

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10415**]
December 19, 1990]

REGULATION CC
— Interim Rule on Deposits at Nonproprietary ATMs
— Comment Invited by January 11, 1991

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

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has issued for public comment interim amendments it has adopted to Regulation CC to conform the regulation to a recent amendment to the Expedited Funds Availability Act, pending adoption of a final rule.

Comment is requested by January 11, 1991.

The amendment, which was enacted on November 28, 1990, extends the availability schedules for deposits to nonproprietary automated teller machines for a two-year period.

Because the amendment to the Expedited Funds Availability Act became effective upon enactment, there was no opportunity for the Board to publish proposed regulations for comment prior to the effective date of the amendment to the Act.

Enclosed — for depository institutions and those who maintain sets of Board regulations — is a copy of the interim rule, as published in the *Federal Register* of December 11; additional, single copies may be obtained at this Bank (33 Liberty Street) in the Issues Division on the first floor.

As indicated in the notice, the interim rule has a retroactive effective date of September 1, 1990; however, the Board of Governors is requesting comment pending the adoption of a final rule. Comment may be sent to the Board, as specified in the notice, or to John F. Sobala, Vice President, Check Function of this Bank, by January 11, 1991.

E. GERALD CORRIGAN,
President.

Tuesday
December 11, 1990
Vol. 55, No. 238
Pp. 50816-50819

federal register

Regulation CC; Docket No. R-0717
Interim Rule on Nonproprietary ATMs.
Effective September 1, 1990

[Enc. Cir. No. 10415]

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0717]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comment.

SUMMARY: The Board is amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act ("Act") (see the Cranston-Gonzales National Affordable Housing Act, Pub. L. No. 101-625, § 1001). The amendments extend the availability schedules for deposits to nonproprietary automated teller machines ("ATMs") for a period of two years. The amendments to the Act were signed into law on November 28, 1990, with a retroactive effective date of September 1, 1990. The Board has adopted these conforming changes to Regulation CC on an interim basis. The Board is requesting comments on the interim rule pending adoption of a final rule.

DATES: *Effective date:* September 1, 1990. *Comment date:* Comments must be submitted on or before January 11, 1991.

ADDRESSES: Comments, which should refer to Docket No. R-0717, 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 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), or Kathleen M. Connor, Senior Financial Services Analyst (202/452-3917), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division. For information regarding modifications to disclosures or Appendix C, contact Thomas J. Noto, Staff Attorney (202/452-3667), or Jane E. Ahrens, Staff Attorney (202/452-3667), Division of Consumer and Community Affairs. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Expedited Funds Availability Act specifies the time periods within which funds deposited at ATMs must be made available for withdrawal. Different rules applied under the temporary schedule (which was effective from September 1, 1988, to August 31, 1990) to deposits at nonproprietary ATMs¹ than to deposits at proprietary ATMs, because of operational differences in the way these deposits are processed. During consideration of the Act, banks reported to the Congress on the processing limitations associated with accepting deposits at nonproprietary ATMs. They indicated that the account-holding bank does not have the information necessary to place holds on nonproprietary ATM deposits because the deposits are removed and processed by the ATM operator rather than the account-holding bank. Given these limitations, the Act allowed the account-holding bank to treat any such deposits as though they were composed of nonlocal checks under the temporary schedule. At that time, the Congress anticipated that the processing limitations that necessitated the special availability rule for nonproprietary ATM deposits under the temporary schedule would be addressed by the time the permanent schedule became effective in September 1990. Therefore, under the permanent schedule, deposits at nonproprietary ATMs generally had to be made available for withdrawal within the same time periods as deposits made at staffed teller facilities.

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

In addition, depository institutions and ATM operators have expressed concern that the potential for fraud will

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

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

On November 28, 1990, the President signed into law the Cranston-Gonzales National Affordable Housing Act (Pub. L. 101-625; § 1001), which amended the Expedited Funds Availability Act to extend the schedules applicable to deposits at nonproprietary ATMs for a two-year period. The Board is amending Regulation CC to conform to this recent amendment of the Act.

Section 229.12 of Regulation CC sets forth the permanent availability schedule under which funds deposited in an account by local and nonlocal checks must be made available for withdrawal. A new § 229.12(f) has been added to provide a special rule for

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

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

deposits made at nonproprietary ATMs. Section 229.12(f) provides that during the period from September 1, 1990, through November 27, 1992, a depository bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks under the permanent schedule, i.e., make them available by the fifth business day after the day of deposit. Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit, and nonlocal checks deposited at a nonproprietary ATM must continue to be made available by the fifth business day following the banking day of deposit. This rule does not apply to deposits made at proprietary ATMs.

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

Section 229.16(b)(5) requires banks wishing to take advantage of the extended hold for deposits at nonproprietary ATMs to disclose this to their customers in their initial disclosures. Model Clause C-10, which can be used to make this disclosure, has been revised to reflect the new rules for nonproprietary ATM deposits. Conforming changes have also been made to the commentary to Appendix C and the commentary to § 229.16.

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

with language indicating the effective date of the change.

The Board believes that it is necessary to amend the regulation with an interim amendment, so that the regulation conforms to the statutory requirements, and so that banks that permit their customers to make deposits at nonproprietary ATMs can rely on the Board's regulation in providing availability in accordance with the amended requirements. If the Board's rule is not effective immediately, banks that wish to take advantage of the provisions of the Act regarding nonproprietary ATMs, which reflect the intent of the Congress to reduce the risk for banks of accepting deposits at nonproprietary ATMs, would be in violation of Regulation CC because the current provisions call for faster availability of these deposits than is required under the amended Act. There was no opportunity for the Board to publish proposed regulations for comment prior to the effective date of the amendment to the Act, which was effective upon enactment. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim amendment effective on September 1, 1990, without regard for the 30-day period provided for in U.S.C. 553(d).

Initial Regulatory Flexibility Analysis: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b)), a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary information above. The Board's interim rule requires no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule shall apply. The interim rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a significant negative economic impact on small

institutions, but rather will decrease the risk to all depository banks by enabling them to impose longer holds on deposits made to nonproprietary ATMs.

List of Subjects in 12 CFR Part 229

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

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

PART 229—[AMENDED]

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

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

2. In § 229.12, paragraph (a) and the introductory text to paragraph (b) are revised, paragraph (b)(3) is removed, paragraphs (b)(4) and (b)(5) are redesignated as (b)(3) and (b)(4), newly redesignated paragraph (b)(4) is revised, paragraph (c)(1) introductory text and the first and third sentences of paragraph (d) are revised, and a new paragraph (f) is added to read as follows:

§ 229.12 Permanent availability schedule.

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

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

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

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

(d) *Time period adjustment for withdrawal by cash or similar means.* A depository bank may extend by one business day the time that funds

deposited in an account by one or more checks subject to paragraphs (b), (c), or (f) of this section are available for withdrawal by cash or similar means.

* * * A depository bank shall, however, make \$400 of these funds available for withdrawal by cash or similar means not later than 5 p.m. on the business day on which the funds are available under paragraphs (b), (c), or (f) of this section.

* * * * *

(f) *Deposits at nonproprietary ATMs.*

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

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

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

(A) Cash;

(B) A check described in § 229.10(c)(1)

(i) through (vi); and

(C) A check described in paragraph (b) of this section.

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

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

Appendix C to Part 229—[Amended]

3. In model clause C-10, the heading and the first sentence under the subheading "Deposits at Automated Teller Machines" are revised to read as follows:

C-10—Automated Teller Machine Deposits (Permanent Schedule, Extended Holds)

Deposits at Automated Teller Machines

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

Appendix E to Part 229—[Amended]

4. Appendix E is amended as set forth below:

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

Section 229.12 Permanent Availability Schedule

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

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

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

(f) *Deposits at nonproprietary ATMs.* The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. Notwithstanding other provisions of the regulation concerning availability requirements, during the period from September 1, 1990, through November 27, 1992, a depository bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks under the permanent schedule. Thus from September 1, 1990, to November 27, 1992, a deposit at a nonproprietary ATM on a Monday, including any deposit by cash or

checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week.

Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit. Nonlocal checks deposited at a nonproprietary ATM must continue to be made available by the fifth business day following the banking day of deposit. This rule does not apply to deposits made at proprietary ATMs.

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

Section 229.16 Specific Availability Policy Disclosure

* * * * *

(b) * * *

* * * * *

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

* * * * *

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

Appendix C—Model Forms, Clauses, and Notices

* * * * *

Model C-10.

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

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 5, 1990.

William W. Wiles,
Secretary of the Board.

[FR Doc. 90-28928 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M