

§ 4003. Safeguard exceptions**(a) New accounts**

Notwithstanding section 4002 of this title, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period (or such shorter period as the Board, jointly with the Director of the Bureau of Consumer Financial Protection, may establish) beginning on the date such account is established—

(1) Next business day availability of cash and certain items

Except as provided in paragraph (3), in the case of—

- (A) any cash deposited in such account;
- (B) any funds received by such depository institution by wire transfer for deposit in such account;
- (C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and
- (D) any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 4002(a)(2) of this title,

such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

(2) Availability of other items

In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 4002(b), 4002(c), or paragraphs¹ (1) of section 4002(e) of this title.

(3) Limitation relating to certain checks in excess of \$5,000

In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds \$5,000—

- (A) paragraph (1) shall apply only with respect to the first \$5,000 of such aggregate amount; and
- (B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) Large or redeposited checks; repeated overdrafts

The Board, jointly with the Director of the Bureau of Consumer Financial Protection, may, by regulation, establish reasonable exceptions to any time limitation established under subsection (a)(2), (b), (c), or (e) of section 4002 of this title for—

- (1) the amount of deposits by one or more checks that exceeds the amount of \$5,000 in any one day;

(2) checks that have been returned unpaid and redeposited; and

(3) deposit accounts which have been overdrawn repeatedly.

(c) Reasonable cause exception**(1) In general**

In accordance with regulations which the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall prescribe, subsections (a)(2), (b), (c), and (e) of section 4002 of this title shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f).

(2) Basis for determination

No determination under this subsection may be based on any class of checks or persons.

(3) Overdraft fees

If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if—

- (A) the depositor was not provided with the written notice required under subsection (f) (with respect to such determination) at the time the deposit was made;
- (B) the overdraft would not have occurred but for the fact that the funds so deposited are not available; and
- (C) the amount of the check is collected from the originating depository institution.

(4) Compliance

Each agency referred to in section 4009(a) of this title shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution and shall describe in each report to the Congress the extent to which this subsection is being complied with. For the purpose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) as a result of the application of this subsection.

(d) Emergency conditions

Subject to such regulations as the Board, jointly with the Director of the Bureau of Consumer Financial Protection, may prescribe, subsections (a)(2), (b), (c), and (e) of section 4002 of this title shall not apply to funds deposited by check in any receiving depository institution in the case of—

- (1) any interruption of communication facilities;
- (2) suspension of payments by another depository institution;
- (3) any war; or
- (4) any emergency condition beyond the control of the receiving depository institution,

¹ So in original. Probably should be "paragraph".

if the receiving depository institution exercises such diligence as the circumstances require.

(e) Prevention of fraud losses

(1) In general

The Board, jointly with the Director of the Bureau of Consumer Financial Protection, may, by regulation or order, suspend the applicability of this chapter, or any portion thereof, to any classification of checks if the Board, jointly with the Director of the Bureau of Consumer Financial Protection, determines that—

(A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and

(B) suspension of this chapter, or such portion of this chapter, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) Sunset provision

No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) Report to Congress

(A) Notice of each suspension

Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) Contents of report

Each report under subparagraph (A) shall contain—

(i) the specific reason for prescribing the regulation or issuing the order;

(ii) evidence considered by the Board, jointly with the Director of the Bureau of Consumer Financial Protection, in making the determination under paragraph (1) with respect to such regulation or order; and

(iii) specific examples of the check-related fraud giving rise to such regulation or order.

(f) Notice of exception; availability within reasonable time

(1) In general

If any exception contained in this section (other than subsection (a)) applies with respect to funds deposited in an account at a depository institution—

(A) the depository institution shall provide notice in the manner provided in paragraph (2) of—

(i) the time period within which the funds shall be made available for withdrawal; and

(ii) the reason the exception was invoked; and

(B) except where other time periods are specifically provided in this chapter, the

availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board, jointly with the Director of the Bureau of Consumer Financial Protection.

(2) Time for notice

The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection (d) or (e) applies, notice shall be provided by the depository institution in accordance with regulations of the Board, jointly with the Director of the Bureau of Consumer Financial Protection.

(D) In the case of a deposit to which subsection (b)(1) or (b)(2) applies, the depository institution may, for nonconsumer accounts and other classes of accounts, as defined by the Board, that generally have a large number of such deposits, provide notice at or before the time it first determines that the subsection applies.

(E) In the case of a deposit to which subsection (b)(3) applies, the depository institution may, subject to regulations of the Board, provide notice at the beginning of each time period it determines that the subsection applies. In addition to the requirements contained in paragraph (1)(A), the notice shall specify the time period for which the exception will apply.

(3) Subsequent determinations

If the facts upon which the determination of the applicability of an exception contained in subsection (b) or (c) to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known to the depository institution.

(Pub. L. 100-86, title VI, § 604, Aug. 10, 1987, 101 Stat. 642; Pub. L. 102-242, title II, §§ 225, 227(b)(2), Dec. 19, 1991, 105 Stat. 2307, 2308; Pub. L. 111-203, title X, § 1086(b), July 21, 2010, 124 Stat. 2085.)

AMENDMENTS

2010—Subsecs. (a) to (e). Pub. L. 111-203, § 1086(b)(1), inserted “, jointly with the Director of the Bureau of Consumer Financial Protection,” after “Board” wherever appearing.

Subsec. (f)(1)(B), (2)(C). Pub. L. 111-203, § 1086(b)(2), substituted “Board, jointly with the Director of the

Bureau of Consumer Financial Protection.” for “Board.”

1991—Subsec. (a)(2). Pub. L. 102-242, §227(b)(2), struck out “and (2)” after “paragraphs (1)”.

Subsec. (b). Pub. L. 102-242, §225(1), inserted “(a)(2),” after “subsection”.

Subsec. (c)(1). Pub. L. 102-242, §225(2), substituted “(a)(2)” for “(a)(2)(F)”.

Subsec. (d). Pub. L. 102-242, §225(3), inserted “(a)(2),” after “subsections”.

Subsec. (f)(1)(A)(i). Pub. L. 102-242, §225(4), substituted “time period within which” for “day”.

Subsec. (f)(2)(D), (E). Pub. L. 102-242, §225(5), added subpars. (D) and (E).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100-86, set out as a note under section 4001 of this title.

§ 4004. Disclosure of funds availability policies

(a) Notice for new accounts

Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) Preprinted deposit slips

All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board, jointly with the Director of the Bureau of Consumer Financial Protection, in regulations, that deposited items may not be available for immediate withdrawal.

(c) Mailing of notice

(1) First mailing after enactment

In the first regularly scheduled mailing to customers occurring after September 1, 1988, but not more than 60 days after September 1, 1988, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institution has provided a disclosure which meets the requirements of this section before September 1, 1988.

(2) Subsequent changes

A depository institution shall send a written notice to customers at least 30 days before im-

plementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

(3) Upon request

Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into a customer's account.

(d) Posting of notice

(1) Specific notice at manned teller stations

Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a consumer account.

(2) General notice at automated teller machines

In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) Notice of interest payment policy

If a depository institution described in section 4005(b) of this title begins the accrual of interest or dividends at a later date than the date described in section 4005(a) of this title with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a) and (c) shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

(f) Model disclosure forms

(1) Prepared by Board and Bureau

The Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

(2) Use of forms to achieve compliance

A depository institution shall be deemed to be in compliance with the requirements of this section if such institution—

(A) uses any appropriate model form or clause as published by the Board, jointly with the Director of the Bureau of Consumer Financial Protection,¹ or

¹ So in original.