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time that the bank provides that original check or sufficient copy to the indemnified person; and

(B) Have a right to the return of any funds it has paid under this section in excess of those losses.

(ii) The production by the indemnifying bank of the original check or a sufficient copy under paragraph (b)(3)(i) of this section shall not absolve the indemnifying bank from any liability under any warranty that the bank has provided under §229.52 or other applicable law.

(c) *Subrogation of rights*—(1) *In general.* An indemnifying bank shall be subrogated to the rights of the person that it indemnifies to the extent of the indemnity it has provided and may attempt to recover from another person based on a warranty or other claim.

(2) *Duty of indemnified person for subrogated claims.* Each indemnified person shall have a duty to comply with all reasonable requests for assistance from an indemnifying bank in connection with any claim the indemnifying bank brings against a warrantor or other person related to a check that forms the basis for the indemnification.

§229.54 Expedited recredit for consumers.

(a) *Circumstances giving rise to a claim.* A consumer may make a claim under this section for a recredit with respect to a substitute check if the consumer asserts in good faith that—

(1) The bank holding the consumer's account charged that account for a substitute check that was provided to the consumer (although the consumer need not be in possession of that substitute check at the time he or she submits a claim);

(2) The substitute check was not properly charged to the consumer account or the consumer has a warranty claim with respect to the substitute check;

(3) The consumer suffered a resulting loss; and

(4) Production of the original check or a sufficient copy is necessary to determine whether or not the substitute check in fact was improperly charged or whether the consumer's warranty claim is valid.

(b) *Procedures for making claims.* A consumer shall make his or her claim for a recredit under this section with the bank that holds the consumer's account in accordance with the timing, content, and form requirements of this section.

(1) *Timing of claim.* (i) The consumer shall submit his or her claim such that the bank receives the claim by the end of the 40th calendar day after the later of the calendar day on which the bank mailed or delivered, by a means agreed to by the consumer—

(A) The periodic account statement that contains information concerning the transaction giving rise to the claim; or

(B) The substitute check giving rise to the claim.

(ii) If the consumer cannot submit his or her claim by the time specified in paragraph (b)(1)(i) of this section because of extenuating circumstances, the bank shall extend the 40-calendar-day period by an additional reasonable amount of time.

(iii) If a consumer makes a claim orally and the bank requires the claim to be in writing, the consumer's claim is timely if the oral claim was received within the time described in paragraphs (b)(1)(i)–(ii) of this section and the written claim was received within the time described in paragraph (b)(3)(ii) of this section.

(2) *Content of claim.* (i) The consumer's claim shall include the following information:

(A) A description of the consumer's claim, including the reason why the consumer believes his or her account was improperly charged for the substitute check or the nature of his or her warranty claim with respect to such check;

(B) A statement that the consumer suffered a loss and an estimate of the amount of that loss;

(C) The reason why production of the original check or a sufficient copy is necessary to determine whether or not the charge to the consumer's account was proper or the consumer's warranty claim is valid; and

(D) Sufficient information to allow the bank to identify the substitute check and investigate the claim.

(ii) If a consumer attempts to make a claim but fails to provide all the information in paragraph (b)(2)(i) of this section that is required to constitute a claim, the bank shall inform the consumer that the claim is not complete and identify the information that is missing.

(3) *Form and submission of claim; computation of time for bank action.* The bank holding the account that is the subject of the consumer's claim may, in its discretion, require the consumer to submit the information required by this section in writing. A bank that requires a written submission—

(i) May permit the consumer to submit the written claim electronically;

(ii) Shall inform a consumer who submits a claim orally of the written claim requirement at the time of the oral claim and may require such consumer to submit the written claim such that the bank receives the written claim by the 10th business day after the banking day on which the bank received the oral claim; and

(iii) Shall compute the time periods for acting on the consumer's claim described in paragraph (c) of this section from the date on which the bank received the written claim.

(c) *Action on claims.* A bank that receives a claim that meets the requirements of paragraph (b) of this section shall act as follows:

(1) *Valid consumer claim.* If the bank determines that the consumer's claim is valid, the bank shall—

(i) Recredit the consumer's account for the amount of the consumer's loss, up to the amount of the substitute check, plus interest if the account is an interest-bearing account, no later than the end of the business day after the banking day on which the bank makes that determination; and

(ii) Send to the consumer the notice required by paragraph (e)(1) of this section.

(2) *Invalid consumer claim.* If a bank determines that the consumer's claim is not valid, the bank shall send to the consumer the notice described in paragraph (e)(2) of this section.

(3) *Recredit pending investigation.* If the bank has not taken an action described in paragraph (c)(1) or (c)(2) of this section before the end of the 10th business day after the banking day on which the bank received the claim, the bank shall—

(i) By the end of that business day—

(A) Recredit the consumer's account for the amount of the consumer's loss, up to the lesser of the amount of the substitute check or $2,500, plus interest on that amount if the account is an interest-bearing account; and

(B) Send to the consumer the notice required by paragraph (e)(1) of this section; and

(ii) Recredit the consumer's account for the remaining amount of the consumer's loss, if any, up to the amount of the substitute check, plus interest if the account is an interest-bearing account, no later than the end of the 45th calendar day after the banking day on which the bank received the claim and send to the consumer the notice required by paragraph (e)(1) of this section, unless the bank prior to that time has determined that the consumer's claim is or is not valid in accordance with paragraph (c)(1) or (c)(2) of this section.

(4) *Reversal of recredit.* A bank may reverse a recredit that it has made to a consumer account under paragraph (c)(1) or (c)(3) of this section, plus interest that the bank has paid, if any, on that amount, if the bank—

(i) Determines that the consumer's claim was not valid; and

(ii) Notifies the consumer in accordance with paragraph (e)(3) of this section.

(d) *Availability of recredit*—(1) *Next-day availability.* Except as provided in paragraph (d)(2) of this section, a bank shall make any amount that it recredits to a consumer account under this section available for withdrawal no later than the start of the business day after the banking day on which the bank provides the recredit.

(2) *Safeguard exceptions.* A bank may delay availability to a consumer of a recredit provided under paragraph (c)(3)(i) of this section until the start of the earlier of the business day after the banking day on which the bank determines the consumer's claim is valid or the 45th calendar day after the banking day on which the bank received the oral or written claim, as required by paragraph (b) of this section, if—

(i) The consumer submits the claim during the 30-calendar-day period beginning on the banking day on which the consumer account was established;

(ii) Without regard to the charge that gave rise to the recredit claim—

(A) On six or more business days during the six-month period ending on the calendar day on which the consumer submitted the claim, the balance in the consumer account was negative or would have become negative if checks or other charges to the account had been paid; or

(B) On two or more business days during such six-month period, the balance in the consumer account was negative or would have become negative in the amount of $5,000 or more if checks or other charges to the account had been paid; or

(iii) The bank has reasonable cause to believe that the claim is fraudulent, based on facts that would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent. The fact that the check in question or the consumer is of a particular class may not be the basis for invoking this exception.

(3) *Overdraft fees.* A bank that delays availability as permitted in paragraph (d)(2) of this section may not impose an overdraft fee with respect to drafts drawn by the consumer on such recredited funds until the fifth calendar day after the calendar day on which the bank sent the notice required by paragraph (e)(1) of this section.

(e) *Notices relating to consumer expedited recredit claims*—(1) *Notice of recredit.* A bank that recredits a consumer account under paragraph (c) of this section shall send notice to the consumer of the recredit no later than the business day after the banking day on which the bank recredits the consumer account. This notice shall describe—

(i) The amount of the recredit; and

(ii) The date on which the recredited funds will be available for withdrawal.

(2) *Notice that the consumer's claim is not valid.* If a bank determines that a substitute check for which a consumer made a claim under this section was in fact properly charged to the consumer account or that the consumer's warranty claim for that substitute check was not valid, the bank shall send notice to the consumer no later than the business day after the banking day on which the bank makes that determination. This notice shall—

(i) Include the original check or a sufficient copy, except as provided in § 229.58;

(ii) Demonstrate to the consumer that the substitute check was properly charged or the consumer's warranty claim is not valid; and

(iii) Include the information or documents (in addition to the original check or sufficient copy), if any, on which the bank relied in making its determination or a statement that the consumer may request copies of such information or documents.

(3) *Notice of a reversal of recredit.* A bank that reverses an amount it previously recredited to a consumer account shall send notice to the consumer no later than the business day after the banking day on which the bank made the reversal. This notice shall include the information listed in paragraph (e)(2) of this section and also describe—

(i) The amount of the reversal, including both the amount of the recredit (including the interest component, if any) and the amount of interest paid on the recredited amount, if any, being reversed; and

(ii) The date on which the bank made the reversal.

(f) *Other claims not affected.* Providing a recredit in accordance with this section shall not absolve the bank from liability for a claim made under any other provision of law, such as a claim for wrongful dishonor of a check under the U.C.C., or from liability for additional damages, such as damages under § 229.53 or § 229.56 of this subpart or U.C.C. 4–402.

§ 229.55 Expedited recredit for banks.

(a) *Circumstances giving rise to a claim.* A bank that has an indemnity claim under § 229.53 with respect to a substitute check may make an expedited recredit claim against an indemnifying bank if—

(1) The claimant bank or a bank that the claimant bank has indemnified—