AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

APPENDIX A TO SUBPART B—COMMENTARY
APPENDIX B TO SUBPART B—ARTICLE 4A, FUNDS TRANSFERS

AUTHORITY: 12 U.S.C. 248 (i), (j), and (o), 342, 360, 464, and 4001–4010.

SOURCE: 45 FR 68634, Oct. 16, 1980, unless otherwise noted.

Subpart A—Collection of Checks and Other Items By Federal Reserve Banks

§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, sections 11 (i) and (j) (12 U.S.C. 248 (i) and (j)), section 13 (12 U.S.C. 342), section 16 (12 U.S.C. 248(o) and 360), and section 19(f) (12 U.S.C. 464); the Expedited Funds Availability Act (12 U.S.C. 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.

[53 FR 21984, June 13, 1988, as amended at Reg. J, 59 FR 22965, May 4, 1994]

§210.2 Definitions.

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

(a) *Account* means an account with reserve or clearing balances on the books of a Federal Reserve Bank. A subaccount is an informational record of a subset of transactions that affect an account and is not a separate account.

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

(c) *Administrative Reserve Bank* with respect to an entity means the Reserve Bank in whose District the entity is located, as determined under the procedure described in §204.3(b)(2) of this chapter (Regulation D), even if the entity is not otherwise subject to that section.

(d) *Bank* means any person engaged in the business of banking. A branch or separate office of a bank is a separate bank to the extent provided in the Uniform Commercial Code.

(e) *Bank draft* means a check drawn by one bank on another bank.

(f) *Banking day* means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(g) *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 that receives the item is willing to accept as a cash item. *Cash item* does not include a returned check.

(h) *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.

(i) *Item* means an instrument or a promise or order to pay money, whether negotiable or not, that is:

(1) Payable in a Federal Reserve District[1] (*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 a *payment order* as defined in §210.26(i) and handled under subpart B of this part.

(j) *Nonbank payor* means a payor of an item, other than a bank.

(k) *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.

[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.

(l) *Paying bank* means—

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

(m) *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.

(n) *Sender* means any of the following that sends an item to a Reserve Bank for forward collection:

(1) *Depository institution* means a depository institution as defined in section 19(b) of the Federal Reserve Act. (12 U.S.C. 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 U.S.C. 342); or

(ii) A corporation that maintains an account with a Reserve Bank in conformity with §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 U.S.C. 632), or a foreign correspondent or agency referred to in section 14(e) of that Act (12 U.S.C. 358).

(o) *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.

(p) *Clock hour* means a time that is on the hour, such as 1:00, 2:00, etc.

(q) *Fedwire* has the same meaning as that set forth in §210.26(e).

(r) *Uniform Commercial Code* means the Uniform Commercial Code as adopted in a state.

[45 FR 68634, Oct. 16, 1980, as amended at 46 FR 42059, Aug. 19, 1981; 51 FR 21744, June 16, 1986; 53 FR 21984, June 13, 1988; 57 FR 46955, Oct. 14, 1992; Reg. J, 59 FR 22965, May 4, 1994; 62 FR 48171, Sept. 15, 1997]

§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, provide different closing times for the receipt of different classes or types of items, provide for instructions by an Administrative Reserve Bank to other Reserve Banks, set forth terms of services, and establish procedures for adjustments on a Reserve Bank's books, including amounts, waiver of expenses, and payment of interest by as-of adjustment.

(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 establishment, 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.

(f) *Relation to other law.* The provisions of this subpart supersede any inconsistent provisions of the Uniform Commercial Code, of any other state law, or of part 229 of this title, but only to the extent of the inconsistency.

[45 FR 68634, Oct. 16, 1980, as amended at 51 FR 21744, June 16, 1986; 53 FR 21984, June 13, 1988; Reg. J, 59 FR 22965, May 4, 1994; 62 FR 48171, Sept. 15, 1997]

§ 210.4 Sending items to Reserve Banks.

(a) *Sending of items.* A sender, other than a Reserve Bank, may send any item to any Reserve Bank, whether or not the item is payable within the Reserve Bank's District, unless the sender's Administrative Reserve Bank directs the sender to send the item to a specific Reserve Bank.

(b) *Handling of items.* (1) The following parties, in the following order, are deemed to have handled an item that is sent to a Reserve Bank for collection—

(i) The initial sender

(ii) The initial sender's Administrative Reserve Bank

(iii) The Reserve Bank that receives the item from the initial sender (if different from the initial sender's Administrative Reserve Bank); and

(iv) Another Reserve Bank, if any, that receives the item from a Reserve Bank.

(2) A Reserve Bank that is not described in paragraph (b)(1) of this section is not a party that handles an item and is not a collecting bank with respect to an item.

(3) The identity and order of the parties under paragraph (b)(1) of this section determine the relationships and the rights and liabilities of the parties under this subpart, part 229 of this chapter (Regulation CC), and the Uniform Commercial Code. An initial sender's Administrative Reserve Bank that is deemed to handle an item is also deemed to be a sender with respect to that item. The Reserve Banks that are deemed to handle an item are deemed to be agents or subagents of the owner of the item, as provided in § 210.6(a) of this subpart.

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

[Reg. J, 62 FR 48171, Sept. 15, 1997]

§ 210.5 Sender's agreement; recovery by Reserve Bank.

(a) *Sender's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the item bears an indorsement of the sender. By sending an item to a Reserve Bank, the sender:

(1) Authorizes the sender's Administrative Reserve Bank and any other Reserve Bank or collecting bank to which the item is sent to handle the item (and authorizes any Reserve Bank that handles settlement for the item to make accounting entries), 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 is a person entitled to enforce the item or authorized to obtain payment of the item on behalf of a person entitled to enforce the item; and

(ii) The item has not been altered; but this paragraph (a)(2) does not limit any warranty by a sender or other prior party arising under state law or under subpart C of part 229 of this title; and

(3) Agrees to indemnify each Reserve Bank for any loss of 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 § 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 paragraph (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 § 210.6(b) of this subpart, the Reserve Bank may, upon 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 because of the judgment or decree or the tender of defense, together with interest thereon.

(c) *Methods of recovery.* (1) 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 by charging a Reserve Bank sender), if—

(i) The Reserve Bank made seasonable written demand on the sender to assume defense of the action or proceeding; and

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

(2) 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 under this paragraph (c) may recover from its sender in the manner and under the circumstances set forth in this paragraph (c). A Reserve Bank's failure to avail itself of the remedy provided in this paragraph (c) does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (a)(3) of this section.

(d) *Security interest.* When a sender sends an item to a Reserve Bank, the sender and any prior collecting bank grant to the sender's Administrative Reserve Bank a security interest in all of their respective assets in the possession of, or held for the account of, any Reserve Bank to secure their respective obligations due or to become due to the Administrative Reserve Bank under this subpart or subpart C of part 229 of this chapter (Regulation CC). The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender or prior collecting bank, or if the sender or prior collecting bank suspends payments or is closed, the Reserve Bank may take any action authorized by law to recover the amount of an obligation, 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.

[45 FR 68634, Oct. 16, 1980, as amended at 51 FR 21745, June 16, 1986; Reg. J, 59 FR 22965, May 4, 1994; 62 FR 48171, Sept. 15, 1997]

§ 210.6 Status, warranties, and liability of Reserve Bank.

(a)(1) *Status and liability.* A Reserve Bank that handles an item shall act as agent or subagent of the owner with respect to the item. This agency terminates when a Reserve Bank receives final payment for the item in actually and finally collected funds, a Reserve Bank makes the proceeds available for use by the sender, and the time for commencing all actions against the Reserve Bank has expired. A Reserve Bank shall not have or assume any liability with respect to an item or its proceeds except—

(i) For the Reserve Bank's own lack of good faith or failure to exercise ordinary care;

(ii) As provided in paragraph (b) of this section; and

(iii) As provided in subpart C of part 229 of this chapter (Regulation CC).

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

(i) That the Reserve Bank is a person entitled to enforce the item (or is authorized to obtain payment of the item on behalf of a person who is either entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item); and

(ii) That the item has not been altered.

(2) The Reserve Bank also makes the warranties set forth in §229.34(c) of this chapter, subject to the terms of part 229 of this chapter (Regulation CC). 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. This paragraph does not lengthen the time limit for claims under §229.38(g) of this title (which include claims for breach of warranty under §229.34 of this title).

[45 FR 68634, Oct. 16, 1980, as amended at 51 FR 21745, June 16, 1986; 53 FR 21984, June 13, 1988; Reg. J, 59 FR 22966, May 4, 1994; 62 FR 48172, Sept. 15, 1997]

§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 that may be sent to the paying bank or nonbank payor 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 sent to another district.* A Reserve Bank receiving an item that may be sent to a paying bank or nonbank payor 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 sent to a paying bank or nonbank payor in its own District.

[45 FR 68634, Oct. 16, 1980, as amended at 53 FR 21985, June 13, 1988; 62 FR 48172, Sept. 15, 1997]

§ 210.8 Presenting noncash items for acceptance.

(a) 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 may be presented 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.

(b) Documents accompanying a noncash item shall not be delivered to the payor upon acceptance 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.

[62 FR 48172, Sept. 15, 1997]

§ 210.9 Settlement and payment.

(a) *Settlement through Administrative Reserve Bank.* A paying bank shall settle for an item under this subpart with its Administrative Reserve Bank, whether or not the paying bank received the item from that Reserve Bank. A paying bank's settlement with its Administrative Reserve Bank is deemed to be settlement with the Reserve Bank from which the paying bank received the item. A paying bank may settle for an item using any account on a Reserve Bank's books by agreement with its Administrative Reserve Bank, any other Reserve Bank holding the settlement account, and the account-holder. The paying bank remains responsible for settlement if the Reserve Bank holding the settlement account does not, for any reason, obtain settlement in that account.

(b) *Cash items*—(1) *Settlement obligation.* On the day a paying bank receives[2] a cash item from a Reserve Bank, it shall settle for the item such that the proceeds of the settlement are available to its Administrative Reserve Bank by the close of Fedwire on that day, or it shall return the item by the later of the close of its banking day or the close of Fedwire. If the paying bank fails to settle for or return a cash item in accordance with this paragraph (b)(1), it is accountable for the amount of the item as of the close of its banking day or the close of Fedwire on the day it receives the item, whichever is earlier.

(2) *Time of settlement.* (i) On the day a paying bank receives a cash item from a Reserve Bank, it shall settle for the item so that the proceeds of the settlement are available to its Administrative Reserve Bank, or return the item, by the latest of—

(A) The next clock hour that is at least one hour after the paying bank receives the item;

(B) 9:30 a.m. Eastern Time; or

(C) Such later time as provided in the Reserve Banks' operating circulars.

(ii) If the paying bank fails to settle for or return a cash item in accordance with paragraph (b)(2)(i) of this section, it shall be subject to any applicable overdraft charges. Settlement under paragraph (b)(2)(i) of this section satisfies the settlement requirements of paragraph (b)(1) of this section.

(3) *Paying bank closes voluntarily.* (i) If a paying bank closes voluntarily so that it does not receive a cash item on a day that is a banking day for a Reserve Bank, and the Reserve Bank makes the cash item available to the paying bank on that day, the paying bank shall either—

(A) On that day, settle for the item so that the proceeds of the settlement are available to its Administrative Reserve Bank, or return the item, by the latest of the next clock hour that is at least one hour after it ordinarily would have received the item, 9:30 a.m. Eastern Time, or such later time as provided in the Reserve Banks' operating circulars; or

(B) On the next day that is a banking day for both the paying bank and the Reserve Bank, settle for the item so that the proceeds of the settlement are available to its Administrative Reserve Bank by 9:30 a.m. Eastern Time on that

[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 after a ''cut-off hour'' established by it in accordance with state law.

day or such later time as provided in the Reserve Banks' operating circulars and compensate the Reserve Bank for the value of the float associated with the item in accordance with procedures provided in the Reserve Bank's operating circular.

(ii) If a paying bank closes voluntarily so that it does not receive a cash item on a day that is a banking day for a Reserve Bank, and the Reserve Bank makes the cash item available to the paying bank on that day, the paying bank is not considered to have received the item until its next banking day, but it shall be subject to any applicable overdraft charges if it fails to settle for or return the item in accordance with paragraph (b)(3)(i) of this section. The settlement requirements of paragraphs (b)(1) and (b)(2) of this section do not apply to a paying bank that settles in accordance with paragraph (b)(3)(i) of this section.

(4) *Reserve Bank closed.* (i) If a paying bank receives a cash item from a Reserve Bank on a banking day that is not a banking day for the Reserve Bank, the paying bank shall—

(A) Settle for the item so that the proceeds of the settlement are available to its Administrative Reserve Bank by the close of Fedwire on the Reserve Bank's next banking day, or return the item by midnight of the day it receives the item (if the paying bank fails to settle for or return a cash item in accordance with this paragraph (b)(4)(i)(A), it shall become accountable for the amount of the item as of the close of its banking day on the day it receives the item); and

(B) Settle for the item so that the proceeds of the settlement are available to its Administrative Reserve Bank by 9:30 a.m. Eastern Time on the Reserve Bank's next banking day or such later time as provided in the Reserve Bank's operating circular, or return the item by midnight of the day it receives the item. If the paying bank fails to settle for or return a cash item in accordance with this paragraph (b)(4)(i)(B), it shall be subject to any applicable overdraft charges. Settlement under this paragraph (b)(4)(i)(B) satisfies the settlement requirements of paragraph (b)(4)(i)(A) of this section.

(ii) The settlement requirements of paragraphs (b)(1) and (b)(2) of this section do not apply to a paying bank that settles in accordance with paragraph (b)(4)(i) of this section.

(5) *Manner of settlement.* Settlement with a Reserve Bank under paragraphs (b) (1) through (4) of this section shall be made by debit to an account on the Reserve Bank's books, cash, or other form of settlement to which the Reserve Bank agrees, except that the Reserve Bank may, in its discretion, obtain settlement by charging the paying bank's account. A paying bank may not set off against the amount of a settlement under this section the amount of a claim with respect to another cash item, cash letter, or other claim under §229.34(c) of this chapter (Regulation CC) or other law.

(6) *Notice in lieu of return.* If a cash item is unavailable for return, the paying bank may send a notice in lieu of return as provided in §229.30(f) of this chapter (Regulation CC).

(c) *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 maintained or used by the paying or collecting bank on a Reserve Bank's books or by any of the following that is in a form acceptable to the collecting Reserve Bank: bank draft, transfer of funds or bank credit, or any other form of payment authorized by State law.

(d) *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.

(e) *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.

(f) *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 (b), (c), and (d) 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 (b), (c), and (d) of this section.

[45 FR 68634, Oct. 16, 1980, as amended at 49 FR 4200, Feb. 3, 1984; 51 FR 21745, June 16, 1986; 53 FR 21985, June 13, 1988; 57 FR 46955, Oct. 14, 1992; Reg. J, 59 FR 22966, May 4, 1994; 62 FR 48172, Sept. 15, 1997]

§ 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 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 that holds the settlement account shall give either immediate or deferred credit to a sender, a paying bank, or a returning bank (other than a foreign correspondent) in accordance with the time schedule of the receiving Reserve Bank. 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 by it 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.

[62 FR 48173, Sept. 15, 1997]

§ 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 by it 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.

[45 FR 68634, Oct. 16, 1980, as amended at 62 FR 48173, Sept. 15, 1997]

§ 210.12 Return of cash items and handling of returned checks.

(a) *Return of items*—(1) *Return of cash items handled by Reserve Banks.* A paying bank that receives a cash item from a Reserve Bank, other than for immediate payment over the counter, and that settles for the item as provided in §210.9(b) of this subpart, may, before it has finally paid the item, return the item to any Reserve Bank (unless its Administrative Reserve Bank directs it to return the item to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter

(Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars. A paying bank that receives a cash item from a Reserve Bank also may return the item prior to settlement, in accordance with §210.9(b) of this subpart and the Reserve Banks' operating circulars. 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.

(2) *Return of checks not handled by Reserve Banks.* A paying bank that receives a check as defined in §229.2(k) of this chapter (Regulation CC), other than from a Reserve Bank, and that determines not to pay the check, may send the returned check to any Reserve Bank (unless its Administrative Reserve Bank directs it to send the returned check to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars. A returning bank may send a returned check to any Reserve Bank (unless its Administrative Reserve Bank directs it to send the returned check to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars.

(b) *Handling of returned checks.* (1) The following parties, in the following order, are deemed to have handled a returned check sent to a Reserve Bank under paragraph (a) of this section—

(i) The paying or returning bank;

(ii) The paying bank's or returning bank's Administrative Reserve Bank;

(iii) The Reserve Bank that receives the returned check from the paying or returning bank (if different from the paying bank's or returning bank's Administrative Reserve Bank); and

(iv) Another Reserve Bank, if any, that receives the returned check from a Reserve Bank.

(2) A Reserve Bank that is not described in paragraph (b)(1) of this section is not a party that handles a returned check and is not a returning bank with respect to a returned check.

(3) The identity and order of the parties under paragraph (b)(1) of this section determine the relationships and the rights and liabilities of the parties under this subpart, part 229 of this chapter (Regulation CC), and the Uniform Commercial Code.

(c) *Paying bank's and returning bank's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the returned check bears an indorsement of the paying bank or returning bank. By sending a returned check to a Reserve Bank, the paying bank or returning bank—

(1) Authorizes the paying or returning bank's Administrative Reserve Bank, and any other Reserve Bank or returning bank to which the returned check is sent, to handle the returned check (and authorizes any Reserve Bank that handles settlement for the returned check to make accounting entries) subject to this subpart and to the Reserve Banks' operating circulars;

(2) Makes the warranties set forth in §229.34 of this title (but this paragraph does not limit any warranty by a paying or returning bank arising under state law); 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) *Warranties by Reserve Bank.* By handling a returned check under this subpart, a Reserve Bank makes the returning bank warranties as set forth in §229.34 of this chapter, subject to the terms of part 229 of this chapter (Regulation CC). The Reserve Bank shall not have or assume any other liability to the transferee returning bank, to any subsequent returning bank, to the depository bank, to the owner of the check, or to any other person, except for the Reserve Bank's own lack of

good faith or failure to exercise ordinary care as provided in subpart C of part 229 of this title.

(e) *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 because of the judgment or decree or the tender of defense, together with interest thereon.

(f) *Methods of recovery.* (1) 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 by charging another returning Reserve Bank), if—

(i) The Reserve Bank made seasonable written demand on the paying or returning bank to assume defense of the action or proceeding; and

(ii) The paying or returning bank has not made any other arrangement for payment that is acceptable to the Reserve Bank.

(2) 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 under this paragraph (f) may recover from the paying or returning bank in the manner and under the circumstances set forth in this paragraph (f). A Reserve Bank's failure to avail itself of the remedy provided in this paragraph (f) does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (c)(3) of this section.

(g) *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.

(h) *Settlement.* A subsequent returning bank or depositary bank shall settle with its Administrative Reserve Bank for returned checks in the same manner and by the same time as for cash items presented for payment under this subpart. Settlement with its Administrative Reserve Bank is deemed to be settlement with the Reserve Bank from which the returning bank or depositary bank received the item.

(i) *Security interest.* When a paying or returning bank sends a returned check to a Reserve Bank, the paying bank, returning bank, and any prior returning bank grant to the paying bank's or returning bank's Administrative Reserve Bank a security interest in all of their respective assets in the possession of, or held for the account of, any Reserve Bank, to secure their respective obligations due or to become due to the Administrative Reserve Bank under this subpart or subpart C of part 229 of this chapter (Regulation CC). The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the paying bank, returning bank, or prior returning bank, or if the paying bank, returning bank, or prior returning bank suspends payments or is closed, the Reserve Bank may take any action authorized by law to recover the amount of an obligation, 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.

[53 FR 21985, June 13, 1988, as amended at Reg. J, 59 FR 22966, May 4, 1994; 62 FR 48173, Sept. 15, 1997]

§ 210.13 Unpaid items.

(a) *Right of recovery.* 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, prior collecting bank, paying bank, or returning bank from or through which it was received, whether or not the

item itself can be sent back. In the event of recovery from such a party, no party, including the owner or holder of the item, shall, for the purpose of obtaining payment of the amount of the item, have any interest in any reserve balance or other funds or property in the Reserve Bank's possession of the bank that failed 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 (including a charge authorized by §210.9(a)(5)), or other order on a reserve balance or other funds in its possession for the purpose of settling for items under §210.9 or §210.12 after it receives notice of suspension or closing of the bank making the settlement for that bank's own or another's account.

[Reg. J, 59 FR 22966, May 4, 1994]

§210.14 Extension of time limits.

If a bank (including a Reserve Bank) or nonbank payor is delayed in acting on an item beyond applicable time limits because of interruption of communication or computer facilities, suspension of payments by a bank or nonbank payor, 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.

[Reg. J, 59 FR 22967, May 4, 1994]

§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) §210.14 applies to the payor as if it were a bank; and (c) under §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

SOURCE: 55 FR 40801, Oct. 5, 1990, unless otherwise noted.

§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 U.S.C. 342), paragraph (f) of section 19 (12 U.S.C. 464), paragraph 14 of section 16 (12 U.S.C. 248(o)), and paragraphs (i) and (j) of section 11 (12 U.S.C. 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 (b)(3) and (b)(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.