

TO AMEND THE EXPEDITED FUNDS AVAILABILITY ACT TO CLARIFY THE
APPLICATION OF THAT ACT TO AMERICAN SAMOA AND THE NORTHERN
MARIANA ISLANDS

APRIL 13, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 1367]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1367) to amend the Expedited Funds Availability Act to clarify the application of that Act to American Samoa and the Northern Mariana Islands, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1367, “to amend the Expedited Funds Availability Act to clarify the application of that Act to American Samoa and the Northern Mariana Islands,” clarifies that the definitions of “State” and “United States” under the Expedited Funds Availability Act include American Samoa and the Northern Mariana Islands. In addition, the bill clarifies that the time periods within which banks must clear checks and make funds available to their customers that currently apply to Hawaii, Alaska, Puerto Rico and the Virgin Islands shall also apply to banks located in American Samoa and the Northern Mariana Islands.

BACKGROUND AND NEED FOR LEGISLATION

In 1987, Congress passed the Expedited Funds Availability Act (EFAA) (Title VI of P.L. 100-86), which addressed the check-hold policies of depository institutions for various types of transaction accounts. EFAA was meant to ensure timely access to deposited funds and requires institutions to disclose to customers their funds availability policies. The EFAA also normalized holding and clearing times on all deposits. However, when the Act was passed,

American Samoa and the Northern Mariana Islands were inadvertently excluded. This legislation is simply a technical correction to the Act.

American Samoa Delegate Aumua Amata Coleman Radewagen submitted a statement for the record for the Financial Services Committee's March 25, 2015 hearing that said, "As you know, the isolation of American Samoa, both geographically and economically, lends itself to difficulties in financial transactions that take place between American Samoa and those off island. Many times, our citizens must wait an exorbitant amount of time before they can receive off-island funds that have been sent to them. These delays often cause hardships that are both unnecessary and unfounded. H.R. 1367 will eliminate the excessive delays that the people of American Samoa must currently deal with in order to receive funds sent to them from off-island."

HEARINGS

The Committee on Financial Services held no hearings on H.R. 1367 in the 114th Congress.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 25, 2015 and March 26, 2015, and ordered H.R. 1367 to be reported favorably to the House without amendment by a recorded vote of 58 yeas to 0 nays (Record vote no. FC-19), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House with/without amendment. The motion was agreed to by a recorded vote of 58 yeas to 0 nays (Record vote no. FC-19), a quorum being present.

Record vote no. FC-19

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)	X		
Mr. King (NY)	X			Mrs. Maloney (NY)	X		
Mr. Royce	X			Ms. Velázquez	X		
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks	X		
Mr. Neugebauer	X			Mr. Capuano	X		
Mr. McHenry	X			Mr. Hinojosa			
Mr. Pearce	X			Mr. Clay	X		
Mr. Posey	X			Mr. Lynch	X		
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland				Mr. Al Green (TX)	X		
Mr. Luetkemeyer	X			Mr. Cleaver	X		
Mr. Huizenga (MI)	X			Ms. Moore	X		
Mr. Duffy	X			Mr. Ellison	X		
Mr. Hurt (VA)	X			Mr. Perlmutter	X		
Mr. Stivers	X			Mr. Himes	X		
Mr. Fincher	X			Mr. Carney	X		
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney	X			Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee	X		
Mr. Ross	X			Mr. Murphy (FL)	X		
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty	X		
Mr. Rothfus	X			Mr. Heck (WA)	X		
Mr. Messer	X			Mr. Vargas	X		
Mr. Schweikert	X						
Mr. Dold	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 1367 will ensure timely access to deposited funds for persons in American Samoa and the Northern Mariana Islands.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 13, 2015.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1367, a bill to amend the Expedited Funds Availability Act to clarify the application of that Act to American Samoa and the Northern Mariana Islands.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Nathaniel Frentz.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1367—A bill to amend the Expedited Funds Availability Act to clarify the application of that Act to American Samoa and the Northern Mariana Islands

H.R. 1367 would amend the Expedited Funds Availability Act to include American Samoa and the Commonwealth of the Northern Mariana Islands. Specifically, accounts at and checks drawn on commercial banks in those territories would be subject to banking regulations that limit hold periods and the use of holds.

The Board of Governors of the Federal Reserve System would be responsible for amending the relevant banking regulation. Any associated costs would reduce remittances from the Federal Reserve System to the Treasury, thereby reducing revenues; as a result, pay-as-you-go procedures apply. However, CBO estimates that any such effects would not be significant over the 2015–2025 period or in any year. Enacting the bill would not affect direct spending.

H.R. 1367 would impose a private-sector mandate, as defined in the Unfunded Mandates Reform Act (UMRA), by requiring accounts at and checks drawn on commercial banks in the two territories to meet banking regulation standards that would require those banks to process such accounts and checks sooner than is their current business practice. The cost of the mandate would be the administrative expenditures and the net income forgone from lost interest as a result of expediting their banking processes. Based on the small number of banks that would be affected, CBO estimates that the direct cost of the mandate would be small and would fall well below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2015, adjusted annually for inflation).

H.R. 1367 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contact for this estimate is Nathaniel Frentz. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1367 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 1367 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 1367 does not require any directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Application of the Expedited Funds Availability Act

This section expands the definitions of “State” and “United States” under the EFAA to include American Samoa and the Commonwealth of the Northern Mariana Islands. The section also sets expedited funds availability schedules for receiving depository institutions located in American Samoa and the Commonwealth of the Northern Mariana Islands on par with those located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. In addition, this section sets January 1, 2016, as the effective date of the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

EXPEDITED FUNDS AVAILABILITY ACT

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**TITLE VI—EXPEDITED FUNDS
AVAILABILITY**

* * * * *

SEC. 602. DEFINITIONS.

For purposes of this title—

- (1) ACCOUNT.—The term “account” means a demand deposit account or other similar transaction account at a depository institution.
- (2) BOARD.—The term “Board” means the Board of Governors of the Federal Reserve System.
- (3) BUSINESS DAY.—The term “business day” means any day other than a Saturday, Sunday, or legal holiday.
- (4) CASH.—The term “cash” means United States coins and currency, including Federal Reserve notes.

(5) CASHIER'S CHECK.—The term “cashier’s check” means any check which—

(A) is drawn on a depository institution;

(B) is signed by an officer or employee of such depository institution; and

(C) is a direct obligation of such depository institution.

(6) CERTIFIED CHECK.—The term “certified check” means any check with respect to which a depository institution certifies that—

(A) the signature on the check is genuine; and

(B) such depository institution has set aside funds which—

(i) are equal to the amount of the check; and

(ii) will be used only to pay such check.

(7) CHECK.—The term “check” means any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States. Such term does not include noncash items.

(8) CHECK CLEARINGHOUSE ASSOCIATION.—The term “check clearinghouse association” means any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System.

(9) CHECK PROCESSING REGION.—The term “check processing region” means the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.

(10) CONSUMER ACCOUNT.—The term “consumer account” means any account used primarily for personal, family, or household purposes.

(11) DEPOSITORY CHECK.—The term “depository check” means any cashier’s check, certified check, teller’s check, and any other functionally equivalent instrument as determined by the Board.

(12) DEPOSITORY INSTITUTION.—The term “depository institution” has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act. Such term also includes an office, branch, or agency of a foreign bank located in the United States.

(13) LOCAL ORIGINATING DEPOSITORY INSTITUTION.—The term “local originating depository institution” means any originating depository institution which is located in the same check processing region as the receiving depository institution.

(14) NONCASH ITEM.—The term “noncash item” means—

(A) a check or other demand item to which a passbook, certificate, or other document is attached;

(B) a check or other demand item which is accompanied by special instructions, such as a request for special advise of payment or dishonor; or

(C) any similar item which is otherwise classified as a noncash item in regulations of the Board.

(15) NONLOCAL ORIGINATING DEPOSITORY INSTITUTION.—The term “nonlocal originating depository institution” means any

originating depository institution which is not a local depository institution.

(16) PROPRIETARY ATM.—The term “proprietary ATM” means an automated teller machine which is—

(A) located—

(i) at or adjacent to a branch of the receiving depository institution; or

(ii) in close proximity, as defined by the Board, to a branch of the receiving depository institution; or

(B) owned by, operated exclusively for, or operated by the receiving depository institution.

(17) ORIGINATING DEPOSITORY INSTITUTION.—The term “originating depository institution” means the branch of a depository institution on which a check is drawn.

(18) NONPROPRIETARY ATM.—The term “nonproprietary ATM” means an automated teller machine which is not a proprietary ATM.

(19) PARTICIPANT.—The term “participant” means a depository institution which—

(A) is located in the same geographic area as that served by a check clearinghouse association; and

(B) exchanges checks through the check clearinghouse association, either directly or through an intermediary.

(20) RECEIVING DEPOSITORY INSTITUTION.—The term “receiving depository institution” means the branch of a depository institution or the proprietary ATM, *located in the United States*, in which a check is first deposited.

(21) STATE.—The term “State” means any State, the District of Columbia, the Commonwealth of Puerto Rico, *American Samoa, the Commonwealth of the Northern Mariana Islands*, or the Virgin Islands.

(22) TELLER’S CHECK.—The term “teller’s check” means any check issued by a depository institution and drawn on another depository institution.

(23) UNITED STATES.—The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, *American Samoa, the Commonwealth of the Northern Mariana Islands*, and the Virgin Islands.

(24) UNIT OF GENERAL LOCAL GOVERNMENT.—The term “unit of general local government” means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

(25) WIRE TRANSFER.—The term “wire transfer” has such meaning as the Board shall prescribe by regulations.

SEC. 603. EXPEDITED FUNDS AVAILABILITY SCHEDULES.

(a) NEXT BUSINESS DAY AVAILABILITY FOR CERTAIN DEPOSITS.—

(1) CASH DEPOSITS; WIRE TRANSFERS.—Except as provided in subsection (e) and in section 604, in any case in which—

(A) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

(B) funds are received by a depository institution by wire transfer for deposit in an account at such institution,

such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(2) GOVERNMENT CHECKS; CERTAIN OTHER CHECKS.—Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

- (i) is drawn on the Treasury of the United States; and
- (ii) is endorsed only by the person to whom it was issued.

(B) a check which—

- (i) is drawn by a State;
- (ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;
- (iii) is deposited with a special deposit slip which indicates it is a check drawn by a State; and
- (iv) is endorsed only by the person to whom it was issued;

(C) a check which—

- (i) is drawn by a unit of general local government;
- (ii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;
- (iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and
- (iv) is endorsed only by the person to whom it was issued;

(D) the first \$200 deposited by check or checks on any one business day;

(E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;

(F) a cashier's check, certified check, teller's check, or depository check which—

- (i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;
- (ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and
- (iii) is endorsed only by the person to whom it was issued.

(b) PERMANENT SCHEDULE.—

(1) AVAILABILITY OF FUNDS DEPOSITED BY LOCAL CHECKS.—Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository insti-

tution by a check drawn on a local originating depository institution and the business day on which the funds involved are available for withdrawal.

(2) AVAILABILITY OF FUNDS DEPOSITED BY NONLOCAL CHECKS.—Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) TIME PERIOD ADJUSTMENTS FOR CASH WITHDRAWAL OF CERTAIN CHECKS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

(B) 5 P.M. CASH AVAILABILITY.—Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

(C) \$200 AVAILABILITY.—Any amount available for withdrawal under this paragraph shall be in addition to the amount available under subsection (a)(2)(D).

(4) APPLICABILITY.—This subsection shall apply with respect to funds deposited by check in an account at a depository institution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

(c) TEMPORARY SCHEDULE.—

(1) AVAILABILITY OF LOCAL CHECKS.—

(A) IN GENERAL.—Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(B) TIME PERIOD ADJUSTMENT FOR CASH WITHDRAWAL OF CERTAIN CHECKS.—

(i) IN GENERAL.—Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on a local depository institution

that is not a participant in the same check clearing-house association as the receiving depository institution (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subparagraph (A).

(ii) 5 P.M. CASH AVAILABILITY.—Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

(iii) \$200 AVAILABILITY.—Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D).

(2) AVAILABILITY OF NONLOCAL CHECKS.—Subject to subsections (a)(2), (d), and (e) of this section and section 604, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) APPLICABILITY.—This subsection shall apply with respect to funds deposited by check in an account at a depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4).

(d) TIME PERIOD ADJUSTMENTS.—

(1) REDUCTION GENERALLY.—Notwithstanding any other provision of law, the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

(2) EXTENSION FOR CERTAIN DEPOSITS IN NONCONTIGUOUS STATES OR TERRITORIES.—Notwithstanding any other provision of law, any time period established under subsection (b), (c), or (e) shall be extended by 1 business day in the case of any deposit which is both—

(A) deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, *American Samoa, the Commonwealth of the Northern Mariana Islands*, or the Virgin Islands; and

(B) deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

(e) DEPOSITS AT AN ATM.—

(1) NONPROPRIETARY ATM.—

(A) IN GENERAL.—Not more than 4 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) DEPOSITS DESCRIBED IN THIS PARAGRAPH.—A deposit is described in this subparagraph if it is—

- (i) a cash deposit;
- (ii) a deposit made by a check described in subsection (a)(2);
- (iii) a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2)); or
- (iv) a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2)).

(2) PROPRIETARY ATM—TEMPORARY AND PERMANENT SCHEDULES.—The provisions of subsections (a), (b), and (c) shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(3) STUDY AND REPORT ON ATM'S.—The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware available for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after the date of the enactment of this title, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

(f) CHECK RETURN; NOTICE OF NONPAYMENT.—No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

- (1) such checks be physically returned to such depository institution; or
- (2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) or in the regulations issued under any such subsection.

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