the settlement method it uses by agreement with paying banks or other returning banks. Special rules apply in the case of insolvency of banks. (See § 229.39.) If payment cannot be obtained from a depository or returning bank because of its insolvency or otherwise, recovery can be had by returning, paying, and collecting banks from prior banks on this basis of the liability of prior banks under § 229.35(b).

This paragraph affects U.C.C. § 4-212(1) in that a paying or collecting bank does not ordinarily have a right to charge back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions. Under § 229.36(d), a bank collecting a check remains liable to prior collecting banks and the depository bank's customer under the U.C.C.

(d) *Charges.* This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank or other returning bank for its service in handling a returned check. Where a claim is made under § 229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.

(e) *Depository bank without accounts.* This paragraph is similar to § 229.30(e) and relieves a returning bank of its obligation to make expeditious return to a depository bank that does not maintain any accounts. (See the Commentary to § 229.30(e).)

(f) *Notice in lieu of return.* This paragraph is similar to § 229.30(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. (See the Commentary to § 229.30(f).)

(g) *Reliance on routing number.* This paragraph is similar to § 229.30(g) and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depository bank's indorsement or on qualified returned checks. (See the Commentary to § 229.30(g).)

Section 229.32 Depository Bank's Responsibility for Returned Checks

(a) *Acceptance of returned checks.* This regulation seeks to encourage direct returns by paying and returning banks and may result in a number of banks sending checks to depository banks with no preexisting arrangements as to where the returned checks should be delivered. This paragraph states where the depository bank is required to accept returned checks and written notices of nonpayment under § 229.33. (These locations differ from locations at which a depository bank must accept electronic notices.) It is derived from U.C.C. § 3-504(2), which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depository bank does not print the check and can only specify the place of "payment" of the returned check in its indorsement.

The paragraph specifies four locations at which the depository bank must accept returned checks:

1. The depository bank must accept returned checks at any location at which it requests presentment of forward collection checks such as a processing center. A depository bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.

2. (i) If the depository bank indorsement states the name and address of the depository bank, it must accept returned checks at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depository bank must accept returned checks at any branch or head office consistent with the address. If, for example, the address is "New York, New York," each branch in New York City must accept returned checks.

(ii) If no address appears in the depository bank's indorsement, the depository bank must accept returned checks at any branch or head office associated with the depository bank's routing number. The offices associated with the routing number of a bank are found in a publication of Rand McNally, *Key to Routing Numbers*, which lists a city and state address for each routing number.

(iii) If no routing number or address appears in its indorsement, the depository bank must accept a returned check at any branch or head office of the bank. The indorsement requirement of § 229.35 and Appendix D requires that the indorsement contain a routing number, a name, and a location. Consequently, this provision, as well as paragraph (a)(2)(ii) of this section, only applies where the depository bank has failed to comply with the indorsement requirement.

For ease of processing, a depository bank may require that returning or paying banks returning checks to it separate returned checks from forward collection checks being presented.

(b) *Payment.* As discussed in the comment to § 229.31(c), under this regulation a paying or returning bank does not obtain credit for a returned check by charge-back but by, in effect, presenting the returned check to the depository bank. This paragraph imposes an obligation to "pay" a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depository bank may not return a returned check for which it is the depository bank. Also, certain means of payment, such as remittance drafts, may only be used with the agreement of the returning bank.

The depository bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to U.C.C. § 4-107, which permits the bank to establish a cut-off hour, generally not earlier than 2:00 p.m., and treat checks received after that hour as being received on the next banking day. If the depository bank is unable to make payment to a returning or paying bank on the banking day that it receives the returned

check, because the returning or paying bank is closed for a holiday or because the time when the depository bank received the check is after the close of Fedwire, e.g., west coast banks with late cut-off hours, payment may be made on the next banking day of the bank receiving payment.

Payment must be made so that the funds are available for use by the bank returning the check to the depository bank on the day the check is received by the depository bank. For example, a depository bank meets this requirement if it sends a wire transfer of funds to the returning or paying bank on the day it receives the returned check, even if the returning or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.

The depository bank may use a net settlement arrangement. Banks with net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement could be established.

The bank sending the returned check to the depository bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

This paragraph and this subpart do not affect the depository bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also §§ 229.33(d) and 229.35(d).)

(c) *Misrouted returned checks.* This paragraph permits a bank receiving a check on the basis that it is the depository bank to send the misrouted returned check to the correct depository bank, if it can identify the correct depository bank, either directly or through a returning bank agreeing to handle the check expeditiously under § 229.30(a). In these cases, the bank receiving the check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check must send the check back to the bank from which it was received. In either case the bank to which the returned check was misrouted could receive settlement for the check. The depository bank would be required to pay for the returned check under § 229.32(b), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under § 229.31(c). If the check was originally received "free," that is, without a charge for the check, the bank incorrectly receiving the check would have to return the check, without a charge, to the bank from which it came. The bank to which the returned check was misrouted is required to act promptly but is not required to meet the expeditious return requirements of § 229.31(a), however, it must act within its midnight deadline. This paragraph does not affect a bank's duties under § 229.35(b).

(d) *Charges.* This paragraph prohibits a depository bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank is also the depository bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depository bank, however, no fee may be charged.

Section 229.33 Notice of Nonpayment

(a) *Requirement.* Notice of nonpayment as required by this section and written notice in lieu of return as provided in §§ 229.30(f) and 229.31(f) serve different functions. The two kinds of notice, however, must meet the content requirements of this section. The paying bank must send a notice of nonpayment if it decides not to pay a check of \$2,500 or more. A paying bank may rely on an amount encoded on the check in magnetic ink to determine whether the check is in the amount of \$2,500 or more. The notice of nonpayment carries no value, and the check itself (or the notice in lieu of return) must be returned. The paying bank must ensure that the notice of nonpayment is received by the depository bank by 4:00 p.m. local time on the second business day following presentment. A bank identified by routing number as the paying bank is considered the paying bank under this regulation and would be required to create a notice of nonpayment even though that bank determined that the check was not drawn by a customer of that bank. (See Commentary to the definition of paying bank in § 229.2(z).)

The paying bank should not send a notice of nonpayment until it has finally determined not to pay the check. Under § 229.34(b), by sending the notice the paying bank warrants that it has returned or will return the check. If a paying bank sends a notice and subsequently decides to pay the check, the paying bank may mitigate its liability on this warranty by notifying the depository bank that the check has been paid.

Because the return of the check itself may serve as the required notice of nonpayment, in many cases no notice other than the return of the check will be necessary. For example, in many cases the return of a check through a clearinghouse to another participant of the clearinghouse will be made in time to meet the time requirements of this section. If the check will not normally be received by the depository bank within the time limits for notice, the return of the check will not satisfy the notice requirement. In determining whether the returned check will satisfy the notice requirement, the paying bank may rely on the availability schedules of returning banks as the time that the returned check is expected to be delivered to the depository bank, unless the paying bank has reason to know the availability schedules are inaccurate.

(b) *Content of notices.* This paragraph provides that the notice must at a minimum contain eight elements which are specifically

enumerated. In the case of written notices, the name and routing number of the depository bank are also required.

If the paying bank cannot identify the depository bank from the check itself, it may wish to send the notice to the earliest collecting bank it can identify and indicate that the notice is not being sent to the depository bank. The collecting bank may be able to identify the depository bank and forward the notice, but is under no duty to do so. In addition, the collecting bank may actually be the depository bank.

(c) *Acceptance of notice.* In the case of a written notice, the depository bank is required to accept notices at the locations specified in § 229.32(a). In the case of telephone notices, the bank may not refuse to accept notices at the telephone numbers identified in this section, but may transfer calls or use a recording device. Banks may vary by agreement the location and manner in which notices are received.

(d) *Notification to customer.* This paragraph requires a depository bank to notify its customer of nonpayment upon receipt of a returned check or notice of nonpayment. This requirement is similar to the requirement under the U.C.C. as interpreted in *Appliance Buyers Credit Corp. v. Prospect National Bank*, 708 F.2d 290 (7th Cir. 1983), that a depository bank may be liable for damages incurred by its customer for its failure to give its customer timely advice that it has received a notice of nonpayment. Notice must also be given if a depository bank receives a notice of recovery under § 229.35(b). The notice to the customer required under this paragraph may also satisfy the notice requirement of § 229.13(g) if the depository bank invokes the reasonable cause exception of § 229.13(e) due to the receipt of a notice of nonpayment, provided the notice meets the other requirements of § 229.13(g).

Section 229.34 Warranties by Paying Bank and Returning Bank

(a) *Warranty of returned check.* This paragraph includes warranties that a returned check was returned by the paying bank within the deadline under the U.C.C., 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 and will not be returned. The warranty does not include a warranty that the bank complied with the expeditious return requirements of §§ 229.30(a) and 229.31(a). These warranties do not apply to checks drawn on the United States Treasury, a state, or a unit of general local government.

(b) *Warranty of notice of nonpayment.* This paragraph provides for warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under § 229.33. The requirements of § 229.33 that are not covered by the warranty are subject to the liability provisions of § 229.36. These warranties are designed to give the depository bank more confidence in relying on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of

nonpayment and then subsequently returns the check. (See Commentary on § 229.33(a).)

(c) *Damages.* This paragraph adopts for the new warranties in § 229.34 (a) and (b) the warranty damages of U.C.C. § 4-207(3).

(d) *Tender of defense.* This paragraph adopts for this regulation the vouching-in provisions of U.C.C. § 3-803.

Section 229.35 Indorsements

(a) *Indorsement standards.* This section and Appendix D require banks to use a standard form of indorsement when indorsing checks during the forward collection and return process. The standard provides for indorsements by all collecting and returning banks, plus a unique standard for depository bank indorsements. It is designed to facilitate the identification of the depository bank and the prompt return of checks. The indorsement standard specifies the information each indorsement must contain and its location and ink color.

The indorsement standard requires that the nine-digit routing number of the depository bank be wholly contained in an area on the back of the check from 3.0 inches from the leading edge to 1.5 inches from the trailing edge of the check. This permits banks to use encoding equipment that measures from either the leading or trailing edge of the check to place indorsements in this area. The standard does not require that the entire depository bank indorsement be contained within the specified area, but checks will be handled most efficiently if depository banks place as much information as possible within the designated area to ensure that the information is protected from being overstamped by subsequent indorsements. The location requirement for subsequent collecting bank indorsements (not including returning bank indorsements) limits these indorsements to the area on the back of the check from the leading edge to 3.0 inches from the leading edge of the check. The area from the trailing edge of the check to 1.5 inches from the trailing edge is commonly used for the payee indorsement.

The standard requires depository banks to use either purple or black ink. The Board encourages depository banks to indorse checks in purple ink where possible, because use of a unique ink color will facilitate the speedy identification of the depository bank. Black ink, however, may be used when use of purple ink is not feasible, such as where a bank uses the same equipment to apply both depository bank and subsequent collecting bank indorsements, and the equipment has only one source of ink. The standard requires subsequent collecting banks to use an ink color other than purple for their indorsements. The standard also requires the depository bank's indorsement to include its nine-digit routing number set off by arrows, the bank's name and location, and the indorsement date, and permits the indorsement to include other identifying information.

The standard does not include the fractional routing number for depository banks; however, a bank may include its fractional routing number or repeat its nine-digit routing number in its indorsement. If a depository bank includes its routing number

in its indorsement more than once, paying and returning banks will be able to identify the depository bank more readily.

A depository bank is not required to place a street address in its indorsement; however, a bank may want to do so in order to limit the number of locations at which it must accept returned checks under § 229.32(a). Banks should note, however, that § 229.32(a) also requires depository banks to accept returned checks at the location(s) it accepts forward collection checks. The inclusion of a depository bank's telephone number where it would receive notices of large-dollar returns in its indorsements is optional.

Under the U.C.C., a specific guarantee of prior indorsement is not necessary. (See U.C.C. §§ 3-417(1)(a) and 4-207(1), and official comment 2 to U.C.C. § 4-207.) Use of guarantee language in indorsements, such as "P.E.G." ("prior indorsements guaranteed"), may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this language may make it more difficult for other banks to identify the depository bank. Subsequent collecting bank indorsements may not include this language.

The standard for returning banks requires a returning bank to apply an indorsement that avoids the area on the back of the check from 3.0 inches from the leading edge of the check to the trailing edge—the area reserved for the payee and depository bank indorsements. Returning bank indorsements may differ from subsequent collecting bank indorsements. The use of various methods to process returns using a variety of equipment may also cause returning bank indorsements to vary substantially in form, content, and placement on the check. Thus, a returning bank indorsement may be on the face of the check or on the back of the check. A returning bank indorsement may not be in purple ink. No content requirements have been adopted for the returning bank indorsement.

If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notices of nonpayment for the bank of account, the indorsement placed on the check as the depository bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of this section.

The backs of many checks bear pre-printed information or blacked out areas for various reasons. For example, some checks are printed with a carbon band across the back that allows the transfer of information from the check to a ledger with one writing. Also, contracts or loan agreements are printed on certain checks. Other checks that are mailed to recipients may contain areas on the back that are blacked out so that they may not be read through the mailer. On the deposit side, the payee of the check may place its indorsement or information identifying the drawer of the check in the area specified for the depository bank indorsement, thus making the depository bank indorsement unreadable.

The indorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require banks to avoid placing their indorsements in these areas. Nevertheless, checks will be handled more efficiently if depository banks design indorsement stamps so that the nine-digit routing number avoids the carbon band area. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the identifiability and legibility of the depository bank indorsement by staying clear of the area reserved for the depository bank indorsement.

Section 229.38(d) allocates responsibility for loss resulting from a delay in return of a check due to indorsements that are unreadable because of material on the back of the check. The depository bank is responsible for a loss resulting from a delay in return caused by the condition of the check arising after its issuance until its acceptance by the depository bank that made the depository bank's indorsement illegible. The paying bank is responsible for loss resulting from a delay in return caused by indorsements that are not readable because of other material on the back of the check at the time that it was issued. Depository and paying banks may shift these risks to their customers by agreement.

The standard does not require the paying bank to indorse the check; however, if a paying bank does indorse a check that is returned, it should follow the indorsement standard for returning banks.

(b) *Liability of bank handling check.* When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depository bank through any subsequent collecting banks to the paying bank. This section extends the indorsement chain through the paying bank to the returning banks, and would permit each bank to recover from any prior indorser if the claimant bank does not receive payment for the check from a subsequent bank in the collection or return chain. For example, if a returning bank returned a check to an insolvent depository bank, and did not receive the full amount of the check from the failed bank, the returning bank could obtain the unrecovered amount of the check from any bank prior to it in the collection and return chain including the paying bank. Because each bank in the collection and return chain could recover from a prior bank, any loss would fall on the first collecting bank that received the check from the depository bank. To avoid circuitry of actions, the returning bank could recover directly from the first collecting bank. Under the U.C.C., the first collecting bank might ultimately recover from the depository bank's customer or from the other parties on the check.

Where a check is returned through the same banks used for the forward collection of the check, priority during the forward collection process controls over priority in the return process for the purpose of determining prior and subsequent banks under this regulation.

Where a returning bank is insolvent and fails to pay the paying bank or a prior

returning bank for a returned check, § 229.39(a) requires the receiver of the failed bank to return the check to the bank that transferred the check to the failed bank. That bank could then either continue the return to the depository bank or recover based on this paragraph. Where the paying bank is insolvent, and fails to pay the collecting bank, the collecting bank could also recover from a prior collecting bank under this paragraph, and the bank from which it recovered could in turn recover from its prior collecting bank until the loss settled on the depository bank (which could recover from its customer).

A bank is not required to make a claim against an insolvent bank before exercising its right to recovery under this paragraph. Recovery may be made by charge-back or by other means. This right of recovery is also permitted even where nonpayment of the check is the result of the claiming bank's negligence such as failure to make expeditious return, but the claiming bank remains liable for its negligence under § 229.38.

This liability is imposed on a bank handling a check for collection or return regardless of whether the bank's indorsement appears on the check. Notice must be sent under this paragraph to a prior bank from which recovery is sought reasonably promptly after a bank learns that it did not receive payment from another bank, and learns the identity of the prior bank. Written notice reasonably identifying the check and the basis for recovery is sufficient if the check is not available. Receipt of notice by the bank against which the claim is made is not a precondition to recovery by charge-back or other means; however, a bank may be liable for negligence for failure to provide timely notice. A paying or returning bank may also recover from a prior collecting bank as provided in §§ 229.30(b) and 229.31(b). This provision is not a substitute for a paying or returning bank making expeditious return under §§ 229.30(a) or 229.31(b). This paragraph does not affect a paying bank's accountability for a check under U.C.C. §§ 4-213(1) and 4-302.

This paragraph affects the following provisions of the U.C.C., and may affect other provisions:

1. Section 4-212(1), in that the right to recovery is not based on provisional settlement, and recovery may be had from any prior bank. Section 4-212(1) would continue to permit a depository bank to recover a provisional settlement from its customer. (See § 229.33(d).)

2. Section 3-414 and related provisions (such as sections 3-502, 3-503(2), and 3-508), in that such provisions would not apply as between banks, or as between the depository bank and its customer.

(c) *Indorsement by bank.* This section protects the rights of a customer depositing a check in a bank without requiring the words "pay any bank," as required by the U.C.C. (See U.C.C. § 4-201(2).) Use of this language in a depository bank's indorsement will make it more difficult for other banks to identify the depository bank. The indorsement standard in Appendix D prohibits such material in subsequent collecting bank

indorsements. The existence of a bank indorsement provides notice of the restrictive indorsement without any additional words.

(d) *Indorsement for depository bank.* This section permits a depository bank to arrange with another bank to indorse checks. This practice may occur when a correspondent indorses for a respondent, or when the bank servicing an ATM or lock box indorses for the bank maintaining the account in which the check is deposited—i.e., the depository bank. If the indorsing bank applies the depository bank's indorsement, checks will be returned to the depository bank. If the indorsing bank does not apply the depository bank's indorsement, by agreement with the depository bank it may apply its own indorsement as the depository bank indorsement. In that case, the depository bank's own indorsement on the check (if any) should avoid the location reserved for the depository bank. The actual depository bank remains responsible for the availability and other requirements of Subpart B, but the bank indorsing as depository bank is considered the depository bank for purposes of Subpart C. The check will be returned, and notice of nonpayment will be given, to the bank indorsing as depository bank.

Because the depository bank for Subpart B purposes will desire prompt notice of nonpayment, its arrangement with the indorsing bank should provide for prompt notice of nonpayment. The bank indorsing as depository bank may require the depository bank to agree to take up the check if the check is not paid even if the depository bank's indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement varying the effect of provisions of Subpart C under § 229.37.

Section 229.36 Presentment of Checks

(a) *Payable through and payable at checks.* The regulation defines a payable through or payable at bank (which could be designated the collectible through or collectible at bank) as a paying bank. The requirements of § 229.30(a) and the notice of nonpayment requirements of § 229.33, are imposed on a payable through or payable at bank and are based on the time of receipt of the forward collection check by the payable through or payable at bank. This is consistent with looking to the location of the payable through or payable at bank when a check is sent to that bank for payment in order to determine whether a check is a local or a nonlocal check. This provision is intended to speed the return of checks that are payable through or at a bank to the depository bank.

(b) *Receipt at bank office or processing center.* This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depository bank, and clarifies the law as to the effect of presentment by routing number. This paragraph differs from § 229.32(b) because presentment of checks differs from delivery of returned checks.

The paragraph specifies four locations at which the paying bank must accept presentment of checks. Where the check is payable through a bank and the check is sent

to that bank, the payable through bank is the paying bank.

1. Delivery of checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. This is the way most checks are presented by banks today. This provision adopts the common law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also U.C.C. § 4-204(3).) If a bank designates different locations for the presentment of forward collection checks bearing different routing numbers, for purposes of this paragraph it only requests presentment of checks bearing a particular routing number at the location designated for receipt of forward collection checks bearing that routing number.

2. Delivery may be made at an office of the bank associated with the routing number on the check. The office associated with the routing number of a bank is found in a publication of Rand McNally, *Key to Routing Numbers*, which lists a city and state address for each routing number. Checks are generally handled by collecting banks on the basis of the nine-digit routing number encoded in magnetic ink (or on the basis of the fractional form routing number if the magnetic ink characters are obliterated) on the check, rather than the printed name or address. The definition of a paying bank in § 229.2(z) includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number.

There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank may generally control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

In some cases, a paying bank may have several offices in the city associated with the routing number. In such a case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank would normally deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

3. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with U.C.C. § 3-504(2), which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay. Thus, there is a trade-off for

a paying bank between specifying a particular address on a check to limit locations of delivery, and simply stating the name of the bank to encourage wider currency for the check.

4. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered by delivery to that office or other location. If the address is too general to identify a particular office, delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment. The designation of an address on the check is generally in the control of the paying bank.

This paragraph may affect U.C.C. § 3-504(2)(c) to the extent that the U.C.C. requires presentment to occur at a place specified in the instrument.

(c) *Truncation.* Truncation includes a variety of procedures in which the physical check is held or delayed by the depository or collecting bank, and the information from the check is transmitted to the paying bank electronically. Presentment takes place when the paying bank receives the electronic transmission. This process has the potential to improve the efficiency of check processing, but use of truncation has been limited, partly because of uncertainties about whether the U.C.C. permits it without the agreement of all parties. This paragraph allows truncation by agreement with the paying bank; however, such agreement may not prejudice the interests of prior parties to the check. For example, a truncation agreement may not extend the paying bank's time for return. Such an extension could damage the depository bank, which must make funds available to its customers under mandatory availability schedules.

(d) *Liability of bank during forward collection.* This paragraph makes settlement between banks during forward collection final when made, subject to any deferral of credit, just as settlements between banks during the return of checks are final. In addition, this paragraph clarifies that this change does not affect the liability scheme under U.C.C. § 4-201 during forward collection of a check. That U.C.C. section provides that, unless a contrary intent clearly appears, a bank is an agent or subagent of the owner of a check, but that Article 4 of the U.C.C. applies even though a bank may have purchased an item and is the owner of it. This paragraph preserves the liability of a collecting bank to prior collecting banks and the depository bank's customer for negligence during the forward collection of a check under the U.C.C., even though this paragraph provides that settlement between banks during forward collection is "final" rather than "provisional." Settlement by a paying bank is not considered to be final payment for the purposes of U.C.C. § 4-213 (b) or (d), because a paying bank has the right to recover settlement from a returning or depository bank to which it returns a check under this subpart. Other provisions of the U.C.C. not superseded by this subpart, such as section 4-202, also continue to apply to the forward collection of a check and may apply

to the return of a check. (See definition of returning bank in § 229.2(cc).)

Section 229.37 Variations by Agreement

This section is similar to U.C.C. § 4-103, and permits consistent treatment of agreements varying Article 4 or Subpart C, given the substantial interrelationship of the two documents. To achieve consistency, the official comment to U.C.C. § 4-103(1) (which in turn follows U.C.C. § 102(3)) should be followed in construing this section. For example, as stated in Official Comment 2 to section 4-103, owners of items and other interested parties are not affected by agreements under this section unless they are parties to the agreement or are bound by adoption, ratification, estoppel, or the like. In particular, agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under § 229.38 to entities not party to the agreement. This section is consistent with the limits on truncation agreements in § 229.36(c).

The Board has not followed U.C.C. § 4-103(2), which treats Federal Reserve regulations and operating letters, clearinghouse rules, and the like as agreements, and permits them to apply to parties that have not specifically assented. For this particular regulation, which seeks to protect many of those parties, that treatment does not appear warranted.

The following are examples of situations where variation by agreement is permissible, subject to the limitations of this section:

a. A depository bank may authorize another bank to apply the other bank's indorsement to a check as the "depository bank." (See § 229.35(d).)

b. A depository bank may authorize returning banks to commingle qualified returned checks with forward collection checks. (See § 229.32(a).)

c. A depository bank may limit its liability to its customer in connection with the late return of a deposited check where the lateness is caused by markings on the check by the depository bank's customer or prior indorser in the area of the depository bank indorsement. (See § 229.38(d).)

d. A paying bank may require its customer to assume the paying bank's liability for delayed or missent checks where the delay or missending is caused by markings placed on the check by the paying bank's customer that obscured a properly placed indorsement of the depository bank. (See § 229.38(d).)

e. A collecting or paying bank may agree to accept forward collection checks without the indorsement of a prior collecting bank. (See § 229.35(a).)

f. A bank may agree to accept returned checks without the indorsement of a prior bank. (See § 229.35(a).)

The Board expects to review the types of variation by agreement that develop under this section and will consider whether it is necessary to limit certain variations.

Section 229.38 Liability

(a) *Standard of care; liability; measure of damages.* The standard of care established by this section applies to any bank covered

by the requirements of Subpart C of the regulation. Thus, the standard of care applies to a paying bank under §§ 229.30 and 229.33, to a returning bank under § 229.31, to a depositary bank under §§ 229.32 and 229.33, to a bank erroneously receiving a returned check or written notice of nonpayment as depositary bank under § 229.32(d), and to a bank indorsing a check under § 229.35. The standard of care is similar to the standard imposed by U.C.C. §§ 1-203 and 4-103(1).

A bank not meeting this standard of care is liable to the depositary bank, the depositary bank's customer, the owner of the check, or another party to the check. The depositary bank's customer is usually a depositor of a check in the depositary bank (but see § 229.35(d)). The measure of damages stated derives from U.C.C. §§ 4-103(5) and 4-202(3). This subpart does not absolve a collecting bank of liability to prior collecting banks under U.C.C. § 4-201.

Under this measure of damages, a depositary bank or other person must show that the damage incurred results from the negligence proved. For example, the depositary bank may not simply claim that its customer will not accept a charge-back of a returned check, but must prove that it could not charge back when it received the returned check and could have charged back if no negligence had occurred, and must first attempt to collect from its customer. (See *Marcoux v. Van Wyk*, 572 F.2d 651 (8th Cir. 1978); *Appliance Buyers Credit Corp. v. Prospect Nat'l Bank*, 708 F.2d 290 (7th Cir. 1983).) Generally, a paying or returning bank's liability would not be reduced because the depositary bank did not place a hold on its customer's deposit before it learned of nonpayment of the check.

This paragraph also states that it does not affect a paying bank's liability to its customer. Under U.C.C. § 4-402, for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

(b) *Paying bank's failure to make timely return.* Section 229.30(a) imposes requirements on the paying bank for expeditious return of a check and leaves in place the U.C.C. deadlines (as they may be modified by § 229.30(c)), which may allow return at a different time. This paragraph clarifies that the paying bank could be liable for failure to meet either standard, but not for failure to meet both. The regulation intends to preserve the paying bank's "accountability" for missing its midnight or other deadline under the U.C.C., (e.g., sections 4-213 and 4-302), provisions that are not incorporated in this regulation, but may be useful in establishing the time of final payment by the paying bank.

(c) *Comparative negligence.* This paragraph establishes a "pure" comparative negligence standard for liability under Subpart C of this regulation. This comparative negligence rule may have particular application where a paying or returning bank delays in returning a check because of difficulty in identifying the depositary bank. Some examples will illustrate liability in such cases. In each example, it is assumed that the returned

check is received by the depositary bank after it has made funds available to its customer, that it may no longer recover the funds from its customer, and that the inability to recover the funds from the customer is due to a delay in returning the check contrary to the standards established by §§ 229.30(a) or 229.31(a).

(1) If a depositary bank fails to use the indorsement required by this regulation, and this failure is caused by a failure to exercise ordinary care, and if a paying or returning bank is delayed in returning the check because additional time is required to identify the depositary bank or find its routing number, the paying or returning bank's liability to the depositary bank would be reduced or eliminated.

(2) If the depositary bank uses the standard indorsement, but that indorsement is obscured by a subsequent collecting bank's indorsement, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depositary bank or find its routing number, the paying or returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the collecting bank may be liable to the depositary bank to the extent that its negligence in indorsing the check caused the paying or returning bank's delay.

(3) If a depositary bank accepts a check that has printing, a carbon band, or other material on the back of the check that existed at the time the check was issued, and the depositary bank's indorsement is obscured by the printing, carbon band, or other material, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depositary bank, the returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depositary bank to the extent that the printing, carbon band, or other material caused the delay.

(d) *Responsibility for back of check.* The indorsement standard in § 229.35 is most effective if the back of the check remains clear of other matter that may obscure bank indorsements. Because bank indorsements are usually applied by automated equipment, it is not possible to avoid pre-existing matter on the back of the check. For example, bank indorsements are not required to avoid a carbon band or printed, stamped, or written terms or notations on the back of the check. Accordingly, this provision places responsibility on the paying bank or depositary bank, as appropriate, for keeping the back of the check clear for bank indorsements during forward collection and return.

The paying bank is responsible for the condition of the check when it is issued by it or its customer. (It would not be responsible for a check issued by a person other than its customer.) Thus, the paying bank would be responsible for the adverse effect (if any) of a carbon band or other material placed on the back of a check before issuance. The paying bank may contract with its customers with respect to such responsibility.

The depositary bank is responsible for the condition of the check arising after it is

issued and before it is accepted by the depositary bank, as well as any condition of the check arising during its handling of the check. The depositary bank would be responsible for the adverse effect (if any) of a stamp placed on the check by its customer or a prior indorser. The depositary bank may refuse to accept a check whose back is unreasonably obscured or contract with its customers with respect to such responsibility.

Responsibility under this paragraph is treated as negligence for comparative negligence purposes, and the contribution to damages under this paragraph is treated in the same way as the degree of negligence under paragraph (c) of this section.

(e) *Timeliness of action.* This paragraph excuses certain delays. It adopts the standard of U.C.C. § 4-108(2) with the addition of "failure of equipment" and "interruption of computer facilities" as causes of delay.

(f) *Exclusion.* This paragraph provides that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611 (a) and (b), and the bona fide error provision of 611(c) of the Act (12 U.S.C. 4010 (a), (b), and (c)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Allowing punitive damages for delays in the return of checks where no actual damages are incurred would only encourage litigation and provide little or no benefit to the check collection system. In view of the provisions of paragraph (a), which incorporate traditional bank collection standards based on negligence, the provision on bona fide error is not included in Subpart C.

(g) *Jurisdiction.* The Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

(h) *Reliance on Board rulings.* This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the Commentary to this regulation, which is issued as an official Board interpretation, as well as on the regulation itself.

Section 229.39 Insolvency of Bank

These provisions cover situations where a bank becomes insolvent during collection or return, and are derived from U.C.C. § 4-214. They are intended to apply to all banks.

(a) *Duty of receiver.* This paragraph requires a receiver of a closed bank to return a check to the prior bank if it does not pay for the check. This permits the prior bank, as holder, to pursue its claims against the closed bank or prior indorsers on the check.

(b) *Preference against paying or depositary bank.* This paragraph gives a bank a preferred claim against a closed paying or depositary bank that finally pays a check without settling for it. If the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

(c) *Preference against paying, collecting, or depositary bank.* This paragraph gives a bank a preferred claim against a closed collecting,

paying, or returning bank that receives settlement but does not settle for a check. (See Commentary to § 229.35(b) for discussion of prior and subsequent banks.) As in the case of § 229.39(b), if the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

(d) *Finality of settlement.* This paragraph provides that insolvency does not interfere with the finality of a settlement, such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.

Section 229.40 Effect on Merger Transaction

When banks merge, there is normally a period of adjustment required before their operations are consolidated. To allow for this adjustment period, the regulation provides that the merged banks may be treated as separate banks for a period of up to one year after the consummation of the transaction. The term "merger transaction" is defined in § 229.2(t). This rule affects the status of the combined entity in a number of areas in this subpart. For example:

1. The paying bank's responsibility for expeditious return (§ 229.30).
2. The returning bank's responsibility for expeditious return (§ 229.31).
3. Whether a returning bank is entitled to an extra day to qualify a return that will be delivered directly to a depository bank that has merged with the returning bank (§ 229.31(a)).
4. Where the depository bank must accept returned checks (§ 229.32(a)).
5. Where the depository bank must accept notice of nonpayment (§ 229.33(c)).
6. Where a paying bank must accept presentment of checks (§ 229.36(b)).

Section 229.41 Relation to State Law

This section specifies that state law relating to the collection of checks is only preempted to the extent that it is inconsistent with this regulation. Thus, this regulation is not a complete replacement for state laws relating to the collection or return of checks.

Section 229.42 Exclusions

Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the expeditious return and notice of nonpayment requirements of Subpart C of this regulation. Other provisions of this subpart continue to apply to the checks. This exclusion does not apply to checks drawn by the U.S. government on banks.

Appendix C.—Model Forms, Clauses, and Notices

Appendix C contains model forms and clauses that may be used by banks to meet their disclosure responsibilities under the regulation. Banks using the model forms and clauses properly will be in compliance with the disclosure requirements of the regulation.

Certain information that must be inserted by a bank using the forms is italicized within parentheses in the text of the forms. Some

forms contain alternative clauses, and these are set forth in brackets and separated by the word "or." Banks may make certain changes in the format or content of the model forms and delete material that is inapplicable without losing the Act's protection from liability for banks that use the forms properly. For example, if a bank does not take advantage of the § 229.13 exceptions, it may delete the material relating to those exceptions. The rearrangement of the model forms may not be so extensive, however, as to affect the substance, clarity, or meaningful sequence of the forms. Acceptable changes include, for example:

- Using "customer" and "bank" instead of pronouns.
- Not using bold type for headings.
- Incorporating certain state law "plain English" requirements.

Shorter time periods for availability may always be substituted for time periods used in the model forms.

Banks may also add information related to their availability policies. For example, a bank might indicate that although funds have been made available to a customer and the customer has withdrawn them, the customer is still responsible for problems with the deposit, such as checks that were deposited being returned unpaid. Or a bank could provide in its disclosure a telephone number to be used if a customer has an inquiry regarding a deposit.

Banks are cautioned against using the forms without reviewing their own policies and practices, as well as state and federal laws regarding the time periods for availability of specific types of checks. A bank using a model form will be in compliance with the Act and the regulation only if its disclosures correspond to the bank's availability policy.

Models C-1 through C-7 generally. These forms are models for the specific availability policy disclosure described in § 229.16 of the regulation. The forms accommodate a variety of availability policies, ranging from policies of next-day availability to holds on a blanket basis up to the maximum time allowed in the regulation. Models C-3 and C-6 reflect the additional disclosures discussed in §§ 229.16 (b) and (c) for banks that have a policy of extending availability times on a case-by-case basis.

Except for Model C-7, the forms reflect the temporary schedules that are in effect from September 1, 1988 through August 31, 1990. Model C-7 reflects availability under the permanent schedule in § 229.12 effective September 1, 1990.

As already noted, there are several places in the forms where information must be inserted. This information includes the bank's name and cut-off times, limitations relating to next-day availability, and the first four digits of routing numbers for local banks. In disclosing when funds will be available for withdrawal, the bank must insert the ordinal number (such as first, second, etc.) of the business day the funds will become available.

Models C-1 through C-7 generally do not reflect any optional provisions of the regulation, or those that apply only to certain banks. Instead, disclosures for these

provisions are included in the model clauses (Models C-8 through C-12). A bank using one of the model forms should also consider whether it must incorporate one or more of the model clauses.

Model C-1. A bank may use this form when its policy is to make funds from all deposits available on the first business day after a deposit is made. This form may also be used by banks that provide immediate availability by substituting the word "immediately" in place of "on the first business day after the day we receive your deposit."

Model C-2. A bank may use this form when its policy is to make funds from all deposits available to its customers on the first business day after the deposit is made, and to reserve the right to invoke the new account and other exceptions in § 229.13 of the regulation.

Model C-3. A bank may use this form when its policy, in most cases, is to make funds from all types of deposits available the day after the deposit is made, but to delay availability on some deposits on a case-by-case basis up to the maximum time periods allowed under the regulation. A bank using this form also reserves the right to invoke the exceptions listed in § 229.13 of the regulation.

Model C-4. A bank may use this form when its policy is to impose delays to the full extent allowed under the temporary schedule in § 229.11 and to reserve the right to invoke the § 229.13 exceptions.

Model C-5. A bank may use this form when its policy is the same as that outlined in Model C-4. The only difference between Model C-4 and Model C-5 is that in the latter a chart showing the bank's availability policy for local and nonlocal checks is substituted for the narrative description in the former.

Model C-6. A bank may use this form when its policy is to delay availability based on the deposit categories (next-day availability items and local and nonlocal checks) in the regulation, but to make funds available more quickly than is required by the regulation. A bank using this form would also reserve the right to place holds on a case-by-case basis up to the statutory limits and to invoke the § 229.13 exceptions.

Model C-7. A bank may use this form when its policy is to impose delays to the full extent allowed by the permanent schedule in § 229.12 and to reserve the right to invoke the § 229.13 exceptions.

Models C-8 through C-12 generally. These model clauses must be incorporated into a bank's specific availability policy disclosure under certain circumstances. The commentary to each clause indicates when the clause is required.

Model C-8. This clause must be incorporated in the specific availability policy disclosure by banks that reserve the right to place a hold on funds already on deposit when they cash a check for the customer, as discussed under § 229.19(e).

Model C-8A. This clause must be incorporated in the specific availability policy disclosure by banks that reserve the right to place a hold on funds in an account of the customer other than the account into which

the deposit is made, as discussed in § 229.19(e).

Model C-9. This clause must be incorporated in the specific availability policy disclosure by banks in check processing regions where the availability schedules for certain nonlocal checks have been reduced, as described in Appendix B of the regulation. Banks using Model C-4, C-6, or C-7 may insert this clause at the conclusion of the discussion titled "Nonlocal checks."

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 seventh business day following the day of the deposit, as permitted during the temporary schedule in § 229.11. A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under § 229.16(b)(5).

Model C-11. This clause must be incorporated in the specific availability policy disclosure by banks that are not members of a local clearinghouse and that choose to limit their customers' ability to withdraw cash on the third business day following the deposit of a local check, as allowed during the temporary schedule under § 229.11. Banks using Model C-4 or C-6 may substitute this clause for the sections titled "Local checks" and "Nonlocal checks."

Model C-11A. This clause serves the same purpose as Model C-11 except that it reflects the § 229.11 rule for banks that are members of local clearinghouses. Banks using Models C-4 or C-6 may substitute this clause for the sections titled "Local checks" and "Nonlocal checks."

Model C-11B. This clause may be used to disclose cash withdrawal limitations under the permanent schedule in § 229.12. Banks using Model C-7 to disclose availability

under the permanent schedule may substitute this clause for the sections titled "Local checks" and "Nonlocal checks." This clause should not be used in making disclosures under the temporary schedule in § 229.11.

Model C-12. This clause must be incorporated in the specific availability policy disclosure by credit unions seeking to satisfy the notice requirement of § 229.14(b). This model clause is only an example of a hypothetical policy. Credit unions may follow any policy for accrual provided the method of accruing interest is the same for cash and check deposits.

Models C-13 through C-18 generally. These forms are models for various notices required by the regulation.

Model C-13. This form satisfies the written notice required under § 229.13(g) of the regulation when a bank places a hold based on a § 229.13 exception. If a hold is being placed on more than one check in a deposit, each check need not be described, but if different reasons apply, each reason must be indicated. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. The bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a § 229.13 exception.

Model C-13A. This form satisfies the same requirement as Model C-13, and the same instructions apply, except that Model C-13A is for use by a bank that invokes the reasonable cause exception in § 229.13. The form provides the bank with a list of specific reasons that may be given for invoking the exception. If a hold is being placed on more than one check in a deposit, each check must be described separately, and if different reasons apply, each reason must be indicated. Banks may disclose of the reason for their doubting collectability by checking the appropriate reason on the form. If the

"Other" category is checked, the reason must be given.

Model C-14. This form satisfies the notice required under § 229.16(b)(2) when a bank with a case-by-case hold policy imposes a delay on a deposit. This notice does not require a statement of the specific reason for the hold, as is the case when a § 229.13 exception hold is placed. A bank may specify the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit when funds will be available. The bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

Model C-15 and C-15A. Either of these forms satisfies the notice requirement of § 229.18(b) (notice at locations where employees accept consumer deposits). Model C-15 is based on an availability policy that is the same as the temporary schedules in the regulation and the policy reflected in Models C-4 and C-5. Model C-15A may be used by a bank with a case-by-case availability policy.

Model C-16. This form satisfies the ATM notice requirement of § 229.18(c)(1).

Model C-17. This form satisfies the ATM notice requirement of § 229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under § 229.29(a)(4). It is based on collection of deposits once a week. If collections occur more or less frequently, the description of when deposits are received must be adjusted accordingly.

Model C-18. This form satisfies the notice requirements of § 229.18(a) for deposit slips.

By order of the Board of Governors of the Federal Reserve System, May 13, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-11267 Filed 5-26-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0621]

Federal Reserve Bank Services**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Notice.

SUMMARY: The Board has adopted a proposal for the Federal Reserve Banks to offer several new returned check services to depository institutions. These services will assist depository institutions in complying with the new rules for the collection and return of checks that the Board has, in Docket No. R-0620, adopted to implement the Expedited Funds Availability Act. The Board has also approved check truncation and extended MICR capture services as permanent Federal Reserve Bank services.

DATE: New services to facilitate expedited returns will be offered beginning September 1, 1988. Check truncation and extended MICR capture are authorized as permanent Federal Reserve Bank services beginning July 15, 1988.

FOR FURTHER INFORMATION CONTACT: Steven O. App, Manager (202/452-3760); Gayle Thompson, Program Leader (202/452-2934); or Kathleen M. Connor, Analyst (202/452-3917); Division of Federal Reserve Bank Operations. For the hearing impaired only: Telecommunications Device for the Deaf, Ernestine Hill or Dorothea Thompson (202/452-3254).

SUPPLEMENTARY INFORMATION: On December 3, 1987, the Board requested public comment on a proposed set of Federal Reserve Bank services to carry out the provisions of the proposed Regulation CC. (52 FR 47171 (Dec. 11, 1987).) This set of services was designed to facilitate bank compliance with Regulation CC requirements to expedite returns and improve the check collection system. The services include establishing new returned check services and expanding Reserve Bank truncation and extended MICR capture services from pilot programs to permanent services. In order to achieve the objectives of the proposed regulatory requirements to speed the return of checks, it is essential that the Federal Reserve Banks and private sector correspondent banks provide new returned check services. The Board anticipates that a number of correspondent banks will provide an array of services similar to those offered by the Reserve Banks.

The comment period for the proposed Federal Reserve Bank services expired

on February 8, 1988. In addition, the Board requested comment on a number of longer-term initiatives to improve the check collection and return process, including digitized image technology and bar code endorsements. (Docket No. R-0622, 52 FR 47176 (Dec. 11, 1987).) The comment period for these longer-term initiatives expired on April 8, 1988. The Board will act on the proposals on longer-term initiatives at a later date.

Summary of Comments

The Board received approximately 1,000 comments on the proposed Regulation CC and the accompanying Federal Reserve Bank services. Two hundred sixty-eight of the comments discussed Federal Reserve Bank services. A list of these commenters, identified by category of respondent, is reflected in the following table:

Bank holding companies	17
Clearinghouses	3
Commercial banks	183
Corporations (banking-related business)	9
Credit unions	14
Federal home loan banks	8
Savings and loan associations	27
Trade associations	5
Other	2
Total	268

Returned Check Services**Direct Returns**

The current returned check system is a slow process due to the number of returning banks that process a check during its trip from the paying bank back to the depository bank. Returned checks handled by the Federal Reserve generally are returned to the bank that deposited the check with the Federal Reserve for forward collection. In many cases, the Federal Reserve Bank sends the returned check to a correspondent bank that, in turn, sends it to its indorser that ultimately returns the check to the depository bank.

The Board proposed that Federal Reserve Banks begin delivering returns directly to the depository bank, bypassing other returning banks in the indorsement chain, in order to minimize the number of banks that must handle a returned check. Generally, the Federal Reserve anticipates that most of the volume of the returned checks could be delivered to the depository bank by using existing couriers; the Federal Reserve Banks currently deliver to approximately 10,500 endpoints via courier. The Federal Reserve's transportation expenses for delivery of returned checks could increase

substantially, however, if delivery of returns were made via courier to all depository banks. (The Federal Reserve estimates that it may sort to approximately 26,000 endpoints under a direct return procedure.) Recognizing the desirability of providing prompt return of checks, while seeking to minimize increases in transportation costs, the Board requested comment on the following:

- A depository bank may receive returned checks from the Federal Reserve, at no charge, at a location where the Federal Reserve currently delivers the bank's forward collection checks, or at a location where the Federal Reserve currently provides courier delivery, or at another designated location through the U.S. mail.

- A depository bank that wishes its returned checks delivered by courier to a location where the Federal Reserve does not currently provide courier service may be charged for newly instituted transportation.

A total of 158 comments were received on the proposal that Federal Reserve Banks return checks directly to the depository bank. One hundred ten commenters agreed with the direct return service as proposed and many of the commenters stated that the service should eliminate several steps in the current returned check process, thereby expediting the flow of returned checks to the depository bank. Other commenters that favored the service stated that direct return was an excellent idea and critical to expediting returns, in order to reduce the exposure to depository banks complying with the new funds availability schedules. Some of the commenters were critical of the proposed guidelines for delivery of returned checks by courier because the guidelines allowed Reserve Banks to occasionally use the mail to send returned checks directly to the depository bank.

While most of these commenters generally agreed with the concept of direct return, a few commenters expressed reservations about whether they could receive checks at third-party processing centers or use other intercept arrangements. Several commenters did not want to receive returned checks via the mail. Finally, there were a few general remarks regarding the Federal Reserve Bank fee schedules and some opposition was raised about the Federal Reserve Banks passing on any additional courier costs through the basic returned check fee, because such a procedure may discriminate against banks that supply private courier

services to pick up returned checks from the Federal Reserve office.

In view of the benefits provided by the Federal Reserve Banks returning unpaid checks directly to the depository bank, the Board adopted the direct return service that was published for comment. Effective September 1, 1988, the Federal Reserve Banks will send return checks under the guidelines for delivery of returned checks described in Appendix A. The guidelines for delivery of returned checks have been modified to provide for minimal use of the mail by Federal Reserve offices, consistent with the Federal Reserve Banks' expeditious return responsibilities under § 229.31(a). In addition, the guidelines allow depository banks to designate a third-party processor for the delivery of returned checks.

Universal Returns and Expedited Processing of Returns

Currently, unpaid checks are sent back through the indorsement chain. In order to assist paying banks in meeting the new requirements for prompt return, the Board proposed that Federal Reserve Banks accept from paying or returning banks all returned checks, regardless of whether or not the returned checks were collected originally through the Federal Reserve (universal returns). Paying banks would not be obligated to send their returned checks to the Federal Reserve.

The Board proposed to establish, effective September 1, 1988, new returned check deposit deadlines at Federal Reserve offices, supported by expanded processing capabilities, such that local returns would, in most instances, be returned to the local depository bank the day following dispatch by the paying bank. The objective of the proposal was to provide for overnight processing and dispatch of returned checks similar to current processing and presentment time frames for forward collection checks.

In its proposal, the Board included estimated price ranges for returned check services. Currently, the Federal Reserve Banks do not explicitly price for returned checks. The costs of handling returned checks are incorporated in the forward collection fees. With the introduction of new returned check services, returns will be priced explicitly, with the returned check fees assessed on the paying or returning bank depositing returns with a Federal Reserve Bank. Forward collection fees will be reduced through the elimination of the return cost component.

The Board requested comment on the effect of the proposed deadline and fee changes on the operations of banks. In

addition, the Board also requested specific comment on a proposed deposit option wherein paying banks would place the depository bank's nine-digit routing number on the face of the returned check before sending it to the Federal Reserve.

A total of 77 comments were received on the proposal for Federal Reserve Banks to accept for deposit returned checks that had not been collected through the Federal Reserve. Seventy commenters agreed that the universal return service would be beneficial. Some of the commenters mentioned that it would be appropriate for Federal Reserve Banks to process returns not originally collected through the Federal Reserve, provided that returned checks were explicitly priced.

Six commenters expressed concerns about the universal return service. Most of these commenters were concerned about the competitive aspects of the service; some stated that the Federal Reserve's proposed fee schedules and deposit deadlines were not specific, and that the lack of product announcements by correspondent banks left them with few alternatives but to use Federal Reserve services until competing services become available. A few other commenters were concerned about the unbundling of returned check prices and subsequent reductions in forward collection prices, and the effect such reductions would have on correspondent banks.

The Board received a total of 117 comments on the proposal for Federal Reserve Banks to offer new deposit deadlines for returned check services, supported by expanded processing hours, such that local returned checks would, in most instances, be returned to the local depository bank the day following dispatch by the paying bank. There were 84 comments on the proposed fees for return check services. Forty-two commenters agreed with the proposed fees. There were 37 commenters that expressed concerns about the proposed fees. Several of these commenters agreed that a fee should be assessed, but indicated that the 300 percent range that was published for comment was too large to determine the effect on banks. These commenters stated that lack of information about alternative products limited their ability to determine whether they would use the service. It was recommended that the Federal Reserve publish a specific fee schedule as soon as possible so that other banks could decide whether to develop competing services. A few commenters noted that the Federal Reserve should not make expedited returned check

processing a profit-making venture. Five commenters disagreed with the proposed price ranges and noted that the proposed fees were too high.

There were 57 comments on the proposed deposit deadlines for returned check services. Forty-eight commenters agreed with the proposed deadlines. Several commenters noted that the deposit deadlines were reasonable and necessary to support next-day delivery of local returned checks. Several commenters indicated that the proposal to set the deadline for returns to correspond with a forward collection deadline was valid because banks would be able to use existing transportation arrangements to deliver their returns to the Federal Reserve Banks. Several other commenters stated that Reserve Banks should be required to offer a raw return deposit option to assist banks of all sizes in complying with Regulation CC. There were other requests that the Federal Reserve publish the deposit deadlines as early as possible so banks would be able to determine how best to deal with the new regulation.

Several commenters stated that the 8:00 p.m. return deposit deadline for raw returns was too early. The commenters stated that the 8:00 p.m. deadline would require, at a minimum, a complete reorganization of transportation schedules and would result in a significant increase in the number of cash letters being delivered to the Federal Reserve.

There were 81 comments on the proposed deposit option wherein paying banks would place the nine-digit routing number of the depository bank on the face of the returned check prior to sending it to a Reserve Bank for subsequent processing. Eleven commenters supported the proposed option and noted that it would speed the return process. Several commenters requested that the Federal Reserve consider mandating this practice as a regulatory requirement for the paying bank. Five commenters disagreed with this deposit option because the process was too time consuming and not cost effective. Sixty-five commenters expressed concern about determining whether the paying bank writing the nine-digit number or the returning bank encoding the nine-digit number would be liable if a returned check was sent by mistake to a bank other than the depository bank. Several other commenters noted that this concept had merit but needed a uniform standard for format and placement. Most commenters stated that the proposed

option should only be used when preparing QRCs.

The Board believes that changes to Federal Reserve Bank returned checks services are necessary to expedite the return of unpaid checks to the depository banks. The Board has approved the proposal to allow Federal Reserve Banks to accept for deposit, from paying and returning banks, returned checks that had not been collected through the Federal Reserve. In addition, the Board has approved the proposal to establish deposit deadlines and explicitly price for returned check services. In response to the concerns expressed by the commenters that the proposed price ranges were too large, the Board published narrower price ranges and specific deposit deadlines for each Federal Reserve office on April 4, 1988. (53 FR 11960 (April 11, 1988))

Based on the mixed response received to the proposal wherein paying banks would place the nine-digit routing number of the depository bank on the face of the returned check prior to sending it to a Reserve Bank for subsequent processing, the Board decided to make the service optional to the Reserve Banks, which may offer it as a deposit option to paying or returning banks.

The Reserve Banks are currently in the process of developing deposit deadlines and prices for returned check services. To address the concerns of the commenters, Reserve Banks will be establishing multiple deposit deadlines. Generally, Reserve Banks will be establishing a deposit deadline for raw returns that corresponds to the deposit deadline for RCPC forward collection checks. Reserve Banks may require that raw returns be sorted as to local or nonlocal at this deadline. If sorting is required, the Reserve Banks will offer an earlier deposit deadline (no earlier than 8:00 p.m.) where no sorting is required. The Board plans to publish the final deposit deadlines and fees for Federal Reserve Bank returned check services in mid-June.

High-Speed Processing of Returns

The proposed Regulation CC allowed paying and returning banks to qualify returned checks for high-speed processing by placing a strip on the bottom of the returned check or placing the returned check in a carrier envelope and encoding that strip or envelope with the nine-digit routing number of the depository bank, the amount of the check, and a return identifier (a "2" in position 44 of the MICR line; see American National Standards Committee on Financial Services, *Specifications for the Placement and*

Location of MICR Printing, X9.13 (Sept. 8, 1983)). This process was proposed because the automation of returned checks being handled by multiple banks should expedite the return of unpaid checks to the depository bank.

The Board proposed that the Federal Reserve Banks accept for deposit returned checks that have been qualified by paying and returning banks. In addition, the Board proposed that Federal Reserve Banks qualify returned checks received raw when doing so would speed the return process. Generally, this would occur for nonlocal returned checks being processed by more than one Federal Reserve office; however, in some cases, Reserve Banks may qualify local returns when doing so would facilitate more efficient and cost-effective processing of local returns.

The Board proposed that the processing of returned checks via the QRC process would be separate from the processing of forward collection checks. Thus, banks depositing qualified returned checks with Federal Reserve Banks generally would deposit QRCs in separate return letters. It was also proposed that Reserve Banks may, as a separate deposit option, accept QRCs intermixed with forward collection checks. QRCs being dispatched by the Federal Reserve Banks would not be intermixed with forward collection checks unless the depository bank agreed that returns be included in its Federal Reserve forward collection cash letter.

The Board requested comment on the use of the QRC process for expediting the handling of returned checks by returning banks. Specifically, the Board requested comment on the likelihood of paying banks initiating this process.

The Board received a total of 172 comments on the proposed QRC process. One hundred commenters supported the proposed QRC process and agreed that it was an excellent means for expediting the handling of returned checks. Several of these commenters stated that the QRC process should be mandatory because it was the only way to ensure that banks of all sizes would use the process. Approximately one-third of the 172 commenters indicated that they would qualify returns. Other commenters stated that paying banks would turn to the Federal Reserve or their correspondent bank for QRC processing.

Eleven commenters disagreed with the proposed QRC process. These commenters indicated that the costs of preparing a QRC would not be offset by the benefits. Several other commenters indicated that they did not have the appropriate software and hardware to

create QRCs. Some commenters also noted that the separation of QRCs from forward collection checks would neutralize many of the advantages of high-speed processing of returned checks.

Approximately 60 commenters expressed some concerns about certain aspects of the proposed QRC process. Several commenters expressed concern over the use of a carrier envelope. They stated that returned checks are often separated from open-faced carrier envelopes and that there was no audit trail when this occurred. It was also noted that using carrier envelopes is not conducive to microfilming or high-speed processing. It was recommended that the carrier envelopes only be used for mutilated checks. Similar concerns were expressed about the application of strips to the bottom of returned checks. Commenters were concerned that a strip might be removed if the returned check is rejected, and the returned check would then be released into the forward collection stream and represented to the paying bank.

For purposes of clear identification, several commenters recommended that QRCs have a unique color strip or carrier. A few commenters also recommended that the carrier envelope should be identified as carrying a QRC. These commenters also urged the Federal Reserve to develop a standard cash letter advice form for returned checks. The unique color strip or carrier, the identification of the carrier as carrying a QRC, and the standard cash letter advice would alert personnel handling the returned checks that the checks are returns and require special handling.

Commenters also expressed concern about the placement of liability if encoding errors were made on the envelope or strip and the returned check was mishandled as a result. It was recommended that the qualifying bank's routing number also be included on the carrier or strip.

Several commenters also noted that the use of the QRC option would depend on the cost difference between raw and qualified returns. It was stated that a significant per transaction fee for raw returns would serve as an incentive to qualify returns.

The Board believes that the QRC process will expedite the processing of returns and has approved the proposal that Reserve Banks accept for deposit QRCs prepared by paying or returning banks beginning September 1, 1988. The Board believes that the QRC process will be effective using either carrier envelopes or strips and that either

should be allowed so that each bank may individually make the most cost-effective choice. The Board believes it is unnecessary to require that the strips or envelopes be of a unique color because the returned check identifier in position 44 of the MICR-line should be sufficient to distinguish the returned check from a forward collection check. The Federal Reserve offices will also qualify raw returns received for deposit when this process will expedite the return process. In recognition of the fact that many banks process returned checks separately from forward collection checks, the Board adopted a policy that the processing of returned checks via the QRC process would generally be kept separate from the processing of forward collection checks. Qualified returned checks dispatched by the Federal Reserve Banks will not be intermixed with forward collection checks unless the depository bank agrees that the returns be included in its Federal Reserve cash letter. As the banking industry gains experience with the new procedures for handling returned checks, the Board may permit all banks to mix their QRC's with their forward collection checks.

Notice of Nonpayment

Regulation CC, adopted by the Board in a related action today (see Docket No. R-0620) requires notice of all large-dollar returned checks of \$2,500 or more, regardless of whether the returned checks were collected through the Federal Reserve. Under the proposal, the paying bank must notify the depository bank by 4:00 p.m. (local time of the depository bank) on the second business day following presentation of the check to the paying bank.

The Board proposed several changes to its notice of nonpayment service in support of the proposed regulation. Specifically, it proposed that the Federal Reserve Banks provide a same-day notice service beginning September 1, 1988. The proposed new deadlines and fees for notice of nonpayment are as follows:

Origination by—	Deadline	Fee
Wire.....	12 noon.....	\$1.75
Telephone call to Fed.....	9 a.m.....	4.25
Physical check to Fed.....do.....	5.25

The Board also proposed that, beginning January 1, 1989, any bank with an on-line electronic connection with the Federal Reserve be required to take notices over its connection or a designated third-party connection.

A total of 106 comments were received on the proposed modifications to the Federal Reserve's notice of nonpayment service. A majority of the commenters agreed with the proposed modifications. Several commenters, however, expressed some concern with the proposal. Some of these commenters opposed requiring banks to use their electronic connections to accept notices. One commenter suggested that the Federal Reserve Banks use facsimile systems for notice because it was relatively inexpensive compared to wire notice.

The Board believes that the proposed modifications to the Federal Reserve Banks' notice of nonpayment service are necessary to meet the requirements of Regulation CC and approved this proposal. Further, the Board approved that any depository bank with an on-line electronic connection with the Federal Reserve will be required to receive all notices from the Federal Reserve over an electronic connection either directly or through a designated third party. Electronic connections, for this purpose, include only connections for funds transfer applications and, therefore, do not include electronic connections used solely for tape transmission of ACH items or other activities such as cash ordering.

Truncation and Extended MICR Capture Services

The Act directed the Federal Reserve to consider several electronic alternatives to improve the check processing system, including check truncation. In truncation, the MICR-line information on the check is captured and presented to the paying bank electronically, while the paper checks are retained by the presenting bank. During 1985, the Federal Reserve implemented a pilot program of the truncation process at four Reserve Banks. By the end of 1986, two additional Reserve Banks became participants in the pilot program. The objectives of the pilot included developing, testing, and refining the Federal Reserve's ability to: (1) Provide local storage and retrieval services to paying banks; (2) participate in a pilot sponsored by the National Association for Check Safekeeping (NACS), which offers the potential benefits of truncating eligible checks earlier in the collection stream; and (3) work with NACS representatives to expand the NACS program to include all types of checks.

In December 1987, the Board proposed that all Federal Reserve Banks be permitted to provide truncation services as a permanent service. As part of the

proposed service, the Federal Reserve Banks would participate in the NACS truncation program. Initially, the Reserve Banks would truncate checks for local paying banks, expanding into truncation for nonlocal paying banks as the rules and procedures of NACS become more fully developed.

Under the Federal Reserve pilot program, a Reserve Bank truncates checks for local paying banks. In providing this service, the Reserve Bank captures the complete payment information from the MICR-line of each check, including the nine-digit routing number, account number, check number, and dollar amount. Checks rejected during high-speed processing are also included on the MICR output file. All MICR-captured checks are microfilmed, and unique sequence numbers are inserted into the MICR file and printed on both the microfilm and the physical check. These sequence numbers facilitate Reserve Bank processing of returned checks and retrieval requests. The Reserve Bank delivers the captured MICR-line data and related totals to the paying bank or its agent on magnetic tape or by data transmission, as requested by the paying bank. Under this service, presentment to the paying bank is based on the receipt of electronic presentment, because the paying bank does not receive the physical paper checks. The Federal Reserve Bank stores the physical checks and microfilm for a negotiated period, usually 90 days and seven years, respectively, after which time both are destroyed.

Upon receipt of the MICR data, the paying bank processes and posts the MICR data to the appropriate customer accounts. If a decision is made to return a check, the paying bank notifies the Reserve Bank no later than the published deadline on the business day following the day the MICR data are presented. The Federal Reserve Bank retrieves the physical checks and initiates the return process to the depository bank. The paying bank may also request retrieval services, such as information from a truncated check, a copy of a check, or the original physical check (provided the request is received before the check has been destroyed).

The pilot program incorporates a standard pricing structure and common set of pricing principles used by the Reserve Banks. Local pricing is used to reflect the different processing costs at each office. The prices have remained in effect throughout the pilot program, with minor adjustments. The fee structure contains a basic per item fee and separate fees for returned checks

(initiated by telephone or automated means), retrievals, fine-sort processing, and over-the-counter processing. Reject reentry and microfilming costs are part of the basic per item fee, while large-dollar notice of nonpayment costs are part of the returned check fee.

In the proposal, the Board anticipated that fees at most Reserve offices will approximate those in the pilot. Fee ranges at the six pilot Reserve Banks are as follows:

Basic per item:

—Via tape, \$0.011–\$0.020

—Via transmission, \$0.014–\$0.025

Return item:

—Telephone, \$1.60–\$2.80

—Automated, \$1.35–\$2.30

Retrieval per item, \$1.00–\$2.00

Fine sort:

—Per package, \$0.00–\$2.00

—Per item, \$0.006–\$0.020

Over-the-counter:

—Per package, \$0.50–\$0.50

—Per item, \$0.014–\$0.018

The Board received 155 comments on the truncation service. Eighty-one commenters supported the implementation of truncation services at the Federal Reserve Banks, 24 commenters were opposed, and 50 commenters were silent as to agreement or opposition to the proposed truncation service. Commenters supporting the proposal indicated that truncation is necessary to provide a less costly checking product. These commenters stated that the primary benefit would be the reduction in paper flow.

Commenters opposed to the proposed truncation service stated various reasons for opposition. Eight commenters indicated that receipt of the physical checks is preferred because their customers want the paid checks to be included in the customers' monthly statements. In addition, commenters indicated a need to review the physical check before deciding whether or not to pay the check (i.e., inspections of large-dollar checks, inspections for payable-through checks).

Commenters that did not indicate whether they favored or opposed the Federal Reserve's proposal to provide a truncation service pointed out specific concerns about the technical details of the proposal. These commenters were concerned that the proposed truncation service would not be easily integrated with current bulkfiling, statement cycle, and other operational procedures at paying banks. These commenters indicated that the potential for the service to be successful in the short term was minimal due to low demand; expanded use of truncation by the industry needed to occur first. In

addition, commenters were concerned about the legal aspects associated with properly payable items, proof of payment, and timeliness. While a few commenters pointed out that a mandatory system would receive the maximum benefits because paying banks would not have to maintain dual processing systems for electronic and paper presentments, other commenters indicated that, because of the legal concerns about properly payable items, a voluntary system would be preferable.

Several commenters indicated that it is inappropriate for Federal Reserve Banks to offer local truncation services because private sector service providers currently offer an adequate level of service. One commenter stated that the Federal Reserve should build and support private sector systems already in place, rather than offering its own truncation service. The commenter stated that the Federal Reserve program should foster, not stifle, alternative systems in the intermediate local stages leading toward national truncation. One commenter indicated that the provision of a local truncation service would place undue burden on the Federal Reserve offices.

Federal Reserve policy regarding the provision of new services was set forth by the Board on August 14, 1984, in a paper entitled "The Federal Reserve in the Payments System." The criteria for the Federal Reserve to enter a new service include: (1) Full recovery of costs in the long run; (2) yield of a clear public benefit, including, for example, improving the efficiency of the payments mechanism or reducing the use of real resources; and (3) a finding that other providers alone cannot be expected to provide the service with reasonable effectiveness, scope, and equity, including, for example, a finding that the Federal Reserve's presence is needed to ensure an adequate level of service nationwide, or to avoid undue delay in the development and implementation of the service.

The Federal Reserve Bank's truncation service meets these criteria. It will be priced to recover its costs, including the private sector adjustment factor. Ultimate provision of this service on a nationwide level will promote the efficiency of the payments mechanism and reduce the use of real resources, once sufficient numbers of checks are truncated. The Federal Reserve Banks, which handle approximately 35 percent of all checks written, must be involved to ensure an adequate level of service nationwide. Experience under the NACS program indicates that private sector providers of local truncation services are unwilling to participate in interbank

truncation until a sufficient volume of checks are eligible for truncation. Thus, Federal Reserve involvement should hasten the development and implementation of a nationwide truncation service. Provision of a local truncation service by the Federal Reserve is a necessary first step to a full nationwide interbank truncation service.

The Board approved the offering of the truncation service by the Reserve Banks as a permanent service, effective July 15, 1988. This service will not be a mandatory service, but rather would be offered to paying banks that choose to participate in the truncation program. The fee structure for the truncation service will correspond to that used in the pilot program. Paying banks that participate in the Federal Reserve's local truncation service may establish a dollar limit on the checks eligible for truncation. Under interbank truncation, this dollar limit is governed by NACS rules, which currently set a \$2,500 limit on checks eligible for truncation.

The Board also requested comment on a proposed service that offers many of the same benefits of truncation without stopping the flow of the paper check—the extended MICR capture service. Under this service, which has also been provided as a pilot program, Reserve Banks would deliver payment information by electronic transmission or magnetic tape, provide returned check and retrieval services identical to the truncation service, and deliver the checks to the paying bank several days later using less time-critical transportation. The paying banks are charged for the checks based on the electronic presentment of the MICR data. In addition, paying banks are charged for return and retrieval services identical to the truncation service.

The Board received 80 comments on the extended MICR capture service. In general, commenters agreed with the concept of the extended MICR capture service, with 43 comments in favor, 6 opposed, and 31 neutral. Commenters in favor of the proposal indicated that extended MICR would assist in evaluating the operational components of truncation without experiencing the problems associated with nonreceipt of checks. In addition, customer habits would not need to change because the paying bank could continue to send the physical checks to the customer.

Commenters opposed to the proposal indicated that there is no need for the Federal Reserve to become involved in the extended MICR capture service. One commenter indicated that, while the delivery of check information would be faster, the delivery of paper checks

would be slower, causing potential problems for the paying bank.

The Board believes that the extended MICR capture service will expedite the returned check process. Offering of this service is consistent with the criteria listed in the paper "The Federal Reserve in the Payments System," which is discussed above. This service will not be a mandatory service but rather would be offered to the paying banks that choose to participate in the program. The Board has approved the extended MICR capture service as a permanent service to be offered by the Reserve Banks, effective July 15, 1988. The service will be provided as described above in the pilot program.

Competitive Issues

An important factor considered in the development of the regulatory framework for expedited returns and related Reserve Bank services was the impact on competition in the check collection system. In this regard, the Board requested comment on whether there are any returned check services or other procedural changes for returning banks that the Federal Reserve has not proposed that might assist the returning bank in providing returned check services.

Commenters that supported implementation of the proposed Federal Reserve services indicated that the services are designed to encourage competition as well as improve the check collection and return process. One trade association added that the public and the majority of depository institutions have benefited from the competitive environment that has existed between the Federal Reserve and the correspondent banks.

Other commenters expressed concern that correspondents will lose a significant portion of their returned check income, because the Federal Reserve will become the predominant provider of returned check services, given the availability schedules and deadlines that will be provided by the Federal Reserve Banks. Several commenters urged that the Federal Reserve delay offering returned check services or, at a minimum, delay unbundling returned check costs from forward collection prices until correspondent banks and other interested parties could develop their own returned check products and get some experience with the market pricing mechanism.

The Board implemented the requirements in Subpart C of Regulation CC to improve the check return process effective September 1, 1988, in conjunction with the effective date of

the funds availability and disclosure requirements mandated by the Act. Industry representatives indicated that implementation of these improvements concurrent with the effective date of the funds availability requirements is important to minimize risks to the depository bank from making funds available on a more prompt basis.

To enable banks to comply with these requirements, the Federal Reserve Banks will begin offering returned check services that would meet the requirements in the Act on September 1, 1988. Handling of returned checks by the Federal Reserve must be explicitly priced with the introduction of these new services, since return costs cannot be recovered through the Federal Reserve Banks' forward collection fees as they are today. Some returned checks handled by the Federal Reserve under the new services will not have been collected through the Federal Reserve, and thus will not have been subject to the Federal Reserve's forward collection fees. In addition, paying banks and returning banks will be able to deposit returned checks with the Federal Reserve in various ways that result in different costs being incurred by the Reserve Banks. To provide correspondent banks with as much advance notice as possible in order to develop competing returned check services, the Board published, on April 4, 1988, estimated price ranges and deadlines for the new Federal Reserve returned check services. The Board retained consulting services to survey banks about the published price ranges and deadlines and provide feedback on the likelihood that banks would offer competing returned check services. This effort revealed that the price differentials between raw and qualified returned check services would provide incentives for banks to qualify their returns prior to deposit at the Federal Reserve office. In addition, banks indicated that they would offer returned check services.

A number of commenters focused on the general role of the Federal Reserve in the check collection system, rather than discussing specifically the competitive impact of the proposed Federal Reserve returned check services. These commenters indicated that the competitive presence of the Federal Reserve disadvantages private sector service providers. They asserted that the Federal Reserve has an unfair competitive advantage due to its dual role as regulator and service provider, and its lower price structure, which they believe is due, in part, to the fact that the Federal Reserve does not incur certain costs, such as presentment fees,

that private sector competitors must pay.

The Board has carefully analyzed the proposed services, and believes that they meet the standards that the Federal Reserve established for priced services, as they will recover costs; yield clear public benefits by speeding the handling of returned checks; and because adequate returned check services are unlikely to be provided by the private sector. In this regard, staff notes that the requests for delay in the check return rules from correspondent banks argue in favor of the Federal Reserve providing check return services.

Appendix A—Federal Reserve Policy on Delivery of Returned Checks

The Federal Reserve's policy on the delivery of returned checks is based on the Regulation CC provision governing where a depository bank must accept its returned checks and Reserve Bank's duties as returning banks. Under § 229.32(a) of the regulation, a depository bank must accept returned checks at the location(s) in accordance with its indorsement, or at any location at which the bank accepts checks as a paying bank. The Federal Reserve cannot receive payment for the returned checks until the checks are delivered to the depository bank. Returning banks, including Federal Reserve Banks, are required to handle returned checks expeditiously, under § 229.31(a).

Federal Reserve arrangements for delivery of returned checks will depend on the following factors:

- (1) Whether a depository bank is subject to the expeditious return rule (i.e. whether the bank has transaction accounts);
 - (2) How quickly the checks will be returned to the depository bank;
 - (3) Preference of the depository bank;
 - (4) Established courier routes;
 - (5) The dollar volume of returns to the depository bank, recognizing the particular risks associated with returned checks;
 - (6) Minimization of overall costs of providing Federal Reserve check services.
- These factors allow for a Federal Reserve delivery policy that meets the Federal Reserve Banks' duty for expeditious return, while allowing for delivery arrangements suited to the individual needs of depository banks.

The Federal Reserve policy on delivery of returned checks is as follows:

- A depository bank with transaction accounts may receive returned checks from the Federal Reserve, at no charge, at a location where the Federal Reserve currently delivers the bank's forward collection checks, or in the case of a depository institution that issues payable through drafts, at a location based on the indorsement on the returned check.
- In the case of certain depository institutions, primarily credit unions, that issue payable through drafts, the Reserve Banks would determine the manner of expeditious return based on the location of

the depository bank and the dollar volume of returned checks, taking into account the risk associated with returned checks.

—In instances where the depository bank does not want its returns delivered to the same place as its forward collection checks, or in instances where an institution that issues payable through drafts does not want returns by mail where mail would constitute expeditious return, Reserve Banks may consider the following delivery alternatives:

(1) The depository bank may arrange to have the Federal Reserve deliver the returned checks to a correspondent bank or service bureau that is on an existing courier route, at no charge;

(2) The depository bank may arrange to pick up the returned checks at the Federal Reserve;

(3) The depository bank may elect to have a facsimile or other information concerning the returned checks transmitted by means of an approved depository bank service or truncation arrangement, to a specified location, with the physical check to follow;

(4) The depository bank and the local Federal Reserve office may agree to an alternative arrangement tailored to meet the needs of the depository bank. If the costs of that arrangement exceed the costs of delivery to a location where the Federal Reserve would offer delivery at no charge, the depository bank may be required to absorb the costs of returned check delivery.

Board Action

For the reasons stated above, the Board has adopted a proposal for the Federal Reserve Banks to offer depository institutions several new

returned check services and services to improve the collection of checks. These services will assist depository institutions in complying with the new rules for the collection and return of checks that the Board has, in Docket No. R-0620, adopted to implement the Expedited Funds Availability Act. The Board has also approved check truncation and extended MICR capture services as permanent Federal Reserve Bank services.

By order of the Board of Governors of the Federal Reserve System, May 13, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-11268 Filed 5-26-88; 8:45 am]

BILLING CODE 6210-01-M