Part II

Federal Reserve System

12 CFR Part 229
Availability of Funds and Collection of Checks; Proposed Rule
FEDERAL RESERVE SYSTEM

12 CFR Part 229
[Regulation CC; Docket No. R–1409]
RIN No. 7100–AD68

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule, request for comment.

SUMMARY: The Board of Governors (Board) is proposing amendments to facilitate the banking industry’s ongoing transition to fully-electronic interbank check collection and return, including proposed amendments to condition a depositary bank’s right of expeditious return on the depositary bank agreeing to accept returned checks electronically either directly or indirectly from the paying bank. The Board also is proposing amendments to the funds availability schedule provisions to reflect the fact that there are no longer any nonlocal checks. The Board proposes to revise the model forms that banks may use in disclosing their funds-availability policies to their customers and to update the preemption determinations. Finally, the Board is requesting comment on whether it should consider future changes to the regulation to improve the check collection system, such as decreasing the time afforded to a paying bank to decide whether to pay a check in order to reduce the risk to a depositary bank of having to make funds available for withdrawal before learning whether a deposited check has been returned unpaid.

DATES: Comments on the proposed rule must be received not later than June 3, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1409 and RIN No. 7100–AD68, by any of the following methods:

• Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm. For the expedited availability of funds, request a written notification of availability of funds electronically or in paper to the relevant Federal Reserve Bank by June 3, 2011.

• Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

• E-mail: reg.comments@federalreserve.gov. Include docket number in the subject line of the message.

• FAX: 202/452–3819 or 202/452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board’s Web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board’s Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Dena L. Milligan, Attorney, (202/452–3900), Legal Division; or Joseph P. Baressi, Financial Services Project Leader (202/452–3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

Regulation CC (12 CFR part 229) implements the Expedited Funds Availability Act (EFA Act) and the Check Clearing for the 21st Century Act (Check 21 Act).1 The Board implemented the EFA Act in subparts A, B, and C of Regulation CC. The EFA Act was enacted to provide depositors of checks with prompt funds availability and to foster improvements in the check collection and return processes. Subpart A of Regulation CC contains general information, such as definitions of terms. Subpart B of Regulation CC specifies availability schedules within which banks must make funds available for withdrawal. Subpart B also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest. These provisions implement specific requirements set forth in the EFA Act. The provisions of subpart C were adopted by the Board pursuant to the authority granted to it in §§ 609(b) and (c) of the EFA Act.2 Section 609(b) directs the Board to consider requiring that depository institutions and Federal Reserve Banks take certain steps to improve the check-processing system, such as taking steps necessary to automate the check-return process. The Board shall consider (among other proposals) requiring, by


2. 12 U.S.C. 4008(b) and (c).

3. Section 609(b)(4) states that “[i]n order to improve the check-processing system, the Board shall consider (among other proposals) requiring, by Board authority to regulate any aspect of the payment system and any related function of the payment system with respect to checks.” Subpart C includes rules to speed the collection and return of checks, such as rules covering the expedient return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns, check indorsement standards, and same-day settlement of checks presented to the paying bank.

4. Subpart C’s provisions assume that banks generally handle checks in paper form. Since the provisions were adopted in 1988, however, banks have largely migrated to an electronic interbank check collection and return system. This migration was facilitated by the Check 21 Act, which became effective in October 2004 and is implemented in subparts A and D of Regulation CC. The Check 21 Act permits banks to use a properly prepared substitute check in place of the original check, which enables banks to take the original check out of the collection and return process and to handle check images for much of the check collection and return process without having to retain the original check. The Check 21 Act has been a catalyst for rapid growth in banks’ electronic handling of checks over the last 5 years. For example, at year-end 2005, the Reserve Banks received about 4 percent of checks deposited with them for collection in electronic form and presented approximately 28 percent of their checks in electronic form.7 In December 2010, the Reserve Banks received about 99.7 percent of checks deposited for forward check presentment electronically, and presented about 98.4 percent of checks electronically. In addition, at the end of 2005 virtually all returned checks handled by the Reserve Banks were sent to and from the Reserve Banks in paper form. By December 2010, the Reserve Banks received 97.1 percent of returned checks
electronically, and delivered about 76.7 percent of returned checks to depositary banks electronically. Based on information from banking industry sources, the Board believes that these trends with respect to checks handled by the Reserve Banks are representative of trends nationwide.

Overview of the Proposal

I. Amendments To Encourage Electronic Check Clearing and Check Return

As a general matter, the Board believes that electronic check-clearing and check-return methods improve the efficiency of the check system. Electronic methods are faster and more resilient, and, at the same time, they are less costly and less error prone. Despite the increasing number of checks presented and returned electronically, some banks continue to demand paper returned checks or present paper checks for same-day settlement under § 229.30(f) of Regulation CC. The full benefits and cost savings of the electronic methods, however, cannot be realized so long as some banks continue to employ paper-processing methods. Accordingly, under its authority provided in § 609(c) of the EFA Act, the Board is proposing amendments to subpart C of Regulation CC to provide incentives for depositary banks to receive, and paying banks to send, returned checks electronically. The Board also is proposing amendments to the same-day settlement provisions to promote electronic presentment of checks. Further, based on experience since the Check 21 Act became effective, the Board is proposing minor amendments to subpart D of Regulation CC with respect to substitute checks.

A. Expeditious-Return Rule

1. Current Rule

Regulation CC currently provides that if a paying bank determines not to pay a check, it must return the check in an expeditious manner, as provided under either the “two-day/four-day test” (§ 229.30(a)(1)), or the “forward-collection test” (§ 229.30(a)(2)). To meet the two-day/four-day test, a paying bank must send a returned local check in a manner such that the check would normally be received by the depositary bank not later than 4 p.m. local time of the depositary bank on the second business day following the banking day on which the check was presented to the paying bank. For nonlocal checks, a paying bank must send a returned check in a manner such that the check would normally be received by the depositary bank not later than 4 p.m. local time of the depositary bank on the fourth business day following the banking day on which the check was presented to the paying bank.

The forward-collection test is satisfied if a paying bank sends the returned check in a manner that a similarly situated bank would send a check (i) of similar amount as the returned check, (ii) drawn on the depositary bank, and (iii) deposited for forward collection in the similarly situated bank by noon on the banking day following the banking day on which the check was presented to the paying bank. When these tests were adopted in the late 1980s, the expeditious-return standard presumed that banks could use the same modes of transportation for returned checks that they used for forward-collection checks. Delivering returned checks in the same time and manner as forward checks would satisfy the regulation’s expeditious-return requirements. Today, by contrast, forward-check collection is almost entirely electronic, and the dedicated air and ground transportation for paper checks has largely been discontinued. Some depositary banks, however, continue to require that returned checks be delivered to them in paper form, making it difficult for paying banks and returning banks to meet the expeditious-return requirement. Accordingly, the full benefits and cost savings of electronic check-return methods cannot be realized if paying banks and returning banks must incur substantial expense to deliver returned checks to the banks that continue to require that paper checks be returned. Moreover, as technology has improved, the Board understands that the initial implementation and ongoing costs incurred by a depositary bank to receive returned items electronically have decreased substantially. For example, the Reserve Banks now provide electronic copies of returned checks in .pdf files to small depositary banks, which can use the .pdf file to print substitute checks on their own premises if necessary. Compared to alternative means of receiving electronic returns, this approach involves only minimal upfront costs to a depositary bank, such as the purchase of a printer capable of double-sided printing and magnetic-ink toner cartridges. After printing the electronic copies, the depositary bank can process them in the same way it processes paper checks that are physically delivered to it.

2. Proposed Expeditious Return Requirement

The Board believes that a fully-electronic check-return system benefits the nation’s payment system, as well as consumers and businesses. Additionally, the Board believes that electronic check return substantially reduces risks to the check system and that the costs to a bank to receive returned checks electronically have markedly declined. Therefore, the Board believes that it is appropriate for the risk of non-expeditious return to rest with a depositary bank that chooses not to accept electronic returns. Accordingly, to encourage depositary banks to agree to receive returned checks electronically, and to avoid imposing increased cost on paying banks to return checks expeditiously to depositary banks that do not accept electronic returns, the Board proposes to amend Regulation CC to provide that a depositary bank would not be entitled to expedient return unless it agrees to receive electronic returns directly or indirectly from the paying bank returning the check.
“electronic return,” and to establish requirements for an item to qualify as an electronic return.15 Under the proposal, an electronic return would be treated as if it were a check for purposes of subpart C of the regulation (See § 229.33 in the section-by-section analysis).16

Sections 229.30(a) and 229.31(a), respectively, would continue to set forth the general expeditious return rule for paying banks and returning banks. Proposed §§ 229.30(b) and 229.31(b) would set forth the exceptions to the expeditious return requirements, one of which would be a new exception: There is no expeditious return requirement if the depositary bank has not agreed to accept the returned check electronically as described in proposed § 229.32(a). Under proposed § 229.32(a), a depositary bank may agree to receive an “electronic return” from the paying bank so as to be entitled to expeditious return: (1) Directly from the paying bank; (2) directly from a returning bank that holds itself out as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to return checks expeditiously under § 229.31(a); or (3) as otherwise agreed with the paying bank, such as through a network provided by a clearing house or other third party.

The Board proposes to delete the forward-collection test for expeditious return from §§ 229.30(a) and 229.31(a). This test was originally included because paying banks and returning banks were in some cases (such as that of a remote depositary bank) not able to meet the two-day/four-day test, and the forward-collection test provided that in these cases paying banks and returning banks nonetheless satisfied the expeditious return requirement so long as the returned check was delivered to the depositary bank in the same time and manner that a forward-collection check would be delivered to the bank (in its role as paying bank). Given that under the Board’s proposal, however, a paying bank or returning bank must satisfy the expeditious return requirement only if the depositary bank agrees to receive electronic returns, a paying bank or returning bank should always be able to satisfy the two-day test with respect to a depositary bank to which the test applies. Specifically, geographic remoteness of a depositary bank from the paying bank should not preclude an electronic return from reaching the depositary bank within two business days of a check’s presentment to the paying bank. Accordingly, the Board believes that the forward-collection test is not necessary in light of the Board’s proposal.

Additionally, because there are no longer nonlocal checks (see the discussion below in section III), the four-day test for expeditious return of a nonlocal check no longer applies to any checks, and the Board proposes to eliminate that test as well. Under the Board’s proposed rule, the two-day test for expeditious return will be the only test in §§ 229.30(a) and 229.31(a). Therefore, a paying bank or returning bank would have to send the returned check expeditiously such that the depositary bank would normally receive the check no later than 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank.

3. Alternate Approaches Considered

The Board requests comment on alternate approaches to revising the expeditious return rule to encourage electronic returns. One possible alternate approach would require a bank that holds itself out as a returning bank to accept an electronic return from any other bank that similarly holds itself out as a returning bank. This approach would ensure that even if the paying bank and depositary bank had electronic return agreements with different returning banks, the electronic return could reach the depositary bank. This approach, however, may be costly for returning banks to implement, because they would have to establish electronic return connections and agreements with every other returning bank. A second alternative would require an electronic return to be delivered through the forward-collection chain (essentially reverting to the pre-Regulation CC rule). Some depositary banks, however, have arrangements under which returned checks are delivered to a different location than that from which the depositary bank sends its checks for forward collection.17 The second alternative might impose barriers to these arrangements. Both of these alternatives therefore appeared to be more operationally complex and costly than the proposed approach.

Nonetheless, the Board requests comment on the desirability of these and other alternatives to the Board’s proposal.

B. Notice of Nonpayment Requirement

Under current § 229.33(a), if a paying bank determines not to pay a check in the amount of $2,500 or more, it must provide notice of nonpayment such that the notice is received by the depositary bank by 4 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. Return of the check itself satisfies the notice of nonpayment requirement if the return meets the timeframe requirement for a notice of nonpayment. The current two-day timeframe for notice of nonpayment is the same as the two-day timeframe for expeditious return set forth in proposed §§ 229.30(a) and 229.31(a). Accordingly, because a depositary bank should receive the returned check within the current notice-of-nonpayment timeframe, the Board proposes to delete the notice of nonpayment provision as unnecessary.

Under the Board’s proposal, a depositary bank that does not agree to receive electronic returns from the paying bank, as specified in § 229.32(a), will not receive expeditious return or a notice of nonpayment. The Board, however, believes that the proposed changes give depositary banks a strong incentive to make arrangements to receive returns electronically. The Board requests comment on whether the notice-of-nonpayment requirement should be retained for banks that do not agree to accept electronic returns in a nearly all-electronic environment.

C. Same-Day Settlement Rule

Section 229.36(f) requires a paying bank to provide same-day settlement for checks presented in accordance with reasonable delivery requirements established by the paying bank and presented at a location designated by the paying bank and by 8 a.m. (local time of the paying bank) on a business day. Prior to the Regulation CC same-day settlement rule, which became effective in 1994, private-sector collecting banks sometimes (1) did not obtain settlement from the paying bank until the day after presentment or (2) were charged “presentment fees” by the paying bank, which the paying bank would deduct from the amount it paid in settlement of the checks presented to it.18 By contrast, under §§ 13(1) and 16(13) of the Federal Reserve Act and § 210.9(b)(1) of Regulation J (12 CFR

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10 For example, a depositary bank may collect checks through a correspondent bank or processor, but have returned checks delivered directly to the depositary bank itself. Conversely, a depositary bank may arrange with another bank to apply the other bank’s indorsement as the depositary-bank indorsement, such that depositary bank’s returned checks are handled by the other bank. See § 229.35(d).

18 See proposed § 229.42(v) (definition of “electronic return”) in the section-by-section analysis.

16 See proposed § 229.34 in the section-by-section analysis for warranties made with respect to electronic returns.
part 210), the Reserve Banks obtain same-day settlement at par for checks presented to a paying bank before its cut-off hour, which is generally 2:00 p.m. or later. To reduce the competitive disparity between the Reserve Banks and other collecting banks, and to more equitably balance the bargaining power between collecting and paying banks, the same-day settlement rule (1) required a paying bank to provide same-day settlement to a private-sector collecting bank.

As noted above, the Check 21 Act facilitated substantial changes in the manner in which checks are collected in the United States. In December 2010, the Reserve Banks received about 99.7 percent of check-collection volume electronically, and presented about 98.4 percent of their volume electronically. Many paying banks that receive check presentments electronically have indicated that they prefer to receive all of their interbank check presentments electronically so that they can streamline their back-office operations and eliminate the costs associated with processing paper-check presentments. Some collecting banks, however, continue to present paper checks to these paying banks under the Regulation CC same-day settlement rule.

The Board is aware of industry practices in which an electronic image of a “check” is created, but a check never existed in paper (“electronically-created items”). For example, payees collect payment by means of electronically-created items (i.e., items that never existed in paper form) that resemble images of remotely created checks. Similarly, the drawer’s bank (the paying bank) might supply a smart-phone application through which the drawer is able to execute a “handwritten” signature on the phone’s screen, and through which the signature is attached to an electronic “check” that the drawer sends via the Internet to the payee, for the payee’s subsequent electronic deposit with its bank.

An electronically-created item is not derived from an original paper check, and therefore it cannot be used to create a substitute check that meets the requirements of the Check 21 Act and Regulation CC. As a practical matter, a bank (including perhaps the depositary bank) receiving an electronically-created item cannot distinguish the item from any other image of a check that it receives electronically. The bank, nonetheless, may transfer the image as if it were an electronic collection item or electronic return, or produce a paper item that is indistinguishable from a substitute check (although not a valid substitute check because the item never existed in paper). A bank that transfers an image as if it were an electronic collection item or electronic return may be liable under the proposed new warranties (see proposed § 229.34) related to electronic collection items and electronic returns, or may be liable for breach of the Check 21 Act’s warranty that a substitute check accurately represents all of the information from the original check as of the time the original check was truncated. In order to protect a bank that receives an electronically-created item from another bank from potential liability, the Board proposes that any bank transferring an electronically-created image and related information as either an electronic collection item or an electronic return would make any warranty the bank would make if the electronically-created item were in fact an electronic collection item or an electronic return (in other words, as if the item were derived from a paper check). As discussed in the section-by-section analysis of proposed § 229.34, the proposal would apply the same warranties to electronic collection items and electronic returns that would apply had those items been handled as paper checks (including remotely created checks) or substitute checks.

As a result of these proposed new warranties, a bank receiving a warranty claim related to an electronic collection item, electronic return, or a nonconforming substitute check could pass back its liability for the item to the bank from which it had received the electronically-created image and information. Although in some instances the first bank to make the warranty also may not know whether an image and information came from a paper instrument, the Board believes that that bank is in the best position to
know and to protect itself contractually against the risk that it did not.

As noted above, a bank often cannot distinguish between electronic items derived from paper checks and electronically-created items. Therefore, under the proposal, banks might treat electronically-created items as if they were electronic collection items or electronic returns. The Board requests comment on whether, in addition to the proposed warranties discussed above, it should in the future consider making an electronically-created item subject to subpart C of Regulation CC as if it were a check. Such a change would result, for example, in the paying bank to which the item is presented being subject to the regulation’s expeditious-return requirement. The Board emphasizes that the proposed warranties, as well as making electronically-created items subject to subpart C as if they were checks, would not necessarily affect any future determinations by the Board or the Bureau of Consumer Financial Protection as to whether such electronically-created items are electronic fund transfers subject to Regulation E (12 CFR part 205).

The Board proposes that the existing warranties related to remotely created checks be extended to electronically-created items that resemble images of remotely created checks. As a general matter, the Board is not aware of reliable data regarding the prevalence of remotely created checks and similar electronically-created items.23 The Board requests comment on the frequency of use of these types of checks and items, the rate at which they are returned unpaid, and the extent to which payees have valid reasons to obtain payment by means of these items, as opposed to using an ACH debit transaction or other means.

III. Amendments Related to the Elimination of Nonlocal Checks

In response to the continued nationwide decline in check usage and banks’ rapidly increasing use of electronic check-clearing methods since the Check 21 Act, as well as to meet the cost recovery requirements of the Monetary Control Act of 1980, the Federal Reserve Banks have ceased check-processing operations at all of their check-processing offices except one.24 The EFA Act’s and Regulation CC’s funds-availability schedule differentiates between “local checks” and “nonlocal checks,” which are defined in terms of which “check-processing region” the paying bank is located in relative to the depositary bank.25 The EFA Act and Regulation CC define a “check-processing region” in terms of the geographical area served by a Federal Reserve Bank check-processing center.26 The Reserve Banks’ office closures have had the effect of reducing to one the number of check-processing regions. Accordingly, there are no more “nonlocal checks,” because all paying banks and depositary banks are located in the same check-processing region.27

Because there are no more nonlocal checks, certain provisions in the regulation can be substantially simplified. Specifically, the Board proposes to delete the definitions in subpart A that relate to distinguishing local from nonlocal checks (specifically, the definitions of “check-processing region,” “local check,” “local paying bank,” “nonlocal check,” and “nonlocal paying bank”), as well as the related portions of appendix A to the regulation. The Board also proposes to streamline the funds-availability and disclosure provisions in subpart B and to update the model funds-availability forms set forth in appendix C to the regulation.28 The Board proposes that a bank basing its disclosures on the models currently in the appendix would continue to receive a safe harbor for doing so up to 12 months after a final rule becomes effective, provided that the disclosures accurately reflect the bank’s policies and practices. Finally, the Board proposes to update the preemption determinations, with respect to states’ funds-availability laws, that are set forth in appendix F to the regulation.29

IV. Dodd-Frank Act Amendments

A. EFA Act Dollar Amounts

Section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amends the EFA Act by increasing from $100 to $200 the amount of deposited funds that banks must make available for withdrawal by opening of business on the next day.30 The effective date of this provision of the act is the “designated transfer date,” which the Secretary of the Treasury has determined to be July 21, 2011.31 This provision of the EFA Act is implemented in § 229.10(c)(1)(vii). Additionally, the model disclosure forms set forth in current appendix C reflect the requirement that a bank must make $100 of the deposit available on the next business day. When the Dodd-Frank Act’s increase to $200 becomes effective, banks should ensure that their disclosures reflect the new funds-availability schedule and that customers are notified of the changes in policy in accordance with § 229.18(e). Specifically, effective July 21, 2011, a bank basing its funds-availability disclosure on current model C–3, C–4, or C–5 must ensure that its disclosure indicates that the first $200 (rather than $100) of a check deposit will be

23 Banks cannot readily differentiate remotely created checks and electronically-created items that resemble remotely created checks from regular checks, which makes data regarding these items difficult to obtain.

24 In 2003, the Reserve Banks had 45 check-processing offices. Cleveland became the sole remaining Reserve Bank check-processing office on February 27, 2010. Historically, appendix A to Regulation CC defined each Federal Reserve Bank check-processing office and listed under each office the first four digits of the routing numbers of the depositary institutions served by that office. Appendix A therefore helped depositary banks determine whether a deposited check’s paying bank was local or nonlocal. In conjunction with the Reserve Banks’ cessation of check-processing activities at each office, the Board published conforming amendments to appendix A so that the appendix accurately reflected which institutions were served by each remaining office. With Cleveland now the sole office, all paying banks’ routing symbols are listed under it.

25 12 CFR 229.2(f) and 229.2(v). A “local check” is one that is payable by a bank located in the same check-processing region as the depositary bank. By contrast, a “nonlocal check” is one that is payable by a bank located in a different check-processing region than the depositary bank.

26 Section 602(9) of EFA Act defines check processing region as “the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulation.”

27 See Regulation CC § 229.20 and EFA Act § 608. A state’s funds-availability law must have been in effect on or before September 1, 1989, to not be preempted by the regulation.

28 The proposed updates to the model forms in appendix C are based on consumer testing of the forms, and are discussed in more detail in the section-by-section analysis below. A detailed report regarding the consumer testing is available on the Board’s public Web site, http://www.federalreserve.gov, along with this proposed rule.

29 See Regulation CC § 229.20 and EFA Act § 608. A state’s funds-availability law must have been in effect on or before September 1, 1989, to not be preempted by the regulation.


31 See § 1062 of the Dodd-Frank Act. The designated transfer date is subject to an extension to up to 18 months after the Dodd-Frank Act’s date of enactment.
available on the next business day after the day of deposit. 32

Section 1086 amends the EFA Act to require the Board, jointly with the Bureau of Consumer Financial Protection (Bureau), to update the dollar amounts to reflect inflation every five years after December 31, 2011. 33 These amounts include the amount of funds a depositary bank must make available from a deposit of a check not subject to next-day availability (§ 229.10(c)(1)(vii)), by cash or similar means (§ 229.12(b)), and under the new-account and large-deposit exceptions (§§ 229.13(a) and (b)). These amounts also include the EFA Act’s damage limitations (§ 229.21(a)). To facilitate future amendments to the regulation in this regard, the proposed amendments minimize the number of references to specific dollar amounts. For example, in the future, the $100 (which increases to $200 as of the transfer date) mentioned above would be considered “the minimum amount of a deposit that must be made available on the next day.” The Board plans to seek comment on proposed methods of indexing the amounts to inflation jointly with the Bureau at a later date.

B. Rule-Writing Authority

Section 1086 also amends the Board’s rule-writing authority under the EFA Act by making certain rule-writing authorities joint with the Bureau. Specifically, as of the transfer date, the Board’s authority to implement the EFA Act’s provisions (EFA Act § 609(a)), reduce hold periods (EFA Act § 603(d)(11)), establish exceptions to the funds-availability schedule (EFA Act § 603(d)(1)), establish exceptions to the funds-availability schedule and other provisions (EFA Act § 603(d)(1)(i)), and publish model disclosure provisions (EFA Act § 605(f)(1)) will become joint with the Bureau. Accordingly, after the transfer date, any rules promulgated pursuant to these authorities will be done so jointly with the Bureau.

C. Administrative Enforcement

The Dodd-Frank Act eliminates the Office of Thrift Supervision as of July 21, 2011, the “transfer date” provided in § 311 of the Dodd-Frank Act, and transfers enforcement authority for insured savings associations under § 8 of the Federal Deposit Insurance Act to the Office of the Comptroller of the Currency. 34 Accordingly, as of the transfer date, compliance with part 229 will be enforced by the Office of the Comptroller of the Currency in the case of savings associations with deposits insured by the Federal Deposit Insurance Corporation. The administrative enforcement provisions are contained in § 229.3.

V. Other Proposed Amendments

The Board proposes other amendments to the provisions of Regulation CC and its commentary. These proposed changes are discussed in the section-by-section analysis below.

Section-by-Section Analysis

Paragraph citations in this section-by-section analysis are as proposed to be renumbered, unless otherwise explicitly stated. Sections not discussed below are either unchanged or have only technical or conforming amendments. The Board requests comment on all aspects of the proposed rule.

I. Subpart A

A. Section 229.1—Authority and Purpose, Organization

The Board proposes to add to § 229.1(b) descriptions of the appendices to the regulation, as well as amendments to conform § 229.1(b) to amendments proposed in this notice.

B. Section 229.2—Definitions

The definitions of terms in § 229.2 were incorporated into the regulation at different times and are not currently in alphabetical order. The Board proposes that the paragraphs in this section be renumbered so that defined terms are in alphabetical order. Similarly, the Board proposes to renumber the paragraphs in the commentary to reflect the proposed renumbering.

1. Section 229.2(b)—Automated Clearinghouse (ACH) Credit Transfer

Because the regulation uses the term ACH only within other definitions, the Board proposes to delete the definition of the term “automated clearinghouse” and replace it with a new defined term, “automated clearinghouse (ACH) credit transfer.” This phrase is used in the definition of electronic payment (§ 229.2(t)) and in the commentary to § 229.10(b), which requires a bank to make funds received for deposit by an electronic payment available for withdrawal the next day. The Board intends no change to the regulation’s

32 Per § 229.18(e), a bank must provide a change-in-terms notice to existing consumer customers by August 21, 2011.

33 The amounts are indexed to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics (BLS), rounded to the nearest multiple of $25. See § 1086(f) of the Dodd-Frank Act.

34 The transfer date is subject to an extension of up to 18 months after the Dodd-Frank Act’s date of enactment. See § 311 of the Dodd-Frank Act.

35 The agreement to receive an electronic collection item could be in the form of a Federal Reserve Bank operating circular or a clearinghouse rule.

§ 229.2(s). Some electronic presentment agreements, however, may not require an image of the check. Electronic items presented under these agreements would not be electronic collection items because they are not sufficient to create a substitute check, nor would they be treated as checks for purposes of subpart C. The proposed commentary also explains that an electronic collection item that contains an image of the front and back of a substitute check (as opposed to an original check) would be an electronic representation of a substitute check, as that phrase is defined in proposed § 229.2(jj) (current § 229.2(ij)).

Not all electronic representations of substitute checks, however, would qualify as an electronic collection item, because, to be an electronic collection item, an electronic representation of a substitute check must contain sufficient information to create a substitute check.

The Board believes that ANS X9.100–187 is the most prevalent industry standard for electronic images and information that will enable the receiving bank to create a substitute check. The Board recognizes, however, that certain banks may use a different standard and that, as is the case with many technology standards, the standard likely will evolve. To the extent that banks use a different standard, the proposed definition of electronic collection item would permit parties to agree to a standard other than ANS X9.100–187 and still have the item qualify as an electronic collection item that is treated as a check for purposes of subpart C, provided that the item is sufficient to create a substitute check. The Board requests comment on the proposed standard for an electronic collection item and whether any other standard should be specified in the regulation.

5. Section § 229.2(u)—Electronic Presentment Point

The Board proposes in new § 229.2(u) to define electronic presentment point as the electronic location that the paying bank has designated for receiving electronic collection items. This point may be either an e-mail address or other electronic address. The Board requests comment on whether this definition provides enough specificity.

6. Section § 229.2(v)—Electronic Return

The Board proposes in new § 229.2(v) to define the new term “electronic return” as an electronic image of and information related to a check that a paying bank has determined not to pay and that a depositary bank has agreed to receive under § 229.32(a), and that is sufficient to create a substitute check. The image and information must conform to ANS X9.100–187, unless the parties otherwise agree. The proposed commentary explains that if an electronic return satisfies the requirements set forth in § 229.2(v), then the provisions of subpart C apply to the electronic return as if it were a check (See proposed § 229.33). Like an electronic collection item, an electronic return conform with ANS X9.100–187. By agreeing with a returning bank to accept an electronic return in the form of a .pdf file, a depositary bank would thereby be entitled to expeditious return. The Board requests comment on whether this definition provides enough specificity.

7. Section § 229.2(w)—Electronic Return Point

The Board proposes in new § 229.2(w) to define electronic return point as the electronic location that the depositary bank has designated for receiving electronic returns. The proposed commentary notes that an electronic return point may be an e-mail address or other electronic address that a depositary bank has designated as the place to which electronic returns must be delivered. The Board requests comment on whether this definition provides enough specificity.

8. Section § 229.2(hh)—Paper or Electronic Representation of a Substitute Check

The Board proposes to modify the commentary to the definition of this term to note that an electronic representation of a substitute check may also be an electronic collection item or electronic return if the electronic representation contains sufficient information for creating a substitute check and conforms to ANS X9.100–187, or another format to which the parties agreed.

9. Section § 229.2(pp)—Routing Number

The Board proposes to add to the definition a new subparagraph providing that the term also includes the bank-identification number contained in the electronic image of or information related to a check. Further, the Board also proposes to move the two introductory paragraphs in appendix A, which provide general information about routing numbers, to the commentary to the definition of routing number.

10. Deleted Terms

Check-processing region, local check, local paying bank, nonlocal check, and nonlocal paying bank. Because there is now only one nationwide check-processing region, there are no longer any nonlocal checks, and the definitions in the regulation implementing the distinctions between local and nonlocal checks are no longer necessary. Accordingly, the Board proposes to delete from the regulation the definitions of “check-processing region” (current § 229.2(mm), “local check” (current § 229.2(rr), “local paying bank” (current § 229.2(ss)), and “nonlocal paying bank” (current § 229.2(w)), and the commentary thereto.

Similarly situated bank: The only place the current regulation uses this term is in the forward-collection test for expeditious return. Because the Board proposes to delete that test from the regulation (as discussed below in this section-by-section analysis under §§ 229.30(a) and 229.31(a)), the regulation’s definition of similarly situated bank is no longer necessary and the Board proposes to delete current § 229.2(ee).

II. Subpart B

Throughout subpart B and the commentary thereto, the Board proposes to eliminate all references to “check-processing regions,” “local checks,” “local paying banks,” “nonlocal checks,” and “nonlocal paying banks.”

A. Section § 229.10(c)—Next-Day Availability of Certain Check Deposits

1. Section § 229.10(c)(1)(vi)

Given that there is only one nationwide check-processing region, the Board proposes in § 229.10(c)(1)(vi) to delete the phrase “if both branches are located in the same state or check-processing region.” As a result, the subparagraph would require a depositary bank to provide next-day availability for a check deposited in a
branch of the depositary bank and drawn on the same or another branch of the same bank.

2. Section 229.10(c)(1)(vii)

Section 1086(e) of the Dodd-Frank Act increases from $100 to $200 the minimum amount of funds deposited by check or checks on a given business day that a bank must make available by opening of business on the next business day pursuant to § 603(a)(2)(D) of the EFA Act. That provision of the EFA Act is implemented in § 229.10(c)(1)(vii) of Regulation CC, and the increase is expected to take effect on July 21, 2011, regardless of whether the Board and the Bureau have amended Regulation CC. Accordingly, the Board proposes to amend the commentary to § 229.10(c)(1)(vii) to facilitate future amendments to the minimum amount of a deposited check a bank must make available on the business day following the banking day of deposit. Specifically, the Board proposes to replace references to "$100" with references to "the minimum amount." The Board proposes to make this amendment throughout the commentary, as well as in the model forms.

3. Section 229.10(c)(2)

The Board proposes to delete current § 229.10(c)(2), which states that a depositary bank shall make funds available by the second business day after the banking day on which a check is deposited in the case of a check deposit that meets the requirements of §§ 229.10(c)(1)(ii), (iii), (iv), or (v), except the check is not deposited in person. In the absence of nonlocal checks, the checks described § 229.10(c)(2) are subject to the same rule as the general rule set forth in proposed § 229.12. Section 229.10(c)(2) is therefore no longer necessary.

B. Section 229.12—Availability Schedule

1. Proposed § 229.12(a)—In General

The Board proposes to delete current § 229.12(a). It specifies the effective date (September 1, 1990) for § 229.12 and is no longer necessary.

The Board proposes that new § 229.12(a) set forth the general funds-availability rule for deposits of checks: Unless subject to one of the enumerated exceptions, funds from a check deposit must be made available for withdrawal by the second business day following the banking day of deposit. Proposed new § 229.12(a) is derived from current § 229.12(b), which sets forth local check availability. In the absence of a distinction between local checks and nonlocal checks, current § 229.12(b)(1), (2), (3), and (4) are subsumed within this general rule, and the Board proposes to delete them. Similarly, current § 229.12(c) applies to nonlocal checks, which is now a null set, and the Board proposes to delete § 229.12(c) and commentary thereto.

2. Section 229.12(b)—Withdrawal by Cash or Similar Means

Section 229.12(b) implements the EFA Act’s permissive adjustment to the funds-availability rules for withdrawals by cash or similar means. In part, a bank may delay availability for withdrawal by cash or similar means by one business day, provided that the bank makes $400 of the deposited funds available for withdrawal not later than 5 p.m. on the business days on which the funds must be made available under the funds-available schedule. Like other amounts specified in the EFA Act, this $400 will be adjusted every five years for inflation. In order to facilitate future adjustments to the amount, the Board proposes to amend the commentary to § 229.12(b) by replacing references to "$400" with references to "the cash withdrawal amount." The Board proposes to make similar amendments throughout the commentary and model forms.

3. Section 229.12(d)—Deposits at Nonproprietary ATMs

As indicated in the EFA Act’s legislative history, Congress adopted the five-day maximum hold on nonproprietary ATM deposits to match the five-day maximum hold on a nonlocal check deposit, because the depositary bank did not know the composition of a nonproprietary ATM deposit (that is, whether the deposit consisted of cash, local checks, nonlocal checks, etc.). In the absence of nonlocal checks, however, there is no longer any class of check that is subject to a maximum five-day hold.

EFA Act § 603(d)(1) states that "The Board 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." The statute’s legislative history recommends a quantitative benchmark for the Board to use to determine whether to reduce these hold periods: a receiving bank could reasonably expect to learn of the return of two-thirds of the checks in a given category before a bank must make the deposited funds available for withdrawal at the opening of business. As mentioned above, in December 2010 the Reserve Banks received about 99.7 percent of deposited for forward collection electronically, presented 98.4 percent of their checks electronically, received 97.1 percent of returned checks electronically, and delivered about 76.7 percent of returned checks to depositary banks electronically. Thus, about 73.0 percent of checks cleared and returned through the Reserve Banks complete the roundtrip from the depositary bank to the paying bank and back again in electronic form. It is reasonable to expect that a check cleared and returned entirely in electronic form would complete this roundtrip in three business days. For example, if a check is deposited on Monday and collected electronically, the check would generally be presented to the paying bank on Tuesday. The paying bank would generally send the return electronically to a returning bank on the next business day. For local checks, which would electronically deliver the returned check to the depositary bank on Thursday. The Board therefore proposes to reduce in proposed § 229.12(d) (current § 229.12(f)) the maximum hold period for nonproprietary ATM deposits from 5 business days to 4 business days. Four business days will provide the depositary bank with reasonable opportunity to learn of the nonpayment of a check deposited at a nonproprietary ATM before it must make the funds available for withdrawal. In the example above, the depositary bank can reasonably expect to learn of an unpaid electronically returned check on Thursday, and will be required under the proposed 4-business-day hold period to make funds deposited by check at a nonproprietary ATM

40 Current § 229.12(b) states which checks are subject to second-day availability. These checks include local checks and checks that meet the requirements of §§ 229.10(c)(1)(ii), (iii), (iv), or (v), except the check is not deposited in person.

41 The EFA Act conference report states that "nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits" (H.R. Rep. No. 261, 100th Cong., 1st Sess. 179 (1987)).


43 Section 229.19(b) requires that funds be made available for withdrawal by the opening of business on the day on which funds are required to be made available for withdrawal.
available for withdrawal at the opening of business on Friday. 44

As mentioned above, Congress recognized in the EFA Act legislative history that depositary banks generally do not know the composition of deposits made at nonproprietary ATMs (that is, whether the deposit consisted of cash, local checks, nonlocal checks, etc.), and therefore adopted a five-day maximum hold on nonproprietary ATM deposits to match the five-day maximum hold on a nonlocal check deposit. Currently, however, all cash deposits not made in person to an employee of the depositary bank and check deposits must be made available for withdrawal by the second business day following deposit. The Board requests comment on whether the funds-availability schedule’s distinction between deposits to proprietary ATMs and deposits to nonproprietary ATMs continues to make sense in an environment where all in-person cash deposits and check deposits must be made available for withdrawal by the second business day following deposit.

C. Section 229.13—Exceptions

1. Section 229.13(b)—Large Deposits

Section 229.13(b) sets forth an exception to the funds-availability schedule for the aggregate amount of deposited checks totaling more than $5,000 on any one banking day to the extent the aggregate amount exceeds $5,000. Like other amounts specified in the EFA Act, this $5,000 threshold will be adjusted every five years for inflation. In order to facilitate future adjustments to the amount, the Board proposes to amend the commentary to § 229.13(b) by replacing references to “$5,000” with references to “the large-deposit amount.” The Board proposes to make similar amendments throughout the commentary and model forms.

2. Section 229.13(d)—Repeated Overdrafts

Section 229.13(d) provides the depositary bank with an exception to the general availability schedule in § 229.12 for a check deposited into an account that has been repeatedly overdrawn in the preceding six months. The exception relates not only to overdrafts caused by checks, but also those caused by, for example, debit card transactions. The Board proposes to add a new paragraph, § 229.13(d)(3), clarifying that the exception does not include an attempted debit card transaction for which the depositary bank declined the authorization request, because in that case no debit card transaction has occurred.

3. Section 229.13(e)—Reasonable Cause to Doubt Collectibility

Section 229.13(e) provides the depositary bank with an exception to the § 229.12 general availability schedule if the depositary bank has reasonable cause to believe that the check is uncollectible from the paying bank. The commentary currently states that a depositary bank cannot invoke this exception simply because a check is drawn on a bank in a rural area and the depositary bank knows it will not have the opportunity to learn of the nonpayment of the check before funds must be made available. If a check is collected and returned electronically, however, the rural location of a paying bank will not affect the time required to collect and return the check. The Board proposes to update the example in paragraph (4) of the commentary to § 229.13(e). Specifically, a depositary bank may not invoke this exception simply because a paying bank demands paper presentment and the depositary bank believes it is unlikely to receive the return prior to the time by which it must make the deposited funds available.

4. Section 229.13(g)—Notice of Exception

A depositary bank must provide notice to its customer when it invokes one of the exceptions in § 229.13 to apply an extended hold to a deposit. Section 229.13(g)(4) sets forth the information that the notice must include. Currently, the notice must include the amount of the deposit that is being delayed. During consumer testing of the model forms, however, consumers were more readily able to recall the deposited check for which the funds were being held when the notice included the total amount of the deposit, rather than only the amount being held. Accordingly, the Board proposes to require that the notice of an exception hold contain the total amount of the deposit, in addition to the amount of the deposit being held. Additionally, consumers more readily understood when funds would be made available if the notice stated the day on which the funds will be made available, rather than explain availability in reference to the date of deposit. Therefore, the Board proposes to require that the notice specify the day funds will be made available instead of “the time period within which” the funds will be available for withdrawal. The Board proposes conforming changes to proposed model notice C-9.

Section 229.13(g)(4) states that 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. With the elimination of nonlocal checks, depositary banks must generally make check deposits available by opening of business on the second business day following the banking day of deposit. The Board believes that it is desirable for a customer to learn that its bank is extending a hold before the customer would expect the funds to become available under the bank’s generally applicable availability policy. Further, it has become more feasible for banks to provide notices to their customers electronically, which results in near instant receipt of the notice to the customer. The Board therefore proposes that, if the customer has agreed to accept notices electronically, the depositary bank is required to send the notice such that the bank may reasonably expect the customer to receive it no later than the first business day following the day the deposit is made or the facts become known to the depositary bank, whichever is later. For example, the bank could e-mail notice of the hold to the customer. The Board requests comment on whether providing a notice in this fashion is practical.

Finally, § 229.13(g)(4) describes the notice that a depositary bank must provide when it applies an emergency-conditions hold. The Board proposes to update the commentary to § 229.13(g) to explain that a depositary bank may provide notice via postings to the depositary bank’s website or through a directed e-mail.

5. Section 229.13(h)—Availability of Deposits Subject to Exceptions

If a check deposit is subject to an exception hold, § 229.13(h)(4) provides that a reasonable period for a hold extension is one business day (for a total of two) for a deposit of on-us checks, five business days (for a total of seven) for local checks, and six business days (for a total of eleven) for nonlocal checks and deposits into nonproprietary ATMs. The Board proposes that the safe harbor for the reasonable hold extension for a deposit of on-us checks is one business day, and that safe harbor for the reasonable hold extension for other

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44 The Board is proposing to follow the analysis set forth in 1999 that it would reduce the availability schedules in Regulation CC only after determining that the depositary bank can reasonably expect to learn of an unpaid check on the business day before the day on which the bank must make funds available for withdrawal at the opening of business. See 64 FR 37712 (July 13, 1999).

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checks be reduced to two business days (from five or six business days), for a total of four business days for all other checks.\footnote{As described above, the Board proposes to reduce the generally-applicable hold period for nonproprietary ATM deposits from five business days to four. The proposed reasonable hold extension of two business days would therefore provide a total of six business days for nonproprietary ATM deposits.}

Section 229.13(b)(4) would continue to permit a bank to apply a longer hold extension than this, but the bank would have the burden of establishing that the longer hold extension is reasonable. The Board is proposing conforming changes to the commentary to §229.13(b).

In adopting Regulation CC’s permanent availability schedules, the Board stated that the reasonable extended-hold periods are “designed to provide adequate time for the depositary bank to learn of the nonpayment of virtually all checks that are returned.”\footnote{See 55 FR 21848, 21850 (May 30, 1990).} If a check is cleared and returned electronically, the depositary bank should receive the returned check in three business days. Checks that are not cleared and returned entirely in electronic form, however, will typically take longer to be returned to the depositary bank. The Reserve Banks, however, by year-end 2011, 97 percent of their checks will be cleared and returned entirely in electronic form, which the Board believes is representative of the industry as a whole.\footnote{See 67740 (Nov. 3, 2010).}

Therefore, depositary banks will receive virtually all returned checks by the third business day after the day of deposit, with the depositary bank making funds available at opening of business on the fourth day. Although the proposed reasonable extended-hold period of two business days (four business days total) may increase risk for a depositary bank that does not accept electronic returns, the Board believes that the reduction in the exception hold safe harbor is warranted given that it will provide faster availability for depositors as well as an incentive for depositary banks to take advantage of electronic check-return infrastructure.

If the paying bank does not return checks electronically, the time required for a check to be delivered from the depositary bank to the paying bank and back again may be greater than three business days. A paying bank that does not send returned checks electronically, however, generally will not meet its expedient return requirement, and the depositary bank may have a claim for any losses it incurs due to the failure of the paying bank to send the returned check expeditiously.

\section*{D. Section 229.15—General Disclosure Requirements}

1. Section 229.15(a)

Section 229.15(a) sets forth the form requirements for disclosures under subpart B. In general, there are two types of disclosures under subpart B—funds-availability policy disclosures and delayed availability notices. Both types of disclosures must be written and in a form the customer may keep. The Board proposes to amend §229.15(a) to clarify that the form requirements apply to both funds-availability policy disclosures and delayed availability notices required by subpart B.

2. Section 229.15(b)(1)

Section 229.15(b) states that “[i]n its disclosure, a bank shall describe funds as being available on ‘the business day after the day of deposit.’” The Board’s consumer testing of the model disclosures in Appendix C (discussed in more detail below), however, indicated that consumers may more readily understand alternative formulations of statements of when deposited funds will be available for withdrawal. The Board therefore proposes in §229.15(b)(1) to provide banks with more flexibility regarding this description.\footnote{See the Board’s Federal Register notice announcing its approval of the Federal Reserve Banks’ 2011 fee schedules for priced services, 75 FR 67740 (Nov. 3, 2010).} The proposal requires a bank in its disclosure or notice to specify the business day on which funds are available for withdrawal by describing that day in relation to the banking day on which the deposit is received, and to use in this description language substantially similar to that set forth in proposed §229.15(b)(1). Under the proposal, for example, the banking day of receipt may be described as “the same business day,” and the business day after the banking day of receipt may be described as “the next business day,” or described using either cardinal or ordinal numbers, such as “2 business days” or “the second business day.”

\section*{E. Section 229.16—Specific Availability Policy Disclosure}

1. Section 229.16(b)(2)

Because the Board is eliminating references to local and nonlocal checks throughout the regulation and commentary, the Board proposes to delete the requirement that banks that distinguish between local and nonlocal checks in their availability policy disclose that a check payable through one bank (the bank whose routing number appears in the MICR line) and payable by another bank would be considered local or nonlocal on the basis of the location of the bank by which the check is payable. In the absence of nonlocal checks, that disclosure requirement is obsolete.

2. Section 229.16(c)(2)

Section 229.16(c)(2) sets forth the information required in a notice when a bank invokes a case-by-case hold. These information requirements are similar to the information requirements for exception-hold notices under §229.13(g). Consumer testing demonstrated that consumers are both able to recall the deposit to which the hold is being applied if the notice states the total deposit amount and able to understand more readily the day on which funds will be made available if given a specific date. Therefore, the Board proposes to amend the case-by-case notice requirements in §229.16(c)(2)(i) to require that a case-by-case notice include the total amount of the deposit and the specific date on which funds will be made available.

Further, in the absence of nonlocal checks, the case-by-case hold period is so short that a paper notice of the hold sent through the mail may not reach the customer until after the hold has been lifted. The Board therefore proposes to amend §229.16(c)(2)(i) and the related commentary to provide that, if the customer has agreed to accept notices electronically, a bank that invokes a case-by-case hold after the time of deposit be required to deliver the notice such that the bank may reasonably expect the notice to be received by the customer not later than the first business day following the banking day of deposit. For example, the bank could e-mail notice of the hold to the customer on the business day after the banking day of deposit. The Board requests comment on whether providing a notice in this fashion is practical.

In addition, the Board requests comment on the extent to which banks continue to find it useful to apply case-by-case holds to check deposits and on whether the regulation’s provision for case-by-case holds should be deleted. In the absence of nonlocal checks, the extra hold period that a depositary bank may obtain by applying a case-by-case hold is generally not sufficient for banks to learn that a deposited check has been returned unpaid before making funds available to the depositor.
F. Section 229.19—Miscellaneous

1. Section 229.19(e)(2)

Section 229.19(e)(2) limits the ability of a depositary bank that cashes a check for a customer to place a hold on other funds of the customer. The Board proposes to amend §229.19(e)(2) to clarify that a depositary bank that cashes a check for a customer over the counter may place a hold on funds in an account of the customer only if the check is not drawn on the depositary bank. In contrast, if a depositary bank cashes a check drawn on itself, the check is considered finally paid when cashed under the U.C.C.49 The Board intends no change to the substance of this provision.

2. Section 229.19(g)(2)

The Board proposes to delete as obsolete the provision regarding mergers between July 1, 1998, and March 1, 2000.

G. Section 229.21(g)—Record Retention

Current §229.21(g) requires a bank to maintain records evidencing compliance with subpart B’s requirements for not less than two years, and states that a bank may store records using, among other media, “microfiche, microfilm, [and] magnetic tape.” These listed examples in §229.21(g) of the types of media on which a bank may store records are obsolete, and the Board proposes to replace them with a more general provision that a bank may store records using “electronic storage media,” among other media.

H. Appendix A—Routing Number Guide to Next-Day-Availability Checks

In the absence of nonlocal checks, it is no longer necessary to retain the portion of appendix A that lists under the single remaining Reserve Bank check-processing office (the head office of the Federal Reserve Bank of Cleveland) all banks’ four-digit routing symbols. The Board proposes to delete this portion of the appendix, as well as the reference to the Federal Reserve Bank of Cleveland. The Board proposes to retain in the appendix the lists of nine-digit routing numbers associated with certain next-day-availability checks.50 The Board also proposes to delete certain listed routing numbers of the Federal Reserve Banks and Federal Home Loan Banks that have been retired.

1. Appendix C, Model Availability-Policy Disclosures, Clauses and Notices

1. Consumer Testing Process

The model availability-policy forms in appendix C of Regulation CC include numerous obsolete provisions related to nonlocal checks. Additionally, the model forms were first published over 20 years ago, when Regulation CC was first promulgated. More recently, the Board has tested with consumers the model forms included with its other regulations.51 In this instance, the Board used ICF Macro, a research and consulting firm that specializes in designing and testing documents, to conduct consumer testing to help the Board’s review of the model availability-policy forms proposed in this notice. ICF Macro prepared a detailed report of the results of the testing, which is available on the Board’s Web site (http://www.federalreserve.gov) along with this proposed rule.

The consumer testing consisted of two rounds of in-depth interviews with 9 consumers in Alexandria, Virginia, on August 19 and 20, 2010, and 11 consumers in Denver, Colorado, on September 13 and 14, 2010. Consumer participants were recruited to ensure the selection of a range of participants in terms of gender, education, ethnicity, and checking and savings account balances.52 While the interview protocol varied slightly between rounds, the general structure and most of the questions were the same.

Prior to the first round of interviews, Board staff and ICF Macro collaboratively revised the forms from those currently found in appendix C.53 For example, the format was substantially modified; provisions related to nonlocal checks were eliminated; and language was added regarding a bank’s right to charge back a customer’s account if a deposited check is returned unpaid. Based on the results of each round of interviews, the forms were again revised. The Board plans to conduct additional consumer testing of the forms in response to public comments received on this proposal, as appropriate.

2. Model Disclosures Generally

Citations below are to the forms in the appendix as they are proposed to be renumbered, unless otherwise explicitly stated. Forms not discussed below are either unchanged or have only technical or conforming amendments.

In the absence of nonlocal checks, the Board proposes throughout appendix C to delete all references to the nonlocal-check and local-check categories. Instead, the Board proposes that the forms, as applicable, specify the types of check deposits that receive next-day availability, and then state the availability that will be provided for checks “other than those specified.” The Board proposes to modify the format of the model disclosures from a mostly narrative form to a more tabular form. For example, the Board proposes that the portions of the model disclosures specifying funds availability for deposits to established accounts and for deposits to new accounts (accounts open for 30 days or less) be presented within tables. The Board’s testing on forms under other rules has consistently indicated that consumers more readily understand information presented in a tabular form.54 The Board is not proposing any changes to the model substitute-check policy disclosure and notices in the appendix.

i. Format of Banks’ Funds-availability Disclosures and Notices

The Board proposes to add to the commentary to appendix C a new paragraph A(4) discussing banks’ formatting of disclosures and notices based on the proposed model funds-availability disclosures and notices in the appendix. Specifically, although the regulation does not require banks to use a certain paper size for their funds-availability disclosures and notices, the proposed model funds-availability policy disclosures are generally designed to be printed on an 8½ x 11 inch sheet of paper with black text on a white background, so as to increase their readability for consumers. Further, §229.15(a) requires that banks generally provide disclosures and notices in a form that the customer may keep. The proposed commentary notes that a bank that provides a disclosure or notice

49 See UCC 4–215 and commentary to Regulation CC: §229.19(e).
50 Treasury checks, postal money orders, and checks drawn on the Federal Reserve Banks and Federal Home Loan Banks can be identified by routing number, and these routing numbers will continue to be listed in appendix A. Next-day-availability checks such as cashier’s, certified, and teller’s checks cannot be identified by routing number, however, and are not listed in the appendix.
51 See Interim Final Rule on Mortgage Disclosures (Regulation Z), 75 FR 58470 (Sept. 24, 2010).
52 A sample of the screening instrument used to recruit interview participants is included as Appendix A to the ICF Macro report. Appendix B to the report provides a summary of the demographics of the interview participants.
53 The sample forms used during the consumer interviews are included as Appendix C to the ICF Macro report.
54 See 75 FR 58539 at 58542 (September 24, 2010) and ICF Macro report, p. 4.
55 The commentary to §229.13(g) indicates that notice of an extended hold should be provided in a form a customer may keep. The proposed commentary to §229.16(c)(2) indicates that notice of a case-by-case hold should be provided in this form as well.
electronically to a customer would comport with the formatting specifications of the proposed model disclosures and notices by providing a disclosure or notice in a file format, such as a .pdf file format, that electronically represents an 8½ x 11 inch sheet of paper with black text and a white background. In addition, a bank may vary (either enlarge or decrease) the font size of the model forms. As explained in the proposed commentary, a bank that uses too small a font may not be in compliance with § 229.15(a)’s clear-and-conspicuous requirement.

ii. Charge Back After Making Funds From Check Deposits Available

Paragraph 5 of the commentary to appendix C states that banks may add information related to funds availability to the model forms. One of the examples currently provided is that a bank’s disclosure may state that although funds have become available and the customer has withdrawn them, the customer remains responsible for deposited checks that are returned unpaid. The Board believes that all banks reserve the right to charge back a customer’s account if a deposited check is returned unpaid. The Board proposes to incorporate language to this effect within the model availability-policy disclosures themselves and to delete this as an example from paragraph A(5) of the commentary and add a provision to paragraph B(1)(a) describing the charge-back statement in the proposed model disclosures. The Board requests comment on whether this proposed revision reflects the practice of most banks.

iii. Reference to Day of Availability

The Board is proposing model availability-policy disclosures that in many cases would use cardinal numbers, instead of ordinal numbers, to describe the business day on which funds will be available in relation to the day on which funds are deposited. For example, the Board proposes in many cases to use “2” in place of “second,” because consumers readily perceived that formulation. In addition, the Board proposes that the disclosures refer to the “next” business day after a deposit, rather than the “first” business day. The Board proposes to modify paragraph B(1)(b) of the commentary accordingly. Notwithstanding the language used in the proposed model forms, use of ordinal numbers would continue to be permitted (see proposed § 229.15(b)).

iv. Inclusion of Optional Information

The Board proposes model availability-policy disclosures that would reflect certain provisions of the regulation that apply only to certain banks, depending on the banks’ policies and practices. For example, the proposed model disclosures would include language about use of special deposit slips as a condition for next-day availability for certain types of check deposits (see § 229.10(c)(2)) and language similar to the appendix’s current model clauses C–6 and C–7 related to check cashing, immediate availability, and holds on other funds (see § 229.19(e)). The text of these portions of the disclosures would be enclosed within brackets to indicate that a bank should include it in the bank’s disclosures only if it is applicable given the bank’s policies and practices. The Board proposes that paragraph B(1)(c) of the commentary to appendix C be modified accordingly.

v. Same-Day Availability

Although § 229.10(a) of the regulation requires next-day availability for cash deposits, and § 229.10(b) requires next-day availability for electronic payments (as defined in § 229.2(1)), the model availability-policy disclosures in appendix C include clauses that state that funds from electronic direct deposits are available on the day the bank receives the funds. As indicated in paragraph B(1)(b) of the commentary to the appendix, this is because U.S. Treasury regulations and ACH association rules require that preauthorized credits, such as direct deposits, be made available on the day the bank receives the funds. During the Board’s consumer testing, many consumers expressed surprise that the sample disclosures indicated that funds from cash deposits and wire transfers (defined in § 229.2(bbb)) would not be available until the next day. When the models in Appendix C were first published over 20 years ago, most banks updated their demand-deposit-account systems on an overnight basis, such that a cash deposit or incoming wire transfer would not be reflected in the receiving customer’s account balance until opening of business the next day. The Board believes, however, that most banks now provide same-day availability for cash deposits and wire transfers (if not immediate) available for cash deposits and wire transfers.

The Board therefore proposes that model funds-availability disclosures C–1 through C–3B, which are designed for banks that generally make deposits available by the next day (and are discussed in more detail below), be modified to indicate that funds from cash deposits and wire transfers will be available for withdrawal on the same business day that the bank receives the funds. The proposed commentary states that a bank basing its disclosure on one of these models should modify its disclosure to indicate that funds from cash deposits and wire transfers will be available the next day if that reflects the bank’s practice.

In contrast, proposed models C–4A and C–4B, which are designed for banks that hold funds from deposits to the statutory limits, indicate that funds from cash deposits and wire transfers will be available on the business day following receipt. The proposed commentary states that a bank that bases its disclosures on one of these models but that makes funds from cash deposits and wire transfers available the same day they are received—i.e., a bank that places holds to statutory limits only on check deposits—should modify its disclosures accordingly.

3. Model C–1—Next-Day Availability

Proposed model C–1 may be used by a bank that has a policy of making funds from all deposits available by the first business day after a deposit is made, but not reserving the right to invoke the new-account and other exceptions in § 229.13. The Board requests comment on whether any banks have such a policy and on whether model C–1 can be deleted from Appendix C.

4. Model C–2—Next-Day Availability and § 229.13 Exceptions

Proposed model C–2 may be used by a bank that has a policy of making funds from deposits available by the first business day after a deposit is made, but reserves the right to invoke the new-account and other exceptions in § 229.13.

5. Model C–3A—Next-Day Availability, Case-by-Case Holds to Statutory Limits Without Cash-Withdrawal Limitation, and § 229.13 Exceptions; and Model C–3B—Next-Day Availability, Case-by-Case Holds to Statutory Limits With Cash-Withdrawal Limitation, and § 229.13 Exceptions

The Board proposes to include in the appendix two versions of model C–3. The first version, proposed C–3A, would be used by a bank that, when it

56 See UCC 4–214, which generally permits a collecting bank that has made provisional settlement with its customer to revoke the settlement (e.g., charge back the amount or obtain a refund) if the bank itself fails to receive settlement.

57 Because the Board proposes to incorporate the information set forth in current model clauses C–6 and C–7 as bracketed information within the model disclosures, the Board proposes to delete model clauses C–6 and C–7 from the appendix.
availability of funds deposited at other locations (proposed C–8).
6. Model C–4A—Holds to Statutory Limits on All Deposits Without Cash- Withdrawal Limitation and Model C– 4B—Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation

The Board proposes to remove current model disclosures C–4 (holds to statutory limits on all deposits (includes chart)) and C–5 (holds to statutory limits on all deposits), because those models are no longer necessary in the absence of nonlocal checks. The Board proposes to add new model disclosures C–4A and C–4B for a bank to use if the bank’s policy is to hold funds on all deposits up to the statutory limits.

Proposed model disclosure C–4A would be used by a bank that delays availability as allowed under § 229.12 but does not impose the cash-withdrawal limitation permitted by § 229.12(b), whereas proposed model C–4B would be used by a bank that delays availability as allowed under § 229.12 and does impose the cash-withdrawal limitation permitted by § 229.12(b). The Board proposes the position of the text related to the cash-withdrawal limitation in C–4B because the Board’s testing indicated that consumers better noticed and understood the cash-withdrawal limitation (and the distinction between other uses of funds) when it is in this form rather than in a text paragraph.59

Proposed models C–3A and C–3B include in brackets language similar to current model clauses C–6 and C–7, related to check cashing, immediate availability, and holds on other funds, modified on the basis of the Board’s testing to promote consumer comprehension. A bank that bases its disclosure on proposed model C–3A or C–3B would need to include this bracketed text in its disclosure only if the text relates to the bank’s policy and practice. A bank that has such a policy would include the proposed bracketed text in the same location as in the proposed model. Testing indicated that consumers notice and retain the information presented in these clauses better if the location of the clauses is early in the disclosure.60

Banks that base their availability-policy disclosure on model disclosure C–3A or C–3B and whose availability policy necessitates incorporation of one or more of the proposed appendix’s remaining model clauses (proposed C–6, C–7, and C–8; current C–9, C–11, or C–11A) would append those model clauses to the end of the second page of proposed model C–3A or C–3B. The appendix’s remaining model clauses pertain to a bank’s funds-availability policy for deposits at ATMs (proposed C–6), a credit union’s interest-payment policy (proposed C–7), and the

58 Because the Board proposes to incorporate into C–3B and C–4B (discussed below) the information set forth in current model clause C–10, the Board proposes to delete model clause C–10 from the appendix.
59 See p. vii of the ICF Macro report.
60 The Board proposes to take an identical approach in proposed model disclosures C–4A and C–4B. Specifically, a bank that bases its disclosure on proposed model C–4A or C–4B would include the bracketed text in its disclosure only if the text corresponds to the bank’s policy and practice.
61 See 75 FR 56739 at 56869 (September 24, 2010), discussing the results of the Board’s testing of model forms related to the suspension or reduction of a home equity line of credit. See also the ICF Macro report, page viii.
62 Specifically, the model reads “We are delaying the availability of $amount being held from this deposit.”
63 See ICF Macro report, p. ix.
which funds will be available for withdrawal may be “subject to our cash-withdrawal limitation policy.” The limitation is material to the length of the hold, and, without additional inquiry, consumers may not know what the limitation is. Accordingly, the Board proposes to include in appendix C two versions of a model case-by-case hold notice: proposed C–12A may be used by a bank that imposes a case-by-case hold, but does not have a policy of imposing the cash-withdrawal limitation, whereas proposed model notice C–12B may be used by a bank that imposes such a hold and does have such a policy. Each of the two proposed versions would incorporate the specific days by which funds would be available.

Current model C–16 indicates that a bank’s notice of an exception hold should refer to the dollar amount being held from a deposit. The Board proposes that proposed models C–12A, and C–12B also refer to the dollar amount of the deposit from which funds are being held, because consumers thought that the amount of the deposit would be more helpful in remembering the deposit in question.64 iv. Proposed Model C–13—Notice at Locations Where Employees Accept Consumer Deposits and Proposed Model C–14—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)

Current models C–17 and C–18 (proposed C–13 and C–14) are notices that are designed to be posted, for example, on a wall near a teller window in a bank branch, and set forth a brief summary of a bank’s funds-availability policy. Current model C–17 may be used by a bank that has a policy of placing holds to statutory limits on deposits, whereas current model C–18 may be used by a bank that has a policy of placing case-by-case holds on check deposits.

The Board proposes to modify current model notice C–18 (proposed C–14) to indicate that funds from cash deposits and wire transfers will be available for withdrawal on the same business day that the bank receives the funds. Therefore, a bank with a case-by-case availability policy that makes cash deposits and wire transfers available the next business day would modify the notice accordingly. By contrast, current model C–17 (proposed C–14) indicates that funds from cash deposits and wire transfers will be available on the next business day. A bank that holds check deposits up to the statutory limits but that makes funds from cash deposits and wire transfers available on the day they are received would modify the notice accordingly.

A bank using either notice that imposes cash-withdrawal limitations under proposed §229.12(b) would indicate that funds from check deposits will generally be available by the third, rather than second, business day after the day of deposit, by replacing “(number)” in the lower-right-hand box of the tables in the proposed models with “third,” rather than “second.”

J. Appendix F—Official Board Interpretations; Preemption Determinations

Section 608 of the EFA Act provides that any state law in effect on September 1, 1989, that provides that funds be made available in a shorter period of time than provided in Regulation CC will supersede the time periods in the Act and regulation. Section 229.20 of the regulation implements §608, and §229.20(e) sets forth the procedures by which a state may submit to the Board a request for a preemption determination. In response to states’ requests, the Board issued determinations specifying the provisions of the funds availability laws in California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, Rhode Island, and Wisconsin that supersede the EFA Act and Regulation CC. These determinations are contained in appendix F to the regulation.

Since September 1, 1989, Connecticut, New Jersey, Rhode Island, and Wisconsin have repealed all state-specific funds availability provisions. California has repealed the funds availability provisions applicable to credit unions. In addition, the elimination of nonlocal checks under the EFA Act and Regulation CC affect the regulations’ preemption of states’ laws. The Board notes that the Dodd-Frank Act’s increase from $100 to $200 of the minimum amount of check deposits that banks must make available by the next business day may affect the EFA Act and Regulation CC preemption of state law. The Board therefore proposes to update the preemption determinations in the appendix. The proposed determinations would supersede any previous determinations made by the Board.

III. Subpart C

A. Section 229.30—Paying Bank’s Responsibility for Return of Checks

1. Section 229.30(a)—Expeditious Return of Checks

i. Section 229.30(a)(1)

Section 229.30(a)(1) sets forth the proposed test for expeditious return of a check by the paying bank. The current rule provides that if a paying bank determines not to pay a check, it must return the check in an expeditious manner, as provided under either the two-day/four-day test or the forward-collection test. For the reasons discussed above, the Board proposes to eliminate the forward-collection test and the four-day test for expeditious return of a check by the paying bank. As a result, the Board proposes that the two-day test for expeditious return be the only test for expeditious return in §229.30(a)(1) (and §229.31(a)(1)). In general, the paying bank may satisfy any expeditious return requirement by sending an electronic return if the depositary bank has agreed to receive electronic returns from the paying bank under proposed §229.32(a), a paper check or a notice in lieu if the check is unavailable. The exceptions to this general rule, including where the depositary bank has not agreed to accept electronic returns from the paying bank, are set forth in proposed §229.30(b).

ii. Section 229.30(a)(3)

The Board proposes to amend §229.30(a)(3) to clarify that a paying bank may send a returned check to any bank that handled the check for forward collection if the paying bank is unable to identify the depositary bank.

iii. Section 229.30(a)(6)

The Board proposes to move current §229.36(a), which states that a check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious-return requirement of this subpart, to proposed §229.30(a)(6).

2. Section 229.30(b)—Exceptions to Expeditious Return of Checks

i. Section 229.30(b)(1)

The Board proposes to group together the exceptions to a paying bank’s duty of expeditious return in §229.30(b)(1). Currently, the requirement does not apply if a paying bank is unable to identify the depositary bank or if the depositary bank does not maintain...
§§ 229.31(b) and 229.31(e).

As is discussed below under § 229.35(a) and appendix D, the Board proposes to require a depositary bank that transfers an electronic collection item to apply its indorsement in accordance with ANSI X9.100–187, unless the parties otherwise agree.

§ 229.30(b)(2)

Proposed § 229.30(b)(2) addresses the situation in which the requirement to return a check expeditiously does not apply because the paying bank is unable to identify the depositary bank. In most cases in today’s predominantly electronic check-clearing environment, the depositary bank’s indorsement will accompany an electronic check as an addenda record associated with the check, and the paying bank will be able to route an electronic return to the depositary bank in a highly automated manner.66

In some cases, the depositary bank’s indorsement may not be in the accompanying addenda record, and the paying bank will be unable to rely on purely automated returns. The Board proposes to clarify in the commentary that a paying bank is not “unable” to identify the depositary bank where the depositary bank’s indorsement is not in an addenda record associated with the electronic image, but is legibly included within the image of a check presented electronically to the paying bank. In these cases, the paying bank may visually review the image of the check to determine the identity of the depositary bank and create an electronic return addressed to the depositary bank or a returning bank agreeing to handle it on the basis of that indorsement within the image. Provided the depositary bank accepts electronic returns (directly or indirectly) from the paying bank under § 229.32(a), the expeditious-return requirement would apply in this situation.

In other cases, however, the depositary bank’s indorsement may not be in an addenda record associated with an electronic image, and also may be absent from or illegible within the image of the check that is presented to the paying bank. In these cases, the paying bank may be unable to identify the depositary bank and the expeditious-return requirement would not apply to the paying bank. If the paying bank has an agreement to send electronic returns to a bank that handled the check for forward collection, the paying bank may under § 229.30(b)(2) send the electronic return to that bank, subject to that agreement. Such a bank may be better able to identify the depositary bank.

In general, the paying bank must advise the bank to which the return is sent that it is unable to identify the depositary bank. The Board proposes to clarify in the commentary that, in the case of electronic returns, the paying bank meets this requirement by inserting the routing number of the bank to which it is sending the return where the paying bank otherwise would have inserted the routing number of the depositary bank. The Board requests comment on whether the regulation and commentary provide the appropriate level of detail with respect to paying banks’ preparation and addressing of electronic returns in cases where it is unable to identify the depositary bank.

3. Section 229.30(c)—Extension of Deadline

The Board proposes amending § 229.30(c), which extends the paying bank’s deadline to initiate the return of a check. The current rule generally extends the deadline to the time at which a paying bank dispatches the return, if the paying bank uses a means of delivery that ordinarily would result in receipt by the bank to which the return is sent on or before the receiving bank’s next banking day following the day of the applicable deadline by the earlier of the close of that banking day or a 2 p.m. cutoff hour (or such a later time as set by the receiving bank under UCC 4–108).67 The provision allows the paying bank an extension, provided that the paying bank sends the return such that it would ordinarily be received by the depositary bank within the timeframes mandated by the regulation’s current tests for expeditious return.

As discussed above, the Board proposes to eliminate the forward-collection test and the four-day test for expeditious return of a nonlocal check, and to replace the two-day test for a nonlocal expeditious return would be the only remaining test. Correspondingly, the Board proposes to simplify the extension in § 229.30(c): The paying bank’s deadline for return would be extended to the time of dispatch if the paying bank sends the return such that

66As is discussed below under § 229.35(a) and appendix D, the Board proposes to require a depositary bank that transfers an electronic collection item to apply its indorsement in accordance with ANSI X9.100–187, unless the parties otherwise agree.

67The current paragraph provides a further extension if the paying bank uses a “highly expeditious” means of return, or if the paying bank’s deadline for return falls on a Saturday that is a banking day for the paying bank under the UCC. (Saturday is never a banking day under Regulation CC.)
it reaches the depositary bank by 4 p.m. on the second business day after the banking day on which the check was presented to the paying bank; i.e., such that the return would ordinarily reach the depositary bank within the time required by the two-day expeditious-return test. The proposed 4 p.m. deadline would correspond to the expedient return deadline in proposed §§ 229.30(a). As noted in the proposed commentary, a paying bank may rely on the return schedules of a returning bank in determining whether the returned check or electronic return would “ordinarily” reach the depositary bank by 4 p.m. on the second business day after the banking day on which the check was presented to the paying bank.

Alternatively, the Board requests comment on whether a paying bank that sends a returned check to a returning bank and relies on this extension should bear the risk that the returning bank may not return the check expeditiously. Specifically, the Board requests comment on whether it should modify the extension such that the return must actually reach the depositary bank within the two-day timeframe for expedient return in order for the extension to apply. Such a modification to the extension might further encourage paying banks to initiate return of a check in a timely fashion.

4. Section 229.30(d)—Identification of a Returned Check

i. Placement of Reason for Return on a Substitute Check

Section 229.30(d) currently states that “[a] paying bank returning a check shall clearly indicate on the face of the check that it is a returned check and the reason for return. If the check is a substitute check, the paying bank shall place this information within the image of the original check that appears on the front of the substitute check.” When current § 229.30(d) became effective in 2004, the placement on substitute checks was consistent with the industry standard for substitute checks, American National Standard Specifications for an Image Replacement Document—IRD, X9.100–140 (ANS X9.100–140). Under the terms of the revised industry standard, however, the reason for return of a substitute check must be placed above a substitute check’s image of the original check—i.e., not within the image of the original check that appears on the front of the substitute check, but nonetheless within the portion of the front of the substitute check that is “clipped” when an image of the substitute check is captured.68 The change to the standard is intended to make it less likely that the return-reason information will obscure underlying data from the original check, such as the name of the payee or the amount of the check, while continuing to ensure that the reason for the return is retained in any captured image of the substitute check, as well as on any subsequent substitute check.

The current commentary explains that § 229.30(d) specifies where to place the return-reason information on a returned substitute check in order to ensure that “the information is retained on any subsequent substitute check.” The revised industry standard, ANSI X9.100–140, is consistent with this purpose. Accordingly, the Board proposes to modify the § 229.30(d) to state that “[i]f the check is a substitute check or electronic return, the paying bank shall place this information [the reason for the return] so that the information would be retained on any subsequent substitute check.” Further, the Board proposes to amend the commentary to state that the requirement to place the return-reason information such that it is retained on any subsequent substitute check could be met by placing the information (1) in the location on the front of the substitute check that is specified by ANSI X9.100–140 or (2) within the image of the original check that appears on the front of the substitute check. The Board believes it is necessary for the regulation to continue to permit this latter possibility in order to encompass situations in which a paying bank presented with a previously-created substitute check opts to physically stamp the reason for the return on the substitute check.

ii. Refer-to-Maker Reason for Return

Current commentary to § 229.30(d) states that “refer to maker” may be a permissible reason for return in appropriate cases but does not elaborate as to which cases may be appropriate. The Board, however, does not believe that “refer to maker,” by itself, is an appropriate reason for return in any case. “Refer to maker” is an instruction rather than a reason for return. Alone, it does not provide the depositary bank with sufficient information to determine whether it should represent the check. Accordingly, the Board proposes to amend the commentary to § 229.30(d) to state that “refer to maker” is insufficient as a reason for return, because “refer to maker” is an instruction to the recipient of the returned check and not a reason for return (e.g., insufficient funds). A paying bank may use “refer to maker” in addition to the reason for return. The Board requests comment on whether there are circumstances in which it is appropriate to use only “refer to maker” when returning a check.

5. Section 229.30(e)—Notice in Lieu of Return

Section 229.30(f) currently states that if a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in current § 229.33(b).

Historically, notices in lieu of return were used when an original check was lost or destroyed. Following implementation of the Check 21 Act, however, the unavailability of an original check does not prevent return of the check, provided that an image of the check sufficient to create a substitute check is available. The Board therefore proposes to revise the § 229.30(e) commentary to provide that a bank may send a notice in lieu of return only where neither the check itself nor an image of and information related to the check sufficient to create a substitute check is available.

The commentary states that notice by electronic transmission, other than a legible facsimile or similar image of both sides of a check, does not satisfy the requirements for a notice in lieu of return. The Board proposes to amend the commentary to § 229.30(e) to provide that, if no image of both sides of the check is available, the notice in lieu of return may be sent by means of an electronic transmission, so long as it contains the required information. For example, the notice may be sent by ACH payment record if permitted by applicable ACH rules, or by an electronic check record if permitted by applicable rules and standards. These records are similar to the currently-permitted written notices of nonpayment where legible copies of both sides of the check are unavailable. The Board requests comment, however, on whether a bank would ever have the information necessary for a notice in lieu of return if it had neither the check nor an image of both sides of the check.

As under the current rule, notice by telephone or other similar oral transmission would not be permitted. Because notice in lieu of return must include the information required for a notice of nonpayment, and the Board
proposes to eliminate the notice of nonpayment requirement, the Board proposes to move the information requirements for a notice in lieu of return from current § 229.33(b) to new § 229.30(e)(2). The Board proposes that the information requirements for a notice in lieu of return remain unchanged.

Currently, a notice in lieu is not required to contain the check’s original MICR line. The Board understands, however, that a depositary bank can often use the data from the original MICR line of a returned check to find in its computer systems an image of the item, which the depositary bank captured when it took the check for deposit, and which the depositary bank can either re-clear or charge back to its customer’s account.\(^69\) The Board requests comment on whether the information-content specifications for a notice in lieu of return should be modified to reflect these capabilities by requiring that a notice in lieu of return include the check’s original MICR line.

As an alternative to the proposed approach, the Board requests comment on whether the regulation’s provision for notice in lieu of return should be deleted. Specifically, the only factual scenario in which a notice in lieu of return may be necessary under the proposal is where a paper check is presented to the paying bank and the paying bank loses the check, but has access to a copy that is not in the proper format to permit creation of a substitute check or electronic return. Forward interbank check collection, however, including presentment to the paying bank, is almost always electronic, and, furthermore, paying banks initiate almost all check returns electronically. Given the overwhelming prevalence of electronic presentment and electronic initiation of return, the paying bank almost always will be able to return an electronic collection item that was presented to it. Therefore, it may no longer be necessary for paying banks to use notices in lieu of return.\(^70\) The Board requests comment on whether a provision for notice in lieu of return continues to be necessary.

6. Section 229.30(f)—Reliance on Routing Number

The regulation currently provides that a paying bank may return a check based on any routing number designating the depositary bank appearing on the check in the depositary bank’s indorsement. The Board proposes in § 229.30(f) to add that the paying bank may also rely on any routing number designating the depositary bank in the electronic image of or information related to the check.

B. Section 229.31—Returning Bank’s Responsibility for Return of Checks

1. Section 229.31(a)—Expedient Return of Checks

For the reasons discussed above under § 229.30(f)(1), the Board proposes to make conforming amendments to § 229.31(a) and eliminate the forward-collection test and the four-day test for expedient return of a check by the returning bank, such that the two-day test for expedient return would be the only test in § 229.31(a)(1). Further, a returning bank would be subject to the expedient return requirement if it agrees to return checks expeditiously. The Board proposes to amend the commentary to § 229.31(a)(1) to explain that a returning bank may condition its agreement to return checks expeditiously on receiving an electronic return from the paying bank or returning bank. The Board also proposes to amend the commentary to § 229.31(a)(1), by removing an example of when a returning bank agrees to return checks expeditiously a returning bank handling a returned check for return that it did not handle for forward collection. While the Board intends a paying bank to continue to be able to send a returned check to a returning bank that did not handle the check for forward collection, the Board does not believe that a returning bank that receives such a check should be deemed to agree to handle the returned check expeditiously. Under this proposed change, for example, a returning bank may accept a paper returned check that it did not handle for forward collection, while not being deemed to have agreed to handle it for expedient return.

ii. Section 229.31(a)(3)

The Board proposes to clarify in proposed § 229.31(a)(3) (currently in § 229.31(a)) that if the returning bank is unable to identify the depositary bank with respect to a returned check, it may send the returned check to any bank

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\(^69\) If the depositary bank chooses to re-clear a check on the basis of an image of the check it captured when it took the check for deposit, it should ensure that the re-cleared check reflects the fact that the check has already been returned one time.

70 If an electronic collection item presented to the paying bank contained an illegible image of the check and the paying bank decided to return the item (perhaps for an unrelated reason, such as insufficient funds), the paying bank could return the electronic collection item as an electronic return, instead of initiating a notice in lieu of return.

71 A qualified returned check is “a returned check that is prepared for automated return to the depositary bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink.” Current 12 CFR 229.2(bh).
returned checks happens only rarely and it is not clear that qualification continues to be a means of expediting returned checks’ delivery to the depositary bank because carrier envelope’s inhibit check imaging. The Board requests comment on whether the regulation’s provisions for qualifying of paper returned checks by paying banks and returning banks should be deleted.

2. Section 229.31(b)—Exceptions to Expedient Return of Checks

The Board proposes changes to §229.31(b) similar to those discussed above under §229.30(b). Specifically, the Board proposes to group together the current exceptions to a returning bank’s duty of expeditious return in §229.31(b)(1) and to provide that, in addition to the exceptions currently provided in the regulation, the returning bank’s duty of expeditious return does not apply if the depositary bank has not agreed to accept electronic returns from the paying bank under §229.32(a).

A returning bank does not have a duty to expeditiously return the check if the returning bank is not able to identify the depositary bank with respect to a returned check. Section 229.31(b) of the regulation currently provides, however, that if a paying bank is not able to identify the depositary bank with respect to a returned check and sends the returned check under the terms of §229.30(b) to a returning bank, but the returning bank can identify the depositary bank (for example, on the basis of its records from the forward collection of the check), then the returning bank must thereafter return the check expeditiously to the depositary bank. The Board proposes to remove this requirement from the regulation (proposed §229.31(b)(1)(iv)), because it may be difficult for a returning bank to meet the two-day test for expedient return where the paying bank likely sent the return as if the return was not subject to the expedient return requirement. In the absence of an expedient-return requirement, the UCC would nonetheless require a returning bank in this situation to use ordinary care when returning the item.\(^2\)

3. Section 229.31(d)—Charges

The Board proposes to clarify in §229.31(d) that a returning bank may impose a charge for handling a returned check on the bank that sent the returned check to it, rather than another party.

4. Section 229.31(e)—Notice in Lieu of Return

The Board proposes to make amendments to §229.31(e) to conform with proposed amendments to §229.30(e).

5. Section 229.31(f)—Reliance on Routing Number

The regulation currently provides that a returning bank may return a check based on any routing number designating the depositary bank appearing on the check in the depositary bank’s indorsement or in a magnetic ink on a qualified returned check. The Board proposes to add that the returning bank may also rely on any routing number designating the depositary bank in the electronic image or information included in an electronic return.

C. Section 229.32—Depositary Bank’s Responsibility for Returned Checks

1. Section 229.32(a)—Acceptance of Electronic Returns

i. Section 229.32(a)(1)

The Board proposes in §229.32(a)(1) three different circumstances under which a depositary bank would be deemed to have agreed to accept an electronic return from the paying bank. The depositary bank must accept an electronic return in at least one of these ways so as to be entitled to expedient return under the Board’s proposal. The first way in which a depositary bank is considered to have agreed to accept electronic returns from the paying bank is by having a direct contractual relationship with the paying bank under which it agrees to accept electronic returns from the paying bank (proposed §229.32(a)(1)(i)).

Secondly, under proposed §229.32(a)(1)(ii), a depositary bank could have a direct contractual relationship with a returning bank to accept electronic returns. In turn, that returning bank must hold itself out as willing to accept electronic returns directly or indirectly (e.g., from another returning bank) from the paying bank and must have agreed to handle returned checks expeditiously under §229.31(a) in order for the depositary bank to have agreed to receive electronic returns from the paying bank under §229.32(a). The proposed commentary to proposed §229.32(a) provides an example of such an arrangement. The Board proposes to provide examples in the proposed commentary to proposed §229.32(a) of how a returning bank holds itself out as willing to accept electronic returns directly or indirectly from the paying bank. Specifically, a returning bank would be considered to hold itself out as willing to accept electronic returns if it published information about its generally available electronic return service, such as information about signing up for the service and fees. The Board requests comment on whether it should provide more specificity as to under what circumstances a returning bank is deemed to hold itself out as willing to accept electronic returns directly or indirectly from a paying bank.

Third, a depositary bank may have otherwise agreed with the paying bank to receive an electronic return. The proposed commentary indicates that one example of such an agreement would be where the depositary bank and paying bank are both members of the same check clearing house, through which the depositary bank has agreed to accept electronic returns from the paying bank.

ii. Section 229.32(a)(2)

Proposed §229.32(a)(2) establishes that a depositary bank receives an electronic return when the return is delivered to the electronic return point designated by the bank or, by agreement, otherwise is made available to the bank for retrieval or review. For example, if a depositary bank designates an e-mail address as its electronic receipt address, the depositary bank has received the electronic return when it is delivered to that e-mail address. In contrast, if the depositary bank has an arrangement with a returning bank whereby the returning bank sends the electronic return to its storage device and then provides the depositary bank with access to the storage device for retrieving electronic returns, the electronic return is received by the depositary bank when the returning bank makes the electronic return available for the depositary bank to retrieve or review from the storage device in accordance with the agreement between the depositary bank and the returning bank.

iii. Section 229.32(a)(3)

Proposed §229.32(a)(3) would permit a depositary bank to require that electronic returns be separated from electronic collection items. This proposed rule is similar to the undesignated paragraph in existing §229.32(a)(proposed §229.32(b)(2)) that permits a depositary bank to require that returned checks be separated from forward-collection checks.
2. Section 229.32(b)—Acceptance of Paper Returned Checks

The Board proposes to clarify that current § 229.32(a) (proposed to be redesignated as § 229.32(b)) is limited to setting forth the locations at which a depositary bank must accept paper returned checks. Further, because there are no more nonlocal checks, the Board proposes to delete current § 229.32(a)(2)(iii) from the regulation, which states that if the address in the depositary bank’s indorsement is not in the same check-processing region as the address associated with the routing number, the depositary bank must accept returned checks at a location consistent with the routing number in its indorsement, and at an office associated with the routing number. The Board also proposes to delete current § 229.32(a)(2)(ii) from the regulation, which states that if the depositary bank’s indorsement is not consistent with the routing number, then the depositary bank must accept returned checks. Further, because there are no more nonlocal checks, the Board proposes to delete current § 229.32(a)(2)(iii) from the regulation, which states that if the address in the depositary bank’s indorsement is not in the same check-processing region as the address associated with the routing number, the depositary bank must accept returned checks at a location consistent with the address associated with the routing number in its indorsement, and at an office associated with the routing number.

Under the proposal, a depositary bank that includes its address in its indorsement is required to receive paper returned checks at a location consistent with the address (proposed § 229.32(b)(1)(iii)(A)) and at a location, if any, at which it requests presentment of paper checks (proposed § 229.32(b)(1)(ii)). Moreover, the depositary bank may structure its operations such that these two locations are the same, i.e., such that the depositary bank accepts paper returned checks at only one location.

The Board proposes that a depositary bank is entitled to expedited return only if it agrees to accept an electronic return under § 229.32(a). The Board anticipates that virtually all depositary banks will agree to do so, and that a depositary bank that accepts electronic returns will generally prefer to receive all returns in electronic form. Further, the Board proposes that a paper return on which it is permitted to impose a charge for accepting and paying the check on the bank returning a check to it, as opposed to other parties on which it is permitted to impose charges.

F. Section 229.34—Warranties and Indemnities

1. Section 229.34(a)—Transfer and Presentment Warranties With Respect to an Electronic Collection Item or an Electronic Return

Proposed § 229.34(a) sets forth the warranties that a bank makes when it transfers or presents an electronic collection item or electronic return and receives consideration. The Board proposes that the bank warrant that (1) the electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated and the electronic information contains an accurate record of all MICR line information required for a substitute check under § 229.2(r) and the amount of the check; and (2) no person will receive a transfer, presentment, or return of, or otherwise be charged for, an electronic collection item, an electronic return, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid. Each bank that transfers or presents an electronic collection item would make the warranties to the transferee bank, any subsequent collecting bank, the paying bank, and the drawer. Each bank that transfers an electronic return would make the warranties to the transferee returning bank, any subsequent returning bank, the depositary bank, and the owner or one of the check.

These warranties are similar to the warranty that the transferor of a substitute check or paper or electronic representation of a substitute check makes under the terms of the Check 21 Act and § 229.52 of Regulation CC. These warranties would, for example, protect a bank that may need to create a substitute check from an electronic collection item or electronic return that it receives. The proposed warranties would not apply to electronic items transferred or presented pursuant to an agreement that does not require the items to include an image of the check, because such items would not purport to meet the proposed definition of an electronic collection item or electronic return and the receiving bank would not expect to be able create a legally equivalent substitute check from the item.

2. Current § 229.34(b)—Warranty of Notice of Nonpayment

Because the Board proposes to delete the regulation’s provision for notice of nonpayment, the Board proposes to...
delete the warranty applicable to such notice that is set forth in current § 229.34(b).

3. Proposed § 229.34(b)—Settlement Amount, Encoding, and Offset Warranties

The Board proposes that the encoding warranty in current § 229.34(c)(3) (proposed § 229.34(b)(3)) be extended to information encoded after issue as electronic information. For purposes of this paragraph, information encoded after issue includes any information in the electronic information of an electronic collection item or electronic return.

4. Proposed § 229.34(c)—Transfer and Presentment Warranties With Respect to a Remotely Created Check

Under current § 229.34(d), a bank that transfers or presents a remotely created check and receives settlement or consideration for it warrants that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The Board proposes to amend the commentary to proposed § 229.34(c) to clarify that under proposed § 229.34(e), the warranty would apply to an electronic image and information that purport to be derived from a remotely created check, even were they not in fact derived from a paper check. For example, a depositary bank transferring an electronic image and information that, upon inspection, appear to be derived from a check that meets the regulation’s definition of remotely created check would make the warranty of authorization for a remotely created check even if no original check existed with respect to the transaction in question. Further, a paying bank receiving presentment of such an item would receive from the presenting bank a warranty that the item was authorized by the person on whose account the item is drawn.

Currently, a bank that transfers a remotely created check makes the current § 229.34(e) warranty to the transferee bank, any subsequent collecting bank, and the paying bank. The Board’s proposed warranties with respect to electronic collection items (which could be derived from remotely created checks) extend to the drawer; similarly, the current notice of nonpayment and returned check warranties extend to the owner of the check. The Board requests comment on whether the remotely created check warranties should extend to the person on whose account the remotely created check is drawn.

5. Section 229.34(d)—Warranties With Respect to a Returned Check

Proposed § 229.34(d) contains the warranties set forth in current § 229.34(a). The Board proposes to delete from these warranties the warranty of return of a check within the deadline specified in Regulation J. The Regulation J warranties apply only to those returned checks subject to the terms of that regulation, and need not be specified in Regulation CC.

6. Section 229.34(e)—Electronic Image and Information Transferred as an Electronic Collection Item or Electronic Return

Under proposed § 229.34(e), a bank that transfers or presents an electronic image and related electronic information as if it were an electronic collection item or electronic return would make all the warranties in § 229.34 as if the image and information were an electronic collection item or electronic return. In turn, because electronic collection items and electronic returns would be treated as if they were checks or returned checks under § 229.33, a bank also would make the warranties in § 229.34 as if the images and related electronic information were checks or returned checks. This proposal protects recipients of these items that likely will not be able to distinguish them from similar items that originated as paper checks and therefore meet the definitions of “electronic collection item” and “electronic return.” In order for a substitute check to be the legal equivalent of the original check, the image and information contained in the substitute check must be of a paper check. Accordingly, the Board proposes definitions that require electronic collection items and electronic returns be derived from an item that existed as paper. In some cases, a bank may receive an electronic image and electronic information that looks like an electronic collection item or electronic return, but is neither, because it was originally created electronically and there was never a paper check. Banks that receive such images and related electronic information usually cannot differentiate them from actual electronic collection items or electronic returns. Nonetheless, a bank that unknowingly receives an electronic image and related electronic information not derived from a paper instrument may nonetheless transfer the image and related electronic information as if it were derived from a paper instrument. Therefore, the Board believes that electronic images and related electronic information transferred as electronic collection items or electronic returns should be subject to the same warranties as electronic collection items and electronic returns, and therefore, the same warranties as checks and returned checks (see proposed § 229.34(a)).

G. Section 229.35(a)—Indorsement Standards; Appendix D—Indorsement, Reconverting-Bank Identification, and Truncating-Bank Identification Standards

Section 229.35(a) requires a bank (other than the paying bank) that handles a check to indorse the check in a manner that permits a person to interpret the indorsement. Since implementation of the Check 21 Act, banks have increasingly complied with this requirement by associating their electronic indorsements with items that they handle electronically.

In appendix D, the Board proposes to require a depositary bank that transfers an electronic collection item to another bank to apply its indorsement to that item electronically in accordance with ANSI X9.100–187, unless the parties otherwise agree. Similarly, the Board also proposes to require a collecting bank that transfers an electronic collection item, or a returning bank that transfers an electronic return, to another bank to apply its indorsement electronically in accordance with ANSI X9.100–187, unless the parties otherwise agree. In general, the Board believes that inclusion of banks’ indorsements as addenda records accompanying electronic collection items and electronic returns will facilitate the automated handling of the items by subsequent banks. In particular, inclusion of the depositary bank’s indorsement as an addenda record accompanying an electronic collection item will facilitate the automated routing of electronic returns by paying banks and returning banks.

H. Section 229.36—Presentment and Issuance of Checks

1. Section 229.36(a)—Receipt of Electronic Collection Items

i. Section 229.36(a)(1)

Proposed § 229.36(a)(1) sets forth two circumstances in which a paying bank is deemed to have agreed to accept an electronic collection item from the presenting bank. First, a paying bank may agree to accept the electronic

74 This new requirement would not alter the flexibility provided by § 229.35(d) to a depository bank to arrange with another bank to apply the other bank’s indorsement as the depository-bank indorsement.
collection item directly from the presenting bank. Second, a paying bank may have otherwise agreed with the presenting bank to accept an electronic collection item. The proposed commentary indicates that one example of such an agreement would be where the paying bank and presenting bank are both members of the same check clearing house, under the rules of which the paying bank has agreed to accept electronic collection items from the presenting bank.

ii. Section 229.36(a)(2)

Similar to proposed § 229.32(a)(2), proposed § 229.36(a)(2) sets forth when a bank is considered to receive an electronic collection item. A bank receives an electronic collection item when it is delivered to the electronic presentment point designated by the bank or, by agreement, otherwise is made available to the bank for retrieval or review. For example, if a paying bank designates an Internet protocol (IP) address as its electronic presentment point, the paying bank has received an electronic collection item when it is delivered to that address. In contrast, the paying bank may have an arrangement with the collecting bank whereby electronic collection items are received by the paying bank when the collecting bank makes the items available for the paying bank to retrieve or review from a storage device in accordance with the agreement between the collecting bank and the paying bank.

iii. Section 229.36(a)(3)

Similar to proposed § 229.32(a)(2), proposed § 229.36(a)(3) permits a paying bank, for ease of processing, to require that electronic collection items be separated from electronic returns.

2. Section 229.36(b)—Receipt of Paper Checks

The Board proposes in § 229.36(b)(2) that a paying bank be permitted to require that forward-collection checks be separated from returned checks. A similar provision in current § 229.36(f)(1) is limited to checks presented for same-day settlement and permits a paying bank to require that paper checks presented for same-day settlement be separated from other forward-collection checks or returned checks. The Board requests comment on whether a requirement that paper checks presented for same-day settlement be separated from other checks presentments remains necessary.

3. Section 229.36(d)—Same-Day Settlement

For the reasons discussed above in the overview of the proposal, the Board proposes in § 229.36(d)(2) to permit a paying bank to require that checks presented for same-day settlement be presented as electronic collection items to a designated electronic presentment point.

4. Section 229.36(e)—Issuance of Payable-Through Checks

Current § 229.36(e) requires a bank that arranges for checks payable by it to be payable through another bank to print conspicuously on the face of the check the name, location, and first four digits of the routing number of the bank by which the check is payable. The purpose of this provision is to alert the depositary bank receiving a check for deposit that it could not rely on the routing number in the MICR line of the check to determine whether the check was local or nonlocal. Because there are no longer any nonlocal checks, the Board believes that § 229.36(e) is no longer necessary and proposes to delete it.

I. Section 229.37—Variation by Agreement

The commentary to § 229.37 provides examples of situations where variation by agreement is permissible. The Board proposes to amend the commentary to § 229.37 to include as an example of permissible variation by agreement the situation where a depositary bank and a paying bank or returning bank agree to send electronic returns even where the item is available for return. Similarly, the Board proposes to amend the commentary by adding an example that permits a presenting bank and paying bank to agree that presentment takes place upon receipt of an electronic collection item.

J. Section 229.38—Liability

Section 229.38(d)(2) makes drawee banks liable to the extent they issue payable-through checks that are payable through a bank located in a different check-processing region and that circumstance causes a delay in return. Because there is now only one check-processing region, this liability provision is obsolete and the Board proposes to delete it.

K. Section 229.40—Mergers

The Board proposes to delete as obsolete the provision in § 229.40(b) regarding mergers consummated on or after July 1, 1998, and before March 1, 2000.

L. Section 229.43—Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

The Board proposes to modify § 229.43 to reflect how the proposed warranties for electronic collection items and electronic returns in § 229.34 would apply to checks payable in Guam, American Samoa, and the Northern Mariana Islands. Specifically, a bank that handles Pacific island checks in the same manner as other checks may transfer electronic images and electronic information as electronic collection items or electronic returns derived from Pacific island checks. Accordingly, such a bank would make the warranties in §§ 229.34(a) and (b) with respect to Pacific island checks.

IV. Subpart D

A. Section 229.52—Substitute-Check Warranties

Sometimes a check submitted for deposit is subsequently “rejected” by the bank that receives the check. For example, a bank’s customer might submit a check at an ATM that captures an image of the check and sends the image electronically to the bank. In turn, the bank may provide provisional credit to the customer and review the item. For various reasons, the bank’s review of the item might result in the item being rejected—for example, the bank might determine that the item is not payable to the customer who submitted it for deposit. It is costly for the bank to obtain the check from the ATM to provide it back to the customer; moreover, the check may have been destroyed. Accordingly, banks sometimes provide the rejected item to the customer in the form of a substitute check. In such a scenario, the bank would be both the reconverting bank (the bank that created the substitute check) and the truncating bank (the bank that truncated the original check).

Under the terms of § 229.52(a), a bank makes the Check 21 Act warranties with respect to a substitute check when it transfers the substitute check for consideration, as the terms “transfer” and “consideration” are defined in current § 229.2(cc)(c) (proposed to be redesignated as § 229.2((t))). However, a bank may not have received consideration for a substitute check it provides to its customer after it has rejected an original check submitted for deposit.

As noted in the commentary to the definition of transfer and consideration, the Check 21 Act contemplates that a nonbank person that receives a substitute check from a bank will receive warranties and indemnities with
respect to that check. Therefore, in order to prevent a bank from being able to transfer a check that the bank truncated and then reconverted without providing the substitute-check warranties and indemnity, the Board proposes to add to §229.52(a) a new subsection stating that a bank that rejects a check submitted for deposit and sends back to its customer a substitute check (or a paper or electronic representation of a substitute check) makes the warranties in §229.52(a) regardless of whether it received consideration for the substitute check. Because the bank would make these warranties, the substitute check would be the legal equivalent of the rejected original check, provided that the substitute check meets the requirements for legal equivalence set forth in §229.51(a).75 If the substitute check does not meet the requirements for legal equivalence, then the substitute check recipient would have a Check 21 warranty claim against the bank.

Because the bank is both the truncating bank and the reconverting bank with respect to the check, the bank must identify itself on the front of the substitute check as the truncating bank and on the front and back of the check as the reconverting bank, in accordance with the terms of §229.51(b). The bank is not, however, a depositary bank, collecting bank, or returning bank with respect to the check, and the Board proposes to add a clarifying statement to that effect in proposed §229.2(r) (current §229.2(o), the regulation’s definition of depositary bank). Moreover, the bank’s identification of itself on the back of the check as a reconverting bank does not constitute the bank’s indorsement of the check. To address this latter point, the Board proposes changes to the commentaries to §§229.35(a) and 229.51(b), and to paragraph 3(ii) of appendix D.

The Board also proposes to modify the commentary to reflect the fact that a bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check makes the warranties in §229.52.

B. Section 229.53—Substitute-Check Indemnity

In addition to imposing the substitute check warranties on a bank that rejects a check for deposit, the Board similarly proposes to add to §229.53(a) a new subsection stating that a bank that rejects a check submitted for deposit and sends back to its customer a substitute check provides the indemnity set forth in §229.53(a) regardless of whether the bank received consideration. The Board also proposes to modify the commentary to reflect the fact that a bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check is responsible for providing the indemnity in §229.53.

Other Requests for Comment

I. Effective Date

The Board proposes that the revised subparts A and B take effect 30 days following publication of the final rule. The Board recognizes that some banks may wish to use the model forms soon after the rule becomes effective, as part of their normal reordering or reprinting cycle for their funds-availability disclosures. In order to minimize the compliance costs, the Board proposes that banks would have 12 months to comply with the amendments to subpart B and the model forms in appendix C.

The Board proposes that the amendments to subparts C and D become effective six months following publication of the final rule. As discussed above, these amendments provide, among other things, that a depositary bank must accept electronic returns in order to be entitled to expedient return. The time required for depositary banks that currently accept paper returned checks to implement the operational changes necessary for receiving electronic returns generally should not be significant. Many of these depositary banks are small and receive a small number of returned checks. Accordingly, receiving returns as .pdfs, for example, should not require substantial changes. The Board does not expect that other changes to subpart C, such as the proposed provisions for electronic same-day settlement, would impose a significant transition burden given that almost all checks are already presented electronically. Further, under the proposal a collecting bank may continue to present paper checks under the terms of the UCC and Regulation J.

II. Potential Future Changes To Reduce Risks to Depositary Banks

Given that there are no longer any nonlocal checks, a depositary bank must makelaund funds available to the depositor for withdrawal by the second business day after the banking day of deposit, unless one of the time-period adjustments in §229.12 or one of the exceptions in §229.13 is applicable. Even assuming that banks collect and return all checks electronically, depositary banks will in many cases nonetheless be required to make the funds represented by a check deposit available for withdrawal before learning whether the check has been returned unpaid. The Board therefore requests comment on whether this risk is significant and whether there are feasible means to help reduce any risk to depositary banks. For example, the deadline in the UCC by which a paying bank must initiate return of an unpaid check is generally midnight of the banking day following the banking day of receipt of the check by the paying bank, except as the deadline may be extended by §229.30(c) of Regulation CC. As delivery of forward-collection and returned checks becomes increasingly electronic, this amount of time (typically about 36 hours) affords to the paying bank takes up a substantial portion of the total time required for a check to be sent from the depositary bank to the paying bank and back again. The Board requests comment on whether it would be desirable to reduce the amount of time afforded to the paying bank to decide whether or not to pay a check that has been presented to it. The Board also requests comment on whether there are other, preferable, ways to reduce this risk to depositary banks.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rulemaking under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is proposed by this rulemaking is found in 12 CFR 229. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0235.

The EFA Act, as amended, and the Check 21 Act authorizes the Board to issue regulations to carry out the provisions of those Acts (12 U.S.C. 4008 and 12 U.S.C. 5014, respectively). Because the Federal Reserve does not collect any information, no issue of confidentiality arises. However, if, during a compliance examination of a financial institution, a violation of possible deceptive violation of the EFA Act or the Check 21 Act is noted then information regarding such violation may be kept.

75 These requirements are that the substitute check (1) accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and (2) bears the legend, “This is a legal copy of your check. You can use it the same way you would use the original check.”
confidential pursuant to Section (b)(8) of the Freedom of Information Act. 5 U.S.C. 552(b)(8). This information collection is mandatory. 

Regulation CC applies to all banks, not just State Member Banks (SMBs). However, under the PRA, the Board accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Federal Reserve. The Board accounts for the paperwork burden only for SMBs and uninsured state branches and agencies of foreign banks. Other Federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.

The current annual burden to comply with the provisions of Regulation CC is estimated to be 202,396 hours for the 1,060 institutions supervised by the Federal Reserve and that are deemed to be respondents for the purposes of the PRA.

As discussed above, the Board proposes to amend model disclosures, clauses, and notices, in appendix C that banks may use in disclosing their funds-availability policies to their customers and to update the preemption determinations in appendix F to incorporate content requirements prescribed by section 1086 of the Dodd-Frank Act.

The Board estimates that the proposed rule would impose a one-time increase in the total annual burden under Regulation CC. The 1,060 respondents would take, on average, 80 hours (two business weeks) to update their systems to comply with the proposed disclosure requirements addressed in 12 CFR part 229. This one-time revision would increase the burden by 84,800 hours. The Board estimates that, on a continuing basis, the revision to the rule would have a negligible effect on the annual burden. The total annual burden for the Regulation CC information collection is estimated to increase from 202,396 to 287,196 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board’s functions; including whether the information has practical utility; (2) the accuracy of the Board’s estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearinghouse Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0235), Washington, DC 20503.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation CC. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation. While the Board believes that the proposed rule likely would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)), the Board has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

The Board is proposing the foregoing amendments to Regulation CC pursuant to its authority under the EFA Act and the Check 21 Act. The proposed amendments would apply to all banks regardless of their size, and the Board anticipates that the proposal would reduce banks’ overall costs of collecting and returning checks. By providing that a depositary bank preserves its right to expeditious return only of it agrees to receive returned checks electronically, the proposed rule would encourage, but not require, depositary banks to accept check returns in electronic form. A depositary bank that currently receives returned checks in paper form and that chooses to receive returned checks electronically, will incur some cost associated with that transition. The Board expects that these costs would be relatively low for a small depositary bank, which typically would receive only a small volume of returned checks. For example, as mentioned above, the Federal Reserve Banks now offer a product under which they deliver electronically to small depositary banks copies (.pdf files) of returned checks, which the banks can print on their own premises if necessary.76 To receive returned checks in this fashion, a depositary bank may need to establish and maintain an electronic connection to the Reserve Banks, or another returning bank that offers a similar service, and to purchase certain equipment, such as a printer capable of double-sided printing and magnetic-ink toner cartridges.

Depending on the volume of returned checks that a small depositary bank receives, the Board estimates that this transition would cost a small depositary bank approximately $5,000 in net-present-value terms.77 Conversely, a small depositary bank that does not choose to accept returned checks electronically would, under the proposal, incur additional risk associated with that decision. Specifically, the bank would not retain its right to expedient return of a check, and a returned check may not be delivered to the bank in a timely fashion. While this risk is difficult to quantify, it is reasonable to expect that each small depositary bank will weigh the costs and benefits of whether to accept returns electronically. If the bank determines that the net present value of the risk is greater than the cost to receive returned checks electronically, then the bank can minimize its cost associated with the Board’s proposal by accepting returned checks electronically.

The proposed updates to the model funds-availability policy disclosures and notices in appendix C should not impose significant cost on small banks. Under the proposal, a bank that bases its disclosures and notices on the current models in the appendix will continue to receive a safe harbor for 12 months after the final rule becomes effective, provided that the bank’s disclosures and notices accurately reflect the bank’s policies and practices. Moreover, a bank that chooses to update its disclosures on the basis of the proposal would not generally need to redeliver disclosures to all of its existing customers if the bank’s underlying funds-availability

76 After printing the .pdf files, the depositary bank would be able to process the checks exactly as it would process paper checks physically delivered to it.

77 This estimate takes into account the cost to a small depositary bank to establish and maintain an electronic connection to the Reserve Banks, which is estimated to be $110 per month. See 75 FR 67731 at 67747 (Nov. 3, 2010). Some small banks, however, may already have such a connection. Further, a small depositary bank may choose to receive its returns electronically in a manner that does not require this connection, such as through a different returning bank, an electronic check clearinghouse, or a nonbank processor.
policies did not change; instead, in accordance with the regulation, a bank would need to provide the disclosures at the time a customer opens an account, and upon request.

Any costs to a small bank that may result from the rule will be offset to some extent by savings to the bank in other areas. For example, receiving returned checks electronically may enable a small bank to reduce its ongoing operating costs associated with receiving and processing returned checks. Further, as other banks with which the small bank does business also begin to receive returned checks electronically, the small bank, in its role as paying bank, may experience lower costs associated with sending returned checks to other banks, because a paying bank typically pays a higher fee to deliver a returned check in paper form to a depositary bank, as compared to delivering a returned check electronically to the depositary bank. In addition, the proposed provisions for electronic same-day settlement may reduce a small bank’s costs associated with receiving check presentments, because it should further reduce the number of paper check presentments that it receives.

According to the Small Business Administration size standards defining small entities, a commercial bank, savings association, or credit union is considered a “small entity” if it has assets of $175 million or less.78 The Board can identify through data from Reports of Condition and Income (“call reports”) the approximate number of small depository institutions that would be subject to the proposed rule if finalized.79 Based on September 2010 call report data, there are approximately 11,030 depository institutions that have total domestic assets of $175 million or less and thus are considered small entities for purposes of the RFA. Based on December 2010 data regarding checks returned through the Reserve Banks, the Board estimates that 41 percent of small depository institutions had at that time made arrangements to receive returned checks electronically, whereas 59 percent had not. Banks are steadily adopting electronic check handling methods, however, and the Board expects that a substantially higher percentage of small depository institutions will have made arrangements to receive electronic check returns by the time the Board adopts a final rule. The Board specifically requests comment on the cost of its proposed rule to a small depository institution.

The Board notes that subpart A of Regulation J overlaps with the proposed rule with respect to checks collected or returned through the Reserve Banks. The provisions of Regulation J supersede any inconsistent provisions of Regulation CC, but only to the extent of the inconsistency.80

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation and commentary. With the exception of appendices C and F to the regulation, new language is shown inside ▶ bold-faced arrows ◄, while language proposed to be deleted is set off with [bold-faced brackets]. In appendix C, each proposed new model form is set forth in its entirety and the corresponding current form is deleted in its entirety, because the convention described above for the changes to the text within each of the forms would render illegible the formatting of the proposed forms. The Board proposes to replace the text of appendix F in its entirety. Paragraphs in the commentary are numbered to comply with Federal Register publication rules.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 229 as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTIONS OF CHECKS (REGULATION CC)

Subpart A—General

1. Section 229.1 is revised to read as follows:

§ 229.1 Authority and purpose; organization.

(a) Authority and purpose. This part is issued by the Board of Governors of the Federal Reserve System (Board) to implement the Expedited Funds Availability Act (12 U.S.C. 4001–4010) (the EFA Act) and the Check Clearing for the 21st Century Act (12 U.S.C. 5001–5018) (the Check 21 Act).

(b) Organization. This part is divided into subparts and appendices as follows—

(1) Subpart A contains general information. It sets forth—

(i) The authority, purpose, and organization;

(ii) Definition of terms; and

(iii) Authority for administrative enforcement of this part’s provisions.

(2) Subpart B of this part contains rules regarding the duty of banks to make funds deposited into accounts available for withdrawal, including availability schedules. Subpart B of this part also contains rules regarding exceptions to the schedules, disclosure of funds availability policies, payment of interest, liability of banks for failure to comply with Subpart B of this part, and other matters.

(3) Subpart C of this part contains rules to expedite the collection and return of checks by banks, including provisions that accommodate electronic presentment and return of checks. These rules cover the direct return of checks, the manner in which the paying bank and receiving banks must return checks to the depositary bank, notification of nonpayment by the paying bank, endorsement and presentment of checks, same-day settlement for certain checks, the liability of banks for failure to comply with subpart C of this part, and other matters.

(4) Subpart D of this part contains rules relating to substitute checks. These rules address the creation and legal status of substitute checks; the substitute check warranties and indemnity; expedited recredit procedures for resolving improper charges and warranty claims associated with substitute checks provided to consumers; and the disclosure and notices that banks must provide.

▶(5) Appendix A of this part contains a routing number guide to next-day-availability checks. The guide lists the routing numbers of checks drawn on Federal Reserve Banks and Federal Home Loan Banks, and U.S. Treasury checks and Postal money orders that are subject to next-day availability.

(6) Appendix C of this part contains model funds-availability policy disclosures, clauses, and notices and a model disclosure and notices related to substitute-check policies.

(7) Appendix D of this part contains indorsement standards and standards for identifying the reconverting bank and truncating bank.

▶(8) Appendix E of this part contains Board interpretations, which are labeled “Commentary,” of the provisions of this...
part. The Commentary provides background material to explain the Board’s intent in adopting a particular part of the regulation and provides examples to aid in understanding how a particular requirement is to be worked. The Commentary is an official Board interpretation under section 611(e) of the EFA Act (12 U.S.C. 4010(e)).

(9) Appendix F of this part contains the Board’s determinations of the EFA Act and Regulation CC’s preemption of state laws that were in effect on September 1, 1989."

2. Section 229.2 is revised to read as follows:

§ 229.2 Definitions.

As used in this part, and unless the context requires otherwise, the following terms have the meanings set forth in this section, and the terms not defined in this section have the meanings set forth in the Uniform Commercial Code:

(a) Account. Except as provided in paragraphs (a)(2) and (a)(3) of this section, account means a deposit as defined in 12 CFR 204.2(a)(1)(i)(j) that is a transaction account as described in 12 CFR 204.2(e). As defined in these sections, account generally includes a savings deposit for a share account described in 12 CFR 204.2(d)(2) even though such accounts permit third party transfers. An account may be in the form of—

(i) A demand deposit account,

(ii) A negotiable order of withdrawal account,

(iii) A share draft account,

(iv) An automatic transfer account, or

(v) Any other transaction account described in 12 CFR 204.2(e).

(2) For purposes of subpart B of this part and, in connection therewith, this subpart A, account does not include an account where the account holder is a bank, where the account holder is an office of an institution described in paragraphs (e)(1) through (e)(6) of this section or an office of a “foreign bank” as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101) that is located outside the United States, or where the direct or indirect account holder is the Treasury of the United States.

(3) For purposes of subpart D of this part and, in connection therewith, this subpart A, account means any deposit, as defined in 12 CFR 204.2(a)(1)(i)(j), at a bank, including a demand deposit or other transaction account and a savings deposit or other time deposit, as those terms are defined in 12 CFR 204.2.

(b) [Automated clearinghouse or ACH] means a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on automated clearinghouse items or under rules of an automated clearinghouse association.

[Automated clearinghouse (ACH) credit transfer means a transfer whereby the originator orders that its account be debited and another account be credited through the ACH, which is a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on ACH items or under rules of an ACH association or similar interbank agreement.]

(c) Automated teller machine or ATM means electronic device at which a natural person may make deposits to an account by cash or paper check and perform other account transactions, for example, making cash withdrawals from an account.

(d) Available for withdrawal with respect to funds deposited means available for all uses generally permitted to the customer for actually and finally collected funds under the account agreement or policies, such as for payment of checks drawn on the account, certification of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

(e) (1) Bank means—

(i) An insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or a bank that is eligible to apply to become an insured bank under section 5 of that Act (12 U.S.C. 1815);

(ii) A mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(iii) A savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(iv) An insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or a credit union that is eligible to make an application to become an insured credit union under section 201 of that Act (12 U.S.C. 1781);

(v) A member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422);

(vi) A savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) that is an insured depository institution as defined in section 3 of that Act (12 U.S.C. 1813(c)(2)) or that is eligible to apply to become an insured depository institution under section 5 of that Act (12 U.S.C. 1815);

(vii) An agency or a branch of a foreign bank as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101).

(2) For purposes of subparts C and D of this part and, in connection therewith, this subpart A, the term bank also includes any person engaged in the business of banking, as well as a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. Unless otherwise specified, the term bank includes all of a bank’s offices in the United States, but not offices located outside the United States.

[Note:]

(3) For purposes of subpart D of this part and, in connection therewith, this subpart A, bank also includes the Treasury of the United States or the United States Postal Service to the extent that the Treasury or the Postal Service acts as a paying bank.

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

(g) Business day means a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

(h) Cash means United States coins and currency.

(i) Cashier’s check means a check that is—

(1) Drawn on a bank;

(2) Signed by an officer or employee of the bank on behalf of the bank as drawer;

(3) A direct obligation of the bank; and

(4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

(j) Certified check means a check with respect to which the drawee bank
certifies by signature on the check of an officer or other authorized employee of the bank that—

(1) (i) The signature of the drawer on the check is genuine; and

(ii) The bank has set aside funds that—

(A) Are equal to the amount of the check, and

(B) Will be used to pay the check; or

(2) The bank will pay the check upon presentment.

(k) [Reserved]

(l) Check means—

(1) A negotiable demand draft drawn on or payable through or at an office of a bank;

(2) A negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;

(3) A negotiable demand draft drawn on the Treasury of the United States;

(4) A demand draft drawn on a state government or unit of general local government that is not payable through or at a bank;

(5) A United States Postal Service money order; or

(6) A traveler’s check drawn on or payable through or at a bank.

(2) The term check includes an original check and a substitute check.

(3) The term check does not include a noncash item or an item payable in a medium other than United States money.

(4) A draft may be a check even though it is described on its face by another term, such as money order.

(5) For purposes of subparts C and D, and in connection therewith, subpart A, of this part, the term check also includes a demand draft of the type described above that is nonnegotiable.

(l) [Reserved]

(m) Check processing region means the geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities.

Collecting bank means any bank handling a check for forward collection, except the paying bank.

Consumer means a natural person who—

(1) With respect to a check handled for forward collection, draws the check on a consumer account; or

(2) With respect to a check handled for return, deposits the check into or cashes the check against a consumer account.

Consumer account means any account used primarily for personal, family, or household purposes.

Contractual branch, with respect to a bank, means a branch of another bank that accepts a deposit on behalf of the first bank.

Customer means a person having an account with a bank.

Local check means a check payable by or at a local paying bank, or a check payable by a nonbank payor and payable through a local paying bank.

Depository bank means the first bank to which a check is transferred even though it is also the paying bank or the payee. A check deposited in an account is deemed to be transferred to the bank holding the account into which the check is deposited, even though the check is physically received and indorsed first by another bank.

A bank that rejects a check submitted for deposit is not a depositary bank with respect to that check.

Local paying bank means a bank that is located in the same check processing region as the physical location of the branch, contractual branch, or proprietary ATM of the depositary bank in which that check was deposited.

Electronic collection item means an electronic image of and information related to a check that a bank sends for forward collection and that—

(1) A paying bank has agreed to receive under §229.36(a);

(2) Is sufficient to create a substitute check; and

(3) Conforms with American National Standard Specifications for Electronic Exchange of Check and Image Data—X9.100–187, in conjunction with its Universal Companion Document (hereinafter collectively referred to as ANS X9.100–187), unless the Board by rule or order determines that different standard applies or the parties otherwise agree.

Electronic payment means a wire transfer or an ACH credit transfer.

Electronic presentment point means the electronic location that a paying bank has designated for receiving electronic collection items.

(v) Nonlocal check means a check payable by, through, or at a nonlocal paying bank.

Electronic return means an electronic image of and information related to a check that a paying bank determines not to pay and that—

(1) A depositary bank has agreed to receive under §229.32(a);

(2) Is sufficient to create a substitute check; and

(3) Conforms with ANS X9.100–187, unless the Board by rule or order determines that different standard applies or the parties otherwise agree.

Nonlocal paying bank means a paying bank that is not a local paying bank with respect to the depositary bank.

Electronic return point means the electronic location that the depositary bank has designated for receiving electronic returns.

(x) Fedwire has the same meaning as that set forth in §210.26(e) of this chapter.

(y) Forward collection means the process by which a bank sends a check on a cash basis to a collecting bank for settlement or to the paying bank for payment.

Good faith means honesty in fact and observance of reasonable commercial standards of fair dealing.

(aa) Indemnifying bank means a bank that provides an indemnity under §229.53 with respect to a substitute check.

(bb) Interest compensation means an amount of money calculated at the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest compensation is payable, divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the last preceding day for which there is a published rate.

(cc) Magnetic ink character recognition line and MICR line mean the numbers, which may include the routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (hereinafter ANS X9.13) for an original check and American National Standard Specifications for an Image Replacement Document—IRD, X9.100–140 (hereinafter ANS X9.100–140) for a substitute check (unless the Board by rule or order determines that different standards apply).

(dd) Merger transaction means—

(1) A merger or consolidation of two or more banks; or

(2) The transfer of substantially all of the assets of one or more banks or branches to another bank in consideration of the assumption by the acquiring bank of substantially all of the liabilities of the transferring banks, including the deposit liabilities.

(ee) Similarly situated bank means a bank of similar size, located in the same community, and with similar check handling activities as the paying bank or returning bank.

Noncash item means an item that would otherwise be a check, except that—

(1) A passbook, certificate, or other document is attached;
(2) It is accompanied by special instructions, such as a request for special advice of payment or dishonor;
(3) It consists of more than a single thickness of paper, except a check that qualifies for handling by automated check processing equipment; or
(4) It has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

(ii) Nonproprietary ATM means an ATM that is not a proprietary ATM.

(gg) Original check means the first paper check issued with respect to a particular payment transaction.

(hh) Paper or electronic representation of a substitute check means any copy of or information related to a substitute check that a bank handles for forward collection or return, charges to a customer’s account, or provides to a person as a record of a check payment made by the person.

(ii) (1) Paying bank means—

(a) (1) The bank by which a check is payable, unless the check is payable at another bank and is sent to the other bank for payment or collection;

(b) (2) A bank that transfers a substitute check to other than a bank; and

(ii) (3) A bank that transfers a substitute check by a bank to a person other than a bank.

(3) (ii) The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank; or

(iii) The state or unit of general local government on which a check is drawn and to which it is sent for payment or collection.

(3) (ii) For purposes of subparts C and D, and in connection therewith, subpart A, paying bank includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection.

(Note: For purposes of subpart D of this part and, in connection therewith, this subpart A, paying bank also includes the Treasury of the United States or the United States Postal Service for a check that is payable by that entity and that is sent to that entity for payment or collection.

(jj) Person means a natural person, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization.

(kk) Proprietary ATM means an ATM that is

[(1) Owned or operated by, or operated exclusively for, the depositary bank;

[(2] Located on the premises (including the outside wall) of the depositary bank; or

[(3] Located within 50 feet of the premises of the depositary bank, and not identified as being owned or operated by another entity.

(2) If more than one bank meets the owned or operated criterion of paragraph (aa) (kk), (1) of this section, the ATM is considered proprietary to the bank that operates it.

(l) Qualified returned check means a returned check that is prepared for automated return to the depositary bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink. A qualified returned check need not contain other elements of a check drawn on the depositary bank, such as the name of the depositary bank.

(mm) Reconverting bank means—

(1) The bank that creates a substitute check; or

(2) With respect to a substitute check that was created by a person that is not a bank, the first bank that transfers, presents, or returns that substitute check or, in lieu thereof, the first paper or electronic representation of that substitute check.

(nn) Remotely created check means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. For purposes of this definition, “account” means an account as defined in paragraph (a) of this section as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

(oo) Returning bank means a bank (other than the paying or depositary bank) handling a returned check or notice in lieu of return. A returning bank is also a collecting bank for purposes of UCC 4-202(b).

(pp) Routing number means—

(1) The bank-identification number printed on the face of a check in fractional form or in nine-digit form;

(2) The bank-identification number in a bank’s indorsement in fractional or nine-digit form, or

(3) In the case of an electronic collection item or electronic return, the bank-identification number contained in the electronic image of or information related to a check.

(qq) State means a state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands. For purposes of subpart D of this part and, in connection therewith, this subpart A, state also means Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Marianas Islands, and any other territory of the United States.

(rr) Substitute check means a paper reproduction of an original check that—

(1) Contains an image of the front and back of the original check;

(2) Bears a MICR line that, except as provided under ANS X9.100–140 (unless the Board by rule or order determines that a different standard applies), contains all the information appearing on the MICR line of the original check at the time that the original check was issued and any additional information that was encoded on the original check’s MICR line before an image of the original check was captured;

(3) Conforms in paper stock, dimension, and otherwise with ANS X9.100–140 (unless the Board by rule or order determines that a different standard applies); and

(4) Is suitable for automated processing in the same manner as the original check.

(ss) Sufficient copy and copy. (1) A sufficient copy is a copy of an original check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or is otherwise sufficient to determine whether or not a claim is valid.

(2) A copy of an original check means any paper reproduction of an original check, including a paper printout of an electronic image of the original check, a photocopy of the original check, or a substitute check.

(tt) Teller’s check means a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

(uu) Transfer and consideration. The terms transfer and consideration have the meanings set forth in the Uniform Commercial Code and in addition, for purposes of subpart D—

(1) The term transfer with respect to a substitute check or a paper or electronic representation of a substitute check means delivery of the substitute check or other representation of the substitute check by a bank to a person other than a bank; and

(2) A bank that transfers a substitute check or a paper or electronic representation of a substitute check directly to a person other than a bank has received consideration for the substitute check or other paper or
electronic representation of the substitute check if it has charged, or has the right to charge, the person’s account or otherwise has received value for the original check, a substitute check, or a representation of the original check or substitute check.

(vv) **Traveler’s check** means an instrument for the payment of money that—

1. Is drawn on or payable through or at a bank;
2. Is designated on its face by the term **traveler’s check** or by any substantially similar term or is commonly known and marketed as a traveler’s check by a corporation or bank that is an issuer of traveler’s checks;
3. Provides for a specimen signature of the purchaser to be completed at the time of purchase; and
4. Provides for a countersignature of the purchaser to be completed at the time of negotiation.

(ww) **Truncate** means to remove an original check from the forward collection or return process and send to a recipient, in lieu of such original check, a substitute check or, by agreement, information relating to the original check including data taken from the MICR line of the original check or an electronic image of the original check, whether with or without the subsequent delivery of the original check.

(xx) **Truncating bank** means—

1. The bank that truncates the original check; or
2. If a person other than a bank truncates the original check, the first bank that transfers, presents, or returns, in lieu of such original check, a substitute check or, by agreement with the recipient, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without the subsequent delivery of the original check.

(yy) **Uniform Commercial Code, Code, or U.C.C.** means the Uniform Commercial Code as adopted in a state.

(zz) **United States** means the states, including the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

(aaa) **Unit of general local government** means any city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special purpose units of government, such as school districts or water districts.

(bbb) **Wire transfer** means an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted by electronic or other means through Fedwire, the Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. **Wire transfer** does not include an electronic fund transfer as defined in section 903(6) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(6)).

3. In § 229.3, paragraph (a) is revised as follows:

§ 229.3 Administrative enforcement.

(a) Enforcement agencies. Compliance with this part is enforced under—

1. Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 et seq.) in the case of—
   (i) National banks, Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
   (ii) Member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board; and
   (iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

2. Section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

3. The Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union or credit union insured by the National Credit Union Share Insurance Fund.

(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. **Note:** This section has been amended. For the effective date, see § 229.10.

   (2) Next-Day availability.

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

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

   ![](attachment://enforcement.png) 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. **In general.** 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; and

      (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; and

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

   (v) 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.

   ![](attachment://check.png) 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.

2. In § 229.10, revise paragraphs (b) and (c) as follows:

§ 229.10 Next-Day availability.

(b) Electronic payments—

1. In general. A bank shall make funds....
(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)(ii) through (vi) of this section.

(3) 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)(iii), (iii), (iv), and (v) of this section, except that it is not deposited in person to an employee of the depositary bank.

(4) 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.

5. Section 229.12 is revised to read as follows:

§ 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. In general. Except as provided in § 229.10(c), paragraphs (b), (c), (e), and (f) of this section, and in § 229.13, a depositary 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); or

(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; or a cashier's, certified, or teller's check; 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 to this part must be made available for withdrawal not later than the times prescribed in that appendix.

(i) 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), (e), and (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, 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 p.m. on the business day following the banking day on which the funds are available under paragraphs (b), (c), (e), and (f) of this section. This $400 is in addition to the $100 available under § 229.10(c)(1)(vii).

(ii) 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.

(d) 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.

6. Section 229.13 is revised as follows:

§ 229.13 Exceptions.

(a) New accounts. For purposes of this paragraph, checks subject to § 229.10(a)(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) Redeemed 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 indicated 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 post dated when redeposited.

(d) Repeated overdrafts. (1) 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.

(ii) A depositary bank may consider a customer’s account to be repeatedly overdrawn if—

(1) The customer has been deposited in an account at a depositary bank, or the deposit is made, whichever is later. If the customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer 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.

(ii) A depositary bank may consider a customer’s account to be repeatedly overdrawn if—

(1) A depositary bank may consider a customer’s account to be repeatedly overdrawn if—

(ii) A depositary bank may consider a customer’s account to be repeatedly overdrawn if—

(i) A depositary bank may consider a customer’s account to be repeatedly overdrawn if—

(ii) A depositary bank may consider a customer’s account to be repeatedly overdrawn if—

(iii) A depositary bank may consider a customer’s account to be repeatedly overdrawn if—

(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. (i) 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—

(ii) 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

(iii) 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, if the depositary bank exercises such diligence as the circumstances require, 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 total amount of the deposit;

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

(E) The reason the exception was invoked; and

(F) 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.

(ii) 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. (i) In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depositary bank that extends the time when 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—

(A) The reason(s) the exception may be invoked; and

(B) The time period within which deposits subject to the exception generally will be available for withdrawal.

(ii) 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.
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.

(b) Availability of deposits subject to exceptions. (1) If an exception contained in paragraphs (a) 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 contained in 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 §229.12(c)(1) through (5), and two business days for checks described in §229.12(c)(2) through (4), and six business days for checks described in §229.12(c)(5) through (9) or all other checks. A longer extension may be reasonable, but the bank has the burden of so establishing.

7. Section 229.14 is revised to read as follows:

§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 or 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.

8. Section 229.15 is revised to read as follows:

§229.15 General disclosure and notice requirements.

(a) Form of disclosures and notices. A bank shall make the disclosures and notices required by this subpart clearly and conspicuously in writing. Disclosures and notices shall be available 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 disclosures, 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.

9. Section 229.16 is revised to read as follows:

§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 that are subject to differing delays (used by the bank when it delays availability of certain deposits or checks and 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);

(3) A description of any of the exceptions in § 229.13 that may result in deposited funds being available for withdrawal later than the time periods stated in the bank’s availability policy; and

(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 total amount of the deposit;

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

(E) 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 the first business day following the banking day the deposit is made. If the customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer not later than the first business day following the banking day the deposit is made.

(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.

10. § 229.17 is republished to read as follows:

§ 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.

11. § 229.18 is republished to read as follows:

§ 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.

13. Section 229.19 is revised to read as follows:

§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 p.m. or later, or, for the receipt of deposits at ATMs, contractual branches, or off-premise facilities, of 12 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 §229.19(b)(1), if any provision of this subpart requires that funds be made available for withdrawal on any business day for the banking day of deposit, the funds shall be available for withdrawal by the later of:

(1) 9 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; or

(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 cash 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 place a hold on any funds of the customer at the bank, where only if—

(i) The amount of funds that are held does not exceed 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 place a hold on funds in an account of the customer at the bank, if—

(i) The amount of funds that are held does not exceed 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.

13a. Section 229.20 is revised to read as follows:

§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 this subpart and, in connection therewith, subpart B, 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.
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 1, 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.

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.

Subpart C—Collection of Checks

15. Revise §229.30 to read as follows:

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

(a) [Expeditious return of checks.](1) 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], the paying bank shall send the returned check expeditiously such that the depositary bank normally would receive the returned check no later than 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank.

   (i) Two-day/four-day test. A paying bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4 p.m. (local time of the depositary bank) of—

   (i) The second business day following the banking day on which the check was presented to the paying bank, if the paying bank is located in the same check processing region as the depositary bank; or

   (ii) The fourth business day following the banking day on which the check was presented to the paying bank, if the paying bank is not located in the same check processing region as the depositary bank.

(b) [Exceptions to expeditious return.](1) The paying bank need not return the check in an expeditious manner if it sends the check to the depositary bank under §229.32(a); to any bank that handles the check for forward collection on the depositary bank, under §229.30(b)(2), to any bank that handled the check for forward collection on the depositary bank on or before the depositary bank’s next banking day.

   (2) If the last business day on which the check was presented to the paying bank is a Saturday, Sunday, or federal holiday, the exception extends through the remainder of the weekend and through the following federal working day.

   (3) Subject to the requirement of paragraph (a)(2), a paying bank may send a returned check to the depositary bank, or to any other bank agreeing to handle the returned check, expeditiously under §229.31(a), or, under §229.30(b)(2), to any bank that handled the check for forward collection on the depositary bank.

   (4) A paying bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depositary bank, the amount of the returned check, and a “z” in the case of an original check or a “5” in the case of a substitute check in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANSI X9.13, and a qualified returned substitute check shall be encoded in accordance with ANSI X9.100–140.

   (5) This paragraph does not affect a paying bank’s responsibility to return a check within the deadlines required by the U.C.C., Regulation J (12 CFR part 210), or §229.30(c).

   (6) A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious return requirement of this subpart.

(b) [Unidentifiable depositary bank.](1) Exceptions to expeditious return of checks. (1) The expeditious return requirement of paragraph (a)(1) of this section does not apply if—

   (i) The depositary bank has not agreed to accept electronic returns from the paying bank under §229.32(a);

   (ii) The check is deposited in an account of the paying bank that does not maintain accounts; or

   (iii) A paying bank is unable to identify the depositary bank with respect to a check.

   (2) A paying bank that is unable to identify the depositary bank [with respect to a check] may send the
§ 229.31 Returning bank’s responsibility for return of checks.

(a) [Expeditious return of checks.]

(b) [If the returning bank agrees to handle the return expeditiously, the returning bank shall return a returned check in an expeditious manner as provided in either paragraph (a)(1) or (a)(2) of this section.] send the returned check expeditiously such that the depositary bank normally would receive the returned check no later than 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank.

(1) Two-day/four-day test. A returning bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4 p.m. (local time) of—

(i) The second business day following the banking day on which the check was presented to the paying bank if the paying bank is located in the same check processing region as the depositary bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank if the paying bank is not located in the same check processing region as the depositary bank.

(2) If the last business day on which the returning bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the returning bank meets this requirement if the returned check is received by the depositary bank on or before the depositary bank’s next banking day.

(2) Forward collection test. A returning bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

(i) Of similar amount as the returned check;

(ii) Drawn on the depositary bank; and

(iii) Received for forward collection by the similarly situated bank at the time the returning bank received the returned check, except that a returning bank may set a cut-off hour for the receipt of returned checks that is earlier than the similarly situated bank’s cut-off hour for checks received for forward collection, if the cut-off hour is not earlier than 2 p.m.]

(3) Subject to the requirement for expeditious return, a returning bank may send the returned check to the depositary bank, [or] to

is a substitute check or electronic return, the paying bank shall place this information [within the image of the original check that appears on the front of the substitute check] such that the information would be retained on any subsequent substitute check.

[§ 229.36(d)(3) is extended to the time of dispatch of such return [or notice of nonpayment] where a paying bank uses a means of delivery that would ordinarily result in receipt by the depositary bank to which it is sent by 4 p.m. (local time of the depositary bank) on the second business day after the banking day on which the check was presented to the paying bank. —

(1) On or before the receiving bank’s next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. or later set by the receiving bank under U.C.C. 4–108, for all deadlines other than those described in paragraph (c)(2) of this section; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if the transportation would ordinarily result in delivery after the receiving bank’s next cutoff hour or banking day referred to above; or

(2) [Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depositary bank), for a deadline falling on a Saturday that is a banking day (as defined in the applicable U.C.C.) for the paying bank. —

If the last business day on which the paying bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the paying bank’s deadline under the U.C.C. or Regulation J (12 CFR part 210), or § 229.36(d)(3) is extended to the time of dispatch of such return where a paying bank uses a means of delivery such that the returned check would ordinarily be received by the depositary bank on or before the depositary bank’s next banking day.

(d) Identification of returned check. A paying bank returning a check shall clearly indicate on the [front] of the check that it is a returned check and the reason for return. If the check

returning bank to any bank that handled the check for forward collection even if that bank does not agree to handle the check expeditiously under § 229.31(a). A paying bank sending a returned check under this paragraph (b)(2) to a bank that handled the check for forward collection must advise the bank to which the check is sent that the paying bank is unable to identify the depositary bank. [The expeditious-return requirements in § 229.30(a) do not apply to the paying bank’s return of a check under this paragraph.]

(c) Extension of deadline. —

(1) Notice in lieu of return.

A paying bank sending a returned check to any bank that handled the check for forward collection must advise the bank to which the check is sent that the paying bank is not maintaining accounts.

(2) Notice in lieu of return.

A paying bank may deliver a returned check to any bank that handled the check for forward collection in a manner that a similarly situated bank would normally receive the returned check no later than 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank.

(1) Two-day/four-day test. A returning bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4 p.m. (local time) of—

(i) The second business day following the banking day on which the check was presented to the paying bank if the paying bank is located in the same check processing region as the depositary bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank if the paying bank is not located in the same check processing region as the depositary bank.

(2) If the last business day on which the returning bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the returning bank meets this requirement if the returned check is received by the depositary bank on or before the depositary bank’s next banking day.

(2) Forward collection test. A returning bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

(i) Of similar amount as the returned check;

(ii) Drawn on the depositary bank; and

(iii) Received for forward collection by the similarly situated bank at the time the returning bank received the returned check, except that a returning bank may set a cut-off hour for the receipt of returned checks that is earlier than the similarly situated bank’s cut-off hour for checks received for forward collection, if the cut-off hour is not earlier than 2 p.m.]

(3) Subject to the requirement for expeditious return, a returning bank may send the returned check to the depositary bank, [or] to

16. Revise § 229.31 to read as follows:
any bank agreeing to handle the returned check expeditiously under §229.31(a), or, under §229.31(b)(2), to any bank that handled the check for forward collection.

The returning bank may convert the returned check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depositary bank, the amount of the returned check, and a “2” in the case of an original check (or a “5” in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100–140. (The time for expeditious return under the forward collection test, and the deadline for return under the U.C.C. and Regulation J (12 CFR part 210), are extended by one business day if the returning bank converts a returned check to a qualified returned check. This extension does not apply to the two-day/four-day test specified in paragraph (a)(1) of this section or when a returning bank is returning a check directly to the depositary bank.)

(b) Exceptions to expeditious return of checks. (1) The expeditious return requirement of paragraph (a) of this section does not apply if—

(i) The depositary bank has not agreed to accept electronic returns from the paying bank under §229.32(a);

(ii) If the check is deposited in a depositary bank that does not maintain accounts;

(iii) A returning bank is unable to identify the depositary bank with respect to a check; or

(iv) The returning bank received the returned check pursuant to paragraph (b)(2) of this section or §229.30(b)(2).

(2) If a returning bank is unable to identify the depositary bank, the returning bank may send the returned check to any bank that handled the check for forward collection, if the returning bank was not a collecting bank with respect to the returned check; or a prior collecting bank, if the returning bank was a collecting bank with respect to the returned check. A returning bank sending a returned check under this paragraph (b)(2) to a bank that handled the check for forward collection must advise the bank to which the check is sent that the returning bank is unable to identify the depositary bank.

(b) Unidentifiable depositary bank. A returning bank that is unable to identify the depositary bank with respect to a returned check may send the returned check to—

(1) Any collecting bank that handled the check for forward collection if the returning bank was not a collecting bank with respect to the returned check; or

(2) A prior collecting bank, if the returning bank was a collecting bank with respect to the returned check.

A returning bank sending a returned check under this paragraph must advise the bank to which the check is sent that the returning bank is unable to identify the depositary bank.

The expeditious return requirements in paragraph (a) of this section do not apply to return of a check under this paragraph. A returning bank that receives a returned check from a paying bank under §229.30(b), or from a returning bank under this paragraph, but that is able to identify the depositary bank, must thereafter return the check expeditiously to the depositary bank.

(c) Settlement. A returning bank shall settle with a bank sending a returned check to it for return by the same means that it settles or would settle with the sending bank for a check received for forward collection drawn on the depositary bank. This settlement is final when made.

(d) Charges. A returning bank may impose a charge on a bank sending a returned check for handling the returned check.

(e) Depositary bank without accounts. The expeditious return requirement[s] of paragraph (a) of this section does not apply to checks deposited with a depositary bank that does not maintain accounts.

(i) Notice in lieu of return. If a check is unavailable for return, the returning bank may send in its place a copy of the front and back of the returned check, or, if no copy is available, a written notice of nonpayment containing the information specified in §229.33(b) §229.30(e)(2). The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other requirements provision[s] of this subpart.

(f) Reliance on routing number. A returning bank may return a returned check based on any routing number designating the depositary bank appearing on the returned check in the depositary bank’s indorsement or in magnetic ink on a qualified returned check, or in the electronic image or information included in the electronic return.

17. Revise §229.32 to read as follows:

§229.32 Depositary bank’s responsibility for returned checks.

(a) Acceptance of electronic returns. (1) A depositary bank agrees to accept an electronic return from a paying bank if it has agreed to receive the electronic return—

(i) Directly from the paying bank;

(ii) Directly from a returning bank that has held itself out as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to return checks expeditiously under §229.31(a); or

(iii) As otherwise agreed with the paying bank.

(2) When electronic return received. A depositary bank receives an electronic return when the return is delivered to the electronic return point designated by the depositary bank or, by agreement, otherwise is made available to the depositary bank for retrieval or review. (3) A depositary bank may require that electronic returns be separated from electronic collection items.

(b) Acceptance of paper returned checks. (1) A depositary bank shall accept paper returned checks [and written notices of nonpayment].

(ii) At a location, if any, at which presentment of paper checks for forward collection is requested by the depositary bank; and

(iii) At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;

(iii) If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check;

(iii) If no address appears in the indorsement, at a location consistent with the name and address of the bank in its indorsement on the check;

(ii) If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank.

(2) A depositary bank may require that returned checks be separated from forward collection checks.

(c) Payment. (1) A depositary bank shall pay the returning bank or paying bank returning the check to it for the amount of the check prior to the close of business on the banking day on which it received the check (“payment date”) by—
[1(1)] (i) Debit to an account of the depositary bank on the books of the returning bank or paying bank;

(2) (ii) Cash;

(3) (iii) Wire transfer; or

(4) (iv) Any other form of payment acceptable to the returning bank or paying bank.[(3)]

[2] [provided that if a return is made, the proceeds of the payment must be available to the returning bank or paying bank in cash or by credit to an account of the returning bank or paying bank on or as of the payment date. If the payment date is not a banking day for the returning bank or paying bank or the depositary bank is unable to make the payment on the payment date, payment shall be made by the next day that is a banking day for the returning bank or paying bank. These payments are final when made.]

[1(c)] (d) Misrouted returned checks and written notices of nonpayment. If a bank receives a returned check or written notice of nonpayment on the basis that it is the depositary bank, and the bank determines that it is not the depositary bank with respect to the check or notice, it shall either promptly send the returned check or notice to the depositary bank directly or by means of a returning bank agreeing to handle the returned check expediously under §229.31(a), or send the check or notice back to the bank from which it was received.

[(d)] (e) Charges. A depositary bank may not impose a charge for accepting and paying checks being returned to it.

[(f)] Notification to customer. If the depositary bank receives a returned check, it shall send or give notice to its customer of the facts by midnight of the banking day following the banking day on which it received the returned check, or within a longer reasonable time.

18. Revise §229.33 to read as follows:

§229.33 Electronic collection items and electronic returns.

(a) Checks under this subpart. Electronic collection items and electronic returns are subject to the provisions of this subpart as if they were checks or returned checks, unless otherwise provided in this subpart.

(b) [Reserved]

19. Revise §229.34 to read as follows:

§229.34 Warranties.

(a) Transfer and presentment warranties with respect to an electronic collection item or an electronic return.

(1) Each bank that transfers or presents an electronic collection item or an electronic return and receives a settlement or other consideration for it warrants that—

(i) The electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated and the electronic information contains an accurate record of all MICR line information required for a substitute check under §229.2(rr) of this part and the amount of the check, and

(ii) Nonpayment of any amount of the check such that the person will be asked to make payment based on a check it has already paid.

(2) Each bank that transfers or presents an electronic collection item makes the warranties in paragraph (a)(1) of this section to the transferee bank, any subsequent collecting bank, the paying bank, and the drawer; and

(3) Each bank that transfers an electronic return makes the warranties in paragraph (a)(1) of this section to the transferee returning bank, any subsequent returning bank, the depositary bank, and the owner of the check.

(b) Warranty of notice of nonpayment. Each paying bank that gives a notice of nonpayment warrants to the transferee bank, to any subsequent transferee bank, to the depositary bank, and to the owner of the check that—

(1) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline under the U.C.C., Regulation J (12 CFR part 210), or §229.30(c) of this part;

(2) It is authorized to send the notice; and

(3) The check has not been materially altered.

These warranties are not made with respect to checks drawn on a state or a unit of general local government that are not payable through or at a bank.

(c) Warranty of substituted amount, encoding, and offset.

§229.35 Warranties.

(a) Warranty of returned check.

(1) Each paying bank or returning bank that transfers a check, it shall send or give notice to its customer that the person on whose account the remotely created check is drawn has authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. For purposes of this paragraph (d)(1), “account” includes an account as defined in §229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

(2) If a paying bank asserts a claim for breach of warranty under paragraph (d)(1) of this section, the warranting bank may defend by proving that the customer of the paying bank is precluded under U.C.C. 4-406, as applicable, from asserting against the paying bank the unauthorized issuance of the check.

(b) Warranty of returned check.

(1) Each paying bank or returning bank that transfers a
returned check and receives a settlement or other consideration for it warrants to the transference returning bank, to any subsequent returning bank, to the depositary bank, and to the owner of the check, that—

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[1(1)](i) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the U.C.C. [, or Regulation J (12 CFR part 210),] or § 229.30(c) [of this part]  

[2(2)](ii) It is authorized to return the check:  

[3(3)](iii) The check has not been materially altered; and  

[4(4)](iv) In the case of a notice in lieu of return, the [original] check has not and will not be returned.  

[5(5)](a) These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank.  

[6(6)](b) Electronic image and information transferred as an electronic collection item or electronic return. A bank that transfers or presents an electronic image and related electronic information as if it were an electronic collection item or electronic return makes the warranties in this section as if the image and information were an electronic collection item or electronic return.  

[7(7)](1) Damages. Damages for breach of these warranties shall not exceed the consideration received by the bank that presents or transfers a check or returned check, plus interest compensation and expenses related to the check or returned check, if any.  

[8(8)](2) Tender of defense. If a bank is sued for breach of a warranty under this section, it may give a prior bank in the collection or return chain written notice of the litigation, and the bank notified may then give similar notice to any other prior bank. If the notice states that the bank notified may come in and defend and that failure to do so will bind the bank notified in an action later brought by the bank giving the notice as to any determination of fact common to the two litigations, the bank notified is so bound unless after reasonable receipt of the notice the bank notified does come in and defend.  

[9(9)](a) Notice of claim. Unless a claimant gives notice of a claim for breach of warranty under this section to the bank that made the warranty within 30 days after the claimant has reason to know of the breach and the identity of the warranting bank, the warranting bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.  

23. In § 229.35, paragraph (b) is revised to read as follows:

§229.35 Indorsements.  

* * * * *  

(b) Liability of bank handling check. A bank that handles a check for forward collection or return is liable to any bank that subsequently handles the check to the extent that the subsequent bank does not receive payment for the check because of suspension of payments by another bank or otherwise. This paragraph applies whether or not a bank has placed its indorsement on the check. This liability is not affected by the failure of any bank to exercise ordinary care, but any bank failing to do so remains liable. A bank seeking recovery against a prior bank shall send notice to that prior bank reasonably promptly after it learns the facts entitling it to recover. A bank may recover from the bank with which it settled for the check by revoking the settlement, charging back any credit given to an account, or obtaining a refund. A bank may have the rights of a holder with respect to each check it handles.  

* * * * *  

24. Revise § 229.36 to read as follows:

§229.36 Presentment [and issuance] of checks.  

(a) Payable through and payable at checks. A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expedited return and notice of nonpayment requirements of this subsection.  

(b) Receipt at bank office or processing center—Receipt of electronic collection items. (1) A paying bank agrees to receive an electronic collection item from a presenting bank if it has agreed to receive the electronic collection item—  

(i) Directly from the presenting bank; or  

(ii) As otherwise agreed with the presenting bank.  

(2) When electronic collection item received. A bank receives an electronic collection item when the item is delivered to the electronic presentment point designated by the bank or, by agreement, otherwise is made available to the bank for retrieval or review.  

(3) A paying bank may require that electronic collection items be separated from electronic returns.  

(b) Receipt of paper checks. (1) A check in paper form is considered received by the paying bank when it is received:

[1(1)](i) At a location to which delivery is requested by the paying bank:  

[2(2)](ii) At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address.  

[3(3)](iii) At an address of the bank associated with the routing number on the check, whether in magnetic ink or in fractional form, or in the electronic image of or electronic information related to the check, or  

[4(4)](iv) At any branch or head office, if the bank is identified on the check by name without address.  

(2) A paying bank may require that forward collection checks be separated from returned checks.  

(c) Reserved  

(d) Liability of bank during forward collection. Settlements between banks for the forward collection of a check are final when made; however, a collecting bank handling a check for forward collection may be liable to a prior collecting bank, including the depositary bank, and the depositary bank’s customer.  

(e) Issuance of payable-through checks. (1) A bank that arranges for checks payable by it to be payable through another bank shall require that the following information be printed conspicuously on the face of each check:  

(i) The name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable; and  

(ii) The words “payable through” followed by the name of the payable-through bank.  

(2) A bank is responsible for damages under § 229.38 to the extent that a check payable by it and not payable through another bank is labeled as provided in this section.  

(f) Same-day settlement. (1) A check is considered presented, and a paying bank must settle for or return the check pursuant to paragraph (f)(2) of this section, if a presenting bank delivers the check in accordance with reasonable delivery requirements established by the paying bank, a presenting bank delivers the check and demands payment under this paragraph (f)(3) of this section—  

(i) (A) As an electronic collection item to the electronic presentment point designated by the paying bank, if the paying bank agrees to receive electronic collection items from the presenting bank under § 229.36(a) or
[B] At a location designated by the paying bank for receipt of checks under this paragraph (f)(1) (that is in the check processing region consistent with the routing number encoded in magnetic ink on the check and) at which the paying bank would be considered to have received the check under paragraph (b) of this section or, if no location is designated, at any location described in paragraph (b) of this section; and
(ii) By 8 a.m. on a business day (local time of the location described in paragraph (f)(1) of this section; and

(2) A paying bank may require that checks presented under paragraph (d)(1) for settlement pursuant to paragraph (d)(3) of this section be presented as electronic collection items and be presented electronically to a designated electronic presentment point. [A paying bank may require that checks presented for settlement pursuant to this paragraph (f)(1) be separated from other forward-collection checks or returned checks.] [C](3)(i) If presentation of a check meets the requirements of paragraph [(f)(1)][(d)(1)] of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on the business day it receives the check, it either:

(i) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or
(ii) Returns the check.

(3)(4) Notwithstanding paragraph [(f)(2)][(d)(3)] of this section, if a paying bank closes on a business day and receives presentation of a check on that day in accordance with paragraph [(f)(1)][(d)(1)] of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on its next banking day, it either:

(i) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or
(ii) Returns the check.

(4) If the closing in paragraph (d)(4) is voluntary, unless the paying bank settles for or returns the check in accordance with paragraph [(f)(2)][(d)(3)] of this section, it shall pay interest compensation to the presenting bank for each day after the business day on which the check was presented until the paying bank settles for the check, including the day of settlement.

25. Revise § 229.38 to read as follows:

§ 229.38 Liability. (a) Standard of care; liability; measure of damages. A bank shall exercise ordinary care and act in good faith in complying with the requirements of this subpart. A bank that fails to exercise ordinary care or act in good faith under this subpart may be liable to the depositary bank, the depositary bank’s customer, the owner of a check, or another party to the check. The measure of damages for failure to exercise ordinary care is the amount of the loss incurred, up to the amount of the check, reduced by the amount of the loss that party would have incurred even if the bank had exercised ordinary care. A bank that fails to act in good faith under this subpart may be liable for other damages, if any, suffered by the party as a proximate consequence. Subject to a bank’s duty to exercise ordinary care or act in good faith in choosing the means of return for notice of nonpayment, the bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, or for loss or destruction of a check for notice of nonpayment in transit or in the possession of others. This section does not affect a paying bank’s liability to its customer under the U.C.C. or other law.

(b) Paying bank’s failure to make timely return. If a paying bank fails both to comply with § 229.30(a) and to comply with the deadline for return under the U.C.C., Regulation J (12 CFR part 210), or § 229.30(c) in connection with a single nonpayment of a check, the paying bank shall be liable under either § 229.30(a) or such other provision in this subpart because of paying bank’s failure to make timely return.

(c) Comparative negligence. If a person, including a bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§ 229.35), accepting a returned check (§ 229.35), accepting a returned check under § 229.30(a), accepting a returned check under § 229.30(c) in connection with a single nonpayment of a check, or otherwise, the damages incurred by that person under § 229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

(d) Responsibility for certain aspects of checks—(1) A paying bank, or in the case of a check payable through the paying bank and payable by another bank, the bank by which the check is payable, is responsible for damages under paragraph (a) of this section to the extent that the condition of the check when issued by it or its customer adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A depositary bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A reconverting bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a substitute check transferred, presented, or returned by it—

(i) Adversely affects the ability of a subsequent bank to indorse the check legibly in accordance with § 229.35; or

(ii) Causes an indorsement that previously was applied in accordance with § 229.35 to become illegible.

[Note: § 229.38 Responsibility under this paragraph (d) shall be treated as negligence of the paying bank, depositary bank, or reconverting bank for purposes of paragraph (c) of this section.]

(2) Responsibility for payable through checks. In the case of a check that is payable by a bank and payable through a paying bank located in a different check processing region than the bank by which the check is payable, the bank by which the check is payable is responsible for damages under paragraph (a) of this section, to the extent that the check is not returned to the depositary bank through the payable through bank as quickly as the check would have been required to be returned under § 229.30(a) had the bank by which the check is payable—

(i) Received the check as paying bank on the day the payable through bank received the check; and

(ii) Returned the check as paying bank in accordance with § 229.30(a)(1).

Responsibility under this paragraph shall be treated as negligence of the bank by which the check is payable for purposes of paragraph (c) of this section.

(e) Timeliness of action. If a bank is delayed in acting beyond the time limits set forth in this subpart because of interruption of communication or computer facilities, suspension of payments by a bank, 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.

(f) Exclusion. Section 229.21 of this part and section 611(a), (b), and (c) of the EFA Act (12 U.S.C. 4010(a), (b), and (c)) do not apply to this subpart.

(g) Jurisdiction. Any action under this subpart 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.

(b) 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 the 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.

26. In §229.39, revise paragraph (c) to read as follows:

§229.39 Insolvency of bank. * * * * *  
(c) Preference against collecting, paying, or returning bank. If a collecting, paying, or returning bank receives settlement from a subsequent bank for a check or returned check, which settlement is or becomes final, and suspends payments without making a settlement for the check with the prior bank, which is or becomes final, the prior bank has a preferred claim against the collecting or returning bank. * * * * *

27. Revise §229.40 to read as follows:

§229.40 Effect of merger transaction.  
(1) [a] In general. For purposes of this subpart, 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.

(b) 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.

28. Revise §229.41 to read as follows:

§229.41 Relation to [Subpart C—Banking law.  
The provisions of this subpart supersede any inconsistent provisions of the U.C.C. as adopted in any state, or of any other state law, but only to the extent of the inconsistency.

29. Revise §229.42 to read as follows:

§229.42 Exclusions.  
The expeditious-return (§§ 229.30(a) and 229.31(a)), notice-of-nonpayment (§ 229.33), and same-day settlement (§§ 229.36(f)(4) and §229.36(d)(4)) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.  

30. Revise §229.43 to read as follows:

§229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands.  
(a) Definitions. The definitions in §229.2 apply to this section, unless otherwise noted. In addition, for the purposes of this section—  
(1) Pacific island bank means an office of an institution that would be a bank as defined in §229.2(e) but for the fact that the office is located in Guam, American Samoa, or the Northern Mariana Islands;  
(2) Pacific island check means a demand draft drawn on or payable through or at a Pacific island bank, which is not a check as defined in §229.2(k);  
(b) Rules applicable to Pacific island checks. To the extent a bank handles a Pacific island check as if it were a check defined in §229.2(k), the bank is subject to the following sections of this part (and the word “check” in each such section is construed to include a Pacific island check)—  
(1) §229.31, except that the returning bank is not subject to the requirement to return a Pacific island check in an expeditious manner;  
(2) §229.32;  
(3) §229.34 (a), (b), (c)(2), (c)(3), (d), (e), and (f);  
(4) §229.35;  
(5) §§229.15(c), 229.16, 229.17, 229.18, 229.20, 229.21, 229.22, 229.23, 229.24, 229.25, 229.26, 229.27, 229.28, 229.29, 229.30, 229.31, 229.32, 229.33, 229.34, 229.35, 229.36(b), 229.37, 229.38(a) and (c) through (h);  
(6) §§229.39(a), (b), (c), and (e);  
(7) §§229.40 through 229.42.

Subpart D—Substitute Checks

31. In §229.52, revise paragraph (a) to read as follows:

§229.52 Substitute check warranties.  
(a) Content and provision of substitute check warranties.  
(1) A bank that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) shall indemnify the recipient as described in paragraph (a)(1) of this section regardless of whether the bank received consideration.  
(2) A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) makes the warranties described in paragraph (a)(1) of this section regardless of whether the bank received consideration.

32. In §229.53, revise paragraph (a) to read as follows:

§229.53 Substitute check indemnity.  
(a) Scope of indemnity.  
(1) A bank that transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check for which it receives consideration shall indemnify the recipient and any subsequent recipient (including a collecting or returning bank, the drawer, the drawee, and any indorser) for any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check.

(2) A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) shall indemnify the recipient as described in paragraph (a)(1) of this section regardless of whether the bank received consideration.

33. Revise Appendix A to Part 229 to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day-Availability Checks [and Local Checks]

[A. Each bank is assigned a routing number by an agent of the American Bankers Association. The routing number takes two forms: a fractional form and a nine-digit form. A paying bank generally is identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink along the bottom of the check). Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable-through bank, not the payer bank.

B. The first four digits of the nine-digit routing number (and the denominator of the fractional routing number) form the “Federal Reserve routing symbol,” and the first two digits of the routing number identify the Federal Reserve District in which the bank is located. Thus, 01 will be the first two digits of the routing number of a bank in the First Federal Reserve District (Boston), and 12 will be the first two digits of the routing number of a bank in the Twelfth District (San Francisco). Adding 2 to the first digit denotes...
a thrift institution. Thus, 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

### Fourth Federal Reserve District

Federal Reserve Bank of Cleveland

**Head Office**

<table>
<thead>
<tr>
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<th>District</th>
</tr>
</thead>
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1 The first two digits identify the bank’s Federal Reserve District. For example, 01 identifies the First Federal Reserve District (Boston), and 12 identifies the Twelfth District (San Francisco). Adding 2 to the first digit denotes a thrift institution. For example, 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

### Federal Reserve Banks

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### Checks and Postal Money Orders

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<td>0000</td>
<td>0800 2</td>
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34. Revise Appendix C to Part 229 to read as follows:
Appendix C to Part 229—Model Availability-Policy Disclosures, Clauses, and Notices; Model Substitute-Check-Policy Disclosure and Notices

This appendix contains model availability-policy disclosures, clauses, and notices to facilitate compliance with the disclosure and notice requirements of Regulation CC (12 CFR part 229). Although use of these models is not required, banks using them properly (with the exception of models C–22 through C–25) to make disclosures required by Regulation CC are deemed to be in compliance.

Model Disclosures

C–1 Next-day availability
C–2 Next-day availability and section 229.13 exceptions
C–3 A Next-day availability, case-by-case hold notice
C–3 B Next-day availability, case-by-case hold notice with cash-withdrawal limitation
C–3 C Next-day availability, case-by-case hold notice and section 229.13 exceptions
C–3 D Next-day availability, case-by-case hold notice with cash-withdrawal limitation and section 229.13 exceptions
C–4 A Holds to statutory limits on all deposits (includes chart)
C–4 B Holds to statutory limits on all deposits with cash-withdrawal limitation
C–5 A Substitute-Check-Policy Disclosure Model
C–5 B Appendix B availability (nonlocal checks)
C–5 C Automated teller machine deposits (extended hold)
C–5 D Cash-withdrawal limitation
C–6 Credit union interest-payment policy
C–6 A Availability of funds deposited at other locations

Model Clauses

C–6 Hold on other funds (check cashing)
C–7 Hold on other funds (other account)
C–8 Appendix B availability (nonlocal checks)
C–9 6 Automated teller machine deposits (extended hold)
C–10 Cash-withdrawal limitation
C–11 A Credit union interest-payment policy
C–11 B Availability of funds deposited at other locations

Model Notices

C–12 9 Exception or reasonable-cause hold notice
C–13 Reasonable-cause hold notice
C–14 10 One-time notice for large-deposit and redeposited-check exception holds
C–15 11 One-time notice for repeated-overdraft exception holds
C–16 12A Case-by-case hold notice
C–16 B 12B Case-by-case hold notice with cash-withdrawal limitation
C–17 13 Notice at locations where employees accept consumer deposits
C–18 14 Notice at locations where employees accept consumer deposits (case-by-case holds)
C–19 15 Notice at automated teller machines
C–20 16 Notice at automated teller machines (delayed receipt)
C–21 17 Deposit-slip notice
C–22 18 Expedited-Recredit Claim, Valid-Claim Refund Notice
C–22 A Expedited-Recredit Claim, Provisional-Refund Notice
C–23 20 Expedited-Recredit Claim, Denial Notice
C–24 21 Expedited-Recredit Claim, Reversal Notice

YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use them to pay checks that you have written. For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and Federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

- Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day’s total deposits of cashier’s, certified, teller’s, traveler’s, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you must use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from other check deposits will be available on the (number) business day after the day of your deposit.

YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written. For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and Federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.
We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day’s total deposits of cashier’s, certified, teller’s, traveler’s, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, funds from these deposits will be available on the second business day after the day of your deposit. Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:
- U.S. Treasury checks that are payable to you
- Wire transfers
- Checks drawn on (bank name) [unless (any limitations related to branches in different states or check-processing regions)]

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:
- Cash
- State and local government checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)]
- Cashier’s, certified, and teller’s checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)]
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

Other Check Deposits

To find out when funds from other check deposits will be available, look at the first four digits of the routing number on the check:
Some checks are marked “payable through” and have a four- or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Once you have determined the first four digits of the routing number (1234 in the examples above), the chart below will show you when funds from the check will be available. If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

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<th>First four digits from routing number</th>
<th>When funds are available</th>
<th>When funds are available if a deposit is made on a Monday</th>
</tr>
</thead>
<tbody>
<tr>
<td>[local numbers]</td>
<td>$100 on the first business day after the day of your deposit.</td>
<td>Tuesday</td>
</tr>
<tr>
<td></td>
<td>Remaining funds on the second business day after the day of your deposit.</td>
<td>Wednesday</td>
</tr>
<tr>
<td>All other numbers</td>
<td>$100 on the first business day after the day of your deposit.</td>
<td>Tuesday</td>
</tr>
<tr>
<td></td>
<td>Remaining funds on the fifth business day after the day of your deposit.</td>
<td>Monday of the following week</td>
</tr>
</tbody>
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Longer Delays May Apply
Funds you deposit by check may be delayed for a longer period under the following circumstances:
- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.
We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts
If you are a new customer, the following special rules will apply during the first 30 days your account is open.
Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day’s total deposits of cashier’s, certified, teller’s, traveler’s, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit. Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C-5—Holds to Statutory Limits on All Deposits
YOUR ABILITY TO WITHDRAW FUNDS
Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit
The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and Federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.
The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability
Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability
Funds from the following deposits are available on the first business day after the day of your deposit:
- U.S. Treasury checks that are payable to you
- Wire transfers
- Checks drawn on (bank name) (unless any limitations related to branches in different states or check-processing regions)
- If you make the deposit in person to one of our employees, funds from the following deposits are available on the first business day after the day of your deposit:
  - Cash
  - State and local government checks that are payable to you (if you use a special deposit slip available from [where deposit may be obtained])
  - Cashier’s, certified, and teller’s checks that are payable to you (if you use a special deposit slip available from [where deposit slip may be obtained])
  - Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you
- If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

Other Check Deposits
The delay for other check deposits depends on whether the check is a local or nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check.
If the first four digits of the routing number (1234 in the examples above) are (list of local numbers), then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked “payable through” and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows:

1. Local checks. The first $100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the second business day after the day of your deposit. For example, if you deposit a $700 local check on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Wednesday.

2. Nonlocal checks. The first $100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the fifth business day after the day of your deposit. For example, if you deposit a $700 nonlocal check on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Monday of the following week.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit. If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day’s total deposits of cashier’s, certified, teller’s, traveler’s, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.
Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

BILLING CODE 6210-01-P

► Model C-1- Next-day availability

DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday. See the Availability Timeline below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

Availability Timeline

<table>
<thead>
<tr>
<th>When a deposit is made by ...</th>
<th>Deposited funds are available ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Electronic direct deposit</td>
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</tr>
<tr>
<td>• Cash</td>
<td>• The next business day</td>
</tr>
<tr>
<td>• Check</td>
<td></td>
</tr>
</tbody>
</table>

What is a “Business Day?”

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (time of day) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

[Check Cashing, Immediate Availability, and Holds on Other Funds]

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your other account(s) according to the timelines described elsewhere in this policy.]
**C-2—Next-Day Availability and Section 229.13 Exceptions**

**DEPOSIT AVAILABILITY POLICY**

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the Availability Timeline below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

**Availability Timeline for Deposits to Established Accounts**

Below is our general policy for deposits to accounts open for more than 30 days. **Longer delays may apply**, and different rules apply for checks deposited to accounts open 30 days or less (see page 2).

<table>
<thead>
<tr>
<th>When a deposit is made by ...</th>
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**What is a “Business Day?”**

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (time of day) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

**[Check Cashing, Immediate Availability, and Holds on Other Funds]**

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your other account(s) according to the timelines described elsewhere in this policy.

**Longer Delays May Apply**

Funds from check deposits may be delayed for up to **(number) business days** if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than $(/large-deposit amount) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds, and we will tell you when the funds will be available.
## DEPOSIT AVAILABILITY POLICY (continued)

**Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)**

<table>
<thead>
<tr>
<th>When a deposit is made by ...</th>
<th>Deposited funds are available ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Electronic direct deposit</td>
<td>• The same business day</td>
</tr>
<tr>
<td>• Wire transfer</td>
<td></td>
</tr>
<tr>
<td>• Cash</td>
<td></td>
</tr>
</tbody>
</table>
| • U.S. Treasury check payable to you | • The first $(new-account amount) is available on the next business day  
|                               | • Any remainder over $(new-account amount) is available in 9 business days |
| • Government, cashier’s, certified, teller’s, or traveler’s check that is payable to you [and deposited with a special deposit slip*] | • The first $(new-account amount) is available on the next business day if deposited with a teller, otherwise 2 business days  
|                               | • Any remainder over $(new-account amount) is available in 9 business days |
| • Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check payable to you |                                  |
| • Other checks not specifically described above  
  For example, personal checks, or checks not written to you | • In (number) business days |

[* Special deposit slips can be obtained in any branch. Government, cashier’s, certified, teller’s, or traveler’s checks will be processed like “other checks” if they are not deposited with a special deposit slip.]
C-3A—Next-Day Availability, Case-by-Case Holds to Statutory Limits Without Cash-Withdrawal Limitation, and Section 229.13 Exceptions

DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the Availability Timeline below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

Availability Timeline for Deposits to Established Accounts

Below is our general policy for deposits to accounts open for more than 30 days. Longer delays may apply, and different rules apply for checks deposited to accounts open 30 days or less (see page 2).

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<th>When a deposit is made by ...</th>
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<tr>
<td>• Wire transfer</td>
<td></td>
</tr>
<tr>
<td>• Cash</td>
<td></td>
</tr>
<tr>
<td>• Check</td>
<td>• Usually the next business day, but see &quot;Longer Delays May Apply&quot; below</td>
</tr>
</tbody>
</table>

What is a “Business Day?”

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (time of day) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

[Check Cashing, Immediate Availability, and Holds on Other Funds]

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.

Longer Delays May Apply

Funds from check deposits may not be available according to the timeline described above. In some cases funds may be held for up to 2 business days. In these cases, the first $(minimum amount)$ of the deposit will be available on the next business day.

Funds from check deposits may be delayed for up to (number) business days if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than $(large-deposit amount)$ on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds, and we will tell you when the funds will be available.

If you will need the funds from a check deposit right away, ask us when the funds will be available.
C-3A—Next-Day Availability, Case-by-Case Holds to Statutory Limits Without Cash-Withdrawal Limitation, and Section 229.13 Exceptions

DEPOSIT AVAILABILITY POLICY (continued)

Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)

<table>
<thead>
<tr>
<th>When a deposit is made by ...</th>
<th>Deposited funds are available ...</th>
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<tbody>
<tr>
<td>• Electronic direct deposit</td>
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<tr>
<td>• Wire transfer</td>
<td></td>
</tr>
<tr>
<td>• Cash</td>
<td></td>
</tr>
<tr>
<td>• U.S. Treasury check payable to you</td>
<td>• The first $(new-account amount) is available on the next business day</td>
</tr>
<tr>
<td></td>
<td>• Any remainder over $(new-account amount) is available in 9 business days</td>
</tr>
<tr>
<td>• Government, cashier’s, certified, teller’s, or traveler’s check that is payable to you [and deposited with a special deposit slip*]</td>
<td>• The first $(new-account amount) is available on the next business day if deposited with a teller, otherwise 2 business days</td>
</tr>
<tr>
<td>• Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check payable to you</td>
<td>• Any remainder over $(new-account amount) is available in 9 business days</td>
</tr>
<tr>
<td>• Other checks not specifically described above For example, personal checks, or checks not written to you</td>
<td>• In (number) business days</td>
</tr>
</tbody>
</table>

[* Special deposit slips can be obtained in any branch. Government, cashier’s, certified, teller’s, or traveler’s checks will be processed like “other checks” if they are not deposited with a special deposit slip.]
C-3B—Next-Day Availability, Case-by-Case Holds to Statutory Limits With Cash-Withdrawal Limitation, and Section 229.13 Exceptions

DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the Availability Timeline below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

Availability Timeline for Deposits to Established Accounts

Below is our general policy for deposits to accounts open for more than 30 days. Longer delays may apply, and different rules apply for checks deposited to accounts open 30 days or less (see page 2).

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</tr>
<tr>
<td>• Check</td>
<td>• Usually the next business day, but see “Longer Delays May Apply” below</td>
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What is a “Business Day?”

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (time of day) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

[Check Cashing, Immediate Availability, and Holds on Other Funds]

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]

Longer Delays May Apply

Funds from check deposits may not be available according to the timeline described above. In some cases funds may be held for up to three business days, and in other specific cases they may be held for up to (number) business days after the day of your deposit. We will notify you if we delay your ability to withdraw funds, and we will tell you when the funds will be available.

In the case of a 3 business day hold:

- The first $(minimum amount) of the deposit will be available on the next business day.
- Up to an additional $(cash-withdrawal amount) will be available for cash withdrawal beginning at (time no later than 5:00 p.m.) on the second business day. The entire deposit (up to $(large-deposit amount)) will be available for paying checks you have written on the second business day.
- The remainder (up to $(large-deposit amount)) will be available for cash withdrawal on the third business day.
- Any remainder over $(large-deposit amount) is available in (number) business days for cash withdrawal and writing checks.

Funds from check deposits may be delayed for up to (number) business days if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than $(large-deposit amount) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is an emergency, such as failure of computer or communications equipment.

If you will need the funds from a check deposit right away, ask us when the funds will be available.
C-3B— Next-Day Availability, Case-by-Case Holds to Statutory Limits With Cash- Withdrawal Limitation, and Section 229.13 Exceptions

DEPOSIT AVAILABILITY POLICY (continued)

Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)

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</tr>
</tbody>
</table>

| • U.S. Treasury check payable to you | • The first $/(new-account amount) is available on the next business day |
|                                       | • Any remainder over $/(new-account amount) is available in 9 business days |

| • Government, cashier’s, certified, teller’s, or traveler’s check that is payable to you [and deposited with a special deposit slip*] | • The first $/(new-account amount) is available on the next business day if deposited with a teller, otherwise 2 business days |
|                                                                                                               | • Any remainder over $/(new-account amount) is available in 9 business days |

| • Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check payable to you | • In (number) business days |
|                                                                                                       |                                |

| • Other checks not specifically described above  |
| For example, personal checks, or checks not written to you |                                |

[* Special deposit slips can be obtained in any branch. Government, cashier’s, certified, teller’s, or traveler’s checks will be processed like “other checks” if they are not deposited with a special deposit slip.]
C-4A— Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation

**DEPOSIT AVAILABILITY POLICY**

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the Availability Timeline below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

**Availability Timeline for Deposits to Established Accounts**

Below is our general policy for deposits to accounts open for more than 30 days. Longer delays may apply, and different rules apply for checks deposited to accounts open 30 days or less (see page 2).

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (time of day) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

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<td>• The next business day</td>
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<tr>
<td>• Cash</td>
<td>• The next business day if deposited with a teller, otherwise 2 business days</td>
</tr>
<tr>
<td>• Check from an account at this bank</td>
<td>• The first $/(large-deposit amount) is available on the next business day</td>
</tr>
<tr>
<td>• U.S. Treasury check payable to you</td>
<td>• Any remainder over $/(large-deposit amount) is available in 2 business days</td>
</tr>
<tr>
<td>• Government, cashier’s, certified, or teller’s check payable to you and deposited with a teller (with a special deposit slip*)</td>
<td>• The first $/(large-deposit amount) is available on the next business day</td>
</tr>
<tr>
<td>• Postal money order, Federal Reserve Bank check, or Federal Home Loan bank check payable to you and deposited with a teller</td>
<td>• Any remainder over $/(large-deposit amount) is available in (number) business days</td>
</tr>
<tr>
<td>• Other checks not specifically described above For example, personal checks, or checks not written to you</td>
<td>• The first $/(minimum-amount) is available on the next business day</td>
</tr>
<tr>
<td></td>
<td>• The remainder (up to $/(large-deposit amount)) is available in 2 business days</td>
</tr>
<tr>
<td></td>
<td>• Any remainder over $/(large-deposit amount) is available in (number) business days</td>
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[* Special deposit slips can be obtained in any branch. Government, cashier’s, certified, or teller’s checks will be processed like "other checks" if they are not deposited with a special deposit slip.*]

**Check Cashing, Immediate Availability, and Holds on Other Funds**

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]
C-4A—Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation

**DEPOSIT AVAILABILITY POLICY (continued)**

**Longer Delays May Apply**
Funds from check deposits may be delayed for up to (number) business days if:
- We believe a deposited check will not be paid.
- You deposit checks totaling more than $(large-deposit amount) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is a bank emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available.

<table>
<thead>
<tr>
<th>Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When a deposit is made by ...</strong></td>
</tr>
<tr>
<td>---</td>
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<td>Electronic direct deposit</td>
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<tr>
<td>Wire transfer</td>
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<tr>
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<tr>
<td>U.S. Treasury check payable to you</td>
</tr>
<tr>
<td>Government, cashier's, certified, teller's, or traveler's check that is payable to you [and deposited with a special deposit slip*]</td>
</tr>
<tr>
<td>Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check payable to you</td>
</tr>
<tr>
<td>Other checks not specifically described above</td>
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</tbody>
</table>

[* Special deposit slips can be obtained in any branch. Government, cashier’s, certified, teller’s, traveler’s checks will be processed like “other checks” if they are not deposited with a special deposit slip.]*
**C-4B—Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation**

**DEPOSIT AVAILABILITY POLICY**

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the Availability Timeline below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

**Availability Timeline for Deposits to Established Accounts**

Below is our general policy for deposits to accounts open for more than 30 days. Longer delays may apply, and different rules apply for checks deposited to accounts open 30 days or less (see page 2).

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (time of day) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

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<td>The next business day</td>
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<tr>
<td>Cash</td>
<td>The next business day if deposited with a teller, otherwise 2 business days</td>
</tr>
<tr>
<td>Check from an account at this bank</td>
<td>The first $(large-deposit amount) is available on the next business day</td>
</tr>
<tr>
<td>U.S. Treasury check payable to you</td>
<td>Any remainder over $(large-deposit amount) is available in 2 business days</td>
</tr>
<tr>
<td>Government, cashier’s, certified, or teller’s check payable to you and deposited with a teller [with a special deposit slip*]</td>
<td>The first $(large-deposit amount) is available on the next business day</td>
</tr>
<tr>
<td>Postal money order, Federal Reserve Bank check, or Federal Home Loan bank check payable to you and deposited with a teller</td>
<td>Any remainder over $(large-deposit amount) is available in (number) business days</td>
</tr>
<tr>
<td>Other checks not specifically described above</td>
<td>For writing checks:</td>
</tr>
<tr>
<td>For example, personal checks, or checks not written to you</td>
<td>- The first $(minimum amount) is available on the next business day</td>
</tr>
<tr>
<td></td>
<td>- The remainder (up to $(large-deposit amount)) is available in 2 business days</td>
</tr>
<tr>
<td></td>
<td>For cash withdrawal:</td>
</tr>
<tr>
<td></td>
<td>- The first $(minimum amount) is available on the next business day</td>
</tr>
<tr>
<td></td>
<td>- Up to an additional $(cash-withdrawal amount) is available on the second business day at (time no later than 5:00 p.m.)</td>
</tr>
<tr>
<td></td>
<td>- The remainder (up to $(large-deposit amount)) is available in 3 business days</td>
</tr>
<tr>
<td></td>
<td>Any remainder over $(large-deposit amount) is available in (number) business days for cash withdrawal and for writing checks</td>
</tr>
</tbody>
</table>

[* Special deposit slips can be obtained in any branch. Government, cashier’s, certified, or teller’s checks will be processed like “other checks” if they are not deposited with a special deposit slip.]

[Check Cashing, Immediate Availability, and Holds on Other Funds
We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]
C-4B—Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation

DEPOSIT AVAILABILITY POLICY (continued)

Longer Delays May Apply
Funds from check deposits may be delayed for up to (number) business days if:
- We believe a deposited check will not be paid.
- You deposit checks totaling more than $500 per day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is a bank emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available.

Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)

<table>
<thead>
<tr>
<th>When a deposit is made by ...</th>
<th>Deposited funds are available ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Electronic direct deposit</td>
<td>• The same business day</td>
</tr>
<tr>
<td>• Wire transfer</td>
<td>• The next business day</td>
</tr>
<tr>
<td>• Cash</td>
<td>• The next business day if deposited with a teller, otherwise 2 business days</td>
</tr>
<tr>
<td>• U.S. Treasury check payable to you</td>
<td>• The first $1(new-account amount) is available on the next business day</td>
</tr>
<tr>
<td></td>
<td>• Any remainder over $1(new-account amount) is available in 9 business days</td>
</tr>
<tr>
<td>• Government, cashier’s, certified, teller’s, or traveler’s check that is payable to you [and deposited with a special deposit slip*]</td>
<td>• The first $1(new-account amount) is available on the next business day</td>
</tr>
<tr>
<td></td>
<td>• Any remainder over $1(new-account amount) is available in 9 business days</td>
</tr>
<tr>
<td>• Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check payable to you</td>
<td>• The same business day</td>
</tr>
<tr>
<td>• Other checks not specifically described above</td>
<td>• In (number) business days</td>
</tr>
<tr>
<td>For example, personal checks, or checks not written to you</td>
<td></td>
</tr>
</tbody>
</table>

[* Special deposit slips can be obtained in any branch. Government, cashier’s, certified, teller’s, traveler’s checks will be processed like “other checks” if they are not deposited with a special deposit slip.]

What are my rights regarding substitute checks?
In certain cases, Federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced-check fees).
The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to (amount, not lower than $2,500) of your refund (plus interest if your account earns interest) with us. The funds in the other account (number of days, not more than 10) business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than (number of days, not more than 45) calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at (contact information, for example phone number, mailing address, e-mail address). You must contact us within (number of days, not less than 40) calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include—

• A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
• An estimate of the amount of your loss;
• An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
• A copy of the substitute check [and/or the following information to help us identify the substitute check: (identifying information, for example the check number, the name of the person to whom you wrote the check, the amount of the check)].

C–6—Holds on Other Funds (Check Cashing)

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

C–7—Holds on Other Funds (Other Account)

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

C–8—Appendix B Availability (Nonlocal Checks)

3. Certain other checks. We can process nonlocal checks drawn on financial institutions in certain areas faster than usual. Therefore, funds from deposits of checks drawn on institutions in those areas will be available to you more quickly. Call us if you would like a list of the routing numbers for these institutions.

C–9—Automated Teller Machine Deposits (Extended Hold)

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the (fifth) fourth business day after the day of your deposit. This rule does not apply at ATMs that we own or operate.

(A list of our ATMs is enclosed, or a list of ATMs where you can make deposits but that are not owned or operated by us is enclosed, or all ATMs that we own or operate are identified as our machines.)

C–10—Cash-Withdrawal Limitation

CASH-WITHDRAWAL LIMITATION

We place certain limitations on withdrawals in cash. In general, $100 of a deposit is available for withdrawal in cash on the first business day after the day of deposit. In addition, a total of $400 of other funds becoming available on a given day is available for withdrawal in cash at or after (time no later than 5 p.m.) on that day. Any remaining funds will be available for withdrawal in cash on the following business day.

C–11—Credit-Union Interest-Payment Policy

INTEREST-PAYMENT POLICY

If we receive a deposit to your account on or before the tenth of the month, you begin earning interest on the deposit (whether it was a deposit of cash or checks) as of the first day of that month. If we receive the deposit after the tenth of the month, you begin earning interest on the deposit as of the first of the following month. For example, a deposit made on June 7 earns interest from June 1, while a deposit made on June 17 earns interest from July 1.

C–13—Reasonable-Cause Hold Notice

NOTICE OF HOLD

Account number: Date of deposit (number) (date)

We are delaying the availability of the funds you deposited by the following check: description of check, such as amount and drawer.

These funds will be available on the (number) business day after the day of your deposit. The reason for the delay is explained below:

We received notice that the check is being returned unpaid.
We have confidential information that indicates the check may not be paid.
The check is delayed because of a repeated overdraft.
We are unable to verify the information on the check.
Some information on the check is not consistent with other information on the check.
There are erasures or other apparent alterations on the check.
The routing number of the paying bank is not a current routing number.
The check is postdated or has a stale date.
Information from the paying bank indicates the check may not be paid.
We have been notified that the check has been lost or damaged in collection.
Other:

C–15—Availability of Funds Deposited at Other Locations

DEPOSITS AT OTHER LOCATIONS

This availability policy only applies to funds deposited at (location). Please inquire for information about the availability of funds deposited at other locations.

C–16—Exception Hold Notice

NOTICE OF HOLD

Account number: Date of deposit (number) (date)

We are delaying the availability of (amount being held) from this deposit. These funds will be available on the (number) business day after the day of your deposit.

We are taking this action because:

• A check you deposited was previously returned unpaid.
• You have overdrawn your account repeatedly in the last six months.

The checks you deposited on this day exceed $5,000.
• An emergency, such as failure of computer or communications equipment, has occurred.
• We believe a check you deposited will not be paid for the following reasons: [*]

C–14—One-Time Notice for Large-Deposit and Redeposited-Check Exception Holds

NOTICE OF HOLD

If you deposit into your account:
Checks totaling more than $5,000 on any one day, the first $5,000 deposited on any one banking day will be available to you according to our general policy. The amount in excess of $5,000 will generally be available on the (number) business day after the day of deposit for checks drawn on (bank name), the (number) business day after the day of deposit for local checks and (number) business day after the day of deposit for nonlocal checks after the day of your deposit. If checks (not drawn on us) that otherwise would receive next-day availability exceed $5,000, the excess will be treated as either local or nonlocal checks depending on the location of the paying bank. If your check deposit, exceeding $5,000 on any one day, is a mix of local checks, nonlocal checks, checks drawn on (bank name), or checks that generally receive next-day availability, the excess will be calculated by first adding together the (type of check), then the (type of check), then the (type of check), then the (type of check).

A check that has been returned unpaid, the funds will generally be available on the (number) business day after the day of deposit for checks drawn on (bank name), the (number) business day after the day of deposit for local checks and the (number) business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would receive next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C–15—One-Time Notice for Repeated-Overdraft Exception Holds

NOTICE OF HOLD
Account number: Date of deposit: (number) (date)
We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the (number) business day after the day of your deposit for checks drawn on (bank name), the (number) business day after the day of your deposit for local checks, and the (number) business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would have received next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C–16—Case-by-Case Hold Notice

NOTICE OF HOLD
Account number: Date of deposit: (number) (date)
We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the (number) business day after the day of your deposit for checks drawn on (bank name), the (number) business day after the day of your deposit for local checks, and the (number) business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would have received next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C–17—Notice at Locations Where Employees Accept Consumer Deposits

FUNDS—AVAILABILITY POLICY

<table>
<thead>
<tr>
<th>Description of Deposit</th>
<th>When Funds Can Be Withdrawn by Cash or Check</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct deposits</td>
<td>The day we receive the deposit</td>
</tr>
<tr>
<td>Cash; wire transfers;</td>
<td>The first business day after the day of</td>
</tr>
<tr>
<td>cashier’s, certified,</td>
<td>deposit</td>
</tr>
<tr>
<td>teller’s, or government</td>
<td></td>
</tr>
<tr>
<td>checks; checks on</td>
<td></td>
</tr>
<tr>
<td>(bank name) [unless</td>
<td></td>
</tr>
<tr>
<td>(any limitation related</td>
<td></td>
</tr>
<tr>
<td>to branches in different</td>
<td></td>
</tr>
<tr>
<td>check-processing</td>
<td></td>
</tr>
<tr>
<td>regions]), and the first</td>
<td></td>
</tr>
<tr>
<td>$100 of a day’s</td>
<td></td>
</tr>
<tr>
<td>deposits of other</td>
<td></td>
</tr>
<tr>
<td>checks</td>
<td></td>
</tr>
<tr>
<td>Local checks</td>
<td>The second business day after the day of</td>
</tr>
<tr>
<td></td>
<td>deposit</td>
</tr>
<tr>
<td>Nonlocal checks</td>
<td>The fifth business day after the day of</td>
</tr>
<tr>
<td></td>
<td>deposit</td>
</tr>
</tbody>
</table>

Our general policy is to allow you to withdraw funds deposited in your account on the (number) business day after the day we receive your deposit. Funds from electronic deposits will be available on the day we receive the deposit. In some cases, we may delay your ability to withdraw funds beyond the (number) business day. Then, the funds will generally be available by the fifth business day after the day of deposit.
NOTICE OF HOLD ON DEPOSIT

This notice is to inform you that we are placing a 

(number)-DAY HOLD on $(deposit amount)

recently deposited to your account.

You will not be able to withdraw or otherwise use money from the deposit described below until the hold is removed in (number) business days on (date).

<table>
<thead>
<tr>
<th>Account Holder:</th>
<th>(name)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account Number:</td>
<td>(number or code)</td>
</tr>
<tr>
<td>Date of Deposit:</td>
<td>(date)</td>
</tr>
<tr>
<td>Deposit Amount:</td>
<td>$(deposit amount)</td>
</tr>
<tr>
<td>Hold Amount:</td>
<td>$(hold amount)</td>
</tr>
<tr>
<td>Funds will be available:</td>
<td>(date)</td>
</tr>
<tr>
<td>Reason for Hold:</td>
<td>(reason for hold)</td>
</tr>
</tbody>
</table>

[If we did not notify you of this hold when you made the deposit, you can request a refund of any overdraft or returned check fees that result from the hold once the check is paid. To request a refund of such fees, (description of procedure for obtaining refund).]
HOLDS ON LARGE DEPOSITS AND REDEPOSITED CHECKS

<table>
<thead>
<tr>
<th>If you deposit into your account:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Checks totaling more than $\text{(large-deposit amount)}$ on any one day</td>
<td>• The first $\text{(large-deposit amount)}$ deposited on any one day will be available according to our general policy</td>
</tr>
<tr>
<td></td>
<td>• The amount over $\text{(large-deposit amount)}$ will generally be available on the second business day for checks drawn on (bank name), or in (number) business days for other checks</td>
</tr>
<tr>
<td></td>
<td>• If the deposit is a mix of checks drawn on (bank name) and other checks, the checks drawn on (bank name) will be counted toward the first $\text{(large-deposit amount)}$, followed by the other checks</td>
</tr>
<tr>
<td>• A check that has been returned unpaid</td>
<td>• The funds will generally be available on the second business day for checks drawn on (bank name), or in (number) business days for other checks</td>
</tr>
</tbody>
</table>
C-11—One-Time Notice for Repeated-Overdraft Exception Holds

NOTICE OF EXTENDED HOLDS

As a result of repeated overdrafts to your account

you will have delayed access to check deposits

made to your account between (date of notice) and (date, 6 months from date of notice)

<table>
<thead>
<tr>
<th>Account Holder:</th>
<th>(name)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account Number:</td>
<td>(number or code)</td>
</tr>
<tr>
<td>Date of Notice:</td>
<td>(date of notice)</td>
</tr>
</tbody>
</table>
| Availability:   | • Checks drawn on (bank name) will be available in 2 business days  
                   • Other checks will be available in (number) business days |
C-12A—Case-by-Case Hold Notice Without Cash- Withdrawal Limitation

NOTICE OF HOLD ON DEPOSIT

This notice is to inform you that we are placing a

(number)-DAY HOLD on $(deposit amount)

recently deposited to your account.

You will not have full access to all the money from the deposit described below until the hold is removed in (number) business days on (date). See below for more information.

<table>
<thead>
<tr>
<th>Account Holder:</th>
<th>(name)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account Number:</td>
<td>(number or code)</td>
</tr>
<tr>
<td>Date of Deposit:</td>
<td>(date)</td>
</tr>
</tbody>
</table>
| Availability Timeline: | • The first $(minimum amount) will be available on (date)
|                    | • The remaining $(amount held) will be available on (date) |

[If we did not notify you of this hold when you made the deposit, you can request a refund of any overdraft or returned check fees that result from the hold once the check is paid. To request a refund of such fees, (description of procedure for obtaining refund).]
C-12B—Case-by-Case Hold Notice With Cash- Withdrawal Limitation

NOTICE OF HOLD ON DEPOSIT

This notice is to inform you that we are placing a

(number)-DAY HOLD on $(deposit amount)

recently deposited to your account.

You will not have full access to all the money from the deposit described below until the hold is removed in (number) business days on (date). See below for more information.

<table>
<thead>
<tr>
<th>Account Holder:</th>
<th>(name)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account Number:</td>
<td>(number or code)</td>
</tr>
<tr>
<td>Date of Deposit:</td>
<td>(date)</td>
</tr>
<tr>
<td>Availability Timeline: For writing checks:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The first $(minimum amount) will be available on (date)</td>
</tr>
<tr>
<td></td>
<td>The remaining $(amount held) will be available at (time) on (date)</td>
</tr>
<tr>
<td></td>
<td>For cash withdrawal:</td>
</tr>
<tr>
<td></td>
<td>The first $(minimum amount) will be available on (date)</td>
</tr>
<tr>
<td></td>
<td>Up to an additional $(cash-withdrawal amount) will be available at (time no later than 5:00 p.m.) on (date)</td>
</tr>
<tr>
<td></td>
<td>The remaining $(amount held) will be available on (date)</td>
</tr>
</tbody>
</table>

[If we did not notify you of this hold when you made the deposit, you can request a refund of any overdraft or returned check fees that result from the hold once the check is paid. To request a refund of such fees, (description of procedure for obtaining refund).]
## DEPOSIT AVAILABILITY POLICY

How soon can I withdraw funds deposited into my account?

<table>
<thead>
<tr>
<th>When a deposit is made by ...</th>
<th>Deposited funds are available ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electronic direct deposit</td>
<td>• The same day</td>
</tr>
<tr>
<td>Cash; wire transfer; cashier’s, certified, teller’s or government check; or a check from an account at this bank</td>
<td>• The next business day</td>
</tr>
</tbody>
</table>
| Any other check               | • The first $(minimum amount)$ is available the next business day  
|                               | • The remainder is generally available by the $(number)$ business day after the deposit |
DEPOSIT AVAILABILITY POLICY

How soon can I withdraw funds deposited into my account?

<table>
<thead>
<tr>
<th>When a deposit is made by ...</th>
<th>Deposited funds are available ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electronic direct deposit, wire transfer, or cash</td>
<td>• The same day</td>
</tr>
<tr>
<td>Check</td>
<td>• Usually the next business day</td>
</tr>
</tbody>
</table>

If you will need the funds from a check deposit right away, you should ask us when the funds will be available.

BILLING CODE 6210–01–C

C–[19]—Notice at Automated Teller Machines

AVAILABILITY OF DEPOSITS

Funds from deposits may not be available for immediate withdrawal. Please refer to your institution’s rules governing funds availability for details.

C–[20]—Notice at Automated Teller Machines (Delayed Receipt)

NOTICE

Deposits at this ATM between (day) and (day) will not be considered received until (day). The availability of funds from the deposit may be delayed as a result.

C–[21]—Deposit-Slip Notice

Deposits may not be available for immediate withdrawal.

C–[22]—Expedited-Recredit Claim, Valid-Claim Refund Notice

Notice of Valid Claim and Refund

We have determined that your substitute-check claim is valid. We are refunding (amount) [of which (amount) represents fees] [and] [(amount) represents accrued interest] to your account. You may withdraw these funds as of (date). [This refund is the amount in excess of the $2,500 [plus interest] that we credited to your account on (date).]

C–[23]—Expedited-Recredit Claim, Provisional-Refund Notice

Notice of Provisional Refund

In response to your substitute-check claim, we are refunding (amount) [of which [(amount) represents fees] [and] [(amount) represents accrued interest]] to your account, while we complete our investigation of your claim. You may withdraw these funds as of (date). [Unless we determine that your claim is not valid, we will credit the remaining amount of your refund to your account no later than the 45th calendar day after we received your claim.]

If, based on our investigation, we determine that your claim is not valid, we will reverse the refund by withdrawing the amount of the refund [plus interest that we have paid you on that amount] from your account. We will notify you within one day of any such reversal.

C–[24]—Expedited-Recredit Claim, Denial Notice

Denial of Claim

Based on our review, we are denying your substitute-check claim. As the enclosed (type of document, for example original check or sufficient copy) shows, (describe reason for denial, for example the check was properly posted, the signature is authentic, there was no warranty breach).

[We have also enclosed a copy of the other information we used to make our decision.]

[Upon your request, we will send you a copy of the other information that we used to make our decision.]

C–[25]—Expedited-Recredit Claim, Reversal Notice

Reversal of Refund

In response to your substitute-check claim, we provided a refund of (amount) by crediting your account on (date(s)). We now have determined that your substitute-check claim was not valid. As the enclosed (type of document, for example original check or sufficient copy) shows, (describe reason for reversal, for example the check was properly posted, the signature is authentic, there was no warranty breach). As a result, we have reversed the refund to your account [plus interest that we have paid you on that amount] by withdrawing (amount) from your account on (date).

[We have also enclosed a copy of the other information we used to make our decision.]
The trailing edge is defined as the 1.5 inches from the trailing edge of the check. Upon your request, we will send you a copy of the information we used to make our decision.

35. Appendix D to Part 229 is revised to read as follows:

Appendix D to Part 229—Indorsement, Reconveting Bank Identification, and Truncating Bank Identification Standards

(1) The depositary bank shall indorse an original check or substitute check according to the following specifications:

(i) The indorsement shall contain—

(A) The bank’s nine-digit routing number, set off by an arrow at each end of the number and pointing toward the number, and, if the depositary bank is a reconverting bank with respect to the check, an asterisk outside the arrow at each end of the routing number to identify the bank as a reconverting bank;

(B) The indorsement date; and

(C) The bank’s name or location, if the depositary bank applies the indorsement physically.

(ii) The indorsement also may contain—

(A) A branch identification;

(B) A trace or sequence number;

(C) A telephone number for receipt of notification of large-dollar returned checks; and

(D) [C] Other information, provided that the inclusion of such information does not interfere with the readability of the indorsement.

(iii) The indorsement, if applied to an existing paper check, shall be placed on the back of the check so that the routing number is wholly contained in the area 3.0 inches from the leading edge of the check to 1.5 inches from the trailing edge of the check.

[31] [B] The leading edge is defined as the right side of the check looking at it from the front. The trailing edge is defined as the left side of the check looking at it from the front. See American National Standards Specifications for the Placement and Location of Print, AMS Z9.12.

(iv) When printing its depositary bank indorsement (or a depositary bank indorsement that previously was applied electronically) onto a substitute check at the time that the substitute check is created, a reconverting bank shall place the indorsement on the back of the check between 0.25 and 2.50 inches from the trailing edge of the check, its nine-digit routing number (without arrows) and an asterisk at each end of the number, in accordance with ANS X9.100–140.

(v) The reconverting bank shall place on the front of the check, outside the image of the original check, its nine-digit routing number (without arrows) and a bracket at each end of the number, in accordance with ANS X9.100–140.

(vi) Any indorsement, reconverting bank identification, or truncating bank identification placed on an original check or substitute check shall be printed in black ink.

(vi) A depositary bank shall indorse an electronic collection item in accordance with ANS X9.100–187, unless the parties otherwise agree, and according to the following specifications—

(i) The electronic indorsement shall contain—

(A) The depositary bank’s nine-digit routing number; and

(B) The indorsement date.

(ii) The electronic indorsement also may contain other information, provided that the inclusion of such information does not interfere with the readability of the indorsement.

(v) Each subsequent collecting bank or returning bank indorser shall protect the identifiability and legibility of the depositary bank indorsement by indorsing an original check or substitute check according to the following specifications:

(i) The indorsement shall contain only—

(A) The definition of “transaction account” in the Board’s Regulation D (12 CFR part 204).

36. Amend Appendix E to Part 229 as follows:

A. Revise Sections II through XI.

B. In Section XII, revise paragraphs A. and E.

C. Revise Sections XIII through XXVIII.

D. In Section XXIX, revise paragraph B.

E. Revise Sections XXX through XXXIII.

F. Revise Section XXXVIII.

The revisions read as follows:

Appendix E to Part 229—Commentary

I. Introduction

A. Background

1. The Board interpretations, which are labeled “Commentary,” provided in each section of Regulation CC (12 CFR part 229) provide background material to explain the Board’s intent in adopting a particular part of the regulation; the Commentary also provides examples to aid in understanding how a particular requirement is to work. Under section 611(e) of the Expedited Funds Availability Act (12 U.S.C. 4010(e)) the Board of Governors of the Federal Reserve System, notwithstanding the fact that such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason, the Commentary is an “interpretation” of a regulation by the Board within the meaning of section 611.

II. Section 229.2 Definitions

A. Background

1. Section 229.2 defines the terms used in the regulation. For the most part, terms are defined as they are in the Expedited Funds Availability Act (12 U.S.C. 4001) or in section 3 of the Check 21 Act (12 U.S.C. 5002). The Board has made a number of changes for the sake of clarity, to conform the terminology to that which is familiar to the banking industry, to define terms that are not defined in the Expedited Funds Availability Act or the Check 21 Act, and to carry out the purposes of the EFA Act and the Check 21 Act. The Board also has incorporated by reference the definitions of the Uniform Commercial Code where appropriate. Some of Regulation CC’s definitions are self-explanatory and therefore are not discussed in this Commentary.

B. 229.2(a) Account

1. The EFA Act defines account to mean “a demand deposit account or similar transaction account at a depository institution.” The regulation defines account, for purposes other than subpart D, in terms of a “transaction account” in the Board’s Regulation D (12 CFR part 204). This definition of account, however, excludes certain deposits, such as nondocumentary obligations (see 12 CFR 204.2(a)(1)(viii)), that are covered under the definition of “transaction account” in Regulation D. The definition applies to...
accounts with general third party payment powers but does not cover time deposits or savings deposits, including money market deposit accounts, even though they may have limited third party payment powers. The Board believes that it is appropriate to exclude such accounts because they are expected to be used primarily by financial institutions to support the clearing of checks and wire transfers. As a result, subpart B is excluded because of the reference to demand deposits in the EFA Act, which suggests that the EFA Act is intended to apply only to accounts that permit unlimited third party transfers.

2. The term account also differs from the definition of transaction account in Regulation D because the term account refers to accounts held at banks. Under §229.2(c) Automated Teller Machine (ATM)

1. ATM is not defined in the EFA Act. The regulation defines an ATM as an electronic device at which a natural person may make deposits to an account by cash or paper check and perform other account transactions, such as cash withdrawals. Point-of-sale terminals, machines that only dispense cash, night depositories, and lobby deposit boxes are not ATMs within the meaning of the definition, either because they do not accept deposits of cash or checks (e.g., point-of-sale terminals and cash dispensers) or because they only accept deposits (e.g., night depositories and lobby boxes) and cannot dispense cash or perform other transaction functions (e.g., subtraction or similar receptacle in which written payment orders or deposits may be placed is not an ATM). Finally, a remote deposit capture device is not an ATM because a natural person can deposit neither cash nor paper checks into an account using the device.

2. A facility may be an ATM within this definition even if it is a branch under state or federal law, although an ATM is not a branch as that term is used in this regulation.

E. 229.2(d) Available for Withdrawal

1. Under this definition, when funds become available for withdrawal, the funds may be put to all uses for which the customer may use actually and finally collected funds in the customer’s account under the customer’s agreement with the bank. Examples of such uses include payment of checks drawn on the account, certification of checks, electronic funds transfers, and cash withdrawals. Funds are available for these uses notwithstanding provisions of other law that may restrict the use of uncollected funds (e.g., 18 U.S.C. 1004; 12 U.S.C. 331).

2. If a bank makes funds available to a customer for a specific purpose (such as paying checks that would otherwise overdraft the customer’s account and be returned for insufficient funds) before the funds must be made available under the bank’s policy or this regulation, it may nevertheless apply a hold consistent with this regulation to those funds for other purposes (such as cash withdrawals). For purposes of this regulation, funds are considered available for withdrawal even though they may be held by the bank to satisfy an obligation of the customer other than the customer’s potential liability for the return of the check. For example, a bank does not violate its obligations under this subpart by holding funds to satisfy a garnishment or court order restricting disbursements from the account; or to satisfy the customer’s liability arising from the certification of a check, sale of a cashier’s or teller’s check, guaranty or acceptance of a check, or similar transaction to be debited from the customer’s account.

F. 229.2(e) Bank

1. The EFA Act uses the term depository institution, which it defines by reference to section 19(b)(1)(A)(i) through (vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i) through (vi)). This regulation uses the term bank, a term that conforms to the usage the Board has previously adopted in Regulation J (12 CFR part 210). Bank is also used in Articles 4 and 4A of the Uniform Commercial Code.

2. Bank is defined to include depository institutions, such as commercial banks, savings banks, savings and loan associations, and credit unions as defined in the EFA Act, and U.S. branches and agencies of foreign banks. For purposes of §229.2(c) Automated Teller Machine (ATM)

1. ATM is not defined in the EFA Act. The regulation defines an ATM as an electronic device at which a natural person may make deposits to an account by cash or paper check and perform other account transactions, such as cash withdrawals. Point-of-sale terminals, machines that only dispense cash, night depositories, and lobby deposit boxes are not ATMs within the meaning of the definition, either because they do not accept deposits of cash or checks (e.g., point-of-sale terminals and cash dispensers) or because they only accept deposits (e.g., night depositories and lobby boxes) and cannot dispense cash or perform other transaction functions (e.g., subtraction or similar receptacle in which written payment orders or deposits may be placed is not an ATM). Finally, a remote deposit capture device is not an ATM because a natural person can deposit neither cash nor paper checks into an account using the device.

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certain actions (such as returning a check), the focus should be on a day that the bank is actually open for business. Second, when counting days for purposes of determining when funds must be available under the regulation or when notice of nonpayment must be given, there would be confusion and uncertainty in trying to follow the schedule of a particular bank, and there is less need to identify a day when a particular bank is open. Most banks that act as intermediaries (large correspondent and Federal Reserve Banks) follow the same holiday schedule. Accordingly, the regulation has two definitions: Business day generally follows the standard Federal Reserve Bank holiday schedule (which is followed by most large banks), and banking day is defined to mean that part of a business day on which a bank is open for substantially all of its banking activities.

2. The definition of banking day corresponds to the definition of banking day in U.C.C. 4-104(a)(1), except that a banking day is defined in terms of a business day. Thus, if a bank is open on Saturday, Saturday might be a banking day for purposes of the U.C.C., but it would not be a banking day for purposes of Regulation CC because Saturday is never a banking day under the regulation.

3. The definition of banking day is phrased in terms of when “an office of a bank is open” to indicate that a bank may observe a banking day on a per-branch basis. A deposit made at an ATM or off-premise facility (such as a remote deposit or lock box) is considered made at the branch holding the account into which the deposit is made for the purpose of determining the day of deposit. All other deposits are considered made at the branch at which the deposit is received. For example, under §229.19(a)(1), funds deposited at an ATM are considered deposited at the time they are received at the ATM. On a calendar day that is a banking day for the branch or other location of the depositor bank at which the account is maintained, a deposit received at an ATM before the ATM’s cut-off hour is considered deposited on that banking day, and a deposit received at an ATM after the ATM’s cut-off hour is considered deposited on the next banking day of the branch or other location where the account is maintained. On a calendar day that is not a banking day for the account-holding location, all ATM deposits are considered deposited on that location’s next banking day. This rule for determining the day of deposit also would apply to a deposit at an off-premise facility, such as a night depository or lock box, which is considered deposited when removed from the facility and available for processing under §229.19(a)(3). If an unstaffed facility, such as a night depository or lock box, is on branch premises, the day of deposit is determined by the banking day at the branch at which the deposit is received, whether or not it is the branch at which the account is maintained.

H. 229.2(b) Cash


The phrase in the EFA Act “including Federal Reserve notes” has been deleted as unnecessary. (See 31 U.S.C. 5109.)
6. The fifth category of instrument included in the definition of check is U.S. Postal Service money orders. These instruments are defined as checks because they often are used as a substitute for checks by consumers, even though money orders are not required by law as part of the Postal Service regulations. The Board has not provided specific rules for other types of money orders; these instruments generally are drawn on or payable through or payable at banks and are treated as checks on that basis.

7. The sixth and final category of instrument included in the definition of check is traveler’s checks drawn on or payable through or payable at banks and are treated as checks on that basis, even if the account is used to pay checks or consumers, even though money orders are not required by law as part of the Postal Service regulations. [The Board has not provided specific rules for other types of money orders; these instruments generally are drawn on or payable through or payable at banks and are treated as checks on that basis, even if the account is used to pay checks or consumers, even though money orders are not required by law as part of the Postal Service regulations.]

8. Finally, for the purposes of Subparts C and D, and in connection therewith, Subpart A, the definition of check includes nonnegotiable demand drafts because these instruments generally are handled as cash items in the forward collection process.

9. [Reserved]

10. The definition of check does not include an instrument payable in a foreign currency (i.e., other than in United States money as defined in 31 U.S.C. 5101) or a credit card draft (i.e., a sales draft used by a merchant or a draft generated by a bank as a result of a cash advance), or an ACH debit transfer. The definition of check includes a check that a bank may supply to a customer as a means of accessing a credit line without the use of a credit card.

L. 229.2(l) [Reserved]

M. 229.2(m) [Check Processing Region]

1. The EFA Act defines this term as “the geographic area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.” The Board has defined check processing region as the territory served by one of the Federal Reserve bank processing centers, branches, or regional check processing centers. Appendix A includes a list of routing numbers assigned by the Federal Reserve Banks. The definition of check processing region is key to determining whether a check is considered local or nonlocal.

N. 229.2(n) [Reserved]

O. 229.2(o) Consumer Account

1. Consumer account is defined as an account used primarily for personal, family, or household purposes. An account that does not meet the definition of consumer account is a nonconsumer account. A clearing account maintained at a bank directly by a brokerage firm is not a consumer account, even if the account is used to pay checks drawn by consumers using the funds in that account. The bank’s relationship is with the brokerage firm, and the account is used by the brokerage firm to facilitate the clearing of its customers’ checks. Because for purposes of Regulation CC the term account includes only deposit accounts, a consumer’s revolving credit relationship or other line of credit with a bank is not a consumer account, even if the consumer draws on such credit lines by using a check. Both consumer and nonconsumer accounts are subject to the requirements of this regulation, including the requirement that funds be made available according to specific schedules and that the bank make specific disclosures of its availability policies. Section 229.18(b) (notices at branch locations) and § 229.18(e) (notice of changes in policy) apply only to consumer accounts. Section 229.13(g)(2) (one-time exception notice) and § 229.19(d) (use of calculated availability) apply only to nonconsumer accounts.

P. 229.2(p) Contractual Branch

1. When one bank arranges for another bank to accept deposits on its behalf, the second bank is a contractual branch of the first bank. For purposes of discussion of contractual branch deposits and related disclosures, see §§ 229.2(s) and 229.19(a) of the regulation and the commentary to §§ 229.2(s), 229.10(c), 229.14(a), 229.16(a), 229.18(b), and 229.19(a).

Q. 229.2(q) [Reserved]

R. 229.2(r) 229.2(r) Local Check

1. Local check is defined as a check payable by or at a local paying bank, or, in the case of nonbank payors, payable through a local paying bank. A check payable by a local bank but payable through a nonlocal bank is a local check. Conversely, a check payable through a local bank but payable by a nonlocal bank is a nonlocal check. Where two banks are named on a check and neither is designated as a payable-through bank, the check is considered payable by either bank and may be considered local or nonlocal depending on the bank to which it is sent for payment. Generally, the depositary bank may rely on the routing number to determine whether a check is local or nonlocal.

S. 229.2(s) Local Paying Bank

1. “Local paying bank” is defined as a paying bank located in the same check-processing region as the branch, contractual branch, or proprietary ATM of the depositary bank. For example, a checking deposit account at a contractual branch would be deemed local or nonlocal based on the location of the contractual branch with respect to the location of the paying bank.

Appendix A includes a list of routing numbers assigned by the Federal Reserve Banks. The definition of check processing region is key to determining whether a check is considered local or nonlocal. [Reserved]

T. 229.2(t) 229.2(t) Local Payment Bank

1. “Local payment bank” is defined as a paying bank located in the same check-processing region as the branch, contractual branch, or proprietary ATM of the depositary bank. For example, a checking deposit account at a contractual branch would be deemed local or nonlocal based on the location of the contractual branch with respect to the location of the paying bank.

Appendix A includes a list of routing numbers assigned by the Federal Reserve Banks. The definition of check processing region is key to determining whether a check is considered local or nonlocal. [Reserved]
check is sent to the nonlocal bank for collection.

b. The location of the depositary bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited, regardless of whether the deposit is made by check, by mail, or otherwise. For example, if a branch of the depositary bank located in one check-processing region sends a check that was deposited at that branch to the depositary bank’s central facility in another check-processing region, the central facility is in the same check-processing region as the paying bank, the check is still considered nonlocal. (See the commentary to the definition of “paying bank.”)

c. If a person deposits a check to an account by mailing or otherwise sending the check to a facility or office that is not a bank, the check is considered local or nonlocal depending on the location of the bank whose indorsement appears on the check as the depositary bank.

T. 229.2(f) Electronic Payment

1. Electronic payment is defined to mean a wire transfer as defined in §229.2(III) or an ACH credit transfer as defined in §229.2(b). The EFA Act requires that funds deposited by wire transfer be made available for withdrawal on the business day following deposit but expressly leaves the definition of the term wire transfer to the Board regulation. Because ACH credit transfers frequently involve important consumer payments, such as wages, pose little risk of return to the depositary bank, the regulation requires that funds deposited by ACH credit transfers be available for withdrawal on the business day following deposit.

2. ACH debit transfers, even though they may be transmitted electronically, are not defined as electronic payments because the receiver of an ACH debit transfer has the right to return the transfer, which would reverse the credit given to the originator. Thus, ACH debit transfers are more like checks than wire transfers. Further, bank customers that receive funds by originating ACH debit transfers are primarily large corporations, which generally would be able to negotiate with their banks for prompt availability.

3. A point-of-sale transaction would not be considered an electronic payment unless the transaction was effected by means of an ACH credit transfer or wire transfer.

U. 229.2(u) Electronic Presentment Point

1. The term “electronic presentment point” means the electronic address that a paying bank has designated as the place to which electronic collection items may be presented. This address may be either an e-mail address or other electronic address.

V. 229.2(y) Electronic Return

1. Many paying banks have entered into agreements with returning banks, depositary banks, clearinghouses, and other parties to return checks electronically. For purposes of subpart C, the term “electronic return” means an electronic image and electronic information related to the check the paying bank determines not to pay and that is sufficient for a subsequent bank to create a substitute check (See §229.2(r) and accompanying commentary). To be sufficient to create a substitute check, the electronic image must include an image of both the front and back of the check. The electronic information, typically contained in an electronic record accompanying the electronic image, must include information from the MICR line of the check at the time it was truncated. The electronic record may include information in addition to MICR-line related information.

2. ANS X9.100–187 is the most prevalent industry standard for electronic images and information that will enable a bank to create a substitute check in connection with returned checks—i.e., in accordance with ANS X9.100–140. Similar to electronic presentment, multiple standards may exist that would enable a bank to create a substitute check from an electronic image and information. Accordingly, the parties may agree to return checks as electronic images and information that conform to a different standard. For example, the depositary bank may agree to receive the electronic image and information sufficient for creating a substitute check in a .pdf, rather than in accordance with ANS X9.100–187.

3. An electronic image and information related to the check the paying bank returns—it must contain sufficient information to create a substitute check and must conform to ANS X9.100–187.

W. 229.2(w) Electronic Return Point

1. The term “electronic return point” means the e-mail address or other electronic address that a depositary bank has designated as the place to which electronic returns must be delivered.

2. The electronic return point may be different from the electronic presentment point designated by a bank for presentment of electronic collection items.

X. 229.2(z) Good Faith

1. This definition of good faith derives from U.C.C. 3–103(a)(4).

AA. 229.2(aa) [Reserved]

BB. 229.2(bb) Interest Compensation

1. This calculation of interest compensation derives from U.C.C. 4A– 506(b). (See §§229.34(e) [§229.36(f) [§229.36(g)]] and accompanying commentary.)

CC. 229.2(cc) [MICR Line] Magnetic ink character recognition line or MICR line

1. Information in the MICR line of a check must be printed in accordance with ANS X9.13 for original checks and ANS X9.100–140 for substitute checks. These standards could vary the requirements for printing the MICR line, such as by indicating circumstances under which the use of magnetic ink is not required.

DD. 229.2(dd) Merger Transaction

1. Merger transaction is a term used in [§229.2(e)] subparts B and C in connection with
transition rules for merged banks. It encompasses mergers, consolidations, and purchase/assumption transactions of the type that usually must be approved under the Bank Merger Act (12 U.S.C. 1828(c)) or similar statutes; it does not encompass acquisitions of a bank under the Bank Holding Company Act (12 U.S.C. 1842) where an acquired bank maintains its separate corporate existence.

2. Regulation CC adopts a one-year transition period for banks that are party to a merger or consolidation during which the merged banks will continue to be treated as separate entities. (See §§ 229.19(g) and 229.40.)

EE. 229.2(e) Noncash Item

1. The EFA Act defines the term check to exclude noncash items, and defines noncash items to include checks to which another document is attached, checks accompanied by special instructions, or any similar item classifiable as an item in the Board’s regulation. To qualify as a noncash item, an item must be handled as such and may not be handled as a cash item by the depositary bank.

2. The regulation’s definition of noncash item also includes checks that consist of more than one thickness of paper (except checks that qualify for handling by automated check processing equipment, e.g., those placed in carrier envelopes) and checks that have not been preprinted or post-encoded in magnetic ink with the paying bank’s routing number, as well as checks with documents attached or accompanied by special instructions. (In the context of this definition, paying bank refers to the paying bank as defined for purposes of § 229.19(a).)

3. A check that has been preprinted or post-encoded with a routing number that has been retired (e.g., because of a merger) for at least three years is a noncash item unless the current number is added for processing purposes (by placing the check in an encoded carrier envelope or adding a strip to the check).

4. Checks that are accompanied by special instructions are also noncash items. For example, a person concerned about whether a check will be paid may request the depositary bank to send a check for collection as a noncash item with an instruction to the paying bank to notify the depositary bank promptly when the check is paid or dishonored.

5. For purposes of forward collection, a copy of a check is neither a check nor a noncash item, but may be treated as either. For purposes of return, a copy is generally a notice in lieu of return. (See §§ 229.30(f)(1)(e) and 229.31(f)(4)(e)).

FF. 229.2(f) [Reserved]

GG. 229.2(gg) Original Check

1. The definition of original check distinguishes the first paper check signed or otherwise authorized by the drawer to effect a particular payment transaction from a substitute check or other paper or electronic representation that is derived from an original check or substitute check. There is only one original check for any particular payment transaction. However, multiple substitute checks could be created to represent that original check at various points in the check collection and return process.

HH. 229.2(hh) Paper or Electronic Representation of a Substitute Check

1. Receipt of a paper or electronic representation of a substitute check does not trigger indemnity or expedited recredit rights, although post-encodement could have warranted a claim or a claim under another check law with respect to that document or the underlying payment transaction. A paper or electronic representation of a substitute check would include a representation of a substitute check that was drawn on an account, as well as a representation of a substitute traveler’s check, credit card check, or other item that meets the substitute check definition. The following examples illustrate the scope of the definition.

Examples.

a. A bank receives electronic presentment of a substitute check that has been converted to electronic form and charges the customer’s account for that electronic item. The periodic account statement that the bank provides to the customer includes information about the electronically-presented substitute check in a line-item list describing all the checks the bank charged to the customer’s account during the previous month. The electronic file that the bank received for presentment and charged to the customer’s account would be an electronic representation of a substitute check, and the line-item appearing on the customer’s account statement would be a paper representation of a substitute check.

b. A paying bank receives and settles for a substitute check and then realizes that its settlement was for the wrong amount. The paying bank sends an adjustment request to the presenting bank to correct the error. The adjustment request is not a paper or electronic representation of a substitute check under the definition because it is not being handled for collection or return as a check. Rather, it is a separate request that is related to a check. As a result, no substitute check warranty, indemnity, or expedited recredit rights attach to the adjustment.

c. An electronic representation of a substitute check also may be an electronic collection item or an electronic return if the electronic representation of the substitute check otherwise satisfies their requirements (see §§ 229.8(s) and (v)).

Examples.

A bank receives electronic presentment of a substitute check that has been converted to electronic form. If the electronic file that the bank receives for presentment contains an electronic image of and information related to the substitute check that are sufficient for creating a substitute check and the electronic image and information conform to ANSI X9.100–187, or another format to which the parties agree, that electronic file would be an electronic collection item in addition to an electronic representation of a substitute check.
Treasury checks and U.S. Postal Service money orders, a Treasury check or U.S. Postal Service money order presented to a Federal Reserve Bank is considered to be presented to the Treasury or U.S. Postal Service, respectively.

J. 229.2(jj) [Reserved]

KK. 229.2(kk) Proprietary ATM

1. All deposits at nonproprietary ATMs are treated as deposits of nonlocal checks, and deposits at proprietary ATMs generally are treated as deposits at banking offices. The Conference Report on the EFA Act indicates that the special availability rules for deposits received through nonproprietary ATMs are provided because “nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits” (H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987)). Thus, a deposit of any combination of cash and checks at a nonproprietary ATM may be treated as if it were a deposit of nonlocal checks, because the depositor bank does not know the makeup of the deposit and consequently is unable to place different holds on cash, local check, and nonlocal check deposits made at the ATM.

2. A colloquy between Senators Proxmire and Dodd during the floor debate on the Competitive Equality Banking Act (133 Cong. Rec. S11289 (Aug. 4, 1987)) indicates that whether a bank operates the ATM is the primary criterion in determining whether the ATM is proprietary to that bank. Because a bank should be capable of ascertaining the composition of deposits made to an ATM operated by that bank, an exception to the availability schedules is not warranted for these deposits. If more than one bank meets the “owns or operates” criterion, the ATM is considered proprietary to the bank that operates it. For the purpose of this definition, the bank that operates an ATM is the bank that puts checks deposited into the ATM into the forward collection stream. An ATM owned by one or more banks, but operated by a nonbank servicer, is considered proprietary to the bank or banks that own it.

3. The EFA Act also includes location as a factor in determining whether an ATM that is either owned or operated by a bank is proprietary to that bank. The definition of proprietary ATM includes an ATM located on the premises of the bank, either inside the branch or on its outside wall, regardless of whether the ATM is owned or operated by that bank. Because the EFA Act also defines a proprietary ATM as one that is “in close proximity to the bank,” the regulation defines an ATM located within 50 feet of a bank to be proprietary to that bank unless it is identified as being owned or operated by another entity. The Board believes that the statutory proximity test was designed to apply to situations where it would be impossible for a depositor that the ATM is run by his or her bank, because of the proximity of the ATM to the bank. The Board believes that a|A|A ATM located within 50 feet of a banking office would be presumed proprietary to that bank unless it is clearly identified as being owned or operated by another entity.

L.L. 229.2(ii) Qualified Returned Check

1. Subpart C requires the paying bank and returning bank to return checks in an expeditious manner« under certain circumstances. [The banks may meet this responsibility by returning a check to the depositor bank by the same general means used for forwarding a check from the depositor bank to the paying bank. One»While the primary way to speed the return process is to« send the return electronically, a bank also could« prepare the returned check for automated« paper« processing. Checks can be automated by either the paying bank or a returning bank by placing the return in a carrier envelope or by placing a strip on the bottom of the return, and encoding the envelope or strip with the routing number of the depositor bank, the amount of the check, and a special return identifier.« Qualified returned checks are identified by placing a “2” in the case of an original check (or a “5” in the case of a substitute check) in position 44 of the omnibus MICR line as a return identifier in accordance with American National Standard Specifications for Placement and Location of MICR Printing. X9.13 (hereinafter “ANS X9.13") for original checks or American National Standard Specifications for Representation of Paper Check Document—IRD, X9.100–100 (hereinafter “ANS X9.100–100") for substitute checks. «(See §229.2[w] and accompanying commentary for a discussion of standards for electronic return). 2. Generally, under the standard of care imposed by §229.38, a paying« bank« or returning bank would be liable for any damages incurred due to misencoding of the routing number, the amount of the check, or return identifier on a qualified returned check. «(See also discussion of §229.38(c).) A qualified returned check that contains an encoding error would still be a qualified returned check for purposes of the depositary bank’s indorsement. «Examples.« A bank’s customer, which is a nonbank business, receives a check for payment, truncates that original check, and creates a substitute check to deposit with its bank. The depositary bank receives that substitute check from its customer and is the first bank to handle the substitute check. The depositary bank becomes the reconverting bank as of the time that it transfers or presents the substitute check (or in lieu thereof the first paper or electronic representation of the substitute check) to a returning bank or the depositary bank.«

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is not a remotely created check. A typical forged check, such as a stolen personal check fraudulently signed by a person other than the drawer, is not covered by the definition of a remotely created check.

2. The term signature as used in this definition has the meaning set forth under U.C.C. § 3-401. The term "applied by" refers to the physical act of placing the signature on the check.

3. The definition of a "remotely created check" differs from the definition of a "remotely created consumer item" under the U.C.C. A "remotely created check" may be drawn on an account held by a consumer, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization. A "remotely created consumer item" under the U.C.C., however, must be drawn on a consumer account.

4. Under Regulation CC (12 CFR part 229), the term "check" includes a negotiable demand draft drawn on or payable through or at a branch of a foreign bank. In the case of a "payable through" or "payable at" check, the signature of the person on whose account the check is drawn would include the signature of the payor institution or the signatures of the customers who are authorized to draw checks on that account, depending on the arrangements between the "payable through" or "payable at" bank, the payor institution, and the customers.

5. The definition of a remotely created check includes a remotely created check that has been reconverted to a substitute check.

Example. 229.2(qq) [Reserved]

229.2(rr) Substitute Check

1. A paper reproduction of an original check could include a reproduction created directly from the original check or a reproduction of the original check that is created from some other source that contains an image of the original check, such as an electronic representation of an original check or substitute check, or a previous substitute check.

2. Because a substitute check must be a piece of paper, an electronic file or electronic check image that has not yet been printed in accordance with the substitute check definition is not a substitute check.

3. Because a substitute check must be a representation of a check, a paper reproduction of something that is not a check cannot be a substitute check. For example, a savings bond or a check drawn on a non-U.S. branch of a foreign bank cannot be reconverted to a substitute check.

4. As described in § 229.51(b) and the commentary thereto, a reconveting bank is required to ensure that a substitute check contains all indorsements applied by previous parties that handled the check in any form. Therefore, the image of the original check that appears on the back of a substitute check would include indorsements that were physically applied to the original check before an image of the original check was captured. An indorsement that was applied physically to the original check after an image of the original check was captured would be conveyed as an electronic indorsement (see paragraph 3 of the commentary to § 229.35(a)). The back of the substitute check would contain a physical representation of any indorsements that were applied electronically to the check after an image of the check was captured but before creation of the substitute check. For example, Bank A, which is the depositary bank, captures an image of an original check, indorses it electronically and, by agreement, transmits to Bank B an electronic image of the check accompanied by the electronic indorsement. Bank B then creates a substitute check to send to Bank C. The back of the substitute check created by Bank B must contain a representation of the indorsement previously applied electronically by Bank A and Bank B’s own indorsement. (For more information on indorsement requirements, see § 229.35, appendix D, and the commentary thereto.)

5. Some substitute checks will not be created directly from the original check, but rather will be created from a previous substitute check. A subsequent substitute check will contain an image of the full length of the back of the previous substitute check. ANS X9.100–140 requires preservation of the full length of the back of the previous substitute check in order to preserve previous indorsements and reconveting bank identifications. By contrast, the front of a subsequent substitute check will not contain an image of the entire previous substitute check. Rather, the image field of the subsequent substitute check will contain the image of the front of the original check that appeared on the previous substitute check at the time it was converted to electronic form. The portions of the front of the subsequent substitute check other than the image field will contain information applied by the subsequent reconveting bank, such as the reconveting bank’s identification, the MICR line, the legal equivalence legend, and optional security information.

Examples.

a. The back of a subsequent substitute check would contain the following indorsements, all of which would be preserved through the image of the back of the previous substitute check: (1) The indorsements that were applied physically to the original check before an image of the original check was captured; (2) a physical representation of indorsements that were applied electronically to the original check after an image of the original check was captured but before creation of the first substitute check; and (3) indorsements that were applied physically to the previous substitute check. In addition, the reconveting bank for the subsequent substitute check must overlay on the back of that substitute check a physical representation of any indorsements that were applied electronically after the previous substitute check was converted to electronic form but before creation of the subsequent substitute check.

b. Because information could have been physically added to the image of the front of the original check that appeared on the previous substitute check, the original check image that appears on the front of a subsequent substitute check could contain information in addition to that which appeared on the original check at the time it was truncated.

6. The MICR line applied to a substitute check must contain information in all fields of the substitute check’s MICR line that were encoded on the original check at any time before an image of the original check was captured. This includes all the MICR-line information that was preprinted on the original check, plus any additional information that was added to the MICR line before the image of the original check was captured (for example, the amount of the check). The information in each field of the substitute check’s MICR line must be the same information as in the corresponding field of the MICR line of the original check, except as provided by ANS X9.100–140 (unless the Board by rule or order determines that a different standard applies). Industry standards may not, however, vary the requirement that a substitute check at the time of its creation must bear a full-field MICR line.

7. ANS X9.100–140 provides that a substitute check must have a ‘‘4’’ in position 44 and that a qualified returned substitute check must have a ‘‘4’’ in position 44 of the forward-collection MICR line as well as a ‘‘5’’ in position 44 of the qualified return MICR line. The ‘‘4’’ and ‘‘5’’ indicate that the
document is a substitute check so that the size of the check image remains constant throughout the collection and return process, regardless of the number of substitute checks created that represent the same original check (see also §§ 229.30(a)(2)–(3) and 229.31(a)(2)–(3)) and the comparative thereto regarding requirements for qualified returned substitute checks). An original check generally has a blank position 44 for forward collection. Because a reconverting bank must encode position 44 of a substitute check's forward collection MICR line with a “4,” the reconverting bank must vary any character that appeared in position 44 of the forward-collection MICR line of the original check. A bank that misencodes or fails to encode position 44 at the time it attempts to create a substitute check has failed to create a substitute check. A bank that receives a properly-encoded substitute check may further encode that item but does so subject to the encoding warranties in Regulation CC and the U.C.C.

8. A substitute check’s MICR line could contain information in addition to the information required at the time the substitute check is created. For example, if the amount field of the original check was not encoded and the substitute check therefore did not, while the check was created, have an encoded amount field, the MICR line of the substitute check later could be amount-encoded.

9. A bank may receive a substitute check that contains a MICR-line variation but nonetheless meets the MICR-line replication requirements of §229.2(aaa)(2)(r)(r), because that variation is permitted by ANSI X9.100–140. If such a substitute check contains a MICR-line error, a bank that receives it may, but is not required to, repair that error. Such a repair must be made in accordance with ANSI X9.100–140 for repairing a MICR line, which generally allows a bank to correct an error by applying a strip that may or may not contain information. The expanded definition of the check’s MICR line. A bank’s repair of a MICR-line error on a substitute check is subject to the encoding warranties in Regulation CC and the U.C.C.

10. A substitute check must conform to all the generally applicable industry standards for substitute checks set forth in ANSI X9.100–140, which incorporates other industry standards by reference. Thus, multiple substitute check images contained on the same page of an account statement are not substitute checks.

SS. 229.2(a)(b) Sufficient Copy and Copy

1. A copy must be a paper reproduction of a check. An electronic image therefore is not a copy, or a copy. However, if a customer has agreed to receive such information electronically, a bank that is required to provide an original check or sufficient copy may satisfy that requirement by providing an electronic image in accordance with §229.58 and the commentary thereto.

2. A bank under §229.53(b)(3) may limit its liability for an indemnity claim and under §§229.54(e)(2) and 229.55(c)(2) may respond to an expedited recredit claim by providing the claimant with a copy of a check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or that otherwise is sufficient to determine the validity of the claim against the bank.

Examples.

a. A copy of an original check that accurately represents all the information on the front and back of the original check as of the time of truncation would constitute a substitute copy if that copy resolved the claim. For example, if resolution of the claim required accurate payment and indorsement information, an accurate copy of the front and back of a legible original check (including but not limited to a substitute check) would be a sufficient copy.

b. A copy of the original check that does not accurately represent all the information on both the front and back of the original check also could be a substitute copy if such copy contained all the information necessary to determine the non-party check writer’s claims. For instance, if a consumer received a substitute check that contained a blurry image of a legible original check, the consumer might seek an expedited recredit because his or her account was charged for $1,000, but he or she believed that the check was written for only $100. If the amount that appeared on the front of the original check was legible, an accurate copy of only the front of the original check that showed the amount of the check would be sufficient to determine whether or not the consumer’s claim regarding the amount of the check was valid.

TT. 229.2(t) Teller’s Check

1. Teller’s check is defined in the EFA Act to mean a check issued by a depository institution and drawn on another depository institution. The definition in the regulation includes not only checks drawn by a bank on another bank, but also checks payable through or at a bank. This would include checks drawn on a nonbank, as long as the check is payable through or at a bank. The definition does not include checks that are drawn on a nonbank on a nonbank even if payable through or at a bank. The definition includes checks provided to a customer of the bank in connection with customer deposit account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by a noncustomer for remittance purposes, such as certain loan disbursement checks. The definition excludes checks used by the bank to pay employees or vendors and checks issued by a bank in connection with a payment service, such as a payroll or a bill-paying service. Teller’s checks generally are sold by banks to substitute the bank’s credit for the customer’s credit and thereby enhance the collectibility of a check. A check issued in connection with a payment service generally is provided as a convenience to the customer rather than as a guarantee of the check’s collectibility. In addition, such checks are often more difficult to distinguish from other types of checks than are teller’s checks as defined by this regulation.

UU. 229.2(uu) Transfer and Consideration

1. Under §§229.52 and 229.53, a bank is responsible for the warranties and indemnity when it transfers, presents, or returns a substitute check (or a paper or electronic representation thereof) for consideration. Drawers and other nonbank persons that receive checks from a bank are not transferees that receive consideration as those terms are defined in the U.C.C. However, the Check 21 Act clearly contemplates that such nonbank persons that receive substitute checks (or representations thereof) from a bank will receive the warranties and indemnity from all previous banks that handled the check. To ensure that these parties are covered by the substitute check warranties and indemnity in the manner contemplated by the Check 21 Act, §229.2(ccc)(uu) incorporates the U.C.C. definitions of the terms transfer and consideration by reference and for purposes of subpart D expands those definitions to cover a broader range of situations. Delivering a check to a nonbank that is acting on behalf of a bank (such as a third-party check processing service) is a transfer of the check to that bank. In subpart D, the terms transfer and consideration have the meaning that they have in the U.C.C.

Examples.

a. A paying bank pays a substitute check and then provides that paid substitute check (or a representation thereof) to a drawer with a periodic statement. Under the expanded definitions, the paying bank thereby transfers the substitute check (or representation thereof) to the drawer for consideration and makes the substitute check warranties described in §229.52. A drawer that suffers a loss due to receipt of a substitute check may have warranty, indemnity, and, if the drawer is a consumer, expedited recredit rights under the Check 21 Act and subpart D. A drawer that suffers a loss due to receipt of a paper or electronic representation of a substitute check would receive the substitute check warranties but would not have indemnity or expedited recredit rights.

b. The expanded definitions also operate such that a paying bank that pays an original check (or a representation thereof) and then creates a substitute check to provide to the drawer with a periodic statement transfers the substitute check for consideration and thereby provides the warranties and indemnity.

c. The expanded definitions ensure that a bank that receives a returned check in any form and then provides a substitute check to the depositor gives the substitute check warranties and indemnity to the depositor.

d. The expanded definitions apply to substitute checks representing original checks that are not drawn on deposit accounts, such as checks used to access a credit card or a home equity line of credit.

VV. 229.2(vv) Traveler’s Check

1. The EFA Act and regulation require that traveler’s checks be treated as cashier’s, teller’s, or certified checks when they are drawn by a new depositor opens an account. (See §229.13(a); 12 U.S.C. 4003(a)(1)(C).) The EFA Act does not define traveler’s check.

2. One element of the definition states that a traveler’s check is “drawn on or payable through or at a bank.” Sometimes traveler’s checks that are not issued by banks do not
have any words on them identifying a bank as drawee or paying agent, but instead bear unique routing numbers with an 8000 prefix that identifies a bank as paying agent.

3. Because a traveler’s check is payable by, at, or through a bank, it is also a check for purposes of information. When not subject to the next-day availability requirement for new accounts, a traveler’s check should be treated as a [local or nonlocal] check (depending on the location of the paying bank) under §229.12. [The depositary bank may rely on the designation of the paying bank by the routing number to determine whether local or nonlocal treatment is required.]

WW. 229.2(ww) Truncate

1. Truncate means to remove the original check from the forward collection or return process and to send in lieu of the original check either a substitute check or, by agreement, information relating to the original check. Truncation does not include removal of a substitute check from the check collection or return process.

XX. 229.2(xx) Truncating Bank

1. A bank is a truncating bank if it truncates an original check or if it is the first bank to transfer, present, or return another form of an original check that was truncated by a person that is not a bank.

Example:

a. A bank’s customer that is a nonbank business receives a check for payment and deposits either a substitute check or an electronic representation of the original check with its depositary bank instead of the original check. That depositary bank is the truncating bank when it transfers, presents, or returns the substitute check or electronic representation in lieu of the original check. That bank also would be the reconverting bank if it were the first bank to transfer, present, or return another form of an original check that was truncated by a person that is not a bank.

b. A truncating bank does not make the subpart D warranties and indemnity unless it also is the reconverting bank. Therefore, a bank that truncates the original check and sends an electronic file to a collecting bank does not provide subpart D protections to the recipient of that electronic item. However, a recipient of an electronic item may protect itself against losses associated with that item by agreement with the truncating bank.

YY. 229.2(yy) Uniform Commercial Code

1. Uniform Commercial Code is defined as the version of the Code adopted by the individual states. For purposes of uniform citation, all citations to the U.C.C. in this part refer to the Official Text as approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

ZZ. 229.2(zz) [Reserved]

AAA. 229.2(aaa) Unit of General Local Government

1. Unit of general local government is defined to include a city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special purpose units, such as school districts, water districts, or Indian nations.

BBB. 229.2(bbb) Wire Transfer

1. The EFA Act delegates to the Board the authority to define [wire transfer] [electronic transfer] to be defined by regulation. The regulation defines wire transfer as an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary, upon receipt or on a day stated in the order, that is transmitted by electronic or other means over certain networks or on the books of banks and that is used primarily to transfer funds between [commercial] [nonconsumer] accounts.

“Unconditional” means that no condition, such as presentation of documents, must be met before the bank receiving the order is to make payment. A wire transfer may be transmitted by electronic or other means.

“Electronic means” include computer-to-
computer links, on-line terminals, [telegrams (including TWX, TELEX, or similar methods of communication),] [telephone calls, or other similar methods.]

The Fedwire Funds Service (electronic payment service) wire transfer network, CHIPS (Clearing House Interbank Payments System, operated by [the New York] Clearing House), and book transfers among banks or within one bank are covered by this definition. Credits for credit and debit card transactions are not wire transfers. The term wire transfer excludes electronic fund transfers as that term is defined by the Electronic Fund Transfer Act.

III. Administrative Liability and Enforcement [Reserved]

IV. Section 229.10—Next-Day Availability

A. Business Days and Banking Days

1. This section, as well as other provisions of this subpart governing the availability of funds, provides that funds must be made available for withdrawal not later than a specified number of business days following the banking day on which the funds are deposited. Thus, a deposit is considered made only on a banking day, i.e., a day that the bank is carrying on substantially all of its banking functions. For example, if a deposit is made at an ATM on a Saturday, Sunday, or other day on which the bank is closed to the public, the deposit is considered received on the bank’s next banking day.

2. Nevertheless, business days are used to determine the number of days following the banking day of deposit that funds must be available for withdrawal. For example, if a deposit of a [local] check were made on a Monday, the availability schedule generally requires that funds be available for withdrawal on the second business day after deposit. Therefore, funds must be made available on Wednesday regardless of whether the bank was closed on Tuesday for other than a standard legal holiday as specified in the definition of business day.

B. 229.10(a) Cash Deposits

1. This paragraph implements the EFA Act’s requirement for next-day availability for cash deposits to accounts at a depository bank “staffed by individuals employed by such institution.” Under this paragraph, cash deposited in an account at a staffed teller station on a Monday must become available for withdrawal by the start of business on Tuesday. Funds are available for withdrawal by the start of business on Wednesday if it is deposited by mail, at a proprietary ATM, or by other means other than at a staffed teller station.

2. Nothing in the EFA Act or this regulation affects terms of account arrangements, such as negotiable order of withdrawal accounts, which may require prior notice of withdrawal. (See 12 CFR 204.2(e)(2).)

3. Nothing in the EFA Act or this regulation affects terms of account arrangements, such as negotiable order of withdrawal accounts, which may require prior notice of withdrawal. (See 12 CFR 204.2(e)(2).)

C. 229.10(b) Electronic Payments

1. The EFA Act provides next-day availability for funds received for deposit by wire transfer. The regulation uses the term “wire transfer” to include both wire transfers and ACH credit transfers under the next-day availability requirement. (See discussion of definitions of [automated clearinghouse] ACH credit transfer, electronic payment, and wire transfer in §229.2.)

2. The EFA Act requires that funds received by wire transfer be available for withdrawal not later than the business day following the day a wire transfer is received. This paragraph clarifies what constitutes receipt of an electronic payment. For the purposes of this paragraph, a bank receives an electronic payment when the bank receives both payment in finally collected funds and the payment instructions indicating the customer accounts to be credited and the amount to be credited to each account. For example, in the case of [a Fedwire Funds transfer, the bank receives finally collected funds at the time the payment is made. (See 12 CFR 210.31.) Finally collected funds generally are received for an ACH credit transfer when they are posted to the receiving bank’s account on the settlement day. In certain cases, the bank receiving ACH credit payments will not receive the specific payment instructions indicating which accounts to credit until after settlement day. In these cases, the payments are not considered received until the information on the account and amount to be credited is received.

3. This paragraph also establishes the extent to which an electronic payment is considered made. Thus, if a participant on a private network fails to settle and the receiving bank receives finally settled funds representing only a partial amount of the payment, it must make only the amount that it actually received available for withdrawal.

4. The availability requirements of this regulation do not preempt or invalidate other rules, regulations, or agreements which require funds to be made available on a more prompt basis. For example, the next-day availability requirement for ACH credits in this section does not preempt ACH
association rules and Treasury regulations (31 CFR part 210), which provide that the proceeds of these credit payments be available to the recipient for withdrawal on the day the bank receives the funds.

D. 229.10(c) Certain Check Deposits

1. The EFA Act generally requires that funds be made available on the business day following the banking day of deposit for Treasury checks, state and local government checks, cashier’s checks, certified checks, teller’s checks, and “on us” checks, under specified conditions. (Treasury checks are checks drawn on the Treasury of the United States and have a routing number beginning with the digits “0000.”) This section also requires next-day availability for additional types of checks not addressed in the EFA Act. Checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank and U.S. Postal Service money orders and checks are conditioned on the deposit of these checks

2. Deposit in Account of Payee. One statutory condition to receipt of next-day availability of Treasury checks, state and local government checks, cashier’s checks, certified checks, and teller’s checks is that the check must be “endorsed only by the person on whose account the check was issued.” The EFA Act could be interpreted to include a check that has been indorsed in blank and deposited into an account of a third party that is not named as payee. The Board believes that such a check presents greater risks than an indorsement by the payee and that Congress did not intend to require next-day availability for such checks. The regulation, therefore, provides that funds must be available on the business day following deposit only if the check is deposited in an account held by a payee of the check. For the purposes of this section, payee does not include transferees other than named payees. The regulation also applies this condition to Postal Service money orders and checks drawn on Federal Reserve Banks and Federal Home Loan Banks.

3. Deposits Made to an Employee of the Depositary Bank.
   a. In most cases, next-day availability of the proceeds of checks subject to this section is conditioned on deposit of these checks in an account of an employee of the depositary bank. If the deposit is not made to an employee of the depositary bank on the premises of such bank, the proceeds of the deposit must be made available for withdrawal by the start of business on the second business day after deposit, under (paragraph (c)(2) of this section). For example, second-day availability rather than next-day availability would be allowed for deposits of checks subject to this section made at a proprietary ATM, night depository, through the mail or a local state bank, or at a teller station staffed by a person who is not an employee of the depositary bank. Second-day availability also may be allowed for deposits picked up by an employee of the depositary bank at the customer’s premises; such deposits would be considered made upon receipt at the branch or other location of the depositary bank. Employees of a contractual branch would not be considered employees of the depositary bank for the purposes of this regulation, and deposits at contractual branches would be treated the same as deposits to a proprietary ATM for the purposes of this regulation. (See also, Commentary to §229.19(a).)
   b. In the case of Treasury checks, the EFA Act and regulation do not condition the receipt of next-day availability to deposits at staffed teller stations. Therefore, Treasury checks deposited at a proprietary ATM must be accorded next-day availability, if the check is deposited to an account of a payee of the check.

4. “On Us” Checks. The EFA Act and regulation require a next-day availability for “on us” checks, i.e., checks 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 geographical area served by a Federal Reserve bank check processing center (“check processing region”). Thus, checks deposited in one branch of a bank and drawn on another branch of the same bank must receive next-day availability even if the branch on which the checks are drawn is located in another check processing region but in the same state as the branch in which the check is deposited.

   a. The EFA Act and regulation also require that if a deposit of a check with a minimum amount of $100 or more is made available for withdrawal on the business day following deposit under other provisions of this section, for example, if a customer deposits a $100 Treasury check and a $1,000 check, or if a customer deposits a $1,000 Treasury check by nonpersonal ATM and a $1,000 check subject to paragraphs (c)(1)(i) through (vi) in its account on Monday, $1,100 must be made available for withdrawal on Tuesday. The proceeds of the $1,000 Treasury check, as well as the $1,100, must be made available for withdrawal on Tuesday.
   b. A depositary bank may aggregate all checks drawn on the Treasury of the United States, state and local government checks, cashier’s checks, certified checks, and teller’s checks in an automated manner by reading the MICR line a routing number that is listed in appendix A are subject to the next-day availability rule. (Treasury checks are subject to the next-day availability rule as well. For example, if a customer deposits a check for $200 drawn on the United States Treasury into a contractually nonpersonal ATM and another check for $200 drawn on a Federal Reserve Bank, the $200 check from each bank will be considered the same amount.

5. First $100. The minimum amount —
   a. The EFA Act and regulation also require that if a deposit of a check with a minimum amount of $100 or more is made available for withdrawal on the business day following deposit under other provisions of this section, for example, if a customer deposits a $100 Treasury check and a $1,000 check, or if a customer deposits a $1,000 Treasury check by nonpersonal ATM and a $1,000 check subject to paragraphs (c)(1)(i) through (vi) in its account on Monday, $1,100 must be made available for withdrawal on Tuesday. The proceeds of the $1,000 Treasury check, as well as the $1,100, must be made available for withdrawal on Tuesday.
   b. A depositary bank may aggregate all checks drawn on the Treasury of the United States, state and local government checks, cashier’s checks, certified checks, and teller’s checks in an automated manner by reading the MICR line a routing number that is listed in appendix A.
   c. A depositary bank may aggregate all checks drawn on the Treasury of the United States, state and local government checks, cashier’s checks, certified checks, and teller’s checks in an automated manner by reading the MICR line a routing number that is listed in appendix A.
   d. If the customer deposits a $500 local check, the minimum amount that must be made available at the time of deposit, the bank need not make an additional $100 amount available for withdrawal on the following day.
   e. If the customer deposits a $500 local check, the minimum amount that must be made available at the time of deposit, the bank need not make an additional $100 amount available for withdrawal on the following day.
   
6. Special Deposit Slips.
   a. Under the EFA Act, a depositary bank may require the use of a special deposit slip as a condition to providing next-day availability for certain types of checks. This condition was included in the EFA Act because many banks determine the availability of their customers’ check deposits in an automated manner by reading the MICR-encoded routing number on the deposited checks. Using these procedures, a bank can determine whether a check is a local or nonlocal check, a check drawn on the Treasury, a Federal Reserve Bank, a Federal Home Loan Bank, or a branch of the depositary bank, or a U.S. Postal Service money order. Appendix A includes the routing numbers of certain categories of checks that are subject to next-day availability. The bank cannot require a special deposit slip for these checks.
b. A bank cannot distinguish whether the check is a state or local government check, cashier’s check, certified check, or teller’s check by reading the [MICR-encoded] routing number, because these checks bear the same routing number as other checks drawn on the same bank that are not accorded next-day availability. Therefore, a bank may require a special deposit slip for these checks.

c. The regulation specifies that if a bank decides to require the use of a special deposit slip (or a special deposit envelope in the case of a depository ATM or other unstaffed facility) as a condition to granting next-day availability under paragraphs (c)(1)(iv) or (c)(1)(v) of this section or second-day availability under paragraph (c)(2) of this section, and if the deposit slip that must be used is different from the bank’s regular deposit slips, the bank must either provide the special slips to its customers or inform its customers how such slips may be obtained and make the slips reasonably available to the customers.

d. A bank may satisfy this requirement by providing customers with an order form for the special deposit slips and allowing sufficient time for the customer to order and receive the slip(s) before this condition is imposed. If a bank provides deposit slips in its branches for use by its customers, it also must provide the special deposit slips in the branches. If special deposit envelopes are required for deposits at an ATM, the bank must provide such envelopes at the ATM.

e. Generally, a teller is not required to advise depositors of the availability of special deposit slips merely because checks requiring special deposit slips for next-day availability are deposited without such slips. If a bank provides the special deposit slips only upon the request of a depositor, however, the teller must advise the depositor of the availability of the special deposit slips, or the bank must post a notice advising customers that the slips are available upon request. Such notice need not be posted at each teller window, but the notice must be posted in a place where consumers seeking to make deposits are likely to see it before making their deposits. For example, the notice might be posted at the point where the line forms for teller service in the lobby. The notice is not required at any drive-through teller windows nor is it required at night depository locations, or at locations where consumer deposits are not accepted. If a bank prepares a deposit for a depositor, it must use a special deposit slip where appropriate.

A. 229.12(b) [Reserved]

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d. A reduction in schedules may apply if the proceeds of a local or nonlocal check become available for withdrawal on the same business day, the $400 withdrawal limitation applies to the cash withdrawal amount based on the aggregate amount of the funds that became available for withdrawal on that day. The remainder of the funds must be available for withdrawal at the start of business on the business day following the business day specified in the schedule.

2. The EFA Act recognizes that the $400 cash withdrawal amount that must be provided on the day specified in the schedule may exceed a bank’s daily ATM cash withdrawal limit, and explicitly provides that the EFA Act does not supersede the bank’s policy in this regard. The Board believes that the rationale for accommodating a bank’s ATM withdrawal limit also applies to other cash withdrawal limits established by that bank. Section 229.19(c)(4) of the regulation addresses the relation between a bank’s cash withdrawal limit for over-the-counter cash withdrawals as well as ATM cash withdrawals and the requirements of this subpart.

3. The Board believes that the Congress included this special cash withdrawal rule to provide a depository bank with additional time to learn of the nonpayment of a check before it must make funds available to its customer. If a customer deposits a [local] check on a Monday, and that check is returned by the paying bank, the depository bank may not receive the returned check until Thursday, the day after funds for a [local] check ordinarily must be made available for withdrawal. The intent of the special cash withdrawal rule is to minimize this risk to the depository bank. For this rule to minimize the depository bank’s risk, it must apply not only to cash withdrawals, but also to withdrawals by other means that result in an irrevocable debit to the customer’s account or commitment to pay by

V. Section 229.11—Reserved

VI. Section 229.12—Availability Schedule

A. 229.12(a) Effective Date

1. The availability schedule set forth in this section supersedes the temporary schedule that was effective September 1, 1988, through August 31, 1990.
the bank on the customer’s behalf during the day. Thus, the cash withdrawal rule also includes withdrawals by electronic payment, issuance of a cashier’s or teller’s check, certification of a check, or other irrevocable commitment to pay, such as authorization of an overdraft or other debit. The rule also applies to checks presented over the counter for payment on the day of presentment by the depositor or another person. Such checks could not be dishonored for insufficient funds if an amount sufficient to cover the check had become available for cash withdrawal under this rule; however, payment of such checks would be subject to the bank’s cut-off hour established under U.C.C. 4–108. The cash withdrawal rule does not apply to checks and other provisional debits presented to the bank for payment that the bank has the right to return.

C. 229.121[e]  [e] Extension of Schedule for Certain Deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands

1. The EFA Act and regulation provide an extension of the availability schedules for check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands. The schedules for [local] checks [other than those subject to next-day availability under §229.10(c)]<i>, nonlocal checks (including nonlocal checks subject to the reduced schedules of appendix B), and deposits at nonproprietary ATMs are extended by one business day for checks deposited to accounts in banks located in these jurisdictions and drawn on or payable at or through a paying bank not located in the same jurisdiction as the depositary bank. For example, a check deposited in a bank in Hawaii and drawn on a San Francisco paying bank must be made available for withdrawal not later than the third business day following deposit. This extension does not apply to deposits that must be made available for withdrawal on the next business day.

2. The Congress did not provide this extension of the availability of checks drawn on a paying bank that had become available for withdrawal under §229.10(c) in §229.12, as checks to that must otherwise be accorded next-day (or second-day) availability under §229.10(c). Many checks will not be returned to the depositary bank by the time funds must be made available for withdrawal under the next-day (or second-day), local and nonlocal schedules. In order to reduce risk to depositary banks, the Board has exercised its statutory authority to adopt regulations under §229.10(c) that provide exceptions to the availability of checks and deposits that must be made available for withdrawal under §229.10(c).

D. 229.121[f]  [d] Deposits at Nonproprietary ATMs

1. The EFA Act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. All deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit. For example, a deposit made on a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Friday of the following week. The provisions of section 229.10(c)(1)(vi) [requiring a deposit bank to make up to $100 of an aggregate daily deposit] setting forth the minimum amount of a deposit that must be made available for withdrawal on the first business day after the banking day of deposit do not apply to deposits at a nonproprietary ATM.

VII. Section 229.13—Exceptions

A. Introduction

1. While certain safeguard exceptions [such as those for new accounts and checks the bank has reasonable cause to believe are uncollectible] are established in the EFA Act, the Congress did not provide the discretion to determine whether certain other exceptions should be included in its regulations. Specifically, the EFA Act gives the Board the authority to establish permit other exceptions to be established by regulation, specifically exceptions to the schedules for large or redeposited checks and for accounts that have been repeatedly overdrawn. These exceptions apply to [local and nonlocal] checks subject to the general availability schedule in §229.12 as well as to checks that must otherwise be accorded next-day (or second-day) availability under §229.10(c).

2. Many checks will not be returned to the depositary bank by the time funds must be made available for withdrawal under the next-day (or second-day), local and nonlocal schedules. In order to reduce risk to depositary banks, the Board has exercised its statutory authority to adopt regulations under §229.10(c) that provide exceptions to the schedules in the regulation to allow the depositary bank to extend the time within which it is required to make funds available.

3. The EFA Act also gives the Board the authority to suspend the schedules for any classification of checks, if the schedules result in an unacceptable level of fraud losses. The Board will adopt regulations or issue orders to implement this statutory authority if circumstances requiring its implementation arise.

B. 229.13(a) New Accounts

1. Definition of New Account.

a. The EFA Act provides an exception to the availability schedule for new accounts. An account is defined as a new account during the first 30 calendar days after the account is opened. An account is opened when the first deposit is made to the account. If a customer on the account has a transaction account relationship with the depositary bank, including a dormant account, that is at least 30 calendar days old or if each customer has had an established account relationship with the depositary bank within the 30 calendar days prior to opening the second account.

b. The following are examples of what constitutes, and does not constitute, a new account:

i. If the customer has an established account with a bank and opens a second account with the bank, the second account is not subject to the new account exception.

ii. If a customer’s account were closed and another account opened as a successor to the original account, the successor account is not subject to the new account exception, assuming the previous account relationship is at least 30 days old. Similarly, if a customer closes an established account and opens a separate account within 30 days, the new account is not subject to the new account exception.

iii. If a customer has a savings deposit or other deposit that is not an account (as that term is defined in §229.2(a)) at the bank, and opens an account, the account is subject to the new account exception.

iv. If a person that is authorized to sign on a corporate account (but has no other relationship with the bank) opens a personal account, the personal account is subject to the new account exception.

v. If a customer has an established joint account at a bank, and subsequently opens an individual account with that bank, the individual account is not subject to the new account exception.

vi. If two customers that each have an established individual account with the bank open a joint account, the joint account is not subject to the new account exception. If one of the customers on the account has no current or recent established account relationship with the bank, however, the joint account is subject to the new account exception, even if the other individual on the account has an established account relationship with the bank.

2. Rules Applicable to New Accounts.

a. During the new account exception period, the EFA Act establishes a schedule for [local and nonlocal] checks for [local and nonlocal] checks under §229.12,<i> does not apply, and, unlike the other exceptions provided in this section, the regulation provides no maximum time frames within which the proceeds of these deposits must be made available for withdrawal. Maximum times within which funds must be available for withdrawal during the new account period are provided, however, for certain other deposits. Deposits received by cash and electronic payments must be made available for withdrawal in accordance with §229.13(b).<i>

b. Special rules also apply to deposits of Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks and Federal Home Loan Banks, state and local government checks, cashier’s checks, certified checks, teller’s checks, and, for the purposes of the new account exception only, traveler’s checks. The first $5,000 of funds deposited to a new account on any one banking day by these checks must be made available for withdrawal in accordance with §229.13(c)(ii). Thus, the first $5,000 of the proceeds of these checks deposits must be made available on the second business day after deposit for deposits that are not made over the counter, in accordance with §229.10(c)(2)(i).<i> Proceeds of Treasury check deposits must be made available on the first business day after deposit, even if the check is not deposited in person to an employee of the depositary
bank.) Funds in excess of the first $5,000 deposited by these types of checks on a banking day must be available for withdrawal not later than the ninth business day following the banking day of deposit. The requirements of §229.10(c)(1)(vii) and (viii) that "any amount under $100 minimum amount of a day’s deposit be made available for withdrawal on the next business day do not apply during the new account period.

3. Representation by Customer. The depositary bank must rely on the representation of the customer that the customer has no established account relationship with the bank, and has not had any such account relationship within the past 30 days, to determine whether an account is subject to the new account exception.

C. 229.13(b) Large Deposits

1. Under the deposit exception, a depositary bank may extend the hold on check deposits to the extent that the amount of the aggregate deposit on any banking day exceeds $5,000 (the "large-deposit amount"). This exception applies to (1) local and nonlocal checks subject to §229.12, as well as to checks that otherwise would be made available on the next business day after the day of deposit under §229.10(c). Although the first $5,000 of a day’s deposit on any amount under the large-deposit amount is subject to the availability otherwise provided for checks, the amount in excess of $5,000 may be held for an additional period of time as provided in §229.13(b). When the deposit exception is applied to deposits composed of a mix of checks that would otherwise be subject to differing availability schedules, the depositary bank has the discretion to choose the portion of the deposit to which it applies the exception. Deposits by cash or electronic payment are not subject to this exception for large deposits.

2. The following example illustrates the operation of the large-deposit exception. If a customer deposits $2,000 in cash and a $9,000 local check on a Monday that is not subject to next-day availability (i.e., $2,100 of the proceeds of the check deposit and $100 of the minimum amount under §229.10(c) from the local check deposit) must be made available for withdrawal on Tuesday. An additional $4,900 of the proceeds of the local check (the amount under the large-deposit threshold less the minimum amount under §229.10(c)) must be made available for withdrawal on a banking day in accordance with the general schedule, and the remaining $5,000 amount over the large-deposit threshold may be held for an additional period of time under the large-deposit exception.

A depositary bank with multiple accounts with a depositary bank, the bank may apply the large-deposit exception to the aggregate deposits to all of the customer’s accounts, even if the customer is not the sole holder of the accounts and not all of the holders of the customer’s accounts are the same. Thus, a depositary bank may aggregate the deposits made to two individual accounts in the same name, to an individual and a joint account with one common name, or to two joint accounts with at least one common name for the purpose of applying the large-deposit exception. Aggregation of deposits to multiple joint accounts with one common name for the purpose of applying the large-deposit exception is similar regardless of how the deposits are allocated among the customer’s accounts.

D. 229.13(c) Redeemed Checks

1. The EFA Act gives the Board the authority to promulgate provisions that the regulation may include an exception to the schedule for checks that have been returned unpaid and redeposited. Section 229.13(c) provides such an exception for checks that have been returned unpaid and redeposited by the customer or the depositary bank. This exception applies to (1) local and nonlocal checks subject to §229.12, as well as to checks that would otherwise be made available on the next business day after the day of deposit under §229.10(c).

2. This exception addresses the risk of multiple deposits caused by a check that has been returned once will be uncollectible when they are presented to the paying bank a second time. The Board, however, does not believe that the increased risk is present for checks that have been returned due to a missing indorsement. Thus, the exception does not apply to checks returned unpaid due to missing indorsements and redeposited after the missing indorsement has been obtained, if the reason for return indicated on the check (see §229.30(d)) states that it was returned due to a missing indorsement. For the same reason, this exception does not apply to a check returned because it was postdated (future dated), if the reason for return indicated on the check states that it was returned because it was postdated when redeposited.

3. To determine when funds must be made available for withdrawal, the banking day on which the check is redeposited is considered to be the day of deposit. A depositary bank that makes a $5,000 minimum amount of a check available for withdrawal under §229.10(c)(1)(vii) can charge back the full amount of the check, including the $100 minimum amount made available, if the check is returned unpaid, and the $100 minimum amount need not be made available again if the check is redeposited.

E. 229.13(d) Repeated Overdrafts

1. The EFA Act gives the Board the authority to establish provisions that the regulation may include the exception for "deposit accounts which have been overdrawn repeatedly." This paragraph provides two tests to determine what constitutes an overdraft. Under the first test, a customer’s accounts are considered repeatedly overdrawn if, on six banking days within the preceding six months, the available balance in any account held by the customer is negative, or the balance would have become negative if checks or other charges to the account had been paid, rather than returned. This test can be met based on separate occurrences (e.g., checks that are returned for insufficient funds on six different days), or based on one occurrence (e.g., a negative balance that remains on the customer’s account for six banking days). If the bank dishonors a check that otherwise would have created a negative balance, however, the incident is considered an overdraft only on that day.

2. The second test addresses substantial overdrafts. Such overdrafts increase the risk to the depositary bank of dealing with the repeated overdrawer. Under this test, a customer incurs repeated overdrafts if, on two banking days within the preceding six months, the available balance in any account held by the customer is negative in an amount of $5,000 or more, or would have become negative in an amount of $5,000 or more if checks or other charges to the account had been paid.

3. The exception relates not only to overdrafts caused by checks drawn on the account, but also to overdrafts caused by other debit charges (e.g., ACH debits, point-of-sale transactions, returned checks, account fees, etc.). If the potential debit is in excess of available funds, the exception applies regardless of whether the items were paid or remained unpaid.

4. Under either test described above, the “other charges to the account” that would have created an overdraft had they been paid do not include attempted debit card transactions for which the depositary bank has declined the authorization request, because there is no transaction that has occurred.

5. An overdraft resulting from an error on the part of the depositary bank, or from the imposition of overdraft charges for which the customer is entitled to a refund under §§229.13(e) or 229.16(c), cannot be considered in determining whether the customer is a repeated overdrawer. The exception excludes accounts with overdraft lines of credit, unless the line has been exceeded or would have been exceeded if the checks or other charges to the account had been paid.

6. An overdraft resulting from a mistake or error by the depositary bank does not constitute an overdraft. This test can be met based on separate occurrences (e.g., checks that are returned for insufficient funds on six different days), or based on one occurrence (e.g., a negative balance that remains on the customer’s account for six banking days). If the bank dishonors a check that otherwise would have created a negative balance, however, the incident is considered an overdraft only on that day.

F. 229.13(e) Reasonable Cause To Doubt Collectibility

1. In the case of certain check deposits, if the bank has reasonable cause to believe the check is uncollectible, it may extend the time funds must be made available for withdrawal. This exception applies to (1) local and nonlocal checks subject to §229.12, as well as to checks that otherwise would be made available on the next business day after the day of deposit under §229.10(c). When a bank places or extends a hold under this exception, it need not make the $100 minimum amount of a deposit available for withdrawal on the next business day, as otherwise would be required by §229.10(c)(1)(vii).

2. The Board believes that, to make deposits available on the next business day, as otherwise would be required by §229.10(c)(1)(vii), would make it more difficult for banks to hold checks for a longer period of time that they otherwise would be held, if the bank has reasonable cause to believe the check is uncollectible.
the \( [\text{first $100}] \text{minimum amount} \) of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). If the reasonable exception is invoked, the bank must include in the notice to its customer, required by § 229.13(g), the reason that the bank believes that the check is uncollectible.

2. The following are several examples of circumstances under which the reasonable exception may be invoked:

a. If a bank received a notice from the paying bank that a check was not paid and is being returned to the depositary bank, the depositary bank could place a hold on the check or extend a hold previously placed on that check, and notify the customer that the bank had received notice that the check is being returned. The exception could be invoked even if the notice were incomplete, if the bank had reasonable cause to believe that the notice applied to that particular check.

b. The depositary bank may have received information from the paying bank, prior to the presentment of the check, that gives the bank reasonable cause to believe that the check is uncollectible. For example, the paying bank may have indicated that payment has been stopped on the check, or that the drawer’s account does not currently have sufficient funds to honor the check. Such information may provide sufficient basis to invoke this exception. In these cases, the depositary bank could invoke the exception and disclose as the reason the exception in invoked the fact that information from the paying bank indicates that the check may not be paid.

c. The fact that a check is deposited more than six months after the date on the check (i.e., a stale check) is a reasonable indication that the check may be uncollectible, because under U.C.C. 4-404 a bank has no duty to its customer to pay a check that is more than six months old. Similarly, if a check being deposited is postdated (future dated), the bank may have a reasonable cause to believe the check is uncollectible, because the check may not be properly payable under U.C.C. 4-401. The bank, in its notice, should specify that the check is stale-dated or postdated.

d. There are reasons that may cause a bank to believe that a check is uncollectible that are based on confidential information. For example, a bank could conclude that a check being deposited is uncollectible based on its reasonable belief that the depositor is engaging in kiting activity. Reasonable belief as to the insolvency or pending insolvency of the drawer of the check or the drawee bank and that the checks will not be paid also may justify invoking this exception. In these cases, the bank may indicate, as the reason it is invoking the exception, that the bank has confidential information that indicates that the check may not be paid.

3. [The Board has included a] Appendix C contains a model reasonable exception notice as a model notice in appendix C (C-13) of the model notice in appendix C (C-13). The commentary in appendix C to the model notice includes several reasons for which this exception may be invoked. The Board does not intend to provide a comprehensive list of reasons for which this exception may be invoked; another reason that does not appear in the commentary to the model notice may be used as the basis for extending a hold, if the bank satisfies the reasonable cause conditions for invoking this exception. A depositary bank may invoke the reasonable exception based on a combination of factors that give rise to a reasonable cause to doubt the collectibility of a check. In these cases, the bank should disclose the primary reasons for which the exception was invoked in accordance with paragraph (g) of this section.

4. The regulation provides that the determination that a check is uncollectible shall not be based on a class of checks or persons. For example, a depositary bank cannot invoke this exception simply because the check is drawn on a paying bank in a rural area or a paying bank demands paper presentation, and the depositary bank knows it will not have the opportunity to learn of non-returned checks before funds must be made available under the availability schedules. Similarly, a depositary bank cannot invoke the reasonable cause exception based on the race or national origin of the depositor.

5. If a depositary bank invokes this exception with respect to a particular check and does not provide a written notice to the depositor at the time of deposit, the depositary bank may not assess any overdraft fee (such as an “NSF” charge) or charge interest for credit, if the check is paid by the paying bank and these charges would not have occurred had the exception not been invoked. A bank may assess an overdraft fee under these circumstances, however, if it provides notice to the customer, in the notice of exception required by paragraph (g) of this section, that the fee may be subject to refund, and refunds the charges upon the request of the customer. The notice must state that the customer may be entitled to a refund of any overdraft fees that are assessed if the check being held is paid, and indicate where such requests for a refund of overdraft fees should be directed.

6. A depositary bank may extend the time period for which the exception was invoked, and the time period within which funds will be available for withdrawal. For a customer who is not a consumer, a depositary bank satisfies the written-notice requirement by sending an electronic notice that displays the text and is in a form that the customer may keep, if for example, it can be downloaded or printed. For a consumer, a depositary bank satisfies the written-notice requirement by sending an electronic notice in compliance with the requirements of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001 et seq.), which include obtaining the consumer’s affirmative consent to such means of notice.

7. With respect to paragraph (g)(1), the requirement that the notice state the time period within which the funds shall be made available may be satisfied if the notice identifies the date that the notice is received and information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the notice need not provide a notice that discloses when funds from each individual check in the deposit will be available for withdrawal; instead, the bank may provide a total dollar amount for each of the time periods within which the funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the funds will be available for deposit.

8. Appendix C (C-12)] contains a model notice.

9. For deposits made in person to an employee of the depositary bank, the notice generally must be given to the person making the deposit, i.e., the “depositor,” at the time of deposit. The depositor need not be the customer holding the account. For other deposits, such as deposits received at...
an ATM, lobby deposit box, night depository, or through the mail, notice must be [mailed] sent to the customer no later than the close of the business day following the banking day on which the deposit was made.

d. Notice to the customer also may be provided at a later date, if the facts upon which the determination to invoke the exception made do not become known to the depositary bank until after notice would otherwise have to be given. In these cases, the bank must [mail] send the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. A bank is deemed to have knowledge when the facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

e. If the customer has agreed to accept notices electronically, the bank shall send the notice electronically. The notice sent electronically may reasonably be expected to be received by the customer 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.

In those cases described in paragraphs (g)(2) and (g)(3), the depositary bank need not provide a notice every time an exception hold is applied to a deposit. When paragraph (g)(2) or (g)(3) requires disclosure of the time period within which deposits subject to the exception generally will be available for withdrawal, the requirement may be satisfied if the one-time notice states when “on us[.]” [local, and nonlocal] and other checks will be available for withdrawal if an exception is invoked.

2. One-time exception notice.

a. Under paragraph (g)(2), if a notice to a nonconsumer account [see Commentary to §229.2(f)] subject to the large deposit or redeposited check exception, the depositary bank may give its customer a single notice at or prior to the time notice would otherwise be provided under paragraph (g)(1). Notices provided under paragraph (g)(2) must contain the reason the exception may be invoked and the time period during which deposits subject to the exception will be available for withdrawal [see Model Notice C-14 §11-0-0]. A depositary bank may provide a one-time notice to a nonconsumer customer under paragraph (g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer’s account to which the exception could apply. A one-time notice may state that the depositary bank will apply exception holds to certain subsets of deposits to which the large deposit or redeposited check exception may apply, and the notice should identify the subset. For example, the bank may apply the redeposited check exception only to checks that were redeposited by the depositor bank in accordance with an agreement with the customer, rather than to all redeposited checks. In lieu of sending the one-time notice, a depositary bank may send individual hold notices for each deposit subject to the large deposit or redeposited check exception in accordance with §229.13(g)(1) [see Model Notice C-12 §9-0-0].

b. In the case of a deposit of multiple checks, the depositary bank may place the discretion to place an exception hold on any combination of checks in excess of $5,000 on the large-deposit threshold. The notice should enable a customer to determine the availability of the deposit in the case of a deposit of multiple checks [subject to differing hold periods]. [For example, if a customer deposits a $5,000 local check and a $5,000 nonlocal check, under the large deposit exception, the depositary bank may make funds available in the amount of (1) $100 on the first business day after deposit, $4,900 on the second business day after deposit (local check), and $5,000 on the eleventh business day after deposit (nonlocal check), or (2) $100 on the first business day after deposit (nonlocal check), and $5,000 on the seventh business day after deposit (local check with 5-day exception hold)]. The notice also should reflect the bank’s priorities in placing exception holds on next-day [or second-day], local, and nonlocal and other checks.

c. Notice to the customer also may be provided at a later date, if the facts upon which the determination to invoke the exception made do not become known to the depositary bank until after notice would otherwise have to be given. In these cases, the bank must [mail] send the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. A bank is deemed to have knowledge when the facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

d. Notice to the customer also may be provided at a later date, if the facts upon which the determination to invoke the exception made do not become known to the depositary bank until after notice would otherwise have to be given. In these cases, the bank must [mail] send the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. A bank is deemed to have knowledge when the facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

3. Notice of repeated overdraft exception.

a. Under paragraph (g)(3), if an account is subject to the repeated overdraft exception, the depositary bank may provide one notice to its customer for each time period during which the exception will apply. Notices sent pursuant to paragraph (g)(3) must state the customer’s account number and the fact the exception was invoked under the repeated overdraft exception, the time period during which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply [see Model Notice C-15 §11-0-0]. A depositary bank may provide a one-time notice to a customer under paragraph (g)(2) only if the repeated overdraft exception will be invoked for most check deposits to the customer’s account.

4. Emergency conditions exception notice.

a. If an account is subject to the emergency conditions exception under §229.13(f), the depositary bank must provide notice in a reasonable form within a reasonable time, depending on the circumstances. For example, a depositary bank may learn of a weather emergency or a power outage that affects the paying bank’s operations. Under these circumstances, it likely would be reasonable for the depositary bank to provide an emergency notice within the reasonable time period in which the funds would be made available for withdrawal or notice. The notice sent pursuant to paragraphs (g)(2) and (g)(3) must state the customer’s account number and the fact the exception was invoked under the repeated overdraft exception, the time period during which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply [see Model Notice C-15 §11-0-0]. A depositary bank may provide a one-time notice to a customer under paragraph (g)(2) only if the repeated overdraft exception will be invoked for most check deposits to the customer’s account.

b. In the case of a deposit of multiple checks, the depositary bank may place the discretion to place an exception hold on any combination of checks in excess of $5,000 [the large-deposit threshold]. The notice should enable a customer to determine the availability of the deposit in the case of a deposit of multiple checks [subject to differing hold periods]. [For example, if a customer deposits a $5,000 local check and a $5,000 nonlocal check, under the large deposit exception, the depositary bank may make funds available in the amount of (1) $100 on the first business day after deposit, $4,900 on the second business day after deposit (local check), and $5,000 on the eleventh business day after deposit (nonlocal check), or (2) $100 on the first business day after deposit (nonlocal check), and $5,000 on the seventh business day after deposit (local check with 5-day exception hold)]. The notice also should reflect the bank’s priorities in placing exception holds on next-day [or second-day], local, and nonlocal and other checks.

c. Notice to the customer also may be provided at a later date, if the facts upon which the determination to invoke the exception made do not become known to the depositary bank until after notice would otherwise have to be given. In these cases, the bank must [mail] send the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. A bank is deemed to have knowledge when the facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

d. Notice to the customer also may be provided at a later date, if the facts upon which the determination to invoke the exception made do not become known to the depositary bank until after notice would otherwise have to be given. In these cases, the bank must [mail] send the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. A bank is deemed to have knowledge when the facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

5. Record retention. A depositary bank must retain a record of each notice of a reasonable cause exception for a period of two years, or such longer time as provided in the record retention requirements of §229.21. This record must contain a brief description of the facts on which the depositary bank based its judgment that there was reasonable cause to doubt the collectibility of a check. In many cases, the bank may determine the collectibility of a check based on the notification of nonpayment received. A longer extension of the record requirement may be met by retaining a copy of the notice sent to the customer. In other cases, such as where the exception was invoked on the basis of confidential information, a further description to the facts, such as insolvency of drawer, should be included in the record.

I. 229.13(h) Availability of Deposits Subject to Exceptions

1. If a depositary bank invokes an exception other than the new account exception, the bank may extend the time within which funds must be made available under the schedule by a reasonable period of time. This provision establishes that an extension of up to one business day for “on us” checks [and two [five] business days for local checks, and six business days for nonlocal checks] all other checks [and checks deposited in a noncompartimental ATM] is reasonable. Under certain circumstances, however, a longer extension of the schedules may be reasonable. In these cases, the burden is placed on the depositary bank to establish that a longer period is reasonable.

2. For example, assume a bank extended the hold on a [local] check deposit by [two [five] business days based on its reasonable cause to believe that the check is uncollectible. If, on the day before the extended hold is scheduled to expire, the bank [receives a notification from the paying bank] learns that the check is being returned unpaid, the bank may determine that a longer hold is warranted, if it decides not to charge back the account based on the notification. If the bank decides to extend the hold, the bank must send a second notice, in accordance with paragraph (g) of this section, indicating the new date that the funds will be available for withdrawal.

3. With respect to Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, cashier’s checks, certified checks, and teller’s checks subject to the next-day [or second-day] availability requirement,
the depositary bank may extend the time funds must be made available for withdrawal under the large, deposit, redeposited, check, repeated, overdraft, or reasonable, or cause exception by a reasonable period beyond the delay that would have been permitted under the regulation had the checks not been subject to the next-day (or second-day) availability requirement. The additional hold is added to the local or nonlocal general schedule that would apply based on the location of the payee of the check 229.12. 4. One business day for "on us" checks and two, five business days for local checks, and six business days for nonlocal checks or checks deposited in a nonproprietary ATM all other checks in addition to the time period provided in the schedule, should provide adequate time for the depositary bank that accepts electronic returns under § 229.32(a) to learn of the nonpayment of virtually all checks that are returned. For example, if a customer deposits $10,000 cashier's check drawn on a nonlocal bank, and the depositary bank applies the large deposit exception to that check, $5,000 must be available for withdrawal on the first business day after the day of deposit and the remaining $2,000 must be available for withdrawal on the eleventh business day following the day of deposit (six business days added to the five-day schedule for nonlocal checks), unless the depositary bank establishes that a longer hold is reasonable. 5. In the event of the application of the emergency conditions exception, the depositary bank may extend the hold placed on a check by not more than a reasonable period following the end of the emergency or the time funds must be made available for withdrawal under §§ 229.10(c) or 229.12, whichever is later. 6. This provision does not apply to holds imposed under the new account exception. Under that exception, the maximum time period within which funds must be made available for withdrawal is specified for deposits that generally must be accorded next-day availability under § 229.10. This subpart does not specify the maximum time period within which the proceeds of local and nonlocal other checks must be made available for withdrawal during the new account period. VIII. Section 229.14 Payment of Interest A. 229.14(a) In General 1. This section requires that a depositary bank begin accruing interest on interest-bearing accounts not later than the day on which the depositary bank receives credit for the funds deposited. 1 A depositary bank generally receives credit on checks within one or two days following deposit. A bank receives credit on a cash deposit, an electronic payment, and the deposit that is drawn on the depositary bank itself on the day the cash, electronic payment, or check is received. In the case of a deposit at a nonproprietary ATM, credit generally is received on the day the bank that operates the ATM credits the depositary bank for the amount of the deposit. In the case of a deposit at a contractual branch, credit is received on the day the depositary bank receives credit for the amount of the deposit, which may be different from the day the contractual branch receives credit for the deposit. 2 This section implements section 606 of the EFA Act (12 U.S.C. 4005). The EFA Act keys the requirement to pay interest to the time the depositary bank receives provisional credit for a check. (Provisional credit is a term used in the U.C.C. that is derived from the Code's concept of provisional settlement.) (See U.C.C. 4–214 and 4–215.) Provisional credit is credit that is subject to charge-back if the check is returned unpaid; once the check is finally paid, the right to charge back expires and the provisional credit becomes final. (See U.C.C. 4–214 and 4–215.) Under § 229.12(b) subpart C, a paying bank no longer has an automatic right to charge back credits given in settlement of a check, and the concept of provisional settlement is no longer useful and has been eliminated by the regulation. A bank that uses the term credit rather than provisional credit and this section applies regardless of whether a credit would be provisional or final under the U.C.C. Credit does not include a bookkeeping entry (sometimes referred to as deferred credit) that does not represent funds actually available for the bank's use. 2 Because account includes only transaction accounts, other interest-bearing accounts of the depositary bank, such as money market deposit accounts, savings deposits, and time deposits, are not subject to this requirement. A bank may accrue interest on such deposits in the same way that it accrues interest under this paragraph for simplicity of operation. The Board intends the term interest to refer to payments to or for the account of any customer as compensation for the use of funds, but to exclude the absorption of expenses incident to providing a normal banking function or a bank's forbearance from charging a fee in connection with such a service. (See 12 CFR 217.2(d)). Thus, earnings applied to corporate accounts are not interest payments for the purposes of this section. 3 It may be difficult for a depositary bank to track which day the depositary bank receives credit for specific checks in order to accrue interest properly on the account to which the check is deposited. This difficulty may be pronounced if the bank uses different means of collecting checks based on the time of day the check is received, the dollar amount of the check, and/or the paying bank to which it must be sent. Thus, for the purpose of the interest accrual requirement, a bank may rely on an availability schedule from its Federal Reserve Bank, Federal Home Loan Bank, or correspondent to determine when the depositary bank receives credit. If availability is delayed beyond that specified in the availability schedule, a bank may charge back interest erroneously accrued or paid on the basis of that schedule. 4 5 This paragraph also permits a depositary bank to accrue interest on checks deposited to all of its interest-bearing accounts based on when the bank receives credit on all checks sent for payment or collection. For example, if a bank receives credit on 20 percent of the funds deposited in the bank by check as of the business day of deposit (e.g., “on us” checks), 70 percent of as the business day following deposit, and 10 percent on the second business day following deposit, the bank can apply these percentages to determine the day interest must begin to accrue on check deposits to all interest-bearing accounts, regardless of when the bank received credit on the funds. 6 Thus, a bank may begin accruing interest on a uniform basis for all interest-bearing accounts, without the need to track the type of check deposited to each account. 5 6 This section is not intended to limit a policy of a depositary bank that provides that interest accrues only on balances that exceed a specified amount, or on the minimum balance maintained in the account during a given period, provided that the balance is determined based on the date that the depositary bank receives credit for the funds. This section also is not intended to limit any policy providing that interest accrues sooner than required by this paragraph. B. 229.14(b) Special Rule for Credit Unions 1. This provision implements a requirement in section 606(b) of the EFA Act, and provides an exemption from the payment-of-interest requirements for credit unions that do not begin to accrue interest or dividends on their customer accounts until a later date than the day the credit union receives credit for those deposits, including cash deposits. These credit unions are exempt from the payment-of-interest requirements, as long as they provide notice of their interest accrual policies in accordance with § 229.16(d). For example, if a credit union has a policy of computing interest on all deposits received by the 10th of the month from the first month, and on all deposits received after the 10th of the month from the first of the next month, that policy is not superseded by this regulation, if the credit union provides proper disclosure of this policy to its customers. 2. The EFA Act limits this exemption to credit unions; other types of banks must comply with the payment-of-interest requirements. In addition, credit unions that compute interest from the day of deposit or day of credit should not change their existing practices in order to avoid compliance with the requirement that interest accrue from the day the credit union receives credit. C. 229.14(c) Exception for Checks Returned Unpaid 1. This provision is based on section 606(c) of the EFA Act (12 U.S.C. 4005(c)) and provides that interest need not be paid on funds deposited in an interest-bearing account by check that is returned unpaid, regardless of the reason for return. IX. Section 229.15 General Disclosure Requirements A. 229.15(a) Form of Disclosures and Notices 1. This paragraph sets forth the general requirements for the disclosures and
withdrawal. Banks must disclose when deposited funds will be available for disclosure in a uniform manner when availability is determined by counting the number of business days starting with the business day following the banking day on which the deposit is received, as determined under § 229.19(a), and ending with the business day on which the customer may begin to withdraw funds. For example, a bank that makes electronic direct deposits available on the banking day they are received may describe the deposits as being available “the same business day.” A bank that makes check deposits available on the business day after the banking day they are received may describe the deposits as being available “the next day.” A bank that imposes delays of [four] one-[interim business days] [between the banking day of receipt and the business day availability]. For example, a bank that makes its policy is to make funds available from deposits of [local] checks on the second business day following the day of deposit, even though it may use the deposited funds to pay checks prior to the second business day, the funds used to pay checks in this example are not available for withdrawal until the second business day after deposit because the funds are not available for all uses until the second business day. (See the definition of available for withdrawal in § 229.2(d).)

C. 229.15(c) Multiple Accounts and Multiple Account Holders

1. This paragraph clarifies that banks need not provide multiple disclosures under the regulation. A disclosure to a customer that holds multiple accounts, or a single disclosure to one of the account holders of a jointly held account, satisfies the disclosure requirements of the regulation.

D. 229.15(d) Dormant or Inactive Accounts

1. This paragraph makes clear that banks need not provide disclosure of their specific availability policies to customers that hold accounts that are either dormant or inactive. The determination that certain accounts are dormant or inactive must be made by the bank. If a bank considers an account dormant or inactive for purposes other than this regulation and no longer provides statements and other mailings to an account for this reason, such an account is considered dormant or inactive for purposes of this regulation.

X. Section 229.16 Specific Availability Policy Disclosure

A. 229.16(a) General

1. This section describes the information that must be disclosed by banks to comply with §§ 229.17 and 229.18(d), which require that banks furnish notices of their specific policy regarding availability of deposited funds. The disclosure provided by a bank must reflect the policy of the bank, followed by the bank in most cases, even though a bank may in some cases make funds available sooner or impose a longer delay.

2. The disclosure must reflect the policy and practice of the bank regarding availability as to most accounts and most deposits into those accounts. In disclosing the availability policy that it follows in most cases, a bank may provide a single disclosure that reflects one policy to all its transaction account customers, even though some of its customers may receive faster availability than that reflected in the policy disclosure. Thus, a bank need not disclose to some customers that they receive faster availability than indicated in the disclosure. If, however, a bank has a policy of imposing delays in availability on any customers longer than those specified in its disclosure, those customers must receive disclosures that reflect the longer applicable availability periods. A bank may establish different availability policies for different groups of customers, such as customers in a particular geographic area or customers of a particular branch. For purposes of providing a specific availability policy, the bank may allocate customers among groups through good faith use of a reasonable method. A bank may also establish different availability policies for deposits at different locations, such as deposits at a contractual branch.

3. A bank may disclose that funds are available for withdrawal on a given day notwithstanding the fact that the bank uses the funds to pay checks received before that day. For example, a bank that makes its policy is to make funds available from deposits of [local] checks on the second business day following the day of deposit, even though it may use the deposited funds to pay checks prior to the second business day, the funds used to pay checks in this example are not available for withdrawal until the second business day after deposit because the funds are not available for all uses until the second business day. (See the definition of available for withdrawal in § 229.2(d).)

B. 229.16(b) Content of Specific Policy Disclosure

1. This paragraph sets forth the items that must be included, as applicable, in a bank’s specific availability policy disclosure. The information that must be disclosed by a particular bank will vary considerably depending upon the bank’s availability policy. For example, a bank that makes its policy is to make funds available from deposits of [local] checks on the second business day following the day of deposit need simply disclose that deposited funds will be available for withdrawal on the business day following the day of deposit. For the first business day after the day of deposit, the bank’s business days, and when deposits are considered received.

2. On the other hand, a bank that has a policy of routinely delaying on a blanket basis the time when deposited funds are available for withdrawal would have a more detailed disclosure. Such blanket hold policies might be for the maximum time allowed under the federal law or might be for shorter periods. These banks must disclose the types of deposits that will be subject to delays, the geographic area or customers of a particular branch. For example, a bank may disclose that deposited funds available for withdrawal on the business day following the day of deposit will be available for withdrawal on the first business day after the day of deposit, the bank’s business days, and when deposits are considered received.

3. Some banks may have a policy of next-day availability for all deposits except for one or two categories, such as deposits at nonproprietary ATMs and personal checks over a specified dollar amount. The bank would describe the categories that are subject to delays in
availability and tell the customer when each category would be available for withdrawal, and state that other deposits will be available for withdrawal on the first business day after the day of deposit. Similarly, a bank that provides availability on the second business day for most of its deposits would need to identify the categories of deposits which, under the regulation, are subject to next-day availability and state that all other deposits will be available on the second business day.

4. Because many banks’ availability policies may be complex, a bank must give a brief summary of its policy at the beginning of the disclosure. In addition, the bank must describe any circumstances when actual availability may be longer than the schedules disclosed. Such circumstances would arise, for example, when the bank invokes one of the exceptions set forth in §229.13 of the regulation, or when the bank delays or extends the time when deposited funds are available for withdrawal up to the time provided by the regulation on a case-by-case basis. Also, a bank that must make certain checks available faster under appendix B (reduction of schedules for certain nonlocal checks) must state that some checks and that a list of the pertinent routing numbers is available upon request.

5. Generally, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose to its customers that certain checks, such as some credit union payable-through drafts, will be treated as local or nonlocal based on the location of the bank by which they are payable (e.g., the credit union), and not on the basis of the location of the bank whose routing number appears on the check. A bank is not required to provide this disclosure, however, if it makes the proceeds of both local and nonlocal checks available for withdrawal within the time periods required for local checks in §§229.12 and 229.13.

6. The business day cut-off time used by the bank must be disclosed and if some locations have different cut-off times the bank must note this in the disclosure and state the earliest time that might apply. A bank need not list all of the different cut-off times that might apply. If a bank does not have a cut-off time prior to its closing time, the bank need not disclose a cut-off time.

7. A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under §229.12(f)(1)(d)(d) must explain this in the initial disclosure. In addition, the bank must provide a list (on or with the initial disclosure) of either the bank’s proprietary ATMs or those ATMs that are nonproprietary at which customers may make deposits. As an alternative to providing such a list, the bank may label all of its proprietary ATMs with the bank’s name and state in the initial disclosure that this has been done. Similarly, a bank taking advantage of the cash withdrawal limitations of §229.12(d)(b) or the provision in §229.19(e) allowing holds to be placed on other deposits when a deposit is made or a check is cashed, must explain this in the initial disclosure.

8. A bank that provides availability based on when the bank generally receives credit for deposited checks need not disclose the time when a check drawn on a specific bank will be available for withdrawal. Instead, the bank may disclose the categories of deposits that must be available on the first business day after the day of deposit (deposits subject to §229.10) and state the other categories of deposits and the time periods that will be applicable to those deposits. For example, a bank might disclose the four-digit Federal Reserve routing symbols and indicate that such checks as well as certain nonlocal checks will be available for withdrawal on the first or second business day following the day of deposit, depending on the location of the particular bank on which the check is drawn, and disclose that funds from all other checks will be available on the second or third business day. The bank must also disclose that the customer may request a copy of the bank’s detailed schedule that would enable the customer to determine the availability of any check and must provide such schedule upon request. A change in the bank’s detailed schedule would not trigger the change in policy disclosure requirement of §229.18(e).]

C. 229.16(c) Longer Delays on a Case-By-Case Basis

1. Notice in specific policy disclosure.

a. Banks that make deposited funds available for withdrawal sooner than required by the regulation—for example, providing availability on the day of deposit or on the next business day for certain nonlocal or nonpersonalized checks—must state the earliest time that might apply. A bank need not provide notice of this in their specific availability policy disclosure. This paragraph outlines the requirements for that notice.

b. In addition to stating what their specific availability policy is in most cases, banks that may delay or extend the time when deposits are available on a case-by-case basis must state that funds may be available for withdrawal later than the time periods in their specific policy disclosure, disclose the latest time that a customer may have to wait for deposited funds to be available for withdrawal when a case-by-case hold is placed, state that customers will be notified when availability of a deposit is delayed on a case-by-case basis, and advise customers to ask if they need to be sure of the availability of a particular deposit.

c. A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of this regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required by §229.12 for local and nonlocal checks, the reason for the delay need not be on the exceptions provided in §229.13. If the delay exceeds the time periods permitted under §229.12, however, then it must be based on an exception provided in §229.13, and the bank must comply with the §229.13 notice requirements. A bank that imposes delays on a case-by-case basis may avail itself of the one-time notice provisions in §229.13(g)(2) and (3) for deposits to which such provisions apply.

2. Notice at time of case-by-case delay.

a. In addition to including the disclosures required by paragraph (c)(1) of this section in their specific availability policy disclosure, banks that delay or extend the time when funds are available for withdrawal on a case-by-case basis must give customers a written notice when availability of funds from a particular deposit will be delayed or extended beyond the time when funds are generally available for withdrawal. The notice must state that a delay is being imposed and indicate when the funds will be available. In addition, the notice must include [the number or code that identifies the customer’s account number], the date of the deposit, the total amount of the deposit, and the amount of the deposit being delayed, and the day the funds will be available for withdrawal.

b. If notice of the delay was not given at the time the deposit was made and the bank receives an overdraft or returned check fee on accounts when a case-by-case hold has been placed, the case-by-case hold notice provided to the customer must include a notice concerning overdraft or returned check fees. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that result from the deposited funds not being available if the check that was deposited was in face paid by the payor bank, and explain how to request a refund of any fees. (See §229.16(c)(3)).

c. The requirement that the case-by-case hold notice state the date that funds will be made available for withdrawal may be met by stating the date or the number of business days after deposit that the funds will be made available. This requirement is satisfied if the notice provides information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual item in the deposit will be available for withdrawal only that funds will be made available for withdrawal later than the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the held funds will be available for withdrawal.

d. For deposits made in person to an employee of the depositary bank, the notice generally must be given at the time of the deposit. The notice at the time of the deposit must be given to the person making the deposit, that is, the “depositor.” The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, through the mail, or by armored car, notice must be sent to the customer not later than the close of the business day following the banking day on which the deposit was made. Notice to the customer also may include a [mail notice] sent to the customer not later than the close of the business day following the banking day on which the deposit was made. Notice to the customer also may include a [mail notice] sent not later than the close of the business day following the banking day on which the deposit was made if the decision to delay availability is made after the time of the deposit. If the
customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer not later than the first business day following the banking day the deposit is made.\[3. Overdraft and returned check fees. If a

**XI. Section 229.18 Initial Disclosures**

A. 229.18(a) Deposit Slips

1. This paragraph requires banks to include a notice on all preprinted deposit slips. The deposit slip notice need only state, somewhere on the front of the deposit slip, that deposits may not be available for immediate withdrawal. The notice is required only on preprinted deposit slips—those printed with the customer’s account number and name and furnished by the bank in response to a customer’s order to the bank. A bank need not include the notice on deposit slips that are not preprinted and supplied to the customer—such as counter deposit slips—or on those special deposit slips provided to the customer under §229.10(c). A bank is not responsible for ensuring that the notice appears on deposit slips that the customer does not obtain from or through the bank. [This paragraph applies to preprinted deposit slips furnished to customers on or after September 1, 1988.]

E. 229.18(e) Changes in Policy

1. This paragraph requires banks to send notices to their customers when the banks change their availability policies with regard to consumer accounts. A notice may be given in any form as long as it is clear and conspicuous. If the bank gives notice of a change by sending the customer a complete new availability disclosure, the bank must direct the customer to the changed terms in the disclosure by use of a letter or insert, or by highlighting the changed terms in the disclosure.

2. Generally, a bank must send a notice at least 30 calendar days before implementing any change in its availability policy. If the change results in faster availability of deposits—for example, if the bank changes its availability for nonlocal checks from the fifth business day after deposit to the fourth business day after deposit—the bank need not send advance notice. The bank must, however, send notice of the change no later than 30 calendar days after the change is implemented. [A bank is not required to give a notice when there is a change in appendix B (reduction of schedules for certain nonlocal checks).]

3. A bank that has provided its customers with a list of ATMs under §229.16(b)(5) shall provide its customers with an updated list of ATMs once a year if there are changes in the list of ATMs previously disclosed to the customers.

**XIII. Section 229.19 Miscellaneous**

A. 229.19(a) When Funds Are Considered Deposited

1. The time funds must be made available for withdrawal under this subpart is determined by the day the deposit is made. This paragraph provides rules to determine the day funds are considered deposited in various circumstances.

2. Staffed facilities and ATMs. Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds received at a contractual branch are considered deposited when received by a teller at the contractual branch or deposited into a proprietary ATM of the contractual branch. [See also, Commentary to §229.10(a)(1) on deposits made to an employee of the depositary bank.] Funds deposited to a deposit box in a bank lobby that is accessible to customers only during regular business hours generally are considered deposited when placed in the lobby box by a customer. However, treat deposits to lobby boxes the same as deposits to night depositories as provided in §229.19(a)(3), provided a notice appears on the lobby box informing the customer when such funds will be considered deposited.

3. Mail. Funds mailed to the depositary bank are considered deposited on the banking day they are received by the depositary bank. The funds are received by the depositary bank at the time the mail is delivered to the bank, even if it is initially delivered to a mail room, rather than the check processing area.

4. Other facilities. In addition to deposits at staffed facilities, at ATMs, and by mail, funds may be deposited at a facility such as a night depository or a lock box. A night depository is a receptacle for receipt of deposits, typically used by corporate depositors when the branch is closed. Funds deposited at a night depository are considered deposited on the banking day the deposit is received, and the contents of the deposit are accessible to the depositary bank for processing. For example, some businesses deposit their funds in a locked bag at the night depository late in the evening, and return to the bank the following day to open the bag. Other depositors may have an agreement with their bank that the deposit bag must be opened under the dual control of the bank and the depositor. In these cases, the funds are considered deposited when the customer returns to the bank and opens the deposit bag.

b. A lock box is a post office box used by a corporation for the collection of bill payments or other check receipts. Generally, the lock box is considered deposited when the customer returns to the bank and opens the deposit bag.

5. Certain off-premise ATMs. A special provision is made for certain off-premise ATMs that are not serviced daily. Funds deposited at such an ATM are considered deposited on the day they are removed from the ATM, if the ATM is not serviced more than two times each week. This provision is intended to address the availability of the banks of servicing certain remote ATMs infrequently. If a depositary bank applies this provision with respect to an ATM, a notice must be posted at the ATM informing depositors that funds deposited at the ATM may not be considered deposited until a future day, in accordance with §229.18.
B. 229.19(b) Availability at Start of Business Day

1. If funds must be made available for withdrawal on a business day under subpart B, the funds must be available for withdrawal by the later of 9:00 a.m. or the time the depositary bank’s teller facilities, including ATMs, are available for customer account withdrawals, except under the special rule for cash withdrawals set forth in §229.121(d)(1) of this subpart. Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10:00 a.m., the funds must be available for customer withdrawal beginning at 10:00 a.m. If the bank has ATMs that are available 24 hours a day, then subject to establishing 12:01 a.m. as the start of the business day, this paragraph sets 9:00 a.m. as the start of the day with respect to ATM withdrawals.

The Board believes that this rule provides banks with sufficient time to update their accounting systems to reflect the available funds in customer accounts for that day.

2. The start of business is determined by the local time of the branch or other location of the deposits and the account is maintained. For example, if funds in a customer’s account at a west coast bank are first made available for withdrawal at the start of business on a given day, and the customer attempts to withdraw the funds at an east coast ATM, the depositary bank is not required to make the funds available until 9:00 a.m. west coast time. The Board believes that this rule provides greater flexibility in the servicing of these facilities.

c. Different cut-off hours may be established for deposits received at ATMs and off-premise facilities used by its customers. The choice of cut-off hours may be reflected in the bank’s internal procedures, and the bank must inform its customers of the cut-off hour upon request. This earlier cut-off for ATM, contractual branch, or other off-premise facilities is intended to provide greater flexibility in the servicing of these facilities.

2. Some small banks, particularly credit unions, due to lack of secure facilities, keep no cash on their premises and hence offer no cash withdrawal capability to their customers. Other banks limit the amount of cash on their premises due to bonding requirements or cost factors, and consequently reserve the right to limit the amount of cash each customer can withdraw over-the-counter on a given day. For example, some banks require advance notice for large cash withdrawals in order to limit the amount of cash needed to be maintained on hand at any time.

3. Nothing in the regulation prohibits a depositary bank to have facilities open for customer transactions, including ATMs, on a day funds must be made available for withdrawal, the regulation does not require the bank to open.

4. The special cash withdrawal rule in the EFA Act recognizes that the $400 cash withdrawal amount that must be made available for cash withdrawal by 9:00 a.m. on the day specified in the schedule may exceed a bank’s daily ATM cash withdrawal limit and explicitly provides that the EFA Act does not supersede a bank’s policy in this regard. An example, if a bank has a policy of limiting daily ATM cash withdrawals from automated teller machines to $250 per day, the regulation would not require that the bank dispense $400 of the proceeds of the customer’s deposit if the full amount that must be made available for cash withdrawal on that day.

5. Even though the EFA Act clearly provides that the bank’s ATM withdrawal limit is not superseded by the federal availability rules on the day funds must first be made available, the EFA Act does not specifically permit banks to limit cash withdrawals at ATMs on subsequent days when the entire amount of the deposit must be made available for withdrawal. The Board believes that the rationale behind the EFA Act’s provision that a bank’s ATM withdrawal limit is not superseded by the requirement that funds be made available for cash withdrawal applies on subsequent days. Nothing in the regulation prohibits a bank from establishing ATM cash withdrawal limits that vary among customers of the bank, as long as the limit is not dependent on the length of time funds have been in the customer’s account (provided that the permissible hold has expired).

6. Some small banks, particularly credit unions, due to lack of secure facilities, keep no cash on their premises and hence offer no cash withdrawal capability to their customers. Other banks limit the amount of cash on their premises due to bonding requirements or cost factors, and consequently reserve the right to limit the amount of cash each customer can withdraw over-the-counter on a given day. For example, some banks require advance notice for large cash withdrawals in order to limit the amount of cash needed to be maintained on hand at any time.

7. Nothing in the regulation is intended to prohibit a bank from limiting the amount of cash that may be withdrawn at a staffed teller station if the bank has a policy limiting the amount of cash that may be withdrawn, and if that policy is applied equally to all customers of the bank, is based on security,
operating, or bonding requirements, and is not dependent on the length of time the funds have been in the customer’s account (as long as the permissible hold has expired). The regulation, however, does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

D. 229.19(d) Use of Calculated Availability

1. A depositary bank may provide availability for nonlocal checks on a calculated availability basis. Under calculated availability, a specified percentage of funds from check deposits may be made available to the customer on the next business day, with the remaining percentage deferred until the subsequent day[1]. The determination of the percentage of deposited funds that will be made available each day is based on the customer’s typical deposit mix as determined by a sample of the customer’s deposits. Use of calculated availability is permitted only if, on average, the availability terms that result from the sample are equivalent to or more prompt than the requirements of this subpart.

E. 229.19(e) Holds on Other Funds

1. Section 607(d) of the EFA Act (12 U.S.C. 4006(d)) provides that once funds are available for withdrawal under the EFA Act, such funds shall not be frozen solely due to the subsequent deposit of additional checks that are not yet available for withdrawal. This provision of the EFA Act is designed to prevent evasion of the EFA Act’s availability requirements.

2. This paragraph clarifies that if a customer deposits a check in an account (as defined in §229.2(a)), the bank may not place a hold on any of the customer’s funds so that the funds that are held exceed the amount of the check deposited or the total amount of funds held are not made available for withdrawal within the times required in this subpart. For example, if a bank places a hold on funds in a customer’s nontransaction account, rather than a transaction account, for deposits made to the customer’s transaction account, the bank may place a hold on the funds held only to the extent that the funds held do not exceed the amount of the deposit and the length of the hold does not exceed the time periods permitted by this regulation.

3. These restrictions also apply to holds placed on funds in a customer’s account (as defined in §229.2(a)) if a customer cashes a check at a bank (other than a check drawn on that bank) over the counter. The regulation does not prohibit holds that may be placed on other funds of the customer for checks cashed over the counter, to the extent that the transaction does not involve a deposit to an account. When a customer cashes a check over the counter and the bank places a hold on an account of the customer, the bank must give whatever notice would have been required under §§229.13 or 229.16 had the check been deposited in the account. If a state enacts a law that is inconsistent with federal law, it may delete a state requirement that is inconsistent with federal law. Preemption does not require a determination by the Board to be effective.

C. 229.20(c) Standards for Preemption

1. This section describes the standards that the Board uses in enforcing the EFA Act. When determining whether federal law will preempt state laws governing funds availability, a provision of state law is considered inconsistent with federal law if it permits a depository bank to make funds available to a customer in a shorter period of time than required by applicable federal law. If a state law permits a depository bank to make funds available to a customer in a shorter period of time than required by applicable federal law, the state law will supersede the federal law. Preemption does not require a determination by the Board to be effective.

2. Under a state law, some categories of deposits could be available for withdrawal sooner or later than the time required by this subpart, depending on the composition of the deposit. For example, the EFA Act and this regulation (§229.10(c)(1)(i)(iii)) require next-day availability for the first $100 of the aggregate deposit of in-state, nonlocal checks on the day the check is deposited. A state law that provides for availability in a shorter period of time than that required under Regulation CC will supersede the federal regulation.

3. If a state provides for a shorter hold for a certain category of checks than is provided for under federal law, that state requirement will supersede the federal provision. For example, most state laws base some hold periods on whether the check being deposited is drawn on an in-state or out-of-state bank. If a state sets a shorter hold period for the first $100 than that provided by the EFA Act, the state law will supersede the federal regulation.
each less than the minimum amount, that combined are more than the minimum amount, are deposited—or three $50 checks are deposited on a given day. Under §100.1(c) the minimum amount under §229.10(c) must be made available for withdrawal on the next business day. And under §100.1(c) the remaining amount must be made available in accordance with the [local or nonlocal] general schedule. Under the state law, however, the two deposits would be subject to different availability rules. In the first case, none of the proceeds of the deposit would be subject to next-day availability; in the second case, the entire proceeds of the deposit would be subject to next-day availability. In this example, because the state law would, in some situations, permit a hold longer than the maximum permitted by the EFA Act, this provision of state law is inconsistent and preempted in its entirety.

3. In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the EFA Act and this regulation. The state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit cannot exceed the hold permissible under the federal exception in accordance with Regulation CC. In such cases, only one exception notice is required, in accordance with §229.13(g). This notice need only include the applicable federal exception as the reason the exception was invoked. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used.

4. State laws that provide maximum availability periods for categories of deposits that are not covered by the EFA Act would not be preempted by the federal law, if the state fund availability laws that apply to funds in time and savings deposits are not affected by the EFA Act or this regulation. In addition, the availability schedules of several states apply to “items” deposited to an account. The term items may encompass types of deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. Deposits that are not covered by Regulation CC continue to be subject to the state availability schedules. State laws that provide maximum availability periods for categories of institutions that are not covered by the EFA Act also would not be preempted. For example, a state law that governs money market mutual funds would not be affected by the EFA Act or this regulation.

5. Generally, state rules governing the disclosure or notice of availability policies applicable to accounts also are preempted, if they are different from the federal rules. Nevertheless, a state law requiring disclosure of funds availability policies that apply to deposits other than “accounts,” such as savings or time deposits, are not inconsistent with the EFA Act and this subpart. Banks in these states would have to follow the state disclosure rules for these deposits.

D. 229.20(d) Preemption Determinations

1. The Board may issue preemption determinations upon the request of an interested party in a state. The determinations will relate only to the provisions of [S] subparts A and B; generally the Board will not issue individual preemption determinations regarding the relation of state U.C.C. provisions to the requirements of [S] subpart C or D.

E. 229.20(e) Procedures for Preemption Determinations

1. This provision sets forth the information that must be included in a request for an interested party for a preemption determination [by the Board].

XV. Section 229.21 Civil Liability

A. 229.21(a) Civil Liability

1. This paragraph sets forth the statutory penalties for failure to comply with the requirements of this subpart. These penalties apply to all laws, however, that supercede provisions of this regulation, such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (See Commentary to §229.20.)

B. 229.21(b) Class Action Awards

1. This paragraph sets forth the provision in the EFA Act concerning the factors that should be considered by the court in establishing the amount of a class action award.

C. 229.21(c) Bona Fide Errors

1. A bank is shielded from liability under this section for a violation of a requirement of this subpart if it can demonstrate, by a preponderance of the evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. For example, a bank may make a bona fide error if it fails to give next-day availability on a check drawn on the Treasury because of computer system malfunctions in a way that prevents the bank from updating its customer’s account; or if it fails to identify whether a payable-through check is a local or nonlocal check despite procedures designed to make this determination accurately.

D. 229.21(d) Jurisdiction

1. The EFA Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

E. 229.21(e) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, model form, notice, or clause (if the disclosure actually corresponds to the bank’s availability policy), or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on this Commentary, which is issued as an official Board interpretation, as well as on the regulation itself.

2. This provision does not shield a bank from civil liability if the bank relies on earlier versions of the model forms (i.e., those not currently in appendix C) after [date that is 12 months after the effective date of the rule].

F. 229.21(f) Exclusions

1. This provision clarifies that liability under this section does not apply to violations of the requirements of [S] subpart C or D of this regulation, or to actions for wrongful dishonor of a check by a paying bank’s customer.

G. 229.21(g) Record Retention

1. Banks must keep records to show compliance with the requirements of this subpart for at least two years. This record retention period is extended in the case of civil actions and enforcement proceedings. Generally, a bank is not required to retain records showing that it actually has given disclosures or notices required by this subpart to each customer, but it must retain evidence demonstrating that its procedures reasonably ensure the customers’ receipt of the required disclosures and notices. A bank that has not provided a notice required by this subpart is not required to provide a copy of each notice provided pursuant to its use of the reasonable cause exception under §229.13(g) as well as a brief description of the facts giving rise to the availability of that exception.

XVI. Section 229.30 Paying Bank’s Responsibility for Return of Checks

A. 229.30(a) Return of Checks

1. This section requires a paying bank (which, for purposes of [S] subpart C, may include a payable-through and payable-at bank; see §229.21(a)) to return the check in accordance with §229.30. This means that the payor bank must, at the earliest opportunity, pay the amount of the check to the paying bank.

2. Under the “two-day/four-day” test, if a check is returned such that it would normally would receive the deposited check no later than 4 p.m. (local time of the depositary bank) two business days after presentment to the paying bank. See §229.30(b) and commentary thereto for the exceptions to this general rule. If the paying bank need not return the check expeditiously under §229.30(a), the paying bank, nonetheless, must return the check within its deadlines under the Uniform Commercial Code, Regulation J (12 CFR part 210) or §229.30(d)(2), or §229.30(c) for returning the item or notice (See §229.30(a)(4) and accompanying commentary).
however, these times are shorter than the time it would normally take a forward collection check deposited in the paying bank and payable by the depositary bank to be collected. Therefore, the Board has included a “forward collection” test, whereby a check is considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward collection checks, even if the check is not received by the depositary banks within the two-day or four-day period, such as:

### 3. Two-day/four-day test.

a. Under the first test, a paying bank must return the check so that the check would normally be received by the depositary bank within specified times, depending on whether or not the paying and depositary banks are located in the same check processing region.

b. Where both banks are located in the same check processing region, a check is returned expeditiously if it is returned to the depositary bank before the banking day following the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a paying bank must be returned to a depositary bank located in the same check processing region by 4 p.m. on Wednesday. For a paying bank that is located in a different check processing region than the depositary bank, the deadline to complete return is 4 p.m. (local time of the depositary bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to such a paying bank on Monday must be returned to the depositary bank by 4 p.m. on Friday.

c. This two-day/four-day test does not necessarily require actual receipt of the check by the depositary bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depositary bank within the specified time. Thus, the paying bank is not responsible for unforeseeable delays in the return of the check, such as transportation delays.

### 4. Forward collection test.

a. Under the second, “forward collection,” test, a paying bank returns a check expeditiously if it returns a check by means as swift as the means similarly situated banks would use for the forward collection of a check drawn on the depositary bank.

b. Generally, the paying bank would satisfy the “forward collection” test if it uses a transportation method and collection path for return comparable to that used for forward collection, provided that the returning bank selected to process the return agrees to handle the returned check under the standards for expeditious return for returning banks under § 229.31(a). This test allows many paying banks to satisfy the means of expeditious return of checks and takes into account the longer time for return that will be required by banks that do not have ready access to direct courier transportation.

c. The paying bank’s normal method of sending a check for forward collection would not be expeditious, however, if it is materially slower than that of other banks of similar size and with similar check handling activity in its community.

d. Under the “forward collection” test, a paying bank must handle, route, and transport a returned check in a manner designed to be at least as fast as a similarly situated bank would collect a forward collection check (1) of similar amount, (2) drawn on the depositary bank, and (3) received for deposit by a branch of the paying bank before noon on the banking day following the banking day on which the depositary bank normally would receive the returned check by 4 p.m. (local time of the depositary bank) on Wednesday.

e. This test refers to similarly situated banks to indicate a general community standard. In the case of a paying bank (other than a Federal Reserve Bank), a similarly situated bank is a bank of similar asset size, in the same community, and with similar check handling activity as the paying bank. (See § 229.2(e)(i). A paying bank has similar check handling activity to other banks that handle similar volumes of checks for collection.

## 5. Examples.

### a. The depositary bank has agreed to accept electronic returns directly from a paying bank.

A check presented to the paying bank on Monday, the paying bank must send the returned check such that the depositary bank normally would receive the returned check by 4:00 p.m. (local time of the depositary bank) on Wednesday.

### b. The depositary bank has not agreed to accept electronic returns from the paying bank, but has agreed to accept electronic returns from Returning Bank A, which holds itself as willing to accept electronic returns directly from the paying bank and has agreed to handle returns expeditiously under § 229.31(a). If a check is presented to the paying bank on Monday, the paying bank must send the returned check such that the depositary bank normally would receive the returned check by 4:00 p.m. (local time of the depositary bank) on Wednesday. The paying bank may rely on Returning Bank A’s schedules for sending returned checks in determining whether the depositary bank normally would receive the returned check by 4 p.m. on Wednesday.

c. The depositary bank has not agreed to accept electronic returns directly from the paying bank, but has agreed to accept electronic returns from Returning Bank B, which holds itself as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to handle returns expeditiously under § 229.31(a). A paying bank has similar check handling activity to other banks that handle similar volumes of checks for collection.
In each example, the paying bank must send the returned check such that the depositary bank normally would receive the check by 4 p.m. (local time of the depositary bank) on Wednesday. The paying bank may satisfy its obligation by sending either an electronic return or a paper check by such time. Additionally, if the paying bank sends the returned check in a manner such that the depositary bank normally would receive the returned check by 4 p.m. on Wednesday, but the depositary bank does not receive the returned check in the required time due to an operational difficulty of the depositary bank or returning bank, the paying bank has satisfied its expeditious return requirement.

**i. If a check is presented to a paying bank on Monday and the depositary banks are participants in the same clearinghouse and the depositary bank has agreed to receive returns electronically through the clearinghouse, the paying bank should arrange to have the returned check received by the depositary bank by Wednesday. This would be the same day the paying bank would deliver a forward collection check to the depositary bank if the paying bank received the deposit by noon on Tuesday.**

**ii. If a check is presented to a paying bank on Monday and the paying bank normally sends checks drawn on the depositary bank by courier, the paying bank could send the returned check to its correspondent Federal Reserve Bank, provided that the correspondent has agreed to handle returned checks expeditiously under §229.31(a). (All Federal Reserve Banks agree to handle returned checks expeditiously.)**

The paying bank must deliver the returned check to the correspondent or Federal Reserve Bank by the correspondent’s or Federal Reserve Bank’s appropriate cut-off hour. The appropriate cut-off hour is the cut-off hour for returned checks that corresponds to the cut-off hour for forward collection checks on the depositary bank that would normally be handled by the paying bank or a similarly situated bank. A returned check cut-off hour corresponds to a forward collection cut-off hour if it provides for the same or faster availability for checks destined for the same depositary banks.

In this example, delivery to the correspondent or Federal Reserve Bank by the appropriate cut-off hour satisfies the paying bank’s duty, even if use of the correspondent or Federal Reserve Bank is not the most expeditious means of returning the check. Thus, a paying bank may send a local returned check to a correspondent instead of a Federal Reserve Bank, even if the correspondent then sends the returned check to a Federal Reserve Bank the following day as a qualified returned check. Where the paying bank sends the returned collection checks by courier to the correspondent or the Federal Reserve Bank, mailing returned checks to the correspondent or Federal Reserve Bank would not satisfy the forward collection test.

If a paying bank ordinarily mails its forward collection checks to its correspondent or Federal Reserve Bank in order to avoid the costs of a courier delivery, but similarly situated banks use a courier to deliver forward collection checks to their correspondent or Federal Reserve Bank, the paying bank must send its returned checks by courier as required by the forward collection test.

**c. If a paying bank normally sends its forward collection checks directly to the depositary bank, which is located in another community, but similarly situated banks send forward collection checks drawn on the depositary bank to a correspondent or Federal Reserve Bank, the paying bank would not have to send returned checks directly to the depositary bank, but could send them to a correspondent or a Federal Reserve Bank.**

**d. The dollar amount of the returned check has a bearing on how it must be returned.**

If the paying bank and similarly situated banks present large-dollar checks drawn on the depositary bank directly to the depositary bank, but use a Federal Reserve Bank or a correspondent to collect small-dollar checks, generally the paying bank is required by law to send its large-dollar returns directly to the depositary bank (or through a returning bank, if the checks are returned as quickly), but could use a Federal Reserve Bank or a correspondent for its small-dollar returns. (See §229.38.)

In meeting the requirements of the forward collection test, §§229.30(a) and §229.30(b), the paying bank is responsible for its own actions, but not for those of the depositary bank or returning banks. (This is analogous to the responsibility of collecting banks under the Uniform Commercial Code.) If, however, the paying bank starts the return of the check in a timely manner but return is delayed by a returning bank, if the checks are returned as quickly, but could use a Federal Reserve Bank or a correspondent for its small-dollar returns.

**6. Choice of returning bank.**

In determining whether a depositary bank has agreed to accept an electronic return directly to the depositary bank if the depositary bank has agreed to accept electronic returns from the paying bank, thereby bypassing returning banks, or

**ii. If the paying bank elects to return the check directly to the depositary bank, it is not necessarily required to return the check to the branch of first deposit. The check may be returned to the depositary bank at any physical location permitted under §§229.32(a) and 229.32(b). If the paying bank elects to send an electronic return directly to the depositary bank, it must send the electronic return to the electronic return point designated by the depositary bank.**

**9. Midnight deadline.**

**a. Except for the extension permitted by §229.30(c), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under U.C.C. 4-301 and 4-302, which continue to apply. Under U.C.C. 4–302, a paying bank is “accountable” for the amount of a demand item, other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under U.C.C. 4–418(c) and 4–215(a), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, retaining this requirement gives the paying bank an additional incentive to make a prompt return.”**

b. The expeditious return requirement applies to a paying bank that determines not to pay a check. This requirement applies to a payable-through or a payable-at bank that is defined as a paying bank (see §229.2(a)) and that returns qualified returned check at any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning. A check that is converted to an electronic return must be encoded in accordance with ANSI X9.13 for original checks or ANSI X9.100–140 for substitute checks.**
a check. This requirement begins when the payable-through or payable-at bank receives the check during forward collection, not when the payor returns the check to the payable-through or payable-at bank. Nevertheless, a check sent for payment or collection through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of U.C.C. 4–301. (See discussion of §§ 229.30(a) [¶ 229.30(a)(5)].)

2. A depositary bank with accounts does not hold itself out as accepting electronic returns from a paper return to the depositary bank. A returning bank does not comply with the timeliness requirements of this regulation. Also, a paying bank is not responsible for failure to make a return to the depositary bank that has breached a presentment warranty under U.C.C. 4–208. [¶ 4–208], notwithstanding that the paying bank has returned the check. (See Commentary to § 229.33(a).)

10. U.C.C. provisions affected. This paragraph sets forth the following provisions of the U.C.C., and may affect other sections or provisions:

a. Section 4–301(d), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depositary bank or to a returning bank.

b. Section 4–301(a), in that time limits specified in that section may be affected by the additional requirement to make an expedited return and in that settlement for returned checks is made under § 229.31(c), not by presentment of settlement.

c. The expeditious-return requirement of § 229.30(a) does not apply to checks being returned in non-accountable “accounts.” Thus, a depositary bank with only time or savings accounts need not comply with the availability requirements of subpart B. Collecting banks may not have an electronic connection with these banks as paying banks because no checks are drawn on them. Consequently, the costs of using expedited means to deliver returned checks directly to such a depositary bank may not be justified. Thus, the expedited-return requirement of § 229.30(a) does not apply to checks being returned in non-accountable “accounts.”

3. Unidentifiable depositary bank

a. For purposes of subpart C, the regulation defines a payable-through and or payable-at bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of § 229.30(a) are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. This provision provides that a paying bank return checks that are payable through or at a bank to the depositary bank.

b. § 229.30(b) [¶ 229.30(b)] Unidentifiable Depository Bank [¶ 229.30(b)] Exceptions to Expedient Return of Checks

1. This paragraph sets forth the circumstances under which a paying bank is not required to return the check to the depositary bank in accordance with § 229.30(a).

2. The depositary bank has not agreed to accept electronic returns from the paying bank.

a. In the circumstances where a depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a), the paying bank should send a paper return directly to the depositary bank or send an electronic return to a returning bank, which would then be required to send a paper return to the depositary bank.

b. Example. The depositary bank has agreed to accept electronic returns from Returning Bank A. Returning Bank A does not hold itself out as accepting electronic returns from either the paying bank or other returning banks. Under these facts, the depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a), and therefore the paying bank need not send the returned check expeditiously to the depositary bank. The paying bank may handle the return in accordance with any deadlines under the Uniform Commercial Code, Regulation J (12 CFR part 210), or § 229.30(c).

3. Depositary bank without accounts

a. Subpart B of this regulation applies only to “checks” deposited in a depositary account. Thus, a depositary bank with only time or savings accounts need not comply with the availability requirements of subpart B. Collecting banks may not have an electronic connection with these banks as paying banks because no checks are drawn on them. Consequently, the costs of using expedited means to deliver returned checks directly to such a depositary bank may not be justified. Thus, the expeditious-return requirement of § 229.30(a) does not apply to checks being returned in non-accountable “accounts.”

b. This paragraph sets forth the circumstances under which a paying bank is not required to return the check to the depositary bank. A paying bank may, in accordance with § 229.30(a), send the returned check to a returning bank that agrees to handle the returned check for expedient return to the depositary bank under § 229.31(a). The returning bank may be better able to identify the depositary bank.

1. In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks normally will be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the paying bank need not return such a returned check to any bank that handled the check for forward collection, even if that bank does not agree to handle the returned check for expedient return to the depositary bank under § 229.31(a). The return of a check to a bank that handled the check for forward collection is consistent with § 229.35(b), which requires a bank handling a check to take up the check if it has not been paid.

d. If the paying bank has an agreement to send electronic returns to a bank that handled the check for forward collection, the paying bank may send an electronic return to that bank.

A paying bank returning a check under this paragraph [to a bank that has not agreed to handle the check expeditiously] must advise that it is unable to identify the depositary bank. This advice must be conspicuous, such as a stamp on each check for which the depositary bank is unknown if such checks are commingled with other returned checks, or, if such checks are not commingled, the receiving bank must act as a qualified indorser to the electronic return. The return of a check to a bank that handled the check for forward collection must be accompanied by the electronic return information. The advice requirement may be satisfied by the paying bank inserting the routing number of the bank to which it is sending the return where the paying bank otherwise would have inserted the routing number of the depositary bank. This information will warn the bank that this check will require special research and handling in accordance with § 229.33(b). The returned check may not be prepared for automated clearinghouse as a qualified return. The return of a check to a bank that handled the check for forward collection is consistent with § 229.35(b), which requires a bank handling a check to take up the check if it has not been paid.

3. The sending of a check to a bank that handled the check for forward collection under this paragraph is subject to the requirements for expedient return by the paying bank. Often, the paying bank will not have courier or other expedient means of transportation to the collecting or presenting bank. Because the paying bank is unable to identify the depositary bank, the paying bank will not know whether the
depositary bank has agreed to accept an electronic return from the paying bank under §229.32(a). Moreover, returning the check through the forward collection chain may require handling by more banks, and thus may take more time. Although the lack of a requirement for expeditious return will create risks for the depositary bank, in many cases the inability to identify the depositary bank will be due to the depositary bank’s, or a collecting bank’s, failure to use the indorsement required by §229.35(a) and appendix D. If the depositary bank failed to use the proper indorsement, it should bear the risks of less than expeditious return.

Similarly, where the inability to identify the depositary bank is due to indorsements or other information placed on the back of the check by the depositary bank’s customer or other prior indorser, the depositary bank should bear the risk that it cannot charge a returned check back to that customer. Where the inability to identify the depositary bank is due to subsequent indorsements of collecting banks or other prior indorsement, the depositary bank may be liable for a loss incurred by the depositary bank due to less than expeditious return of a check; those banks therefore have an incentive to return checks sent to them under this paragraph quickly.

1. This paragraph does not relieve a paying bank from the liability for the lack of expeditious return in cases where the paying bank is itself responsible for the inability to identify the depositary bank, such as when the paying bank’s customer has used a check of another bank or other material on the back of the area reserved for the depositary bank’s indorsement, making the indorsement unreadable. (See §229.38(d).)

5. A paying bank’s return under this paragraph is also subject to its midnight deadline under U.C.C. 4–301, Regulation J (if the check is returned through a Federal Reserve Bank), and the exception provided in §229.30(c). A paying bank also may send a check to a prior collecting bank to make a claim against that bank under §229.35(b) where the depositary bank is insolvent or in other cases as provided in §229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under U.C.C. 4–208.

C. 229.30(c) Extension of Deadline

1. This paragraph permits extension of the deadline in the U.C.C., Regulation J (12 CFR part 210) and §229.36(d)(3) of this part for returning a check for which the paying bank has previously settled (generally midnight of the banking day following the banking day on which the check is received by the paying bank) and for returning a check without settling for it (generally midnight of the banking day following the day the check is received by the paying bank, or such other time provided by §210.9 of Regulation J (12 CFR part 210) or §229.36(f)(2)(d)(3) of this part), but not of a notice in lieu of return in two circumstances: if the paying bank returns the check using a means of delivery such that the depositary bank would ordinarily receive the return within the timeframe specified in §229.30(a).

2. If a paying bank sends an electronic return, the paying bank’s midnight (or other applicable) deadline is extended to the time it dispatches the electronic return so long as the depositary bank would ordinarily receive the electronic return by 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the paying bank received the check. A paying bank may rely on its returning bank’s electronic return delivery schedules in determining when the depositary bank would ordinarily receive an electronic return. A paying bank may have a cutoff hour (or after any other applicable deadline) to deliver its forward-collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches the receiving bank on or before the receiving bank’s next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. or later set by the receiving bank under U.C.C. 4–108 would ordinarily reach the depositary bank by 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the paying bank received the check. A paying bank may rely on its returning bank’s delivery schedules in determining when the depositary bank would ordinarily receive the returned check. The extension also applies if the check reaches the bank to which it is sent later than the time described in the previous sentence if highly expedient means of transportation are used. For example, a West Coast paying bank may use this further extension to ship a returned check directly to an East Coast returning bank even if the check arrives after the returning bank’s cutoff hour. This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (see paragraph C.1.b. below).

1. A paying bank may observe a banking day, as defined in the applicable U.C.C., on a Saturday, which is neither a business day and therefore not a banking day under Regulation CC. In such a case, the U.C.C. deadline for returning a check settled for on a Friday, or for returning checks received on Saturday without settling for them, might require the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depositary bank to which the returned checks were sent might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depositary bank by the cut-off hour on its next banking day following the Saturday midnight deadline. This paragraph applies exclusively to extension of Saturday midnight deadlines.

2. The time limits that are extended in each case are the paying bank’s midnight deadline for returning a check for which it has already settled and the paying bank’s deadline for returning a check without settling for it in U.C.C. 4–301 and 4–302, §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12), and §229.36(f)(2)(d)(3) of this part. As these extensions are designed to speed (§229.30(c)(1)), or at least not slow (§229.30(c)(2)), the overall return of checks, no modification or extension of the midnight return requirement in §229.30(a) is required.

1. The paying bank satisfies its midnight or other return deadline by dispatching returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the deadline.

1. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in §229.35(b). Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check (or retain possession through protest) and does not have sufficient information to create a substitute check. For example, a bank may have an image of both sides of the check, but the image may be insufficient, or may not be in the proper format, to create a substitute check. A bank using a notice in lieu of return gives a warranty under §229.34(e)(1)(iv) that the [original] check has not been and will not be returned.
check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in §229.33(b) [§229.30(e)(2)]. The copy or written notice must clearly indicate it is a notice in lieu of return and must be handled in the same manner as other returned checks.

1. Notice by a legible facsimile or electronic transmission of the image of both sides of the check may satisfy the requirements for a notice in lieu of return. If no image of both sides of the check is available, the notice may be sent by other means, but not by [Notice] by telegraph, [or other (electronic)] [oral] transmission, other than a legible facsimile or similar image transmission of both sides of the check, does not satisfy the requirements for a notice in lieu of return.

The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that the returning and depositary banks are informed that the specific check has been charged back as lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in §229.35(b).

A bank using a notice in lieu of return gives a warranty under §229.34(a)(4) that the original check has not been and will not be returned.

2. The requirement of this paragraph supersedes the requirement of U.C.C. 4–301(a) as to the form and information required of a notice of dishonor or nonpayment. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

3. [Two-day/four-day test]

The notice in lieu of return is subject to the provisions of §229.30 and is treated like a returned check for settlement purposes. If the original check is over $2,500, the notice of nonpayment under §229.33 is still required, but may be satisfied by the notice in lieu of return if the notice in lieu meets the time and information requirements of §229.33.

4. [Two-day/four-day test]

If all of the information required by §229.33(b) [§229.30(e)(2)] is available, the paying bank may make a claim against any prior bank handling the check as provided in §229.35(b).

5. Content of notices

a. This paragraph provides that the notice must contain, if available, specified items of information that would enable a depositary bank to identify the check to which the notice relates.

b. If the paying bank cannot identify the deposited check, the check itself, the paying bank should treat the notice in lieu as if it were a returned check for which the paying bank cannot identify the depositary bank (see §229.30(b)(2) and accompanying commentary).

c. If a bank is uncertain as to the accuracy of an item of information, but a bank may make this identification by setting the item off with question marks, asterisks, or other symbols designated for this purpose by generally applicable industry standards.

6. Reliance on Routing Number

Although §229.35 and appendix D require that the depositary bank indorse its nine-digit routing number, it is possible that a returned check will bear the routing number of the depositary bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depositary bank as it appears on the check (in the depositary bank’s indorsement) or in the electronic image or information included in the electronic collection item when it is received by the paying bank.

7. If there are inconsistent routing numbers, the paying bank may rely on any routing number in the depositary bank.

The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under §229.38(a).

XVII. Section 229.31 Returning Bank’s Responsibility for Return of Checks

A. 229.31(a) Return of Checks

1. The standards for return of checks established by this section are similar to those for paying banks in §229.30(a).

This section requires a returning bank to [return a returned check expeditiously if it agrees to handle the returned check for expedient return under this paragraph] send a returned check expeditiously if the returning bank has agreed to do so. In effect, the returning bank is an agent or subagent of the paying bank for the purposes of returning the check.

2. A returning bank agrees to [handle a returned check for expedient return] return checks expeditiously to the depositary bank if it:

a. Publishes or distributes availability schedules for the return of [electronic returns or] returned checks and accepts the [electronic return or] returned check for return;

b. Handles a returned check for return that it did not handle for forward collection;

c. Otherwise agrees to handle a returned check for expedient return.

3. A returning bank may agree to handle only certain types of returns expeditiously. For example, a returning bank may agree to handle electronic returns expeditiously, while not agreeing to handle returned checks expeditiously.

4. If a returning bank has not agreed to return checks expeditiously, the returning bank has no expedited return requirement with respect to the check. Therefore, a paying bank will not satisfy its expedited return requirement by sending a returned check to that returning bank that has not agreed to return checks expeditiously.

5. The returning bank’s return of a check under this paragraph is subject to the midnight deadline under U.C.C. 4–202(b). (See definition of returning bank in §229.2(mmn).)

6. If the case of electronic returns, a returning bank agrees to handle the electronic return expeditiously if the returning bank has an agreement with the paying bank for accepting electronic returns, and handling such returns expeditiously, and the returning bank accepts the electronic return.

[Two-day/four-day test] As in the case of a paying bank, a returning bank’s return of a returned check is expedient if it meets either of two tests. Under the "two-day/four-day test," the check must be returned so that it is sent in a manner such that it would normally be received by the returning bank by 4 p.m. if 

[Local time of the depositary bank] two or four days, depending on whether or not the paying bank is located in the same check processing region as the depositary bank. This is the same test as the two-day/four-day test applicable to paying banks. (See Commentary to §229.30(a).)

While a returning bank will not have first hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. In effect, the two-day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within the specified time following presentment to the paying bank, or a later time as would result from unforeseen delays.

I. Forward collection test

a. The "forward collection" test is similar to the forward collection test for paying banks. Under this test, a returning bank must handle a returned check in a manner that a similarly situated collecting bank would handle a check of similar size drawn on the depositary bank for forward collection. A similarly situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check handling activity in the same community. A bank has similar check handling activity if it handles a similar volume of checks for forward collection as the forward collection volume of the returning bank.

b. Under the forward collection test, a returning bank must accept returned checks, including both qualified and other returned checks ("raw returns"), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.

[Cut-off hours. A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but the cut-off hour for...
returned checks may not be earlier than 2 p.m. [local time of the returning bank]. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returned checks than for forward collection checks. All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would deliver a forward collection check on the same day to convert a check to a qualified returned check. Where the returning bank sends a returned check to a correspondent of a Federal Reserve Bank for collection, the amount of the check, and a return identifier encoded on the check in magnetic ink. A check that is converted to a qualified returned check must be encoded in accordance with ANS X9.13 for original checks or ANSI X9.100–140 for substitute checks.

b. If the returning bank is unable to return the check directly to the depositary bank, this extra day is not available because preparing a qualified returned check will not expedite handling by other banks. If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under §229.38 for losses caused by an encoding warranty. If the returning bank would not lose the one-day extension available to it for creating a qualified returned check because of an encoding error.

Routing of returned check. a. Under §229.31(a), the returning bank is authorized to route the returned check in a variety of ways:

1. It may send an electronic return if the depositary bank has agreed to accept an electronic return from the returning bank or it may send the returned check directly to the depositary bank by courier or other means of delivery; or

2. It may send an electronic return to any other returning bank that has agreed to accept an electronic return from the returning bank.

3. It may send the returned check to any returning bank agreeing to handle the returned check for expedient return to the depositary bank under this section regardless of whether or not the returning bank handled the check for forward collection. If the returning bank elects to send the returned check directly to the depositary bank, it is not required to send the check to the branch of the depositary bank that first handled the check. The returned check may be sent to the depositary bank at any location permitted under §229.32(b). If the returning bank elects to send the electronic return directly to the depositary bank, it must send the electronic return to the electronic return point designated by the depositary bank.

Responsibilities of returning bank. In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depositary bank. (See U.C.C. 4–202(c) regarding the responsibility of collecting banks.) For example, if the paying bank has delayed the start of the return process, but the returning bank acts in a timely manner, the returning bank may satisfy the requirements of this section even if the delayed return results in a charge-back to the depositary bank under §229.38. A return bank must handle a notice in lieu of return as expeditiously as a returned check.

U.C.C. sections affected. This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

1. Section 4–202(b), in that time limits required by that section may be affected by the additional requirement to make an expedient return.

2. Section 4–204(a), in that settlement for returned checks is made under §229.31(c) and not by charge-back of provisional credit, and in that the time limits may be affected by the additional requirement to make an expedient return.

B. 229.31(b) Unidentifiable Depositary Bank Exceptions to Expedient Return of Checks

1. This section is similar to §229.30(b), but applies to returning banks instead of paying banks. In some cases a returning bank will be unable to identify the depositary bank with respect to a check. In general, in circumstances where the paying bank is not subject to the expedient return requirement (see §229.30(b)), the returning bank may not receive the returned check in a timeframe that enables it to return the check to the depositary bank by the second business day following the banking day on which the check was presented to the paying bank. Moreover, the same circumstances that make expedient return of a check difficult for a paying bank also are likely to make expedient return of a check difficult for a returning bank.

2. Depositary bank has not agreed to accept electronic returns under §229.32(a).

3. Unidentifiable depositary banks

a. Returning banks agreeing to handle checks for return to depositary banks under §229.31(a) are expected to identify depositary bank indorsements. In the limited cases where the returning bank cannot identify the depositary bank, it must keep the returning bank did not handle the check for forward collection, it may send the returned check to a returning bank that agrees to handle the returned check for...
C. 229.31(c) Settlement

1. Under the U.C.C., a collecting bank receives settlement for a check when it

2. There are three different ways a depositary bank can agree to accept electronic returns from the paying bank for purposes of subpart C:

a. First, a paying bank may have a direct contractual relationship with the depositary bank under which the depositary bank accepts electronic returns directly from the returning bank. In that case, returning bank must hold itself out as willing to accept electronic returns directly or indirectly from the paying bank and agrees to return checks expeditiously. For example, the returning bank may hold itself out as willing to accept electronic returns from other returning banks that accept electronic returns from the paying bank.

b. Second, a depositary bank may have a direct contractual relationship with a returning bank under which the depositary bank accepts electronic returns directly from the returning bank. In turn, that returning bank must hold itself out as willing to accept electronic returns directly or indirectly from the paying bank and agrees to return checks expeditiously. For example, the returning bank may hold itself out as willing to accept electronic returns from other returning banks that accept electronic returns from the paying bank.

c. Third, a depositary bank may have otherwise agreed with the paying bank to accept electronic returns. For example, the
depositary bank and paying bank may both be members of the same clearing house, under the rules of which the depositary bank has agreed to accept electronic returns from the paying bank.

d. The paying bank or returning bank must deliver the electronic return to the electronic location designated by the depositary bank. Accordingly, regardless of the means by which a depositary bank agrees to accept electronic returns from the paying bank, the depositary bank’s agreement with the paying bank or returning bank must designate an electronic return point.

3. A returning bank holds itself out as willing to accept electronic returns from a paying bank by publishing information about its generally available electronic return service, including how to enroll in the returning bank’s electronic return service and fees for the service. For example, a returning bank may publish on its Web site electronic return service set-ups for a paying bank to complete.

4. This section also sets forth when a depositary bank receives an electronic return. A depositary bank “receives” an electronic return when that electronic return is delivered to the electronic return point designated by the depositary bank or when the electronic return is otherwise made available for retrieval or review in accordance with an agreement between the depositary bank and the delivering paying bank or returning bank. For example, if a depositary bank designates an e-mail address as its electronic return point, the depositary bank has received the electronic return when it is delivered to that e-mail address. In contrast, if the depositary bank has an arrangement with a returning bank whereby the returning bank sends the electronic return to its storage device and then provides the depositary bank with access to the storage device for retrieving electronic returns, the electronic return is received by the depositary bank when the returning bank makes the electronic return available for the depositary bank to retrieve or review from the storage device in accordance with the agreement between the depositing bank and the returning bank.

A. 229.32(a) B. 229.32(b) Acceptance of paper Returned Checks

1. [This regulation seeks to encourage direct returns by paying and returning banks and may result in a number of banks sending checks to depositary banks with no preexisting arrangements as to where the returned checks should be delivered.] This paragraph specifies that a depositary bank is required to accept returned paper checks and written notices of nonpayment under §229.33. [These locations differ from locations at which a depositary bank may accept electronic returns.] It is derived from U.C.C. 3-111, which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depositary bank does not print the check and can only specify the place of “payment” of the returned check in its indorsement.

2. The paragraph specifies four locations at which the depositary bank must accept returned paper checks:

a. The depositary bank must accept returned paper checks at any location at which it requests presentment of forward collection checks at a processing center. A depositary bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.

b. If the depositary bank indorsement states the name of the depositary bank, it must accept returned paper checks at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depositary bank must accept returned checks at any branch or head office consistent with the address. If, for example, the address is “New York, New York,” each branch in New York City must accept returned paper checks. Accordingly, a depositary bank must make available the locations at which it must accept returned paper checks by specifying a branch or head office in its indorsement.

c. If no address appears in the depositary bank’s indorsement, the depositary bank must accept returned paper checks at any branch or head office associated with the depositary bank’s routing number. The offices associated with the routing number of a bank are found in American Bankers Association Key to Routing Numbers, published by an agent of the American Bankers Association that lists a city and state address for each routing number.

d. The depositary bank must accept returned checks at the address in its indorsement and at an address associated with its routing number in the indorsement if the written address in the indorsement and the address associated with the routing number in the indorsement are not in the same check processing region. Under §§229.30(g) and 229.31(g), a paying or returning bank may rely on the depositary bank’s routing number in its indorsement in handling returned checks and is not required to send returned checks to an address in the depositary bank’s indorsement that is not in the same check processing region as the address associated with the routing number in the indorsement.

3. If no routing number or address appears in its indorsement, the depositary bank must accept a returned paper check at any branch or head office of the bank. The indorsement requirement of §229.35 and appendix D requires that the indorsement contain a routing number, a name, and a location. Consequently, this provision, as well as paragraph (a)(2)(ii) of this section, only applies where the depositary bank has failed to comply with the indorsement requirements.

3. For a depositary bank to accept electronic returns, it may require that returning banks or paying banks returning checks to it separate returned checks from forward collection checks being presented.

4. Under §229.33(d) and §229.32(f), a depositary bank receiving a returned check or notice of nonpayment must send notice to its customer by its midnight deadline or within a longer reasonable time.

5. As discussed in the commentary to §229.31(c), under this regulation a paying bank or returning bank does not obtain credit for a returned check by charge-back but by, in effect, presenting the returned check to the depositary bank. The paragraph imposes an obligation to “pay” a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depositary bank may not return a returned check for which it is the depositary bank. Also, certain means of payment, such as remittance drafts, may be used only with the agreement of the returning bank.

6. This paragraph and this subpart do not affect the depositary bank’s right to recover...
a provisional settlement with its nonbank customer for a check that is returned. (See also §§229.19(c)(2)(iii), 229.33(d), and 229.35(b)).

[C. 229.32(e)] D. 229.32(d) Misrouted Returned Checks

1. This paragraph permits a bank receiving a check on the basis that it is the depositary bank to send the misrouted returned check to the correct depositary bank, if it can identify the correct depositary bank, either directly or through a returning bank agreeing to handle the check under § 229.30(a) and § 229.31(a). In these cases, the bank receiving the check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check must send the check back to the bank from which it was received. In either case the bank to which the returned check was misrouted could receive settlement for the check. The depositary bank would be required to pay for the returned check under § 229.32(b) and § 229.32(c), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under § 229.31(c).

[D. 229.32(d)] E. 229.32(e) Charges

1. This paragraph prohibits a depositary bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank also is the depositary bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depositary bank, however, no fee may be charged.

F. 229.32(f) Notification to Customer

1. This paragraph requires a depositary bank to notify its customer of nonpayment upon receipt of a returned check. Notice also must be given if a depositary bank receives a notice of recovery under § 229.35(b). A bank that chooses to provide the notice required by § 229.32(f) in writing may send the notice by e-mail or facsimile if the bank sends the notice to the e-mail address or facsimile number specified by the customer for that purpose. The notice to the customer required under this paragraph also may satisfy the notice requirement of § 229.13(g) if the depositary bank invokes the reasonable-cause exception of § 229.13(e) due to learning of nonpayment, provided the notice meets all the requirements of § 229.13(g).

X. Section 229.33 Electronic returns and collection items

A. 229.33(a) Checks under this subpart

1. If a depositary bank has agreed to accept an electronic return, the electronic return must be subject to the provisions of this subpart as if it were a returned check. For example, a depositary bank that receives an electronic return must notify its customer by midnight of the banking day following the banking day on which it received the electronic return, or within a longer reasonable time. (See § 229.32(f)).

2. Similarly, if a bank has agreed to accept an electronic collection item from another bank (either under the same-day settlement provisions of § 229.36(d) or otherwise), the electronic collection item is subject to the provisions of this subpart as it were a returned check. For example, if a paying bank receives presentment of an electronic collection item, it is subject to the expeditious return requirements of this subpart, provided the depositary bank has agreed to accept electronic returns as of the paying bank under § 229.32(a).

XX. Section 229.34 Warranties

A. Transfer and presentment warranties

1. Paragraph (a) sets forth the warranties that a bank makes when transferring an electronic collection item or electronic return and receives settlement or other consideration for it. Electronic collection items and electronic returns are treated as checks subject to the provisions of subpart C, and therefore the warranties in § 229.34(a) are in addition to any warranties a bank makes under paragraphs (b), (c), or (d).

2. The first warranty in § 229.34(a) relates to the requirements for substitute checks. A bank that transfers an electronic collection item or electronic return warrants that the electronic image accurately represents all of the information on the front and back of the original check as of the time the original check was transferred and that the electronic information contains a record of all MICR-line information required for a substitute check under § 229.22(f) of this part and the amount of the check. This paragraph provides a bank that creates a substitute check from an electronic collection item of electronic return with a warranty claim against the bank that transferred the electronic collection item or electronic return to it or any prior transferor of the electronic collection item or electronic return.

3. A bank that transfers an electronic collection item or an electronic return also warrants that no person will receive a transfer, return of, or otherwise be charged for, an electronic collection item, an electronic return, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid. A bank that transfers an electronic collection item or electronic return that is an electronic representation of a substitute check also makes the warranties and indemnity in §§229.52 and 229.53.

1. Paragraph (c) provides that a bank that presents and receives settlement for checks warrants to the paying bank that the settlement it demands (e.g., as noted on the cash letter) equals the total amount of the checks it presents. This paragraph gives the paying bank a warranty claim against the presenting bank for the amount of any excess settlement made on the basis of the amount demanded, plus expenses. If the amount demanded is understated, a paying bank also changes its settlement under U.C.C. 4–301 by paying the amount demanded, but remains liable for the amount by which the demand is understated; the presenting bank is nevertheless liable for expenses in resolving the adjustment.

2. When checks or returned checks are transferred to a collecting bank, or a depositary bank, the transferee bank is not required to demand settlement, as is required upon presentment to the paying bank. However, often the checks or returned checks will be accompanied by information (such as a cash letter listing) that will indicate the total of the checks or returned checks transferred, it warrants that the information is correct (i.e., equals the actual total of the items).

3. Paragraph (c) expands on the U.C.C. by providing that all banks that transfer or present a check or returned check make the encoding warranty. In addition, under the U.C.C., the encoder makes the warranty to subsequent collecting banks and the paying bank, while paragraph (c) provides that the warranty is made to banks in the return chain as well. Paragraph (c) applies to all MICR-line encoding on a substitute check under § 229.35(b) and, in the case of an electronic collection item or electronic return, to the electronic information related to a check.

4. A paying bank that settles for an overstated cash letter because of a misencoded check may make a warranty claim against the presenting bank under paragraph (c) which would require the bank that issued the cash letter to show that the check was part of the overstated cash letter or an encoding warranty claim under paragraph (c) against the presenting bank or any preceding bank that handled the misencoded check.

5. Paragraph (c) provides that a paying bank or a depositary bank may set
off excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depositary bank) subsequent to the excess settlement.

[D. 229.34(d)] [C. 229.34(b)] [Transfer and Presentment Warranties With Respect to a Remotely Created Check]

1. A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants that the person on whose account the check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The warranties are given only by banks and only to subsequent banks in the collection chain. The warranties ultimately shift liability for the loss created by an unauthorized remotely created check to the depositary bank. The depositary bank cannot assert the transfer and presentment warranties against a depositor. However, a depositary bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person.

2. The transfer and presentment warranties for remotely created checks supplement the Federal Trade Commission's Telemarketing Sales Rule, which requires telemarketers that submit checks for payment to obtain the customer's "express verifiable authorization," (the authorization may be either in writing or tape recorded and must be made available upon request to the customer's bank). 16 CFR 310.3(a)(3). The transfer and presentment warranties shift liability to the depositary bank for a remotely created check is unauthorized, and would not apply when the customer initially authorizes a check but then experiences "buyer's remorse" and subsequently tries to revoke the authorization by asserting a claim against the paying bank under U.C.C. 4-401. If the depositary bank suspects "buyer's remorse," it may obtain from its customer the express verifiable authorization of the check by the paying bank's customer, required under the Federal Trade Commission's Telemarketing Sales Rule, and use that authorization as a defense to the warranty claim.

3. The scope of the transfer and presentment warranties for remotely created checks differs from that of the corresponding U.C.C. warranty provisions in two respects. The U.C.C. warranties differ from the [§ 229.34(d)] [§ 229.34(c)] warranties in that [they] [the U.C.C. warranties] are given by any person, including a nonbank depositor, that transfers a remotely created check and not just to a bank, as is the case under [§ 229.34(d)]. In addition, the U.C.C. warranties state that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. The [§ 229.34(d)] [§ 229.34(c)] warranties specifically cover the amount as well as the payee stated on the check. Neither the U.C.C. warranties[, ] nor the [§ 229.34(d)] [§ 229.34(c)] warranties apply to the date stated on the remotely created check.

4. A bank making the [§ 229.34(d)] [§ 229.34(c)] warranties may defend a claim asserting violation of the warranties by proving that the customer of the paying bank is precluded by U.C.C. 4-406 from making a claim against the paying bank. This may be the case, for example, if the customer failed to discover the unauthorized remotely created check in a timely manner.

5. The transfer and presentment warranties for a remotely created check apply to a remotely created check that has been reconverted to a substitute check, to an electronic collection item derived from a remotely created check, and to an electronic image and related information that is an electronic collection item derived from a remotely created check.

[A. 229.34(a)] [D. 229.34(d)] [Warranty of Returned Check]

1. This paragraph includes warranties that a returned check, including a notice in lieu of return and electronic return, was returned by the paying bank, or in the case of a check payable by another bank, the bank by which the check is payable, within the timeframe under the U.C.C. (subject to any claims or defenses under the U.C.C., such as breach of a presentment warranty)). Regulation J (12 CFR part 210), that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the [original] check has not been and will not be returned for payment. (See the Commentary to [§ 229.30(f)].) [§ 229.30(e)] ["Check" includes the original check, a substitute check, an electronic return, and notice in lieu of return.] The warranty does not include a warranty that the bank complied with the expedited return requirements of §§ 229.30(a) and 229.31(a). These warranties do not apply to checks drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (See § 229.42.) [E. 229.34(e)] [Electronic Image and Information Transferred as an Electronic Collection Item or Electronic Return]

1. Paragraph (e) sets forth the warranties that a bank makes when transferring an electronic image and related information as if it were an electronic collection item or electronic return. These warranties are the same warranties made for electronic collection items and electronic returns throughout § 229.34 and carry the same conditions, such as the requirement for receiving settlement or other consideration in § 229.30(a) and 229.31(a). These warranties do not apply to returns drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (See § 229.42.) [F. 229.34(e)] [G. 229.34(g)] [Tender of Defense]

1. This paragraph adopts this regulation the vouching-in provisions of U.C.C. 3-119.

1. This paragraph adopts the notice provisions of U.C.C. sections 4-207(d) and 4-208(e). The time limit set forth in this paragraph applies to notices of claims for warranty breaches only. As provided in § 229.38(g), all actions under this section must be brought within one year after the date of the occurrence of the violation involved.

XXI. Section 229.35 Indorsements

A. 229.35(a) Indorsement Standards

1. This section and appendix D require banks to use a standard form of indorsement. When indorsing checks during the forward collection and return process, the standard provides for indorsements by all collecting banks. The standard (for which it is the depositary bank) subsequent to the excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depositary bank)

1. This paragraph provides for warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under § 229.33. The requirements of § 229.33 that are not covered by the warranty provisions are subject to the liability provisions of § 229.38. These warranties are designed to provide the depositary bank more confidence in relying on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of nonpayment and then subsequently returns the check. (See Commentary on § 229.33(a).)

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print or “spray” indorsements onto a check when the check is processed through the banks’ automated check sorters (regardless of whether the checks are original checks or substitute checks), and (2) reconverting banks print or “overlay” previously applied electronic indorsements and their own indorsements and identifications onto a substitute check at the time that the substitute check is created. If a subsequent substitute check is created in the course of collection or return, that substitute check will contain in its image of the back of the previous substitute check, reproductions of indorsements that were sprayed or overlaid onto the previous item. For purposes of the indorsement standard set forth in appendix D, a reproduction of a previously applied sprayed or overlaid indorsement contained within an image of a check does not constitute “an indorsement that previously was applied electronically.” To accommodate these two indorsement scenarios, the appendix includes two indorsement location specific standards. The first standard applies to banks spraying indorsements onto existing paper original checks and substitute checks, and another applies to reconverting banks overlaying indorsements that previously were applied electronically and their own indorsements onto substitute checks at the time the substitute checks are created. 3. A bank might use check processing equipment that captures an image of a check prior to spraying an indorsement onto that check. If the bank truncates that check, it should ensure that it also applies an indorsement to the item electronically in accordance with ANSI X9.100–187, unless the parties otherwise agree. A reconverting bank satisfies its obligation to preserve all previously applied indorsements by overlaying a bank’s indorsement that previously was applied electronically onto a substitute check that the reconverting bank creates. 4. The location of an indorsement applied to an original paper check in accordance with appendix D may shift if that check is truncated and thus converted to a substitute check. If an indorsement applied to the original check in accordance with appendix D is overprinted by a subsequent indorsement applied to the substitute check in accordance with appendix D, then one or both of those indorsements could be rendered illegible. As explained in §229.38(d) and the commentary thereto, a reconverting bank is liable for losses associated with indorsements that are rendered illegible as a result of check substitution. 5. To ensure that indorsements can be easily read and would remain legible after an image of a check is captured, the standard requires all indorsements applied to original checks and substitute checks to be printed in black ink (as of January 1, 2006). 6. The standard requires the depositary bank’s indorsement to include (1) its nine-digit routing number set off by an arrow at each end of the routing number and, if the depositary bank is a reconverting bank with respect to the check, an asterisk outside the arrow at each end of the routing number to identify the bank as a reconverting bank; (2) the indorsement date; and (3) if the indorsement is applied physically, name or location information. The standard also permits but does not require the indorsement to include other identifying information. The standard requires a collecting bank’s or returning bank’s indorsements to include only (1) the bank’s nine digit routing number (without arrows) and, if the collecting bank or returning bank is a reconverting bank with respect to the check, an asterisk at each end of the number to identify the bank as a reconverting bank, (2) the indorsement date, and (3) an optional trace or sequence number. The information required to be included in the depositary bank’s indorsement of an electronic collection item, and the information that may be included, is the same as set forth above. The formatting of the information, however, should be in accordance with ANSI X9.100–187. 7. Depositary banks should not include information that can be confused with routing numbers. For example, a nine-digit zip code could be confused with the nine-digit routing number. 8. A depositary bank may want to include an address in its indorsement in order to limit the number of returns at which it must receive returned checks. In instances where this address is not consistent with the routing number in the indorsement, the depositary bank is required to receive returned checks at a branch or head office consistent with the routing number. Banks should note, however, that §229.32 requires a depositary bank to receive returned checks at the location(s) at which it receives forward-collection checks, as well as the other locations enumerated in §229.32(b) (see §229.32(b) and accompanying commentary). If a depositary bank includes an e-mail address or other electronic address for delivery of electronic returns, and has agreed to accept electronic returns from the paying bank or returning bank, the paying bank or returning bank may send electronic returns to such address. 9. In addition to indorsing a substitute check in accordance with appendix D, a reconverting bank must identify itself and the truncating bank by applying its routing number and the routing number of the truncating bank to the front of the check in accordance with appendix D and ANSI X9.100–140. Further, if the reconverting bank is the paying bank, or a bank that rejected a check submitted for deposit, it must also identify itself by applying its routing number to the back of the check in accordance with appendix D. In these instances, the reconverting bank and truncating bank routing numbers are for identification purposes only and are not indorsements or acceptances. 10. Under the U.C.C., a specific guarantee of prior indorsement is not necessary. (See U.C.C. 4–207(a) and 4–208(a).) Use of guarantee language in indorsements, such as “P.E.G.” “prior endorsement guaranteed,” may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this language may make it more difficult for other banks to identify the depositary bank. Subsequent collecting bank indorsements may not include this language. 11. If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns [and notices of nonpayment] for the bank of account, the indorsement placed on the check as the depositary bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of this section. 12. The backs of many checks bear pre-printed information or blacked out areas for various reasons. For example, some checks are printed with a carbon band across the back that allows the transfer of information from the check to a ledger with one writing. Also, contracts or loan agreements are printed on certain checks. Other checks that are mailed to recipients may contain areas on the back that are blacked out so that they may not be read through the mailer. On the deposit side, the payer of the check may place its indorsement or information identifying the drawer of the check in the area specified for the depositary bank indorsement, thus making the depositary bank indorsement unreadable. 13. The indorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require banks to avoid placing their indorsements in these areas. Nevertheless, checks will be handled more efficiently if depositary banks design indorsement stamps so that the nine-digit routing number avoids the carbon band area. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the identifiability and legibility of the depositary bank indorsement by staying clear of the area reserved for the depositary bank indorsement. 14. Section 229.38(d) allocates responsibility for loss resulting from a delay in return of a check due to indorsements that are unreadable because of material on the back of the check. The depositary bank is responsible for a loss resulting from a delay in return caused by the condition of the check arising after its issuance until its acceptance by the depositary bank that made the depositary bank’s indorsement illegible. The paying bank is responsible for losses resulting from a delay in return caused by indorsements that are not readable because of other material on the back of the check at the time that it was issued. Depositary and paying banks may shift these risks to their customers by agreement. 15. The standard does not require the paying bank to indorse the check; however, if a paying bank does indorse a check that is returned, it should follow the indorsement standard for collecting banks and returning banks. The standard requires collecting and returning banks to indorse the check for tracing purposes. With respect to the identification of a paying bank that is also a reconverting bank, see the commentary to §229.51(b)(2).
B. 229.35(b) Liability of Bank Handling Check

1. When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depositary bank through any subsequent collecting banks to the paying bank. This section extends the indorsement chain through the paying bank to the returning banks, and would permit each bank to recover from any prior indorser if the claimant bank does not receive payment for the check from a subsequent bank in the collection or return chain. For example, if a returning bank returned a check to an insolvent depositary bank, and did not receive the full amount of the check from the failed bank, the returning bank could obtain the unrecovered amount of the check from any bank prior to it in the collection and return chain including the paying bank. Because each bank in the collection and return chain could recover from a prior bank, any loss would fall on the first collecting bank that received the check from the depositary bank. To avoid circuity of actions, the returning bank could recover directly from the first collecting bank. Under the U.C.C., the first collecting bank might ultimately recover from the depositary bank's customer or from the other parties on the check.

2. Where a check is returned through the same banks used for the forward collection of the check, priority during the forward collection process controls over priority in the return process for the purpose of determining prior and subsequent banks under this regulation.

3. Where a returning bank is insolvent and fails to pay the paying bank or a prior returning bank for a returned check, §229.39(a) requires the receiver of the failed bank to return the check to the paying bank. The bank that received the check from the depositary bank through any subsequent banks, or as between the depositary bank and the depositors, would permit each bank to recover from any other bank in the collection chain. This paragraph provides that a paying bank may have the rights of a holder based on the handling of the check for collection or return. A bank may become a holder or a holder in due course regardless of whether prior banks have complied with the indorsement standard in §229.35(a) and appendix D.

4. This paragraph also provides that a bank may constitute an agreement varying the effect of provisions of §229.35(a) and Commentary.

5. A bank may both be members of the same contractual relationship with the presenting bank and apply its own indorsement as the depositary bank. If the indorsing bank does not apply the depositary bank’s indorsement, checks will be returned to the depositary bank. If the indorsing bank does not apply the depositary bank’s indorsement, checks will be returned to the depositary bank. By agreement with the depositary bank it may apply its own indorsement as the depositary bank indorsement. In that case, the depositary bank’s own indorsement on the check (if any) should avoid the location reserved for the depositary bank. The actual depositary bank remains responsible for the availability and other requirements of §229.35(a) and the bank indorsing as depositary bank is considered the depositary bank for purposes of §229.35(a) and the check will be returned, and notice of nonpayment will be given, to the bank indorsing as depositary bank.

6. The bank indorsing as depositary bank for purposes will desire prompt notice of nonpayment, its arrangement with the indorsing bank should provide for prompt notice of nonpayment. The bank indorsing as depositary bank may require the depositary bank to agree to take up the check if the check is not paid even if the depositary bank’s indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement varying the effect of provisions of §229.35(a) and Commentary.

XXII. Section 229.36 Presentment and Issuance of Checks

A. 229.36(a) Payable Through and Payable at Checks

1. For purposes of Subpart C, the regulation defines a payable-through or payable-at bank (which could be designated) the collectible-through or collectible-at bank) as a paying bank. The requirements of §229.30(a) and the notice of nonpayment requirements of §229.33 are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. The provision is intended to speed the return of checks that are payable through or at a bank to the depositary bank.

A. 229.36(a) Receipt of Electronic Collection Items

1. This paragraph sets forth the circumstances under which a paying bank has agreed to accept an electronic collection item from the presenting bank for purposes of Subpart C. There are two different ways a paying bank can agree to accept an electronic collection item from the presenting bank for purposes of Subpart C:

a. First, a paying bank may have a direct contractual relationship with the presenting bank under which it has agreed to accept electronic collection items directly from the presenting bank.

b. Second, a paying bank may have otherwise agreed with the presenting bank to accept electronic collection items. For example, the presenting bank and paying bank may both be members of the same clearing house, under the rules of which the paying bank has agreed to accept electronic collection items from the presenting bank.

2. The presenting bank must deliver the electronic collection item to the electronic...
3. This paragraph also sets forth when a paying bank receives an electronic collection item. A bank "receives" an electronic collection item when that item is delivered to the electronic presentment point designated by the bank or when the electronic collection item is otherwise made available for retrieval or review in accordance with an agreement between the paying bank and the presenting bank. For example, if a paying bank designates an Internet protocol (IP) address as its electronic presentment point, the paying bank has received the electronic collection item when it is delivered to that address. In contrast, if the paying bank has an arrangement with a presenting bank whereby the presenting bank sends the electronic collection item to its storage device and then provides the paying bank with access to the storage device for retrieving electronic collection items, the electronic collection item is received by the paying bank when the presenting bank makes the electronic collection item available for the paying bank to retrieve or review from storage device in accordance with the agreement between the presenting bank and the paying bank.

B. 229.36(b) Receipt at Bank Office or Processing Center

1. This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depositary bank and clarifies the law as to the effect of presentment by routing number. This paragraph differs from §229.32(a) because presentment of checks differs from delivery of returned checks.

ii. There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable-through bank, not that of the payor bank. As the payor bank has selected the payable-through bank as the point through which presentment is to be made, it is proper to treat the payable-through bank as the paying bank for purposes of this section.

iii. In some cases, a paying bank may have several offices in the city associated with the routing number. In such cases, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank normally would deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether the check is payable by that branch.

ii. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with U.C.C. 3–111, which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party entitled under the instrument. There is a trade-off for a paying bank between specifying a particular address on a check to limit locations of delivery, and simply stating the name of the bank to encourage wider currency for the check.

This paragraph may affect U.C.C. 3–111 to the extent that the U.C.C. requires presentment to occur at a place specified in the instrument.

C. (Reserved)

D. 229.36(d) Liability of Bank During Forward Collection

1. This paragraph makes settlement between banks during forward collection final when made, subject to any defense, just as settlements between banks during the return of checks are final. In addition, this paragraph clarifies that this change does not affect the liability scheme under U.C.C. 4–201 during forward collection of a check. This paragraph provides that, unless a contrary intent clearly appears, a bank is an agent or subagent of the owner of a check, but that Article 4 of the U.C.C. applies even though a bank may have purchased an item and is the owner of it. This paragraph preserves the liability of a collecting bank to prior collecting banks and the depositary bank’s customer for negligence during the forward collection of a check under the U.C.C., even though this paragraph provides that settlement between banks during forward collection is final rather than provisional. Settlement by a paying bank is not considered to be final payment for the purposes of U.C.C. 4–215(a)(2) or (3), because a paying bank has the right to recover settlement from a returning or depositary bank to which it returns the checks under this subpart. Other provisions of the U.C.C. not superseded by this subpart, such as section 4–202, also continue to apply to the forward collection of a check and may apply to the return of a check. (See definition of returning bank in §229.2(2)(c) ¶ §229.2(2)(o).)

E. 229.36(e) Issuance of Payable Through Checks

1. If a bank arranges for checks payable by it to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, and location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend "payable through" followed by the name of the payable-through bank. The first four digits of the nine-digit routing number and the location of the bank by which the check is payable must be associated with the same check processing region. (This section does not affect §229.36(b).) The required information is deemed conspicuous if it is printed in a type size not smaller than six-point type and if it is contained in the title plate, which is located in the lower left quadrant of the check. The required information may be conspicuous if it is located elsewhere on the check.
2. If a payable-through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depositary bank or others as provided in §229.38. For example, a bank by which a payable-through check is payable could be liable to a depositary bank that suffers a loss such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. Similarly, a bank may be liable under §229.38 if a check payable by it that is not payable through another bank is labeled as provided in this section. For example, a bank that holds checking accounts and processes checks at a central location but has widely-dispersed branches may be liable under this section if it labels all of its checks as “payable through” a single branch and includes the name, address, and four-digit routing symbol of another branch. These checks would not be payable through another bank and should not be labeled as payable-through checks. (All of a bank’s offices within the United States are considered part of the same bank; see §229.2(e).) In this example, the bank by which the checks are payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under Subpart B, due to the mislabeled check. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

229.36(f)(1) D. 229.36(d) Same-Day Settlement

1. This paragraph provides that, under certain conditions, a paying bank must settle with a presenting bank for a check on the same day the check is presented in order to avoid itself of the ability to return the check on its next banking day under U.C.C. 4-301 and 4-302. This paragraph does not apply to checks presented for immediate payment over the counter. Settling for a check under this paragraph constitutes final payment of the check under the U.C.C. This paragraph does not supersede or limit the rules governing collection and return of checks through Federal Reserve Banks that are contained in Subpart A of Regulation J (12 CFR part 210).

2. Presentment requirements.
   a. Location and time.
      i. For presented checks to qualify for mandatory same-day settlement, information accompanying the checks must indicate that presentment is being made under this paragraph—e.g., “these checks are being presented for same-day settlement”—and must include a demand for payment of the total amount of the checks together with appropriate payment instructions in order to enable the paying bank to discharge its settlement responsibilities under this paragraph. In addition, the check or checks must be presented at a location designated by the paying bank for receipt of checks for same-day settlement at 8:00 a.m., local time of that location. The designated presentment location must be a location at which the paying bank would be considered to have received a check under §229.36(b). The paying bank may not designate a location solely for presentment of checks subject to settlement under this paragraph; by designating a location for the purposes of §229.36(f), the paying bank agrees to accept checks at that location for purposes of §229.36(b).
         1. Electronic presentment. A paying bank may require that checks presented for same-day settlement under this paragraph be presented as electronic collection items to a designated electronic presentment point. If a paying bank so requires, the presenting bank must present checks for same-day settlement as electronic collection items, and may not present checks to physical locations for receiving same-day settlement under this section. An electronic collection item presented for same-day settlement is subject to the provisions of this subpart as if it were a check (See §229.33). Therefore, references to checks in this subpart include electronic collection items presented under §229.36(d).
         2. Presentment for paper checks, but the designated presentment location must be a location at which the paying bank will be considered to have received the check on the check processing region consistent with the check processing region. The paying bank, however, must accept presentment for same-day settlement at any location identified in §229.36(b), i.e., at an address of the bank associated with the routing number on the check, at any branch or head office if the bank is identified on the check by name without address, or at a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address. Ordinarily, a presenting bank will find it necessary to contact the paying bank to determine the appropriate presentment location and any delivery instructions. Further, because presentment might not take place during the paying bank’s banking day, a paying bank may establish reasonable delivery requirements to safeguard the checks presented, such as use of a night depository. If a presenting bank fails to follow reasonable delivery requirements established by the paying bank, it bears the risk that it will not have presented the checks. However, if no reasonable delivery requirements are established or if the paying bank does not make provisions for accepting delivery of checks during non-business hours, the checks at the presentment location constitutes effective presentment.
   b. Reasonable delivery requirements. A check is considered presented when it is delivered to and payment is demanded at a location specified in presentment instructions. The requirements of same-day settlement under this paragraph would apply to a payable-through or payable-by bank to which the check is sent for payment or collection.

   a. If a bank presents a check in accordance with the time and location requirements for presentment under paragraph (f)(1) or (d)(1), the paying banking either must settle for the check on the business day it receives the check without charging a presentment fee or return the check prior to
the time for settlement. (This return deadline is subject to extension under §229.30(c).) The settlement must be in the form of a credit to an account designated by the presenting bank at a Federal Reserve Bank (e.g., a Fedwire transfer). The presenting bank may agree with the paying bank to accept settlement in another form (e.g., credit to an account of the presenting bank at the paying bank or debit to an account of the paying bank at the presenting bank). The settlement must occur on Fedwire, or on the business day the check is received by the paying bank. Under the provisions of §229.34(c), a settlement owed to a presenting bank may be set off by adjustments for previous settlements with the presenting bank. (See also §229.39(d).)

b. Checks that are presented after the 8 a.m. local time of the paying bank presentation deadline for same-day settlement and before the paying bank’s cut-off hour are treated as if they were presented under paragraph (d), and the applicable legal and settled for or returned accordingly. However, for purposes of settlement only, the presenting bank may require the paying bank to treat such checks as presented for same-day settlement on the next business day of accepting settlement by cash or other means on the business day the checks are presented to the paying bank. Checks presented after the paying bank’s cut-off hour or on non-business days, but otherwise in accordance with this paragraph, are considered presented for same-day settlement on the next business day.

4. Closed Paying Bank

a. There may be certain business days that are not banking days for the paying bank. Some paying banks may continue to settle for checks presented on these days (e.g., by opening their back office operations or by using an intercept processor). In other cases, a paying bank may be unable to settle for checks presented on a day it is closed.

If the payee or a business day and checks are presented to the paying bank in accordance with paragraph (f)(1) or (d)(1), the paying bank is accountable for the checks unless it settles for or returns the checks by the close of Fedwire on its next banking day. In addition, checks presented on a business day on which the paying bank is closed are considered received on the paying bank’s next banking day for purposes of the U.C.C. midnight deadline (U.C.C. 4–301 and 4–302) and this regulation’s expeditious return [and notice of nonpayment] provisions.

b. If the paying bank is closed on a business day voluntarily, the paying bank must pay interest compensation, as defined in §229.2(b), to the presenting bank for the value of the float associated with the check from the day of the voluntary closing until the day of settlement. Interest compensation is not required in the case of an involuntary closing on a business day, as required by state law. In addition, if the paying bank is closed on a business day due to emergency conditions, settlement delays and interest compensation may be excused under §229.38(e) or U.C.C. 4–109(b).

5. Good faith. Under §229.38(a), both presenting banks and paying banks are held to a standard of good faith, defined in §229.2(2) to mean honesty in fact and the observance of reasonable commercial standards of fair dealing. For example, designating a presentment location or changing presentment locations for the primary purpose of encouraging banks from presenting checks for same-day settlement might not be considered good faith on the part of the paying bank. Similarly, presenting a large volume of checks without prior notice could be viewed as not meeting reasonable commercial standards of fair dealing and therefore may not constitute presentment in good faith. In addition, if banks, in the general course of business, regularly agree to certain practices related to same-day settlement, it might not be considered consistent with reasonable commercial standards of fair dealing, and therefore might not be considered good faith, for a bank to refuse to agree to those practices if agreeing would not cause it harm.

6. U.C.C. sections affected. This paragraph directly affects the following provisions of the U.C.C. and may affect other sections or provisions:

a. Section 4–204(b)(1), in that a presenting bank may not send a check for same-day settlement directly to the paying bank, if the paying bank designates a different location in accordance with paragraph (f)(1) or (d)(1).

b. Section 4–213(a), in that the medium of settlement for checks presented under this paragraph is limited to a credit to an account at a Federal Reserve Bank and that, for checks presented after the deadline for same-day settlement and before the paying bank’s cut-off hour, the presenting bank may require settlement on the next business day in accordance with this paragraph rather than accept settlement on the business day of presentment by cash.

c. Section 4–301(a), in that, to preserve the ability to exercise deferred posting, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.

d. Section 4–302(a), in that, to avoid accountability, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.

XXIII. Section 229.37 Variations by Agreement

A. This section is similar to U.C.C. 4–103, and permits consistent treatment of agreements varying Article 4 or Subpart C, given the substantial interrelationship of the two documents. To achieve consistency, the official comment to U.C.C. 4–103(a) (which in turn follows U.C.C. 1–201(3)) should be followed in this section. For example, as stated in Official Comment 2 to section 4–103, owners of items and other interested parties are not affected by agreements under this section unless they are parties to the agreement or are bound by adoption, ratification, estoppel, or the like. In particular, agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under §229.38 to entities not party to the agreement.

B. The Board has not followed U.C.C. 4–103(b), which permits Federal Reserve regulations and operating letters, including clearinghouse rules, and the like to apply to parties that have not specifically assented. Nevertheless, this section does not affect the status of such agreements under the U.C.C.

C. The following are examples of situations where variation by agreement is permissible, subject to the limitations of this section:

1. A depositary bank may agree with a paying bank or a returning bank to accept electronic returns even when the item is available for return. (See §229.32(a).)

2. A depositary bank may authorize another bank to apply the other bank’s indorsement to a check as the depositary bank. (See §229.35(d).)

3. A depositary bank may limit its liability to its customer in connection with the late return of a deposited check where the lateness is caused by markings on the check by the depositary bank’s customer or prior indorser in the area of the depositary bank indorsement. (See §229.38(d).)

4. A paying bank may require its customer to agree to settle a presentment for delayed or missent checks where the delay or missend is caused by markings placed on the check by the paying bank’s customer that obscured a properly placed indorsement of the depositary bank. (See §229.38(d).)

5. A collecting or paying bank may agree to accept forward collection checks without the indorsement of a prior collecting bank. (See §229.35(a).)

6. A bank may agree to accept returned checks without the indorsement of a prior bank. (See §229.35(a).)

7. A presenting bank may agree with a paying bank to present checks for same-day settlement at a location that is not in the check processing region consistent with the routing number on the checks. (See §229.36(f)(1)(ii).)

8. A presenting bank may agree with a paying bank to present checks for same-day settlement by a deadline earlier or later than 8:00 a.m. (See §229.36(d)(1)(ii)).

9. A presenting bank and a paying bank may agree that presentment takes place when the paying bank receives an electronic transmission of information describing the check rather than upon delivery of the physical check. (See §229.36(b)(a).)

10. A depositary bank may agree with a paying bank or a returning bank to accept electronic returns even when the item is available for return under this part. Except to the extent that other parties interested in the check assent to or are bound by the variation of the notice-in-lieu provisions of this part, banks entering into such an agreement may be responsible.
B. 229.38(b) Paying Bank’s Failure To Make Timely Return

1. Section 229.30(a) imposes requirements on the paying bank for expeditious return of a check and leaves in place the U.C.C. deadlines (as they may be modified by § 229.30(c)), which may allow return at a different time. This paragraph clarifies that the paying bank could file a failure to meet either standard, but not for failure to meet both. The regulation intends to preserve the paying bank’s accountability for missing its midnight or other deadline under the U.C.C., e.g., sections 4–215 and 4–302, provisions that are not incorporated in this regulation, but may be useful in establishing the time of final payment by the paying bank.

C. 229.38(c) Comparative Negligence

1. This paragraph establishes a “pure” comparative negligence standard for liability under § 229.2(a)(2) of this regulation. This comparative negligence rule may have particular application to the return of an original check, as compared to the ordinary care, and if a paying or returning bank delays in returning the check because of difficulty in identifying the depositary bank. Some examples will illustrate liability in such cases. In each example, it is assumed that the returned check is received by the depositary bank after it has made funds available to its customer, that it may no longer recover the funds from its customer, and that the inability to recover the funds from the customer is due to a delay in returning the check contrary to the standards established by §§ 229.30(a) or 229.31(a).

2. Examples.
   a. If a depositary bank fails to use the indorsement required by this regulation, and this failure is caused by a failure to exercise ordinary care, and if a paying or returning bank is delayed in returning the check because additional time is required to identify the depositary bank or find its routing number, the paying or returning bank’s liability to the depositary bank would be reduced or eliminated.
   b. If the depositary bank uses the standard indorsement, but that indorsement is obscured by a subsequent collecting bank’s indorsement, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depositary bank or find its routing number, the paying or returning bank may not be liable to the depositary bank because the delay was not due to its negligence.
   c. If a depositary bank accepts a check that has printing, a carbon band, or other material on the back of the check, or another party to the check. The depositary bank or other person must show that the damage incurred results from the negligence proved. For example, the depositary bank may not simply claim that its customer will not accept a charge-back of its own negligence and not for actions of another. If no negligence had occurred, and must first prove that it

D. 229.38(d) Responsibility for Certain Aspects of Checks

1. Responsibility for back of check. The indorsement standard in § 229.35 is most effective if the back of the check remains clear of other matter that may obscure bank indorsements. Because bank indorsements are usually applied by automated equipment, it is not possible to avoid pre-existing matter on the back of the check. For example, bank indorsements are not required to avoid a carbon band or printed, stamped, or written terms or notations on the back of the check. Accordingly, this provision places responsibility on the paying bank, depositary bank, or reconvert bank, as appropriate, for keeping the back of the check clear for bank indorsements during forward collection and return.

2. ANS X9.100–140 provides that an image of an original check must be reduced in size when placed on the first substitute check associated with that original check. (The image thereafter would be constant in size on any subsequent substitute check that might be created.) Because of this size reduction, the location of an indorsement, particularly a depositary bank indorsement, applied to an original paper check likely will change when the first reconvert bank creates a substitute check that contains information within the margins of the original paper check. If the indorsement was applied to the original paper check in accordance with appendix D’s location requirements for indorsements applied to existing paper checks, and if the size reduction of the image of the indorsement does not no longer be consistent with the appendix’s requirements, then the reconvert bank bears the liability for any loss that results from the shift in the placement of the indorsement. Such a loss could result either because the original indorsement applied in accordance with appendix D is rendered illegible by a subsequent indorsement that later is applied to the substitute check in accordance with appendix D, or because the subsequent bank cannot apply its indorsement to the substitute check legibly in accordance with appendix D as a result of the shift in the previous indorsement.

Example. In accordance with appendix D’s specifications, a depositary bank sprays its indorsement onto a business-sized original check between 3.0 inches from the leading edge of the check and 1.5 inches from the trailing edge of the check. The check’s conversion to electronic form and subsequent reconversion to paper form causes the location of the depositary bank indorsement, now contained within the image of the original check, to change such that it is less than 3.0 inches from the leading edge of the substitute check. In accordance with appendix D’s specifications, a subsequent collecting bank sprays its indorsement onto the substitute check between 3.0 inches from the leading edge of the check and 3.0 inches from the leading edge of the check and the indorsement happens to be on top of the shifted depositary bank indorsement. If the check is returned unpaid and the return is not expedient because of the illegibility of the depositary bank indorsement, and the
depository bank incurs a loss that it would not have incurred had the return been expeditious, the reconvert bank bears the liability for that loss.

3. Responsibility for payable-through checks

a. This paragraph provides that the bank by which a payable-through check is payable is liable for damages under paragraph (a) of this section to the extent that the check is not returned through the payable-through bank as quickly as would have been necessary to meet the requirements of § 229.30(a)(1) (the 2-day/4-day test) had the bank by which it is payable received the check as paying bank on the day the payable-through bank received it. The location of the bank by which a check is payable for purposes of the 2-day/4-day test may be determined from the location or the first four digits of the routing number of the bank by which the check is payable. This information should be stated on the check. (See § 229.36(e) and accompanying Commentary.) Responsibility under paragraph (d)(2) does not include responsibility for the forward collection of a check to the payable-through bank.

b. Generally, liability under paragraph (d)(2) will be limited in amount. Under § 229.33(a), a paying bank that returns a check in the amount of $2,500 or more must provide notice of nonpayment to the depositary bank by 4:00 p.m. on the second business day following the banking day on which the check is presented to the paying bank. Even if a payable-through check in the amount of $2,500 or more is not returned through the payable-through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depositary bank should not suffer damages unless it has not received timely notice of nonpayment. Thus, ordinarily the bank by which a payable-through check is payable would be liable under paragraph (a) only for checks in amounts of $2,500 or more, and the paying bank would be responsible for notice of nonpayment for checks in the amount of $2,500 or more.]

[4] § 229.38(e) Timeliness of Action

1. This paragraph excuses certain delays. It adopts the standard of U.C.C. 4–109(b).

F. 229.38(f) Exclusion

1. This paragraph provides that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611(a) and (b), and the bona fide error provision (§ 229.33(c)) of the EFA Act (12 U.S.C. 4010(a), (b), and (c)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Allowing punitive damages for delays in the return of checks where no actual damages are incurred would only encourage litigation and provide little or no benefit to the check collection system. In view of the provisions of paragraph (a), which incorporate traditional bank collection standards based on negligence, the provision on bona fide error is not included in § 229.38(g).

G. 229.38(g) Jurisdiction

1. The EFA Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

H. 229.38(h) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the Commentary to this regulation, which is issued as an official Board interpretation, as well as on the regulation itself.

XXV. Section 229.39 Insolvency of Bank

A. Introduction

1. These provisions cover situations where a bank becomes insolvent during collection or return and are derived from U.C.C. 4–216. They are intended to apply to all banks.

B. 229.39(a) Duty of Receiver

1. This paragraph requires a receiver of a closed bank to return a check to the prior bank if it does not pay for the check. This permits the prior bank, as holder, to pursue its claims against the closed bank or prior indorsers on the check.

C. 229.39(b) Preference Against Paying or Depositary Bank

1. This paragraph gives a bank a preferred claim against a closed bank that finally pays a check without settling for it or a closed depositary bank that becomes obligated to pay a returned check without settling for it. If the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

D. 229.39(c) Preference Against Paying, Collecting, or Depositary Bank

1. This paragraph gives a bank a preferred claim against a collecting bank, paying, or returning bank that receives settlement but does not settle for a check. (See Commentary to § 229.35(b) for discussion of prior and subsequent banks.) As in the case of § 229.39(b), if the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

E. 229.39(d) Preference Against Presenting Bank

1. This paragraph gives a presenting bank, a closed presenting bank in the event that the presenting bank breaches an amount or encoding warranty as provided in § 229.34(c)(1) or (3) and does not reimburse the paying bank for adjustments for a settlement made by the paying bank in excess of the value of the checks presented. This preference is intended to have the effect of a perfected security interest and is intended to put the paying bank in the position of a secured creditor for purposes of the receivership provisions of the Federal Deposit Insurance Act and similar provisions of state law.

F. 229.39(e) Finality of Settlement

1. This paragraph provides that insolvency does not interfere with the finality of a settlement, such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.
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(a) § 229.34
returning bank for a Pacific island check is
paying bank
island checks.
Similarly, a bank that handles Pacific
encoding warranty in § 229.34(c)(3).
fl
and manner of settlement for
fl
may transfer electronic collection
island checks in the same manner as other
checks, the bank is subject to the provisions
of § 229.32, including the provisions
time and manner of settlement for returned checks in
§ 229.32(b) do not apply, because the Pacific island bank is not a paying bank under Regulation CC. [The
depository bank is not subject to the notice of
nonpayment provisions in § 229.33 for Pacific island checks.]

4. Banks that handle Pacific island checks in the same manner as other checks are subject to the
endorsement provisions of § 229.35. Section 229.35(c) eliminates the need for endorsement "pay any bank." For purposes of § 229.35(c), the Pacific island bank is deemed to be a bank.

5. Pacific island checks will often be intermingled with other checks in a single cash letter. Therefore, a bank that handles Pacific island checks in the same manner as other checks is subject to the transfer warranty provision in § 229.34(c)(2) regarding accurate cash letter totals and the encoding warranty in § 229.34(c)(3). ◄

Similarly, a bank that handles Pacific island checks in the same manner as other checks may transfer electronic collection items, electronic returns, or electronic images and related electronic information as if they were electronic collection items or electronic images derived from Pacific island checks. Accordingly, a bank makes the warranties in §§ 229.34(a)(1) through (a)(10) with respect to Pacific island checks. ◄ A bank that acts as a returning bank for a Pacific island check is not subject to the warranties in § 229.34(a)(8) through (a)(10). Similarly, because the Pacific island bank is not a "bank" or a "paying bank" under Regulation CC, § 229.34(b), (c)(1), and (c)(4) do not apply. For the same reason, the provisions of § 229.36 governing paying bank responsibilities such as place of receipt and same-day settlement do not apply to checks presented to a Pacific island bank, and the liability provisions applicable to paying banks do not apply to Pacific island banks. Section 229.36(f)(1) do not apply, regarding finality of settlement between banks during forward collection, applies to banks that handle Pacific island checks in the same manner as other checks, as do the provisions of § 229.38, to the extent the banks are subject to the requirements of Regulation CC as provided in this section, and §§ 229.37 and 229.39 through 229.42.

XXX. § 229.51 General Provisions Governing Substitute Checks
A. 229.51(a) Legal Equivalence
1. Section 229.51(a) states that a substitute check for which a bank has provided the substitute check warranties is the legal equivalent of the original check for all purposes and all persons if it meets the accuracy and legal equivalence requirements. Where the law (or a contract) requires production of the original check, production of a legally equivalent substitute check would satisfy that requirement. A person that receives a substitute check cannot be assessed costs associated with the creation of the substitute check, absent agreement to the contrary. Examples.

a. A presenting bank presents a substitute check that meets the legal equivalence requirements to a paying bank. The paying bank cannot refuse presentation of the substitute check on the basis that it is a substitute check, because the substitute check is the legal equivalent of the original check.

b. A depositor’s account agreement with a bank provides that the depositor is entitled to receive original cancelled checks back with his or her periodic account statement. The bank may honor that agreement by providing original checks, substitute checks, or a combination thereof. However, a bank may not honor an agreement by providing something other than an original check or a substitute check.

c. A mortgage company argues that a consumer missed a monthly mortgage payment that the consumer believes she made. A legally equivalent substitute check concerning that mortgage payment could be used in the same manner as the original check to prove the payment.

2. A person other than a bank that creates a substitute check could transfer, present, or return that check only by agreement unless and until a bank provided the substitute check warranties.

3. To be the legal equivalent of the original check, a substitute check must accurately represent all the information on the front and back of the check as of the time the original check was last properly payable under U.C.C. § 4–401. An accurate representation of information that was illegible on the original check would satisfy this requirement. The payment instructions placed on the check by, or as authorized by, the drawer, such as the amount of the check, the payee, and the drawer’s signature, must be accurately represented, because that information is an essential element of a negotiable instrument. Other information that must be accurately represented includes (1) the information identifying the drawer and the paying bank that is preprinted on the check, including the MICR line; and (2) other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any indorsements applied to the back of the check. A substitute check need not capture other characteristics of the original check, such as watermarking, microprinting, or other physical security features that cannot survive the imaging process or decorative images, in order to meet the accuracy requirement. Conversely, some security features that are latent on the original check might become visible as a result of the check imaging process. For example, the original check might have a faint representation of the word “void” that will appear more clearly on a photocopied or electronic image of the check. Providing the inclusion of the clearer version of the word on the image used to create a substitute check did not obscure the required information listed above, a substitute check that contained such information could be the legal equivalent of an original check under § 229.51(a). However, if a person suffered a loss due to receipt of such a substitute check instead of the original check, that person could have an indemnity claim under § 229.53 and, in the case of a consumer, an expedited recredit claim under § 229.54.

4. To be the legal equivalent of the original check, a substitute check must bear the legal equivalence legend described in § 229.51(a)(2). A bank may not vary the language of the legal equivalence legend and must place the legend on the substitute check as specified by generally applicable industry standards for substitute checks contained in ANSI X9.100–140.5. In some cases, the original check used to create a substitute check could be forged or otherwise fraudulent. A substitute check created from a fraudulent original check would have the same status under Regulation CC and the U.C.C. as the original fraudulent check. For example, a substitute check of a fraudulent original check would not be properly payable under U.C.C. 4–401 and would be subject to the transfer and presentment warranties in U.C.C. 4–207 and 4–208.

5. In some cases, the original check used to create a substitute check could be forged or otherwise fraudulent. A substitute check created from a fraudulent original check would have the same status under Regulation CC and the U.C.C. as the original fraudulent check. For example, a substitute check of a fraudulent original check would not be properly payable under U.C.C. 4–401 and would be subject to the transfer and presentment warranties in U.C.C. 4–207 and 4–208.

B. 229.51(b) Reconciling-Bank Duties
1. As discussed in more detail in appendix D and the commentary to section 229.35, a reconciling-bank must indorse (or, if it is a paying bank with respect to the check, identify itself on) the back of a substitute check in a manner that preserves all indorsements applied, whether physically or
electronically, by persons that previously handled the check in any form for forward collection or return. Indorsements applied physically to the original check before an image of the check was captured would be preserved through the image of the back of the original check and thereby to the substitute check must contain. Indorsements applied physically to the original check after an image of the original check was captured would be conveyed as electronic indorsements (see paragraph 3 of the commentary to section 229.35(a)). If indorsements were applied electronically after an image of the original check was captured or were applied electronically after a previous substitute check was converted to electronic form, the reconverting bank must apply those indorsements physically to the substitute check. A reconverting bank is not responsible for obtaining indorsements that persons that previously handled the check should have applied but did not apply.

2. A reconverting bank also must identify itself as such on the front and back of the substitute check and must preserve on the back of the substitute check the identifications of any previous reconverting banks in accordance with appendix D. The presence on the back of a substitute check of indorsements applied by previous reconverting banks and identified with asterisks in accordance with appendix D would satisfy the requirement that the reconverting bank preserve the identification of previous reconverting banks. As discussed in more detail in the commentary to section 229.35, the reconverting-bank and truncating-bank routing numbers on the front of a substitute check and, if the reconverting bank is the paying bank or a bank that rejected a check submitted for deposit, must contain. Indorsements applied electronically to the substitute check are for identification only and are not indorsements or acceptances.

3. The reconverting bank must place the routing number of the truncating bank surrounded by brackets on the front of the substitute check in accordance with appendix D and ANS X9.100–140. Example

A bank’s customer, which is a nonbank business, receives checks for payment and by agreement deposits substitute checks instead of the original checks with its depositary bank. The depositary bank is the reconverting bank with respect to the substitute checks and the truncating bank with respect to the original checks. In accordance with appendix D and with ANS X9.100–140, the bank must therefore be identified on the front of the substitute checks as a reconverting bank and as the truncating bank, and on the back of the substitute checks as the depositary bank and a reconverting bank.

C. 229.51(c) Applicable Law

1. A substitute check that meets the requirements set forth in this section is subject to any provision of federal or state law that applies to original checks, except to the extent such provision is inconsistent with the Check 21 Act or subpart D. A legally equivalent substitute check is subject to all laws that are not preempted by the Check 21 Act in the same manner and to the same extent as an original check. Thus, any person could satisfy a law that requires production of an original check by producing a substitute check that is derived from the relevant original check and that meets the legal equivalence requirements of §229.51(a).

2. A law is not inconsistent with the Check 21 Act or subpart D merely because it allows for the recovery of a greater amount of damages.

Example

A drawer that suffers a loss with respect to a substitute check that was improperly charged to its account and for which the drawer has an indemnity claim but not a warranty claim would be limited under the Check 21 Act to recovery of the amount of the substitute check plus interest and expenses. However, if the drawer also suffered damages that were proximately caused because the bank wrongfully dishonored subsequently presented checks as a result of the improper substitute check charge, the drawer could recover those losses under U.C.C. 4–402.

XXXI. §229.52 Substitute Check Warranties

A. 229.52(a) Warranty Content and Provision

1. The responsibility for providing the substitute check warranties begins with the reconverting bank. In the case of a substitute check created by a bank, the reconverting bank starts the flow of warranties when it transfers, presents, or returns a substitute check for which it receives consideration or when it rejects a check submitted for deposit and reconverts it to its customer a substitute check. A bank that receives a substitute check created by a nonbank starts the flow of warranties when it transfers, presents, or returns for consideration either the substitute check it received or an electronic or paper representation of that substitute check. A bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check also makes the warranties.

2. To ensure protection flow all the way through to the ultimate recipient of a substitute check or paper or electronic representation thereof, any subsequent bank that transfers, presents, or returns for consideration either the substitute check or a paper or electronic representation of the substitute check is responsible to subsequent transferees for the warranties. Any warranty recipient could bring a claim for a breach of a substitute check warranty if it received either the actual substitute check or a paper or electronic representation of a substitute check.

3. The substitute check warranties and indemnity are not given under §§229.52 and 229.53 by a bank that truncates the original check and by agreement transfers the original check electronically to another bank for consideration. However, parties may by agreement, allocate liabilities associated with the exchange of electronic check information.

Example

A bank that receives check information electronically and uses it to create substitute checks is the reconverting bank and, when it transfers, presents, or returns that substitute check, becomes the first warrantor. However, that bank may protect itself by including in its agreement with the sending bank provisions that specify the sending bank’s warranties and responsibilities to the reconverting bank with respect to the accuracy of the check image and check data transmitted under the agreement.

4. A bank need not affirmatively make the warranties because they attach automatically when a bank transfers, presents, or returns the substitute check (or a representation thereof) for which it receives consideration. Because a substitute check transferred, presented, or returned for consideration is warranted to be the legal equivalent of the original check and thereby subject to existing laws as if it were the original check, all U.C.C. and other Regulation CC warranties that apply to the original check also apply to the substitute check.

5. The legal equivalence warranty by definition must be linked to a particular substitute check. When an original check is truncated, the check may move from electronic form to substitute check form and then back again, such that there would be multiple substitute checks associated with one original check. When a check changes form multiple times in the collection or return process, the first reconverting bank and subsequent banks that transfer, present, or return the first substitute check (or a paper or electronic representation of the first substitute check) warrant the legal equivalence of only the first substitute check. If a bank receives an electronic representation of a substitute check and uses that representation to create a second substitute check, the second reconverting bank and subsequent transferees of the second substitute check (or a representation thereof) warrant the legal equivalence of both the first and second substitute checks. A reconverting bank would not be liable for a warranty breach under §229.52 if the legal equivalence defect is the fault of a subsequent bank that handled the substitute check, either as a substitute check or in other paper or electronic form.

6. The warranty in §229.52(a)(2)(A)(iv)(iii), which addresses multiple payment requests for the same check, is not linked to a particular substitute check but rather is given by each bank handling the substitute check. An electronic representation of a substitute check, or a subsequent substitute check created from an electronic representation of a substitute check. All banks that transfer, present, or return a substitute check (or a paper or electronic representation thereof) therefore provide the warranty regardless of whether the ultimate demand for double payment is based on the original check, the substitute check, or some other electronic or paper representation of the substitute or original check, and regardless of the order in which the duplicative payment requests occur. This warranty is given by the banks that transfer, present, or return a substitute check even if the demand for duplicative payment results from a fraudulent substitute check about which the warranting bank had no knowledge.
Example. A nonbank depositor truncates a check and in lieu thereof sends an electronic version of that check to both Bank A and Bank B. Bank A and Bank B each uses the check information that it received electronically to create an electronic cash letter, which it presents to Bank C for payment. Bank A and Bank B each is a reconverting bank that made the substitute check warranties when it presented a substitute check to and received payment from Bank C. Bank C could pursue a warranty claim. However, the loss it suffered as a result of the duplicative payment against either Bank A or Bank B.

7. A bank that rejects a check for deposit and instead of the original check provides its customer with a substitute check makes the warranties in §229.52(a)(1). As noted in the commentary to §229.2(uu), the Check 21 Act contemplates that nonbank persons that receive substitute checks (or representations thereof) from a bank will receive warranties and indemnities with respect to the checks. A reconverting bank that provides a substitute check to its depositor after it has rejected the check for deposit may not have received consideration for the substitute check. In order to prevent banks from being able to transfer a check the bank truncated and then reconverted without providing substitute check warranties, the regulation provides that a bank that rejects a check for deposit but provides its customer with a substitute check makes the warranties set forth in §229.52(a)(1) regardless of whether the bank received consideration.

Example. A bank’s customer submits a check at an ATM that captures an image of the check and sends the image electronically to the bank. After reviewing the item, the bank rejects the item submitted for deposit. Instead of providing the original check to its customer, the bank provides a substitute check to its customer. This bank is the reconverting bank with respect to the substitute check and makes the warranties described in §229.52(a)(1) regardless of whether the bank previously extended credit to its customer. (See commentary to §229.2(uu).)

B. 229.52(b) Warranty Recipients

1. A reconverting bank makes the warranties to the person to which it transfers, presents, or returns a substitute check for consideration and to any subsequent recipient that receives either the substitute check or a paper or electronic representation derived from the substitute check. These subsequent recipients could include a subsequent collecting or returning bank, the depositary bank, the drawer, the drawer, the payee, the depositor, and any indorser. The paying bank instead of being included as a warranty recipient, for example because it would be the drawer of a check or a transferee of a check that is payable through it.

2. The warranties flow with the substitute checks, and the warranties described in a substitute check or a paper or electronic representation of a substitute check. The warranties do not flow to a person that receives only the original check or a representation of an original check that was not derived from a substitute check. However, a person that initially handled only the original check could become a warranty recipient if that person later receives a returned substitute check or a paper or electronic representation of a substitute check that was derived from that original check.

3. A reconverting bank also makes the warranties to a person to whom the bank transfers a substitute check that the bank has rejected for deposit regardless of whether the bank received consideration.

3. A reconverting bank also provides the substitute check indemnity to a person to whom the bank transfers a substitute check that the bank has rejected for deposit regardless of whether the bank providing the indemnity has received consideration.

Examples.

a. A paying bank makes payment based on a substitute check that was derived from a fraudulent original cashier’s check. The amount and other characteristics of the original cashier’s check are such that, had the original check been presented instead, the paying bank would have inspected the original check for security features. The paying bank’s fraud detection procedures were designed to detect the fraud in question and allow the bank to return the fraudulent check in a timely manner. However, the security features that the bank would have inspected were security features that did not survive the imaging process (see the commentary to §229.51(a)). Under these circumstances, the paying bank could assert an indemnity claim against the bank that presented the substitute check.

b. By contrast with the previous examples, the indemnity would not apply if the characteristics of the presented substitute check were such that the security policies and procedures would not have detected the fraud even if the original had been presented. For example, if the check was under the threshold amount at which the bank subjects an item to its fraud detection procedures, the bank would not have inspected the item for security features regardless of the form of the item and accordingly would have suffered a loss even if it had received the original check.

c. A paying bank makes an erroneous payment based on an electronic representation of a substitute check because electronic checks the electronic item included the wrong amount to be charged. The paying bank would not have an indemnity claim associated with that payment because its loss did not result from receipt of an actual substitute check instead of the original check. If the paying bank could protect itself from such losses through its agreement with the bank that sent the check to it electronically and may have rights under other law.

d. A drawer has agreed with its bank that the drawer will not receive paid checks with periodic account statements. The drawer requested a copy of a paid check in order to prove payment and received a photocopy of a substitute check. The photocopy that the bank provided in response to the request was illegible, such that the drawer could not prove payment. Any loss that the drawer suffered as a result of receiving the blurry check image would not trigger an indemnity claim because the loss was not caused by the receipt of a substitute check. The drawer may, however, still have a warranty claim if he received a copy of a substitute check, and may also have rights under the U.C.C.

B. 229.53(b) Indemnity Amount

1. If a recipient of a substitute check is making an indemnity claim because a bank has breached one of the substitute check warranties, the recipient can recover any losses proximately caused by that warranty breach.

Examples.

a. A drawer discovers that its account has been charged for two different substitute checks that were provided to the drawer and that were associated with the same original check. As a result of this duplicative charge, the paying bank dishonored several subsequently-presented checks that it otherwise would have paid and charged the drawer returned check fees. The payees of the returned checks also charged the drawer returned check fees. The drawer would have a warranty claim against any of the warranting banks, including its bank, for breach of the warranty described in §229.52(a)(1). The drawer also could assert an indemnity claim. Because there is only one original check for any payment transaction, if the collecting and presenting bank had collected the original check instead of using a substitute check the bank would have been asked to make only one payment. The drawer could assert its indemnity claim against the paying bank, because that is the bank with which the drawer has a customer relationship and the drawer has received an indemnity claim from that bank. The drawer could recover from the indemnifying bank the amount of the erroneous charge, as well as the amount of the returned check fees charged by both the paying bank and the payees of the returned checks. If the drawer’s account were an interest-bearing account, the drawer also could recover any interest lost on the erroneously debited amount and the
§ 229.38(c).

comparative negligence provision of § 229.53 by producing the original check or a sufficient copy. However, production of the original check or a sufficient copy does not absolve the indemnifying bank from liability claims relating to a warranty the bank has provided under § 229.52 or any other law, including but not limited to part C of this part or the U.C.C.

C. 229.53(c) Subrogation of Rights

1. A bank that pays an indemnity claim is subrogated to the rights of the person it indemnified, to the extent of the indemnity it provided, so that it may attempt to recover that amount from another person based on an indemnity, warranty, or other claim. The person that the bank indemnified must comply with reasonable requests from the indemnifying bank for assistance with respect to the subrogated claim.

Example – A paying bank indemnifies a drawer for a substitute check that the drawer alleged was a forgery. If the drawer suffered a loss because it could not prove the forgery based on the substitute check, for example because proving the forgery required analysis of pen pressure that could be determined only from the original check, the drawer would have an indemnity claim. However, the drawer would not have a substitute check warranty claim because the substitute check was the legal equivalent of the original check and no person was asked to pay the substitute check more than once. In that case, the amount of the drawer’s indemnity under § 229.53 would be limited to the amount of the substitute check, plus interest and expenses. However, the indemnified person might be entitled to additional damages under some other provision of law.

Examples – a. A drawer received a substitute check that met all the legal equivalence requirements and for which the drawer was only charged once, but the drawer believed that the underlying original check was a forgery. If the drawer suffered a loss because it could not prove the forgery based on the substitute check, for example because proving the forgery required analysis of pen pressure that could be determined only from the original check, the drawer would have an indemnity claim. However, the drawer would not have a substitute check warranty claim because the substitute check was the legal equivalent of the original check and no person was asked to pay the substitute check more than once. In that case, the amount of the drawer’s indemnity under § 229.53 would be limited to the amount of the substitute check, plus interest and expenses. However, the drawer could attempt to recover additional losses, if any, under other law.

b. As described more fully in the commentary to § 229.53(a) regarding the scope of the indemnity, a paying bank could have an indemnity claim if it paid a legally equivalent substitute check that was created from a fraudulent cashier’s check and if a materially smaller size may not meet the clear and conspicuous standard of section 229.15(a).

2. Information that must be inserted by a bank using the models (except models C–22 and C–25) is italicized within parentheses in the text of the models.

Optional information, and information the inclusion of which is dependent on a bank’s policies and practices, is enclosed in brackets.

3. Banks may make certain changes to the format or content of the models, including deleting material that is inapplicable, without losing the EFA’s protection from liability for banks that use the forms properly. For example, if a bank does not have a cutoff hour prior to its closing time, or if a bank does not take advantage of the section 229.13 exceptions, it may delete the references to those provisions. Changes to the models may not be so extensive as to affect the substance, clarity, or meaningful sequence of the models. Acceptable changes include, for example—

a. Using “customer” and “bank” instead of parties.

b. Changing the typeface or size, although a materially smaller size may not meet the clear and conspicuous standard of section 229.15(a).

c. Incorporating certain state-law plain-English requirements.

4. Although banks are not required to use a certain paper size for their disclosures and notices, model funds-availability disclosures C–1, C–2, C–3A, C–3B, C–4A, and C–4B and notices C–9, C–10, C–11, C–12A, and C–12B are designed to be provided to customers on an 8½ x 11 inch sheet of paper. In addition, the following formatting techniques ensure that the information is readable:

i. A readable font style and font size

ii. Sufficient spacing between lines of the text

iii. Adequate spacing between paragraphs, as appropriate

iv. Sufficient white space and margins above, below and to the sides of the text

v. Sufficient contrast between the text and the background, such as black text on white paper.

b. While the regulation does not require banks to use the above formatting techniques in presenting the information in these disclosures and notices, banks are encouraged to consider these techniques.
when disclosing how to disclose information. A bank that provides a disclosure or notice electronically to a customer comports with the models’ formatting techniques by providing a disclosure or notice in a file format that electronically represents an 8½ x 11 inch sheet of paper with black text and a white background. ▶

5[4]. Shorter time periods for availability may always be substituted for time periods used in the models. ▶

5[5], 5[4]. As already noted, there are several places in the forms accordingly to reflect the bank’s practice. ▶

2. Model C–1, Next-Day Availability. A bank may use this model when its policy is to make funds from all types of deposits available on the next business day after a deposit is made. This model may also be used by banks that provide immediate availability ▶

same-day for check deposits by substituting the word “immediately” ▶

phrase “the same business day” ▶

in place of “on the first business day after the day we receive your deposit.” ▶

2. Model C–1, Next-Day Availability. A bank may use this model when its policy is to make funds from all types of deposits available [on the first] ▶

by the next business day after a deposit is made. This model may also be used by banks that provide immediate availability ▶

same-day for check deposits ▶

by substituting the word “immediately” ▶

phrase “the same business day” ▶

in place of “on the first business day after the day we receive your deposit.” ▶

3. Model C–2, Next-Day Availability and Section 229.13 Exceptions. A bank may use this model when its policy is to make funds from all types of deposits available ▶

on the next day after the deposit is made. ▶

c. Models C–1 through C–3B reflect some information the text in its availability-policy disclosure is dependent on the bank’s funds-availability policies and practices. Additionally, certain other provisions of the regulation that apply only to certain banks are reflected ▶

instead, disclosures for these provisions are included ▶

in models C–4 through C–11A ▶

clauses C–6, C–7, and C–8. ▶

A bank using one of the model availability-policy disclosures should determine whether it must incorporate one or more of ▶

models C–6 through C–11A ▶

these model clauses. A bank for which one or more of these clauses is applicable would append the clause(s) to the end of its availability-policy disclosure. ▶

d. While section 229.10(b) of the regulation requires next-day availability for electronic payments, Treasury regulations (31 CFR 210) and ACH association rules require that preauthorized credits (direct deposits) be made available to a customer when the bank receives the funds. ▶

Models C–1 through C–3B ▶

reflect these rules, Wire transfers [however,] ▶

and cash deposits ▶

are not governed by Treasury or ACH rules, but banks generally make funds from ▶

wire transfers ▶

these types of deposits ▶

available on the day received or on the business day following receipt. Banks should ensure that their disclosures reflect the availability given in most cases for ▶

wire transfers ▶

these types of deposits. A bank that makes the proceeds of cash deposits or wire transfers available for withdrawal on the banking day they are received may specify in its disclosure that these types of deposits are available “the same business day” notwithstanding that the funds were not available at the opening of business on that day. Model C–3B indicate that funds from these types of deposits will be available on the day received. A bank that uses one of these models should modify its disclosure to indicate that funds from cash deposits and wire transfers will be available on the business day following receipt. A bank that uses one of these models but that makes funds from cash deposits and wire transfers available the same day they are received— ▶

i.e., a bank that places holds to statutory limits only on check deposits—may modify the forms accordingly to reflect the bank’s practice. ▶

a. A bank may use [this model] ▶

these models ▶

when its policy, in most cases, is to make funds from all types of deposits available ▶

by the day after the deposit is made to delay availability ▶

up to the maximum time periods allowed under the regulation. A bank using [this model] ▶

these models ▶

also reserves the right to invoke the exceptions listed in section 229.13. [A bank using this model also reserves the right to invoke the exceptions listed in section 229.13. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of ▶

checks other than next-day-availability checks [a nonlocal check ] ▶

b. Model availability-policy disclosure C–3A may be used by a bank that, when it delays availability of a check deposit on a case-by-case basis, does not impose the cash-withdrawal limitation permitted by section 229.12(b), whereas model availability-policy disclosure C–3B may be used by a bank that does impose this limitation when it delays availability on a case-by-case basis. ▶

c. Models C–3A and C–3B include in brackets language related to check cashing, immediate availability, and holds on other 16971 Federal Register / Vol. 76, No. 58 / Friday, March 25, 2011 / Proposed Rules
funds. A bank that bases its disclosure on model C–3A or C–3B would include this bracketed text in its disclosure only if the text corresponds to the bank’s policy and practice. A bank that has such a policy, and that therefore includes this text in its disclosure, would declare the text in the location indicated by the model. A bank that bases its availability-policy disclosure on model disclosure C–3A or C–3B and whose availability policy necessitates incorporation of one or more of the appendix’s model clauses (C–9, C–11, or C–11A) would append those model clauses to the end of the second page of model C–3A or C–3B.

5. Models C–4A, C–4B, Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation; and C–4B, Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation
   a. A bank may use this model when its policy is to impose delays to the full extent permitted by section 229.12(b), must incorporate this type of clause in its availability-policy disclosure.
   b. Model availability-policy disclosure C–4A may be used by a bank that delays availability as allowed under section 229.12 but does not impose the cash-withdrawal limitation permitted by section 229.12(b), must incorporate this type of clause in its availability-policy disclosure.
   c. Models C–4A and C–4B include in brackets language related to check cashing, immediate availability, and holds on other funds. A bank that bases its disclosure on model C–4A or C–4B would include this bracketed text in its disclosure only if the text corresponds to the bank’s policy and practice. A bank that has such a policy and that therefore includes this text in its disclosure would include the text in the location indicated by the model. A bank that bases its availability-policy disclosure on model disclosure C–4A or C–4B and whose availability policy necessitates incorporation of one or more of the appendix’s model clauses (C–9, C–11, or C–11A) would append those model clauses to the end of the second page of model C–4A or C–4B.
   d. Model C–5A bank may use this form when its policy is to impose delays to the full extent allowed by section 229.12 and to reserve the right to invoke the section 229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of checks other than next-day-availability [a nonlocal check].
   e. b. Model availability-policy disclosure C–4A may be used by a bank that delays availability as allowed under section 229.12 but does not impose the cash-withdrawal limitation permitted by section 229.12(b), must incorporate this type of clause in its availability-policy disclosure.
   f. Models C–6 through C–11A [8], Generally. Certain classes like those in the models must be incorporated into a bank’s availability-policy disclosure under certain circumstances. The commentary to each clause indicates when a clause similar to the model clause is required. A bank for which one or more of these classes is applicable would append the clause(s) to the end of its availability-policy disclosure.

2. Model C–6, Holds on Other Funds (Check Cashing)
   A bank that reserves the right to place a hold on funds already on deposit when it cashes a check for a customer, as addressed in section 229.19(e), must incorporate this type of clause in its availability-policy disclosure.

3. Model C–7, Holds on Other Funds (Other Account)
   A bank that reserves the right to place a hold on funds in an account of the customer other than the account into which the deposit is made, as addressed in section 229.19(e), must incorporate this type of clause in its availability-policy disclosure.

4. Model C–8, Appendix B Availability (Nonlocal Checks)
   A bank in a check-processing region where the availability schedules for certain nonlocal checks have been reduced, as described in Appendix B of Regulation CC, must incorporate this type of clause in its availability-policy disclosure.

   a. Model C–9 uses a narrative description.

6. Model C–10, Cash-Withdrawal Limitation
   A bank that imposes cash-withdrawal limitations under section 229.12 must incorporate this type of clause in its availability-policy disclosure. Banks reserving the right to impose the cash-withdrawal limitation and using model C–3 should disclose that funds may not be available until the sixth (rather than fifth) business day following the date of deposit, as permitted by section 229.15(1). A bank must incorporate the type of clause in its availability-policy disclosure. A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under section 229.16(b)(5).

7. Model C–5A [1], Substitute-Check-Policy Disclosure
   a. A bank may use this form when it is providing the disclosure to its consumers required by section 229.57 explaining that a substitute check is the legal equivalent of an original check and the circumstances under which the consumer may make a claim for expedited credit. C. Model Clauses, Models C–6 through C–11A [8].

1. Models C–6 through C–11A [8], Generally. Certain classes like those in the models must be incorporated into a bank’s availability-policy disclosure under certain circumstances. The commentary to each clause indicates when a clause similar to the model clause is required. A bank for which one or more of these classes is applicable would append the clause(s) to the end of its availability-policy disclosure.

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   a. Model C–9 uses a narrative description.

6. Model C–10, Cash-Withdrawal Limitation
   A bank that imposes cash-withdrawal limitations under section 229.12 must incorporate this type of clause in its availability-policy disclosure. Banks reserving the right to impose the cash-withdrawal limitation and using model C–3 should disclose that funds may not be available until the sixth (rather than fifth) business day following the date of deposit, as permitted by section 229.15(1). A bank must incorporate the type of clause in its availability-policy disclosure. A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under section 229.16(b)(5).

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1. Models C–6 through C–11A [8], Generally. Certain classes like those in the models must be incorporated into a bank’s availability-policy disclosure under certain circumstances. The commentary to each clause indicates when a clause similar to the model clause is required. A bank for which one or more of these classes is applicable would append the clause(s) to the end of its availability-policy disclosure.

2. Model C–6, Holds on Other Funds (Check Cashing)
   A bank that reserves the right to place a hold on funds already on deposit when it cashes a check for a customer, as addressed in section 229.19(e), must incorporate this type of clause in its availability-policy disclosure.

3. Model C–7, Holds on Other Funds (Other Account)
   A bank that reserves the right to place a hold on funds in an account of the customer other than the account into which the deposit is made, as addressed in section 229.19(e), must incorporate this type of clause in its availability-policy disclosure.

4. Model C–8, Appendix B Availability (Nonlocal Checks)
   A bank in a check-processing region where the availability schedules for certain nonlocal checks have been reduced, as described in Appendix B of Regulation CC, must incorporate this type of clause in its availability-policy disclosure.

   a. Model C–9 uses a narrative description.

6. Model C–10, Cash-Withdrawal Limitation
   A bank that imposes cash-withdrawal limitations under section 229.12 must incorporate this type of clause in its availability-policy disclosure. Banks reserving the right to impose the cash-withdrawal limitation and using model C–3 should disclose that funds may not be available until the sixth (rather than fifth) business day following the date of deposit, as permitted by section 229.15(1). A bank must incorporate the type of clause in its availability-policy disclosure. A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under section 229.16(b)(5).

7. Model C–5A [1], Substitute-Check-Policy Disclosure
   a. A bank may use this form when it is providing the disclosure to its consumers required by section 229.57 explaining that a substitute check is the legal equivalent of an original check and the circumstances under which the consumer may make a claim for expedited credit. C. Model Clauses, Models C–6 through C–11A [8].
insert the specific reason(s) that may be given for invoking the exception. If a hold is being placed on more than one check in a deposit, each check must be described separately, and if different reasons apply, each reason must be indicated. A bank may disclose its reasons for doubting collectibility by checking the appropriate reason on the model. If the "Other" category is checked, the reason must be given.

1. We received notice that the check is being returned unpaid.
2. We have confidential information that indicates that the check may not be paid.
3. The check is drawn on an account with repeated overdrafts.
4. We are unable to verify a signature on the back of the check.
5. Some information on the check is not consistent with other information on the check.
6. There are apparent alterations on the check.
7. The routing number of the paying bank is not a current routing number.
8. The check is postdated.
9. The check has a stale date, that is, it was written too long ago and is expired.
10. We have been notified that the check has been lost or damaged in collection.

ii. The above list is not intended to be comprehensive; another reason that does not appear in the list may be inserted in place of "(reason for hold)" provided the reason satisfies the conditions for invoking the reasonable cause exception.

iii. If a hold is being placed on more than one check in a deposit, each check should be described separately, and if different reasons apply, each reason should be indicated. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft or returned-check fees after invoking the reasonable-cause exception under section 229.13(e).

Model C–14

10. One-Time Notice for Large-Deposit and Redeposited-Check Exception Hold. This model satisfies the notice requirements of section 229.13(g)(2) concerning nonconsumer accounts.

Model C–15

11. One-Time Notice for Rejected-Deposit Exception Hold. This model satisfies the notice requirements of section 229.13(g)(3).

Model C–16

12. Model C–16 Notice Without Cash-Withdrawal Limitation; and C–16B Notice With Cash-Withdrawal Limitation. [This model] These models satisfy the notice requirements of section 229.16(c)(2) when a bank with a case-by-case hold policy imposes a hold on a deposit.

Model case-by-case hold notice C–12A may be used by a bank that imposes a case-by-case hold, but does not have a policy of imposing the cash-withdrawal limitation permitted by section 229.12(b), whereas model notice C–12B may be used by a bank that imposes such a hold and does have such a policy.

Section 229.16(c)(2)[This notice] does not require a statement of the specific reason for the hold, as is the case when a section 229.13 exception hold is placed. A bank may specify the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit when funds will be available. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

Notice at Locations Where Employees Accept Consumer Deposits—C–17 and Model C–18 Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)

1. These models satisfy the notice requirement of section 229.18(b). Model C–17 reflects an availability policy of holds to statutory limits on all deposits, and model C–18 reflects a case-by-case availability policy.

ii. A bank that models C–13 indicates that funds from cash deposits and wire transfers will be available on the business day following receipt. A bank that uses this model but that makes funds from these types of deposits available the same day they are received—i.e., a bank that places holds to statutory limits only on check deposits—may modify the form accordingly to reflect the bank’s practice. In contrast, model C–14 indicates that funds from cash deposits and wire transfers will be available on the day received. A bank that uses this model should modify its disclosure to indicate that funds from these types of deposits will be available on the next day if that reflects the bank’s practice. A bank should ensure that its notice reflects the availability given in most cases for these types of deposits.

ii. A bank that imposes cash-withdrawal limitations under section 229.12(b) should indicate that funds will generally be available by the third, rather than second, business day after the day of deposit, by replacing the "("number") in the lower-right-hand box of the tables in the models with "third" (rather than second).

Model C–19

15. Notice at Automatic Teller Machines. This model satisfies the ATM notice requirement of section 229.18(c)(1).

Model C–20

16. Notice at Automated Teller Machines (Delayed Receipt). This model satisfies the ATM notice requirement of section 229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under section 229.19(a)(4). It is based on collection of deposits once a week. If collections occur more or less frequently, the description of when deposits are received must be adjusted accordingly.

Model C–21

17. Deposit-Slip Notice. This model satisfies the notice requirements of section 229.18(a) for deposit slips.

Models C–22

18. Through C–25. Generally, Models C–123 and C–25 provide models for the various notices required when a consumer who receives substitute checks makes an expedited recredit claim under section 229.54 for a loss related to a substitute check. The Check 21 Act does not provide banks that use these models with a safe harbor. However, the Board has published these models to aid banks’ efforts to comply with section 229.54(e).

Other

21. Generally, Model C–22, Valid-Claim Refund Notice. A bank may use this model when crediting the entire amount or the remaining amount of a consumer’s expedited-recredit claim to an account that uses the consumer’s claim is valid. This notice could be used when the bank provides the consumer a full recredit based on a valid-claim determination within ten days of the receipt of the consumer’s claim or when the bank rebalances the remaining amount of a consumer’s expedited-recredit claim by the 45th calendar day after receiving the consumer’s claim, as required under section 229.54(a)(1).

22. Generally, Model C–123, Provisional-Refund Notice. A bank may use this model when providing a full or partial expedited recredit to a consumer pending further investigation of the consumer’s claim, as required under section 229.54(a)(1).

23. Generally, Model C–124, Reversal Notice. A bank may use this model when reversing an expedited recredit that was credited to a consumer’s account under section 229.54(e)(3).

37. Revise Appendix F to Part 229 to read as follows:

Appendix F to Part 229—Official Board Interpretations; Preemption Determinations

Uniform Commercial Code, Section 4–213(5)

1. State provision that may supersede Regulation CC

Section 4–213(5) of the Uniform Commercial Code ("U.C.C.") provides that money deposited in a bank is available for withdrawal as of right at the opening of business of the banking day after deposit. Although the language "deposited in a bank" is unclear, arguably it is broader than the language "made in person to an employee of the depository bank," which conditions the next-day availability of cash under Regulation CC (§ 229.10(a)(1)). Under Regulation CC, deposits of cash that are not made in person to an employee of the depository bank must be made available by the third business day after the banking day of deposit (§ 229.10(a)(2)). Therefore, this provision of the U.C.C. may call for the availability of certain cash deposits in a shorter time than provided in Regulation CC. To the extent that section 4–213(5) of the U.C.C. requires certain cash deposits in a shorter time than provided in Regulation CC, that section supersedes Regulation CC.

2. State provision superseded by Regulation CC

Section 4–213(5) of the U.C.C., however, is subject to Section 4–103(1), which provides,
in part, that “the effect of the provisions of this Article may be varied by agreement * * *.” The Regulation CC funds availability requirements may not be varied by agreement. Therefore, a depository bank may agree to extend availability beyond the requirements in Regulation BB (2 CFR §§ 213(1)), but may not agree with its customer under section 4–103(1) of the Code to extend availability beyond the time periods provided in § 229.10(a) of Regulation CC.

Other preemption determinations. California regulations.

California has three separate sets of regulations establishing maximum availability schedules, all adopted pursuant to California Financial Code section 866.5 (which requires the banking commissioners to promulgate regulations establishing a reasonable period of time within which a depository institution must make deposited funds available to customers) and California Commercial Code section 4–213(4)(a), that were in effect on or before September 1, 1989. The regulations applicable to commercial banks and branches of foreign banks (collectively, banks) located in California (Cal. Admin. Code tit. 10, §§ 106.100–106.202) were promulgated by the superintendent of banks. The regulations applicable to savings banks and savings and loan associations (collectively, savings institutions) (Cal. Admin. Code tit. 10, §§ 106.200–106.202) were promulgated by the savings and loan commissioner. The regulations applicable to industrial loan companies (Cal. Admin. Code tit. 10, § 40.101) were promulgated by the Commissioner of Corporations. California Financial Code section 867 also establishes availability periods for funds deposited by cashier’s check, certified check, teller’s check, or depository check under certain circumstances. Finally, California Financial Code section 866.2 establishes disclosure requirements.

Funds availability periods

A. Banks and savings institutions.

The regulations applicable to California banks and savings institutions provide that a depository bank shall make funds deposited into a deposit account available for withdrawal as provided in Regulation CC subject to the following:

Cashier’s checks, teller’s checks, certified checks, or depository checks. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier’s check, teller’s check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement applies to cashier’s checks and teller’s checks only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state’s second-day availability requirement applies to cashier’s and teller’s checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement provides for holds of the same number of days as the federal schedules and therefore supersedes the federal schedules if the California regulations do not allow the funds to be made available later in the day than does Regulation CC.

Checks drawn on in-state bank with a different four-digit routing symbol. California regulations require banks (not including savings institutions) to provide fourth business day availability of funds deposited into a bank with a four-digit routing symbol of 1210 ("1210 bank") if a check drawn on an in-state bank with a four-digit routing symbol of 1220 ("1220 bank"). Similarly, a 1220 bank that receives a check drawn on a 1210, in-state bank may make the funds available for withdrawal by the fourth business day after deposit. Regulation CC, however, provides that checks must be made available for withdrawal by the second business day after the banking day of deposit. Because California’s regulations permit depository banks to make funds available within a longer period of time than the federal schedules, California’s regulations are superseded by the EFA Act and part B of Regulation CC.

Paying bank. The California regulation uses the term paying bank and describing the institution on which these checks are drawn, but does not define paying bank or bank. Regulation CC’s definitions of paying bank and bank include savings institutions and credit unions as well as commercial banks and branches of foreign banks. However, because the California regulation makes separate provisions for checks drawn on savings institutions and credit unions, the Board concludes that the term paying bank, as used in the California regulation, includes only commercial banks and foreign bank branches.

Exceptions to the availability schedules. Under the state preemption standards of Regulation CC (see § 229.20(c) and accompanying Commentary), for deposits subject to the state availability schedules, a state exception may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depository bank may further extend the hold under any federal exception applicable to the deposit. If no state exceptions exist, then no exceptions holds may be placed on deposits covered by state schedules. Thus, to the extent that California law provides for exceptions to the California schedules that supersede Regulation CC, those exceptions may be applied in order to extend the state availability schedules up to the federal availability schedules or such later time as is permitted by a federal exception.

B. Industrial loan companies.

Section 229.20(l)(1)(i) of Regulation CC, the term bank includes an insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813). That Act defines bank to include any State bank (12 U.S.C. 1813(a)(1)(A)) and, in turn, defines State bank to include an industrial bank or similar nonprofit institution that is a depository and is incorporated under the laws of any state (12 U.S.C. 1813(a)(2)). The California regulations applicable to industrial loan companies set forth a funds availability schedule that does not incorporate the periods set forth in Regulation CC. Accordingly, the following preemption determination sets forth the provisions of state law that supersede federal law and those that are preempted by it.

Check of $100 or less. California regulations require industrial loan companies to give next-day availability to a check of $100 or less. Therefore, Regulation CC’s provision supersedes the Regulation CC provision if on a single banking day multiple checks, each under $100, are deposited.

U.S. Treasury, state and local government checks. California regulations require industrial loan companies to give next-day availability to items drawn by the State of California or any of its departments, agencies, or political subdivisions. Regulation CC conditions next-day availability on receipt of the deposit at a staffed teller station or use of a special deposit slip.

On-us checks. California regulations require industrial loan companies to provide second business day availability to checks drawn on the depositary bank. Regulation CC requires next-day availability for checks deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank. Thus, generally, the Regulation CC rule for availability of on-us checks preempts the California regulations. To the extent, however, that an on-us check is deposited at an off-premises ATM or another facility of the depositary bank that is not considered a branch under federal law, the state regulation applies the Regulation CC availability requirements.

Cashier’s checks, teller’s checks, certified checks, or depository checks. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier’s check, teller’s check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement applies to cashier’s checks and teller’s checks issued to a non-customer of the bank for other than remittance purposes, the state two-day availability requirement for holds of the same number of days as the federal schedules and therefore supersedes the federal local and nonlocal schedules if the California regulations do not allow the funds to be made available later in the day than does Regulation CC.

In-state and out-of-state checks. California regulations require industrial loan companies to make funds deposited by a check drawn on a depository institution in California available no later than the sixth business day after deposit. Industrial loan companies are required to make funds deposited by a check drawn on a depository institution outside of California available no later than the twelfth business day after deposit. Regulation CC, however, generally requires depositary banks to make funds deposited by a check drawn on any depository bank available no later
than the second business day after deposit. Accordingly, California’s regulation permitting longer holds by industrial loan companies is preempted by Regulation CC.

Exceptions to the availability schedules. California regulations provide exceptions to the state schedules applicable to industrial loan companies for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state’s availability schedule (e.g., cashier’s or teller’s checks that are not deposited with a special deposit slip or at a staff teller station and on-us checks deposited at an off-premises ATM or another facility of the depositary bank that is not considered a branch under federal law), the state exceptions may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with §229.13(g) of Regulation CC.

2. Disclosures

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229 of Regulation CC provides that inconsistency may exist when a state law provides for disclosures concerning funds availability relating to accounts. California Financial Code § 866.2 requires disclosures that differ from those required by Regulation CC and, therefore, is preempted to the extent that it applies to accounts as defined in Regulation CC. Thus, the state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

The Department of Savings and Loan regulations provide that for those non-transaction accounts covered by state law but not by federal law, disclosures in accordance with Regulation CC will be deemed to comply with the state law disclosure requirements. To the extent that the Department of Savings and Loan regulations permit reliance on Regulation CC disclosures for transaction accounts and to the extent the state regulations survive the preemption of California Financial Code § 866.2, they are not preempted by, nor do they supersede, the federal law. The state law continues to apply to savings accounts and other non-transaction accounts not governed by Regulation CC disclosure requirements.

3. Other general provisions

Accounts. The California funds availability laws and regulations apply to accounts as defined by Regulation CC as well as savings accounts as defined in the Board’s Regulation D (12 CFR 204.2(d)), negotiable order of withdrawal draft accounts, share draft accounts and other share accounts (other than time accounts). (California Financial Code section 866(b)) The funds availability schedules in Regulation CC apply only to accounts as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability regulations continue to apply to deposits in savings and other accounts (such as accounts in which the account-holder is another bank) that are not accounts under Regulation CC. Under §229.19(e) of Regulation CC (Holds on other funds), however, the federal availability schedules may apply to savings, time, and other accounts not defined as accounts under Regulation CC. Thus, for determining whether the permissible hold under the California availability schedule supersedes the Regulation CC schedule, deposits are considered made on the specified number of business days following the banking day of deposit.

Availability at start of day. The California regulations do not specify when during the day funds must be made available for full withdrawal. Section 229.19(b) of Regulation CC provides that funds must be made available at the start of the business day. In those cases where federal and state law provide for holds for the same number of days, to the extent that the California regulations allow funds to be made available later in the day than does Regulation CC, the federal law would preempt state law.

Checks. The California law applies to any item (California Financial Code section 866.5 and California Commercial Code section 4213(4)(a)). The California Commercial Code defines item to mean any instrument for the payment of money even though it is not negotiable * * * (Cal. Com. Code section 4104(g)). This term is broader in scope than the definition of check in the Act and Regulation CC. All of the regulations, however, define the term item to include checks, negotiable orders of withdrawal, share drafts, warrants, and money orders. As limited by the state regulations, the state law applies only to instruments that are also checks as defined in §229.2(k) of Regulation CC.

Illinois

Section 4–213(5) of the U.C.C. as adopted in Illinois (Illinois Revised Statutes Chapter 26, paragraph 4–213(5), enacted July 26, 1988) provides that funds from deposits must be available in accordance with the provisions of the federal Expedited Funds Availability Act (Title VI of the Competitive Equality Banking Act of 1987) and the regulations promulgated by the Federal Reserve Board for the implementation of that Act. Therefore, Section 4–213(5) of the Illinois law does not supersede Regulation CC; and, because this provision of Illinois law does not permit funds to be made available for withdrawal in a longer period of time than required under the Act and Regulation, it is not preempted by Regulation CC.

Maine

Maine’s funds availability (Title 9–B MRSA section 241(5), adopted in 1985) requires Maine financial institutions to make funds deposited in a transaction account, savings account, or time account available for withdrawal within a reasonable period. The Maine statute gives the Superintendent of Banking for the State of Maine the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability. Under the Superintendent of Banking’s regulations, effective July 1, 1987 (Regulation 18(IV)), and adopted amendments to this regulation, effective September 1, 1988, funds deposited to any deposit account in a Maine financial institution are available for withdrawal in accordance with the Act and Regulation CC (Regulation 18–IV(A)(1), 02–029–118 Me. Code. R. § IV). The state regulation provides that an institution’s funds availability policies for accounts subject to Regulation CC be disclosed in a manner consistent with the Regulation CC requirements. Funds availability policies for accounts not subject to Regulation CC must be disclosed in accordance with the state regulation (Regulation 18–IV(A)(2)).

Funds availability and disclosures. The Maine regulations incorporate the Regulation CC availability and disclosure requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the Maine regulation is not preempted by, nor does it supersede, the federal law.

Accounts. The Maine funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts, as defined in the Board’s Regulation D (12 CFR 204.2(b)). The funds availability schedules in Regulation CC apply only to accounts as defined in Regulation CC, which generally consist of transaction accounts. The Maine funds availability law and regulations continue to apply to deposits in all accounts, including those that are not accounts under Regulation CC. Under §229.19(e) of Regulation CC (Holds on other funds), however, the federal availability schedules may apply to savings, time, and other accounts not defined as accounts under Regulation CC in certain circumstances.


1. Funds availability periods

Massachusetts requires banking institutions to make funds available for withdrawal in accordance with the EFA Act and Regulation CC. Massachusetts defines local originating depository institution (local paying bank in Regulation CC terminology) as a depository institution located in Massachusetts (as distinguished from a depository institution located in the same
check-processing region—the terminology the EFA Act uses. Regulation CC no longer distinguishes between “local” and “nonlocal” originating depository institutions, and therefore, the term “local originating depository institution” is no longer relevant for purposes of funds availability. Because the Massachusetts statute incorporates the Regulation CC availability requirements, the state requirements are consistent with the federal requirements, and the Massachusetts statute is not preempted by, nor does it supersede, the federal law.

2. Disclosures

The Massachusetts regulation incorporates the Regulation CC disclosure requirements with respect to both accounts covered by Regulation CC and savings and other accounts not governed by the federal regulation. Because the state requirements are consistent with the federal requirements, the Massachusetts regulation is not preempted by, nor does it supersede, the federal law. The Massachusetts disclosure rules would continue to apply to accounts not governed by the Regulation CC disclosure requirements.

3. Other general provisions

Accounts. The Massachusetts statute governs the availability of funds deposited in “any demand deposit, negotiable order of withdrawal account, savings deposit, share account or other asset account.” Regulation CC applies only to accounts as defined in § 229.2(a) of Regulation CC. Regulation CC does not affect the Massachusetts statute to the extent that the state law applies to deposits in savings accounts and time deposits, as well as accounts as defined in § 229.2(a) of Regulation CC. Because the state law applies to deposits in savings accounts and time deposits, which are not accounts under Regulation CC, under § 229.19(e) of Regulation CC, Holds on other funds, the federal availability schedules may apply to savings, time, and other accounts not defined as accounts under Regulation CC, in certain circumstances.

Items. The New York statute governs the availability of funds deposited in savings accounts and time deposits, as well as accounts as defined in § 229.2(a) of Regulation CC. The Board interprets the definition of item in New York law to be consistent with the definition of check in Regulation CC (§ 229.2(k)).


Robert deV Frierson,
Deputy Secretary of the Board.

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