

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **10514**  
February 10, 1992 ]

**REGULATION CC**

**Interim Rule on Extending Holds to "Next-Day" Availability Checks;  
Proposed Amendment on ATM Deposits**

Comment Invited by March 27

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

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

The Federal Reserve Board has adopted amendments to Regulation CC as an interim rule and has requested comment on other proposed changes to the regulation. The Regulation CC amendments implement provisions in the Federal Deposit Insurance Corporation Improvement Act of 1991 that amend several provisions of the Expedited Funds Availability Act.

Comments are due by March 27, 1992.

The interim rule implements those provisions that would have an immediate effect on banks. Specifically, the Board has adopted as an interim rule, and requests comment pending adoption of a final rule, amendments to allow banks to extend holds, on an exception basis, to "next-day" availability checks and to allow one-time notices of exception holds in certain cases.

The Board also has requested comment on proposed amendments to make permanent the current availability schedules for deposits at nonproprietary automated teller machines and to expand administrative enforcement to cover U.S. offices and branches of foreign banks.

Printed on the following pages is the text of the Board's proposal on automated teller machines, as published in the *Federal Register* of January 29. In addition, enclosed — for depository institutions and those who maintain sets of Board regulations — is a copy of the Board's interim rule, effective January 15, on exception holds, also as published in the January 29th *Federal Register*. Additional, single copies of this circular or of the interim rule may be obtained at this Bank (33 Liberty Street) in the Issues Division on the first floor, or by calling our Circulares Division (Tel. No. 212-720-5215 or 5216).

Comments are invited on both the interim rule and the proposed amendment, and may be sent to the Board, as indicated in the notices, or to our Check Function, by March 27, 1992.

E. GERALD CORRIGAN,  
*President.*



## FEDERAL RESERVE SYSTEM

## 12 CFR Part 229

[Regulation CC; Docket No. R-0745]

## Availability of Funds and Collection of Checks

**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Proposed rule.

**SUMMARY:** The Board is proposing to amend Regulation CC to conform to recent amendments to the Expedited Funds Availability Act. The proposed amendments make permanent the current availability schedules for deposits at nonproprietary automated teller machines and expand administrative enforcement to cover U.S. offices and branches of foreign banks.

**DATES:** Comments must be submitted on or before March 27, 1992.

**ADDRESSES:** Comments, which should refer to Docket No. R-0745, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to the Board's mail room between 9 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 9 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Louise L. Roseman, Assistant Director, Division of Reserve Bank Operations and Payment Systems (202/452-3874); Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Senior Attorney (202/452-3198), Legal Division. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

**SUPPLEMENTARY INFORMATION:** The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA," Public Law 102-242, 105 Stat. 2236 (1991)) amends the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001 *et seq.*), effective December 19, 1991. Section 227 of the FDICIA amends section 603(e) of the Act regarding deposits at nonproprietary automated teller machines ("ATMs"). Section 212(h) of the FDICIA amends section 610(a) of the Act to provide for administrative enforcement over U.S. branches and agencies of foreign banks. The Board is requesting comment on proposed amendments to Regulation CC (12 CFR part 229) and revisions to the Commentary to implement the amendments to the Act, as described

below.<sup>1</sup>

## Deposits at Nonproprietary ATMs

Currently, under § 229.12(f)(1) of Regulation CC, a depository bank may treat all deposits made by its customers at a nonproprietary ATM<sup>2</sup> as though the deposits were nonlocal checks under the permanent schedule, i.e., make them available by the fifth business day after the day of deposit. This special treatment was accorded deposits made at nonproprietary ATMs because the depository bank cannot ascertain the composition of these deposits (i.e., whether the deposit consists of cash, checks generally subject to next-day availability, or local or nonlocal checks). Effective November 28, 1992, however, § 229.12(f)(2) requires deposits of cash, "next-day" (as described in § 229.10(c)(1)(i) through (v) and (vii)), and local and other checks (as described in § 229.12(b)) at a nonproprietary ATM to be made available by the second business day following the banking day of deposit. Nonlocal checks deposited at a nonproprietary ATM would continue to be made available by the fifth business day following the banking day of deposit.<sup>3</sup>

Depository institutions and ATM operators have raised concerns with Congress and the Board about the operational problems and potential for fraud under the shorter schedules for nonproprietary ATM deposits. In two reports to Congress on the implementation of the Act and two reports specifically discussing deposits to nonproprietary ATMs,<sup>4</sup> the Board summarized these concerns and recommended that Congress amend the Act to provide fifth-day availability for all deposits at nonproprietary ATMs on

<sup>1</sup> Section 225 of the FDICIA amends section 604 of the Act regarding exception holds for "next day" and "second-day" availability checks and one-time exception hold notices. To allow depository institutions to avail themselves of these changes immediately, the Board has adopted interim amendments to Regulation CC and has requested comment pending a final rule. See Docket R-0744, elsewhere in today's *Federal Register*.

<sup>2</sup> A nonproprietary ATM generally is an ATM that is not owned or operated by the depository bank.

<sup>3</sup> The effective date for the shorter schedules for nonproprietary ATM deposits was extended from August 31, 1990, to November 28, 1992, by the Cranston-Gonzales National Affordable Housing Act of 1990 (Pub. L. No. 101-625; § 1001). The Board adopted conforming amendments to Regulation CC at that time. See 55 FR 50816, December 11, 1990, (interim rule) and 56 FR 7799, February 26, 1991 (final rule).

<sup>4</sup> See, Board of Governors of the Federal Reserve System, *Report to Congress Under the Expedited Funds Availability Act*, September 1991 and March 1990, and *Deposits at Nonproprietary Automated Teller Machines: Report to Congress Pursuant to the Expedited Funds Availability Act*, October 1989 and July 1990.

a permanent basis.

The FDICIA amendments to section 603(e) of the Act eliminate the shorter holds for deposits at nonproprietary ATMs that were scheduled to take effect in November 1992 and extend the current 5-day hold permanently. The Board is proposing amendments to §§ 229.12 (a) and (f) of the regulation and revisions to the Commentary to reflect these changes.

## Administrative Enforcement

Title II, Subtitle A of the FDICIA increases the supervisory responsibilities of U.S. banking regulatory agencies over U.S. offices and branches of foreign banks. Section 212(h) of the FDICIA makes conforming changes to the administrative enforcement provisions in section 610(a) of the Act. These amendments were effective December 19, 1991. The Board is proposing conforming amendments to § 229.3(a) of Regulation CC. (U.S. branches and agencies of foreign banks are already subject to the substantive requirements of the Act and Regulation CC.)

## Initial Regulatory Flexibility Analysis

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

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule shall apply. The proposed rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a negative economic impact on small institutions, but rather will decrease the risk and cost for all depository banks by eliminating the requirement for shorter holds on deposits made to nonproprietary ATMs after November 27, 1992.

## List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve Systems.



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

**PART 229—[AMENDED]**

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

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

2. In § 229.3, paragraph (a)(1) is revised and concluding text to paragraph (a) is added after paragraph (a)(3) to read as follows:

**§ 229.3 Administrative enforcement.**

(a) \* \* \*

(1) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 *et seq.*) in the case of—

(i) National banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other

than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

\* \* \* \* \*

The terms used in paragraph (a)(1) of this section that are not defined in this part or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

\* \* \* \* \*

3. In § 229.12, paragraph (a) is revised as follows, paragraphs (f)(1)(ii) and (f)(2) are removed, and the designation "(1)(i)" in paragraph (f) is removed:

**§ 229.12 Permanent availability schedule.**

(a) *Effective date.* The permanent availability schedule contained in this section is effective September 1, 1990.

\* \* \* \* \*

**Appendix E to Part 229—[Amended]**

4. Appendix E to part 229 is amended, in the Commentary under § 229.12, by removing the last sentence of paragraph (a) and revising paragraph (f) to read as follows:

**Appendix E—Commentary**

\* \* \* \* \*

**§ 229.12 Permanent Availability Schedule**

\* \* \* \* \*

(f) *Deposits at nonproprietary ATMs.* 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. 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, 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. The provisions of § 229.10(c)(1)(vii) requiring a depository bank to make up to \$100 of an aggregate daily deposit available for withdrawal on the next business day after the banking day of deposit do not apply to deposits to a nonproprietary ATM.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, January 15, 1992.

**William W. Wiles,**

*Secretary of the Board.*

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Regulation CC; Docket No. R-0744  
Interim Rule on Exception Holds  
*Effective January 15, 1992*



## FEDERAL RESERVE SYSTEM

## 12 CFR Part 229

[Regulation CC; Docket No. R-0744]

## Availability of Funds and Collection of Checks

**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Board is amendment regulation CC to conform to recent amendments to the Expedited Funds Availability Act. The amendments allow banks to extend holds, on an exception basis, to "next-day" and "second-day" availability checks and allow one-time notices of exception holds in certain cases. The Board has adopted conforming changes to regulation CC on an interim basis. The Board is requesting comment on the interim rule pending adoption of a final rule and on whether there are classes of consumer accounts for which one-time notice should be permitted.

**DATES:** *Effective date:* January 15, 1992.*Comment date:* Comments must be submitted on or before March 27, 1992.

**ADDRESSES:** Comments, which should refer to Docket No. R-0744, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, attention: Mr. William W. Wiles, Secretary; or may be delivered to the Board's mail room between 9 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at room B-1122 between 9 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Louise L. Roseman, Assistant Director, Division of Reserve Bank Operations and Payment Systems (202/452-3874); Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Senior Attorney (202/452-3198), Legal Division. For information regarding modifications to Model Forms or appendix C, contact Jane E. Ahrens, Staff Attorney (202/452-3667), or Dale I. Nishimura, Staff Attorney (202/452-2412), Division of Consumer and Community Affairs. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

**SUPPLEMENTARY INFORMATION:** The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA," Pub. L. No. 102-242, section 225, 105 Stat. 2236 (1991)) amends the provisions in section 604 of the Expedited Funds Availability Act ("Act") (12 U.S.C. 4003)

regarding safeguard exceptions to the availability schedules, effective December 19, 1991. The Board has adopted interim amendments to regulation CC (12 CFR part 229), effective January 15, 1992, to conform the regulation to the amendments to the Act. The Board is requesting comment on the interim amendments and Commentary revisions, which are described below.<sup>1</sup>

**Background**

The Board adopted regulation CC to implement the Act, which was effective September 1, 1988. Among other things, the regulation establishes availability schedules to limit the holds banks<sup>2</sup> can place on deposits to transaction accounts and requires banks to disclose their funds availability policy to their customers.

As a general matter, the availability of a deposit is linked to the degree of risk associated with the deposit and the amount of time necessary for a bank to learn whether a deposited check will be returned unpaid. Accordingly, nonlocal<sup>3</sup> checks must generally be made available for withdrawal on the fifth business day after deposit, local checks on the second business day, and certain "low-risk" checks, such as government, cashier's, certified, and teller's checks, on the next business day. (Most "next-day" checks, if not deposited in person at a staffed teller facility, must be made available for withdrawal on the second business day after deposit.)

The Act (section 604) and the regulation (§ 229.13) provide for certain safeguard exceptions to the availability schedules. Under these exceptions, the depository bank can extend the hold on a deposit for a reasonable period of time. The exception holds apply to deposits to new accounts, daily aggregate deposits in excess of \$5,000, checks that have returned unpaid and redeposited, checks deposited into an

account that has been repeatedly overdrawn, checks the depository bank may reasonably expect to be uncollectible, and checks deposited during emergency conditions, such as a computer failure, natural disaster, or other emergency beyond the bank's control.

**Applicability of Exception Holds to "Next-Day" and "Second-Day" Checks**

Prior to the enactment of the FDICIA, most of the exception holds did not apply to checks that must be accorded next-day or second-day availability under section 603(a)(2) of the Act and § 229.10(c) of the regulation, such as government, cashier's, certified, and teller's checks. In three reports to Congress on the implementation of the Act, the Board expressed concern that the inapplicability of the exception holds to next-day and second-day checks exposed depository banks to substantial risk that such checks would be returned after the proceeds had been made available for withdrawal.<sup>4</sup> The Board noted that fraud loss reduction would benefit depository institutions as well as their customers, who otherwise may face increased service fees or decreased service levels.

Section 225 of the FDICIA amends section 604 of the Act to authorize the Board to prescribe regulations to apply most of the safeguard exception holds to checks that would otherwise receive next-day or second-day availability under section 603(a)(2) of the Act and § 229.10(c) of Regulation CC. The Board is adopting amendments to the regulation that will make the exceptions for large deposits (§ 229.13(b)), redeposited checks (§ 229.13(c)), accounts with repeated overdrafts (§ 229.13(d)), and emergency conditions (§ 229.13(f)) available for checks otherwise covered by § 229.10(c). In addition, the amendment will make the reasonable cause exception (§ 229.13(e)), which previously had applied to local and nonlocal checks and only certain next-day or second-day checks (i.e., checks drawn on Federal Reserve Banks or Federal Home Loan Banks and cashier's, certified, and teller's checks), available for all checks covered by § 229.10(c). The Board is revising the corresponding Commentary to reflect the broader scope of the exception holds.

The Board is also amending § 229.13(h), which governs the

<sup>1</sup> Section 227 of the FDICIA amends section 603(e) of the Act to eliminate the shorter availability schedules for deposits at nonproprietary ATMs that were to be effective November 28, 1992. Section 212(h) of the FDICIA amends the administrative enforcement provisions in section 610(a) of the Act. The Board is requesting comment on amendments to regulation CC to implement these changes (see Docket R-0745, elsewhere in today's *Federal Register*). The proposed amendments regarding nonproprietary ATM deposits and administrative enforcement are not part of the interim rule adopted by the Board in this docket.

<sup>2</sup> For purposes of regulation CC, the term "bank" includes commercial banks, savings institutions, and credit unions.

<sup>3</sup> A check generally is "local" if the bank by which it is payable and to which it is sent for collection ("paying bank") is in the same Federal Reserve check processing region as the bank that receives the check for deposit ("depository bank").

<sup>4</sup> See, Board of Governors of the Federal Reserve System, Report to Congress Under the Expedited Funds Availability Act, September 1991, March 1990, and June 1989.



availability of deposits subject to the exception holds. The Board's amendments provide that, with respect to Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, and cashier's, certified, and teller's 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 large deposit, redeposited check, repeated overdraft, or 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 (or second-day) availability requirement. The additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank. For on us checks that must be available on the next business day after the banking day of deposit under § 229.10(c)(1)(vi), the additional hold of one business day is added to the next-day requirement.

#### One-Time Hold Notices

Prior to the enactment of the FDICIA, section 604(f) of the Act and § 229.13(g) of the regulation provided that each time a depository bank invoked an exception of the availability schedules under § 229.13 (b) through (f) of the regulation (the large deposit, redeposited check, repeated overdraft, reasonable cause, and emergency conditions exceptions, respectively), it had to notify the customer of the exception hold. Section 229.13(g) required that the exception hold notice be given at the time of the deposit or by the first business day following the day the facts upon which the exception hold is based become known to the depository bank.

Although individual notices may be appropriate in the case of the reasonable cause or emergency conditions exceptions, which must be invoked on a case-by-case basis, they are less appropriate for the large deposit, redeposited check, or repeated overdraft exceptions. In these latter cases, it would be more efficient and less costly to depository banks if the notice requirement could be tailored to the exception invoked. Customers would also benefit from receiving advance notice of any exception holds that will be in effect under certain conditions or for a certain period of time, rather than receiving on-the-spot or after-the-fact notices upon each deposit. In its three reports to Congress regarding implementation of the Act, cited above, the Board recommended that the Act be

amended to provide banks with greater flexibility in giving notices of exception holds.

Section 225 of the FDICIA amends section 604(f) of the Act to authorize the Board to prescribe regulations to allow the depository bank, in certain cases, to send one notice of an exception hold applicable to a customer's future deposits rather than sending a separate notice for each deposit. The amendments to section 604(f) set out two types of one-time notices and the circumstances under which they apply, as follows:

#### 1. Large Deposit and Redeposited Check Exception Hold Notices

Sections 229.13(b) and (c) of the regulation provide that a depository bank may apply exception holds to aggregate daily deposits of checks in excess of \$5,000 and to deposits of checks that have been returned unpaid and redeposited. Under the amendments to section 604(f) of the Act, if a depository bank applies the large deposit or redeposited check exception to nonconsumer accounts, it may give its nonconsumer customers a single notice at or prior to the time notice must otherwise be given. The Board has adopted interim amendments to § 229.13(g) and revisions to the Commentary to implement these amendments to the Act.

As provided in the interim amendments to § 229.13(g)(2) adopted by the Board, the one-time notice for the large deposit and redeposited check exceptions must explain the reason the exception(s) may be invoked and the time period within which deposits subject to the exception(s) would be available for withdrawal. The notice should reflect the bank's priorities in placing exception holds on deposits consisting of different types of checks, such as next-day, local, and nonlocal checks.

A depository bank may provide a one-time notice to a nonconsumer customer under § 229.13(g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. The Board has adopted Model Notice C-13B, which may be used by those banks that want to provide a one-time notice of these exception holds to their nonconsumer customers. A depository bank may continue to send hold notices for each deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C-13).

Under the Board's interim amendment, consumer account-holders must continue to receive large deposit and redeposited check exception hold notices upon each deposit to which the exception is applied. The amendment to section 604(f) of the Act authorizes the Board to apply the one-time notice provision for the large deposit and redeposited check exceptions to classes of consumer accounts that generally have a large number of such deposits. The Board requests comment on whether the one-time notice provision for these types of exceptions should be extended to certain classes of consumer accounts, and if so, how those classes of accounts should be categorized. Specifically, the Board requests comment on the following questions:

- i. Are there classes of consumer accounts, such as high balance accounts, that would generally have a large number of daily aggregate deposits of checks in excess of \$5,000?
- ii. What is a proper measurement of a "large number" of large deposits or redeposited checks, and over what period of time should such a measurement be taken?
- iii. Would it be operationally feasible for depository banks to monitor deposits to consumer accounts to determine which accounts have a large number of daily aggregate deposits of checks in excess of \$5,000 or a large number of deposits of redeposited checks?

#### 2. Repeated Overdraft Exception Hold Notice

Section 229.13(d) of the regulation provides that a depository bank may, for a six-month period, apply longer holds to deposits to an account that has been repeatedly overdrawn. Under § 229.13(d), an account is repeatedly overdrawn if it is overdrawn on six or more banking days within the preceding six months or is overdrawn by \$5,000 or more on two or more banking days within the preceding six months.

Section 229.13(g) of the regulation provides that, when invoking the repeated overdraft exception, a depository bank must provide a notice to the customer upon each deposit. Under the amendments to section 604(f) of the Act, if an account (either consumer or nonconsumer) is subject to the repeated overdraft exception, the depository bank may provide one notice to its customer for each time period during which the exception will apply, rather than giving a notice upon each deposit during that time period. The Board has adopted interim amendments to § 229.13(g) and revisions to the



Commentary to implement the amendments to the Act.

Section 229.13(g)(3) of the interim amendment provides that the one-time repeated overdraft notice must state the customer's account number, the fact that the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply. A depository bank may provide a one-time notice to a customer under § 229.13(g)(3) only if the repeated overdraft exception will be invoked for most check deposits to the customer's account. A depository bank may send a notice, such as that contained in Model Notice C-13C, to its customer at the start of each period for which the repeated overdraft exception will be in effect.

#### Need for Interim Amendment

The Board believes that it is necessary to amend the regulation with an interim amendment, so that depository banks may take immediate advantage of the new provisions regarding exception holds and hold notices without violating the regulation. The provisions of the FDICIA reflect the intent of the Congress to reduce risk and cost for banks by broadening the scope of the exception holds and providing the one-time notice requirement in certain cases. If the Board's rule is not effective immediately, banks would not be able to take advantage of the FDICIA amendments because attempting to apply the broader statutory hold provisions would result in violation of Regulation CC and attendant potential civil liability.

There was no opportunity for the Board to publish proposed regulations for comment prior to the enactment of the FDICIA amendments to the Act, which were effective December 19, 1991. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim amendment effective on January 15, 1992 without regard for the 30-day period provided for in U.S.C. 553(d).

#### Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b))—a description of the

reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are contained in the supplementary information above. The Board's interim rule requires no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule shall apply. The interim rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a negative economic impact on small institutions, but rather will decrease the risk and cost for all depository banks by broadening the scope of the exception holds and providing the one-time notice requirement in certain cases.

#### List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System.

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

#### PART 229—[AMENDED]

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

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

2. In § 229.13, the term "229.10(c)," is added immediately preceding the term "229.11" in paragraphs (b), (c) introductory text, (d) introductory text, (f) introductory text, (h)(1), and (h)(3); the first sentence of paragraph (e)(1), paragraph (g)(1) introductory text and (i), paragraph (h)(2), and the first sentence of paragraph (h)(4) are revised; paragraphs (g)(1) (ii) through (v) are removed; paragraphs (g)(2) heading, (g)(2)(i), (g)(2)(ii), and (g)(3) are redesignated as paragraphs (g)(1)(ii) heading, (g)(1)(ii)(A), (g)(1)(ii)(B), and (g)(4), respectively; in newly designated paragraph (g)(1)(ii)(B), the reference "paragraph (g)(2)(i)" is revised to read "paragraph (g)(1)(ii)(A)"; and new paragraphs (g)(2) and (g)(3) are added to read as follows:

#### § 229.13 Exceptions.

(e) *Reasonable cause to doubt collectibility*—(1) *In general.* Sections 229.10(c), 229.11, and 229.12 do not apply to a check deposited in an account at a depository bank if the depository bank has reasonable cause to believe that the

check is uncollectible from the paying bank. \* \* \*

(g) *Notice of exception*—(1) *In general.* Subject to paragraphs (g)(2) and (g)(3) of this section, 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.

(i) 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;

(D) The reason the exception was invoked; and

(E) The time period within which 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) *One-time exception notice.* In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depository bank that extends the time when the funds deposited in a nonconsumer account will be available for withdrawal based on an exception contained in paragraph (b) or (c) of this section may provide a single notice to the customer that includes the following information—

(i) The reason(s) the exception may be invoked; and

(ii) The time period within which deposits subject to the exception will be available for withdrawal.

This one-time notice shall be provided only if each type of exception cited in the notice will be invoked for most check deposits in the account to which the exception could apply. This notice shall be provided at or prior to the time notice must be provided under paragraph (g)(1)(ii) of this section.

(3) *Notice of repeated overdrafts exception.* In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depository bank that extends the time when funds deposited in an account will be available for withdrawal based on the exception contained in paragraph (d) of this section may provide a notice to the customer for each time period during which the



exception will be in effect. The notice shall include the following information—

(i) The account number of the customer;

(ii) The fact that the availability of funds deposited in the customer's account will be delayed because the repeated overdrafts exception will be invoked;

(iii) The time period within which deposits subject to the exception will be available for withdrawal; and

(iv) The time period during which the exception will apply.

This notice shall be provided at or prior to the time notice must be provided under paragraph (g)(1)(ii) of this section and only if the exception cited in the notice will be invoked for most check deposits in the account.

\* \* \*

(h) *Availability of deposits subject to exceptions.*

\* \* \*

(2) If a depository bank invokes an exception contained in paragraphs (b) through (e) of this section with respect to a check described in § 229.10(c)(1) (i) through (v) or § 229.10(c)(2), it shall make the funds available for withdrawal not later than a reasonable period after the day the funds would have been required to be made available had the check been subject to §§ 229.11 or 229.12.

\* \* \*

(4) For the purposes of paragraphs (h)(1), (h)(2), and (h)(3) of this section, a reasonable period is an extension of up to one business day for checks subject to § 229.10(c)(1)(vi), five business days for checks subject to § 229.12(b) and checks that would be subject to § 229.12(b) under in paragraph (h)(2) of this section, and six business days for checks subject to § 229.12(c) and checks that would be subject to § 229.12(c) under paragraph (h)(2) of this section.

\* \* \*

#### Appendix C to Part 229—[Amended]

3. Appendix C is amended as set forth below:

a. In the introductory text, two new headings are added in numerical order under the heading "Model Notices"; and

b. New model notices C-13B and C-13C are added in numerical order to read as follows:

#### Appendix C—Model Forms, Clauses, and Notices

\* \* \*

##### Model Notices

\* \* \*

C-13B One-time notice for large deposit and redeposited check exception holds

C-13C One-time notice for repeated overdraft exception holds

\* \* \*

##### Model Notices

\* \* \*

#### C-13B—One-Time Notice for Large Deposit and Redeposited Check Exception Holds

##### Notice of Hold

If you deposit into your account:

- Checks totaling more than \$5,000 on any one day, the first \$5,000 deposited on any one banking day will be available to you according to our general policy. The amount in excess of \$5,000 will generally be available on the [number] business day for checks drawn on [bank], the [number] business day for local checks and [number] business day for nonlocal checks after the day of your deposit. If checks (not drawn on us) that otherwise would receive next-day availability exceed \$5,000, the excess will be treated as either local or nonlocal checks depending on the location of the paying bank. If your check deposit, exceeding \$5,000 on any one day, is a mix of local checks, nonlocal checks, checks drawn on [bank], or checks that generally receive next-day availability, the excess will be calculated by first adding together the [ ], then the [ ], then the [ ], then the [ ].
- A check that has been returned unpaid, the funds will generally be available on the [number] business day for checks drawn on [bank], the [number] business day for local checks and the [number] business day for nonlocal checks after the day of your deposit. Checks (not drawn on us) that otherwise would receive next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

\* \* \*

#### C-13C—One-time notice for repeated overdraft exception hold

##### Notice of Hold

Account Number: [Number]

Date of Notice: [Date]

We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the [number] business day for checks drawn on [bank], the [number] business day for local checks, the [number] business day for nonlocal checks after the day of your deposit. Checks (not drawn on us) that otherwise would have received next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

\* \* \*

#### Appendix E to Part 229—[Amended]

4. Appendix E to part 229 is amended as set forth below:

a. In appendix E, in the Commentary under section 229.13, in the introductory text, the last sentence of the first paragraph and the first sentence of the second paragraph are revised, and the

last sentence of the second paragraph is removed; in paragraph (b), the first two paragraphs are revised; in paragraph (c) a new sentence is added to the end of the first paragraph and the last sentence of the last paragraph is revised; in paragraph (d), two new sentences are added to the end of the last paragraph; in paragraph (e), the second sentence of the first paragraph is revised and a new sentence is added immediately following the second sentence of the first paragraph; in paragraph (f), two new sentences are added immediately preceding the last sentence, and the second and last sentences are revised; in paragraph (g), the first paragraph and the first sentence of the second paragraph are revised, and four new paragraphs are added immediately preceding the last paragraph; and in paragraph (h), the second sentence of the first paragraph, and the third, fourth, and fifth paragraphs are revised; and

b. In Appendix E, in the Commentary under appendix C, two new paragraphs are added in numerical order to read as follows:

#### Appendix E—Commentary

\* \* \*

#### § 229.13 Exceptions.

\* \* \* These exceptions apply to local and nonlocal checks as well as to checks that must otherwise be accorded next-day (or second-day) availability under § 229.10(c).

Many checks will not be returned to the depository bank by the time funds must be made available for withdrawal under the next-day (or second-day), local, and nonlocal schedules. \* \* \*

\* \* \*

(b) *Large deposits.* Under the large deposit exception, a depository bank may extend the hold placed on check deposits to the extent that the amount of the aggregate deposit on any banking day exceeds \$5,000. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). Although the first \$5,000 of a day's deposit is subject to the availability otherwise provided for checks, the amount in excess of \$5,000 may be held for an additional period of time as provided in § 229.13(h). When the large deposit exception is applied to deposits composed of a mix of checks that would otherwise be subject to differing availability schedules, the depository bank has the discretion to choose the portion of the deposit to which it applies the exception. Deposits by cash or electronic payment are not subject to this exception for large deposits.

The following example illustrates the operation of the large deposit exception. If a customer deposits \$2,000 in cash and a \$9,000 local check on a Monday, \$2,100 (the proceeds of the cash deposit and \$100 from the local check deposit) 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. Wednesday under the permanent schedule), and the remaining \$4,000 may be held for an additional period of time under the large deposit exception.

(c) *Redeposited checks.* \* \* \* This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c).

\* \* \* A depository bank that made \$100 of a check available for withdrawal under § 229.10(c)(1)(vii) can charge back the full amount of the check, including the \$100, if the check is returned unpaid, and the \$100 need not be made available again if the check is redeposited.

(d) *Repeated Overdrafts.* \* \* \*

\* \* \* This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as would otherwise be required by § 229.10(c)(1)(vii).

(e) *Reasonable cause to doubt collectibility.* \* \* \* This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as would otherwise be required by § 229.10(c)(1)(vii).

(f) *Emergency conditions.* \* \* \* In the circumstances specified in this paragraph, the depository bank may extend the holds that are placed on deposits of checks that are affected by such delays, if the bank exercises such diligence as the circumstances require. \* \* \* This exception applies to local and nonlocal checks, as well as checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as would otherwise be required by § 229.10(c)(1)(vii). In cases where the emergency conditions exception does not apply, as in the case of deposits of cash or electronic payments under § 229.10 (a) and (b), the depository bank may not be liable for a delay in making funds available for withdrawal if the delay is due to a bona fide error such as an unavoidable computer malfunction.

(g) *Notice of exception.* If a depository bank invokes any of the safeguard exceptions to the schedules listed above, other than the new account exception, and extends the hold

on a deposit beyond the time periods permitted in §§ 229.10(c), 229.11, and 229.12, it must provide a notice to its customer. Except in the cases described in paragraphs (g)(2) and (g)(3) of the regulation, notices must be given each time an exception hold is invoked and must state the customer's account number, the date of deposit, the reason the exception was invoked, and the time period within which funds will be available for withdrawal.

With respect to paragraph (g)(1), the requirement that the notice state the time period within which 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. \* \* \*

In those cases described in paragraphs (g)(2) and (g)(3), the depository bank need not provide a notice every time an exception hold is applied to a deposit. When paragraph (g)(2) or (g)(3) requires disclosure of the time period within which deposits subject to the exception will be available for withdrawal, the requirement may be satisfied if the one-time notice states when on us, local, and nonlocal checks will be available for withdrawal if an exception is invoked.

Under paragraph (g)(2), if a nonconsumer account is subject to the large deposit or redeposited check exception, the depository bank may give its customer a single notice at or prior to the time notice must be provided under paragraph (g)(1). Notices provided under paragraph (g)(2) must contain the reason the exception may be invoked and the time period within which deposits subject to the exception will be available for withdrawal (see Model Notice C-13B). A depository bank may provide a one-time notice to nonconsumer customer under paragraph (g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. A depository bank may to continue send hold notices for each deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C-13).

In the case of a deposit of multiple checks, the depository bank has the discretion to place an exception hold on any combination of checks in excess of \$5,000. The notice should enable a customer to determine the availability of the deposit in the case of a deposit of multiple checks. For example, if a customer deposits a \$5,000 local check and a \$5,000 nonlocal check, under the large deposit exception, the depository bank may make funds available in the amount of (1) \$100 on the business day after deposit, \$4,900 on the second business day after deposit (local check), and \$5,000 on the eleventh business day after deposit (nonlocal check with 6-day exception hold), or (2) \$100 on the first business day after deposit, \$4,900 on the fifth business day after deposit (nonlocal check), and \$5,000 on the seventh business day after deposit (local check with 5-day exception hold). The notice should reflect the bank's priorities in placing exception holds on next-

day (or second-day), local, and nonlocal checks.

Under paragraph (g)(3), if an account is subject to the repeated overdraft exception, the depository bank may provide one notice to its customer for each time period during which the exception will apply. Notices sent pursuant to paragraph (g)(3) must state the customer's account number, the fact the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception funds will be made available for withdrawal, and the time period during which the exception will apply (see Model Form C-13C). A depository bank may provide a one-time notice to a customer under paragraph (g)(3) only if the repeated overdraft exception will be invoked for most check deposits to the customer's account.

(h) *Availability of deposits subject to exceptions.* \* \* \* This provision establishes that an extension of up to one business day for on us checks, five business days for local checks, and six business days for nonlocal checks is reasonable. \* \* \*

With respect to Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, and cashier's, certified, and teller's 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 large deposit, redeposited check, repeated overdraft, or 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 (or second-day) availability requirement. The additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank.

One business day for on us checks, 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 §§ 229.10(c), 229.11 or 229.12, whichever is later.

#### Appendix C—Model Forms, Clauses, and Notices

*Model C-13B.* This form satisfies the notice requirements of § 229.13(g)(2).

*Model C-13C.* This form satisfies the notice requirements of § 229.13(g)(3).