

H-Cir. No. 10458(a)

May 22, 1991

*To All Depository Institutions in the Second
Federal Reserve District, and Others
Maintaining Sets of Board Regulations:*

Enclosed is a copy of a revised Regulation CC pamphlet, "Availability of Funds and Collection of Checks," effective February 1, 1991, of the Board of Governors of the Federal Reserve System. (Because of the size of the pamphlet, and the placement of the type, we are unable to punch holes.)

Also enclosed is a revised pamphlet for Regulation J, "Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks," effective January 1, 1991.

Both pamphlets supersede the previous printings of those regulations and any subsequent amendments thereto.

Circulars Division
FEDERAL RESERVE BANK OF NEW YORK

Af-10458 (A)

Regulation J Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks

12 CFR 210; as amended effective January 1, 1991



(4) 820017

Regulation
Collection
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by

Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

March 1991

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Regulation J

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire

12 CFR 210*; as amended effective January 1, 1991

SUBPART A—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS

SECTION 210.1—Authority, Purpose, and Scope

The Board of Governors of the Federal Reserve System (“Board”) has issued this subpart pursuant to the Federal Reserve Act, section 13 (12 USC 342), section 11(i) (12 USC 248(i)), section 16 (12 USC 248(o), 360); the Expedited Funds Availability Act (12 USC 4001 et seq.); and other laws. This subpart governs the collection of checks and other cash and noncash items and the handling of returned checks by Federal Reserve Banks. Its purpose is to provide rules for collecting and returning items and settling balances.

SECTION 210.2—Definitions

As used in this subpart, unless the context otherwise requires—

(a) “Actually and finally collected funds” means cash or any other form of payment that is, or has become, final and irrevocable.

(b) “Bank” includes a depository institution as defined in section 19 of the Federal Reserve Act (12 USC 461(b)).

(c) “Bank draft” means a check drawn by one bank on another bank.

(d) “Banking day” means a day during which a bank is open to the public for carrying on substantially all its banking functions.

(e) “Cash item” means—

(1) a check other than one classified as a noncash item under this section; or

(2) any other item payable on demand and

collectible at par that the Reserve Bank of the District in which the item is payable is willing to accept as a cash item. “Cash item” does not include a returned check.

(f) “Check” means a draft, as defined in the Uniform Commercial Code, that is drawn on a bank and payable on demand. “Check as defined in 12 CFR 229.2(k)” means an item defined as a check in 12 CFR 229.2(k) for purposes of subpart C of part 229.

(g) “Item” means an instrument for the payment of money, whether negotiable or not, that is—

(1) payable in a Federal Reserve District¹ (“District”);

(2) sent by a sender to a Reserve Bank for handling under this subpart; and

(3) collectible in funds acceptable to the Reserve Bank of the District in which the instrument is payable.

Unless otherwise indicated, “item” includes both a cash and a noncash item, and includes a returned check sent by a paying or returning bank. “Item” does not include a check that cannot be collected at par, or an “item” as defined in section 210.26 that is handled under subpart B.

(h) “Nonbank payor” means a payor of an item, other than a bank.

(i) “Noncash item” means an item that a receiving Reserve Bank classifies in its operating circulars as requiring special handling. The term also means an item normally received as a cash item if a Reserve Bank decides that special conditions require that it handle the item as a noncash item.

(j) “Paying bank” means—

(1) the bank by which an item is payable, unless the item is payable or collectible at

* Code of Federal Regulations, title 12, chapter II, part 210.

¹ For purposes of this subpart, the Virgin Islands and Puerto Rico are deemed to be in the Second District, and Guam, American Samoa, and the Northern Mariana Islands in the Twelfth District.

or through another bank and is sent to the other bank for payment or collection;

(2) the bank at or through which an item is payable or collectible and to which it is sent for payment or collection; or

(3) The bank whose routing number appears on a check in magnetic characters or fractional form and to which the check is sent for payment or collection.

(k) "Returned check" means a cash item or a check as defined in 12 CFR 229.2(k) returned by a paying bank, including a notice of nonpayment in lieu of a returned check, whether or not a Reserve Bank handled the check for collection.

(l) "Sender" means any of the following that sends an item to a Reserve Bank for forward collection: a depository institution, a clearing institution, another Reserve Bank, an international organization, a foreign correspondent, or a branch or agency of a foreign bank maintaining reserves under section 7 of the International Banking Act of 1978 (12 USC 347d, 3105).

(1) "Depository institution" means a depository institution as defined in section 19(b) of the Federal Reserve Act (12 USC 461(b)).

(2) "Clearing institution" means—

(i) an institution that is not a depository institution, but maintains with a Reserve Bank the balance referred to in the first paragraph of section 13 of the Federal Reserve Act (12 USC 342); or

(ii) a corporation that maintains an account with a Reserve Bank in conformity with section 211.4 of this chapter (Regulation K).

(3) "International organization" means an international organization for which a Reserve Bank is empowered to act as depository or fiscal agent and maintains an account.

(4) "Foreign correspondent" means any of the following for which a Reserve Bank maintains an account: a foreign bank or banker, a foreign state as defined in section 25(b) of the Federal Reserve Act (12 USC 632), or a foreign correspondent or agency referred to in section 14(e) of that act (12 USC 358).

(m) "State" means a state of the United States, the District of Columbia, Puerto Rico, or a territory, possession, or dependency of the United States.

Unless the context otherwise requires, the terms not defined herein have the meanings set forth in 12 CFR 229.2 applicable to subpart C of part 229, and the terms not defined herein or in 12 CFR 229.2 have the meanings set forth in the Uniform Commercial Code.

SECTION 210.3—General Provisions

(a) *General.* Each Reserve Bank shall receive and handle items in accordance with this subpart, and shall issue operating circulars governing the details of its handling of items and other matters deemed appropriate by the Reserve Bank. The circulars may, among other things, classify cash items and noncash items, require separate sorts and letters, and provide different closing times for the receipt of different classes or types of items.

(b) *Binding effect.* This subpart, together with subpart C of part 229 and the operating circulars of the Reserve Banks, are binding on all parties interested in an item handled by any Reserve Bank.

(c) *Government items.* As depositaries and fiscal agents of the United States, Reserve Banks handle certain items payable by the United States or certain federal agencies as cash or noncash items. To the extent provided by regulations issued by, and arrangements made with, the United States Treasury Department and other government departments and agencies, the handling of such items is governed by this subpart. The Reserve Banks shall include in their operating circulars such information regarding these regulations and arrangements as the Reserve Banks deem appropriate.

(d) *Government senders.* Except as otherwise provided by statutes of the United States, or regulations issued or arrangements made thereunder, this subpart and the operating circulars of the Reserve Banks apply to the following when acting as a sender: a department, agency, instrumentality, independent estab-

lishment, or office of the United States, or a wholly owned or controlled government corporation, that maintains or uses an account with a Reserve Bank.

(e) *Foreign items.* A Reserve Bank also may receive and handle certain items payable outside a Federal Reserve District, as provided in its operating circulars. The handling of such items in a state is governed by this subpart, and the handling of such items outside a state is governed by the local law.

SECTION 210.4—Sending Items to Reserve Banks

(a) A sender may send any item to the Reserve Bank with which it maintains or uses an account, but that Reserve Bank may permit or require the sender to send direct to another Reserve Bank an item payable within the other Reserve Bank's District.

(b) With respect to an item sent direct, the relationships and the rights and liabilities between the sender, the Reserve Bank of its District, and the Reserve Bank to which the item is sent are the same as if the sender had sent the item to the Reserve Bank of its District and that Reserve Bank had sent the item to the other Reserve Bank.

(c) The Reserve Banks shall receive cash items and other checks at par.

SECTION 210.5—Sender's Agreement; Recovery by Reserve Bank

(a) *Sender's agreement.* By sending an item to a Reserve Bank, the sender—

(1) authorizes the receiving Reserve Bank (and any other Reserve Bank or collecting bank to which the item is sent) to handle the item subject to this subpart and to the Reserve Banks' operating circulars, and warrants its authority to give this authorization;

(2) warrants to each Reserve Bank handling the item that (i) the sender has good title to the item or is authorized to obtain payment on behalf of one who has good title (whether or not this warranty is evi-

denced by the sender's express guaranty of prior indorsements on the item); and (ii) to the extent prescribed by state law applicable to a Reserve Bank or subsequent collecting bank handling the item, the item has not been materially altered; but this subparagraph (a)(2) does not limit any warranty by a sender or other prior party arising under state law; and

(3) agrees to indemnify each Reserve Bank for any loss or expense sustained (including attorneys' fees and expenses of litigation) resulting from (i) the sender's lack of authority to make the warranty in paragraph (a)(1) of this section; (ii) any action taken by the Reserve Bank within the scope of its authority in handling the item; or (iii) any warranty made by the Reserve Bank under section 210.6(b) of this subpart.

(b) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled an item, based on—

(1) the alleged failure of the sender to have the authority to make the warranty and agreement in subparagraph (a)(1) of this section;

(2) any action by the Reserve Bank within the scope of its authority in handling the item; or

(3) any warranty made by the Reserve Bank under section 210.6(b) of this subpart,

the Reserve Bank may, upon the entry of a final judgment or decree, recover from the sender the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay under the judgment or decree, together with interest thereon.

(c) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (b) of this section by charging any account on its books that is maintained or used by the sender (or if the sender is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if—

(1) the Reserve Bank made reasonable written demand on the sender to assume defense of the action or proceeding; and

(2) the sender has not made any other arrangement for payment that is acceptable to the Reserve Bank.

The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from its sender in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in subparagraph (a)(3) of this section.

SECTION 210.6—Status, Warranties, and Liability of Reserve Bank

(a)(1) *Status and liability.* A Reserve Bank shall act only as agent or subagent of the owner with respect to an item. This agency terminates not later than the time the Reserve Bank receives payment for the item in actually and finally collected funds and makes the proceeds available for use by the sender. A Reserve Bank may be liable to the owner, to the sender, to a prior collecting bank, or to the depository bank's customer with respect to a check as defined in 12 CFR 229.2(k). A Reserve Bank shall not have or assume any liability with respect to an item or its proceeds except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care except as provided in paragraph (b) of this section and except as provided in subpart C of part 229.

(2) *Reliance on routing designation appearing on item.* A Reserve Bank may present or send an item based on the routing number or other designation of a paying bank or nonbank payor appearing in any form on the item when the Reserve Bank receives it. A Reserve Bank shall not be responsible for any delay resulting from its acting on any designation, whether inscribed by magnetic ink or by other means, and whether or not the designation acted on is consistent with any other designation appearing on the item.

(b) *Warranties and liability.* By presenting or sending an item, a Reserve Bank warrants to a subsequent collecting bank and to the paying bank and any other payor—

- (1) that the Reserve Bank has good title to the item (or is authorized to obtain payment on behalf of one who either (i) has good title or (ii) is authorized to obtain payment on behalf of one who has good title), whether or not this warranty is evidenced by the Reserve Bank's express guaranty of prior indorsements on the item; and
- (2) that the item has not been materially altered to the extent prescribed by state law applicable to a Reserve Bank or subsequent collecting bank holding the item.

The Reserve Bank shall not have or assume any other liability to the paying bank or other payor, except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

(c) *Time for commencing action against Reserve Bank.* A claim against a Reserve Bank for lack of good faith or failure to exercise ordinary care shall be barred unless the action on the claim is commenced within two years after the claim accrues. A claim accrues on the date when a Reserve Bank's alleged failure to exercise ordinary care or to act in good faith first results in damages to the claimant.

SECTION 210.7—Presenting Items for Payment

(a) *Presenting or sending.* As provided under state law or as otherwise permitted by this section—

- (1) a Reserve Bank or a subsequent collecting bank may present an item for payment or send the item for presentment and payment; and
- (2) a Reserve Bank may send an item to a subsequent collecting bank with authority to present it for payment or to send it for presentment and payment.

(b) *Place of presentment.* A Reserve Bank or subsequent collecting bank may present an item—

- (1) at a place requested by the paying bank;

(2) In the case of a check as defined in 12 CFR 229.2(k), in accordance with 12 CFR 229.36;

(3) at a place requested by the nonbank payor, if the item is payable by a nonbank payor other than through or at a paying bank;

(4) under a special collection agreement consistent with this subpart; or

(5) through a clearinghouse and subject to its rules and practices.

(c) *Presenting or sending direct.* A Reserve Bank or subsequent collecting bank may, with respect to an item payable in the Reserve Bank's District—

(1) present or send the item direct to the paying bank, or to a place requested by the paying bank; or

(2) if the item is payable by a nonbank payor other than through a paying bank, present it direct to the nonbank payor. Documents, securities, or other papers accompanying a noncash item shall not be delivered to the nonbank payor before the item is paid unless the sender specifically authorizes delivery.

(d) *Item payable in another District.* A Reserve Bank receiving an item payable in another District ordinarily sends the item to the Reserve Bank of the other District, but with the agreement of the other Reserve Bank, may present or send the item as if it were payable in its own District.

SECTION 210.8—Presenting Noncash Items for Acceptance

A Reserve Bank or a subsequent collecting bank may, if instructed by the sender, present a noncash item for acceptance in any manner authorized by law if—

(1) the item provides that it must be presented for acceptance;

(2) the item is payable elsewhere than at the residence or place of business of the payor; or

(3) the date of payment of the item depends on presentment for acceptance.

Documents accompanying a noncash item shall not be delivered to the payor upon ac-

ceptance of the item unless the sender specifically authorizes delivery. A Reserve Bank shall not have or assume any other obligation to present or to send for presentment for acceptance any noncash item.

SECTION 210.9—Payment

(a) *Cash items.* (1) A paying bank becomes accountable for the amount of a cash item received directly or indirectly from a Reserve Bank, at the close of the paying bank's banking day on which it receives² the item if it retains the item after the close of that banking day, unless, prior to that time, it pays for the item by—

(i) debit to an account on the Reserve Bank's books;

(ii) cash; or

(iii) in the discretion of the Reserve Bank, any other form of payment.

(2) The proceeds of any payment shall be available to the Reserve Bank by the close of the Reserve Bank's banking day on the banking day of receipt of the item by the paying bank. If the banking day of receipt is not a banking day for the Reserve Bank, payment shall be made on the next day that is a banking day for the Reserve Bank by the close of the Reserve Bank's banking day. A paying bank that closes voluntarily on a day that is a banking day for the Reserve Bank shall either pay on that day by the close of the Reserve Bank's banking day for cash items that the Reserve Bank makes available to the paying bank on that day, or compensate the Reserve Bank for the value of the float associated with the items in accordance with procedures provided in its Reserve Bank's operating circular; in such circumstances, the paying bank is not considered to receive the item until its next banking day.

² A paying bank is deemed to receive a cash item on its next banking day if it receives the item:

(1) on a day other than a banking day for it; or

(2) on a banking day for it, but

(i) after its regular banking hours;

(ii) after a "cut-off hour" established by it in accordance with state law; or

(iii) during afternoon or evening periods when it is open for limited functions only.

(b) *Noncash items.* A Reserve Bank may require the paying or collecting bank to which it has presented or sent a noncash item to pay for the item in cash, but the Reserve Bank may permit payment by a debit to an account on the Reserve Bank's books or by any of the following that is in a form acceptable to the Reserve Bank: bank draft, transfer of funds or bank credit, or any other form of payment authorized by state law.

(c) *Nonbank payor.* A Reserve Bank may require a nonbank payor to which it has presented an item to pay for it in cash, but the Reserve Bank may permit payment in any of the following that is in a form acceptable to the Reserve Bank: cashier's check, certified check, or other bank draft or obligation.

(d) *Handling of payment.* A Reserve Bank may handle a bank draft or other form of payment it receives in payment of a cash item as a cash item. A Reserve Bank may handle a bank draft or other form of payment it receives in payment of a noncash item as either a cash item or a noncash item.

(e) *Liability of Reserve Bank.* Except as set forth in 12 CFR 229.35(b), a Reserve Bank shall not be liable for the failure of a collecting bank, paying bank, or nonbank payor to pay for an item, or for any loss resulting from the Reserve Bank's acceptance of any form of payment other than cash authorized in paragraphs (a), (b), and (c) of this section. A Reserve Bank that acts in good faith and exercises ordinary care shall not be liable for the nonpayment of, or failure to realize upon, a bank draft or other form of payment that it accepts under paragraphs (a), (b), and (c).

SECTION 210.10—Time Schedule and Availability of Credits for Cash Items and Returned Checks

(a) Each Reserve Bank shall include in its operating circulars a time schedule for each of its offices indicating when the amount of any cash item or returned check received by it (or sent direct to another Reserve office for the account of that Reserve Bank) is counted as reserves for purposes of part 204 of this chapter (Regulation D) and becomes available for

use by the sender or paying or returning bank. The Reserve Bank shall give either immediate or deferred credit in accordance with its time schedule to a sender or paying or returning bank other than a foreign correspondent. A Reserve Bank ordinarily gives credit to a foreign correspondent only when the Reserve Bank receives payment of the item in actually and finally collected funds, but, in its discretion, a Reserve Bank may give immediate or deferred credit in accordance with its time schedule.

(b) Notwithstanding its time schedule, a Reserve Bank may refuse at any time to permit the use of credit given for any cash item or returned check, and may defer availability after credit is received by the Reserve Bank for a period of time that is reasonable under the circumstances.

SECTION 210.11—Availability of Proceeds of Noncash Items; Time Schedule

(a) *Availability of credit.* A Reserve Bank shall give credit to the sender for the proceeds of a noncash item when it receives payment in actually and finally collected funds (or advice from another Reserve Bank of such payment to it). The amount of the item is counted as reserve for purposes of part 204 of this chapter (Regulation D) and becomes available for use by the sender when the Reserve Bank receives the payment or advice, except as provided in paragraph (b) of this section.

(b) *Time schedule.* A Reserve Bank may give credit for the proceeds of a noncash item subject to payment in actually and finally collected funds in accordance with a time schedule included in its operating circulars. The time schedule shall indicate when the proceeds of the noncash item will be counted as reserve for purposes of part 204 of this chapter (Regulation D) and become available for use by the sender. A Reserve Bank may, however, refuse at any time to permit the use of credit given for a noncash item for which the Reserve Bank has not yet received payment in actually and finally collected funds.

(c) *Handling of payment.* If a Reserve Bank

receives, in payment for a noncash item, a bank draft or other form of payment that it elects to handle as a noncash item, the Reserve Bank shall neither count the proceeds as reserve for purposes of part 204 of this chapter (Regulation D) nor make the proceeds available for use until it receives payment in actually and finally collected funds.

SECTION 210.12—Return of Cash Items and Handling of Returned Checks

(a) *Return of cash items.* A paying bank that receives a cash item directly or indirectly from a Reserve Bank, other than for immediate payment over the counter, and that pays for the item as provided in section 210.9(a) of this subpart, may, before it has finally paid the item, return the item in accordance with subpart C of part 229, the Uniform Commercial Code, and its Reserve Bank's operating circular. The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(b) *Return of checks not handled by Reserve Banks.* A paying bank that receives a check as defined in 12 CFR 229.2(k), other than directly or indirectly from a Reserve Bank, and that determines not to pay the check, may send the returned check to its Reserve Bank in accordance with subpart C of part 229, the Uniform Commercial Code, and its Reserve Bank's operating circular. A returning bank may send a returned check to its Reserve Bank in accordance with subpart C of part 229, the Uniform Commercial Code, and its Reserve Bank's operating circular.

(c) *Paying bank's and returning bank's agreement.* By sending a returned check to a Reserve Bank, the paying bank or returning bank—

- (1) Authorizes the receiving Reserve Bank (and any other Reserve Bank or returning bank to which the returned check is sent) to handle the returned check subject to this subpart and to the Reserve Banks' operating circulars;

(2) Makes the warranties set forth in 12 CFR 229.34; and

(3) Agrees to indemnify each Reserve Bank for any loss or expense (including attorneys' fees and expenses of litigation) resulting from—

- (i) The paying or returning bank's lack of authority to give the authorization in paragraph (c)(1) of this section;
- (ii) Any action taken by a Reserve Bank within the scope of its authority in handling the returned check; or
- (iii) Any warranty made by the Reserve Bank under 12 CFR 229.34.

(d) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled a returned check based on—

- (1) The alleged failure of the paying or returning bank to have the authority to give the authorization in paragraph (c)(1) of this section;
- (2) Any action by the Reserve Bank within the scope of its authority in handling the returned check; or
- (3) Any warranty made by the Reserve Bank under 12 CFR 229.34,

the Reserve Bank may, upon the entry of a final judgment or decree, recover from the paying bank or returning bank the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay under the judgment or decree, together with interest thereon.

(e) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (d) of this section by charging any account on its books that is maintained or used by the paying or returning bank (or, if the returning bank is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if—

- (1) The Reserve Bank made seasonable written demand on the paying or returning bank to assume defense of the action or proceeding; and
- (2) The paying or returning bank has not made any other arrangement for payment that is acceptable to the Reserve Bank.

The Reserve Bank is not responsible for de-

fending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from the paying or returning bank in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (c)(3) of this section.

(f) *Reserve Bank's responsibility.* A Reserve Bank shall handle a returned check, or a notice of nonpayment, in accordance with subpart C of part 229 and its operating circular. A Reserve Bank may permit or require the paying or returning bank to send direct to another Reserve Bank a returned check with respect to which the depository bank is located within the other Reserve Bank's District, in accordance with section 210.4(b).

(g) *Settlement.* A subsequent returning bank or depository bank shall settle for returned checks in the same manner as for cash items presented for payment.

SECTION 210.13—Unpaid Items

(a) *Right of charge-back.* If a Reserve Bank does not receive payment in actually and finally collected funds for an item, the Reserve Bank shall recover by charge-back or otherwise the amount of the item from the sender, paying bank, or returning bank from which it was received, whether or not the item itself can be sent back. In the event of recovery, neither the owner or holder of the item, nor the sender, paying bank, or returning bank from which it was received, shall have any interest in any reserve balance or other funds in the Reserve Bank's possession of the bank failing to make payment in actually and finally collected funds.

(b) *Suspension or closing of bank.* A Reserve Bank shall not pay or act on a draft, authorization to charge, or other order on a reserve balance or other funds in its possession after it receives notice of suspension or closing of the bank making the payment for that bank's own or another's account.

SECTION 210.14—Extension of Time Limits

If, because of interruption of communication facilities, suspension of payments by a bank or nonbank payor, war, emergency conditions or other circumstances beyond its control, a bank (including a Reserve Bank) or nonbank payor is delayed in acting on an item beyond applicable time limits, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

SECTION 210.15—Direct Presentment of Certain Warrants

If a Reserve Bank elects to present direct to the payor a bill, note, or warrant that is issued and payable by a state or a political subdivision and that is a cash item not payable or collectible through a bank—

(a) sections 210.9, 210.12, and 210.13 and the operating circulars of the Reserve Banks apply to the payor as if it were a paying bank;

(b) section 210.14 applies to the payor as if it were a bank; and

(c) under section 210.9 each day on which the payor is open for the regular conduct of its affairs or the accommodation of the public is considered a banking day.

SUBPART B—FUNDS TRANSFERS THROUGH FEDWIRE

SECTION 210.25—Authority, Purpose, and Scope

(a) *Authority and purpose.* This subpart provides rules to govern funds transfers through Fedwire, and has been issued pursuant to the Federal Reserve Act—section 13 (12 USC 342), paragraph (f) of section 19 (12 USC 464), paragraph 14 of section 16 (12 USC 248(o)), and paragraphs (i) and (j) of section 11 (12 USC 248(i) and (j))—and other laws and has the force and effect of federal law. This

subpart is not a funds-transfer system rule as defined in section 4A-501(b) of article 4A.*

(b) *Scope.* (1) This subpart incorporates the provisions of article 4A set forth in appendix B to this subpart. In the event of an inconsistency between the provisions of the sections of this subpart and appendix B to this subpart, the provisions of the sections of this subpart shall prevail.

(2) Except as otherwise provided in paragraphs (3) and (4) of this section, this subpart governs the rights and obligations of—

(i) Federal Reserve Banks sending or receiving payment orders;

(ii) senders that send payment orders directly to a Federal Reserve Bank;

(iii) receiving banks that receive payment orders directly from a Federal Reserve Bank;

(iv) beneficiaries that receive payment for payment orders sent to a Federal Reserve Bank by means of credit to an account maintained or used at a Federal Reserve Bank; and

(v) other parties to a funds transfer any part of which is carried out through Fedwire to the same extent as if this subpart were considered a funds-transfer system rule under article 4A.

(3) This subpart governs a funds transfer that is sent through Fedwire, as provided in paragraph (b)(2) of this section, even though a portion of the funds transfer is governed by the Electronic Fund Transfer Act, but the portion of such funds transfer that is governed by the Electronic Fund Transfer Act is not governed by this subpart.

(4) In the event that any portion of this subpart establishes rights or obligations with respect to the availability of funds that are also governed by the Expedited Funds Availability Act or the Board's Regulation CC, Availability of Funds and Collection of Checks, those provisions of the Expedited Funds Availability Act or Regulation CC shall apply and the portion of this subpart, including article 4A as incorporated herein, shall not apply.

* Section 4A-501(b) of article 4A of the Uniform Commercial Code.

(c) *Operating circulars.* Each Federal Reserve Bank shall issue an operating circular consistent with this subpart that governs the details of its funds-transfer operations and other matters it deems appropriate. Among other things, the operating circular may set cut-off hours and funds-transfer business days; address available security procedures; specify format and media requirements for payment orders; identify messages that are not payment orders; and impose charges for funds-transfer services.

(d) *Government senders, receiving banks, and beneficiaries.* Except as otherwise expressly provided by the statutes of the United States, the parties specified in paragraph (b)(2)(ii)-(v) of this section include—

(1) a department, agency, instrumentality, independent establishment, or office of the United States, or a wholly owned or controlled government corporation;

(2) an international organization;

(3) a foreign central bank; and

(4) a department, agency, instrumentality, independent establishment, or office of a foreign government, or a wholly owned or controlled corporation of a foreign government.

SECTION 210.26—Definitions

As used in this subpart, the following definitions apply:

(a) *Article 4A* means article 4A of the Uniform Commercial Code as set forth in appendix B of this subpart.

(b) *As-of adjustment* means a debit or credit, for reserve- or clearing-balance maintenance purposes only, applied to the reserve or clearing balance of a bank that either sends a payment order to a Federal Reserve Bank, or that receives a payment order from a Federal Reserve Bank, in lieu of an interest charge or payment.

(c) *Automated clearinghouse transfer* means any transfer designated as an automated clearinghouse transfer in a Federal Reserve Bank operating circular.

(d) *Beneficiary's bank* has the same meaning as in article 4A, except that—

(1) a Federal Reserve Bank need not be identified in the payment order in order to be the beneficiary's bank; and

(2) the term includes a Federal Reserve Bank when that Federal Reserve Bank is the beneficiary of a payment order.

(e) *Fedwire* is the funds-transfer system owned and operated by the Federal Reserve Banks that is used primarily for the transmission and settlement of payment orders governed by this subpart. Fedwire does not include the system for making automated clearinghouse transfers.

(f) *Inter-District transfer* means a funds transfer involving entries to accounts maintained at two Federal Reserve Banks.

(g) *Intra-District transfer* means a funds transfer involving entries to accounts maintained at one Federal Reserve Bank.

(h) *Off-line bank* means a bank that transmits payment orders to and receives payment orders from a Federal Reserve Bank by telephone orally or by other means other than electronic data transmission.

(i) *Payment order* has the same meaning as in article 4A, except that the term does not include automated clearinghouse transfers or any communication designated in a Federal Reserve Bank operating circular issued under this subpart as not being a payment order.

(j) *Sender's account*, *receiving bank's account*, and *beneficiary's account* mean the reserve, clearing, or other funds deposit account at a Federal Reserve Bank maintained or used by the sender, receiving bank, or beneficiary, respectively.

(k) *Sender's Federal Reserve Bank* and *receiving bank's Federal Reserve Bank* mean the Federal Reserve Bank at which the sender or receiving bank, respectively, maintains or uses an account.

SECTION 210.27—Reliance on Identifying Number

(a) *Reliance by a Federal Reserve Bank on*

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number to identify an intermediary bank or beneficiary's bank. A Federal Reserve Bank may rely on the number in a payment order that identifies the intermediary bank or beneficiary's bank, even if it identifies a bank different from the bank identified by name in the payment order, if the Federal Reserve Bank does not know of such an inconsistency in identification. A Federal Reserve Bank has no duty to detect any such inconsistency in identification.

(b) *Reliance by a Federal Reserve Bank on number to identify beneficiary.* A Federal Reserve Bank, acting as a beneficiary's bank, may rely on the number in a payment order that identifies the beneficiary, even if it identifies a person different from the person identified by name in the payment order, if the Federal Reserve Bank does not know of such an inconsistency in identification. A Federal Reserve Bank has no duty to detect any such inconsistency in identification.

SECTION 210.28—Agreement of Sender

(a) *Payment of sender's obligation to a Federal Reserve Bank.* A sender (other than a Federal Reserve Bank), by maintaining or using an account with a Federal Reserve Bank, authorizes the sender's Federal Reserve Bank to obtain payment for the sender's payment orders by debiting the amount of the payment order from the sender's account.

(b) *Overdrafts.* (1) A sender does not have the right to an overdraft in the sender's account. In the event an overdraft is created, the overdraft shall be due and payable immediately without the need for a demand by the Federal Reserve Bank, at the earliest of the following times:

(i) at the end of the funds-transfer business day;

(ii) at the time the Federal Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender; or

(iii) at the time the sender suspends payments or is closed.

(2) The sender shall have in its account, at the time the overdraft is due and payable, a balance of actually and finally collected

funds sufficient to cover the aggregate amount of all its obligations to the Federal Reserve Bank, whether the obligations result from the execution of a payment order or otherwise.

(3) To secure any overdraft, as well as any other obligation due or to become due to its Federal Reserve Bank, each sender, by sending a payment order to a Federal Reserve Bank that is accepted by the Federal Reserve Bank, grants to the Federal Reserve Bank a security interest in all of the sender's assets in the possession of, or held for the account of, the Federal Reserve Bank. The security interest attaches when an overdraft, or any other obligation to the Federal Reserve Bank, becomes due and payable.

(4) A Federal Reserve Bank may take any action authorized by law to recover the amount of an overdraft that is due and payable, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

(c) *Review of payment orders.* A sender, by sending a payment order to a Federal Reserve Bank, agrees that for the purposes of sections 4A-204(a) and 4A-304 of article 4A, a reasonable time to notify a Federal Reserve Bank of the relevant facts concerning an unauthorized or erroneously executed payment order is within 30 calendar days after the sender receives notice that the payment order was accepted or executed, or that the sender's account was debited with respect to the payment order.

SECTION 210.29—Agreement of Receiving Bank

(a) *Payment.* A receiving bank (other than a Federal Reserve Bank) that receives a payment order from its Federal Reserve Bank authorizes that Federal Reserve Bank to pay for the payment order by crediting the amount of the payment order to the receiving bank's account.

(b) *Off-line banks.* An off-line bank that does not expressly notify its Federal Reserve Bank

in writing that it maintains an account for another bank warrants to that Federal Reserve Bank that the off-line bank does not act as an intermediary bank or a beneficiary's bank with respect to payment orders received through Fedwire for a beneficiary that is a bank.

SECTION 210.30—Payment Orders

(a) *Rejection.* A sender shall not send a payment order to a Federal Reserve Bank unless authorized to do so by the Federal Reserve Bank. A Federal Reserve Bank may reject, or impose conditions that must be satisfied before it will accept, a payment order for any reason.

(b) *Selection of an intermediary bank.* For an inter-District transfer, a Federal Reserve Bank is authorized and directed to execute a payment order through another Federal Reserve Bank. A sender shall not send a payment order to a Federal Reserve Bank that requires the Federal Reserve Bank to issue a payment order to an intermediary bank (other than a Federal Reserve Bank) unless that intermediary bank is designated in the sender's payment order. A sender shall not send to a Federal Reserve Bank a payment order instructing use by a Federal Reserve Bank of a funds-transfer system or means of transmission other than Fedwire, unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

(c) *Same-day execution.* A sender shall not issue a payment order that instructs a Federal Reserve Bank to execute the payment order on a funds-transfer business day that is later than the funds-transfer business day on which the order is received by the Federal Reserve Bank, unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

SECTION 210.31—Payment by a Federal Reserve Bank to a Receiving Bank or Beneficiary

(a) *Payment to a receiving bank.* Payment of a Federal Reserve Bank's obligation to pay a

receiving bank (other than a Federal Reserve Bank) occurs at the earlier of the time when the amount of the payment order is credited to the receiving bank's account or when the payment order is sent to the receiving bank.

(b) *Payment to a beneficiary.* Payment by a Federal Reserve Bank to a beneficiary of a payment order, where the Federal Reserve Bank is the beneficiary's bank, occurs at the earlier of the time when the amount of the payment order is credited to the beneficiary's account or when notice of the credit is sent to the beneficiary.

SECTION 210.32—Federal Reserve Bank Liability; Payment of Interest

(a) *Damages.* In connection with its handling of a payment order under this subpart, a Federal Reserve Bank shall not be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank, governed by this subpart, for any damages other than those payable under article 4A. A Federal Reserve Bank shall not agree to be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank for consequential damages under section 4A-305(d) of article 4A.

(b) *Payment of interest.*

(1) A Federal Reserve Bank, in its discretion, may satisfy its obligation, or that of another Federal Reserve Bank, to pay compensation in the form of interest under article 4A by—

- (i) providing an as-of adjustment to its sender, its receiving bank, or its beneficiary, as provided in the Federal Reserve Bank's operating circular, in an amount equal to the amount on which interest is to be calculated multiplied by the number of days for which interest is to be calculated; or
- (ii) paying compensation in the form of

interest to its sender, its receiving bank, its beneficiary, or another party to the funds transfer that is entitled to such payment, in an amount that is calculated in accordance with section 4A-506 of article 4A.

(2) If the sender or receiving bank that is the recipient of an as-of adjustment or an interest payment is not the party entitled to compensation under article 4A, the sender or receiving bank shall pass through the benefit of the as-of adjustment or interest payment by making an interest payment, as of the day the as-of adjustment or interest payment is effected, to the party entitled to compensation. The interest payment that is made to the party entitled to compensation shall not be less than the value of the as-of adjustment or interest payment that was provided by the Federal Reserve Bank to the sender or receiving bank. The party entitled to compensation may agree to accept compensation in a form other than a direct interest payment, provided that such an alternative form of compensation is not less than the value of the interest payment that otherwise would be made.

(c) *Nonwaiver of right of recovery.* Nothing in this subpart or any operating circular issued hereunder shall constitute, or be construed as constituting, a waiver by a Federal Reserve Bank of a cause of action for recovery under any applicable law of mistake and restitution.

APPENDIX A TO SUBPART B— Commentary

See page 13.

APPENDIX B TO SUBPART B — UCC Article 4A

See page 23.

Commentary on Regulation J

12 CFR 210, appendix A to subpart B; effective January 1, 1991

The commentary provides background material to explain the intent of the Board of Governors of the Federal Reserve System (Board) in adopting a particular provision in the subpart and to help readers interpret that provision. In some comments, examples are offered. The commentary constitutes an official Board interpretation of subpart B of this part. Commentary is not provided for every provision of subpart B of this part, as some provisions are self-explanatory.

SECTION 210.25—Authority, Purpose, and Scope

25(a) Authority and Purpose

Section 210.25(a) states that the purpose of subpart B of this part is to provide rules to govern funds transfers through Fedwire and recites the Board's rulemaking authority for this subpart. Subpart B is federal law and is not a "funds-transfer system rule," as defined in section 4A-501(b) of article 4A, Funds Transfers, of the Uniform Commercial Code (UCC), as set forth in appendix B of this part. Certain provisions of article 4A may not be varied by a funds-transfer system rule, but under section 4A-107, regulations of the Board and operating circulars of the Federal Reserve Banks supersede inconsistent provisions of article 4A to the extent of the inconsistency. In addition, regulations of the Board may preempt inconsistent provisions of state law. Accordingly, subpart B of this part supersedes or preempts inconsistent provisions of state law. It does not affect state law governing funds transfers that does not conflict with the provisions of subpart B of this part, such as article 4A, as enacted in any state, as it applies to parties to funds transfers through Fedwire whose rights are not governed by subpart B of this part.

25(b) Scope

Subpart B of this part incorporates the provisions of article 4A set forth in appendix B of

this part. The provisions set forth expressly in the sections of subpart B of this part supersede or preempt any inconsistent provisions of article 4A as set forth in appendix B of this part or as enacted in any state. The official comments to article 4A are not incorporated in subpart B of this part or this commentary to subpart B of this part, but the official comments may be useful in interpreting article 4A. Because section 4A-105 refers to other provisions of the Uniform Commercial Code, e.g., definitions in article 1 of the UCC, these other provisions of the UCC, as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, from time to time, are also incorporated in subpart B of this part. Subpart B of this part applies to any party to a Fedwire funds transfer that is in privity with a Federal Reserve Bank. These parties include a sender (bank or nonbank) that sends a payment order directly to a Federal Reserve Bank, a receiving bank that receives a payment order directly from a Federal Reserve Bank, and a beneficiary that receives credit to an account that it uses or maintains at a Federal Reserve Bank for a payment order sent to a Federal Reserve Bank. Other parties to a funds transfer are covered by this subpart to the same extent that this subpart would apply to them if this subpart were a "funds-transfer system rule" under article 4A that selected subpart B of this part as the governing law.

The scope of the applicability of a funds-transfer system rule under article 4A is specified in section 4A-501(b), and the scope of the choice of law provision is specified in section 4A-507(c). Under section 4A-507(c), a choice of law provision is binding on the participants in a funds-transfer system and certain other parties having notice that the funds-transfer system might be used for the funds transfer and of the choice of law provision. The Uniform Commercial Code provides that a person has notice when the person has actual knowledge, receives notification, or has reason to know from all the facts and circumstances known to the person at the time in

question. (See UCC § 1-201(25).) However, under sections 4A-507(b) and 4A-507(d), a choice of law by agreement of the parties takes precedence over a choice of law made by funds-transfer system rule.

If originators, receiving banks, and beneficiaries that are not in privity with a Federal Reserve Bank have the notice contemplated by Section 4A-507(c) or if those parties agree to be bound by subpart B of this part, subpart B of this part generally would apply to payment orders between those remote parties, including participants in other funds-transfer systems. For example, a funds transfer may be sent from an originator's bank through a funds-transfer system other than Fedwire to a receiving bank which, in turn, sends a payment order through Fedwire to execute the funds transfer. Similarly, a Federal Reserve Bank may execute a payment order through Fedwire to a receiving bank that sends it through a funds-transfer system other than Fedwire to a beneficiary's bank. In the first example, if the originator's bank has notice that Fedwire may be used to effect part of the funds transfer, the sending of the payment order through the other funds-transfer system to the receiving bank will be governed by subpart B of this part unless the parties to the payment order have agreed otherwise. In the second example, if the beneficiary's bank has notice that Fedwire may be used to effect part of the funds transfer, the sending of the payment order to the beneficiary's bank through the other funds-transfer system will be governed by subpart B of this part unless the parties have agreed otherwise. In both cases, the other funds-transfer system's rules would also apply to, at a minimum, the portion of these funds transfers going through that funds-transfer system. Because subpart B of this part is federal law, to the extent of any inconsistency, subpart B of this part will take precedence over any funds-transfer system rule applicable to the remote sender or receiving bank or to a Federal Reserve Bank. If remote parties to a funds transfer, a portion of which is sent through Fedwire, have expressly selected by agreement a law other than subpart B of this part under section 4A-507(b), subpart B of this part would not take precedence over the choice of law made by the agreement even

though the remote parties had notice that Fedwire may be used and of the governing law. (See 4A-507(d).) In addition, subpart B of this part would not apply to a funds transfer sent through another funds-transfer system where no Federal Reserve Bank handles the funds transfer, even though settlement for the funds transfer is made by means of a separate net settlement or funds transfer through Fedwire.

Under section 4A-108, article 4A does not apply to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act (15 USC 1693 et seq.). Fedwire funds transfers to or from consumer accounts are exempt from the Electronic Fund Transfer Act and Regulation E (12 CFR 205). A funds transfer from a consumer originator or a funds transfer to a consumer beneficiary could be carried out in part through Fedwire and in part through an automated clearinghouse or other means that is subject to the Electronic Fund Transfer Act or Regulation E. In these cases, subpart B would not govern the portion of the funds transfer that is governed by the Electronic Fund Transfer Act or Regulation E. (See the commentary to section 210.26(i), "Payment Order".)

Finally, section 4A-404(a) provides that a beneficiary's bank is obliged to pay the amount of a payment order to the beneficiary on the payment date unless acceptance of the payment order occurs on the payment date after the close of the funds-transfer business day of the bank. The Expedited Funds Availability Act provides that funds received by a bank by wire transfer shall be available for withdrawal not later than the banking day after the business day on which such funds are received (12 USC 4002(a)). That act also preempts any provision of state law that is not effective on September 1, 1989, that is inconsistent with that act or its implementing Regulation CC (12 CFR 229). Accordingly, the Expedited Funds Availability Act and Regulation CC may preempt section 4A-404(a) as enacted in any state. In order to ensure that section 4A-404(a), or other provisions of article 4A, as incorporated in subpart B of this part, do not take precedence over provisions of the Expedited Funds Availability Act, this section provides that where sub-

part B of this part establishes rights or obligations that are also governed by the Expedited Funds Availability Act or Regulation CC, the Expedited Funds Availability Act or Regulation CC provision shall apply and subpart B of this part shall not apply.

25(c) Operating Circulars

The Federal Reserve Banks issue operating circulars consistent with this subpart that contain additional provisions applicable to payment orders sent through Fedwire. Under section 4A-107, these operating circulars supersede inconsistent provisions of article 4A, as set forth in appendix B and as enacted in any state. These operating circulars are not funds-transfer system rules, but, by their terms, they are binding on all parties covered by this subpart.

25(d) Government Senders, Receiving Banks, and Beneficiaries

This section clarifies that unless a statute of the United States provides otherwise, subpart B of this part applies to governmental entities, domestic or foreign, including foreign central banks as specified in paragraph (b)(1).

SECTION 210.26—Definitions

Article 4A defines many terms (e.g., “beneficiary,” “intermediary bank,” “receiving bank,” “security procedure”) used in this subpart. These terms are defined or listed in sections 4A-103 through 4A-105. These terms, such as the term “bank” (defined in section 4A-105(d)(2)), may differ from comparable terms in subpart A of this part. As subpart B of this part incorporates consistent provisions of article 4A, it incorporates these definitions unless these terms are expressly defined otherwise in subpart B of this part. This subpart modifies the definitions of two article 4A terms, “beneficiary’s bank” and “payment order.” This subpart also defines terms not defined in article 4A.

26(a) Article 4A

“Article 4A” means the version of that article of the Uniform Commercial Code set forth in

appendix B of this part. It does not refer to the law of any particular state unless the context indicates otherwise. Subject to the express provisions of this subpart, this version of article 4A is incorporated into this subpart and made federal law for transactions covered by this subpart.

26(b) As-of Adjustments

As-of adjustments are memorandum items that affect a bank’s reserve or clearing balance for the purpose of meeting the required balance, but do not represent funds that can be used for other purposes. As discussed in the commentary to section 210.32(b), the Federal Reserve Banks generally provide as-of adjustments as a means of effecting interest payments or charges.

26(d) Beneficiary’s Bank

The definition of “beneficiary’s bank” in subpart B of this part differs from the section 4A-103(a)(3) definition. The subpart B definition clarifies that where a Federal Reserve Bank functions as the beneficiary’s bank, it need not be identified in the payment order as the beneficiary’s bank and that a Federal Reserve Bank that receives a payment order as beneficiary is also the beneficiary’s bank with respect to that payment order.

26(e) Fedwire

Fedwire refers to the funds-transfer system owned and operated by the Federal Reserve Banks that is governed by this subpart. The term does not refer to any particular computer, telecommunications facility, or funds transfer, but to the system as a whole, which may include transfers by telephone or by written instrument in particular circumstances. Fedwire does not include the system used for automated clearinghouse transfers.

26(h) Off-Line Bank

Most Fedwire payment orders are transmitted electronically from a sender to a Federal Reserve Bank or from a Federal Reserve Bank to a receiving bank. Banks transmitting payment orders to Federal Reserve Banks electronically are often referred to as on-line banks. Some

Fedwire participants, however, transmit payment orders to a Federal Reserve Bank or receive payment orders from a Federal Reserve Bank orally by telephone, or, in unusual circumstances, in writing. A bank that does not use either a terminal or a computer that links it electronically to a terminal or computer at its Federal Reserve Bank to send payment orders through Fedwire is an off-line bank.

26(i) Payment Order

The definition of "payment order" in subpart B of this part differs from the section 4A-103(a)(1) definition. The subpart B definition clarifies that, for the purposes of Subpart B of this part, automated clearinghouse transfers and certain messages that are transmitted through Fedwire are not payment orders. Federal Reserve Banks and banks participating in Fedwire send various types of messages relating to payment orders or to other matters, through Fedwire, that are not intended to be payment orders. Under the subpart B definition, these messages, and messages involved with automated clearinghouse transfers, are not "payment orders" and therefore are not governed by this subpart. The operating circulars of the Federal Reserve Banks specify those messages that may be transmitted through Fedwire but that are not payment orders.

In some cases, messages sent through Fedwire, such as certain requests for credit transfer, may be payment orders under article 4A, but are not treated as payment orders under subpart B because they are not an instruction to a Federal Reserve Bank to pay money.

This subpart and article 4A govern a payment order even though the originator's or beneficiary's account may be a consumer account established primarily for personal, family, or household purposes. Under section 4A-108, article 4A does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act. That act, and Regulation E implementing it, do not apply to funds transfers through Fedwire (*see* 15 USC 1693a(6)(B) and 12 CFR 205.3(b)). Thus, this subpart applies to all funds transfers through Fedwire even though some such transfers involve originators or beneficiaries

that are consumers. (See also section 210.25(b) and accompanying commentary.)

SECTION 210.27—Reliance on Identifying Number

27(a) Reliance by a Federal Reserve Bank on Number to Identify Intermediary Bank or Beneficiary's Bank

Section 4A-208 provides that a receiving bank, such as a Federal Reserve Bank, may rely on the routing number of an intermediary bank or the beneficiary's bank specified in a payment order as identifying the appropriate intermediary bank or beneficiary's bank, even if the payment order identifies another bank by name, provided that the receiving bank does not know of the inconsistency. Under section 4A-208(b)(2), if the sender of the payment order is not a bank, a receiving bank may rely on the number only if the sender had notice before the receiving bank accepted the sender's order that the receiving bank might rely on the number. This section provides this notice to entities that are not banks, such as the Department of the Treasury, that send payment orders directly to a Federal Reserve Bank.

27(b) Reliance by a Federal Reserve Bank on Number to Identify Beneficiary

Section 4A-207 provides that a beneficiary's bank, such as a Federal Reserve Bank, may rely on the number identifying a beneficiary, such as the beneficiary's account number, specified in a payment order as identifying the appropriate beneficiary, even if the payment order identifies another beneficiary by name, provided that the beneficiary's bank does not know of the inconsistency. Under Section 4A-207(c)(2), if the originator is not a bank, an originator is not obliged to pay for a payment order if the originator did not have notice that the beneficiary's bank might rely on the identifying number and the person paid on the basis of the identifying number was not entitled to receive payment. This section of subpart B provides this notice to entities that are not banks, such as the Department of the Treasury, that are originators of payment orders

sent directly by the originators to a Federal Reserve Bank, where that Federal Reserve Bank or another Federal Reserve Bank is the beneficiary's bank (*see also* section 4A-402(b), providing that a sender must pay a beneficiary's bank for a payment order accepted by the beneficiary's bank).

SECTION 210.28—Agreement of Sender

28(a) Payment of Sender's Obligation to a Federal Reserve Bank

When a sender issues a payment order to a Federal Reserve Bank and the Federal Reserve Bank issues a conforming order implementing the sender's payment order, under section 4A-403, the sender is indebted to the Federal Reserve Bank for the amount of the payment order. A sender, other than a Federal Reserve Bank, that maintains or uses an account at a Federal Reserve Bank authorizes the Federal Reserve Bank to debit that account so that the Federal Reserve Bank can obtain payment for the payment order.

28(b) Overdrafts

In some cases, debits to a sender's account will create an overdraft in the sender's account. The Board and the Federal Reserve Banks have established policies concerning when a Federal Reserve Bank will permit a bank to incur an overdraft in its account at a Federal Reserve Bank. These policies do not give a bank or other sender a right to an overdraft in its account. Subpart B clarifies that a sender does not have a right to such an overdraft. If an overdraft arises, it becomes immediately due and payable at the earliest of: the end of the funds-transfer business day of the Federal Reserve Bank; the time the Federal Reserve Bank, in its sole discretion, deems itself insecure and gives notice to the sender; or the time that the sender suspends payments or is closed by governmental action, such as the appointment of a receiver. In some cases, a Federal Reserve Bank extends its Fedwire operations beyond its cut-off hour for that funds-transfer business day. For the purposes of this section, unless otherwise specified by the Federal Reserve Bank making such an extension,

an overdraft becomes due and payable at the end of the extended operating hours. An overdraft becomes due and payable prior to a Federal Reserve Bank's cut-off hour if the Federal Reserve Bank deems itself insecure and gives notice to the sender. Notice that the Federal Reserve Bank deems itself insecure may be given in accordance with the provisions on notice in section 1-201(27) of the UCC, in accordance with any other applicable law or agreement, or by any other reasonable means. An overdraft also becomes due and payable at the time that a bank is closed or suspends payments. For example, an overdraft becomes due and payable if a receiver is appointed for the bank or the bank is prevented from making payments by governmental order. The Federal Reserve Bank need not make demand on the sender for the overdraft to become due and payable.

A sender must cover any overdraft and any other obligation of the sender to the Federal Reserve Bank by the time the overdraft becomes due and payable. By sending a payment order to a Federal Reserve Bank, the sender grants a security interest to the Federal Reserve Bank in any assets of the sender held by, or for the account of, the Federal Reserve Bank in order to secure all obligations due or to become due to the Federal Reserve Bank. The security interest attaches when the overdraft, or other obligation of the sender to the Federal Reserve Bank, becomes due and payable. The security interest does not apply to assets held by the sender as custodian or trustee for the sender's customers or third parties. Once an overdraft is due and payable, a Federal Reserve Bank may exercise its right of set-off, liquidate collateral, or take other similar action to satisfy the overdrafting bank's obligation owed to the Federal Reserve Bank.

28(c) Review of Payment Orders

Under section 4A-204, a receiving bank is required to refund the principal amount of an unauthorized payment order that the sender was not obliged to pay, together with interest on the refundable amount calculated from the date that the receiving bank received payment to the date of the refund. The sender is not entitled to compensation in the form of inter-

est if the sender fails to exercise ordinary care to determine that the order was not authorized and to notify the receiving bank within a reasonable period of time after the sender receives a notice that the payment order was accepted or that the sender's account was debited with respect to the order. Similarly, under section 4A-304, if a sender of a payment order that was erroneously executed does not notify the bank receiving the payment order within a reasonable time, the bank is not liable to the sender for compensation in the form of interest on any amount refundable to the sender. Section 210.28(d) establishes 30 calendar days as the reasonable period of time for the purposes of these provisions of article 4A.

Section 4A-505 provides that a customer must object to a debit to its account by a receiving bank within one year after the customer received notification reasonably identifying the payment order. Subpart B of this part does not vary this one-year period.

SECTION 210.29—Agreement of Receiving Bank

29(b) Off-Line Banks

Generally, an on-line bank receiving payment orders or advices of credit for payment orders from a Federal Reserve Bank receives the payment orders or advices electronically a short time after the corresponding payment orders are received by the on-line bank's Federal Reserve Bank. An off-line bank receiving payment orders or advices of credit from a Federal Reserve Bank does not have an electronic connection with the Federal Reserve Bank; therefore, payment orders or advices are transmitted either by telephone on the day the payment order is received by the receiving bank's Federal Reserve Bank, or sent by courier or mail along with the off-line bank's daily account statement, on the funds-transfer business day following the day the payment order is received by the off-line bank's Federal Reserve Bank.

Under section 4A-302(a)(2), a Federal Reserve Bank must transmit payment orders at a time and by means reasonably necessary to allow payment to the beneficiary on the pay-

ment date, or as soon thereafter as is feasible. Therefore, where an off-line receiving bank is an intermediary bank or beneficiary's bank in a payment order, its Federal Reserve Bank attempts to transmit the payment order to the off-line bank by telephone on the day the payment order is received by the Federal Reserve Bank. A Federal Reserve Bank can generally identify these payment orders from the type code designated in the payment order.

Under section 4A-404(b), if a payment order instructs payment to the account of the beneficiary, the beneficiary's bank must notify the beneficiary of the receipt of a payment order before midnight of the next funds-transfer business day following the payment date. Where an off-line bank is the beneficiary of a payment order, telephone notice by a Federal Reserve Bank to the off-line bank of the receipt of the order is not required by Article 4A because the Federal Reserve Bank sends notice to the off-line bank by courier or mail, along with its daily account statement, on the day after the payment order is received by its Federal Reserve Bank. Payment orders for which an off-line bank is the beneficiary of the order are generally designated as settlement transactions.

If an off-line receiving bank maintains an account for another bank, the off-line bank may receive payment orders designated as settlement transactions in its capacity as beneficiary's bank or intermediary bank. A Federal Reserve Bank cannot readily distinguish these payment orders from settlement transactions for which the off-line bank is the beneficiary of the order. If an off-line bank notifies its Federal Reserve Bank that it maintains an account for another bank, the Federal Bank will attempt to telephone the off-line bank with respect to all settlement transactions received by such bank, whether the off-line bank is the beneficiary, the beneficiary's bank, or an intermediary bank in the payment order. Under this section, an off-line bank that does not expressly notify its Federal Reserve Bank in writing that it maintains an account for another bank warrants to that Federal Reserve Bank that it does not act as an intermediary bank or a beneficiary's bank for a bank beneficiary with respect to payment orders received through Fedwire.

SECTION 210.30—Payment Orders**30(a) Rejection**

A sender must make arrangements with its Federal Reserve Bank before it can send payment orders to the Federal Reserve Bank. Federal Reserve Banks reserve the right to reject or impose conditions on the acceptance of payment orders for any reason. For example, a Federal Reserve Bank might reject or impose conditions on accepting a payment order where a sender does not have sufficient funds in its account with the Federal Reserve Bank to cover the amount of the sender's payment order and other obligations of the sender due or to become due to the Federal Reserve Bank. A Federal Reserve Bank may require a sender to execute a written agreement concerning security procedures or other matters before the sender may send payment orders to the Federal Reserve Bank.

30(b) Selection of an Intermediary Bank

Under section 4A-302, if a receiving bank (other than a beneficiary's bank), such as a Federal Reserve Bank, accepts a payment order, it must issue a payment order that complies with the sender's order. The sender's order may include instructions concerning an intermediary bank to be used that must be followed by a receiving bank (*see* section 4A-302(a)(1)). If the sender does not designate any intermediary bank in its payment order, the receiving bank may select an intermediary bank through which the sender's payment order can be expeditiously issued to the beneficiary's bank so long as the receiving bank exercises ordinary care in selecting the intermediary bank (*see* section 4A-302(b)).

This section provides that in an inter-District transfer, a Federal Reserve Bank is authorized and directed to select another Federal Reserve Bank as an intermediary bank. A sender may, however, instruct a Federal Reserve Bank to use a particular intermediary bank by designating that bank as the bank to be credited by that Federal Reserve Bank (or the second Federal Reserve Bank in the case of an inter-District transfer) in its payment order, in which case the Federal Reserve Bank will send the payment order to that

bank if that bank receives payment orders through Fedwire. A sender may not instruct a Federal Reserve Bank to use its discretion to select an intermediary bank other than a Federal Reserve Bank or an intermediary bank designated by the sender. In addition, a sender may not instruct a Federal Reserve Bank to use a funds-transfer system or means of transmission other than Fedwire unless the sender and the Federal Reserve Bank agree in writing to the use of the funds-transfer system or means of transmission.

30(c) Same-Day Execution

Generally, Fedwire is a same-day value transfer system through which funds may be transferred from the originator to the beneficiary on the same funds-transfer business day. A sender may not send a payment order to a Federal Reserve Bank that specifies an execution date or payment date later than the day on which the payment order is issued, unless the sender of the order and the Federal Reserve Bank agree in writing to the arrangement.

SECTION 210.31—Payment by a Federal Reserve Bank to a Receiving Bank or Beneficiary**31(a) Payment to a Receiving Bank**

Under section 4A-402, when a Federal Reserve Bank executes a sender's payment order by issuing a conforming order to a receiving bank that accepts the payment order, the Federal Reserve Bank must pay the receiving bank the amount of the payment order. Section 210.29(a) authorizes a Federal Reserve Bank to make the payment by crediting the account at the Federal Reserve Bank maintained or used by the receiving bank. Section 210.31(a) provides that the payment occurs when the receiving bank's account is credited or when the payment order is sent by the Federal Reserve Bank to the receiving bank, whichever is earlier. Ordinarily, payment will occur during the funds-transfer business day a short time after the payment order is received, even if the receiving bank is an off-line bank.

This credit is final and irrevocable when made and constitutes final settlement under section 4A-403. Payment does not waive a Federal Reserve Bank's right of recovery under the applicable law of mistake and restitution (*see* section 210.32(c)), affect a Federal Reserve Bank's right to apply the funds to any obligation due or to become due to the Federal Reserve Bank, or affect legal process or claims by third parties on the funds.

This section on final payment does not apply to settlement for payment orders between Federal Reserve Banks. *These payment orders* are settled by other means.

31(b) Payment to a Beneficiary

Section 210.31(b) specifies when a Federal Reserve Bank makes payment to a beneficiary for which it is the beneficiary's bank. As in the case of payment to a receiving bank, this payment occurs at the earlier of the time that the Federal Reserve Bank credits the beneficiary's account or sends notice of the credit to the beneficiary, and is final and irrevocable when made.

SECTION 210.32—Federal Reserve Bank Liability; Payment of Interest

32(a) Damages

Under section 4A-305(d), damages for failure of a receiving bank to execute a payment order that it was obliged to execute by express agreement are limited to expenses in the transaction and incidental expenses and interest and do not include additional damages, including consequential damages, unless they are provided for in an express written agreement of the receiving bank. This section clarifies that in connection with the handling of payment orders, Federal Reserve Banks may not agree to be liable for consequential damages under this provision and shall not be liable for damages other than those that may be due under article 4A to parties governed by this subpart. Any agreement in conflict with these provisions would not be effective, because it would be in violation of subpart B.

This section does not affect the ability of

other parties to a funds transfer to agree to be liable for consequential damages, the liability of a Federal Reserve Bank under section 4A-404, or the liability to parties governed by subpart B for claims not based on the handling of a payment order *under this* subpart.

32(b) Payment of Interest

Under article 4A, a Federal Reserve Bank may be required to pay compensation in the form of interest to another party in connection with its handling of a funds transfer. For example, payment of compensation in the form of interest is required in certain situations pursuant to sections 4A-204 (relating to refund of payment and duty of customer to report with respect to unauthorized payment order), 4A-209 (relating to acceptance of payment order), 4A-210 (relating to rejection of payment order), 4A-304 (relating to duty of sender to report erroneously executed payment order), 4A-305 (relating to liability for late or improper execution or failure to execute a payment order), 4A-402 (relating to obligation of sender to pay receiving bank), and 4A-404 (relating to obligation of beneficiary's bank to pay and give notice to beneficiary). Under Section 4A-506(a), the amount of such interest may be determined by agreement between the sender and receiving bank or by funds-transfer system rule. If there is no such agreement, under section 4A-506(b), the amount of interest is based on the federal funds rate. Section 210.32(b) provides two means by which Federal Reserve Banks may provide compensation in the form of interest: through an as-of adjustment or through an explicit interest payment.

An as-of adjustment is a memorandum credit or debit that is applied to the reserve or clearing balance of the bank that sent the payment order to, or received the payment order from, a Federal Reserve Bank. Federal Reserve Banks generally provide as-of adjustments to correct errors and recover float. An as-of adjustment differs from a debit or credit to an account in that it does not affect the actual balance of the account; it only affects the balance for reserve- or clearing-balance computation purposes. These adjustments affect the level of reserve or clearing balances

that the bank must fund by other means and are therefore an effective substitute for explicit interest payments.

A party that sent or received a payment order from a Federal Reserve Bank may be unable to make use of an as-of adjustment as compensation in lieu of explicit interest. For example, if the sender or receiving bank is not subject to reserve requirements or satisfies its reserve requirements with vault cash, the as-of adjustment could not be used to free other balances for investment. A Federal Reserve Bank may, in its discretion, provide compensation by an explicit interest payment rather than through an as-of adjustment. Interest would be calculated in accordance with the procedures specified in section 4A-506(b). Similarly, compensation in the form of explicit interest will be paid to government senders, receiving banks, or beneficiaries described in section 210.25(d) if they are entitled to interest under this subpart. A Federal Reserve Bank may also, in its discretion, pay explicit interest directly to a remote party to a Fedwire funds transfer that is entitled to interest, rather than providing compensation to its direct sender or receiving bank.

If a bank that received an as-of adjustment or explicit interest payment is not the party entitled to interest compensation under article 4A, the bank must pass the benefit of the as-of adjustment or explicit interest payment made to it to the party that is entitled to compensation in the form of interest from a Federal Reserve Bank. The benefit may be passed on either in the form of a direct payment of interest or in the form of a compensating balance, if the party entitled to interest agrees to accept the other form of compensation, and the value of the compensating balance is at least equivalent to the value of the explicit interest that otherwise would have been provided.

32(c) Nonwaiver of Right of Recovery

Several sections of article 4A allow for a party to a funds transfer to make a claim pursuant to the applicable law of mistake and restitution. Nothing in subpart B of this part or any operating circular issued under subpart B waives any such claim. A Federal Reserve Bank, however, may waive such a claim by express written agreement in order to settle litigation or for other purposes.

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Uniform Commercial Code Article 4A Funds Transfers

12 CFR 210, appendix B to subpart B

PART 1—SUBJECT MATTER AND DEFINITIONS

SECTION 4A-101—Short Title

This Article may be cited as Uniform Commercial Code—Funds Transfers.

SECTION 4A-102—Subject Matter

Except as otherwise provided in Section 4A-108, this Article applies to funds transfers defined in Section 4A-104.

SECTION 4A-103—Payment Order; Definitions

(a) In this Article:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

SECTION 4A-104—Funds Transfer; Definitions

In this Article:

(a) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) "Originator" means the sender of the first payment order in a funds transfer.

(d) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

SECTION 4A-105—Other Definitions

(a) In this Article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the cus-

tomers is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (Section 1-201(8)).

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	Section 4A-209
"Beneficiary"	Section 4A-103
"Beneficiary's bank"	Section 4A-103
"Executed"	Section 4A-301
"Execution date"	Section 4A-301
"Funds transfer"	Section 4A-104
"Funds-transfer system rule"	Section 4A-501
"Intermediary bank"	Section 4A-104
"Originator"	Section 4A-104
"Originator's bank"	Section 4A-104
"Payment by beneficiary's bank to beneficiary"	Section 4A-405
"Payment by originator to beneficiary"	Section 4A-406

"Payment by sender to receiving bank"	Section 4A-403
"Payment date"	Section 4A-401
"Payment order"	Section 4A-103
"Receiving bank"	Section 4A-103
"Security procedure"	Section 4A-201
"Sender"	Section 4A-103

(c) The following definitions in Article 4 apply to this Article:

"Clearing house"	Section 4-104
"Item"	Section 4-104
"Suspends payments"	Section 4-104

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

SECTION 4A-106—Time Payment Order Is Received

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or

day stated, unless the contrary is stated in this Article.

SECTION 4A-107—Federal Reserve Regulations and Operating Circulars

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

SECTION 4A-108—Exclusion of Consumer Transactions Governed by Federal Law

This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.) as amended from time to time.

PART 2—ISSUE AND ACCEPTANCE OF PAYMENT ORDER

SECTION 4A-201—Security Procedure

“Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

SECTION 4A-202—Authorized and Verified Payment Orders

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized

the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term “sender” in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a),

or it is effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in Section 4A-203(a)(1), rights and obligations arising under this section or Section 4A-203 may not be varied by agreement.

SECTION 4A-203—Unenforceability of Certain Verified Payment Orders

(a) If an accepted payment order is not, under Section 4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 4A-202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

SECTION 4A-204—Refund of Payment and Duty of Customer to Report with Respect to Unauthorized Payment Order

(a) If a receiving bank accepts a payment order issued in the name of its customer as

sender which is (i) not authorized and not effective as the order of the customer under Section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section 1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

SECTION 4A-205—Erroneous Payment Orders

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to Section 4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged

to pay the order to the extent stated in paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

SECTION 4A-206—Transmission of Payment Order Through Funds-Transfer or Other Communication System

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer

system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

SECTION 4A-207—Misdescription of Beneficiary

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in sub-

section (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

SECTION 4A-208—Misdescription of Intermediary Bank or Beneficiary's Bank

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the

intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the

name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in Section 4A-302(a)(1).

SECTION 4a-209—Acceptance of Payment Order

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank (i) pays the beneficiary as stated in Section 4A-405(a) or 4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) when the bank receives payment of the entire amount of the sender's order pursuant to Section 4A-403(a)(1) or 4A-403(a)(2); or

(3) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on

the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to Section 4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

SECTION 4A-210—Rejection of Payment Order

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any

means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to Section 4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

SECTION 4A-211—Cancellation and Amendment of Payment Order

(a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender canceling or amending a payment order is effective to cancel or amend

the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a

new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

SECTION 4A-212—Liability and Duty of Receiving Bank Regarding Unaccepted Payment Order

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in Section 4A-209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

PART 3—EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

SECTION 4A-301—Execution and Execution Date

(a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

SECTION 4A-302—Obligations of Receiving Bank in Execution of Payment Order

(a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to Section 4A-209(a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning

(i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or

(ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is simi-

larly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by a means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order

by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

SECTION 4A-303—Erroneous Execution of Payment Order

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under Section 4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under Section 4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment

orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

SECTION 4A-304—Duty of Sender to Report Erroneously Executed Payment Order

If the sender of a payment order that is erroneously executed as stated in Section 4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under Section 4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

SECTION 4A-305—Liability for Late or Improper Execution or Failure to Execute Payment Order

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of Section 4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance

of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

PART 4—PAYMENT

SECTION 4A-401—Payment Date

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the

beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

SECTION 4A-402—Obligation of Sender to Pay Receiving Bank

(a) This section is subject to Sections 4A-205 and 4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to Section 4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in Sections 4A-204 and 4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in Section 4A-302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through

that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

SECTION 4A-403—Payment by Sender to Receiving Bank

(a) Payment of the sender's obligation under Section 4A-402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obli-

gations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under Section 4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under Section 4A-402(b) or 4A-402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

SECTION 4A-404—Obligation of Beneficiary's Bank to Pay and Give Notice to Beneficiary

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt con-

cerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

SECTION 4A-405—Payment by Beneficiary's Bank to Beneficiary

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under Section 4A-404(a) occurs when and to the extent

- (i) the beneficiary is notified of the right to withdraw the credit,
- (ii) the bank lawfully applies the credit to a debt of the beneficiary, or
- (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under Section 4A-404(a) occurs is

governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under Section 4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations-multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no

payment by the originator to the beneficiary occurs under Section 4A-406, and (iv) subject to Section 4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under Section 4A-402(c) because the funds transfer has not been completed.

SECTION 4A-406—Payment by Originator to Beneficiary; Discharge of Underlying Obligation

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under Section 4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the

funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

PART 5—MISCELLANEOUS PROVISIONS

SECTION 4A-501—Variation by Agreement and Effect of Funds-Transfer System Rule

(a) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in Sections 4A-404(c), 4A-405(d), and 4A-507(c).

SECTION 4A-502—Creditor Process Served on Receiving Bank; Setoff by Beneficiary's Bank

(a) As used in this section, "creditor pro-

cess" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

SECTION 4A-503—Injunction or Restraining Order with Respect to Funds Transfer

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

SECTION 4A-504—Order in Which Items and Payment Orders May Be Charged to Account; Order of Withdrawals from Account

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

SECTION 4A-505—Preclusion of Objection to Debit of Customer's Account

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

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SECTION 4A-506—Rate of Interest

(a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

SECTION 4A-507—Choice of Law

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law

of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of

the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

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Statutory Provisions

FEDERAL RESERVE ACT

SECTION 13—Powers of Federal Reserve Banks

Any Federal reserve bank may receive from any of its member banks or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation, or other items and also, for collection, maturing notes and bills; or solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district, or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or maturing notes and bills: *Provided*, Such nonmember bank or trust company or other depository institution maintains with the Federal reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the Federal Reserve Bank, and other factors as the Board may deem appropriate; *Provided further*, That nothing in this or any other section of this Act shall be construed as prohibiting a member or nonmember bank or other depository institution from making reasonable charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case to exceed 10 cents per \$100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or

otherwise; but no such charges shall be made against the Federal reserve banks.

[12 USC 342.]

* * * * *

SECTION 16—Note Issues

* * * * *

Every Federal reserve bank shall receive on deposit at par from depository institutions or from Federal Reserve banks checks and other items, including negotiable orders of withdrawal and share drafts and drafts drawn upon any of its depositors, and when remitted by a Federal reserve bank, checks and other items, including negotiable orders of withdrawal and share drafts and drafts drawn by any depositor in any other Federal reserve bank or depository institution upon funds to the credit of said depositor in said reserve bank or depository institution. Nothing herein contained shall be construed as prohibiting a depository institution from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons. The Board of Governors of the Federal Reserve System shall, by rule, fix the charges to be collected by the member banks from its patrons whose checks are cleared through the Federal reserve bank and the charge which may be imposed for the service of clearing or collection rendered by the Federal reserve bank.

[12 USC 360.]

The Board of Governors of the Federal Reserve System shall make and promulgate from time to time regulations governing the transfer of funds and charges therefor among Federal reserve banks and their branches, and may at its discretion exercise the functions of a clearing house for such Federal reserve banks, or may designate a Federal reserve bank to exercise such functions, and may also require each such bank to exercise the func-

tions of a clearing house for depository institutions.

[12 USC 248(o).]

SECTION 11—Powers of Board of Governors of Federal Reserve System

* * * * *

The Board of Governors of the Federal Reserve System shall be authorized and empowered:

* * * * *

(i) To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve notes, money or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this Act, and make all rules and regulations necessary to enable said board effectively to perform the same.

[12 USC 248(i).]

* * * * *

SECTION 14—Open Market Operations

* * * * *

Every Federal reserve bank shall have power:

* * * * *

(e) To establish accounts with other Federal reserve banks for exchange purposes and, with the consent or upon the order and direction of the Board of Governors of the Federal Reserve System and under regulations to be prescribed by said board, to open and maintain accounts in foreign countries, appoint correspondents, and establish agencies in such countries wheresoever it may be deemed best for the purpose of purchasing, selling, and collecting bills of exchange, and to buy and sell, with or without its indorsement, through such correspondents or agencies, bills of exchange (or acceptances) arising out of actual commercial transactions which have not more than ninety days to run, exclusive of days of

grace, and which bear the signature of two or more responsible parties, and, with the consent of the Board of Governors of the Federal Reserve System, to open and maintain banking accounts for such foreign correspondents or agencies, or for foreign banks or bankers, or for foreign states as defined in section 25(b) of this Act. Whenever any such account has been opened or agency or correspondent has been appointed by a Federal reserve bank, with the consent of or under the order and direction of the Board of Governors of the Federal Reserve System, any other Federal reserve bank may, with the consent and approval of the Board of Governors of the Federal Reserve System, be permitted to carry on or conduct, through the Federal reserve bank opening such account or appointing such agency or correspondent, any transaction authorized by this section under rules and regulations to be prescribed by the board.

[12 USC 358.]

* * * * *

SECTION 25 (b)—Jurisdiction of Suits

* * * * *

For the purposes of this section, * * * (2) the term "foreign state" includes any foreign government, or any department, district, province, county, possession, or other similar governmental organization or subdivision of a foreign government, and any agency or instrumentality of any such foreign government or of any such organization or subdivision; (3) the term "central bank" includes any foreign bank or banker authorized to perform any one or more of the functions of a central bank; * * *

[12 USC 632.]

BRETTON WOODS AGREEMENTS ACT

SECTION 6—Federal Reserve Banks as Depositories

Any Federal Reserve bank which is requested to do so by the Fund or the Bank shall act as

its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 286d.]

INTER-AMERICAN DEVELOPMENT BANK ACT

SECTION 6—Federal Reserve Banks as Depositories

Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 283d.]

INTERNATIONAL DEVELOPMENT ASSOCIATION ACT

SECTION 6—Federal Reserve Banks as Depositories

Any Federal Reserve bank which is requested to do so by the Association shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System

shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 284d.]

INTERNATIONAL FINANCE CORPORATION ACT

SECTION 6—Federal Reserve Banks as Depositories

Any Federal Reserve bank which is requested to do so by the Corporation shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 282d.]

ASIAN DEVELOPMENT BANK ACT

SECTION 6—Federal Reserve Banks as Depositories

Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 285d.]

Regulation CC Availability of Funds and Collection of Checks

12 CFR 229; as amended effective February 1, 1991



Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

March 1991

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Note on Regulation CC

In the Code of Federal Regulations, the commentary on Regulation CC is set out separately as appendix E. In the version of Regulation CC that follows, each section of the regulation is followed by the commentary on that section. The beginning of each commentary section is clearly labeled "Commentary," and the running head at the top of each page indicates whether the text on that page is regulation or commentary.

The commentary provides background material to explain the Board's intent in adopting a particular part of the regulation. It also provides examples to help readers understand how a particular requirement is to work. Un-

der section 611(e) of the Expedited Funds Availability Act (12 USC 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 the regulation by the Board within the meaning of section 611.

The following is a statement of the assets and liabilities of the Federal Reserve Bank of St. Louis, Missouri, as of the close of business on the 31st day of December, 1914.

U.S. Government Securities U.S. Treasury Notes U.S. Government Bonds U.S. Government Debentures U.S. Government Certificates of Indebtedness U.S. Government Checks U.S. Government Deposits U.S. Government Accounts U.S. Government Cash	State and Local Government Securities State and Local Government Bonds State and Local Government Debentures State and Local Government Certificates of Indebtedness State and Local Government Checks State and Local Government Deposits State and Local Government Accounts State and Local Government Cash	Federal Reserve Bank of St. Louis Federal Reserve Bank of Chicago Federal Reserve Bank of Cleveland Federal Reserve Bank of Cincinnati Federal Reserve Bank of Dallas Federal Reserve Bank of Denver Federal Reserve Bank of Kansas City Federal Reserve Bank of Louisville Federal Reserve Bank of Memphis Federal Reserve Bank of Milwaukee Federal Reserve Bank of Minneapolis Federal Reserve Bank of New York Federal Reserve Bank of Philadelphia Federal Reserve Bank of Richmond Federal Reserve Bank of St. Paul Federal Reserve Bank of San Francisco Federal Reserve Bank of Seattle Federal Reserve Bank of St. Louis Federal Reserve Bank of Washington	Federal Reserve Bank of St. Louis Federal Reserve Bank of Chicago Federal Reserve Bank of Cleveland Federal Reserve Bank of Cincinnati Federal Reserve Bank of Dallas Federal Reserve Bank of Denver Federal Reserve Bank of Kansas City Federal Reserve Bank of Louisville Federal Reserve Bank of Memphis Federal Reserve Bank of Milwaukee Federal Reserve Bank of Minneapolis Federal Reserve Bank of New York Federal Reserve Bank of Philadelphia Federal Reserve Bank of Richmond Federal Reserve Bank of St. Paul Federal Reserve Bank of San Francisco Federal Reserve Bank of Seattle Federal Reserve Bank of St. Louis Federal Reserve Bank of Washington
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Regulation CC

Availability of Funds and Collection of Checks

12 CFR 229; as amended effective February 1, 1991

Subpart A—General

Section

- 229.1 Authority and purpose; organization
- 229.2 Definitions
- 229.3 Administrative enforcement

Subpart B—Availability of Funds and Disclosure of Funds-Availability Policies

Section

- 229.10 Next-day availability
- 229.11 Temporary availability schedule
- 229.12 Permanent availability schedule
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- 229.14 Payment of interest
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- 229.16 Content of specific availability-policy disclosure
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Subpart C—Collection of Checks

Section

- 229.30 Paying bank's responsibility for return of checks
- 229.31 Returning bank's responsibility for return of checks
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- 229.33 Notice of nonpayment
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Appendix A—Routing Number Guide to Next-Day-Availability Checks and Local Checks

Appendix B—Reduction of Schedules for Certain Nonlocal Checks

Appendix C—Model Forms, Clauses, and Notices

Appendix D—Indorsement Standards

Appendix E—Commentary †

Appendix F—Preemption Determinations

SUBPART A—GENERAL

SECTION 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 Public Law 100-86.

(b) *Organization.* This part is divided into subparts and appendixes 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 re-

† In this publication, the commentary is interwoven with the regulation rather than set out as a separate appendix. The commentary for each section of the regulation immediately follows that section.

turn 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.

SECTION 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 USC 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 USC 1813) or a bank that is eligible to apply to become an insured bank under section 5 of that act (12 USC 1815);

(2) A "mutual savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813);

(3) A "savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813);

(4) An "insured credit union" as defined in section 101 of the Federal Credit Union Act (12 USC 1752) or a credit union that is eligible to make application to become an insured credit union under section 201 of that act (12 USC 1781);

(5) A "member" as defined in section 2 of the Federal Home Loan Bank Act (12 USC 1422);

(6) An "insured institution" as defined in section 401 of the National Housing Act (12 USC 1724) or an institution that is eligible to make application to become an insured institution under section 403 of that act (12 USC 1726); or

(7) An "agency" or "branch" of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 USC 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 govern-

ment 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) "Depositary 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 payable by or at a local paying bank, or a check payable by a nonbank payor and payable through a local paying bank.

(s) "Local paying bank" means a paying bank 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 non-proprietary 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 another bank and is sent to the other bank for payment or collection;

(2) The bank at which a check is payable and to which it is sent for payment or collection;

(3) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;

(4) The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank; or

(5) The state or unit of general local government on which a check is drawn and to which it is sent for payment or collection.

For purposes of subpart C, and in connection therewith, subpart A, "paying bank" includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection.

(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 (1) of this definition, 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 purposes of UCC section 4-202(2).

(dd) "Routing number" means—

- (1) The number printed on the face of a check in fractional form or in nine-digit form; 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 "UCC" 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 USC 1693a(6)).

(mm) Unless the context requires otherwise, the terms not defined in this section have the meanings set forth in the UCC.

COMMENTARY

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 USC 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 definitions are self-explanatory and therefore are not discussed in this commentary.

2(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 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.

2(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.

2(c) Automated Teller Machine

“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.

2(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 USC 1004; 12 USC 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 purposes of this regulation, funds are considered available for withdrawal even though they are being held by the bank to satisfy an obligation of the customer other than the customer's potential liability for the return of the check. For example, funds are available for withdrawal even though they are being held by a bank to satisfy a garnishment, tax levy, or court order restricting disbursements from the account, or to satisfy the customer's liability arising from the certification of a check, sale of a cashier's or teller's check, guaranty or acceptance of a check, or similar transaction.

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2(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 USC 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 and agencies of foreign banks. For purposes of subpart B, the term does not include corporations organized under section 25(a) of the Federal Reserve Act, 12 USC 611-631 (Edge corporations) or corporations having an agreement or undertaking with the Board under section 25 of the Federal Reserve Act, 12 USC 601-604a (agreement corporations). 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 UCC section 1-201(4), and is intended to cover entities that handle checks for collection and payment, such as Edge and agreement corporations, commercial lending companies under 12 USC 3101, certain industrial banks, and private bankers, so that virtually 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, the term may also include a state or a unit of general local government to the extent that it pays warrants or other drafts drawn directly on the state or local government itself, and the warrants or other drafts are sent to the state or local government for payment or collection.

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.

2(f) and (g) Banking Day and 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 UCC section 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 UCC, 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. A deposit made at an ATM or off-premise facility (such as a remote depository or a lock box) is considered made at the branch holding the account into which the deposit is made for the purpose of determining the day of deposit. All other deposits are considered made at the branch at

which the deposit is received. For example, under section 229.19(a)(1), funds deposited at an ATM are considered deposited at the time they are received at the ATM. On a calendar day that is a banking day for the branch or other location of the depository bank at which the account is maintained, a deposit received at an ATM before the ATM's cut-off hour is considered deposited on that banking day, and a deposit received at an ATM after the ATM's cut-off hour is considered deposited on the next banking day of the branch or other location where the account is maintained. On a calendar day that is not a banking day for the account-holding location, all ATM deposits are considered received on that location's next banking day. This rule for determining the day of deposit would also apply to a deposit to an off-premise facility, such as a night depository or lock box, which is considered deposited when removed from the facility and available for processing under § 229.19(a)(3). If an unstaffed facility, such as a night depository or lock box, is on branch premises, the day of deposit is determined by the banking day at the branch at which the deposit is received, whether or not it is the branch at which the account is maintained.

2(h) Cash

"Cash" means U.S. coins and currency. The phrase in the act "including Federal Reserve notes" has been deleted as unnecessary. (See 31 USC 5103.)

2(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 a customer of the bank in connection with customer deposit-account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by non-customers for remittance purposes, including loan-disbursement checks. Cashier's checks

provided to customers or others are often labeled as "cashier's check," "officer's check," or "official check." The definition excludes checks that a bank draws on itself for other purposes, such as to pay employees and vendors, and checks issued by the bank in connection with a payment service, such as a payroll or a bill-paying service. Cashier's checks are generally sold by banks to substitute the bank's credit for the customer's credit and thereby enhance the collectibility of the checks. A check issued in connection with a payment service is generally provided as a convenience to the customer rather than as a guarantee of the check's collectibility. In addition, such checks are often more difficult to distinguish from other types of checks than are cashier's checks as defined by this regulation.

2(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 (UCC §§ 3-410, 3-411). The regulation defines "certified check" to include both the act's and UCC's definitions.

2(k) Check

"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 UCC

the payable-through bank is a collecting bank to make presentment and is generally not authorized to make payment (UCC § 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, banker's 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 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

¹ Section 602(11) of the act (12 USC 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."

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 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 USC 5101), a credit card draft (i.e., a sales draft used by a merchant or a draft generated by a bank as a result of a cash advance), or an ACH debit transfer. The definition of check includes a check that a bank may supply to a customer as a means of accessing a credit line without the use of a credit card.

2(l) Check Clearinghouse Association

The act defines a clearinghouse association as any arrangement by which participants exchange deposited checks on a local basis, in-

cluding 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 clearinghouse association sponsors separate exchanges 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.

2(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.

2(n) Consumer Account

"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 section 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.

2(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 UCC 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 section 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.)

For purposes of subpart B, a bank may act as both the depository bank and the paying bank with respect to a check, if the check is payable by the bank in which it was deposited, or if the check is payable by a nonbank payor and payable through or at 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.

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2(p) Electronic Payment

“Electronic payment” is defined to mean a wire transfer as defined in section 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.

2(q) Forward Collection

“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.”

2(r) Local Check

“Local check” is defined as a check payable by or at a local paying bank, or, in the case of nonbank payors, payable through a local paying bank. A check payable by a local bank but payable through a nonlocal bank is a local check. Conversely, a check payable through a local bank but payable by a nonlocal bank is a nonlocal check. Where two banks are named

on a check and neither is designated as a payable-through bank, the check is considered payable by either bank and may be considered local or nonlocal depending on which bank it is sent to for payment. Generally, the depository bank may rely on the routing number to determine whether a check is local or nonlocal. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank Office to assist persons in determining whether or not such a check is local. If, however, a check is payable by one bank but payable through another bank, the routing number appearing on the check will be that of the payable-through bank, not the paying bank. Many credit-union share drafts and certain other checks payable by banks are payable through other banks. In such cases, the routing number cannot be relied on to determine whether the check is local or nonlocal. Until the labelling requirements in section 229.36(e) for payable-through checks become effective on February 1, 1991, there may be cases where the payable-through bank will be designated only by routing number and will not be named on the check. In such cases also, the routing number may not be relied on to determine whether the check is local or nonlocal. For payable-through checks that meet the labelling requirements of section 229.36(e), the depository bank may rely on the four-digit routing symbol of the paying bank that is printed on the face of the check as required by that section, e.g., in the title plate, but not on the first four digits of the payable-through bank's routing number printed in magnetic ink in the MICR line or in fractional form, to determine whether the check is local or nonlocal.

2(s) Local Paying Bank

"Local paying bank" is defined as a paying bank located in the same check-processing region as the branch or proprietary ATM of the depository bank.

Examples

1. If a check that is payable by 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 the location of the bank by which it is payable even if the check is sent to the nonlocal bank for collection.

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 the commentary on definition of "paying bank.")

For deposits at nonproprietary ATMs, a paying bank is a local paying bank only if the paying bank 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.

2(t) Merger Transaction

"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 USC 1828) or similar statutes; it does not encompass acquisitions of a bank under the Bank Holding Company Act (12 USC 1842) or section 408 of the National Housing Act (12 USC 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 sections 229.19(g) and 229.40.)

2(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 in-

structions, or any similar item classified as a noncash item in the Board's regulation. To qualify as a noncash item, an item must be handled as such and may not be handled as a cash item by the depository bank.

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. (In the context of this definition, "paying bank" refers to the paying bank as defined for purposes of subpart C.)

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 sections 229.30(f) and 229.31(f).)

2(y) Participant

"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.

2(z) Paying bank

The regulation uses this term in lieu of the act's "originating depository institution." For purposes of subpart B, the term "paying bank" includes the payor bank, the payable-at bank to which a check is sent, or, if the check is payable by a nonbank payor, the bank through which the check is payable and to which it is sent for payment or collection. For purposes of subpart C, the term includes the payable-through bank and the bank whose routing number appears on the check, regardless of whether the check is payable by a different bank, provided that the check is sent for payment or collection to the payable-through bank or the bank whose routing number appears on the check.

Under sections 229.30 and 229.36(a), a bank designated as a payable-through bank or payable-at bank and to which the check is sent for payment or collection 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. Subpart C places on payable-through and payable-at banks the requirements of expeditious return based on the time the payable-through or payable-at bank received the check for forward 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.

2(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. 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 in 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.

2(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 section 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 section 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 UCC section 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.

2(cc) Returning Bank

"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 section 229.31(a). A returning bank is also a collecting bank for the purpose of a collecting bank's duty to act seasonably under UCC section 4-202(2) and is analogous to a collecting bank for purposes of final settlement. (See the commentary to section 229.35(b).)

2(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.

2(gg) Teller's Check

"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 does not include checks that are drawn by a nonbank on a nonbank even if payable through or at a bank. The definition includes checks provided to a customer of the bank in connection with customer deposit-account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by a noncustomer for remittance purposes, including loan-disbursement checks. The definition excludes checks used by the bank to pay employees or vendors and checks issued by the bank in connection with a payment service, such as a payroll or a bill-paying service. Teller's checks are generally sold by banks to substitute the bank's credit for the customer's credit and thereby enhance the collectibility of the checks. A check issued in connection with a payment service is generally provided as a convenience to the customer rather than as a guarantee of the check's collectibility. In addition, such checks are often more difficult to distinguish from other types of checks than are teller's checks as defined by this regulation. (See also the commentary on the definition of "cashier's check.")

2(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 section 229.13(a); 12 USC 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.

able 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" includes 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 Interbank 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.

2(ii) Uniform Commercial Code

"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 UCC 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.

2(kk) Unit of Local Government

"Unit of general local government" is defined to include a city, county, parish, town, township, village, or other general-purpose political subdivision of a state. The term does not include special-purpose units, such as school districts, water districts, or Indian nations.

2(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 determin-

SECTION 229.3—Administrative Enforcement

(a) *Enforcement agencies.* Compliance with this part is enforced under—

(1) Section 8 of the Federal Deposit Insurance Act (12 USC 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 8 of the Federal Deposit Insurance Act, by the director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) The Federal Credit Union Act (12 USC 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

SECTION 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.

COMMENTARY

SECTION 229.10—Next-Day Availability

10(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.

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).)

10(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 the discussion of definitions of "automated clearinghouse," "electronic payment," and "wire transfer" in section 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 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.

10(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 that contain in the MICR line a routing number that is listed in appendix A 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. For all new accounts, even if the new-account exception is not invoked, traveler's checks must be included in the \$5,000 aggregation of checks deposited on any one banking day that are subject to the next-day availability requirement. (See section 229.13(a).)

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.

Deposits Made to an Employee of the Depository Bank

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 not made to an employee of the depository bank on the premises of such bank, the proceeds of the deposit must be made available for withdrawal by the start of business on the second business day after deposit, under paragraph (c)(2) of this section. For example, second-day availability rather than next-day availability would be allowed for deposits of checks subject to this section made at a proprietary ATM (and at a nonproprietary ATM under the permanent schedule), night depository, through the mail or a lock box, or at a teller station staffed by a person that is not an employee of the depository bank. Second-day availability may also be allowed for deposits picked up by an employee of the depository bank at the customer's premises; such deposits would be considered made upon receipt at the branch or other location of the depository bank.

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) 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.

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, or the bank must post a notice advising customers that the slips are available upon request. 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.* 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 section 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 section 229.10(c);
- (iii) A U.S. Postal Service money order that is not governed by the availability requirements of section 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 section 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 with-

drawal 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 section 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 section 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 section 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.

COMMENTARY

SECTION 229.11—Temporary Availability Schedule

11(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.

11(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 section 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 section 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 UCC section 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.

11(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 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 section 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.

A reduction in schedules may apply even in those cases where the determination that the check is nonlocal cannot be made based on the routing number on the check. For example, a nonlocal credit-union payable-through share draft may be subject to a reduction in schedules if the routing number of the payable-through bank which appears on the draft is included in appendix B, even though the determination that the payable-through share draft is nonlocal is based on the location of the credit union and not the routing number on the draft.

Reduction in Schedules

Section 603(d)(1) of the act (12 USC 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. 179 (1987)).

Reduced schedules are provided for certain nonlocal checks where significant improvements can be made to the act's schedules. Spe-

cifically, 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.

11(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.

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

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

- (1) A local check;
- (2) A check drawn on the Treasury of the United States that is not governed by the availability requirements of section 229.10(c);
- (3) A U.S. Postal Service money order that is not governed by the availability requirements of section 229.10(c); and
- (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 section 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—

- (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 section 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), (c), or (f) 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), (c), or (f) of this section. This \$400 is in addition to the \$100 available under section 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 section 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.

(f) *Deposits at nonproprietary ATMs.*

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

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

(2)(i) A depository bank shall make funds

deposited in an account at a nonproprietary ATM available for withdrawal not later than the second business day following the banking day on which the funds are deposited, in the case of—

(A) cash;

(B) a check described in section 229.10(c)(1)(i) through (v) and (vii), even though the check or checks are not deposited in person to an employee of the depository bank; and

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

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

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

COMMENTARY**SECTION 229.12—Permanent Availability Schedule****12(a) Effective Date**

The permanent schedule supersedes the temporary schedule on September 1, 1990. Paragraph (f) provides special effective dates for deposits made at nonproprietary ATMs.

12(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 section 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 section 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.

12(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 section 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 section 229.11(c), the Board is required to shorten the schedules for any category of check where most of these 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.

12(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 section 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.

12(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 section 229.11(d).

The act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. During the period from September 1, 1990, through No-

November 27, 1992, all deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit (i.e., such deposits may be treated in the same manner as deposits of nonlocal checks under the permanent schedule). For example, during that time period, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week.

Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit. In addition, the first \$100 of the aggregate deposit at a nonproprietary ATM on any one banking day must be made available for withdrawal on the second business day after the banking day of deposit (rather than on the next day, as required by section 229.10(c)(1)(vii) for deposits at staffed teller stations and proprietary ATMs). If a customer makes a deposit at a nonproprietary ATM and one or more deposits to the same account on the same day at another location, such as a staffed teller station, the \$100 rule is applied to the aggregate of all deposits made on that day. In this situation, the \$100 rule is applied first to funds for which the \$100 must be available for withdrawal on the next day (e.g., funds deposited at a staffed teller station) and then to funds deposited at nonproprietary ATMs for which the \$100 must be made available for withdrawal on the second day. For example, if a customer deposits a \$75 nonlocal check at a staffed teller station and a \$100 nonlocal check at a nonproprietary ATM on the same banking day, \$75 must be available for withdrawal on the next business day (as required by section 229.10(c)(1)(vii)) and an additional \$25 must be available for withdrawal on the second business day after the banking day of deposit (as required by this paragraph). Nonlocal checks deposited at a nonproprietary ATM after November 28, 1992, must continue to be made available for withdrawal by the fifth business day following the banking day of deposit.

SECTION 229.13—Exceptions

(a) *New accounts.*

(1) A deposit in a new account—

(i) Is subject to the requirements of section 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 section 229.10(c)(1)(i) through (v) and section 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 sections 229.10(c)(1)(vi) and (vii), 229.11, and 229.12.

For purposes of this paragraph, checks subject to section 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 postdated, if the reason for return indicated on the check states that it was returned because it was postdated, 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, sections 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 section 229.10(c)(1)(iii) and (v); section 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; section 229.11; and section 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 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 section 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 sections 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 section 229.10(c)(1)(iii) or (v) or section 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 sections 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 sections 229.11 and 229.12, whichever is later.

(4) For the purposes of paragraphs (h)(1), (h)(2), and (h)(3) of this section, an extension of up to five business days for local checks and six business days for non-local checks is a reasonable period. A longer extension may be reasonable, but the bank has the burden of so establishing.

COMMENTARY

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 section 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.

13(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 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 section 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 section 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 section 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 section 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 section 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.

13(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 section 229.13(h). When the large-deposit exception is applied to deposits composed of both local and nonlocal checks, the depository bank has the discretion to choose the portion of the deposit to which it applies the exception. Deposits by cash, electronic payment, or checks that must be granted next-day (or second-day) availability under section 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.

13(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 section 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 with-

drawal under section 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.

13(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 sections 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.

13(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 section 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 ac-

count 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 UCC section 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 UCC section 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.

13(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 be-

yond 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 section 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.

13(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 sections 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. The Board has clarified in the regulation when a depository bank is deemed to have knowledge of the facts upon which the determination is made. 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 section 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.

13(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 five business days for local checks and six business days for nonlocal checks is reasonable. 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 local check deposit by five 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.

Five business days for local checks and six business days for nonlocal checks, 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 sections 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 section 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.* 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 section 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 section 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.

COMMENTARY

SECTION 229.14—Payment of Interest

14(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.

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.

³ This section implements section 606 of the act (12 USC 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 UCC that is derived from the code's concept of "provisional settlement." (See UCC sections 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 UCC. "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.

(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.

14(b) Special Rule for Credit Unions

This provision implements a requirement in section 606(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 section 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.

14(c) Exception for Checks Returned Unpaid

This provision is based on section 606(c) of the act (12 USC 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.* 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 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.

COMMENTARY

SECTION 229.15—General Disclosure Requirements

15(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."

15(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 section 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.

15(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.

15(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.* To meet the requirements of a specific availability-policy disclosure under sections 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 section 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);^{3a}

^{3a} No later than December 31, 1988, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose that certain checks, such as some credit-union share drafts that are payable by one bank but payable through another bank, will be treated as local or nonlocal checks based upon the location of the bank by which they are payable and not on the basis of the location of the bank whose routing number appears on the check. A bank that makes funds from nonlocal checks available for withdrawal within the time periods required for local checks under sections 229.11, 229.12, and 229.13 is not required to provide this disclosure on payable-through checks to its customers. The statement concerning payable-through checks must describe how the customer can determine whether these checks will be treated as local or nonlocal, or state that special rules apply to such checks and that the customer may ask about the availability of these checks. The statement may be in the form of an attachment or insert to the bank's existing specific policy disclosures. In addition, banks subject to this disclosure requirement must provide a similar notice concerning the payable-through checks to existing account customers no later than December 31, 1988. (Even though a bank need not make a disclosure concerning payable-through checks until December 31, 1988, the bank must characterize these checks correctly as local or nonlocal checks under amended section 229.2, and provide availability in accordance with sections 229.11, 229.12, and 229.13, effective September 1, 1988.)

(3) A description of any of the exceptions in section 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 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 how to obtain a refund.

(d) *Credit-union notice of interest-payment policy.* If a bank described in section

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 section 229.14(a), the bank's specific policy disclosures shall contain an explanation of when interest or dividends on deposited funds begin to accrue.

COMMENTARY

SECTION 229.16—Specific Availability-Policy Disclosure

16(a) General

This section describes the information that must be disclosed by banks to comply with sections 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.

The disclosure must reflect the policy and practice of the bank regarding availability as to most accounts and most deposits into those accounts. In disclosing the availability policy that it follows in most cases, a bank may provide a single disclosure that reflects one policy to all its transaction account customers, even though some of its customers may receive faster availability than that reflected in the policy disclosure. Thus, a bank need not disclose to some customers that they receive faster availability than indicated in the disclosure. If, however, a bank has a policy of imposing delays in availability on any customers longer than those specified in its disclosure, those customers must receive disclosures that reflect the longer applicable availability periods.

A bank may disclose that funds are “available for withdrawal” on a given day notwithstanding the fact that the bank uses the funds to pay checks received before that day. For example, a bank may disclose that its policy is to make funds available from deposits of local checks on the second business day following the day of deposit, even though it may use the deposited funds to pay checks prior to the second business day; the funds used to pay checks in this example are not available for withdrawal until the second business day after deposit because the funds are not available for all uses until the second business day. (See the definition of “available for withdrawal” in section 229.2(d).)

16(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 section 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.

Generally, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose to its customers that certain checks, such as some credit-union payable-through drafts, will be treated as local or nonlocal based on the location of the bank by which they are payable (e.g., the credit union), and not on the basis of the location of the bank whose routing number appears on the check. A bank is not required to provide this disclosure, however, if it makes the proceeds of both local and nonlocal checks available for withdrawal within the time periods required for local checks in sections 229.11, 229.12, and 229.13.

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 section 229.12(f)(1) 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 sections 229.11(b)(2) and 229.12(d), or the provision in section 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.

A bank that provides availability based on when the bank generally receives credit for deposited checks need not disclose the time when a check drawn on a specific bank will be available for withdrawal. Instead, the bank may disclose the categories of deposits that must be available on the first business day after the day of deposit (deposits subject to section 229.10) and state the other categories of deposits and the time periods that will be applicable to those deposits. For example, a bank might disclose the four-digit Federal Reserve routing symbol for local checks and indicate that such checks as well as certain nonlocal checks will be available for withdrawal on the first or second business day following the day of deposit, depending on the location of the particular bank on which the check is drawn, and disclose that funds from all other checks will be available on the second or third business day. The bank must also disclose that the customer may request a copy of the bank's detailed schedule that would enable the customer to determine the availability of any check and must provide such schedule upon request. A change in the bank's detailed schedule would not trigger the change-in-policy disclosure requirement of section 229.18(e).

16(c) Longer Delays on a Case-by-Case Basis

16(c)(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 sections 229.11 or 229.12 for local and nonlocal checks, the reason for the delay need not be based on the exceptions provided in section 229.13. If the delay exceeds the time periods permitted under sections 229.11 or 229.12, however, then it must be based on an exception provided in section 229.13, and the bank must comply with the section 229.13 notice requirements.

(16)(c)(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 section 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.

(16)(c)(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.

16(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 section 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.* Before opening an account, a bank shall provide a potential customer with the applicable specific availability-policy disclosure described in section 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 section 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.

COMMENTARY

SECTION 229.17—Initial Disclosures

17(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.

17(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 section 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.* 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 section 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 section 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.

COMMENTARY

SECTION 229.18—Additional Disclosure Requirements

18(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 section 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 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.

18(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.

18(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 section 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.

18(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.

18(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 section 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.

In disclosing changes due to the implementation of the permanent schedule, a bank may provide notice in any form that is clear and conspicuous. For example, in disclosing the change in the maximum period for case-by-case holds, banks that used the previous version of Form C-3 could use language such as the following on account statements or inserts: "Our disclosure on funds availability indicated that, in certain circumstances, funds from deposits would not be available until the seventh business day following the day of your deposit. Effective September 1, 1990, that period [was/will be] reduced to five business days." A bank reserving the right to apply the cash-withdrawal limitation in section 229.12(d) when invoking a case-by-case hold should indicate that the period is reduced to six, rather than five, business days.

SECTION 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 sections 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 section 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 non-consumer 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.*

(1) A depository bank that receives a

check for deposit in an account may not place a hold on any funds of the customer at the bank, where—

- (i) The amount of funds that are held exceeds the amount of the check; or
 - (ii) The funds are not made available for withdrawal within the times specified in 229.10, 229.11, 229.12, and 229.13.
- (2) A depository bank that cashes a check for a customer over the counter, other than a check drawn on the depository bank, may not place a hold on funds in an account of the customer at the bank, if—
- (i) The amount of funds that are held exceeds the amount of the check; or
 - (ii) The funds are not 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 section 229.13(a), and when funds are considered deposited under section 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.

COMMENTARY

SECTION 229.19—Miscellaneous

19(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 deposited to a deposit box in a bank lobby that is accessible to customers only during regular business hours are generally considered deposited when placed in the lobby box; a bank may, however, treat deposits to lobby boxes the same as deposits to night depositories (as provided in section 229.19(a)(3)), provided a notice appears on the lobby box informing the customer when such deposits will be considered received. 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-premises 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 section 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-premise facilities, such as night depositories or lock boxes, the depository bank may establish a cut-off hour of 12:00 noon or later (either local time of the branch or other location of the depository bank at which the account is maintained or local time of the ATM or off-premise facility). The depository bank must use the same method for establishing the cut-off hour for all ATMs and off-premise facilities used by its customers. The choice of cut-off hour must be reflected in the bank's internal procedures, and the bank must inform its customers of the cut-off hour upon request. 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.

A bank is not required to remain open until 2:00 p.m. If a bank closes before 2:00 p.m., deposits received after the closing may be considered received on the next banking day. Further, as section 229.2(f) defines the term "banking day" as the portion of a business day on which a bank is open to the public for substantially all of its banking functions, a day, or a portion of a day, is not necessarily a banking day merely because the bank is open for only limited functions, such as keeping drive-in or walk-up teller windows open, when the rest of the bank is closed to the public. For example, a banking office that usually provides a full range of banking services may close at 12:00 noon but leave a drive-in teller window open for the limited purpose of receiving deposits and making cash withdrawals. Under those circumstances, the bank is considered closed and may consider deposits received after 12:00 noon as having been received on the next banking day. The fact that a bank may reopen for substantially all of its banking functions after 2:00 p.m., or that it continues its back office operations throughout the day, would not affect this result. A bank may not, however, close individual teller stations and reopen them for next day's business before 2:00 p.m. during a banking day.

19(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 sections 229.11(b)(2) and 229.12(d). Thus, if a bank has no ATMs and its branch facilities are available for customer transactions be-

ginning 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).

19(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. For example, even if a check is returned or a notice of nonpayment is received after the time by which funds must be made available for withdrawal in accordance with this regulation, the depository bank may charge back the customer's ac-

count for the full amount of the check. (See section 229.33(d) and commentary.)

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 sections 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.

19(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.

19(e) Holds on Other Funds

Section 607(d) of the act (12 USC 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 in an account (as defined in section 229.2(a)), the bank may not place a hold on any of the customer's funds so that the funds that are held exceed the amount of the check deposited or the total amount of funds held are not made available for withdrawal within the times required in this subpart. For example, if a bank places a hold on funds in a customer's nontransaction account, rather than a transaction account, for deposits made to the customer's transaction account, the bank may place such a hold only to the extent that the funds held do not exceed the amount of the deposit and the length of the hold does not exceed the time periods permitted by this regulation.

These restrictions also apply to holds placed on funds in a customer's account (as defined in section 229.2(a)) if a customer cashes a check at a bank (other than a check drawn on that bank) over the counter. The regulation does not prohibit holds that may be placed on other funds of the customer for checks cashed over the counter, to the extent that the transaction does not involve a deposit to an account. A bank may not, however, place a hold on any account when an on-us check is cashed over the counter. On-us checks are considered finally paid when cashed (see UCC section 4-213(1)(a)).

19(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 ensure 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.

19(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 section 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 section 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 (section 229.2(y) and (l) and section 229.11(b)(2))
2. When an ATM is a "proprietary ATM" (section 229.2(aa), section 229.11(d), and section 229.12(b))
3. When a check is drawn on a branch of the depository bank (section 229.10(c)(1)(vi))

"Merger transaction" is defined in section 229.2(t).

SECTION 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 amended 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 1, 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.

COMMENTARY

SECTION 229.20—Relation to State Law

20(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. 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.

20(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.

20(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 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 business days or longer for local checks permits a hold that is longer than that permitted under the act and this regulation, and therefore is inconsistent and preempted. State availability schedules that provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

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 and this regulation, 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 non-

local 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, this provision of state law is inconsistent and preempted in its entirety.

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 this regulation. 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 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 cannot exceed the hold permissible under the federal exception in accordance with Regulation CC. In such cases, only one exception notice is required, in accordance with section 229.13(g). This notice need only include the applicable federal exception as the reason the exception was invoked. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used.

State laws that provide maximum availability periods for categories of deposits that are not covered by the act would not be preempted. Thus, state funds-availability laws that apply to funds in time and savings deposits are not affected by the act or this regulation. In addition, the availability schedules of several states apply to "items" deposited to an account. The term "items" may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. Deposits that are not covered by Regulation CC continue to be subject to the state availability schedules. State laws that provide maximum availability periods for categories of institutions that are not

covered by the act would also not be preempted. For example, a state law that governs money market mutual funds would not be affected by the act or this regulation.

Generally, state rules governing the disclosure or notice of availability policies applicable to accounts are also preempted. 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 and this subpart. Banks in these states would have to follow the state disclosure rules for these deposits.

20(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 UCC provisions to the requirements of subpart C.

20(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.* 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.

COMMENTARY

SECTION 229.21—Civil Liability

21(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 the commentary to section 229.20.)

21(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.

21(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 or if it fails to identify whether a payable-through check is a local or nonlocal check despite procedures designed to make this determination accurately.

21(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.

21(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.

21(f) Exclusions

This provision clarifies that liability under this section 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.

21(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 section 229.13(g) as well as a brief description of the facts giving rise to the availability of that exception.

SUBPART C—COLLECTION OF CHECKS

SECTION 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 located in the same check-processing region as 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 not located in the same check-processing region as 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 section 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 UCC, Regulation J (12 CFR 210), or section 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 section 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 section 229.30(a) do not apply to the paying bank's return of a check under this paragraph.

(c) *Extension of deadline.* The deadline for return or notice of nonpayment under the UCC or Regulation J (12 CFR 210) is extended—

(1) 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's 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; this 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; or

(2) if the deadline falls on a Saturday that is a banking day, as defined in the applicable UCC, for the paying bank, and the paying bank uses a means of delivery that would ordinarily result in the returned check's being received by the bank to which it is sent prior to the cut-off hour for the next processing cycle, in the case of a returning bank, or on the next banking day, in the case of a depository bank, after midnight Saturday night.

(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 section 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.

COMMENTARY

SECTION 229.30—Paying Bank's Responsibility for Return of Checks

30(a) Return of Checks

This section requires a paying bank (which, for purposes of subpart C, may include a payable-through and payable-at bank; see section 229.2(z)) 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 where both the paying and depository banks are located in the same check-processing region or four business days after presentment where the paying and depository banks are not located in the same check-processing region, 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 payable by 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.

30(a)(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 or not the paying and depository banks are located in the same check-processing region.

Where both banks are located in the same check-processing region, 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 paying bank must be returned to a depository bank located in the same check-processing region by 4:00 p.m. on Wednesday. For a paying bank that is located in a different check-processing region than the depository 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 such a 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 section 229.10(c), must be made available for withdrawal under the temporary schedules in section 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 section 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.

30(a)(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 section 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 section 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 section

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 depositary 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 depositary 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 depositary bank, which is located in another community, but similarly situated banks send forward-collection checks drawn on the depositary bank to a correspondent or a Federal Reserve Bank, the paying bank would not have to send returned checks directly to the

depositary 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 depositary bank directly to the depositary 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 depositary 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 depositary 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 section 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 depositary bank as quickly as the forward collection of a check drawn on the depositary bank or, where the returning bank takes a day to create a qualified returned check under section 229.31(a), one day later than the forward-collection time. If a paying bank returns a check on its banking day of receipt without paying for the check, as permitted under UCC section 4-302(a), and receives settlement for the returned check from a returning bank, it must promptly pay the amount of the check to the collecting bank from which it received the check.

Although paying banks may wish to prepare qualified returned checks because they

⁴ This is analogous to the responsibility of collecting banks under UCC section 4-202(3).

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 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 section 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 section 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 section 229.32(a).

Except for the extension permitted by section 229.30(c), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under UCC sections 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 UCC sections 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 pay-

ment. 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 section 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 UCC section 4-301. (See discussion of section 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 UCC and liability for missing the timeliness requirements of this regulation. Also, a paying bank is not responsible for failure to make expeditious return to a party that has breached a presentment warranty under UCC section 4-207(1), notwithstanding that the paying bank has returned the check. (See the commentary to section 229.30(a).)

This paragraph directly affects the following provisions of the UCC, 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 section 229.31(c), not by revocation of settlement.

30(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 section 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 section 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 section 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 section 229.31(a). A paying bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on each check for which the depository bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. The returned check may not be prepared for automated return. This information will warn the bank that this check will require special research and handling in accordance with section 229.31(b). The return of a check to a bank that handled the check for forward collection is consistent with section 229.35(b), which requires a bank handling a check to take up the check if it has not been paid.

The sending of a check to a bank that han-

dled the check for forward collection under this paragraph 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 section 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 bank in the area reserved for the depository bank's indorsement, making the indorsement unreadable. (See section 229.38(d).)

A paying bank's return under this paragraph is also subject to its midnight deadline under UCC section 4-301, Regulation J, and the exception provided in section 229.30(c). A paying bank also may send a check to a prior collecting bank to make a claim against that bank under section 229.35(b) where the depository bank is insolvent or in other cases as provided in section 229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under UCC section 4-207.

30(c) Extension of Deadline

This paragraph permits extension of the midnight deadline, but not of the duty of expeditious return, in two circumstances:

1. 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.
2. A paying bank may observe a banking day, as defined in the applicable UCC, on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the UCC midnight deadline for checks received on Friday might require the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depository bank to which the returned checks were sent might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depository bank by the cut-off hour on its next banking day following the Saturday midnight deadline.

The time limits that are extended in each case are the paying bank's midnight deadline in UCC sections 4-301 and 4-302 and section

210.12 of Regulation J (12 CFR 210.12). As these extensions are designed to speed (§ 229.30(c)(1)), or at least not slow (§ 229.30(c)(2)), the overall return of checks, no modification or extension of the expeditious return requirements in section 229.30(a) is required.

The paying bank satisfies its midnight deadline under the UCC 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 UCC sections 4-301 and 4-302 and section 210.12 of Regulation J (12 CFR 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

30(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.

30(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 section 229.30(a) and the notice-of-nonpayment requirement of section 229.33 do not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in UCC sections 4-301 and 4-302 and section 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 the expeditious-return and notice-of-nonpayment requirements of sections 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 section 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.

30(f) Notice in Lieu of Return

A check that is lost or otherwise unavailable for return may be returned by sending a legible 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 section 229.33(b). The copy or written notice must clearly indicate it is a notice in lieu of return and must be handled in the same manner as other returned checks. 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. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in section 229.35(b). A bank using a notice in lieu of return gives a warranty under section 229.34(a)(4) that the original check has not been and will not be returned.

The requirement of this paragraph supersedes the requirement of UCC section 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 section 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 section 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 section 229.33.

If not all of the information required by section 229.33(b) is available, the paying bank may make a claim against any prior bank handling the check as provided in section 229.35(b).

30(g) Reliance on Routing Number

Although section 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 depositary bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depositary bank as it appears on the check (in the depositary 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 depositary 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 section 229.38(a).

SECTION 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 located in the same check-processing region as 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 not located in the same check-processing region as 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 re-

turn, the returning bank may send the returned check to the depository bank, or to any bank agreeing to handle the returned check expeditiously under section 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 UCC and Regulation J (12 CFR 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 section 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 section 229.30(b), or from a returning bank under this paragraph, but that 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 section 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.

COMMENTARY

SECTION 229.31—Returning Bank's
Responsibility for Return of Checks

31(a) Return of Checks

The standards for return of checks established by this section are similar to those for paying banks in section 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 or not the paying bank is located in the same check-processing region as the depository bank. This is the same test as the two-day/four-day test applicable to paying banks. (See the commentary to section 229.30(a).) While a returning bank will not have firsthand 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 presentment 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 section 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 UCC section 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 UCC section 4-202 and section 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 section 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 section 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 re-

turned 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 section 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 UCC section 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 section 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 UCC 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 section 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.

31(b) Unidentifiable Depository Bank

This section is similar to section 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 section 229.31(a) are expected to be expert in identifying depository-bank indorsements. In the limited cases where the re-

turning 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 section 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 the returned check expeditiously under section 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 section 229.30(b), a returning bank's sending of a check to a bank that handled the check for forward collection under section 229.31(b) is not subject to the expeditious-return requirements of section 229.31(a).

The returning bank's return of a check under this paragraph is subject to the midnight deadline under UCC section 4-202(2). (See the definition of "returning bank" in section 229.2(cc).)

Where a returning bank receives a check that it does not agree to handle expeditiously under section 229.31(a), such as a check sent to it under section 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 section 229.30(b), a returning bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on each check for which the depository bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter,

by one notice on the cash letter. The returned check may not be prepared for automated return.

31(c) Settlement

Under the UCC, 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 section 229.36(d) and the commentary to section 229.35(b).)

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 section 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 the basis of the liability of prior banks under section 229.35(b).

This paragraph affects UCC section 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 section 229.36(d), a bank collecting a check remains liable to prior collecting banks and the depository bank's customer under the UCC.

31(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 section 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.

31(e) Depository Bank Without Accounts

This paragraph is similar to section 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 section 229.30(e).)

31(f) Notice in Lieu of Return

This paragraph is similar to section 229.30(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system. (See the commentary to section 229.30(f).)

31(g) Reliance on Routing Number

This paragraph is similar to section 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 section 229.30(g).)

SECTION 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;

(iii) If the address in the indorsement is not in the same check-processing region as the address associated with the routing number of the bank in its indorsement on the check, at a location consistent with the address in the indorsement and at a branch or head office associated with the routing number in the bank's indorsement; or

(iv) 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 section 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.

COMMENTARY

SECTION 229.32—Depository Bank's Responsibility for Returned Checks

32(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 section 229.33. (These locations differ from locations at which a depository bank must accept electronic notices.) It is derived from UCC section 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) The depository bank must accept returned checks at the address in its indorsement and at an address associated with its routing number in the indorsement if the written address in the indorsement and the address associated with the routing number in the indorsement are not in the same check-processing region. Under sections 229.30(g) and 229.31(g), a paying or returning bank may rely on the depository bank's routing number in its indorsement in handling returned checks and is not required to send returned checks to an address in the depository bank's indorsement that is not in the same check-processing region as the address associated with the routing number in the indorsement.

(iv) 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 section 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.

Under section 229.33(d), a depository bank receiving a returned check or notice of nonpayment must send notice to its customer by its midnight deadline or within a longer reasonable time.

32(b) Payment

As discussed in the comment to section

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 UCC section 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 settle-

ment 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 sections 229.33(d) and 229.35(d).)

32(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 section 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 section 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 section 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 section 229.31(a); however, it must act within its midnight deadline. This paragraph does not

affect a bank's duties under section 229.35(b).

32(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.* 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 depository bank, receipt of notice on the depository 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 depository bank;
- (5) Account number of the customer(s) of the depository bank;
- (6) Branch name or number of the depository bank from its indorsement;
- (7) Trace number associated with the indorsement of the depository 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 depository 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 depository 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 ap-

pears 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 section 229.32(a).

(d) *Notification to customer.* If the depository 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) *Depository bank without accounts.* The requirements of this section do not apply to checks deposited in a depository bank that does not maintain accounts.

COMMENTARY

SECTION 229.33—Notice of Nonpayment

33(a) Requirement

Notice of nonpayment as required by this section and written notice in lieu of return as provided in sections 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 the commentary to the definition of “paying bank” in section 229.2(z).)

The paying bank should not send a notice of nonpayment until it has finally determined not to pay the check. Under section 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.

Unless the returned check is used to satisfy the notice requirement, the requirement for notice is independent of and does not affect the requirements for timely and expeditious return of the check under section 229.30 and the UCC. (See section 229.30(a).) If a paying bank fails both to comply with this section and to comply with the requirements for timely and expeditious return under section 229.30 and the UCC and Regulation J (12 CFR 210), the paying bank shall be liable under either this section or such other requirements, but not both. (See section 229.38(b).) A paying bank is not responsible for failure to give notice of nonpayment to a party that has breached a presentment warranty under UCC section 4-207(1), notwithstanding that the paying bank may have returned the check. (See UCC sections 4-207(1) and 4-302.)

33(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.

33(c) Acceptance of Notice

In the case of a written notice, the depository bank is required to accept notices at the loca-

tions specified in section 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.

33(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, regardless of the amount of the check or notice. This requirement is similar to the requirement under the UCC 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 section 229.35(b). The notice to the customer required under this paragraph may also satisfy the notice requirement of section 229.13(g) if the depository bank invokes the reasonable-cause exception of section 229.13(e) due to the receipt of a notice of nonpayment, provided the notice meets the other requirements of section 229.13(g).

SECTION 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 depository bank, and to the owner of the check, that—

- (1) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the UCC, Regulation J (12 CFR 210), or section 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, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank.

(b) *Warranty of notice of nonpayment.* Each paying bank that gives a notice of nonpayment warrants to the transferee bank, to any subsequent transferee bank, to the depository bank, and to the owner of the check that—

- (1) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline under the UCC, Regulation J (12 CFR 210), or section 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 that are not payable through or at a bank.

(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 reasonable receipt of the notice the paying or returning bank notified does come in and defend, it is so bound.

COMMENTARY

SECTION 229.34—Warranties by
Paying Bank and Returning Bank

34(a) Warranty of Returned Check

This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the UCC, Regulation J, or section 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 been and will not be returned for payment (see the commentary to section 229.30(f)). The warranty does not include a warranty that the bank complied with the expeditious-return requirements of sections 229.30(a) and 229.31(a). These warranties do not apply to checks drawn on the United States Treasury, to Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank (see section 229.42).

34(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 section 229.33. The requirements of section 229.33 that are not covered by the warranty are subject to the liability provisions of section 229.38. 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 the commentary on section 229.33(a).)

34(c) Damages

This paragraph adopts for the new warranties in section 229.34(a) and (b) the warranty damages of UCC section 4-207(3).

34(d) Tender of Defense

This paragraph adopts for this regulation the vouching-in provisions of UCC section 3-803.

SECTION 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 legibly 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.

COMMENTARY

SECTION 229.35—Indorsements

35(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 depositary-bank indorsements. It is designed to facilitate the identification of the depositary bank and the prompt return of checks. The regulation places a duty on banks to ensure that their indorsements are legible. 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 depositary 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 depositary bank indorsement be contained within the specified area, but checks will be handled most efficiently if depositary 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 depositary banks to use either purple or black ink. The Board encourages depositary banks to indorse checks in purple ink where possible, because use of a unique ink color will facilitate the speedy identification of the depositary 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 depositary-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 depositary 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 depositary banks; however, a bank may include its fractional routing number or repeat its nine-digit routing number in its indorsement. If a depositary bank includes its routing number in its indorsement more than once, paying and returning banks will be able to identify the depositary bank more readily. Depositary banks should not include information that can be confused with required information. For example, a nine-digit zip code could be confused with the nine-digit routing number.

A depositary bank is not required to place a street address in its indorsement; however, a bank may want to put an address in its indorsement in order to limit the number of locations at which it must accept returned checks. In instances where this address is not consistent with the routing number in the indorsement, the depositary bank is required to accept returned checks at a branch or head office consistent with the routing number. Banks should note, however, that section 229.32 requires a depositary bank to accept returned checks at the location(s) it accepts forward-collection checks. The inclusion of a depositary bank's telephone number where it would receive notices of large-dollar returns in its indorsements is optional.

Under the UCC, a specific guarantee of prior indorsement is not necessary. (See UCC sections 3-417(1)(a) and 4-207(1), and official comment 2 to UCC section 4-207.) Use of guarantee language in indorsements, such as "P.E.G." ("prior endorsements guaranteed"), may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this lan-

guage 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 preprinted 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. The standard requires collecting and returning banks to indorse the check for tracing purposes.

35(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 circuity of actions, the returning bank could recover directly from the first collecting bank. Under the UCC, 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, section 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 section 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 par-

agraph 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 sections 229.30(b) and 229.31(b). This provision is not a substitute for a paying or returning bank making expeditious return under sections 229.30(a) or 229.31(b). This paragraph does not affect a paying bank's accountability for a check under UCC sections 4-213(1) and 4-302. Nor does this paragraph affect a collecting bank's accountability under UCC sections 4-211(2) and (3) and 4-213(3). A collecting bank becomes accountable upon receipt of final settlement as provided in the foregoing UCC sections. The term "final settlement" in sections 229.31(c), 229.32(b), and 229.36(d) is intended to be consistent with the use of the term "final settlement" in the UCC (e.g., UCC sections 4-211, 4-212, and 4-213). (See also section 229.2(cc) and commentary.)

This paragraph also provides that a bank may have the rights of a "holder" based on the handling of the check for collection or return. A bank may become a holder or a holder in due course regardless of whether prior banks have complied with the indorsement standard in section 229.35(a) and appendix D.

This paragraph affects the following provisions of the UCC 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 section 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.

35(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 UCC. (See UCC section 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.

35(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 section 229.37.

SECTION 229.36—Presentment and Issuance 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.

(e) *Issuance of payable-through checks.* A bank that arranges for checks payable by it to be payable through another bank shall require that the following information be printed conspicuously on the face of each check:

- (1) the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable; and
- (2) the words "payable through" followed by the name and location of the payable through bank.

This provision shall be effective February 1, 1991, and after that date banks that use payable-through arrangements must require their customers to use checks that meet the requirements of this provision. A bank is responsible for damages under section 229.38 of this part to the extent that a check payable by it and not payable through another bank is labelled as provided in this section.

COMMENTARY

SECTION 229.36—Presentment and Issuance of Checks

36(a) Payable-Through and Payable-at Checks

For purposes of subpart C, 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 section 229.30(a) and the notice-of-nonpayment requirements of section 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 provision is intended to speed the return of checks that are payable through or at a bank to the depository bank.

36(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 section 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 for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

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 UCC section 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 section 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. Where a check is payable by one bank, but payable through another, the routing number is that of the payable-through bank, not that of the payor bank. As the payor bank has selected the payable-through bank as the point through which presentment is to be made, it is proper to treat the payable-through bank as the paying bank for purposes of this section.

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 de-

liver 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 UCC section 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 UCC section 3-504(2)(c) to the extent that the UCC requires presentment to occur at a place specified in the instrument.

36(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 UCC 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.

36(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 UCC section 4-201 during forward collection of a check. That UCC 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 UCC 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 UCC, 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 UCC section 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 UCC 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 section 229.2(cc).)

36(e) Issuance of Payable-Through Checks

If a bank arranges for checks payable by it to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend "payable through" followed by the name and location of the payable-through bank. The first four digits of the nine-digit routing number and the location of the bank by which the check is payable must be associated with the same check-processing region. (This section does not affect section 229.36(b).) The required information is deemed conspicuous if it is printed in a type size not smaller than six-point type and if it is contained in the title plate, which is located in the lower left quadrant of the check. The required information may be conspicuous if it is located elsewhere on the check.

If a payable-through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depository bank or others as provided in section 229.38. For example, a bank by which a payable-through check is payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under subpart B, that would not have occurred had the check met the requirements of this paragraph. Similarly, a bank may be liable under section 229.38 if a check payable by it that is not payable through another bank is labelled as provided in this section. For example, a bank that holds checking accounts and processes checks at a central location but has widely dispersed branches may be liable under this section if it labels all of its checks as "payable through" a single branch and includes the name, address, and four-digit routing symbol of another branch. These checks would not be payable through another bank and should not be labelled as payable-through checks. (All of a bank's offices within the United States are considered part of the same bank; see section 229.2(e).) In this example, the bank by which the checks are payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under subpart B, due to

the mislabelled check. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

SECTION 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.

COMMENTARY

SECTION 229.37—Variations by Agreement

This section is similar to UCC section 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 UCC section 4-103(1) (which in turn follows UCC section 1-201(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 section 229.38 to entities not party to the agreement. This section is consistent with the limits on truncation agreements in section 229.36(c).

The Board has not followed UCC section 4-103(2), which permits Federal Reserve regulations and operating letters, clearinghouse rules, and the like to apply to parties that have not specifically assented. Nevertheless, this section does not affect the status of such agreements under the Uniform Commercial Code.

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 section 229.35(d).)
- b. A depository bank may authorize returning banks to commingle qualified returned checks with forward-collection checks. (See section 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 section 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 section 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 section 229.35(a).)
- f. A bank may agree to accept returned checks without the indorsement of a prior bank. (See section 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.* 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 UCC or other law.

(b) *Paying bank's failure to make timely return.* If a paying bank fails both to comply with section 229.30(a) and to comply with the deadline for return under the UCC, Regulation J (12 CFR 210), or section 229.30(c) in connection with a single nonpayment of a check, the paying bank shall be liable under either section 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 (section 229.35), accepting a returned check or notice of nonpayment (sections 229.32(a) and 229.33(c)), or otherwise, the damages incurred by that person under section 229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

(d) *Responsibility for certain aspects of check.* (1) A paying bank, or in the case of a check payable through the paying bank

and payable by another bank, the bank by which the check is payable, 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 section 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 section 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.

(2) *Responsibility for payable-through checks.* In the case of a check that is payable by a bank and payable through a paying bank located in a different check-processing region than the bank by which the check is payable, the bank by which the check is payable is responsible for damages under paragraph (a) of this section, to the extent that the check is not returned to the depository bank through the payable-through bank as quickly as the check would have been required to be returned under section 229.30(a) had the bank by which the check is payable—

(i) received the check as paying bank on the day the payable-through bank received the check; and

(ii) returned the check as paying bank in accordance with section 229.30(a)(1).

Responsibility under this paragraph shall be treated as negligence of the bank by which the check is payable 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 section 611(a), (b), and (c) of the act (12 USC 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.

COMMENTARY

SECTION 229.38—Liability

38(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 sections 229.30 and 229.33, to a returning bank under section 229.31, to a depository bank under sections 229.32 and 229.33, to a bank erroneously receiving a returned check or written notice of nonpayment as depository bank under sections 229.32(d), and to a bank indorsing a check under section 229.35. The standard of care is similar to the standard imposed by UCC sections 1-203 and 4-103(1).

A bank not meeting this standard of care is liable to the depository bank, the depository bank's customer, the owner of the check, or another party to the check. The depository bank's customer is usually a depositor of a check in the depository bank (but see section 229.35(d)). The measure of damages stated derives from UCC sections 4-103(5) and 4-202(3). This subpart does not absolve a collecting bank of liability to prior collecting banks under UCC section 4-201.

Under this measure of damages, a depository bank or other person must show that the damage incurred results from the negligence proved. For example, the depository 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 depository 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 UCC section 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.

38(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 UCC deadlines (as they may be modified by section 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 UCC (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.

38(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 depository bank. Some examples will illustrate liability in such cases. In each example, it is assumed that the returned check is received by the depository 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 sections 229.30(a) or 229.31(a).

1. If a depository 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 depository bank or find its routing number, the paying or returning bank's liability to the depository bank would be reduced or eliminated.
2. If the depository 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 depository bank or find its routing number, the paying or returning bank may not be liable to the depository bank because the delay was not due to its negligence. Nonetheless, the collecting bank may be liable to the depository bank to the extent that its negligence in indorsing the check caused the paying or returning bank's delay.
 3. If a depository 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 depository 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 depository bank, the returning bank may not be liable to the depository bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depository bank to the extent that the printing, carbon band, or other material caused the delay.

38(d) Responsibility for Certain Aspects of Checks

The indorsement standard in section 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 depository bank, as appro-

priate, for keeping the back of the check clear for bank indorsements during forward collection and return.

The paying bank, or in the case of a check payable through the paying bank and payable by another bank, the bank by which the check is payable, 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 such a bank or 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 depository bank is responsible for the condition of the check arising after it is issued and before it is accepted by the depository bank, as well as any condition of the check arising during its handling of the check. The depository 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 depository bank may refuse to accept a check whose back is unreasonably obscured or contract with its customers with respect to such responsibility.

Paragraph (d)(2) provides that the bank by which a payable-through check is payable is liable for damages under paragraph (a) of this section to the extent that the check is not returned through the payable-through bank as quickly as would have been necessary to meet the requirements of section 229.30(a)(1) (the two-day/four-day test) had the bank by which it is payable received the check as paying bank on the day the payable-through bank received it. The location of the bank by which a check is payable for purposes of the two-day/four-day test may be determined from the location or the first four digits of the routing number of the bank by which the check is payable. This information should be stated on the check. (See section 229.36(e) and accompanying commentary.) Responsibility under paragraph (d)(2) does not include responsibility for the time required for the forward collection of a check to the payable-through bank.

Generally, liability under paragraph (d)(2) will be limited in amount. Under sec-

tion 229.33(a), a paying bank that returns a check in the amount of \$2,500 or more must provide notice of nonpayment to the depository bank by 4:00 p.m. on the second business day following the banking day on which the check is presented to the paying bank. Even if a payable-through check in the amount of \$2,500 or more is not returned through the payable-through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depository bank should not suffer damages unless it has not received timely notice of nonpayment. Thus, ordinarily the bank by which a payable-through check is payable would be liable under paragraph (a) only for checks in amounts up to \$2,500, and the paying bank would be responsible for notice of nonpayment for checks in the amount of \$2,500 or more.

Responsibility under paragraphs (d)(1) and (d)(2) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraphs (d)(1) and (d)(2) is treated in the same way as the degree of negligence under paragraph (c) of this section.

38(e) Timeliness of Action

This paragraph excuses certain delays. It adopts the standard of UCC section 4-108(2) with the addition of "failure of equipment" and "interruption of computer facilities" as causes of delay.

38(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 USC 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 in-

corporate traditional bank collection standards based on negligence, the provision on bona fide error is not included in subpart C.

38(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.

38(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

(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.

COMMENTARY**SECTION 229.39—Insolvency of Bank**

These provisions cover situations where a bank becomes insolvent during collection or return, and are derived from UCC section 4-214. They are intended to apply to all banks.

such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.

39(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.

39(b) Preference Against Paying or Depository Bank

This paragraph gives a bank a preferred claim against a closed paying or depository 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.

39(c) Preference Against Paying, Collecting, or Depository 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 the commentary to section 229.35(b) for discussion of prior and subsequent banks.) As in the case of section 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.

39(d) Finality of Settlement

This paragraph provides that insolvency does not interfere with the finality of a settlement,

SECTION 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.

COMMENTARY

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 section 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

The provisions of this subpart supersede any inconsistent provisions of the UCC as adopted in any state, or of any other state law, but only to the extent of the inconsistency.

COMMENTARY**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

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.

COMMENTARY**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 A—Routing Number Guide to Next-Day-Availability Checks and Local Checks

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 generally 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). Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable-through bank, not the payor bank.

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.

First Federal Reserve District (Federal Reserve Bank of Boston)

Head Office	Windsor Locks Office
0110 ¹	0111
0113	0116
0114	0117
0115	0118
2110 ²	0119
2113	0211 ³
2114	2111
2115	2116
	2117
	2118
	2119
	2211 ³

Lewiston Office
0112
2112

Second Federal Reserve District (Federal Reserve Bank of New York)

Head Office	Buffalo Branch
0210	0220
0215	0223
0216	2220
0260	2223
2215	
2216	
2260	

Cranford Office	Jericho Office
0212	0214
0270	0219
2212	2214
	2219
	2280

Utica Office
0213
2213

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

Charlotte Branch

0530
0531
2530
2531

Columbia Office

0532
0539
2532
2539

Charleston Office

0515
0519
2515
2519

Fourth Federal Reserve District
(Federal Reserve Bank of Cleveland)

Head Office

0410
0412
2410
2412

Cincinnati Branch

0420
0421
0422
0423
2420
2421
2422
2423

Pittsburgh Branch

0430
0432
0434
0433
2430
2432
2433
2434

Columbus Office

0440
0441
0442
2440
2441
2442

Sixth Federal Reserve District

(Federal Reserve Bank of Atlanta)

Head Office

0610
0611
0612
0613
2610
2611
2612
2613

Birmingham Branch

0620
0621
0622
2620
2621
2622

Jacksonville Branch

0630
0631
0632
2630
2631
2632

Nashville Branch

0640
0641
0642
2640
2641
2642

Fifth Federal Reserve District
(Federal Reserve Bank of Richmond)

Head Office

0510
0514
2510
2514

Baltimore Branch

0520
0521
0522
0540
0550
0560
0570
2520
2521
2522
2540
2550
2560
2570

New Orleans Branch

0650
0651
0652
0653
0654
0655
2650
2651
2652
2653
2654
2655

Miami Branch

0660
0670
2660
2670

Seventh Federal Reserve District
(Federal Reserve Bank of Chicago)

Head Office	Detroit Branch
0710	0720
0711	0724
0712	2720
0719	2724
2710	
2711	
2712	
2719	
Des Moines Office	Indianapolis Office
0730	0740
0739	0749
2730	2740
2739	2749
Milwaukee Office	
0750	
0759	
2750	
2759	

Ninth Federal Reserve District
(Federal Reserve Bank of Minneapolis)

Head Office	Helena Branch
0910	0920
0911	0921
0912	0929
0913	2920
0914	2921
0915	2929
0918	
0919	
2910	
2911	
2912	
0960	
2913	
2914	
2915	
2918	
2919	
2960	

Eighth Federal Reserve District
(Federal Reserve Bank of St. Louis)

Head Office	Little Rock Branch
0810	0820
0812	0829
0815	2820
0819	2829
0865	
2810	
2812	
2815	
2819	
2865	
Louisville Branch	Memphis Branch
0813	0840
0830	0841
0839	0842
0863	0843
2813	2840
2830	2841
2839	2842
2863	2843

Tenth Federal Reserve District
(Federal Reserve Bank of Kansas City)

Head Office	Denver Branch
1010	1020
1011	1021
1012	1022
1019	1023
3010	1070
3011	3020
3012	3021
3019	3022
	3023
	3070
Oklahoma City Branch	Omaha Branch
1030	1040
1031	1041
1039	1049
3030	3040
3031	3041
3039	3049

Eleventh Federal Reserve District
(Federal Reserve Bank of Dallas)

Head Office	El Paso Branch
1110	1120
1111	1122
1113	1123
1119	1163
3110	3120
3111	3122
3113	3123
3119	3163
Houston Branch	San Antonio Branch
1130	1140
1131	1149
3130	3140
3131	3149

Twelfth Federal Reserve District
(Federal Reserve Bank of San Francisco)

Head Office	Los Angeles Branch
1210	1220
1211	1221
1212	1222
1213	1223
3210	1224
3211	3220
3212	3221
3213	3222
	3223
	3224

Portland Branch	Salt Lake City Branch
1230	1240
1231	1241
1232	1242
1233	1243
3230	3240
3231	3241
3232	3242
3233	3243

Seattle Branch

1250
1251
1252
3250
3251
3252

U.S. Treasury Checks and Postal Money Orders

U.S. Treasury Checks	Postal Money Orders
0000 0050 5	0000 0119 3
0000 0051 8	0000 0800 2

Federal Reserve Offices

0110 0001 5	0710 0030 1
0111 0048 1	0720 0029 0
0112 0048 8	0730 0033 8
0210 0120 8	0740 0020 1
0220 0026 6	0750 0012 9
0212 0400 5	0810 0004 5
0214 0950 9	0820 0013 8
0213 0500 1	0830 0059 3
0310 0004 0	0840 0003 9
0410 0001 4	0910 0008 0
0420 0043 7	0920 0026 7
0430 0030 0	1010 0004 8
0440 0050 3	1020 0019 9
0510 0003 3	1030 0024 0
0520 0027 8	1040 0012 6
0530 0020 6	1110 0003 8
0539 0008 9	1120 0001 1
0519 0002 3	1130 0004 9
0610 0014 6	1140 0072 1
0620 0019 0	1210 0037 4
0630 0019 9	1220 0016 6
0640 0010 1	1230 0001 3
0650 0021 0	1240 0031 3
0660 0010 9	1250 0001 1

Federal Home Loan Banks

0110 0053 6	0810 0091 9
0212 0639 1	0820 0125 0
0215 0212 1	0910 0091 2
0260 0973 9	1010 0091 2
0410 0291 5	1011 0194 7
0420 0091 6	1020 0603 8
0430 0143 5	1030 0362 9
0530 1174 5	1040 0019 7
0610 0876 6	1110 1083 7
0640 0091 0	1119 1083 0
0654 0348 0	1130 1750 8
0710 0450 1	1210 0070 1
0724 1338 2	1211 3994 4
0730 0091 4	1222 4014 6
0740 0101 9	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.

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
<i>Boston</i>				
Depository banks (0110, 2110) to:				5 business days
0210	0310	2260	2710	
0260	0360	2310		
0280	0710	2360		
<i>Windsor Locks</i>				
None				
<i>Lewiston</i>				
None				
<i>New York</i>				
Depository banks (0210, 0260, 2260, 0215, 2215, 0216, 2216) to:				4 business days
0214	0280	2214	2219	
0219				
Depository banks (0210, 0260, 2260, 0215, 2215, 0216, 2216) to:				5 business days
0110	0730	2110	2750	
0212	0740	2212	2810	
0213	0750	2213	2820	
0220	0810	2220	2830	
0270	0820	2360	2840	
0310	0830	2410	2910	
0360	0840	2420	2920	
0410	0910	2430	2960	
0420	0920	2440	3010	
0430	0960	2510	3020	
0440	1010	2519	3030	
0510	1020	2520	3040	
0519	1030	2530	3110	
0520	1040	2539	3120	
0530	1110	2610	3130	
0539	1120	2620	3140	
0610	1130	2630	3210	
0620	1140	2640	3220	
0630	1210	2650	3223	
0640	1220	2660	3230	
0650	1223	2710	3240	
0660	1230	2720	3250	
0710	1240	2730		
0720	1250	2740		

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
Jericho				
Depository banks (0214, 2214, 0219, 2219, 0280) to:				4 business days
0210	0260	2260		
Depository banks (0214, 2214, 0219, 2219, 0280) to:				5 business days
0110	0720	2110	2740	
0212	0730	2212	2750	
0213	0740	2213	2810	
0215	0750	2215	2820	
0216	0810	2216	2830	
0220	0820	2220	2840	
0270	0830	2360	2910	
0310	0840	2410	2920	
0360	0910	2420	2960	
0410	0920	2430	3010	
0420	0960	2440	3020	
0430	1010	2510	3030	
0440	1020	2519	3040	
0510	1030	2520	3110	
0519	1040	2530	3120	
0520	1110	2539	3130	
0530	1120	2610	3140	
0539	1130	2620	3210	
0610	1140	2630	3220	
0620	1210	2640	3223	
0630	1220	2650	3230	
0640	1223	2660	3240	
0650	1230	2710	3250	
0660	1240	2720		
0710	1250	2730		

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
<i>Cranford</i>				
Depository banks (0212, 0270, 2212) to:				4 business days
0210	0260	0280	2260	
Depository banks (0212, 2212, 0270) to:				5 business days
0110	0720	2110	2730	
0213	0730	2213	2740	
0214	0740	2214	2750	
0215	0750	2215	2810	
0216	0810	2216	2820	
0219	0820	2219	2830	
0220	0830	2220	2840	
0310	0840	2360	2910	
0360	0910	2410	2920	
0410	0920	2420	2960	
0420	0960	2430	3010	
0430	1010	2440	3020	
0440	1020	2510	3030	
0510	1030	2519	3040	
0519	1040	2520	3110	
0520	1110	2530	3120	
0530	1120	2539	3130	
0539	1130	2610	3140	
0610	1140	2620	3210	
0620	1210	2630	3220	
0630	1220	2640	3223	
0640	1223	2650	3230	
0650	1230	2660	3240	
0660	1240	2710	3250	
0710	1250	2720		

				<i>Number of business days following the banking day funds are deposited</i>
<i>Federal Reserve Office</i>				
<i>Buffalo</i>				
Depository banks (0220, 2220, 0223, 2223) to:				4 business days
0210	0260	0280	2260	
0212	0270	2212		
Depository banks (0220, 2220, 0223, 2223) to:				5 business days
0110	0730	2213	2750	
0213	0740	2214	2810	
0214	0750	2215	2820	
0215	0810	2216	2830	
0216	0820	2219	2840	
0219	0830	2360	2910	
0310	0840	2410	2920	
0360	0910	2420	2960	
0410	0920	2430	3010	
0420	0960	2440	3020	
0430	1010	2510	3030	
0440	1020	2519	3040	
0510	1030	2520	3110	
0519	1040	2530	3120	
0520	1110	2539	3130	
0530	1120	2610	3140	
0539	1130	2620	3210	
0610	1140	2630	3220	
0620	1210	2640	3223	
0630	1220	2650	3230	
0640	1223	2660	3240	
0650	1230	2710	3250	
0660	1240	2720		
0710	1250	2730		
0720	2110	2740		

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
<i>Utica</i>				
Depository banks (0213, 2213) to:				4 business days
0210	0260	0280	2260	
0212	0270	2212		
Depository banks (0213, 2213) to:				5 business days
0110	0730	2214	2750	
0214	0740	2215	2810	
0215	0750	2216	2820	
0216	0810	2219	2830	
0219	0820	2220	2840	
0220	0830	2360	2910	
0310	0840	2410	2920	
0360	0910	2420	2960	
0410	0920	2430	3010	
0420	0960	2440	3020	
0430	1010	2510	3030	
0440	1020	2519	3040	
0510	1030	2520	3110	
0519	1040	2530	3120	
0520	1110	2539	3130	
0530	1120	2610	3140	
0539	1130	2620	3210	
0610	1140	2630	3220	
0620	1210	2640	3223	
0630	1220	2650	3230	
0640	1223	2660	3240	
0650	1230	2710	3250	
0660	1240	2720		
0710	1250	2730		
0720	2110	2740		
<i>Philadelphia</i>				
Depository banks (0310, 2310, 0360, 2360) to:				5 business days
0110	0640	2110	2650	
0210	0650	2220	2660	
0220	0660	2260	2710	
0260	0710	2410	2720	
0410	0720	2420	2730	
0420	0730	2430	2740	
0430	0740	2440	2750	
0440	0750	2510	2810	
0510	0810	2519	2830	
0519	0830	2520	2840	
0520	0840	2530	2910	
0530	0910	2539	2960	
0539	0960	2610	3010	
0610	1010	2620	3020	
0620	1020	2630	3040	
0630	1040	2640		

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
Cleveland				
Depository banks (0410, 2410) to:				5 business days
0110	0740	2220	2820	
0210	0750	2260	2830	
0220	0810	2310	2840	
0260	0820	2360	2910	
0280	0830	2420	2920	
0310	0840	2430	2960	
0360	0910	2440	3010	
0420	0920	2510	3020	
0430	0960	2519	3030	
0440	1010	2520	3040	
0510	1020	2530	3110	
0519	1030	2539	3120	
0520	1040	2610	3130	
0530	1110	2620	3140	
0539	1120	2630	3210	
0610	1130	2640	3220	
0620	1140	2650	3223	
0630	1210	2660	3230	
0640	1220	2710	3240	
0650	1223	2720	3250	
0660	1230	2730		
0710	1240	2740		
0720	1250	2750		
0730	2110	2810		
Cincinnati				
Depository banks (0420, 2420) to:				5 business days
0110	0730	2110	2749	
0210	0740	2220	2750	
0220	0749	2260	2810	
0260	0750	2310	2813	
0280	0810	2360	2830	
0310	0813	2410	2839	
0360	0830	2430	2840	
0410	0839	2440	2863	
0430	0840	2441	2910	
0440	0863	2442	2960	
0441	0910	2510	3010	
0442	0960	2519	3020	
0510	1010	2520	3030	
0519	1020	2530	3040	
0520	1030	2539	3110	
0530	1040	2610	3130	
0539	1110	2620	3140	
0610	1130	2630	3210	
0620	1140	2640	3220	
0630	1210	2650	3223	
0640	1220	2660	3230	
0650	1223	2710	3240	
0660	1230	2720	3250	
0710	1240	2730		
0720	1250	2740		

*Number of business days
following the banking day
funds are deposited*

*Federal Reserve Office**Columbus*

Depository banks (0440, 2440) to:

5 business days

0110	0730	1250	2740
0210	0740	2110	2750
0220	0750	2220	2810
0260	0810	2260	2820
0280	0820	2310	2830
0310	0830	2360	2840
0360	0840	2410	2910
0410	0910	2420	2920
0420	0920	2430	2960
0430	0960	2510	3010
0510	1010	2519	3020
0519	1020	2520	3030
0520	1030	2530	3040
0530	1040	2539	3110
0539	1110	2610	3120
0610	1120	2620	3130
0620	1130	2630	3140
0630	1140	2640	3210
0640	1210	2650	3220
0650	1220	2660	3223
0660	1223	2710	3230
0710	1230	2720	3240
0720	1240	2730	3250

Pittsburgh

Depository banks (0430, 2430) to:

5 business days

0110	0730	1250	2740
0210	0740	2110	2750
0220	0750	2220	2810
0260	0810	2260	2820
0280	0820	2310	2830
0310	0830	2360	2840
0360	0840	2410	2910
0410	0910	2420	2920
0420	0920	2440	2960
0440	0960	2510	3010
0510	1010	2519	3020
0519	1020	2520	3030
0520	1030	2530	3040
0530	1040	2539	3110
0539	1110	2620	3120
0610	1120	2610	3130
0620	1130	2630	3140
0630	1140	2640	3210
0640	1210	2650	3220
0650	1220	2660	3223
0660	1223	2710	3230
0710	1230	2720	3240
0720	1240	2730	3250

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
<i>Richmond</i>				
Depository banks (0510, 2510) to:				5 business days
0110	0620	1140	2630	
0210	0630	2110	2640	
0220	0640	2220	2650	
0260	0650	2260	2660	
0280	0660	2310	2710	
0310	0710	2360	2720	
0360	0720	2410	2730	
0410	0730	2420	2740	
0420	0740	2430	2750	
0430	0750	2440	2810	
0440	0810	2515	2820	
0515	0820	2519	2830	
0519	0830	2520	2840	
0520	0840	2521	2910	
0521	0910	2522	2960	
0522	0960	2530	3010	
0530	1010	2531	3020	
0531	1020	2539	3030	
0539	1030	2550	3040	
0550	1040	2560	3110	
0560	1110	2570	3120	
0570	1120	2610	3130	
0610	1130	2620	3140	
<i>Baltimore</i>				
Depository banks (0520, 2520) to:				5 business days
0110	0640	2110	2660	
0210	0650	2220	2710	
0220	0660	2260	2720	
0260	0710	2310	2730	
0280	0720	2360	2740	
0310	0730	2410	2750	
0360	0740	2420	2810	
0410	0750	2430	2830	
0420	0810	2440	2840	
0430	0830	2510	2910	
0440	0840	2530	2960	
0510	0910	2539	3010	
0530	0960	2610	3020	
0539	1010	2620	3040	
0610	1020	2630	3240	
0620	1040	2640		
0630	1240	2650		

				<i>Number of business days following the banking day funds are deposited</i>	
<i>Federal Reserve Office</i>					
Charlotte					
Depository banks (0530, 2530) to:				5 business days	
0110	0660	1140	2710		
0210	0710	2110	2720		
0220	0720	2220	2730		
0260	0730	2260	2740		
0280	0740	2310	2750		
0310	0750	2360	2810		
0360	0810	2410	2820		
0410	0820	2420	2830		
0420	0830	2430	2840		
0430	0840	2440	2910		
0440	0910	2510	2960		
0510	0960	2520	3010		
0520	1010	2539	3020		
0539	1020	2610	3030		
0610	1030	2620	3040		
0620	1040	2630	3110		
0630	1110	2640	3120		
0640	1120	2650	3130		
0650	1130	2660	3140		
Columbia					
Depository banks (0539, 2539) to:				5 business days	
0110	0660	2110	2720		
0210	0710	2220	2730		
0220	0720	2260	2740		
0260	0730	2310	2750		
0280	0740	2360	2810		
0310	0750	2410	2820		
0360	0810	2420	2830		
0410	0820	2430	2840		
0420	0830	2440	2910		
0430	0840	2510	2960		
0440	0910	2519	3010		
0510	0960	2520	3020		
0519	1010	2530	3030		
0520	1020	2610	3040		
0530	1030	2620	3110		
0610	1040	2630	3120		
0620	1110	2640	3130		
0630	1120	2650	3140		
0640	1130	2660			
0650	1140	2710			

				<i>Number of business days following the banking day funds are deposited</i>
<i>Federal Reserve Office</i>				
<i>Charleston</i>				
Depository banks (0519, 2519) to:				5 business days
0110	0630	1240	2640	
0210	0640	2110	2650	
0220	0650	2220	2660	
0260	0660	2260	2710	
0280	0710	2310	2720	
0310	0720	2360	2730	
0360	0730	2410	2740	
0410	0740	2420	2750	
0420	0750	2430	2810	
0430	0810	2440	2830	
0440	0830	2510	2840	
0510	0840	2520	2910	
0520	0910	2530	2960	
0530	0960	2539	3010	
0539	1010	2610	3020	
0610	1020	2620	3040	
0620	1040	2630	3240	
<i>Atlanta</i>				
Depository banks (0610, 2610) to:				5 business days
0110	0720	2110	2740	
0210	0730	2220	2750	
0220	0740	2260	2810	
0260	0750	2310	2820	
0280	0810	2360	2830	
0310	0820	2410	2840	
0360	0830	2420	2910	
0410	0840	2430	2960	
0420	0910	2440	3010	
0430	0960	2510	3020	
0440	1010	2519	3030	
0510	1020	2520	3040	
0519	1030	2530	3110	
0520	1040	2539	3120	
0530	1110	2620	3130	
0539	1120	2630	3140	
0620	1130	2640	3210	
0630	1140	2650	3220	
0640	1210	2660	3223	
0650	1220	2710	3240	
0660	1223	2720		
0710	1240	2730		

				<i>Number of business days following the banking day funds are deposited</i>
<i>Federal Reserve Office</i>				
Birmingham				
Depository banks (0620, 2620) to:				4 business days
0651	2651			
Depository banks (0620, 2620) to:				5 business days
0110	0730	1250	2740	
0210	0740	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2630	3140	
0630	1140	2640	3210	
0640	1210	2650	3220	
0650	1220	2660	3223	
0660	1223	2710	3230	
0710	1230	2720	3240	
0720	1240	2730	3250	
Jacksonville				
Depository banks (0630, 2630) to:				5 business days
0110	0660	1140	2710	
0210	0710	2110	2720	
0220	0720	2220	2730	
0260	0730	2260	2740	
0280	0740	2310	2750	
0310	0750	2360	2810	
0360	0810	2410	2820	
0410	0820	2420	2830	
0420	0830	2430	2840	
0430	0840	2440	2910	
0440	0910	2510	2920	
0510	0920	2519	2960	
0519	0960	2520	3010	
0520	1010	2530	3020	
0530	1020	2539	3030	
0539	1030	2610	3040	
0610	1040	2620	3110	
0620	1110	2640	3120	
0640	1120	2650	3130	
0650	1130	2660	3140	

				<i>Number of business days following the banking day funds are deposited</i>
<i>Federal Reserve Office</i>				
Miami				
Depository banks (0660, 2660) to:				5 business days
0110	0710	2110	2730	
0210	0720	2220	2740	
0220	0730	2260	2750	
0260	0740	2310	2810	
0280	0750	2360	2820	
0310	0810	2410	2830	
0360	0820	2420	2840	
0410	0830	2430	2910	
0420	0840	2440	2920	
0430	0910	2510	2960	
0440	0920	2519	3010	
0510	0960	2520	3020	
0519	1010	2530	3030	
0520	1020	2610	3040	
0530	1030	2620	3110	
0610	1040	2630	3120	
0620	1110	2640	3130	
0630	1120	2650	3140	
0640	1130	2710		
0650	1140	2720		
Nashville				4 business days
0613	2613			
Depository banks (0640, 2640) to:				5 business days
0530	0630	2530	2630	
0539	0650	2539	2650	
0610	0660	2610	2660	
0620	0840	2620	2840	

Number of business days following the banking day funds are deposited

Federal Reserve Office**New Orleans**

Depository banks (0650, 2650) to:

5 business days

0110	0740	2110	2810
0210	0750	2220	2820
0220	0810	2260	2830
0260	0820	2310	2840
0280	0830	2360	2910
0310	0840	2410	2920
0360	0910	2420	2960
0410	0920	2430	3010
0420	0960	2440	3020
0430	1010	2510	3030
0440	1020	2519	3040
0510	1030	2520	3110
0519	1040	2530	3120
0520	1110	2539	3130
0530	1120	2610	3140
0539	1130	2620	3210
0610	1140	2630	3220
0620	1210	2640	3223
0630	1220	2710	3230
0640	1223	2720	3240
0710	1230	2730	3250
0720	1240	2740	
0730	1250	2750	

Chicago

Depository banks (0710, 2710) to:

5 business days

0110	0730	1250	2740
0210	0740	2110	2750
0220	0750	2220	2810
0260	0810	2260	2820
0280	0820	2310	2830
0310	0830	2360	2840
0360	0840	2410	2910
0410	0910	2420	2920
0420	0920	2430	2960
0430	0960	2440	3010
0440	1010	2510	3020
0510	1020	2519	3030
0519	1030	2520	3040
0520	1040	2530	3110
0530	1110	2539	3120
0539	1120	2610	3130
0610	1130	2620	3140
0620	1140	2630	3210
0630	1210	2640	3223
0640	1220	2650	3230
0650	1223	2660	3240
0660	1230	2720	3250
0720	1240	2730	

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
<i>Detroit</i>				
Depository banks (0720, 2720) to:				5 business days
0110	0730	1250	2740	
0210	0740	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2730	3250	
<i>Des Moines</i>				
Depository banks (0730, 2730) to:				5 business days
0110	0720	1250	2740	
0210	0740	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
Indianapolis				
Depository banks (0740, 2740) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	
Milwaukee				
Depository banks (0750, 2750) to:				5 business days
0110	0720	2110	2740	
0210	0730	2220	2810	
0220	0740	2260	2820	
0260	0810	2310	2830	
0280	0820	2360	2840	
0310	0830	2410	2910	
0360	0840	2420	2920	
0410	0910	2430	2960	
0420	0920	2440	3010	
0430	0960	2510	3020	
0440	1010	2519	3030	
0510	1020	2520	3040	
0519	1030	2530	3110	
0520	1040	2539	3120	
0530	1110	2610	3130	
0539	1120	2620	3140	
0610	1130	2630	3210	
0620	1140	2640	3220	
0630	1210	2650	3223	
0640	1220	2660	3230	
0650	1223	2710	3240	
0660	1240	2720	3250	
0710	1250	2730		

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
St. Louis				
Depository banks (0810, 2810) to:				5 business days
0110	0660	1240	2710	
0210	0710	2110	2720	
0220	0720	2220	2730	
0260	0730	2260	2740	
0280	0740	2310	2750	
0310	0750	2360	2820	
0360	0820	2410	2830	
0410	0830	2420	2840	
0420	0840	2430	2910	
0430	0910	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3040	
0530	1040	2539	3110	
0539	1110	2610	3120	
0610	1120	2620	3130	
0620	1130	2630	3140	
0630	1140	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3240	
Little Rock				
Depository banks (0820, 2820) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

Federal Reserve Office *Number of business days
following the banking day
funds are deposited*

Louisville

Depository banks (0830, 2830) to:

5 business days

0110	0620	1240	2630
0210	0630	2110	2640
0220	0640	2220	2650
0260	0650	2260	2660
0280	0660	2310	2710
0310	0710	2360	2720
0360	0720	2410	2730
0410	0730	2420	2740
0420	0740	2430	2750
0430	0750	2440	2810
0440	0810	2510	2840
0510	0840	2519	2910
0519	0910	2520	2960
0520	0960	2530	3010
0530	1010	2539	3020
0539	1020	2610	3040
0610	1040	2620	3240

Memphis

Depository banks (0840, 2840)

5 business days

0110	0650	2110	2710
0210	0660	2220	2720
0220	0710	2260	2730
0260	0720	2310	2740
0280	0730	2360	2750
0310	0740	2410	2810
0360	0750	2420	2820
0410	0810	2430	2910
0420	0820	2440	2960
0430	0910	2510	3010
0440	0960	2519	3020
0510	1010	2520	3030
0519	1020	2530	3040
0520	1030	2539	3110
0530	1040	2610	3120
0539	1110	2620	3130
0610	1120	2630	3140
0620	1130	2640	3240
0630	1140	2650	
0640	1240	2660	

				<i>Number of business days following the banking day funds are deposited</i>
<i>Federal Reserve Office</i>				
Minneapolis				
Depository banks (0910, 2910, 0960, 2960) to:				5 business days
0110	0650	1240	2660	
0210	0660	2110	2710	
0220	0710	2220	2720	
0260	0720	2260	2730	
0280	0730	2310	2740	
0310	0740	2360	2750	
0360	0750	2410	2810	
0410	0810	2420	2820	
0420	0820	2430	2830	
0430	0830	2440	2840	
0440	0840	2510	3010	
0510	1010	2520	3020	
0520	1020	2530	3030	
0530	1030	2539	3040	
0539	1040	2610	3110	
0610	1110	2620	3120	
0620	1120	2630	3130	
0630	1130	2640	3140	
0640	1140	2650	3240	
Helena				
None				
Kansas City				4 business days
0865	2865			
Depository banks (1010, 3010) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
Denver				
Depository banks (1020, 3020) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	
Oklahoma City				
Depository banks (1030, 3030) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
<i>Omaha</i>				
Depository banks (1040, 3040) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	
<i>Dallas</i>				
Depository banks (1110, 3110) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3040	
0530	1040	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

Number of business days following the banking day funds are deposited

*Federal Reserve Office***Houston**

Depository banks (1130, 3130) to:

5 business days

0110	0720	1250	2730
0210	0730	2110	2740
0220	0740	2220	2750
0260	0750	2260	2810
0280	0810	2310	2820
0310	0820	2360	2830
0360	0830	2410	2840
0410	0840	2420	2910
0420	0910	2430	2920
0430	0920	2440	2960
0440	0960	2510	3010
0510	1010	2519	3020
0519	1020	2520	3030
0520	1030	2530	3040
0530	1040	2539	3110
0539	1110	2610	3120
0610	1120	2620	3140
0620	1140	2630	3210
0630	1210	2640	3220
0640	1220	2650	3223
0650	1223	2660	3230
0660	1230	2710	3240
0710	1240	2720	3250

San Antonio

Depository banks (1140, 3140) to:

5 business days

0110	0720	1250	2730
0210	0730	2110	2740
0220	0740	2220	2750
0260	0750	2260	2810
0280	0810	2310	2820
0310	0820	2360	2830
0360	0830	2410	2840
0410	0840	2420	2910
0420	0910	2430	2920
0430	0920	2440	2960
0440	0960	2510	3010
0510	1010	2519	3020
0519	1020	2520	3030
0520	1030	2530	3040
0530	1040	2539	3110
0539	1110	2610	3120
0610	1120	2620	3130
0620	1130	2630	3210
0630	1210	2640	3220
0640	1220	2650	3223
0650	1223	2660	3230
0660	1230	2710	3240
0710	1240	2720	3250

				<i>Number of business days following the banking day funds are deposited</i>
<i>Federal Reserve Office</i>				
<i>El Paso</i>				
Depository banks (1120, 3120) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3040	
0530	1040	2539	3110	
0539	1110	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	
<i>San Francisco</i>				
Depository banks (1210, 3210) to:				5 business days
1220	1223	3220	3223	
<i>Los Angeles</i>				
Depository banks (1220, 1223, 3220, 3223) to:				5 business days
1210	3210			
<i>Portland</i>				
Depository banks (1230, 3220) to:				5 business days
1250	3250			
<i>Salt Lake City</i>				
None				
<i>Seattle</i>				
Depository banks (1250, 3250) to:				5 business days
1230	3230			

APPENDIX B-2—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.

<i>Federal Reserve Office</i>				<i>Number of business days following the banking day funds are deposited</i>
<i>New York</i>				
Depository banks (0210, 0260, 0280, 2260) to:				3 business days
0214	0219	2214	2219	
<i>Jericho</i>				3 business days
0210	0260	2260		
<i>Cranford</i>				3 business days
0210	0260	0280	2260	
<i>Utica</i>				3 business days
0210	0280			
<i>Nashville</i>				3 business days
0613	2613			
<i>Kansas City</i>				3 business days
0865	2865			

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 section 229.13 exceptions
- C-3 Next-day availability, case-by-case holds to statutory limits, and section 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 (permanent 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
- C-19 Payable-through checks
- C-19A Payable-through checks

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. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, 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 Section 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. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, 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.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, 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 your deposit of these checks (other

than a U.S. Treasury check) is not made 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 Section 229.13 Exceptions (Permanent 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. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, 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 fifth 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.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, 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 your deposit of these checks (other than a U.S. Treasury check) is not made 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.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

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
- 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.

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. Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal 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.

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	000000000 000	_____
Routing number		

Business Check

Name of Company Address, City, State		
Pay to the order of _____	_____ 19____	\$ _____
dollars		
(Bank Name and Location)		
000000000	123456789	000000000 000
Routing number		

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.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, 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 your deposit of these checks (other than a U.S. Treasury check) is not made 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 (Permanent 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.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

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
- 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 000000000 000

Routing number

Business Check

Name of Company
Address, City, State _____ 19____

Pay to the order of _____ | \$ _____
dollars

(Bank Name and Location) _____

000000000 123456789 000000000 000

Routing number

Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Once you have determined the first four digits of the routing number (1234 in the examples above), the chart below will show you when the funds from the check will be available. 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.

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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.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, 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 your deposit of these checks (other than a U.S. Treasury check) is not made 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.

<i>First four digits from routing number</i>	<i>When funds are available</i>	<i>When funds are available if a deposit is made on a Monday</i>
[local numbers]	\$100 on the first business day after the day of your deposit.	Tuesday
	Remaining funds on the second business day after the day of your deposit.	Wednesday
All other numbers	\$100 on the first business day after the day of your deposit.	Tuesday
	Remaining funds on the fifth business day after the day of your deposit.	Monday of the following week

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.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

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
- 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	000000000 000
	Routing number

Business Check

Name of Company Address, City, State	_____ 19____
Pay to the order of _____	\$ _____ dollars
(Bank Name and Location)	
000000000	123456789 000000000 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. Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal 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.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, 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 your deposit of these checks (other than a U.S. Treasury check) is not made 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.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

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
- 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	000000000 000
Routing number	

Business Check

Name of Company Address, City, State	_____ 19__
Pay to the order of _____	\$ _____
	dollars
(Bank Name and Location)	_____
000000000	123456789 000000000 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. Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal 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 de-

posit 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. 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.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, 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 your deposit of these checks (other than a U.S. Treasury check) is not made 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-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.

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 non-local 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 (Permanent Schedule, Extended Hold)

DEPOSITS AT AUTOMATED TELLER MACHINES

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

C-13—Exception Hold Notice

NOTICE OF HOLD

Account number: Date of deposit:
[*number*] [*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: Date of deposit:
[*number*] [*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 indorsement 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: _____

[description of procedure for obtaining refund].)

(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 (Permanent Schedule)

FUNDS-AVAILABILITY POLICY

<i>Description of Deposit</i>	<i>When Funds Can Be Withdrawn by Cash or Check</i>
Direct deposits	The day we receive the deposit
Cash; wire transfers; cashier's, certified, teller's, or government checks; checks on [bank name] (unless [any limitation related to branches in different check-processing regions]), and the first \$100 of a day's deposits of other checks	The first business day after the day of deposit
Local checks	The second business day after the day of deposit
Nonlocal checks	The fifth business day after the day of deposit

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,

C-15A—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds) (Permanent Schedule)

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. Funds from electronic deposits will be available on the day we receive the 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 fifth 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.

COMMENTARY

APPENDIX C

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 within brackets 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 section 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 section 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 section 229.16(b) and (c) for banks that have a policy of extending availability times on a case-by-case basis.

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.

While section 229.10(b) of the regulation requires next-day availability for electronic payments, Treasury regulations (31 CFR 210) and ACH association rules require that preauthorized credits ("direct deposits") be made available on the day the bank receives the funds. Model Forms C-1 through C-7 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the day received or on the business day following receipt. Banks should ensure that their disclosures reflect the availability given in most cases for wire transfers.

Banks that have used earlier versions of the model forms or clauses (such as those forms that gave Social Security benefits and payroll

payments as examples of preauthorized credits available the day after deposit) are protected from civil liability under section 229.21(e). Banks are encouraged, however, to use current versions of the forms when reordering or reprinting supplies of forms.

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 section 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 section 229.13 of the regulation. A bank reserving the right to impose the cash-withdrawal limitation in section 229.12(d) should disclose that funds may not be available until the sixth (rather than fifth) business day in the first paragraph under the heading "Longer Delays May Apply."

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 section 229.11 and to reserve the right to invoke the section 229.13 exceptions.

Model C-5

A bank may use this form when its policy is the same as that outlined in model C-7. The only difference between model C-7 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 section 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 section 229.12 and to reserve the right to invoke the section 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 section 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 section 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 fifth business day following the day of deposit, as permitted by section 229.12(f)(1). A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under section 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 section 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 section 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-with-

drawal limitations under the permanent schedule in section 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 section 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 section 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 section 229.13(g) of the regulation when a bank places a hold based on a section 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 section 229.13 exception.

Model C-13A

This form satisfies the same requirements 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 section 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 section 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 section 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 requirements of section 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 permanent schedule in the regulation and the policy reflected in models C-5 and C-7. 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 section 229.18(c)(1).

Model C-17

This form satisfies the ATM notice requirement of section 229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under section 229.19(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 section 229.18(a) for deposit slips.

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;

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 F—Preemption Determinations

Uniform Commercial Code, Section 4-213(5)

Section 4-213(5) of the Uniform Commercial Code (UCC) 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 UCC may call for the availability of certain cash deposits in a shorter time than provided in Regulation CC.

This provision of the UCC, 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.) UCC section 4-213(5) supersedes the Regulation CC provision in section 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 section 229.10(a) of Regulation CC.

California

Background

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act (“the act”) and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of California law concerning availability of funds. This preemption determination specifies those provisions of the California 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 (at 9-660).)

California has four separate sets of regulations establishing maximum availability schedules. The regulations applicable to commercial banks and branches of foreign banks located in California (Cal. Admin. Code tit. 10, §§ 10.190401-10.190402) were promulgated by the superintendent of banks. The regulations applicable to savings banks and savings and loan associations (Cal. Admin. Code tit. 10, §§ 106.200-106.202) were adopted by the savings and loan commissioner. The regulations applicable to credit unions (Cal. Admin. Code tit. 10, § 901) and to industrial loan companies (Cal. Admin. Code tit. 10, § 1101) were adopted by the Commissioner of Corporations.

All the regulations were adopted pursuant to California Financial Code section 866.5 and California Commercial Code section 4-213(4)(a), under which the appropriate state regulatory agency for each depository institution must issue administrative regulations to define a reasonable time for permitting customers to draw on items received for deposit in the customer’s account. California Financial Code section 867 also establishes availability periods for funds deposited by cashier’s check, certified check, teller’s check, or depository check under certain circumstances. Finally, California Financial Code section 866.2 establishes disclosure requirements.

The Board’s determination with respect to these California laws and regulations governing the funds-availability requirements applicable to depository institutions in California are as follows.

Commercial Banks and Branches of Foreign Banks

Coverage

The California State Banking Department regulations, which apply to California state commercial banks, California national banks, and California branch offices of foreign banks, provide that a depository bank shall make

funds deposited into a deposit account available for withdrawal as provided in Regulation CC with certain exceptions. The funds-availability schedules in Regulation CC apply only to "accounts" as defined in Regulation CC, which generally consist of transaction accounts. The California funds-availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts (other than time accounts), as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under section 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.)

Availability Schedules

Temporary schedule. Regulation CC provides that, until September 1, 1990, nonlocal checks must be made available for withdrawal by the seventh business day after the banking day of deposit, except for certain nonlocal checks listed in appendix B-1, which must be made available within a shorter time (by the fifth business day following deposit for those California checks listed). Under the temporary schedule in the California regulations, a depository bank with a four-digit routing symbol of 1210 ("1210 bank") or of 1220 ("1220 bank") that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch¹ must make the funds available for withdrawal by the fourth business day after the day of deposit. The California regulations provide that 1210 and 1220 banks must make deposited checks drawn on nonlocal in-state thrifts (defined as savings and loan associations, savings banks, and credit unions) available by the fifth business day after deposit. In addition, California law

¹ The California regulation uses the term "paying bank" when describing the institution on which these checks are drawn, but does not define "paying bank" or "bank." Regulation CC's definitions of "paying bank" and "bank" include savings institutions and credit unions as well as commercial banks and branches of foreign banks. However, because the California regulation makes separate provisions for checks drawn on savings institutions and credit unions, the Board concludes that the term "paying bank," as used in the California regulation, includes only commercial banks and foreign bank branches.

provides that all other depository banks must make deposited checks drawn on a nonlocal in-state commercial bank or foreign bank branch available by the fifth business day after deposit and checks drawn on nonlocal in-state thrifts available by the sixth business day after deposit. To the extent that these schedules provide for shorter holds than Regulation CC and its appendix B-1, the state schedules supersede the federal schedules.² For example, the California four-day schedule that applies to checks drawn on in-state nonlocal commercial banks or foreign bank branches and deposited in a 1210 or 1220 bank would be shorter than and would supersede the federal schedules.

The California regulations do not specify whether the state schedules apply to deposits of checks at nonproprietary ATMs. Under the temporary schedules in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal by the seventh business day following deposit. To the extent that the California 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 section 229.11(d).

Permanent schedule. Regulation CC provides that, as of September 1, 1990, nonlocal checks must be made available for withdrawal by the fifth business day after the banking day of deposit. Under the permanent schedule in the California regulations, a depository bank with a four-digit routing symbol of 1210 or of 1220 that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch must make the funds available for withdrawal by the fourth business day after the day of deposit. These state schedules provide for shorter hold peri-

² Appendix B-1 of Regulation CC provides that the federal schedules will be the same as the California schedules (five days) in the following cases: a depository bank bearing a 1210 routing number receiving for-deposit checks bearing a 3220 or a 3223 routing number, and a depository bank bearing a 1220 routing number receiving for-deposit checks bearing a 3210 routing number. In the cases where federal and state law are the same, the state law is not preempted by, nor does it supersede, the federal law.

ods than and thus supersede the federal schedules.

Second-day availability. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Availability at start of day. The California regulations do not specify when during the day funds must be made available for withdrawal. Section 229.19(b) of Regulation CC provides that funds must be made available at the start of the business day. In those cases where federal and state law provide for holds for the same number of days, to the extent that the California regulations allow funds to be made available later in the day than does Regulation CC, the federal law would preempt state law.

Exceptions to the availability schedules. Under the state preemption standards of Regulation CC (see section 229.20(c) and accompanying commentary), for deposits subject to the state availability schedules, a state exception may be used to extend the state availability schedule up to the federal availability 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. If no state exceptions exist, then no exception holds may be placed on deposits covered by state schedules. Thus, to the extent that California law provides for exceptions to the California schedules that supersede Regulation CC, those exceptions may be applied in order to

extend the state availability schedules up to the federal availability schedules or such later time as is permitted by a federal exception.

Disclosures

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code section 866.2 requires disclosures that differ from those required by Regulation CC and, therefore, is preempted to the extent that it applies to "accounts" as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

Savings Institutions

Coverage

The California Department of Savings and Loan regulations, which apply to California savings and loan associations and California savings banks, provide that a depository bank shall make funds deposited into a transaction or non-transaction account available for withdrawal as provided in Regulation CC. The funds-availability schedules in Regulation CC apply only to "accounts" as defined in Regulation CC, which generally consist of transaction accounts. The California funds-availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under section 229.19(e) of Regulation CC, "Holds on other funds," the federal availabil-

ity schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

Availability Schedules

Second-day availability. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Temporary and permanent schedules. Other than the provisions of section 867 discussed above, California law incorporates the Regulation CC availability requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the California regulation is not preempted by, nor does it supersede, the federal law.

Disclosures

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal. Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning

funds availability relating to accounts. To the extent that California Financial Code section 866.2 requires disclosures that differ from those required by Regulation CC and apply to "accounts" as defined in Regulation CC (generally, transaction accounts), the California law is preempted by Regulation CC.

The Department of Savings and Loan regulations provide that for those non-transaction accounts covered by state law but not by federal law, disclosures in accordance with Regulation CC will be deemed to comply with the state-law disclosure requirements. To the extent that the Department of Savings and Loan regulations permit reliance on Regulation CC disclosures for transaction accounts and to the extent the state regulations survive the preemption of California Financial Code section 866.2, they are not preempted by, nor do they supersede, the federal law. The state law continues to apply to savings accounts and other non-transaction accounts not governed by Regulation CC disclosure requirements.

Credit Unions and Industrial Loan Companies

Each credit union and federally insured industrial loan company that maintains an office in California for the acceptance of deposits must make funds deposited by check available for withdrawal in accordance with the following table:

	<i>Availability</i>	
	<i>Credit Union</i>	<i>Industrial Loan Company</i>
\$100 or less checks; U.S. Treasury checks; state/local government checks	1st day	1st day
On-us, cashier's, certified, teller's, depository checks	2nd day	2nd day
In-state checks	6th day	6th day
Out-of-state checks	10th day	12th day

Note. These time periods are stated in terms of availability for withdrawal not later than the Xth business day following the banking day of deposit to facilitate comparison with Regulation CC. State regulations are stated in terms of availability at the start of the business day subsequent to the number of days specified in the regulation.

Coverage

The California law and regulations govern the availability of funds to "demand deposits, negotiable order of withdrawal draft accounts, savings deposits subject to automatic transfers, share draft accounts, and all savings deposits and share accounts, other than time deposits" (California Financial Code § 886(b)). The federal preemption of state funds-availability laws only applies to "accounts" subject to Regulation CC, which generally includes transaction accounts. Thus, the California funds-availability regulations continue to apply to deposits in savings and other accounts (such as accounts in which the account holder is another bank) that are not "accounts" under Regulation CC. (Note, however, that under section 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 California law applies to any "item" (California Financial Code § 866.5 and California Commercial Code § 4213 (4)(a)). The California Commercial Code defines "item" to mean "any instrument for the payment of money even though it is not negotiable . . ." (Cal. Com. Code § 4104(g)). This term is broader in scope than the definition of "check" in the act and Regulation CC. The commissioner's regulations, however, define the term "item" to include checks, negotiable orders of withdrawal, share drafts, warrants, and money orders. As limited by the state regulations, the state law applies only to instruments that are also "checks" as defined in section 229.2(k) of Regulation CC.

Availability Schedules

Temporary schedule. The California regulations provide that in-state nonlocal checks must be made available for withdrawal not later than the sixth business day following deposit. This time period is shorter than the seventh-business-day availability required for nonlocal checks under section 229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in section 229.11(c)(2) and appendix B-1 of

Regulation CC. Thus, the state schedules for in-state nonlocal checks supersede the federal schedule to the extent that they apply to an item payable by a California institution that is defined as a nonlocal check under Regulation CC, and is not subject to reduced schedules under section 229.11(c)(2) and appendix B-1.

Under the California regulations, credit unions and industrial loan companies must provide next-day availability to first-indorsed items issued by any federally insured institution. This regulatory requirement, however, has been superseded by section 867 of the California Financial Code, which requires depository institutions to make funds deposited by cashier's check, teller's check, certified checks, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day-availability requirement for cashier's checks and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second-business-day-availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

The California regulations do not specify whether they apply 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 start of the seventh business day after deposit. To the extent that the California 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 section 229.11(d).

Permanent schedule. Under the California regulations, credit unions and industrial loan companies must provide next-day availability to first-indorsed items issued by any federally insured institution. This regulatory requirement, however, has been superseded by section 867 of the California Financial Code, which requires depository institutions to make funds deposited by cashier's check, teller's

check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day-availability requirement for cashier's and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second-business-day-availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Next-day availability. Credit unions and industrial loan companies in California are required to give next-day availability to items drawn by the state of California or any of its departments, agencies, or political subdivisions. California law supersedes the federal law in that the state law does not condition next-day availability on receipt at a staffed teller station or use of a special deposit slip.

California credit unions and industrial loan companies must provide second-business-day availability to checks drawn on the depository bank. Regulation CC requires next-day availability for 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 the same check-processing region. Thus, generally, the Regulation CC rule for availability of on-us checks preempts the California regulations. To the extent, however, that an on-us check is (1) drawn on an out-of-state branch of the depository bank that is not in the same check-processing region as the branch in which it was deposited or (2) deposited at an off-premises ATM or another facility of the depository bank that is not considered a branch under federal law, the state regulation supersedes the Regulation CC availability requirements.

Exceptions to the availability schedules. California law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions. 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 (e.g., in-state nonlocal checks under the temporary schedule; cashier's or teller's checks that are not deposited with a special deposit slip or at a staff teller station), the state exceptions may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability 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 section 229.13(g) of Regulation CC.

Business day/banking day. The definitions of "business day" and "banking day" in the California regulations are preempted by the Regulation CC definition of those terms. Thus, for determining the permissible hold under the California schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.

Disclosures

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires a depository institution to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code section 866.2 requires disclosures that differ from those required by Regulation CC, and there-

fore is preempted to the extent that it applies to "accounts" as defined in Regulation CC. The state law continues to apply to savings accounts not governed by Regulation CC disclosure requirements.

Connecticut

Background

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the 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 [page 169].

In 1987, Connecticut amended its statute governing funds availability (Conn. Gen. Stat. § 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, as amended, provides that items deposited in a checking, time, interest, or savings account at a depository institution must be available for withdrawal in accordance with the following table:

	<i>Availability</i>
On-us checks	2nd day
In-state checks	4th day
Out-of-state checks	6th day

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 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 section 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. Regulation CC does not affect the Connecticut statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under section 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 Connecticut statute applies to "items" deposited in accounts. This term encompasses instruments that are not defined as "checks" in Regulation CC (§ 229.2(k)), such as non-negotiable 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.

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 supersedes 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 start 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 section 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 (e.g., nonlocal out-of-state checks under the temporary schedule), the state exceptions may be used to extend the state availability schedule (of six business days) to meet the federal availability schedule (of seven business days). 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 section 229.13(g) of Regulation CC.

Disclosures

The Connecticut statute (Conn. Gen. Stat. § 36-9v(b)) requires written notice to depositors of an institution's check-hold policy and requires a notice of the policy to be posted in each branch.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules (§ 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.

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The Connecticut disclosure rules would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

Illinois

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act and subpart B, and, in connection therewith, subpart A, of Regulation CC, preempt provisions of Illinois law relating to the availability of funds. Section 4-213(5) of the Uniform Commercial Code as adopted in Illinois (Illinois Revised Statutes chapter 26, paragraph 4-213(5), enacted July 26, 1988) provides that—

Time periods after which deposits must be available for withdrawal shall be determined by the provisions of the federal Expedited Funds Availability Act (Title VI of the Competitive Equality Banking Act of 1987) and the regulations promulgated by the Federal Reserve Board for the implementation of that Act.

Section 4-213(5) of the Illinois law does not supersede Regulation CC; and, because this provision of Illinois law does not permit funds to be made available for withdrawal in a longer period of time than required under the act and regulation, it is not preempted by Regulation CC.

Maine

Background

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt the provisions of Maine law concerning the availability of funds. This preemption determination addresses the relation of the act and Regulation CC to the Maine funds-availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits [page 169].

In 1985, Maine adopted a statute governing funds availability (title 9-B MRSA § 241(5)), which requires Maine financial institutions to make funds deposited in a transaction account, savings account, or time account available for withdrawal within a reasonable period. The Maine statute gives the superintendent of banking for the state of Maine the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability.

The superintendent of banking issued regulations implementing the Maine funds-availability statute, effective July 1, 1987 (Regulation 18(IV)), and adopted amendments to this regulation, effective September 1, 1988. Under the revised regulation, funds deposited to any deposit account in a Maine financial institution must be made available for withdrawal in accordance with the act and Regulation CC (Regulation 18-IV(A)(1)). The state regulation provides that an institution's funds-availability policies for accounts subject to Regulation CC be disclosed in a manner consistent with the Regulation CC requirements. Funds-availability policies for accounts not subject to Regulation CC must be disclosed in accordance with the state regulation (Regulation 18-IV(A)(2)).

Coverage

The Maine law and regulation govern the availability of funds to any deposit account, as defined in the Board's Regulation D (12 CFR 204.2(a)). This coverage is broader than the "accounts" covered in Regulation CC. The Maine law continues to apply to all deposit accounts, including those that are not accounts under Regulation CC. (Note, however, that under section 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.

Availability Schedules and Disclosures

The Maine regulation incorporates the Regulation CC availability and disclosure requirements with respect to deposits to accounts covered by Regulation CC. Because the state

requirements are consistent with the federal requirements, the Maine regulation is not preempted by, nor does it supersede, the federal law.

Massachusetts

Background

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt provisions of Massachusetts law relating to the availability of funds. This preemption determination addresses the relationship of the act and Regulation CC to the Massachusetts funds-availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits [page 169].

In 1988, Massachusetts amended its statute governing funds availability (Mass. Gen. L. ch. 167D, § 35), to require Massachusetts banking institutions to make funds available for withdrawal and disclose their availability policies in accordance with the act and Regulation CC. The Massachusetts law, however, provides that "local originating depository institution" is to be defined as any originating depository institution located in the commonwealth.

Coverage

The Massachusetts statute governs the availability of funds deposited in "any demand deposit, negotiable order of withdrawal account, savings deposit, share account or other asset account." Regulation CC applies only to "accounts" as defined in section 229.2(a). Regulation CC does not affect the Massachusetts statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under section 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.

Availability Schedules

The Massachusetts definition of "local originating depository institution" (local paying bank in Regulation CC terminology) requires that in-state checks that are nonlocal checks under Regulation CC be made available in accordance with the Regulation CC local schedule. The Massachusetts law supersedes Regulation CC under the temporary and permanent schedule with respect to nonlocal checks payable by banks located in Massachusetts and deposited into "accounts." Regulation CC preempts the Massachusetts law, however, to the extent the state law does not define banks located outside of Massachusetts, but in the same check-processing region as the paying bank, as "local originating depository institutions."

Disclosures

The Massachusetts regulation incorporates the Regulation CC disclosure requirements with respect to both accounts covered by Regulation CC and savings and other accounts not governed by the federal regulation. Because the state requirements are consistent with the federal requirements, the Massachusetts regulation is not preempted by, nor does it supersede, the federal law. The Massachusetts disclosure rules would continue to apply to accounts not governed by the Regulation CC disclosure requirements.

New Jersey

Background

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of New Jersey law concerning disclosure of a bank's funds-availability policy. (See also the Board's preemption determination regard-

ing the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits [page 169].)

New Jersey does not have a law or regulation establishing the maximum time periods within which funds deposited by check or electronic payment must be made available for withdrawal. New Jersey does, however, have regulations concerning the disclosure of a banking institution's availability policy (N.J.A.C. 3:1-15.1 et seq.).

Disclosures

New Jersey law requires every banking institution (defined as any state or federally chartered commercial bank, savings bank, or savings and loan association) to provide written disclosure to all holders of and applicants for deposit accounts which describes the institution's funds-availability policy. Institutions must also disclose to their customers any significant changes to their availability policy.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules (§ 229.20(c)(2)). Thus, the New Jersey statute (N.J.A.C. §§ 3:1-15.1 et seq.) is preempted by Regulation CC to the extent that these disclosure provisions apply to "accounts" as defined by Regulation CC. The New Jersey disclosure rules would continue to apply to other "deposit accounts," as defined by New Jersey law, including money market accounts and savings accounts established by a natural person for personal or family purposes, which are not governed by the Regulation CC disclosure requirements.

New Mexico

Background

The Board has been requested in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt provisions

of New Mexico law relating to the availability of funds. This preemption determination specifies those provisions in the New Mexico 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 [page 169].

In 1987, New Mexico adopted a statute governing funds availability (N.M. Stat. Ann. § 58-3-4 (1978, Supp. 1987)), which requires New Mexico financial institutions to make funds deposited into retail accounts available for withdrawal after a reasonable period of time. Section 4A of the New Mexico statute establishes the time frames within which financial institutions must make funds deposited by checks or share drafts available for withdrawal if the checks or share drafts are drawn and payable on demand at other financial institutions located in the continental United States. Section 4B of the statute defines terms and specifies availability for checks deposited in branch offices of certain financial institutions, section 4C specifies exceptions to the availability schedules, and section 4D specifies damages recoverable for a violation of this statute.

Generally, the New Mexico law provides that checks and share drafts, other than on-us checks, drawn and payable on demand at a financial institution and deposited into an individual or household account must be made available for withdrawal at the beginning of the third business day after deposit for checks or share drafts drawn and payable on demand at financial institutions located within the same municipality as the depository bank, and for checks or share drafts deposited in a branch office of a financial institution if the main office of that financial institution is located in the same municipality as the depository bank. Other in-state checks or share drafts must be made available at the opening of the fifth business day after deposit. Checks or share drafts drawn and payable on demand at any other financial institution located within continental United States must be made available at the beginning of the seventh business day after deposit.

Exceptions to the schedules are provided for documentary drafts, accounts which have

been open less than 60 days, checks or share drafts with two-party indorsements, checks or share drafts in an amount greater than the average balance in the account over the last 12 months or the average balance since the account was opened, whichever is less, and checks or share drafts deposited in an account on which six or more nonsufficient fund checks or share drafts were presented in the prior six-month period.

Coverage

The New Mexico statute is limited to retail accounts and does not apply to business accounts. No portion of the New Mexico statute supersedes Regulation CC for any "account" as that term is defined in Regulation CC that is not held by an individual or household. Regulation CC does not affect the New Mexico statute to the extent that the state law applies to time, savings, and other deposits that are not defined as "accounts" under Regulation CC. (Note, however, that under section 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 Mexico statute is limited to checks and share drafts payable by financial institutions. The term "financial institution" corresponds generally to the term "bank" in Regulation CC. The terms "check" and "share draft" are narrower than the term "check" in Regulation CC because they do not appear to apply to Treasury checks, checks payable by state or local governments (i.e., warrants), checks payable by Federal Reserve Banks or Federal Home Loan Banks, or U.S. Postal Service money orders. No portion of the New Mexico statute supersedes Regulation CC with respect to these instruments.

Availability Schedules

Temporary schedules. The New Mexico statute requires checks and share drafts drawn and payable on demand at an office of a financial institution located in the same municipality as the depository bank and checks and share drafts drawn and payable on demand at

offices of financial institutions located in New Mexico whose main office is located in the same municipality as the depository bank to be made available at the opening of the third business day after deposit. (N.M. Stat. Ann. § 58-3-4A(1)).¹ New Mexico is served by two Federal Reserve check-processing regions, and, therefore, while most checks and share drafts subject to this schedule will be local under Regulation CC, some checks and share drafts covered by this schedule may be nonlocal under Regulation CC. Under the temporary schedule in Regulation CC, the proceeds of local checks must be available for withdrawal at the start of the third business day after deposit, but Regulation CC permits a time-period adjustment for withdrawals by cash and similar means that permits a depository bank to delay the time it must make funds available for deposits of local checks cleared outside a check-clearinghouse arrangement. Under the temporary schedule in Regulation CC, the proceeds of nonlocal checks must be made available for withdrawal at the opening of the seventh business day following deposit. No time-period adjustment is provided. New Mexico law supersedes this time-period adjustment for local checks under the temporary schedule and for nonlocal checks coming within the portion of the New Mexico schedule calling for availability on the third banking day after deposit.

The New Mexico statute calls for the proceeds of checks and share drafts to be made available at the opening of the fifth day after deposit for checks and share drafts drawn and payable on demand at other offices of financial institutions located in New Mexico (N.M. Stat. Ann. § 58-3-4A(2)). To the extent that this schedule applies to nonlocal checks as defined by Regulation CC, it supersedes the temporary schedules in Regulation CC. The New Mexico statute also provides for availability of checks and share drafts drawn and payable on demand at financial institutions located in the continental United States, excluding Alaska, Hawaii, Puerto Rico, and

the U.S. Virgin Islands, at the opening of the seventh banking day after deposit (N.M. Stat. Ann. § 58-3-4A(3)). This schedule is the same as Regulation CC with respect to nonlocal checks.

The New Mexico 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 New Mexico schedules described above 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 section 229.11(d).

Permanent schedules. Under the permanent schedule in Regulation CC, the proceeds of checks must be made available at the opening of the second business day after deposit for local checks and the fifth business day after deposit for nonlocal checks. Both of these schedules are subject to time-period adjustments for withdrawal by cash or similar means. The New Mexico statute supersedes the permanent schedules in Regulation CC for nonlocal checks subject to the third-day-withdrawal requirement (N.M. Stat. Ann. § 58-3-4A(1)) and the time-period adjustment for nonlocal checks subject to the fifth-day-withdrawal requirement (N.M. Stat. Ann. § 58-3-4A(2)) of the New Mexico statute.

Exceptions to availability schedules. The New Mexico statute provides for exceptions to the state schedules for (1) documentary drafts; (2) accounts opened less than 60 days; (3) checks or share drafts with two-party indorsements; (4) a check or share draft in a face amount greater than the average balance of the depositor's account for the prior 12 months or the average balance since the account was opened, whichever is less; and (5) a check or share draft deposited in an account on which six or more insufficient-fund checks or share drafts were presented for payment in the prior six-month period.

The state exceptions will continue to apply when the state schedules are not preempted by

¹ It is not clear from the New Mexico statute whether days stated in the schedules include the day of deposit. For the purposes of this interpretation, it is assumed that the stated days do include the day of deposit. References to days included in the New Mexico schedules have also been revised to reflect Regulation CC terminology.

Regulation CC, but holds may be placed under the state schedules only up to the limits permitted by the Regulation CC schedules. Where the Regulation CC schedules are subject to exceptions, holds placed on checks under the state schedules that would also be permissible under Regulation CC may be continued up to the limit on holds under Regulation CC. Notice of holds as required by Regulation CC (§ 229.13(g)) must be given whenever a hold is placed so that availability is extended beyond the applicable state or federal schedule.

Business day/banking day. Under New Mexico law a bank is authorized to establish its own banking days except that it must observe certain holidays (N.M. Stat. Ann. §§ 58-5-6 and 58-5-7). This definition is preempted by the Regulation CC definitions of "business day" and "banking day." Thus, for determining the permissible hold under the New Mexico schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.

Disclosures

The New Mexico law does not contain funds-availability disclosure requirements applicable to accounts subject to Regulation CC.

New York

Background

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the 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 addresses the relation of the act and Regulation CC to the New York funds-availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits [page 169].

In 1983, the New York State Banking De-

partment, pursuant to section 14-d of the New York Banking Law, issued regulations requiring that funds deposited in an account be made available for withdrawal within specified time periods, and provided certain exceptions to those availability schedules. Part 34 of the New York State Banking Department's general regulations established 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.

The Banking Department amended part 34, effective September 1, 1988, generally to exclude accounts covered by Regulation CC from the scope of the state regulation. Part 34.4(a)(2) and (b)(2) of the revised New York rules, however, continue to apply to checks deposited to accounts, as defined in Regulation CC. These provisions require that the proceeds of nonlocal checks payable by a New York institution be made available for withdrawal not later than the start of the fourth business day following deposit, if deposited in a bank, or the fifth business day following deposit, if deposited in a savings institution. The revised regulation also provides that, with respect to savings accounts and time deposits, New York institutions could elect to comply with either the state or federal availability and disclosure requirements.

This preemption determination supersedes the determination issued by the Board on August 18, 1988 (53 *Fed. Reg.* 32357 (August 24, 1988)).

Coverage

The New York law and regulation govern the availability of funds in savings accounts and time deposits, as well as "accounts" as defined in section 229.2(a) of Regulation CC. The New York law continues to apply to deposits to savings accounts and time deposits that are not accounts under Regulation CC. (Note, however, that under section 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 law and regulation apply to "items" deposited to accounts. Part 34.3(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 provisions of New York law governing the availability of in-state nonlocal items provide for a shorter hold than is provided under Regulation CC, and supersede the federal availability requirements. With the exception of these provisions, the New York regulation does not apply to deposits to accounts covered by Regulation CC.

Temporary schedule. The time periods for the availability of in-state nonlocal checks, contained in part 34.4(a)(2) and (b)(2), are shorter than the seventh-business-day availability required for nonlocal checks under section 229.11(c) of Regulation CC, although they are not necessarily shorter than the schedules for nonlocal checks set forth in section 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 section 229.11(c) and appendix B-1.

Permanent schedule. The New York schedule for banks supersedes the Regulation CC requirement in the permanent schedule, effective September 1, 1990, that nonlocal checks be made available for withdrawal by the start of the fifth business day following deposit, 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 section 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 for withdrawal by cash or similar means in the permanent schedule, 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 section 229.12(c)(2) and appendix B-2.

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). The state exceptions apply only with respect to deposits of in-state nonlocal checks that are subject to the state availability schedule. For these deposits, 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 law, it must give notice of the extended hold to its customer in accordance with section 229.13(g) of Regulation CC.

Disclosures

The revised New York regulation does not contain funds-availability disclosure requirements applicable to accounts subject to Regulation CC.

Rhode Island

Background

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC, supersede provisions of Rhode Island law relating to the availability of funds. This preemption determination specifies those provisions in the Rhode Island funds-availability law that su-

persede 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 [page 169].

In 1986, Rhode Island adopted a statute governing funds availability (R.I. Gen. Laws tit. 6A, §§ 4-601 through 4-608), which requires Rhode Island depository institutions to make checks deposited in a personal transaction account available for withdrawal within certain specific periods. Commercial banks and thrift institutions (mutual savings banks, savings banks, savings and loan institutions, and credit unions) must make funds available for withdrawal in accordance with the following table:

	<i>Commercial Banks</i>	<i>Thrift Institutions</i>
Treasury checks, Rhode Island government checks, first-indorsed	2nd	2nd
In-state, cashier's checks less than \$2,500	2nd	2nd
On-us checks	2nd	3rd
In-state clearinghouse checks	3rd	4th
In-state nonclearing- house checks	5th	6th
1st or 2nd Federal Reserve District checks (out-of- state)	7th	7th
Other checks	9th	10th

Note. These time periods are stated in terms of availability for withdrawal not later than the Xth business day following the banking day of deposit to facilitate comparison with Regulation CC. State regulations are stated in terms of availability at the start of the business day subsequent to the number of days specified in the regulation.

The Rhode Island statute also provides restrictions and exceptions to the schedules and requires institutions to make certain disclosures to their customers.

Coverage

The Rhode Island statute governs the availability of funds deposited in "personal transaction accounts," a term not defined in the statute. The federal law would continue to ap-

ply to "accounts," as defined in section 229.2(a), that are not "personal transaction accounts."

The Rhode Island statute applies to "items," defined as checks, negotiable orders of withdrawal, or money orders. The Board interprets the definition of "item" to be consistent with the definition of "check" in Regulation CC (§ 229.2(k)).

Availability Schedules

Temporary schedule. Rhode Island law requires availability for certain checks in the same time as does Regulation CC. Thus, in these instances, the federal law does not preempt the state law. Rhode Island law requires commercial banks (but not thrift institutions) to make checks payable by a depository institution that uses the same in-state clearing facility as the depository bank available for withdrawal on the third business day following the day of the deposit. This is the same time period contained in Regulation CC for local checks payable by a bank that is a member of the same local clearinghouse as the depository bank. (The Board views the definition of "the same in-state clearing facility" as having the same meaning as the term "the same check clearinghouse association" in the federal law's provision that allows banks to limit the customer's ability to withdraw cash on the third business day if the local check being deposited is payable by a bank that is not a member of the same local clearinghouse as the depository bank.) Since the Rhode Island law and the federal law both require the funds to be made available no later than the third business day, the state law is not preempted by the federal law.

The Rhode Island law also requires commercial banks and savings institutions to make checks payable by a depository institution located in the First or Second Federal Reserve District (outside of Rhode Island) available on the seventh business day following deposit. To the extent that this provision applies to checks payable by institutions located outside the Boston check processing region, it provides for availability in the same time as required for nonlocal checks under the

temporary federal schedule, and thus is not preempted by the federal law.

The Rhode Island 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 Rhode Island schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule.

Exceptions to the availability schedules. The Rhode Island law contains exceptions for reason to doubt collectibility or ability of the depositor to reimburse the depository bank, for new accounts, for large checks, and for foreign checks. 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, the state exceptions may be used to extend the state availability schedule to meet the federal availability 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. Thus, if the state and federal availability schedules are the same for a particular deposit, both a state and a federal exception must be applicable to that deposit in order to extend the hold beyond the schedule. 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 section 229.13(g) of Regulation CC.

Business day/banking day. The Rhode Island statute defines "business day" as excluding Saturday, Sunday, and legal holidays. This definition is preempted by the Regulation CC definitions of "business day" and "banking day." Thus, for determining the permissible hold under the Rhode Island schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.

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Disclosures

The Rhode Island statute requires written notice to depositors of an institution's check-hold policy and requires a notice on deposit slips. Regulation CC preempts state disclosure requirements concerning funds availability that relate to accounts that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal rules (§ 229.20(c)(2)). Thus, Regulation CC preempts the Rhode Island disclosure requirements concerning funds availability.

Wisconsin

Background

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act (the act) and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of Wisconsin law concerning availability of funds. This preemption determination specifies those provisions of the Wisconsin funds-availability law that are not preempted by 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 [page 169].)

Wisconsin Statutes sections 404.213(4m), 215.136, and 186.117 require Wisconsin banks, savings and loan associations, and credit unions, respectively, to make funds deposited in accounts available for withdrawal within specified time frames. Generally, checks drawn on the U.S. Treasury, the state of Wisconsin, or on a local government located in Wisconsin must be made available for withdrawal by the second day following deposit. (The law governing commercial banks determines availability based on banking day; the laws governing savings and loan associations and credit unions determine availability based on business days.) In-state and out-of-state checks must be made available for withdrawal within five days and eight days following deposit, respectively. Exceptions are

provided for new accounts and reason to doubt collectibility. In addition, Wisconsin Statutes section 404.103 permits commercial banks to vary these availability requirements by agreement.

Coverage

Wisconsin law defines "account," with respect to the rules governing commercial banks, as "any account with a bank and includes a checking, time, interest or savings account" (Wisconsin Statutes section 404.104(1)(a)). The statutes relating to the funds-availability requirements applicable to savings and loan associations and credit unions do not define the term "account." The federal preemption of state funds-availability requirements applies only to "accounts" subject to Regulation CC, which generally consist of transaction accounts. Regulation CC does not affect the Wisconsin law to the extent that the state law applies to deposits in savings, time, and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under section 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 Wisconsin statute applies to "items" deposited in accounts. This term encompasses instruments that are not defined as "checks" in Regulation CC (§ 229.2(k)), such as non-negotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Wisconsin law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions.

Availability Schedules

Temporary schedule. The Wisconsin statute requires that in-state nonlocal checks be made available for withdrawal not later than the fifth day following deposit (Wisconsin Statutes §§ 404.213(4m)(b)(2); 215.136(2)(b); 186.117(2)(b)). This time period is shorter than the seventh-business-day availability re-

quired for nonlocal checks under section 229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in section 229.11(c)(2) and appendix B-1 of Regulation CC. Thus, the state schedule for in-state nonlocal checks supersedes the federal schedule to the extent that it applies to an item payable by a Wisconsin bank that is defined as a nonlocal check under Regulation CC and is not subject to reduced schedules under section 229.11(c)(2) and appendix B-1.

Permanent schedule. Under the federal permanent availability schedule, nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit. The fifth-day availability requirement for in-state items in the Wisconsin statute supersedes the Regulation CC time-period adjustment for withdrawal by cash or similar means in the permanent schedule, to the extent that the in-state checks are defined as nonlocal under Regulation CC.

Next-day availability. Under the Wisconsin statute, the proceeds of state and local government checks must be made available for withdrawal by the second day following deposit, if the check is indorsed only by the person to whom it was issued (Wisconsin Statutes §§ 404.213(4m)(b)(1); 215.136(2)(b); and 186.117(2)(a)). Regulation CC requires next-day availability for these checks if they are (1) deposited in an account of a payee of the check, (2) deposited in a depository bank located in the same state as the state or local government that issued the check, (3) deposited in person to an employee of the depository bank, and (4) deposited with a special deposit slip, if the depository bank informed its customers that use of such a slip is a condition to next-day availability. Under the federal law, if a state or local government check is not deposited in person to an employee of the depository bank, but meets the other conditions set forth in section 229.10(c)(1)(iv), the funds must be made available for withdrawal not later than the second business day following deposit. The Wisconsin statute supersedes Regulation CC to the extent that the state law does not permit the use of a special deposit

slip as a condition to receipt of second-day availability.

Exceptions to the schedules. Wisconsin law provides exceptions to the state availability schedules for new accounts (those opened less than 90 days) and reason to doubt collectibility (Wisconsin Statutes §§ 404.213(4m)(b); 215.136(2); and 186.117(2)). The state availability law also permits commercial banks to vary the funds-availability requirements by agreement (Wisconsin Statute § 404.103 (1)). In all cases where the federal schedule preempts the state schedule, only the federal exceptions apply. For deposits that are covered by the state availability schedule (e.g., in-state nonlocal checks), a state exception must apply in order to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability limit under a state exception, the depository bank may further extend the hold only if a federal exception 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.

Business day/banking day. The definitions of “business day” and “banking day” in the Wisconsin statutes are preempted by the Regulation CC definition of those terms. For determining the permissible hold under the Wisconsin schedules that supersede the Regulation CC schedule, deposits are considered available for withdrawal on the specified number of “business days” following the “banking day” of deposit.

Wisconsin law considers funds to be deposited, for the purpose of determining when they must be made available for withdrawal, when an item is “received at the proof and transit facility of the depository.” For the purposes of this preemption determination, funds are considered deposited under Wisconsin law in accordance with the rules set forth in section 229.19(a) of Regulation CC.

Disclosures

The Wisconsin statute does not require disclo-

sure of a bank’s funds-availability policy. The state law does require, however, that a bank give notice to its customer if it extends the time within which funds will be available for withdrawal due to the bank’s doubt as to the collectibility of the item (Wisconsin Statutes §§ 404.213(4m)(b); 215.136(2); and 186.117(2)).

Regulation CC preempts state disclosure requirements concerning funds availability that relate to “accounts” that are inconsistent with the federal requirements. The state requirement is different from, and therefore inconsistent with, the federal disclosure rules (§ 229.20(c)(2)). Thus, the Wisconsin statute is preempted by Regulation CC to the extent that the state notice requirement applies to “accounts” as defined by Regulation CC. The Wisconsin requirement would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

Expedited Funds Availability Act

12 USC 4001 et seq.; 101 Stat. 635; Pub. L. 100-86 (August 10, 1987)

Competitive Equality Banking Act, Title VI

Section

- 601 Short title
- 602 Definitions
- 603 Expedited funds availability schedules
- 604 Safeguard exceptions
- 605 Disclosure of funds availability policies
- 606 Payment of interest
- 607 Miscellaneous provisions
- 608 Effect on state law
- 609 Regulations and reports by Board
- 610 Administrative enforcement
- 611 Civil liability
- 612 Parity in clearing

SECTION 601—Short Title

This title may be cited as the “Expedited Funds Availability Act”.

[12 USC 4001 note.]

SECTION 602—Definitions

For purposes of this title—

- (1) The term “account” means a demand deposit account or other similar transaction account at a depository institution.
- (2) The term “Board” means the Board of Governors of the Federal Reserve System.
- (3) The term “business day” means any day other than a Saturday, Sunday, or legal holiday.
- (4) The term “cash” means United States coins and currency, including Federal Reserve notes.
- (5) The term “cashier’s check” means any check which—
 - (A) is drawn on a depository institution;
 - (B) is signed by an officer or employee of such depository institution; and
 - (C) is a direct obligation of such depository institution.
- (6) The term “certified check” means any

check with respect to which a depository institution certifies that—

- (A) the signature on the check is genuine; and
- (B) such depository institution has set aside funds which—
 - (i) are equal to the amount of the check; and
 - (ii) will be used only to pay such check.
- (7) The term “check” means any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States. Such term does not include noncash items.
- (8) The term “check clearinghouse association” means any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System.
- (9) The term “check processing region” means the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.
- (10) The term “consumer account” means any account used primarily for personal, family, or household purposes.
- (11) 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.
- (12) The term “depository institution” has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act. Such term also includes an office, branch, or agency of a foreign bank located in the United States.
- (13) The term “local originating depository institution” means any originating depository institution which is located in the same check processing region as the receiving depository institution.
- (14) The term “noncash item” means—
 - (A) a check or other demand item to which a passbook, certificate, or other document is attached;

(B) a check or other demand item which is accompanied by special instructions, such as a request for special advise of payment or dishonor; or

(C) any similar item which is otherwise classified as a noncash item in regulations of the Board.

(15) The term “nonlocal originating depository institution” means any originating depository institution which is not a local depository institution.

(16) The term “proprietary ATM” means an automated teller machine which is—

(A) located—

(i) at or adjacent to a branch of the receiving depository institution; or

(ii) in close proximity, as defined by the Board, to a branch of the receiving depository institution; or

(B) owned by, operated exclusively for, or operated by the receiving depository institution.

(17) The term “originating depository institution” means the branch of a depository institution on which a check is drawn.

(18) The term “nonproprietary ATM” means an automated teller machine which is not a proprietary ATM.

(19) The term “participant” means a depository institution which—

(A) is located in the same geographic area as that served by a check clearinghouse association; and

(B) exchanges checks through the check clearinghouse association, either directly or through an intermediary.

(20) The term “receiving depository institution” means the branch of a depository institution or the proprietary ATM in which a check is first deposited.

(21) The term “State” means any State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

(22) The term “teller’s check” means any check issued by a depository institution and drawn on another depository institution.

(23) The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(24) The term “unit of general local government” means any city, county, town, town-

ship, parish, village, or other general purpose political subdivision of a State.

(25) The term “wire transfer” has such meaning as the Board shall prescribe by regulations.

[12 USC 4001.]

SECTION 603—Expedited Funds Availability Schedules

(a) *Next business day availability for certain deposits.*

(1) Except as provided in subsection (e) and in section 604, in any case in which—

(A) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

(B) funds are received by a depository institution by wire transfer for deposit in an account at such institution,

such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(2) Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

(i) is drawn on the Treasury of the United States; and

(ii) is endorsed only by the person to whom it was issued;

(B) a check which—

(i) is drawn by a State;

(ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a State; and

(iv) is endorsed only by the person to whom it was issued;

(C) a check which—

(i) is drawn by a unit of general local government;

(ii) is deposited in a receiving depository

tory institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and

(iv) is endorsed only by the person to whom it was issued;

(D) the first \$100 deposited by check or checks on any one business day;

(E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;

(F) a cashier's check, certified check, teller's check, or depository check which—

(i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;

(ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and

(iii) is endorsed only by the person to whom it was issued.

(b) *Permanent schedule.* (1) Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which the funds involved are available for withdrawal.

(2) Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3)(A) Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

(B) Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

(C) Any amount available for withdrawal under this paragraph shall be in addition to the amount available under subsection (a)(2)(D).

(4) This subsection shall apply with respect to funds deposited by check in an account at a depository institution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

(c) *Temporary schedule.* (1)(A) Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(B)(i) Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on

a local depository institution that is not a participant in the same check clearinghouse association as the receiving depository institution (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subparagraph (A).

(ii) Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

(iii) Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D).

(2) Subject to subsections (a)(2), (d), and (e) of this section and section 604, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) This subsection shall apply with respect to funds deposited by check in an account at a depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4).

(d) *Time period adjustments.* (1) Notwithstanding any other provision of law, the Board shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

(2) Notwithstanding any other provision

of law, any time period established under subsection (b), (c), or (e) shall be extended by 1 business day in the case of any deposit which is both—

(A) deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, or the Virgin Islands; and

(B) deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

(e) *Deposits at an ATM.* (1)(A) Not more than 4 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) A deposit is described in this subparagraph if it is—

(i) a cash deposit;

(ii) a deposit made by a check described in subsection (a)(2);

(iii) a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2)); or

(iv) a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2)).

(C) This paragraph shall apply with respect to funds deposited at a nonproprietary automated teller machine after August 31, 1988, and prior to the expiration of the 2-year period beginning on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act.

(2)(A) Not more than 1 business day shall intervene between the business day on which a deposit described in paragraph (1)(B) (i), (ii), or (iii) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) Not more than 4 business days shall intervene between the business day a deposit described in paragraph (1)(B)(iv) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(C) For the purpose of this paragraph, a check is drawn on a local originating depository institution if that depository institution is located in the same check processing region as the receiving nonproprietary ATM.

(D) This paragraph shall apply with respect to funds deposited at a nonproprietary automated teller machine on or after the expiration of the 2-year period beginning on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act.

(3) The provisions of subsections (a), (b), and (c) shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(4) The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware available for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after the date of the enactment of this title, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

(f) *Check return; notice of nonpayment.* No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

(1) such checks be physically returned to such depository institution; or

(2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) or in the regulations issued under any such subsection.

[12 USC 4002. As amended by act of Nov. 28, 1990 (104 Stat. 4424).]

SECTION 604—Safeguard Exceptions

(a) *New accounts.* Notwithstanding section 603, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period (or such shorter period as the Board may establish) beginning on the date such account is established—

(1) Except as provided in paragraph (3), in the case of—

(A) any cash deposited in such account;

(B) any funds received by such depository institution by wire transfer for deposit in such account;

(C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and

(D) any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 603(a)(2),

such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

(2) In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 603(b), 603(c), or paragraphs (1) and (2) of section 603(e).

(3) In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds \$5,000—

(A) paragraph (1) shall apply only with respect to the first \$5,000 of such aggregate amount; and

(B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) *Large or redeposited checks; repeated overdrafts.* The Board may, by regulation, establish reasonable exceptions to any time limitation established under subsection (b), (c), or (e) of section 603 for—

- (1) the amount of deposits by one or more checks that exceeds the amount of \$5,000 in any one day;
- (2) checks that have been returned unpaid and redeposited; and
- (3) deposit accounts which have been overdrawn repeatedly.

(c) *Reasonable cause exception.* (1) In accordance with regulations which the Board shall prescribe, subsections (a)(2)(F), (b), (c), and (e) of section 603 shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f).

(2) No determination under this subsection may be based on any class of checks or persons.

(3) If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if—

- (A) the depositor was not provided with the written notice required under subsection (f) (with respect to such determination) at the time the deposit was made;
- (B) the overdraft would not have occurred but for the fact that the funds so deposited are not available; and
- (C) the amount of the check is collected from the originating depository institution.

(4) Each agency referred to in section 610(a) shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution

and shall describe in each report to the Congress the extent to which this subsection is being complied with. For the purpose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) as a result of the application of this subsection.

(d) *Emergency conditions.* Subject to such regulations as the Board may prescribe, subsections (b), (c), and (e) of section 603 shall not apply to funds deposited by check in any receiving depository institution in the case of—

- (1) any interruption of communication facilities;
- (2) suspension of payments by another depository institution;
- (3) any war; or
- (4) any emergency condition beyond the control of the receiving depository institution,

if the receiving depository institution exercises such diligence as the circumstances require.

(e) *Prevention of fraud losses.* (1) The Board may, by regulation or order, suspend the applicability of this title, or any portion thereof, to any classification of checks if the Board determines that—

(A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and

(B) suspension of this title, or such portion of this title, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) (A) Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) Each report under subparagraph (A) shall contain—

- (i) the specific reason for prescribing the regulation or issuing the order;
- (ii) evidence considered by the Board in making the determination under paragraph (1) with respect to such regulation or order; and
- (iii) specific examples of the check-related fraud giving rise to such regulation or order.

(f) *Notice of exception; availability within reasonable time.* (1) If any exception contained in this section (other than subsection (a)) applies with respect to funds deposited in an account at a depository institution—

(A) the depository institution shall provide notice in the manner provided in paragraph (2) of—

- (i) the day the funds shall be made available for withdrawal; and
- (ii) the reason the exception was invoked; and

(B) except where other time periods are specifically provided in this title, the availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board.

(2) The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection (d) or (e) applies, notice shall be provided by the depository institution in accordance with regulations of the Board.

(3) If the facts upon which the determina-

tion of the applicability of an exception contained in subsection (b) or (c) to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known to the depository institution.

[12 USC 4003.]

SECTION 605—Disclosure of Funds Availability Policies

(a) *Notice for new accounts.* Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) *Preprinted deposit slips.* All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board in regulations, that deposited items may not be available for immediate withdrawal.

(c) *Mailing of notice.* (1) In the first regularly scheduled mailing to customers occurring after the effective date of this section, but not more than 60 days after such effective date, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institution has provided a disclosure which meets the requirements of this section before such effective date.

(2) A depository institution shall send a written notice to customers at least 30 days before implementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability

of such funds shall be disclosed not later than 30 days after implementation.

(3) Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into a customer's account.

(d) *Posting of notice.* (1) Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a consumer account.

(2) In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) *Notice of interest payment policy.* If a depository institution described in section 606(b) begins the accrual of interest or dividends at a later date than the date described in section 606(a) with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a) and (c) shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

(f) *Model disclosure forms.* (1) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

(2) A depository institution shall be deemed to be in compliance with the requirements of this section if such institution—

(A) uses any appropriate model form or clause as published by the Board, or

(B) uses any such model form or clause and changes such form or clause by—

(i) deleting any information which is not required by this title; or

(ii) rearranging the format.

(3) Nothing in this title requires the use of any such model form or clause prescribed by the Board under this subsection.

(4) Model disclosure forms and clauses shall be adopted by the Board only after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

[12 USC 4004.]

SECTION 606—Payment of Interest

(a) *In general.* Except as provided in subsection (b) or (c) and notwithstanding any other provision of law, interest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds.

(b) *Special rule for credit unions.* Subsection (a) shall not apply to an account at a depository institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act if the depository institution—

(1) begins the accrual of interest or dividends at a later date than the date described in subsection (a) with respect to all funds, including cash, deposited in such account; and

(2) provides notice of the interest payment policy in the manner required under section 605(e).

(c) *Exception for checks returned unpaid.* No provision of this title shall be construed as requiring the payment of interest or dividends on funds deposited by a check which is returned unpaid.

[12 USC 4005.]

SECTION 607—Miscellaneous Provisions

(a) *After-hours deposits.* For purposes of this title, any deposit which is made on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been made on the next business day.

(b) *Availability at start of business day.* Except as provided in subsections (b)(3) and (c)(1)(B) of section 603, if any provision of this title requires that funds be available for withdrawal on any business day, such funds shall be available for withdrawal at the start of such business day.

(c) *Effect on policies of depository institutions.* No provision of this title shall be construed as—

(1) prohibiting a depository institution from making funds available for withdrawal in a shorter period of time than the period of time required by this title; or

(2) affecting a depository institution's right—

(A) to accept or reject a check for deposit;

(B) to revoke any provisional settlement made by the depository institution with respect to a check accepted by such institution for deposit;

(C) to charge back the depositor's account for the amount of such check; or

(D) to claim a refund of such provisional credit.

(d) *Prohibition on freezing certain funds in an account.* In any case in which a check is deposited in an account at a depository institution and the funds represented by such check are not yet available for withdrawal pursuant to this title, the depository institution may not freeze any other funds in such account (which are otherwise available for withdrawal pursuant to this title) solely because the funds so deposited are not yet available for withdrawal.

(e) *Employee training on and compliance with the requirements of this title.* Each depository institution shall—

(1) take such actions as may be necessary fully to inform each employee (who per-

forms duties subject to the requirements of this title) of the requirements of this title; and

(2) establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

[12 USC 4006.]

SECTION 608—Effect on State Law

(a) *In general.* Any law or regulation of any State in effect on September 1, 1989, which requires that funds deposited or received for deposit in an account at a depository institution chartered by such State be made available for withdrawal in a shorter period of time than the period of time provided in this title or in regulations prescribed by the Board under this title (as in effect on September 1, 1989) shall—

(1) supersede the provisions of this title and any regulations by the Board to the extent such provisions relate to the time by which funds deposited or received for deposit in an account shall be available for withdrawal; and

(2) apply to all federally insured depository institutions located within such State.

(b) *Override of certain state laws.* Except as provided in subsection (a), this title and regulations prescribed under this title shall supersede any provision of the law of any State, including the Uniform Commercial Code as in effect in such State, which is inconsistent with this title or such regulations.

[12 USC 4007.]

SECTION 609—Regulations and Reports by Board

(a) *In general.* After notice and opportunity to submit comment in accordance with section 553(c) of title 5, United States Code, the Board shall prescribe regulations—

(1) to carry out the provisions of this title;

(2) to prevent the circumvention or evasion of such provisions; and

(3) to facilitate compliance with such provisions.

(b) *Regulation relating to improvement of check processing system.* In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that—

(1) depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;

(2) the Federal Reserve banks and depository institutions provide for check truncation;

(3) depository institutions be provided incentives to return items promptly to the depository institution of first deposit;

(4) the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks;

(5) each depository institution and Federal Reserve bank—

(A) place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and

(B) take such actions as are necessary to—

(i) automate the process of reading endorsements; and

(ii) eliminate unnecessary endorsements;

(6) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution determines whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institution directly notify the receiving depository institution of such determination;

(7) regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

(8) Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board

determines, pursuant to the study under subsection (f), that such a process is feasible; and

(9) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

(c) *Regulatory responsibility of Board for payment system.*

(1) In order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—

(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

(B) any related function of the payment system with respect to checks.

(2) The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

(d) *Reports.* (1)(A) The Board shall transmit a report to both Houses of the Congress not later than 18, 30, and 48 months after the date of the enactment of this title.

(B) Each such report shall describe—

(i) the actions taken and progress made by the Board to implement the schedules established in section 603, and

(ii) the impact of this title on consumers and depository institutions.

(2)(A) The Board shall transmit a report to both Houses of the Congress not later than 2 years after the date of the enactment of this title regarding the effects the temporary schedule established under section 603(c) have had on depository institutions and the public.

(B) Such report shall also assess the potential impact the implementation of the schedule established in section 603(b) will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the benefits to consumers. Such report shall also contain such recommendations for legislative or administrative

action as the Board may determine to be necessary.

(3) Not later than 6 months after section 603(b) takes effect, the Comptroller General of the United States shall transmit a report to the Congress evaluating the implementation and administration of this title.

(e) *Consultation.* In prescribing regulations under subsections (a) and (b), the Board shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board.

(f) *Electronic clearinghouse study.* (1) The Board shall study the feasibility of modernizing and accelerating the check payment system through the development of an electronic clearinghouse process utilizing existing telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item.

(2) In connection with the study required under paragraph (1), the Board shall—

(A) consult with appropriate experts in telecommunications technology; and

(B) consider all practical and legal impediments to the development of an electronic clearinghouse process.

(3) The Board shall report its conclusions to the Congress within 9 months of the date of the enactment of this title.

[12 USC 4008.]

SECTION 610—Administrative Enforcement

(a) *Administrative enforcement.* Compliance with the requirements imposed under this title, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this title, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Re-

serve System (other than national banks), by the Board of Governors of the Federal Reserve System; and

(C) 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 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

(b) *Additional powers.* (1) For purposes of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act.

(2) In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this title, 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 title is specifically committed to some other Government agency under subsection (a) of this section, the Board of Governors of the Federal Reserve System shall enforce such requirements.

(2) If the Board determines that—

(A) any depository institution which is not a depository institution described in subsection (a), or

(B) any other person subject to the authority of the Board under this title, including any person subject to the authority of the Board under section 605(d)(2) or 609(c),

has failed to comply with any requirement imposed by this title or by the Board under this title, the Board may issue an order prohibiting any depository institution, any Federal Reserve bank, or any other person subject to the authority of the Board from engaging in any activity or transaction which directly or indirectly involves such noncomplying depository institution 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).

(d) *Procedural rules.* The authority of the Board to prescribe regulations under this title does not impair the authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with requirements imposed under this title.

[12 USC 4009. As amended by act of Aug. 9, 1989 (103 Stat. 438).]

SECTION 611—Civil Liability

(a) *Civil liability.* Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this title or any regulation prescribed under this title with respect to any person other than another depository institution is liable to such person in an amount equal to the sum of—

- (1) any actual damage sustained by such person as a result of the failure;
- (2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or
- (B) in the case of a class action, such amount as the court may allow, except that—
 - (i) as to each member of the class, no minimum recovery shall be applicable; and
 - (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same

failure to comply by the same depository institution shall not be more than the lesser of \$500,000 or 1 percent of the net worth of the depository institution involved; and

(3) in the case of any 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 actual damages awarded;
- (2) the frequency and persistence of failures of compliance;
- (3) the resources of the depository institution;
- (4) the number of persons adversely affected; and
- (5) the extent to which the failure of compliance was intentional.

(c) *Bona fide errors.* (1) A depository institution may not be held liable in any action brought under this section for a violation of this title if the depository institution 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 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 a depository institution's obligation under this title 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, within one year after the date of the occurrence of the violation involved.

(e) *Reliance on Board rulings.* No provision of this section 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 of Governors of the Federal Reserve System, notwithstand-

ing 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.

(f) *Authority to establish rules regarding losses and liability among depository institutions.* The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.

[12 USC 4010.]

SECTION 612—Parity in Clearing

(a) *In general.* Section 11A of the Federal Reserve Act (12 U.S.C. 248a) is amended by adding at the end thereof the following:

“(e) All depository institutions, as defined in section 19(b)(1) (12 U.S.C. 461(b)(1)), may receive for deposit and as deposits any evidences of transaction accounts, as defined by section 19(b)(1) (12 U.S.C. 461(b)(1)) from other depository institutions, as defined in section 19(b)(1) (12 U.S.C. 461(b)(1)) or from any office of any Federal Reserve bank without regard to any Federal or State law restricting the number or the physical location or locations of such depository institutions.”

(b) *Effective date.* The amendment made by subsection (a) shall take effect on the date of enactment of this title.

[12 USC 248a note.]

SECTION 613—Effective Dates

(a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this title.

(b) Sections 603, 604, 605, 606, 610, and 611 shall take effect on September 1, 1988.

[12 USC 4001 note.]