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(b) *Additional powers.* (1) For the purposes of the exercise by any agency referred to in paragraph (a) of this section of its powers under any statute referred to in that paragraph, a violation of any requirement imposed under the EFA Act is deemed to be a violation of a requirement imposed under that statute.

(2) In addition to its powers under any provision of law specifically referred to in paragraph (a) of this section, each of the agencies referred to in that paragraph may exercise, for purposes of enforcing compliance with any requirement imposed under this part, any other authority conferred on it by law.

(c) *Enforcement by the Board.* (1) Except to the extent that enforcement of the requirements imposed under this part is specifically committed to some other government agency, the Board shall enforce such requirements.

(2) If the Board determines that—

(i) Any bank that is not a bank described in paragraph (a) of this section; or

(ii) Any other person subject to the authority of the Board under the EFA Act and this part,

has failed to comply with any requirement imposed by this part, the Board may issue an order prohibiting any bank, any Federal Reserve Bank, or any other person subject to the authority of the Board from engaging in any activity or transaction that directly or indirectly involves such noncomplying bank or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks, and any related function of the payment system with respect to checks).

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 55 FR 21855, May 30, 1990; 57 FR 36600, Aug. 14, 1992; 69 FR 47310, Aug. 4, 2004]

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

§ 229.10 Next-day availability.

(a) *Cash deposits.* (1) A bank shall make funds deposited in an account by cash available for withdrawal not later than the business day after the banking day on which the cash is deposited, if the deposit is made in person to an employee of the depositary bank.

(2) A bank shall make funds deposited in an account by cash available for withdrawal not later than the second business day after the banking day on which the cash is deposited, if the deposit is not made in person to an employee of the depositary bank.

(b) *Electronic payments*—(1) *In general.* A bank shall make funds received for deposit in an account by an electronic payment available for withdrawal not later than the business day after the banking day on which the bank received the electronic payment.

(2) *When an electronic payment is received.* An electronic payment is received when the bank receiving the payment has received both—

(i) Payment in actually and finally collected funds; and

(ii) Information on the account and amount to be credited.

A bank receives an electronic payment only to the extent that the bank has received payment in actually and finally collected funds.

(c) *Certain check deposits*—(1) *General rule.* A depositary bank shall make funds deposited in an account by check available for withdrawal not later than the business day after the banking day on which the funds are deposited, in the case of—

(i) A check drawn on the Treasury of the United States and deposited in an account held by a payee of the check;

(ii) A U.S. Postal Service money order deposited—

(A) In an account held by a payee of the money order; and

(B) In person to an employee of the depositary bank.

(iii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank and deposited—

(A) In an account held by a payee of the check; and

(B) In person to an employee of the depositary bank;

(iv) A check drawn by a state or a unit of general local government and deposited—

(A) In an account held by a payee of the check;

(B) In a depositary bank located in the state that issued the check, or the

same state as the unit of general local government that issued the check;

(C) In person to an employee of the depositary bank; and

(D) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depositary bank under paragraph (c)(3) of this section.

(v) A cashier's, certified, or teller's check deposited—

(A) In an account held by a payee of the check;

(B) In person to an employee of the depositary bank; and

(C) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depositary bank under paragraph (c)(3) of this section.

(vi) A check deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank if both branches are located in the same state or the same check processing region; and,

(vii) The lesser of—

(A) $100, or

(B) The aggregate amount deposited on any one banking day to all accounts of the customer by check or checks not subject to next-day availability under paragraphs (c)(1) (i) through (vi) of this section.

(2) *Checks not deposited in person.* A depositary bank shall make funds deposited in an account by check or checks available for withdrawal not later than the second business day after the banking day on which funds are deposited, in the case of a check deposit described in and that meets the requirements of paragraphs (c)(1) (ii), (iii), (iv), and (v), of this section, except that it is not deposited in person to an employee of the depositary bank.

(3) *Special deposit slip.* (i) As a condition to making the funds available for withdrawal in accordance with this section, a depositary bank may require that a state or local government check or a cashier's, certified, or teller's check be deposited with a special deposit slip or deposit envelope that identifies the type of check.

(ii) If a depositary bank requires the use of a special deposit slip or deposit envelope, the bank must either provide the special deposit slip or deposit envelope to its customers or inform its customers how the slip or envelope may be prepared or obtained and make the slip or envelope reasonably available.

§ 229.11 [Reserved]

§ 229.12 Availability schedule.

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

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

(1) A local check;

(2) A check drawn on the Treasury of the United States that is not governed by the availability requirements of § 229.10(c);

(3) A U.S. Postal Service money order that is not governed by the availability requirements of § 229.10(c); and

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

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

(i) A nonlocal check; and

(ii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; a cashier's, certified, or teller's check; or a check deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank, if any check referred to in this paragraph (c)(1)(ii) is a nonlocal check that is not governed by the availability requirements of § 229.10(c).

(2) Nonlocal checks specified in appendix B–2 to this part must be made

available for withdrawal not later than the times prescribed in that Appendix.

(d) *Time period adjustment for withdrawal by cash or similar means.* A depositary bank may extend by one business day the time that funds deposited in an account by one or more checks subject to paragraphs (b), (c), or (f) of this section are available for withdrawal by cash or similar means. Similar means include electronic payment, issuance of a cashier's or teller's check, or certification of a check, or other irrevocable commitment to pay, but do not include the granting of credit to a bank, a Federal Reserve Bank, or a Federal Home Loan Bank that presents a check to the depositary bank for payment. A depositary bank shall, however, make $400 of these funds available for withdrawal by cash or similar means not later than 5:00 p.m. on the business day on which the funds are available under paragraphs (b), (c), or (f) of this section. This $400 is in addition to the $100 available under §229.10(c)(1)(vii).

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The depositary bank may extend the time periods set forth in this section by one business day in the case of any deposit, other than a deposit described in §229.10, that is—

(1) Deposited in an account at a branch of a depositary bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and

(2) Deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depositary bank.

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

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 55 FR 50818, Dec. 11, 1990; 56 FR 7801, Feb. 26, 1991; 56 FR 66343, Dec. 23, 1991; 57 FR 36601, Aug. 14, 1992; 60 FR 51670, Oct. 3, 1995]

§229.13 Exceptions.

(a) *New accounts.* For purposes of this paragraph, checks subject to §229.10(c)(1)(v) include traveler's checks.

(1) A deposit in a new account—

(i) Is subject to the requirements of §229.10 (a) and (b) to make funds from deposits by cash and electronic payments available for withdrawal on the business day following the banking day of deposit or receipt;

(ii) Is subject to the requirements of §229.10(c)(1) (i) through (v) and §229.10(c)(2) only with respect to the first $5,000 of funds deposited on any one banking day; but the amount of the deposit in excess of $5,000 shall be available for withdrawal not later than the ninth business day following the banking day on which funds are deposited; and

(iii) Is not subject to the availability requirements of §§229.10(c)(1)(vi) and (vii) and 229.12.

(2) An account is considered a new account during the first 30 calendar days after the account is established. An account is not considered a new account if each customer on the account has had, within 30 calendar days before the account is established, another account at the depositary bank for at least 30 calendar days.

(b) *Large deposits.* Sections 229.10(c) and 229.12 do not apply to the aggregate amount of deposits by one or more checks to the extent that the aggregate amount is in excess of $5,000 on any one banking. day. For customers that have multiple accounts at a depositary bank, the bank may apply this exception to the aggregate deposits to all accounts held by the customer, even if the customer is not the sole holder of the accounts and not all of the holders of the accounts are the same.

(c) *Redeposited checks.* Sections 229.10(c) and 229.12 do not apply to a check that has been returned unpaid and redeposited by the customer or the depositary bank. This exception does not apply—

(1) To a check that has been returned due to a missing indorsement and redeposited after the missing indorsement has been obtained, if the reason for return indication on the check states that it was returned due to a missing indorsement; or

(2) To a check that has been returned because it was post dated, if the reason

for return indicated on the check states that it was returned because it was post dated, and if the check is no longer postdated when redeposited.

(d) *Repeated overdrafts.* If any account or combination of accounts of a depositary bank's customer has been repeatedly overdrawn, then for a period of six months after the last such overdraft, §§ 229.10(c) and 229.12 do not apply to any of the accounts. A depositary bank may consider a customer's account to be repeatedly overdrawn if—

(1) On six or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative if checks or other charges to the account had been paid; or

(2) On two or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative, in the amount of $5,000 or more, if checks or other charges to the account had been paid.

(e) *Reasonable cause to doubt collectibility*—(1) *In general.* Sections 229.10(c) and 229.12 do not apply to a check deposited in an account at a depositary bank if the depositary bank has reasonable cause to believe that the check is uncollectible from the paying bank. Reasonable cause to believe a check is uncollectible requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. Such belief shall not be based on the fact that the check is of a particular class or is deposited by a particular class of persons. The reason for the bank's belief that the check is uncollectible shall be included in the notice required under paragraph (g) of this section.

(2) *Overdraft and returned check fees.* A depositary bank that extends the time when funds will be available for withdrawal as described in paragraph (e)(1) of this section, and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks of other debits to the account, if—

(i) The overdraft or return of the check would not have occurred except for the fact that the deposited funds were delayed under paragraph (e)(1) of this section; and

(ii) The deposited check was paid by the paying bank.

Notwithstanding the foregoing, the depositary bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice of exception required in paragraph (g) of this section and, when required, refunds any such fees upon the request of the customer. The notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the exception is paid and how to obtain a refund.

(f) *Emergency conditions.* Sections 229.10(c) and 229.12 do not apply to funds deposited by check in a depositary bank in the case of—

(1) An interruption of communications or computer or other equipment facilities;

(2) A suspension of payments by another bank;

(3) A war; or

(4) An emergency condition beyond the control of the depositary bank,

if the depositary bank exercises such diligence as the circumstances require.

(g) *Notice of exception*—(1) *In general.* Subject to paragraphs (g)(2) and (g)(3) of this section, when a depositary bank extends the time when funds will be available for withdrawal based on the application of an exception contained in paragraphs (b) through (e) of this section, it must provide the depositor with a written notice.

(i) The notice shall include the following information—

(A) A number or code, which need not exceed four digits, that identifies the customer's account;

(B) The date 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.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not made in person to an employee of the depositary bank, or, if the facts upon which a determination to invoke

one of the exceptions in paragraphs (b) through (e) of this section to delay a deposit only become known to the depositary bank after the time of the deposit. If the notice is not given at the time of the deposit, the depositary bank shall mail or deliver the notice to the customer as soon as practicable, but no later than the first business day following the day the facts become known to the depositary bank, or the deposit is made, whichever is later.

(2) *One-time exception notice.* In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depositary 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 generally 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 depositary 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 generally 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.

(4) *Emergency conditions exception notice.* When a depositary bank extends the time when funds will be available for withdrawal based on the application of the emergency conditions exception contained in paragraph (f) of this section, it must provide the depositor with notice in a reasonable form and within a reasonable time given the circumstances. The notice shall include the reason the exception was invoked and the time period within which funds shall be made available for withdrawal, unless the depositary bank, in good faith, does not know at the time the notice is given the duration of the emergency and, consequently, when the funds must be made available. The depositary bank is not required to provide a notice if the funds subject to the exception become available before the notice must be sent.

(5) *Record retention.* A depositary bank shall retain a record, in accordance with §229.21(g), of each notice provided pursuant to its application of the reasonable cause exception under paragraph (e) of this section, together with a brief statement of the facts giving rise to the bank's reason to doubt the collectibility of the check.

(h) *Availability of deposits subject to exceptions.* (1) If an exception contained in paragraphs (b) through (f) of this section applies, the depositary bank may extend the time periods established under §§229.10(c) and 229.12 by a reasonable period of time.

(2) If a depositary 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 229.12.

(3) If a depositary bank invokes an exception under paragraph (f) of this

section based on an emergency condition, the depositary bank shall make the funds available for withdrawal not later than a reasonable period after the emergency has ceased or the period established in §§ 229.10(c) and 229.12, whichever is later.

(4) For the purposes of this section, a ''reasonable period'' is an extension of up to one business day for checks described in § 229.10(c)(1)(vi), five business days for checks described in § 229.12(b)(1) through (4), and six business days for checks described in § 229.12(c) (1) and (2) or § 229.12(f). A longer extension may be reasonable, but the bank has the burden of so establishing.

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 54 FR 13850, Apr. 6, 1989; Reg. CC, 55 FR 21855, May 30, 1990; 57 FR 3279, Jan. 29, 1992; 57 FR 36598, Aug. 14, 1992; 60 FR 51671, Oct. 3, 1995; Reg. CC, 62 FR 13809, Mar. 24, 1997; 69 FR 47310, Aug. 4, 2004]

§ 229.14 Payment of interest.

(a) *In general.* A depositary bank shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the depositary bank receives credit for the funds. For the purposes of this section, the depositary bank may—

(1) Rely on the availability schedule of its Federal Reserve Bank, Federal Home Loan Bank, or correspondent bank to determine the time credit is actually received; and

(2) Accrue interest or dividends on funds deposited in interest-bearing accounts by checks that the depositary bank sends to paying banks or subsequent collecting banks for payment or collection based on the availability of funds the depositary bank receives from the paying or collecting banks.

(b) *Special rule for credit unions.* Paragraph (a) of this section does not apply to any account at a bank described in § 229.2(e)(4), if the bank—

(1) Begins the accrual of interest or dividends at a later date than the date described in paragraph (a) of this section with respect to all funds, including cash, deposited in the account; and

(2) Provides notice of its interest or dividend payment policy in the manner required under § 229.16(d).

(c) *Exception for checks returned unpaid.* This subpart does not require a bank to pay interest or dividends on funds deposited by a check that is returned unpaid.

§ 229.15 General disclosure requirements.

(a) *Form of disclosures.* A bank shall make the disclosures required by this subpart clearly and conspicuously in writing. Disclosures, other than those posted at locations where employees accept consumer deposits and ATMs and the notice on preprinted deposit slips, must be in a form that the customer may keep. The disclosures shall be grouped together and shall not contain any information not related to the disclosures required by this subpart. If contained in a document that sets forth other account terms, the disclosures shall be highlighted within the document by, for example, use of a separate heading.

(b) *Uniform reference to day of availability.* In its disclosure, a bank shall describe funds as being available for withdrawal on ''the _____ business day after'' the day of deposit. In this calculation, the first business day is the business day following the banking day the deposit was received, and the last business day is the day on which the funds are made available.

(c) *Multiple accounts and multiple account holders.* A bank need not give multiple disclosures to a customer that holds multiple accounts if the accounts are subject to the same availability policies. Similarly, a bank need not give separate disclosures to each customer on a jointly held account.

(d) *Dormant or inactive accounts.* A bank need not give availability disclosures to a customer that holds a dormant or inactive account.

§ 229.16 Specific availability policy disclosure.

(a) *General.* To meet the requirements of a specific availability policy disclosure under §§ 229.17 and 229.18(d), a bank shall provide a disclosure describing the bank's policy as to when funds deposited in an account are available for withdrawal. The disclosure must reflect the policy followed by the bank in most cases. A bank may impose longer

delays on a case-by-case basis or by invoking one of the exceptions in § 229.13, provided this is reflected in the disclosure.

(b) *Content of specific availability policy disclosure.* The specific availability policy disclosure shall contain the following, as applicable—

(1) A summary of the bank's availability policy;

(2) A description of any categories of deposits or checks used by the bank when it delays availability (such as local or nonlocal checks); how to determine the category to which a particular deposit or check belongs; and when each category will be available for withdrawal (including a description of the bank's business days and when a deposit is considered received);[1]

(3) A description of any of the exceptions in § 229.13 that may be invoked by the bank, including the time following a deposit that funds generally will be available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions;

(4) A description, as specified in paragraph (c)(1) of this section, of any case-by-case policy of delaying availability that may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy; and

(5) A description of how the customer can differentiate between a proprietary and a nonproprietary ATM, if the bank makes funds from deposits at nonproprietary ATMs available for withdrawal later than funds from deposits at proprietary ATMs.

(c) *Longer delays on a case-by-case basis*—(1) *Notice in specific policy disclosure.* A bank that has a policy of making deposited funds available for withdrawal sooner than required by this subpart may extend the time when funds are available up to the time periods allowed under this subpart on a case-by-case basis, provided the bank includes the following in its specific policy disclosure—

(i) A statement that the time when deposited funds are available for withdrawal may be extended in some cases, and the latest time following a deposit that funds will be available for withdrawal;

(ii) A statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until later than the time periods stated in the bank's availability policy; and

(iii) A statement that customers should ask if they need to be sure about when a particular deposit will be available for withdrawal.

(2) *Notice at time of case-by-case delay*—(i) *In general.* When a depositary bank extends the time when funds will be available for withdrawal on a case-by-case basis, it must provide the depositor with a written notice. The notice shall include the following information—

(A) A number or code, which need not exceed four digits, that identifies the customer's account.

(B) The date of the deposit;

(C) The amount of the deposit that is being delayed; and

(D) The day the funds will be available for withdrawal.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not made in person to an employee of the depositary bank or the decision to extend the time when the deposited funds will be available is made after the time of the deposit. If notice is not given at the time of the deposit, the depositary bank shall mail or deliver the notice to the customer not later than

[1] A bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose that certain checks, such as some credit union share drafts that are payable by one bank but payable through another bank, will be treated as local or nonlocal checks based upon the location of the bank by which they are payable and not on the basis of the location of the bank whose routing number appears on the check. A bank that makes funds from nonlocal checks available for withdrawal within the time periods required for local checks under §§ 229.12 and 229.13 is not required to provide this disclosure on payable-through checks to its customers. The statement concerning payable-through checks must describe how the customer can determine whether these checks will be treated as local or nonlocal, or state that special rules apply to such checks and that the customer may ask about the availability of these checks.

the first business day following the banking day the deposit is made.

(3) Overdraft and returned check fees. A depositary bank that extends the time when funds will be available for withdrawal on a case-by-case basis and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks or other debits to the account, if—

(i) The overdraft or return of the check or other debit would not have occurred except for the fact that the deposited funds were delayed under paragraph (c)(1) of this section; and

(ii) The deposited check was paid by the paying bank.

Notwithstanding the foregoing, the depositary bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice required in paragraph (c)(2) of this section and, when required, refunds any such fees upon the request of the customer. The notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the delay is paid and how to obtain a refund.

(d) *Credit union notice of interest payment policy.* If a bank described in §229.2(e)(4) begins to accrue interest or dividends on all deposits made in an interest-bearing account, including cash deposits, at a later time than the day specified in §229.14(a), the bank's specific policy disclosures shall contain an explanation of when interest or dividends on deposited funds begin to accrue.

[53 FR 19433, May 27, 1988, as amended at 53 FR 31292, Aug. 18, 1988; 53 FR 44324, Nov. 2, 1988; Reg. CC, 54 FR 13850, Apr. 6, 1989; 60 FR 51671, Oct. 3, 1995; Reg. CC, 62 FR 13810, Mar. 24, 1997; 69 FR 47311, Aug. 4, 2004]

§229.17 Initial disclosures.

Before opening a new account, a bank shall provide a potential customer with the applicable specific availability policy disclosure described in §229.16.

[Reg. CC, 60 FR 51671, Oct. 3, 1995]

§229.18 Additional disclosure requirements.

(a) *Deposit slips.* A bank shall include on all preprinted deposit slips furnished to its customers a notice that deposits may not be available for immediate withdrawal.

(b) *Locations where employees accept consumer deposits.* A bank shall post in a conspicuous place in each location where its employees receive deposits to consumer accounts a notice that sets forth the time periods applicable to the availability of funds deposited in a consumer account.

(c) *Automated teller machines.* (1) A depositary bank shall post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

(2) A depositary bank that operates an off-premises ATM from which deposits are removed not more than two times each week, as described in §229.19(a)(4), shall disclose at or on the ATM the days on which deposits made at the ATM will be considered received.

(d) *Upon request.* A bank shall provide to any person, upon oral or written request, a notice containing the applicable specific availability policy disclosure described in §229.16.

(e) *Changes in policy.* A bank shall send a notice to holders of consumer accounts at least 30 days before implementing a change to the bank's availability policy regarding such accounts, except that a change that expedites the availability of funds may be disclosed not later than 30 days after implementation.

§229.19 Miscellaneous.

(a) *When funds are considered deposited.* For the purposes of this subpart—

(1) Funds deposited at a staffed facility, ATM, or contractual branch are considered deposited when they are received at the staffed facility, ATM, or contractual branch;

(2) Funds mailed to the depositary bank are considered deposited on the day they are received by the depositary bank;

(3) Funds deposited to a night depository, lock box, or similar facility are considered deposited on the day on which the deposit is removed from such

facility and is available for processing by the depositary bank;

(4) Funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depositary bank are considered deposited on the day the funds are removed from the ATM, if funds normally are removed from the ATM not more than two times each week; and

(5) Funds may be considered deposited on the next banking day, in the case of funds that are deposited—

(i) On a day that is not a banking day for the depositary bank; or

(ii) After a cut-off hour set by the depositary bank for the receipt of deposits of 2:00 p.m. or later, or, for the receipt of deposits at ATMs, contractual branches, or off-premise facilities, of 12:00 noon or later. Different cut-off hours later than these times may be established for the receipt of different types of deposits, or receipt of deposits at different locations.

(b) *Availability at start of business day.* Except as otherwise provided in §229.12(d), if any provision of this subpart requires that funds be made available for withdrawal on any business day, the funds shall be available for withdrawal by the later of:

(1) 9:00 a.m. (local time of the depositary bank); or

(2) The time the depositary bank's teller facilities (including ATMs) are available for customer account withdrawals.

(c) *Effect on policies of depositary bank.* This part does not—

(1) Prohibit a depositary bank from making funds available to a customer for withdrawal in a shorter period of time than the time required by this subpart;

(2) Affect a depositary bank's right—

(i) To accept or reject a check for deposit;

(ii) To revoke any settlement made by the depositary bank with respect to a check accepted by the bank for deposit, to charge back the customer's account for the amount of a check based on the return of the check or receipt of a notice of nonpayment of the check, or to claim a refund of such credit; and

(iii) To charge back funds made available to its customer for an electronic payment for which the bank has not received payment in actually and finally collected funds;

(3) Require a depositary bank to open or otherwise to make its facilities available for customer transactions on a given business day; or

(4) Supersede any policy of a depositary bank that limits the amount of cash a customer may withdraw from its account on any one day, if that policy—

(i) Is not dependent on the time the funds have been deposited in the account, as long as the funds have been on deposit for the time period specified in §§229.10, 229.12, or 229.13; and

(ii) In the case of withdrawals made in person to an employee of the depositary bank—

(A) Is applied without discrimination to all customers of the bank; and

(B) Is related to security, operating, or bonding requirements of the depositary bank.

(d) *Use of calculated availability.* A depositary bank may provide availability to its nonconsumer accounts based on a sample of checks that represents the average composition of the customer's deposits, if the terms for availability based on the sample are equivalent to or more prompt than the availability requirements of this subpart.

(e) *Holds on other funds.* (1) A depositary bank that receives a check for deposit in an account may not place a hold on any funds of the customer at the bank, where—

(i) The amount of funds that are held exceeds the amount of the check; or

(ii) The funds are not made available for withdrawal within the times specified in §§229.10, 229.12, and 229.13.

(2) A depositary bank that cashes a check for a customer over the counter, other than a check drawn on the depositary bank, may not place a hold on funds in an account of the customer at the bank, if—

(i) The amount of funds that are held exceeds the amount of the check; or

(ii) The funds are not made available for withdrawal within the times specified in §§229.10, 229.12, and 229.13.

(f) *Employee training and compliance.* Each bank shall establish procedures to ensure that the bank complies with the requirements of this subpart, and

shall provide each employee who performs duties subject to the requirements of this subpart with a statement of the procedures applicable to that employee.

(g) *Effect of merger transaction*—(1) *In general.* For purposes of this subpart, except for the purposes of the new accounts exception of §229.13(a), and when funds are considered deposited under §229.19(a), two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

(2) *Merger transactions on or after July 1, 1998, and before March 1, 2000.* If banks have consummated a merger transaction on or after July 1, 1998, and before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.

[Reg. CC, 53 FR 19433, May 27, 1988, as amended by 54 FR 13850, Apr. 6, 1989; 60 FR 51671, Oct. 3, 1995; 62 FR 13810, Mar. 24, 1997; 64 FR 14577, Mar. 26, 1999]

§229.20 Relation to state law.

(a) *In general.* Any provision of a law or regulation of any state in effect on or before September 1, 1989, that requires funds deposited in an account at a bank chartered by the state to be made available for withdrawal in a shorter time than the time provided in subpart B, and, in connection therewith, subpart A, shall—

(1) Supersede the provisions of the EFA Act and subpart B, and, in connection therewith, subpart A, to the extent the provisions relate to the time by which funds deposited or received for deposit in an account are available for withdrawal; and

(2) Apply to all federally insured banks located within the state.

No amendment to a state law or regulation governing the availability of funds that becomes effective after September 1, 1989, shall supersede the EFA Act and subpart B, and, in connection therewith, subpart A, but unamended provisions of state law shall remain in effect.

(b) *Preemption of inconsistent law.* Except as provided in paragraph (a), the EFA Act and subpart B, and, in connection therewith, subpart A, supersede any provision of inconsistent state law.

(c) *Standards for preemption.* A provision of a state law in effect on or before September 2, 1989, is not inconsistent with the EFA Act, or subpart B, or in connection therewith, subpart A, if it requires that funds shall be available in a shorter period of time than the time provided in this subpart. Inconsistency with the EFA Act and subpart B, and in connection therewith, subpart A, may exist when state law—

(1) Permits a depositary bank to make funds deposited in an account by cash, electronic payment, or check available for withdrawal in a longer period of time than the maximum period of time permitted under subpart B, and, in connection therewith, subpart A; or

(2) Provides for disclosures or notices concerning funds availability relating to accounts.

(d) *Preemption determinations.* The Board may determine, upon the request of any state, bank, or other interested party, whether the EFA Act and subpart B, and, in connection therewith, subpart A, preempt provisions of state laws relating to the availability of funds.

(e) *Procedures for preemption determinations.* A request for a preemption determination shall include the following—

(1) A copy of the full text of the state law in question, including any implementing regulations or judicial interpretations of that law; and

(2) A comparison of the provisions of state law with the corresponding provisions in the EFA Act and subparts A and B of this part, together with a discussion of the reasons why specific provisions of state law are either consistent or inconsistent with corresponding sections of the EFA Act and subparts A and B of this part.

A request for a preemption determination shall be addressed to the Secretary, Board of Governors of the Federal Reserve System.

[53 FR 19433, May 27, 1988, as amended at 69 FR 47311, Aug. 4, 2004]

§229.21 Civil liability.

(a) *Civil liability.* A bank that fails to comply with any requirement imposed

under subpart B, and in connection therewith, subpart A, of this part or any provision of state law that supersedes any provision of subpart B, and in connection therewith, subpart A, with respect to any person is liable to that person in an amount equal to the sum of—

(1) Any actual damage sustained by that person as a result of the failure;

(2) Such additional amount as the court may allow, except that—

(i) In the case of an individual action, liability under this paragraph shall not be less than $100 nor greater than $1,000; and

(ii) In the case of a class action—

(A) No minimum recovery shall be applicable to each member of the class; and

(B) The total recovery under this paragraph in any class action or series of class actions arising out of the same failure to comply by the same depositary bank shall not be more than the lesser of $500,000 or 1 percent of the net worth of the bank involved; and

(3) In the case of a successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) *Class action awards.* In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) The amount of any damages awarded;

(2) The frequency and persistence of failures of compliance;

(3) The resources of the bank;

(4) The number of persons adversely affected; and

(5) The extent to which the failure of compliance was intentional.

(c) *Bona fide errors*—(1) *General rule.* A bank is not liable in any action brought under this section for a violation of this subpart if the bank demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) *Examples.* Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to the bank's obligation under this subpart is not a bona fide error.

(d) *Jurisdiction.* Any action under this section may be brought in any United States district court or in any other court of competent jurisdiction, and shall be brought within one year after the date of the occurrence of the violation involved.

(e) *Reliance on Board rulings.* No provision of this subpart imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, regardless of whether such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after the act or omission has occurred.

(f) *Exclusions.* This section does not apply to claims that arise under subpart C of this part or to actions for wrongful dishonor.

(g) *Record retention.* (1) A bank shall retain evidence of compliance with the requirements imposed by this subpart for not less than two years. Records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information.

(2) If a bank has actual notice that it is being investigated, or is subject to an enforcement proceeding by an agency charged with monitoring that bank's compliance with the EFA Act and this subpart, or has been served with notice of an action filed under this section, it shall retain the records pertaining to the action or proceeding pending final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

[53 FR 19433, May 27, 1988, as amended at 69 FR 47311, Aug. 4, 2004]

Subpart C—Collection of Checks

§ 229.30 Paying bank's responsibility for return of checks.

(a) *Return of checks.* If a paying bank determines not to pay a check, it shall return the check in an expeditious manner as provided in either paragraph (a)(1) or (a)(2) of this section.

(1) *Two-day/four-day test.* A paying bank returns a check in an expeditious