

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 10260]
[September 7, 1988]

REGULATION CC

**— Final Preemption Determination for New York
Effective September 1, 1988**

**— Proposed Preemption Determination for Connecticut
Comment Invited by September 20, 1988**

*To All Depository Institutions, and Others Concerned,
in the Second Federal Reserve District:*

The Board of Governors of the Federal Reserve System has issued a final and a proposed interpretation concerning certain preemption determinations under its Regulation CC, "Availability of Funds and Collection of Checks," with respect to the laws of New York and Connecticut. As indicated in the Board's notices in these matters, which have been excerpted from the *Federal Register* of August 24 and appear on the following pages, a final determination has been made that the laws of Illinois and New York have been preempted under Regulation CC, with respect to section 4-213(5) of the Uniform Commercial Code; the Board has also issued for comment a proposed determination that the laws of California, Connecticut, Massachusetts, New Mexico and Rhode Island be preempted under Regulation CC. (For the most part, only Board actions pertaining to the laws of New York and Connecticut have been included in the *Federal Register* excerpt.)

Comments regarding the proposed preemption determination, should be submitted by September 20, 1988 and may be sent to the Board, as indicated in the notice, or to John F. Sobala, Vice President, Check Processing Function of this Bank.

E. GERALD CORRIGAN,
President.

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0640]

Regulation CC; Availability of Funds and Collection of Checks; Preemption Determinations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretations.

SUMMARY: The Board is publishing final official Board interpretations concerning preemption determinations under its Regulation CC, Availability of Funds and Collection of Checks (12 CFR Part 229), with respect to the laws of Illinois and New York and with respect to section 4-213(5) of the Uniform Commercial Code.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel, Legal Division (202/452-3625) or Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452-3874); for the hearing impaired *only*:

Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

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

Provisions of state law governing funds availability that provide for longer availability than the federal law are considered inconsistent with Regulation CC and are preempted by Regulation CC. In addition, state disclosure or notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law. These determinations would be provided upon

the request of a state, bank, or other interested party.

Discussion

On June 28, 1988 (53 FR 24315), the Board published, for a 30-day comment period, proposed interpretations of Regulation CC concerning preemption determinations with respect to the funds availability laws of Illinois, Maine, and New York (53 FR 24315). In conjunction with the proposed determination of Illinois law, the Board requested comment on the relationship between Regulation CC and section 4-213(5) of the Uniform Commercial Code ("U.C.C."). The Board received twelve comments on the proposed interpretations, which are summarized below. The Board is now publishing its final interpretations concerning U.C.C. section 4-213(5) and the Illinois and New York preemption determinations. The Board has deferred its determination regarding the law of Maine at the request of the Maine Attorney General.

Preemption of State Schedules and Exceptions. State law availability schedules often differ from the Regulation CC schedules with respect both to the categories of checks to which the schedules apply and the time periods within which funds must be available for withdrawal. State availability schedules that provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the Act and Regulation CC. Under the Board's interpretation, the state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit that is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit can be further extended by the federal exception in accordance with Regulation CC. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used. The Board had initially proposed a broader preemption scheme; however, the Board's final approach responds to the concerns of state banking regulators that the more protective provisions of state law be retained. This approach also provides a preemption standard that can

be more readily applied by banks in states that have not received preemption determinations from the Board.

Treatment of State Schedules that Provides for the Same Availability as the Federal Schedules. The Board proposed to preempt any state schedule that does not provide for shorter availability than required under Regulation CC. Under this approach, if state law provides for the same availability as federal law, the state law would be preempted. The Maine Attorney General's office argued that only inconsistent state law is preempted by the Act and Regulation CC, and that a state law requiring availability in the same time periods as required by federal law cannot be considered inconsistent. Some states have incorporated the federal schedules into their state law to facilitate state enforcement of these requirements. Under the Board's final interpretations, the only state schedules that are preempted are those that provide for a longer hold than required under Regulation CC; state schedules that provide for availability within the same time periods would not be preempted.

Treatment of Deposits not Subject to Regulation CC. Certain state laws govern the availability of deposits that are not covered by the Regulation CC schedules. For example, the availability schedules of several states apply to "items" deposited to an account. The term "item" may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. The Board proposed that neither the Regulation CC nor the state schedules would apply to deposits of items not subject to Regulation CC's funds availability provisions. The Board also requested comment on two alternative treatments of these deposits: (1) That the state schedules continue to apply to deposits that are not subject to the Regulation CC availability rules; or (2) that the Regulation CC schedules apply to the deposit of all "items" to "accounts" covered by that Regulation.

The Maine Bureau of Banking and the Maine Attorney General's office objected to the federal preemption of deposits not regulated by federal law. They argued that such a broad preemptive approach needlessly restricts the ability of a state to protect the public from excessive holds in circumstances where the federal government has not acted. The Board believes that while funds availability laws would be simpler if state laws applicable to items that are not checks were preempted, states have a

legitimate interest in regulating deposits of these items, and state laws should not be preempted with respect to these items. The Board's final interpretation provides that deposits that are not covered by Regulation CC continue to be subject to the state law and are not subject to the federal law.

* * *

New York. The New York regulation contains availability schedules for local (same city) checks, in-state checks, and out-of-state checks, as well as certain low-risk checks. Different schedules are provided for banks and savings institutions. Certain portions of the New York schedule supersede the availability requirements of Regulation CC. The New York schedules continue to apply to accounts not subject to the Regulation CC availability requirements. The state disclosure requirements are preempted by the Regulation CC disclosure rules to the extent that the state rules pertain to accounts subject to Regulation CC.

* * *

U.C.C. Availability of Cash Deposits Requirement. In conjunction with the proposed preemption determination of Illinois law, the Board requested comment on the relation of U.C.C. section 4-213(5), which provides for next-day availability of "money" deposited in a bank, to the Regulation CC requirement that deposits of cash be made available on either a next-day or two-day basis, depending on whether the cash was deposited at a staffed teller station. This U.C.C. provision has been adopted in each of the 50 states. The next-day availability requirement in the Code is subject to a general variation by agreement provision. The Board proposed that, because the ability to vary this provision of the Code by agreement may allow depository banks to provide availability to their customers in a longer time than permitted by Regulation CC, this Code provision be preempted by the Act and Regulation CC. The Board also requested comment on an alternative approach, whereby this U.C.C. provision would supersede the Regulation CC requirement, but a depository bank could not agree to extend availability beyond the time periods provided in Regulation CC.

The Board has adopted this alternative approach, and has determined that U.C.C. section 4-213(5) governing availability of cash deposits supersedes the federal requirement, but that the ability of a bank to vary this provision by agreement under the Code is limited by the time periods provided in the federal availability schedule.

Summary of Comments

* * *

Four commenters (State of New York Banking Department, New York Clearing House, New York Credit Union League, and Citicorp) responded to the proposed preemption determination for the State of New York. All four commented on the status of checks that are payable by an in-state bank but are nonlocal under Regulation CC. The New York State Banking Department confirmed that the intent of its proposed amendments to the New York funds availability law is to retain state availability schedules for in-state nonlocal checks as the sole feature of state law to escape federal preemption. Two other commenters supported the Banking Department's view. The New York Clearing House supported federal preemption of all state schedules, and stated that if the proposed amendment to the state funds availability schedules were interpreted to supersede the federal schedules, it should supersede only with respect to nonlocal in-state checks.

The State Banking Department also favored allowing the state law provision providing for variation of availability schedules by agreement to stand so long as it does not conflict with Regulation CC. The New York Clearing House favored federal preemption of the New York schedule.

In addition, the New York Clearing House and a large bank took the position that Regulation CC's definition of "local" and "nonlocal" should preempt the state law's definitions and that Regulation CC's special cash withdrawal rule should be available to New York depository banks. The New York Credit Union League objected to the inclusion of payable through banks in Regulation CC's definition of "paying bank" and therefore did not favor federal preemption of New York's "local" and "nonlocal" definitions.

The State Banking Department stated that the Regulation CC definition of "account," should preempt the scope of transaction accounts as defined in New York law. The New York Clearing House suggested that New York banks be allowed to follow either state or federal availability schedules with respect to accounts covered by state law but not by Regulation CC.

A large bank supported federal preemption of all New York exceptions to the availability schedules and requested that all deposited items covered by state law but not by federal law be subject to the federal availability schedules.

The New York Clearing House requested confirmation that New York banks will be able to use calculated availability for nonconsumer accounts as provided by § 229.19(d) of Regulation CC.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is amended as follows:

PART 229—[AMENDED]

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

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

2. A new Appendix F is added to read as follows:

Appendix F—Official Board Interpretations; Preemption Determinations

Uniform Commercial Code, Section 4-213(5)

Section 4-213(5) of the Uniform Commercial Code ("U.C.C.") provides that money deposited in a bank is available for withdrawal as of right at the opening of business of the banking day after deposit. Although the language "deposited in a bank" is unclear, arguably it is broader than the language "made in person to an employee of the depository bank", which conditions the next-day availability of cash under Regulation CC (§ 229.10(a)(1)). Under Regulation CC, deposits of cash that are not made in person to an employee of the depository bank must be made available by the second business day after the banking day of deposit (§ 229.10(a)(2)). Therefore, this provision of the U.C.C. may call for the availability of certain cash deposits in a shorter time than provided in Regulation CC.

This provision of the U.C.C., however, is subject to Section 4-103(1), which provides, in part, that "the effect of the provisions of this Article may be varied by agreement * * *." (The Regulation CC funds availability requirements may not be varied by agreement.) U.C.C. Section 4-213(5) supersedes the Regulation CC provision in § 229.10(a)(2), but a depository bank may not agree with its customer under section 4-103(1) of the Code to extend availability beyond the time periods provided in § 229.10(a) of Regulation CC.

* * *

New York

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B, and, in connection therewith, Subpart A, of Regulation CC, preempt the provisions of New York law concerning the availability of funds. This preemption determination specifies those provisions in the New York funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding U.C.C. Section 4-213(5), pertaining to availability of cash deposits, in paragraph (a), above.)

The New York State Banking Department, pursuant to section 14-d of the New York Banking Law, has issued regulations requiring that funds deposited in an account be made available for withdrawal within specified time periods, and providing certain exceptions to those availability schedules.

Part 34 of the New York State Banking Department's General Regulations establishes time frames within which commercial banks, trust companies, and branches of foreign banks ("banks") and savings banks, savings and loan associations, and credit unions ("savings institutions") must make funds deposited in customer accounts available for withdrawal.

Different schedules apply to deposits in banks and savings institutions. Deposits must be made available for withdrawal not later than the following number of business days following the business day of deposit:

	Banks	Savings institutions
Local checks (same city)	3	4
In-state checks	4	5
Out-of-state checks	7	9
\$100 or less checks; on us checks (in-state); Treasury checks; NY state/local gov't checks.....	2	2
Nonproprietary ATMs.....	+1	+1

Note: Part 34 requires that funds be available at the start of the business day subsequent to the number of days specified in the regulation. To simplify comparisons of the New York and federal regulations, the Board has converted the time periods used in Part 34 to the method used in Regulation CC; i.e. the number of business days following the day of deposit.

Coverage

The New York law and regulation govern the availability of funds deposited into savings and time

deposits, as well as to "accounts" as defined in § 229.(a) of Regulation CC. The federal preemption of state funds availability laws only applies to "accounts subject to Regulation CC, which generally include transaction accounts. Thus, to the extent that the New York law applies to deposits in time, savings, and other accounts (such as accounts in which the account holder is another bank or foreign bank) that are not "accounts" under Regulation CC, the state funds availability law will continue to apply. (Note, however, that under § 229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.) The New York State Superintendent of Banks stated, in her comments to the Board, that "[t]he Banking Department believes that the Regulation CC definition of account to the extent it applies to transaction accounts preempts the scope of the accounts as defined in Part 34."

The New York law and regulation apply to "items" deposited to accounts. Part 34.2(e) defines "item" as "a check, negotiable order of withdrawal or money order deposited into an account". The Board interprets the definition of "item" in New York law to be consistent with the definition of "check" in Regulation CC (§ 229.2(k)).

Availability Schedules

The following provisions of New York law provide for the same or a shorter hold for certain categories of checks than is provided under Regulation CC, and supersede the federal availability requirements. All other provisions of the New York law relating to the availability of funds deposited in "accounts" are preempted by Regulation CC, because they provide for longer availability than is provided for in Regulation CC.

Temporary Schedule. The New York regulation requires that items payable by a local bank or savings institution (i.e., one that is located in the same city, town, or village, and which uses the same clearing facility, as the depository bank) be made available for withdrawal not later than the start of business on the third business day following deposit, if deposited in a bank (Part 34.2(a)(1)). The New York Superintendent of Banking has interpreted "clearing facility" to include both check clearinghouse associations and Federal Reserve check processing facilities. (See December 21, 1983, letter from Vincent Tese, New York State Superintendent of Banks, regarding adoption of Part 34.) Regulation CC (§ 229.11(b)) also requires

that the proceeds of these check deposits be made available for withdrawal not later than the start of business on the third business day following deposit. Regulation CC, however, includes a time period adjustment which permits a depository bank to delay the time it must make funds available by cash or similar means, for deposits of local checks cleared outside a check clearinghouse arrangement (§ 229.11(b)(2)). New York law supersedes this time period adjustment for withdrawal by cash and similar means for local checks (as defined by New York law) deposited in banks and cleared through the Federal Reserve.

The New York regulation requires items payable by an in-state bank or savings institution to be available for withdrawal not later than the start of business on the fourth business day following deposit, if deposited in a bank (Part 34.3(a)(2)), or the fifth business day following deposit, if deposited in a savings institution (Part 34.3(b)(2)). These time periods are shorter than the seventh business day availability required for nonlocal checks under § 229.11(c) of Regulation CC, although they are not necessarily shorter than the schedules for nonlocal checks set forth in § 229.11(c)(2) and Appendix B-1 of Regulation CC. Thus, these state schedules supersede the federal schedule to the extent that they apply to an item payable by a New York bank or savings institution that is defined as a nonlocal check under Regulation CC and the applicable state schedule is less than the applicable schedule specified in § 229.11(c) and Appendix B-1.

Part 34.3 (a)(8) and (b)(8) provide that for any item deposited at a shared or nonproprietary electronic facility, the depository bank may, at its option, add one business day to the relevant state schedule for the item being deposited. In the following cases, the state schedules applicable to deposits at nonproprietary ATMs to accounts in banks supersede the federal schedule, which provides for seventh day availability:

- Treasury checks, state and local government checks, on us in-state checks—Third business day
- Local checks—Fourth business day
- In-state checks—Fifth business day

The state schedules applicable to deposits at nonproprietary ATMs to accounts in savings institutions supersede the federal schedule for the following items:

- Treasury checks, state and local government checks, on us in-state checks—Third business day
- Local checks—Fifth business day

In-state checks—Sixth business day

Permanent Schedule. Under Part 34.3(a)(2), in-state checks must be made available for withdrawal by the start of business on the fourth business day following deposit, if deposited in a bank, and the fifth business day following deposit, if deposited in a savings institution. The New York schedule for banks supersedes the Regulation CC requirement in the permanent schedule that nonlocal checks be made available for withdrawal by the start of the fifth business day following deposit, with a time period adjustment for withdrawals by cash or similar means, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under § 229.12(c)(2) and Appendix B-2 of Regulation CC. In addition, the New York schedule for savings institutions supersedes the Regulation CC time period adjustment in the permanent schedule for withdrawal by cash or similar means, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under § 229.12(c)(2) and Appendix B-2.

The following charts show the relationship between the New York law that supersedes Regulation CC and the temporary and permanent availability schedules in Regulation CC. Section 229.10 (b) and (c) of Regulation CC preempt the New York law and thus are not affected by it.

**TEMPORARY AVAILABILITY SCHEDULE—
NEW YORK**

	Banks	Savings institutions
Local checks.....	1 3	3
In-state nonlocal checks	4	5
Out-of-state nonlock checks..	3 4	7
Deposits at Nonproprietary ATMs Treasury checks, state/local gov't checks, on us in-state checks.....	3	3
Local checks (same city).....	4	5
In-state checks	5	6
All other deposits.....	7	7

¹ Withdrawals by cash or similar means for local checks cleared outside the same *check clearing facility* (i.e., outside a check clearinghouse or the Federal Reserve) may be delayed in accordance with § 229.11(c).

² Withdrawals by cash or similar means for local checks cleared outside a *check clearinghouse* may be delayed in accordance with § 229.11(c).

³ In order to extend the hold beyond the availability schedule, a state exception as well as a federal exception must be applicable. In no case can the hold be extended beyond that permitted under Regulation CC.

⁴ Schedule is subject to reductions for certain nonlocal checks. See Appendix B-1 of Regulation CC.

**PERMANENT AVAILABILITY SCHEDULE—
NEW YORK**

	Banks	Savings institutions
Local checks.....	1 2	2
In-state nonlocal checks	3 4	5
Out-of-state nonlock checks..	1 5	5

¹ Withdrawals by cash or similar means may be delayed in accordance with § 229.12(d).

² Schedule is subject to reductions for certain nonlocal checks. See Appendix B-2 of Regulation CC.

³ In order to extend the hold beyond the availability schedule, a state exception must be applicable. To extend the hold beyond the applicable federal availability schedule, a federal exception must also be applicable. In no case can the hold be extended beyond that permitted under Regulation CC.

Exceptions to the Availability Schedules. New York law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions (Part 34.4). In all instances where the federal availability schedule preempts the state availability schedule, the state exceptions do not apply. In such cases, the depository bank may only invoke the federal exceptions. For those deposits to which the state availability schedule applies, however, the depository bank may invoke a state exception and place a hold on the deposit up to the federal availability schedule limit for that type of deposit. Once the federal availability schedule limit is reached, the depository bank may further extend the hold under any of the federal exceptions that apply to that deposit. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by the law, it must give notice of the extended hold to its customer in accordance with § 229.13(g) of Regulation CC.

Variation by Agreement. Part 34.4(f) provides that the New York regulation does not prohibit a depository bank from agreeing with its customer to make funds available for withdrawal in a longer period of time than prescribed in New York law because of special circumstances, "provided that such agreement is not contained in a preprinted form and is not a usual, regular business practice of the depository bank." The variation by agreement provision would remain in effect for those provisions of New York law that supersede Regulation CC; however, a depository bank could not agree with its customer to extend availability beyond the times permitted under Regulation CC.

Business Day/Banking Day. New York law requires availability within a specified number of "business days"

following the "business day" of deposit. "Business day" is defined as any day excluding Saturdays, Sundays, and legal holidays (Part 34.2(c)). Legal holiday is not further defined in the regulation. The New York definition of business day is preempted by the Regulation CC definitions of "business day" and "banking day".

Part 34.2(c) also provides that "for electronic branches, opening and closing times shall be the hours of the closest manned office of the depository bank." The Commentary to the Regulation CC definition of "banking day" provides that "deposits 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." The Regulation CC rule to determine what constitutes a banking day for ATM deposits preempts the New York provision.

Disclosures

Part 34.5 of New York law requires depository banks to disclose their funds availability policy to their customers, and to post their availability schedule in each branch location. The purposes of the disclosures concerning funds availability appear to be met by the disclosure requirements in Regulation CC. Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts". Thus, Part 34.5 of New York law is preempted by Regulation CC, to the extent that it applies to "accounts", as defined by Regulation CC. The New York disclosure rules would continue to apply to savings, time, and other accounts not governed by Regulation CC disclosure requirements.

By order of the Board of Governors of the Federal Reserve System, August 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-19146 Filed 8-23-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0644]

Regulation CC; Availability of Funds and Collection of Checks; Preemption Determinations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed interpretations.

SUMMARY: The Board is publishing for comment proposed official Board interpretations concerning preemption determinations under its Regulation CC,

Availability of Funds and Collection of Checks (12 CFR Part 229), with respect to the laws of California, Connecticut, Massachusetts, New Mexico, and Rhode Island.

DATES: Comments must be submitted on or before September 20, 1988.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

Provisions of state law governing funds availability that do not supersede federal law are considered inconsistent, and are thus preempted by Regulation CC. Thus, a state law that permits a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC is preempted by that regulation. In addition, state disclosure or notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations as to whether state law

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

Discussion

The Board is publishing, for a 30-day comment period, its interpretations of Regulation CC concerning preemption determinations with respect to the laws of California, Connecticut, Massachusetts, New Mexico, and Rhode Island.

Preemption of State Schedules and Exceptions. State law availability schedules often differ from the Regulation CC schedules with respect both to the categories of checks to which the schedules apply and the time periods within which funds must be available for withdrawal. State availability schedules which provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the Act and Regulation CC. Under the Board's proposed interpretations, the state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit that is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit can be further extended under the federal exception in accordance with Regulation CC. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used. This approach provides a preemption standard that can be more readily applied by banks in states that have not received preemption determinations from the Board.

Treatment of State Schedules that Provide for the Same Availability as the Federal Schedules. According to the provisions of the Act, only inconsistent state law is preempted by the Act and Regulation CC. The Board has determined that a state law requiring availability in the same time periods as required by federal law is not inconsistent with Regulation CC. Some states have incorporated the federal schedules into their state law to

facilitate bank compliance with a single standard while retaining state enforcement of these requirements. Under the Board's interpretations, the only state schedules that are preempted are those that provide for a longer hold than required under Regulation CC; state schedules that provide for availability within the same time periods would not be preempted.

Treatment of Deposits not Subject to Regulation CC. Certain state laws govern the availability of deposits that are not covered by the Regulation CC schedules. For example, the availability schedules of several states apply to "items" deposited to an account. The term "item" may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. The Board believes that while funds availability laws would be simpler if state laws applicable to items that are not checks were preempted, states have a legitimate interest in regulating deposits of these items, and state laws should not be preempted with respect to these items. The Board's proposed interpretations provide that deposits not covered by Regulation CC continue to be subject to the state law.

Connecticut. Connecticut law provides availability schedules for deposits of on us checks, in-state checks, and out-of-state checks. The state law also provides certain exceptions to those schedules. Generally, the state schedules and exceptions allow longer hold periods than the federal schedules and Regulation CC will preempt; however, out-of-state nonlocal checks will continue to be governed by the shorter state schedule. The state schedules will also continue to apply to items such as nonnegotiable instruments that are not covered by Regulation CC. In addition, the Connecticut law, including disclosure requirements, will continue to apply to accounts, such as savings and time accounts, not subject to Regulation CC.

* * *

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

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

PART 229—[AMENDED]

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

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

2. Appendix F is amended by adding preemption determinations for the states of California, Connecticut, Massachusetts, New Mexico, and Rhode Island alphabetically to read as follows:

Appendix F—Official Board Interpretations

* * *

Connecticut
Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act and Subpart B, and, in connection therewith, Subpart A of Regulation CC, preempt provisions of Connecticut law relating to the availability of funds. This preemption determination specifies those provisions of the Connecticut funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1987, Connecticut amended its statute governing funds availability (Conn. Gen. Stat. section 36-9v), which requires Connecticut depository institutions to make funds deposited in a checking, time, interest, or savings account available for withdrawal within specified periods.

Generally, the Connecticut statute provides that items deposited in a checking, time, interest, or savings account at a depository institution must be available for withdrawal on the second business day after deposit if payable by the depository bank; the fourth business day after deposit if payable by a Connecticut depository institution; and the sixth business day after deposit if payable by a depository institution not located in Connecticut. Exceptions to the schedules are provided for items received for deposit for the purpose of opening an account and for items that the depository bank has reason to believe will not clear. The longer hold period for items subject to an exception is undefined. The Connecticut statute also requires availability policy disclosures to depositors in the form of written notices and notices posted conspicuously at each branch.

Coverage

The Connecticut statute governs the availability of funds deposited in savings and time accounts, as well as "accounts" as

defined in § 229.2(a) of Regulation CC. The federal preemption of state funds availability requirements only applies to "accounts" subject to Regulation CC, which generally consist of transaction accounts. Thus, the Connecticut availability schedules, exceptions, and disclosure requirements continue to apply to deposits in time and savings accounts that are not "accounts" under Regulation CC. (Note, however, that under § 229.19(e) or Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.) The Connecticut statute would also continue to apply to transaction accounts subject to the state law, but not covered by Regulation CC, such as those where the account holder is another bank.

The Connecticut statute applies to "items" deposited to accounts. This term encompasses instruments that are not defined as "checks" in Regulation CC (§ 229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Connecticut law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions. Certain other items, which are "checks" under Regulation CC but are not covered by the Connecticut law, such as payable through drafts payable by a nondepository institution, would be subject to the provisions of Regulation CC.

Availability Schedules

Temporary Schedule. Connecticut law provides that certain checks that are nonlocal under Regulation CC must be available in a shorter time (sixth business day after deposit for checks payable by depository institutions not located in Connecticut) than under the federal regulation (seventh business day after deposit under the temporary schedule for nonlocal checks). Accordingly, the Connecticut law preempts Regulation CC with respect to nonlocal checks (other than checks covered by Appendix B-1) deposited in "accounts" until the federal permanent availability schedules take effect on September 1, 1990.

The Connecticut statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the opening of the seventh business day after deposit. To the

extent that the Connecticut schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

Exceptions to the Availability Schedule. The Connecticut law provides exceptions for items received for deposit for the purpose of opening new accounts and for items that the depository bank has reason to believe will not clear. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule (i.e., nonlocal out-of-state checks under the temporary schedule), the state exemptions may be used to extend the state availability schedule (of six business days) to meet the Federal availability schedule (of seven business days under the temporary schedule). Once the deposit is held up to the federal availability schedule limit under a state exception, the depository bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with § 229.13(g) of Regulation CC.

Disclosures

The Connecticut statute (Conn. Gen. Stat. section 36-9d(b)) requires written notice to depositors of an institution's check hold limitation policies and requires a notice to be posted in each branch. The purposes of the disclosures concerning funds availability appear to be met by the disclosure requirements in Regulation CC.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" (§ 229.20(c)(2)). Thus, the Connecticut statute is preempted by Regulation CC to the extent that these disclosure provisions apply to "accounts" as defined by Regulation CC. The Connecticut disclosure rules would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

* * *

By order of the Board of Governors of the Federal Reserve System, August 18, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-19147 Filed 8-23-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE BANK
OF NEW YORK

At-lic. no. 10260

September 29, 1988

REGULATION CC

Payable Through Routing Numbers

*To All Depository Institutions
in the Second Federal Reserve District:*

As indicated in our Circular No. 10256, dated August 23, 1988, the U.S. District Court for the District of Columbia ruled that the definition of paying bank in Regulation CC was inconsistent with the Expedited Funds Availability Act and invalid to the extent that it defined a credit union share draft payable through a bank as local or nonlocal depending on the location of the payable through bank rather than the payor credit union for purposes of the availability requirements in Regulation CC. The Board accordingly adopted an interim amendment to the regulation, conforming the definition to the court decision.

In an effort to assist depository institutions in identifying payable through share drafts and other checks written on banks that are payable through other banks in order to comply with the interim rule amending Regulation CC, the staff of the Board of Governors has compiled a list of payable through banks and corresponding payable through routing numbers; the list is printed on the following pages.

Please note that the list may not be complete or totally accurate.

As additional information is received, the list will be updated. Questions regarding this matter should be addressed to your local Federal Reserve office, as indicated below:

Cranford Office

Fred A. Denesevich (201) 272-9000;
Reginald J. Skowronski (201) 272-9000

Utica Office

Angus J. Kennedy (315) 768-2220;
William M. Kirk (315) 768-2250

New York Head Office

Matthew J. Puglisi (212) 720-6551;
Patricia Cabello (212) 720-7780

Buffalo Branch

David P. Schwarzmuller (716) 849-5018;
W. Raymond Gatgens (716) 849-5051

Jericho Office

Anthony N. Sagliano (516) 997-4569;
Mary Anne Banevicius (516) 997-4905

JOHN F. SOBALA,
Vice President.

Routing Numbers Used for Payable Through Drafts*
(By Federal Reserve District)

First District

Union Trust Bank	0211-0110-8
Connecticut National Bank	0119-0044-5
Key Bank	0112-0060-8
Casco Bank	0112-0002-2

Second District

Chase Manhattan Bank, N.A.	0219-0947-8
Empire Corporate FCU	2213-8171-5
Chase Lincoln Bank	0223-0017-3

Third District

First Pennsylvania Bank	0310-0002-4
-------------------------------	-------------

Fourth District

National City Bank	0410-0012-4
Central Trust Company	0420-0039-8
Pittsburgh National Bank	0430-0009-6

Fifth District

Sovran Bank	0510-0001-7
Crestar Bank	0510-0002-0
Signet Bank	0510-0677-8
Dominion Bank	0514-0054-9
First National Bank of Maryland	0520-0011-3

Sixth District

First American Bank of Atlanta	0610-0025-6
Central Bank of the South	0620-0118-6
Sun Bank	0660-0060-4
Florida National Bank	0632-0036-8
City National Bank	0660-0436-7

Seventh District

Merchant National Bank & Trust (IN)	0740-0006-5
Chemical Bank (MI)	0724-1001-3
Michigan National Bank	0720-0080-5
Credit Union Central (MI)	2724-7807-5
NBD Detroit (Pontiac Branch)	0720-0032-6
Cleveland State Bank (WI)	0759-0485-6
First National Bank of Kenosha (WI)	0759-0065-6
First National Bank of Menasha (WI)	0759-0164-2
First Interstate Bank of Appleton (WI)	0759-0087-6
Iowa Corporate Central CU	2730-8267-7

Eighth District

Centere Bank, Rolla (MO)	0815-0289-9
Pulaski Bank & Trust (AR)	0820-0779-1
Liberty National Bank (KY)	0830-0013-7

* This list contains routing numbers of which the Federal Reserve is aware that are used for payable through drafts that are payable by credit unions and other depository institutions.

Ninth District

First Bank St. Cloud (MN)	0919-0532-1
First American National Bank (MN)	0919-0028-7
Security State Bank (MN)	0919-1238-5
Norwest Bank (St. Paul Branch)	0960-0010-8
Western Bank (SD)	0914-0934-8
Community National Bank (MN)	0919-0148-0

Tenth District

U.S. Central Corporate CU	3011-8962-0
Kansas Corporate CU	3011-8011-1
Missouri Corporate CU	2810-8558-5
Colorado Corporate CU	3070-8739-9
First National Bank of Henryetta	1031-0115-2
Security Bank of Miami	1031-1090-7
Western National Bank	1039-0201-8

Eleventh District

Town North National Bank	1119-0450-3
--------------------------------	-------------

Twelfth District

Security Pacific	1220-0004-3
Nevada National Bank	1212-0015-8
Wells Fargo Bank	1210-0024-8
Federal Home Loan Bank	1211-3994-4
Union Bank	1220-0077-1 and 1210-0097-6
Wescorp	3222-8086-7
Pacific First FSB	3250-7155-2
Ben Franklin S&L	3230-7038-0
Evergreen Bank	1250-0639-0
League Central Credit Union, Reno	3212-8140-1
First Nationwide Savings	3210-7000-7
Bank of Hawaii	1213-0102-8
First Security Bank (UT)	1240-0001-2
Idaho Corporate Credit Union	3241-8398-8
First Interstate Bank of California	1220-0021-8