

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 9932
October 11, 1985]

**IMPACT OF HOLIDAYS ON
NOTIFICATION OF LARGE-DOLLAR RETURN ITEMS**

Text of Interim Amendment to Regulation J, on Which Comment Is Invited

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

In our Circular No. 9928, dated October 3, 1985, we advised you that the Board of Governors of the Federal Reserve System had adopted an interim amendment, effective October 3, 1985, to its Regulation J that specifies the days that are excluded in computing the paying bank's deadline for notification under the new notice-of-nonpayment procedures for large-dollar return items. In addition, we indicated that the Board is inviting comments on the amendment.

Following is the text of the Board's press statement on this matter:

The Federal Reserve Board has announced a temporary amendment to Regulation J to provide for a uniform holiday schedule that will apply to its new notice of nonpayment provision that went into effect on October 1.

On February 8, the Board amended Regulation J to require that a paying bank provide notice that a check is being returned unpaid to the bank of first deposit ("depository bank") by midnight of the second banking day following the paying bank's deadline for return of the check to its Reserve Bank.

Because of problems that arise due to different banking holiday schedules across the country — for example, Saturdays are regarded as banking days by many institutions — the Board has provided, effective immediately, for a uniform holiday schedule — 10 Federal holidays and all Saturdays and Sundays.

Prior to adoption of a final rule, the Board requested public comment on the temporary amendment by November 4, 1985.

Enclosed — for depository institutions in this District — is the text of the Board's official notice and request for comments; additional copies will be furnished upon request directed to our Circulars Division. Comments should be submitted by *November 4* (not November 1 as indicated in the prior circular) and may be sent to the Board or to Cathy E. Minehan, Vice President in charge of our Check Processing Function.

E. GERALD CORRIGAN,
President.

FEDERAL RESERVE SYSTEM

REGULATION J

12 C.F.R. Part 210

[Docket No. R-0552]

COLLECTION OF CHECKS AND OTHER ITEMS
AND WIRE TRANSFERS OF FUNDS

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary rule; request for comment.

SUMMARY: The Board has adopted an amendment to subpart A of Regulation J creating a standard holiday schedule to be applied to the recently adopted notification of nonpayment provision. Although the temporary rule is effective immediately the Board is requesting comments from the public prior to adopting a final rule.

DATE: The temporary rule is effective on October 3, 1985. Comments must be received by November 4, 1985.

ADDRESS: Comments, which should refer to Docket No. R-0552, may be mailed to the Board of Governors of the Federal Reserve System, 20th & C Sts., N.W. Washington, D.C. 20551, attention Mr. William W. Wiles, Secretary. Comments may also be delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m. except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 C.F.R. § 261.6(a).

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director, Division of Federal Reserve Bank Operations

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(202/452-3926); Joseph R. Alexander, Attorney, Legal Division (202/452-2489); or Joy W. O'Connell, Telecommunication Device for the Deaf (202/452-3244).

SUPPLEMENTARY INFORMATION: On February 8, 1985, the Board amended § 210.12 of Regulation J, 12 C.F.R. § 210.12, to strengthen the requirement that paying banks provide notice of nonpayment when they are returning large-dollar cash items presented through the Federal Reserve. 50 Fed. Reg. 5734 (1985). The amendment requires the paying bank to provide notice to the bank of first deposit ("depository bank") that the item is being returned unpaid by midnight of the second banking day following the paying bank's deadline for return of the item to its Reserve Bank. 12 C.F.R. § 210.12(c)(2). The requirement took effect on October 1, 1985.

While the Board was seeking comment on the notification amendment, three of the 260 comments received discussed the problem that could be the result of different holiday schedules observed by banks in different regions in the country. These commenters suggested that the Board override state and local holidays and impose a uniform holiday schedule nationwide. After examining this issue, the Board determined that it was not necessary or desirable to impose a uniform schedule at that time.

As Reserve Banks refined the details of the new and complex operations required to implement the notification procedures on October 1, however, they realized that the

discrepancies among banks as to what constitutes banking days create greater problems for paying banks than had previously been anticipated and that these problems arise more quickly and more frequently than had previously been assumed. This results from the way in which the notification procedure is designed to work.

The notification of nonpayment requirement provides that the paying bank must notify the depositary bank if it is not going to pay a cash item. The notice must be received by the depositary bank by midnight of the paying bank's second banking day following the deadline the regulation imposes on the paying bank for return of the item. For example, if a paying bank receives a check from a Reserve Bank on Monday, it must return the check to the Reserve Bank by midnight on Tuesday and provide notice of nonpayment to the depositary bank by midnight Thursday.

Regulation J defines the term "banking day" to mean "a day during which a bank is open to the public for carrying on substantially all of its banking functions." 12 C.F.R. § 210.2(d)^{1/} This definition means that the business schedule of the paying bank will drive the time at which notice must be received by the depositary bank. For example, if the paying bank in the previous illustration is closed on

^{1/} This definition is the same as that generally found in state law. See U.C.C. § 4-104(1)(c).

Wednesday, it would only be required to provide notice of nonpayment to the depository bank by midnight Friday.

The definition may cause problems for banks if they are open for business on days that most of the banking community is closed. For example, many banks are open for most of their banking functions on Saturdays. This is especially true for banks that normally observe regular midweek closing days. If a bank that opens on Saturday received a check on Wednesday, it would have to return the check to its Reserve Bank by midnight Thursday and provide notice to the depository bank by midnight Saturday. If the depository bank were closed on that Saturday, notice could be made on the following Monday, but it could be difficult for the paying bank to determine whether the depository bank was closed or open, especially if the two banks are separated by any great distance. Nevertheless, in some cases Saturday would count as a banking day for purposes of providing the notice.

In order to provide the return item notification service on Saturdays for paying banks, the Reserve Banks estimate that they would incur costs of up to \$50,000 for each Saturday. In short, the costs for Reserve Banks to provide the return item service for paying banks on Saturdays in relation to the number of notices to be provided would result in a misallocation of economic resources in the payments mechanism.

Private correspondent banks are also planning to provide a return item notification service. If they are to provide a complete service, they too would have to remain open on Saturdays and nonstandard holidays to provide the service on behalf of their customers. Given the relatively small volume expected on these days, this would also be a costly service for correspondent banks to provide.

The alternative to the Reserve Banks or other service providers being open on Saturdays while not going forward with the proposed temporary rule would be to require paying banks to fend for themselves on Saturdays. This is likely to be very burdensome to the paying banks. It would require them to establish, for at least one day each week, the elaborate procedures necessary for making notice of nonpayment to other banks open on Saturdays. This would be complicated by the difficulty in ascertaining whether or not the depository bank is open and able to receive notices on Saturdays.

In order to alleviate these problems and similar problems that arise with respect to certain holidays which may not be observed uniformly, the Board is adopting a standard holiday schedule for purposes of calculating the deadline for the notice of nonpayment. The Board is not attempting at this time to establish a nationwide bank holiday schedule for all purposes. Under the amendment, the following days will not

be considered banking days for purposes of the notice of nonpayment:

All Saturdays,
All Sundays,
New Year's Day (January 1),
Martin Luther King's Birthday (third Monday in January),
Washington's Birthday (third Monday in February),
Memorial Day (last Monday in May),
Independence Day (July 4),
Labor Day (first Monday in September),
Columbus Day (second Monday in October),
Veterans' Day (November 11),
Thanksgiving Day (fourth Thursday in November), and
Christmas Day (December 25).

This schedule follows that observed by the federal government.

See 5 U.S.C. § 6103.

If a fixed holiday (such as Christmas) falls on a Saturday, the holiday will be observed on the previous Friday; if such a holiday falls on a Sunday, it will be observed on the following Monday. This practice also follows that adopted by the federal government. See, Exec. Order No. 11,582 (Jan. 1, 1971). The Board, however, specifically seeks comment on whether there are other alternatives for handling such occurrences.

Immediate adoption of this rule is required to avoid potential problems arising on October 5, 1985, the first Saturday on which the notification would apply. In addition, this amendment will ease a regulatory burden in that paying banks that open on Saturday will be given an extra day to

comply with the notice requirements under certain circumstances. It will also relieve correspondent banks providing the notification service of the responsibility of remaining open on Saturdays. For these reasons, the Board finds that application of the notice and public participation provisions of 5 U.S.C. § 553 to this action would be contrary to the public interest and that good cause exists for making this action effective immediately.

This regulation will not have any significant impact on a substantial number of small entities.

LIST OF SUBJECTS INDEX TERMS: Banks; Banking; Federal Reserve System.

Pursuant to its authority under § 13 of the Federal Reserve Act, 12 U.S.C. § 342, § 16 of the Federal Reserve Act, 12 U.S.C. §§ 248(o) and 360, § 11(i) of the Federal Reserve Act, 12 U.S.C. § 248(i), and other provisions of law, the Board hereby amends 12 C.F.R. § 210.12(c) by adding a new paragraph at the end thereof as follows:

(10) The following days shall not be considered banking days for purposes of the deadline for notice of nonpayment: Saturdays and Sundays, 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, and December 25. If January 1, July 4, November 11, or December 25

fall on a Saturday, the previous Friday shall not be considered a banking day for purposes of this subsection. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next following Monday shall not be considered a banking day for purposes of this subsection.

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By Order of the Board of Governors of the the Federal Reserve System, October 3, 1985.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board