

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

### FEDERAL RESERVE SYSTEM

#### 12 CFR Part 210

[Regulation J; Docket No. R-1599]

RIN 7100 AE 98

#### Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule and comment request.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is publishing for comment proposed amendments to Regulation J. The proposed amendments are intended to clarify and simplify certain provisions of Subpart A of Regulation J, remove obsolete provisions, and align the rights and obligations of sending banks, paying banks, and Federal Reserve Banks (Reserve Banks) with the Board's recent amendments to Regulation CC, Availability of Funds and Collection of Checks, to reflect the virtually all-electronic check collection and return environment. The proposed rule would also amend subpart B of Regulation J to clarify that terms used in financial messaging standards, such as ISO 20022, do not confer legal status or responsibilities.

**DATES:** Comments must be submitted by May 14, 2018.

**ADDRESSES:** You may submit comments, identified by Docket No. R-1599 and RIN 7100-AE98, by any of the following methods:

- *Agency Website:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>
- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

*Instructions:* All public comments will be made available on the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified 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 form in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

**FOR FURTHER INFORMATION CONTACT:** Clinton N. Chen, Senior Attorney (202/452-3952), Legal Division; or Ian C.B. Spear, Manager (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; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Subpart A of Regulation J governs the collection of checks and other items by the Reserve Banks. This subpart includes the warranties and indemnities that are given to the Reserve Banks by parties that send items to the Reserve Banks for collection and return, as well as the warranties and indemnities for which the Reserve Banks are responsible in connection with the items they handle. Subpart A also describes the methods by which the Reserve Banks may recover for losses associated with their collection of items. Subpart A authorizes the Reserve Banks to issue operating circulars governing the details of the collection of checks and other items and provides that such operating circulars have binding effect on all parties interested in an item

handled by a Reserve Bank. The Reserve Banks' Operating Circular No. 3, "Collection of Cash Items and Returned Checks" (OC 3),<sup>1</sup> is the operating circular that is most relevant to the Reserve Banks' check collection activities. Subpart B of Regulation J provides rules to govern funds transfers through the Reserve Banks' Fedwire Funds Service. This service is also governed by the Reserve Banks' Operating Circular No. 6, "Funds Transfers through the Fedwire Funds Service" (OC 6).<sup>2</sup>

#### II. Overview of Proposed Amendments

##### A. Alignment With Regulation CC Amendments Addressing Electronic Checks

In 2004, the Board amended Regulation J to cover electronic check processing options that the Reserve Banks offered after the Check Clearing for the 21st Century Act (Check 21 Act) took effect in October 2004.<sup>3</sup> The Board's amendments to Regulation J at the time included provisions to address the rights and obligations of banks and Reserve Banks relating to electronic items handled by Reserve Banks.<sup>4</sup>

As a result of the 2004 amendments, Regulation J defines an "electronic item" as an electronic image of, and information describing, an item that a Reserve Bank agrees to handle pursuant to an operating circular.<sup>5</sup> Regulation J also sets forth certain warranties provided to the Reserve Banks by the sender of an electronic item and certain

<sup>1</sup> See, <https://www.frbservices.org/assets/resources/rules-regulations/072315-operating-circular-3.pdf>.

<sup>2</sup> See, <https://www.frbservices.org/assets/resources/rules-regulations/operating-circular-6-102917.pdf>.

<sup>3</sup> The Board's Regulation CC implements the Expedited Funds Availability Act of 1987 (EFA Act), 12 U.S.C. 4001 *et seq.*; and the Check Clearing for the 21st Century Act of 2003 (Check 21 Act), 12 U.S.C. 5001 *et seq.* The Check 21 Act facilitated electronic collection and return of checks by permitting banks to create a paper "substitute check" from an electronic image and electronic information derived from a paper check. The Check 21 Act authorized banks to provide substitute checks to a bank or a customer that had not agreed to electronic exchange. The Board implemented the Check 21 Act primarily in subpart D of Regulation CC.

<sup>4</sup> At the time, the Board's Regulation CC presumed that banks generally handled checks in paper form, and the Uniform Commercial Code did not explicitly address electronic checks other than to say the terms of electronic presentment may be governed by agreement (U.C.C. 4-110).

<sup>5</sup> 12 CFR 210.2(i).

warranties provided by the Reserve Banks when sending or presenting an electronic item.<sup>6</sup> Specifically, Regulation J provides that for electronic items, the sender and the Reserve Banks make warranties (1) as set forth in the Uniform Commercial Code (U.C.C.) and Regulation CC as if the electronic item were subject to their terms; and (2) similar to those made for substitute checks under the Check 21 Act (“Check-21-like warranties”).<sup>7</sup> Regulation J also currently provides similar provisions related to checks that are returned as electronic items.<sup>8</sup>

In 2017, the Board published a final rule amending Regulation CC to reflect the virtually all-electronic check collection and return environment.<sup>9</sup> Among other things, the amendments created a regulatory framework for the collection and return of electronic items (*i.e.*, electronic images and electronic information derived from a paper item) by defining the terms “electronic check” and “electronic returned check,” creating Check-21-like warranties for electronic checks and electronic returned checks, and applying existing paper-check warranties to electronic checks and electronic returned checks.

Accordingly, the Board is proposing amendments to align subpart A of Regulation J with the Board’s 2017 amendments to Regulation CC and incorporate certain provisions by reference, thereby reducing the need for duplication and improving consistency between the regulations. Under the Board’s proposal, the term “electronic item” would be removed from Regulation J and “check” and “returned check” would be defined to include an electronic check and electronic returned check as defined in § 229.2 of Regulation CC. The term “item” would also be defined to include an electronic check as defined in Regulation CC. The Board also proposes to eliminate duplicative provisions by removing the Check-21-like warranties currently provided under Regulation J by the sender and the Reserve Banks. Instead, Regulation J would provide that the sender of an item (including an

<sup>6</sup> 12 CFR 210.5(a)(3)–(4) sets forth warranties provided by the sender of an electronic item; 12 CFR 210.6(b)(2)–(3) sets forth warranties provided by the Reserve Banks related to electronic items.

<sup>7</sup> That is, warranties that a bank will not be asked to pay an item twice and that the electronic image and electronic information are sufficient to create a substitute check.

<sup>8</sup> 12 CFR 210.12(c)(3)–(4) sets forth warranties provided by the sender of a returned check that is an electronic item; 12 CFR 210.12(e)(1)(ii)–(iii) sets forth warranties provided by the Reserve Banks related to a returned check that is an electronic item.

<sup>9</sup> 82 FR 27552 (June 15, 2017).

electronic check) and the Reserve Banks would (as applicable and unless otherwise provided) make all the warranties and indemnities set forth in and subject to the terms of subparts C and D in Regulation CC. The Board proposes similar amendments to the provisions of Regulation J that currently address returning checks as electronic items.

#### B. Electronically Created Items

In the 2017 amendments to Regulation CC, the Board included certain indemnities with respect to electronically-created items (ECIs), which are check-like items created in electronic form that never existed in paper form. ECIs can be difficult to distinguish from electronic images of paper checks. As a practical matter, a bank receiving an ECI often handles it as if it were derived from a paper check. However, because there was no original paper check corresponding to the ECI, the warranties, indemnities, and other provisions of Regulation CC would not apply to those items. As the Board explained in the 2017 Regulation CC amendments, the payee and the depositary bank are best positioned to know whether an item is electronically created and to prevent the item from entering the check-collection system. Therefore, to protect banks that receive ECIs during the check collection process, the Board’s Regulation CC amendments provided indemnities that ultimately shift liability for losses to the depositary bank because either the ECI (1) is not derived from a paper check, (2) was unauthorized, or (3) was transferred or presented for payment more than once.<sup>10</sup> The proposed amendments to incorporate Regulation CC’s warranties and indemnities into Regulation J by reference would include these ECI indemnities.

Currently, neither Regulation CC nor Regulation J explicitly address the

<sup>10</sup> 12 CFR 229.34(g) provides that “each bank that transfers or presents an electronically-created item and receives a settlement or other consideration for it shall indemnify, as set forth in § 229.34(i), each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against losses that result from the fact that—(1) The electronic image or electronic information is not derived from a paper check; (2) The person on whose account the electronically-created item is drawn did not authorize the issuance of the item in the amount stated on the item or to the payee stated on the item (for purposes of this paragraph (g)(2), “account” includes an account as defined in section 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); or (3) A person receives a transfer, presentation, or return of, or otherwise is charged for an electronically-created item such that the person is asked to make payment based on an item or check it has already paid.”

sending of ECIs to the Reserve Banks. However, the definition of item in Regulation J as currently drafted does not encompass ECIs and therefore does not allow for the handling of ECIs by the Reserve Banks. Regulation J defines an item, in part, as “an instrument or a promise or order to pay money, whether negotiable or not” that meets several other requirements.<sup>11</sup> The terms “instrument,” “promise,” and “order” are defined under the U.C.C. as requiring a writing.<sup>12</sup> Because they never existed in tangible form and therefore do not qualify as writings, ECIs are not “items” as currently defined in Regulation J. To provide greater clarity, the Board proposes to amend the definition of “item” in subpart A of Regulation J to explicitly state that the term does not include an ECI as defined Regulation CC.

Furthermore, because Regulation J is intended to provide rules for the collection and return of items by the Reserve Banks, the Board is proposing amendments to Regulation J that would allow the Reserve Banks to require senders to provide warranties and indemnities that only “items” and any “noncash items” the Reserve Banks have agreed to handle will be provided to the Reserve Banks. The Board’s proposed amendments would also permit the Reserve Banks to provide a subsequent collecting bank and a paying bank the warranties and indemnities provided by the sender. As with the amendments to Regulation CC, the Board believes the proposed amendments will help to shift liability to parties better positioned to know whether an item is electronically created and to prevent the item from entering the check-collection system.

The Board recognizes that the proposed amendments may affect the creation and acceptance of ECIs. However, the Board’s proposed amendments would not prevent parties that desire to exchange ECIs from doing so by agreement using direct exchange relationships or other methods not involving the Reserve Banks. The Board believes such arrangements are more

<sup>11</sup> 12 CFR 210.2(i).

<sup>12</sup> Terms not otherwise defined in Regulation J or Regulation CC have the meanings set forth in the U.C.C. Under the U.C.C., “instrument” means a “negotiable instrument” which is defined in part as “unconditional promise or order to pay a fixed amount of money.” U.C.C. 3–104. “Promise” is defined as “a written undertaking to pay money signed by the person undertaking to pay.” U.C.C. 3–103. “Order” is defined as “a written instruction to pay money signed by the person giving the instruction.” U.C.C. 3–103. “Writing” and “written” are defined as including “printing, typewriting, or any other intentional reduction to tangible form.” U.C.C. 1–201.

appropriate to ensure all parties knowingly accept any corresponding risks arising from the fact that the ECI never existed in paper form and therefore does not carry with it the warranties, indemnities, and other provisions associated with a check. The Board requests comment on possible implications that this clarification and change related to ECIs in Regulation J may have on financial institutions or the industry more broadly. The Board also requests comment on whether, and to what extent, the Board should consider amending Regulation J as part of a future rulemaking to permit the Reserve Banks to accept ECIs.

#### C. Settlement and Payment

Regulation J currently provides that settlement with a Reserve Bank for cash items “shall be made by debit to an account on the Reserve Bank’s books, cash, or other form of settlement” to which the Reserve Bank has agreed.<sup>13</sup> With respect to noncash items, Regulation J provides that a Reserve Bank may require settlement by cash, by a debit to an account on a Reserve Bank’s books or “by any of the following that is in a form acceptable to the collecting Reserve Bank: Bank draft, transfer of funds or bank credit, or any other form of payment authorized by State law.”<sup>14</sup> Regulation J also currently provides that a Reserve Bank may require a nonbank payor to settle for items by cash, or by “any of the following that is in a form acceptable to the Reserve Bank: Cashier’s check, certified check, or other bank draft or obligation.”<sup>15</sup> In order to facilitate the efficient collection of items, the Reserve Banks’ current practice is generally to settle for items by debit to an account on the Reserve Bank’s books. The use of cash is rare, typically only done in emergency situations, and could be covered by a provision allowing “other form of settlement to which the Reserve Bank agrees.” The Board therefore proposes to revise certain settlement provisions of Regulation J to remove references to cash and other specified forms of settlement (e.g., cashier’s checks or certified checks) and instead state that the Reserve Banks may settle by a debit to an account on the Reserve Bank’s books, or another form of settlement acceptable to the Reserve Banks. The Board requests comment on possible implications that the proposed changes may have on financial institutions with which the Reserve

Banks settle for the presentment of items.

#### D. Legal Status of Terms Used in Financial Messaging Standards

Financial messaging standards provide a common format that allows different financial institutions to communicate. Federal Reserve Banks plan to migrate to the ISO 20022 financial messaging standard for the Fedwire Funds Service. ISO 20022 is an international standard that employs terminology that differs in key respects from that used in U.S. funds-transfer law, including Regulation J. The Board proposes an amendment to subpart B of Regulation J that would clarify that terms used in financial messaging standards, such as ISO 20022, do not confer or connote legal status or responsibilities.

#### E. Additional Aspects of the Proposal

The Board also proposes several other amendments to Regulation J, which include removal of obsolete material and corrections to include certain provisions that were unintentionally omitted by previous amendatory instructions to Regulation J.

#### F. Effective Date

The Board proposes an effective date of July 1, 2018, to align with the effective date of the Board’s amendments to subpart C of Regulation CC.

### III. Section-by-Section Analysis

The paragraph citations in this section are to the paragraphs of the proposed rule unless otherwise stated. The Board requests comment on all aspects of the proposed rule.

#### Subpart A—Collection of Checks and Other Items by Federal Reserve Banks

##### Section 210.2 Definitions

###### 1. Section 210.2(h)—Check

Regulation J currently includes the term “check” (a draft as defined in the U.C.C. drawn on a bank and payable on demand). The Board proposes to revise the definition of “check” to mean a “check” and an “electronic check” as those terms are defined in Regulation CC. This amendment will align the terminology in the two regulations.

Regulation J also includes the term “check as defined in 12 CFR 229.2(k)” (the Regulation CC definition of “check”). This term is used in Regulation J in those provisions that require specific references to the Regulation CC definition of “check.” (See §§ 210.2(m), 210.7(b)(2), and § 210.12(a)(2).) The Board proposes to

delete the definition of “check as defined in 12 CFR 229.2(k)” because it is no longer needed in light of the proposed revision of the Regulation J definition of “check” to cross-reference the Regulation CC definition. The Board proposes to revise the three provisions where it is used by deleting the reference to “check as defined in 12 CFR 229.2(k),” as described in more detail in the corresponding section-by-section analysis.

###### 2. Section 210.2(i)—Item

Regulation J uses the term “item” to refer to the instruments and electronic images that the Reserve Banks handle. Regulation J uses the term “electronic item” to refer to an electronic image of an item, and information describing that item, that a Reserve Bank agrees to handle as an item pursuant to an operating circular. To align the terminology of Regulation J with Regulation CC, the Board proposes to delete the definition of “electronic item” and revise the definition of “item” in § 210.2(i) to include a check, which, under the proposed amendment discussed above would include both a check and an electronic check as defined in Regulation CC. The Board also proposes to add a clarifying statement that the term “item” does not include an electronically-created item as defined in § 229.2 of Regulation CC (as discussed in detail above).

###### 3. Section 210.2(m)—Returned Check

Current § 210.2(m) defines a “returned check” as “a cash item or a check as defined in 12 CFR 229.2(k) returned by a paying bank.” To align the definition of “returned check” with “check,” the Board proposes to delete the reference to “check as defined in 12 CFR 229.2(k)” and instead refer to the definition of “electronic returned check” in Regulation CC.

###### 4. Section 210.2(n)—Sender

Current § 210.2(n) defines sender by providing a set of entities that sends an item to a Reserve Bank for forward collection. The Board proposes to add “member bank, as defined in section 1 of the Federal Reserve Act” in § 210.2(n)(2) to include a bank or trust company that is a member of one of the Federal Reserve Banks to ensure inclusion of any member bank that does not fall under the existing definition. The Board proposes to redesignate current §§ 210.2(n)(2)–(6) to §§ 210.2(n)(3)–(7) to accommodate the insertion.

<sup>13</sup> 12 CFR 210.9(b)(5).

<sup>14</sup> 12 CFR 210.9(c).

<sup>15</sup> 12 CFR 210.9(d).

## 5. Section 210.2(q)—Fedwire

Current § 210.2(q) defines “Fedwire” as having the same meaning set forth in § 210.26(e). The Board proposes to amend this definition to refer to both “Fedwire Funds Service and Fedwire” to conform to the proposed amendment to § 210.26(e).

### Section 210.3 General Provisions

Section 210.3(a) provides general provisions concerning the obligations of Reserve Banks and the role of operating circulars. For reasons described above in connection with electronically-created items, the Board proposes to add a sentence stating that the operating circulars may require a sender to provide warranties and indemnities that only items and any noncash items the Reserve Banks have agreed to handle will be sent to the Reserve Banks. Additionally, in order to allow the Reserve Banks to pass any such warranties and indemnities forward, the Board proposes to authorize the Reserve Banks to provide to a subsequent collecting bank and to the paying bank any warranties and indemnities provided by the sender pursuant to this paragraph.

### Section 210.4 Sending Items to Reserve Banks

Section 210.4(a) sets forth the rule for determining the Reserve Bank to which an item should be sent. The Board proposes to clarify this paragraph to provide that a sender’s Administrative Reserve Bank may direct a sender (other than a Reserve Bank) to send any item to a specified Reserve Bank, whether or not the item is payable in the Reserve Bank’s district. This amendment reflects current practice in the Reserve Banks’ check service and is not expected or intended to have a substantive affect. The Board is also proposing to capitalize the term “Administrative Reserve Bank” wherever it appears to conform to the defined term in § 210.2(c).

### Section 210.5 Sender’s Agreement; Recovery by Reserve Bank

#### 1. Section 210.5(a)—Sender’s Agreement

Current § 210.5(a) lists the warranties, authorizations, and agreements made by a sender. The first two paragraphs (current §§ 210.5(a)(1) and (2)) apply to all items and require the sender to authorize the Reserve Banks to handle the item sent and warrant that the sender is entitled to enforce the item, that the item has not been altered, and that the item bears the indorsements applied by all prior parties. The Board

is not proposing to revise these paragraphs. Current §§ 210.5(a)(3) and (4) set out warranties for electronic items and electronic items that are not representations of substitute checks, respectively. These warranties are now specified in Regulation CC, and the Board proposes to revise Regulation J accordingly. Proposed § 210.5(a)(3) would require the sender to make all applicable warranties and indemnities set forth in Regulation CC and the U.C.C. The proposal would retain the existing requirement that the sender make all warranties set forth in and subject to the terms of U.C.C. 4–207 for an electronic check as if it were an item subject to the U.C.C. These proposed changes would streamline Regulation J, align § 210.5(a) with the Regulation CC provisions that set out warranties and indemnities for electronic checks, and ensure a seamless chain of warranties for the items handled by the Reserve Banks.

The Board also proposes to require a sender to make any warranties or indemnities regarding the sending of items that the Reserve Banks include in an operating circular issued in accordance with § 210.3(a) to ensure that only items and any noncash items the Reserve Banks have agreed to handle will be sent to the Reserve Banks (proposed § 210.5(a)(4)). Finally, the Board proposes to add a reference to “indemnities” to the introductory text of § 210.5(a) to reflect that the sender would provide indemnities pursuant to proposed §§ 210.5(a)(3) and (4).

#### 2. Section 210.5(a)(5)—Sender’s Liability to Reserve Bank

Current § 210.5(a)(5) sets out the sender’s liability to Reserve Banks. The Board proposes to make a number of amendments to this subsection that align this paragraph to changes elsewhere in the proposed rule.

Current § 210.5(a)(5)(i)(C) states that the sender agrees to indemnify the Reserve Bank for any loss or expense resulting from “[a]ny warranty or indemnity made by the Reserve Bank under § 210.6(b), part 229 of this chapter, or the U.C.C.” The Board proposes to amend this provision to provide that the sender will also indemnify a Reserve Bank for any loss or expense sustained resulting from any warranties and indemnities regarding the sending of “items” required by the Reserve Bank in an operating circular issued pursuant to proposed § 210.3(a).

Current § 210.5(a)(5)(ii) specifies conditions and limitations to a sender’s liability for warranties and indemnities that a Reserve Bank makes for a substitute check, a paper or electronic

representation thereof, or any other electronic item. The Board proposes to delete the term “electronic item” in current § 210.5(a)(5)(ii) and replace it with “electronic check.”

Current § 210.5(a)(5)(ii)(A) provides that a sender of an original check is not liable for any amount that the Reserve Bank pays under subpart D of Regulation CC for a subsequently created substitute check or under § 210.6(b)(3) for an electronic item, absent the sender’s agreement to the contrary. The Board proposes to delete the reference to current § 210.6(b)(3), which lists warranties and an indemnity for an electronic item that is not a representation of a substitute check, and replace it with a reference to § 229.34 of this chapter with respect to an electronic check, consistent with other proposed amendments to § 210.6(b) described below.

Current § 210.5(a)(5)(ii)(B) provides that nothing in Regulation J alters the liability structure that applies to substitute checks and paper or electronic representations of substitute checks under subpart D of Regulation CC. The Board proposes to add that this subpart also does not alter the liability of a sender of an electronic check under § 229.34, consistent with the other proposed revisions to Regulation J.

Current § 210.5(a)(5)(ii)(C) provides that a sender of an electronic item that is not a representations of a substitute check is not liable for any related warranties or indemnities that a Reserve Bank pays that are attributable to the Reserve Bank’s own lack of good faith or failure to exercise ordinary care. The Board proposes to broaden this provision by applying the limitation on liability to all senders for any amount that the Reserve Bank pays that is attributable to the Reserve Bank’s own lack of good faith or failure to exercise ordinary care under Regulation J or Regulation CC. The Board proposes to redesignate this section as § 210.5(a)(5)(iii) and make conforming changes to cross-references.

#### 3. Section 210.5(c) & (d)—Recovery by Reserve Bank and Methods of Recovery

Section 210.5(c) sets out the procedures by which a Reserve Bank may recover against a sender if certain actions or proceedings related to the sender’s actions are brought against (or defense is tendered to) a Reserve Bank. A portion of this section was inadvertently dropped from the Code of Federal Regulations. The Board proposes to reinstate the dropped language, which provides that, upon entry of a final judgment or decree, a Reserve Bank may recover from the

sender the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay because of the judgment or decree or the tender of defense, with interest. In addition, the Board proposes to correct cross-references to this provision in § 210.5(d).

#### 4. Section 210.5(e)—Security Interest

Current § 210.5(e) provides that when a sender sends an item to a Reserve Bank, the sender and any prior collecting bank grant to the sender's Administrative Reserve Bank a security interest in all of their respective assets in the possession of, or held for the account of, any Reserve Bank to secure their respective obligations due or to become due to the Administrative Reserve Bank under this subpart or subpart C of part 229 of this chapter (Regulation CC). The Board proposes to amend this subsection to reference subpart D of Regulation CC in addition to subpart C, as senders may have obligations to Reserve Banks under that subpart as well.

#### *Section 210.6 Status, Warranties, and Liability of Reserve Bank*

##### 1. Section 210.6(a)(2)—Limitations on Reserve Bank Liability

Section 210.6(a)(2) limits a Reserve Bank's liability with respect to an item to three instances: (1) The Reserve Bank's own lack of good faith or failure to exercise ordinary care, (2) as provided in this section of Regulation J, and (3) as provided in subparts C and D of Regulation CC. The Board proposes to expand this list to provide that a Reserve Bank may be liable under any warranties and indemnities provided in an operating circular issued in accordance with § 210.3(a) regarding the sending of items.

##### 2. Section 210.6(b)—Warranties and Liability

Section 210.6(b) sets forth the warranties and indemnities made by a Reserve Bank when it presents or sends an item. In alignment with the Board's proposed amendments to the sender's warranties in § 210.5(a), the Board proposes to replace current §§ 210.6(b)(2) and (3), which provide warranties and indemnities for electronic items and electronic items that are not representations of substitute checks, respectively. Those warranties are now covered by Regulation CC. The Board also proposes to make a conforming amendment to § 210.6(b)(1)(iii) to eliminate the unnecessary reference to "paper or electronic form."

The Board proposes a new § 210.6(b)(2) to provide that a Reserve Bank would make any warranties or indemnities regarding the sending of items as set forth in an operating circular issued pursuant to proposed § 210.3(a). This language corresponds to the similar proposed provision for sender liability in § 210.5(a)(4).

The Board proposes a new § 210.6(b)(3) to provide that the Reserve Bank makes to a subsequent collecting bank and to the paying bank all the warranties and indemnities set forth in subparts C and D for Regulation CC. Proposed § 210.6(b)(3) would retain the existing application of U.C.C. 4-207 warranties to electronic items (now called electronic checks).

In § 210.6(b)(4), the Board proposes to retain the existing Reserve Bank indemnity for substitute checks created from electronic checks, which is in current § 210.6(b)(3)(ii). This provision provides an indemnity chain for substitute check indemnity claims under Regulation CC, enabling receiving banks (and, in turn, Reserve Banks) to pass the loss on such claims to the bank whose choice to handle an item electronically necessitated the later creation of a substitute check.

##### 3. Section 210.6(c)—Limitation on Liability

The limitations on Reserve Bank liability are set forth in proposed (and current) § 210.6(a)(2). The Board is proposing to delete this subsection as it is redundant and to redesignate current subsection (d) as subsection (c).

#### *Section 210.7 Presenting Items for Payment*

Section 210.7(b) provides the places of presentment for a Reserve Bank or subsequent collecting bank. Current § 210.7(b)(2) states "In the case of a check as defined in 12 CFR 229.2(k), in accordance with 12 CFR 229.36." In alignment with the Board's proposed deletion of the defined term "check as defined in 12 CFR 229.2(k)," the Board proposes to delete the use of that term in § 210.7(b)(2), as it is no longer needed, and make other minor edits. As a result, proposed § 210.7(b)(2) would state "In accordance with § 229.36 of this chapter (Regulation CC)."

#### *Section 210.9 Settlement and Payment*

##### 1. Section 210.9(b)(5), (c), & (d)—Manner of Settlement, Noncash Items, & Nonbank Payor

Current § 210.9(b)(5) requires that settlement for cash items with a Reserve Bank be made by debit to an account on the Reserve Bank's books, cash, or other

form of settlement to which the Reserve Bank agrees. As discussed in the overview section, the use of cash as a means of settlement is quite rare and generally used only in emergencies. Accordingly, the Board proposes to amend this provision by removing the reference to cash as a means of settlement. A Reserve Bank could continue to accept cash or other forms of settlement by agreement in special situations. The Board also proposes to make conforming amendments to §§ 210.9(c) and (d), as well as to remove the references to other rarely-used forms of settlement (cashier's checks, certified checks, or other bank drafts or obligations). The Board is also proposing to correct cross-references and to capitalize the term "Administrative Reserve Bank" wherever it appears to conform to the defined term in § 210.2(c).

##### 2. Section 210.9(e)—Handling of Payment

Current § 210.9(e) states that a Reserve Bank may handle a bank draft or other form of payment it receives in payment of a cash item as a cash item and that a Reserve Bank may handle a bank draft or other form of payment it receives in payment of a noncash item as either a cash item or a noncash item. The Board proposes to delete this section as it is now obsolete.

##### 3. Section 210.9(f)—Liability of Reserve Bank

Current § 210.9(f) states that a Reserve Bank that acts in good faith and exercises ordinary care shall not be liable for the nonpayment of, or failure to realize upon, any bank draft or other form of payment that it accepts pursuant to § 210.9(b)–(d). The Board proposes to renumber this subsection as § 210.9(e) and to replace the reference to "bank draft or other form of payment" with "any non-cash form of payment" to conform to the proposed changes to the other provisions of this section.

#### *Section 210.10 Time Schedule and Availability of Credits for Cash Items and Returned Checks*

Section 210.10(a) states that each Reserve Bank shall "include in its operating circulars" its time schedules for availability of cash items and returned checks and, correspondingly, when credits can be counted toward reserve balance requirements for purposes of Regulation D (12 CFR part 204). The Reserve Banks' practice is to publish the time schedules on the Federal Reserve website for financial services. Accordingly, the Board proposes to amend this section to delete

the requirement that time schedules be included in the operating circulars and, instead, require only that the time schedules be published.

**Section 210.11 Availability of Proceeds of Noncash Items; Time Schedule**

**1. Section 210.11(b)—Time Schedule**

Section 210.11(b) states that a Reserve Bank may give credit for the proceeds of a noncash item subject to payment in actually and finally collected funds in accordance with a time schedule included in its operating circulars. To conform to amendments made in proposed § 210.10, the Board proposes to delete the reference to operating circulars and require only that the time schedule be published.

**2. Section 210.11(c)—Handling of Payment**

Current § 210.11(c) prohibits a Reserve Bank from providing credit for a bank draft or other form of payment for a noncash item until it receives payment in actually and finally collected funds. The Board proposes to delete this subsection, as actually and finally collected funds are already required by § 210.11(a).

**Section 210.12 Return of Cash Items and Handling of Returned Checks**

Section 210.12 sets out the provisions governing the handling of returned checks. It is the counterpart to §§ 210.5 and 210.6, which govern the handling of items for forward collection.

**1. Section 210.12(a)—Return of Items**

Current § 210.12(a)(2) sets out the procedures by which a paying bank may return checks not handled by Reserve Banks and references “check as defined in § 229.2(k) of this chapter (Regulation CC).” In alignment with the Board’s proposal to delete the defined term “check as defined in § 229.2(k)” in § 210.2(h), the Board proposes to delete the use of this term in this section, as it is no longer needed, and to use the term “check” instead.

**2. Section 210.12(c)—Paying Bank’s and Returning Bank’s Agreement**

Current § 210.12(c) provides the warranties, authorizations, and agreements related to returned checks made by paying banks and returning banks. The Board proposes amendments to this section that are parallel to the proposed amendments for forward-collection items with respect to the liability of the sender (§ 210.5(a)(3)) and the Reserve Banks (§ 210.6(b)(2)). Specifically, the Board proposes to replace current §§ 210.12(c)(3) and (4),

which provide warranties for all returned checks that are electronic items and warranties for returned checks that are electronic items that are not representations of substitute checks, respectively, with a provision that requires the paying bank or returning bank to make all the warranties and indemnities as set forth in Regulation CC, as applicable (proposed § 210.12(c)(3)).

Current § 210.12(c)(5) sets out the conditions under which a paying bank or returning bank is liable to a Reserve Bank. The Board proposes to redesignate this paragraph as § 210.12(c)(4) and amend the paragraph to correspond with the proposed amendments to the section on sender’s liability to a Reserve Bank (§ 210.5(a)(4)). These proposed amendments are intended to create consistent liability provisions for senders, paying banks, and returning banks.

**3. Section 210.12(d)—Liability Under Other Law**

Current § 210.12(d) is titled “Preservation of other warranties and indemnities.” The Board proposes to change the title of this section to “Returning bank’s or paying bank’s liability under other law” to mirror the heading for the corresponding section for senders (§ 210.5(b)).

**4. Section 210.12(e)—Warranties by and Liability of Reserve Bank**

Current § 210.12(e) sets forth a Reserve Bank’s liability when it handles a returned check, including warranties and liabilities. The Board proposes to amend this section to correspond to the amendments proposed in § 210.6(b) related to the warranties and liabilities that are made by Reserve Banks when presenting or sending an item.

**5. Section 210.12(f) & (g)—Recovery by Reserve Bank & Method of Recovery**

Section 210.12(f) parallels § 210.5(c) and sets out the procedures by which a Reserve Bank may recover against a paying bank or returning bank if certain actions or proceedings related to the paying bank’s or returning bank’s actions are brought against (or defense is tendered to) a Reserve Bank. A portion of this section was inadvertently dropped from the Code of Federal Regulations. The Board proposes to reinstate the dropped language, which provides that, upon entry of a final judgment or decree, a Reserve Bank may recover from the paying bank or returning bank the amount of attorneys’ fees and other expenses of litigation incurred, as well as any amount the

Reserve Bank is required to pay because of the judgment or decree or the tender of defense, with interest. In addition, the Board proposes to correct cross-references and make organizational changes in § 210.12(g).

**Subpart B—Funds Transfers Through Fedwire**

**Section 210.25 Authority, Purpose, and Scope**

Section 210.25 sets out the authority, purpose, and scope for subpart B of Regulation J, which governs Fedwire funds transfers. The Board proposes to add a new § 210.25(e) to clarify that financial messaging standards (e.g., ISO 20022), including the financial messaging components, elements, technical documentation, tags, and terminology used to implement those standards, do not confer or connote legal status or responsibilities. The proposed amendment would specify that Regulation J, Article 4A of the U.C.C., and the operating circulars of the Reserve Banks govern the rights and obligations of parties to the Fedwire Funds Service and supersede any inconsistency between a financial messaging standard adopted by the Fedwire Funds Service. Additionally, the Board proposes to add in the commentary examples of inconsistent terminology between the ISO 20022 financial messaging standard and U.S. funds transfer law.

**Section 210.26 Definitions**

Section 210.2(e) defines the term “Fedwire” to mean the funds-transfer system owned and operated by the Federal Reserve Banks that is used primarily for the transmission and settlement of payment orders governed by Subpart B. The Board is proposing to amend this definition so that it applies to the official title of the service, “Fedwire Funds Service,” as well as the shorthand term “Fedwire.” The Board also proposes to change references to “Fedwire” to “Fedwire Funds Service” in §§ 210.9(b)(4)(i), 210.25(a) and (b)(3), and 210.29(b).

**Section 210.32 Federal Reserve Bank Liability; Payment of Interest**

Current § 210.32 sets out provisions that govern Federal Reserve Bank liability and payment of interest.

Section 210.32(b) provides that compensation that is paid by Federal Reserve Banks in the form of interest shall be calculated in accordance with section 4A–506 of Article 4A. Under section 4A–506(a), the amount of interest may be determined by agreement between the sender and

receiving bank or by funds-transfer system rule. If there is no such agreement, under section 4A–506(b), the amount of interest is based on the federal funds rate. The current commentary to § 210.32(b) states that “Interest would be calculated in accordance with the procedures specified in section 4A–506(b).” The Board proposes to delete this statement and rearrange the commentary to clarify that interest can be calculated in accordance with both section 4A–506(a) and (b).

#### IV. Competitive Impact Analysis

The Board conducts a competitive impact analysis when it considers an operational or legal change, if that change would have a direct and material adverse effect on the ability of other service providers to compete with the Federal Reserve in providing similar services due to legal differences or due to the Federal Reserve’s dominant market position deriving from such legal differences. All operational or legal changes having a substantial effect on payments-system participants will be subject to a competitive-impact analysis, even if competitive effects are not apparent on the face of the proposal. If such legal differences exist, the Board will assess whether the same objectives could be achieved by a modified proposal with lesser competitive impact or, if not, whether the benefits of the proposal (such as contributing to payments-system efficiency or integrity or other Board objectives) outweigh the materially adverse effect on competition.<sup>16</sup>

The Board does not believe that the amendments to Regulation J will have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services due to legal differences. The amendments would align the provisions in Regulation J governing Reserve Bank services to the generally applicable provisions in Regulation CC. The proposed amendment would not affect the competitive position of private-sector presenting banks vis-à-vis the Reserve Banks.

#### V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control

number. The Board reviewed the proposed rule under the authority delegated to the Board by the OMB and determined that it contains no collections of information under the PRA.<sup>17</sup> Accordingly, there is no paperwork burden associated with the rule.

#### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (the “RFA”) (5 U.S.C. 601 *et seq.*) requires agencies 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. In this case, the proposed rule would apply to all depository institutions. This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 in order for the Board to solicit comment on the effect of the proposal on small entities. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

##### 1. Statement of the Need for, Objectives of, and Legal Basis for, the Proposed Rule

The Board is proposing the foregoing amendments to Regulation J pursuant to its authority under the Federal Reserve Act, the EFA Act; the Check 21 Act, and other laws. The proposal clarifies and simplifies certain provisions of Subpart A of Regulation J, removes obsolete provisions, and aligns the rights and obligations of sending banks, paying banks, and Reserve Banks with the Board’s recent amendments to Regulation CC to reflect the virtually all-electronic check collection and return environment. The proposed rule would also amend subpart B of Regulation J to clarify the legal status of terms in financial messaging standards.

##### 2. Small Entities Affected by the Proposed Rule

The proposed rule would apply to all depository institutions regardless of their size.<sup>18</sup> Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a “small banking organization” includes a depository institution with \$550 million or less in total assets. Based on call report data as of June 2017, there are approximately 9,918 of depository

institutions that have total domestic assets of \$550 million or less and thus are considered small entities for purposes of the RFA.

#### 3. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Board’s proposed rule generally does not have any projected reporting, recordkeeping or other compliance requirements, as the proposed amendments to Regulation J align the rights and obligations of sending banks, paying banks, and Federal Reserve Banks (Reserve Banks) with the Board’s recent amendments to Regulation CC. The proposed warranties and indemnities are similar to the warranties and indemnities that apply to paper and electronic checks under existing Regulation J and other law. The proposed amendments do not require any bank to change the form in which it submits checks, nor do they require any bank to submit reports, maintain records, or provide notices or disclosures.

With respect to ECIs, the Board recognizes that the proposed amendments that would allow the Reserve Banks to require senders to provide certain warranties and indemnities may affect the creation and acceptance of ECIs by small entities. However, the Board’s proposed amendments would not prevent small entities that desire to exchange ECIs from doing so by agreement using direct exchange relationships or other methods not involving the Reserve Banks. The Board believes the proposed amendments will help to shift liability to parties better positioned to know whether an item is electronically created and that can either prevent the item from entering the check-collection system or assume the risk of sending it forward.

Furthermore, the Board does not expect the Board’s proposed amendments to remove references to cash and other specified forms of settlement to burden small entities, as the use of cash as settlement is rare and typically only done in emergency situations. The Board’s proposed amendment would allow use of cash as settlement in emergency situations by continuing to permit other forms of settlement to which the Reserve Banks agree.

#### 4. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Board notes that subparts C and D of Regulation CC overlap with the proposed rule with respect to checks collected or returned through the

<sup>17</sup> See 44 U.S.C. 3502(3).

<sup>18</sup> The proposed rule would not impose costs on any small entities other than depository institutions.

Reserve Banks. The Board's intent in proposing the amendments is, in part, to align Regulation J with Regulation CC and incorporate certain provisions by reference, thereby reducing the need for duplication and improving consistency between the regulations. The provisions of Regulation J would supersede any inconsistent provisions of Regulation CC, but only to the extent of the inconsistency.<sup>19</sup> The Board knows of no other duplicative, overlapping, to conflicting Federal rules related to this proposal.

*5. Significant Alternatives to the Proposed Rule*

The Board welcomes comment on the impact of the proposed rule on small entities and any approaches, other than the proposed amendments, that would reduce the burden on all entities.

**List of Subjects in 12 CFR Part 210**

Banks, Banking, Federal Reserve System.

**Authority and Issuance**

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 210 as follows:

**PART 210—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS AND FUNDS TRANSFERS THROUGH FEDWIRE (REGULATION J)—[AMENDED]**

- 1. The authority citation for part 210 is revised to read as follows:

**Authority:** 12 U.S.C. 248 (i), (j), and (o); 12 U.S.C. 342; 12 U.S.C. 360; 12 U.S.C. 464; 12 U.S.C. 4001–4010; 12 U.S.C. 5001–5018.

**PART 210—[AMENDED]**

- 2. In part 210, revise all references to “article 4A” to read “Article 4A”.

**Subpart A—Collection of Checks and Other Items by Federal Reserve Banks**

- 3. In § 210.2, revise paragraphs (h), (i), (m), (n), (q), and (s)(1) to read as follows:

**§ 210.2 Definitions.**

\* \* \* \* \*

(h) *Check* means a check or an electronic check, as those terms are defined in § 229.2 of this chapter (Regulation CC).

(i) *Item*.

(1) Item means—

(i) An instrument or a promise or order to pay money, whether negotiable or not, that is—

(A) Payable in a Federal Reserve District<sup>1</sup> (District);  
(B) Sent by a sender to a Reserve Bank for handling under this subpart; and  
(C) Collectible in funds acceptable to the Reserve Bank of the District in which the instrument is payable; or  
(ii) A check.

(2) Unless otherwise indicated, *item* includes both a cash and a noncash item, and includes a returned check sent by a paying or returning bank. *Item* does not include a check that cannot be collected at par, or a *payment order* as defined in § 210.26(i) and handled under subpart B of this part. The term also does not include an electronically-created item as defined in § 229.2 of this chapter (Regulation CC).

\* \* \* \* \*

(m) *Returned check* means a cash item returned by a paying bank, including an electronic returned check as defined in § 229.2 of this chapter (Regulation CC) and a notice of nonpayment in lieu of a returned check, whether or not a Reserve Bank handled the check for collection.

(n) *Sender* means any of the following entities that sends an item to a Reserve Bank for forward collection—

(1) A *depository institution*, as defined in section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b));

(2) A member bank, as defined in section 1 of the Federal Reserve Act (12 U.S.C. 221);

(3) A clearing institution, defined as—

(i) An institution that is not a depository institution but that maintains with a Reserve Bank the balance referred to in the first paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342); or

(ii) A corporation that maintains an account with a Reserve Bank in conformity with § 211.4 of this chapter (Regulation K);

(4) Another Reserve Bank;

(5) An international organization for which a Reserve Bank is empowered to act as depositary or fiscal agent and maintains an account;

(6) A foreign correspondent, defined as any of the following entities for which a Reserve Bank maintains an account: A foreign bank or banker, a foreign state as defined in section 25(b) of the Federal Reserve Act (12 U.S.C. 632), or a foreign correspondent or agency referred to in section 14(e) of that act (12 U.S.C. 358); or

(7) A branch or agency of a foreign bank maintaining reserves under section

7 of the International Banking Act of 1978 (12 U.S.C. 347d, 3105).

\* \* \* \* \*

(q) *Fedwire Funds Service* and *Fedwire* have the same meaning as that set forth in § 210.26(e).

\* \* \* \* \*

(s) \* \* \*

(1) The terms not defined herein have the meanings set forth in § 229.2 of this chapter applicable to subpart C or subpart D of part 229 of this chapter (Regulation CC), as appropriate; and

\* \* \* \* \*

- 4. In § 210.3, revise paragraph (a) to read as follows:

**§ 210.3 General provisions.**

(a) *General*. Each Reserve Bank shall receive and handle items in accordance with this subpart, and shall issue operating circulars governing the details of its handling of items and other matters deemed appropriate by the Reserve Bank. The circulars may, among other things, classify cash items and noncash items, require separate sorts and letters, provide different closing times for the receipt of different classes or types of items, provide for instructions by an Administrative Reserve Bank to other Reserve Banks, set forth terms of services, and establish procedures for adjustments on a Reserve Bank's books, including amounts, waiver of expenses, and payment of compensation. As deemed appropriate by the Reserve Bank, the circulars may also require the sender to provide warranties and indemnities that only items and any noncash items the Reserve Banks have agreed to handle will be sent to the Reserve Banks. The Reserve Banks may provide to a subsequent collecting bank and to the paying bank any warranties and indemnities provided by the sender pursuant to this paragraph.

\* \* \* \* \*

- 5. In § 210.4, revise paragraphs (a), (b)(1)(ii), (b)(1)(iii), and (b)(3) to read as follows:

**§ 210.4 Sending items to Reserve Banks.**

(a) *Sending of items*. A sender's Administrative Reserve Bank may direct a sender other than a Reserve Bank to send any item to a specified Reserve Bank, whether or not the item is payable in the Reserve Bank's district.

(b) \* \* \*

(1) \* \* \*

(ii) The initial sender's Administrative Reserve Bank (which is deemed to have accepted deposit of the item from the initial sender);

(iii) The Reserve Bank that receives the item from the initial sender (if

<sup>19</sup> See 12 CFR 210.3(f).

<sup>1</sup> For purposes of this subpart, the Virgin Islands and Puerto Rico are deemed to be in the Second District, and Guam, American Samoa, and the Northern Mariana Islands in the Twelfth District.

different from the initial sender's Administrative Reserve Bank); and

\* \* \* \* \*

(3) The identity and order of the parties under paragraph (b)(1) of this section determine the relationships and the rights and liabilities of the parties under this subpart, part 229 of this chapter (Regulation CC), section 13(1) and section 16(13) of the Federal Reserve Act, and the Uniform Commercial Code. An initial sender's Administrative Reserve Bank that is deemed to accept an item for deposit or handle an item is also deemed to be a sender with respect to that item. The Reserve Banks that are deemed to handle an item are deemed to be agents or subagents of the owner of the item, as provided in § 210.6(a).

\* \* \* \* \*

■ 6. In § 210.5, revise paragraphs (a), (c), (d), and (e) to read as follows:

#### **§ 210.5 Sender's agreement; recovery by Reserve Bank.**

(a) *Sender's agreement.* The warranties, indemnities, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the item bears an indorsement of the sender. By sending an item to a Reserve Bank, the sender does all of the following.

(1) *Authorization to handle item.* The sender authorizes the sender's Administrative Reserve Bank and any other Reserve Bank or collecting bank to which the item is sent to handle the item (and authorizes any Reserve Bank that handles settlement for the item to make accounting entries), subject to this subpart and to the Reserve Banks' operating circulars, and warrants its authority to give this authorization.

(2) *Warranties for all items.* The sender warrants to each Reserve Bank handling the item that—

(i) The sender is a person entitled to enforce the item or authorized to obtain payment of the item on behalf of a person entitled to enforce the item;

(ii) The item has not been altered; and

(iii) The item bears all indorsements applied by parties that previously handled the item for forward collection or return.

(3) *Warranties and indemnities as set forth in Regulation CC and U.C.C.* As applicable and unless otherwise provided, the sender of an item makes to each Reserve Bank that handles the item all the warranties and indemnities set forth in and subject to the terms of subparts C and D of part 229 of this chapter (Regulation CC) and Article 4 of the U.C.C. The sender makes all the warranties set forth in and subject to the terms of 4-207 of the U.C.C. for an

electronic check as if it were an item subject to the U.C.C.

(4) *Warranties and indemnities as set forth in Reserve Bank Operating Circulars.* The sender makes any warranties and indemnities regarding the sending of items as set forth in an operating circular issued in accordance with § 210.3(a).

(5) *Sender's liability to Reserve Bank.*

(i) Except as provided in paragraph (a)(5)(ii) and (iii) of this section, the sender agrees to indemnify each Reserve Bank for any loss or expense sustained (including attorneys' fees and expenses of litigation) resulting from—

(A) The sender's lack of authority to make the warranty in paragraph (a)(1) of this section;

(B) Any action taken by the Reserve Bank within the scope of its authority in handling the item; or

(C) Any warranty or indemnity made by the Reserve Bank under § 210.6(b), part 229 of this chapter, the U.C.C., or, regarding the sending of items, an operating circular issued in accordance with § 210.3(a).

(ii) A sender's liability for warranties and indemnities that the Reserve Bank makes for a substitute check, a paper or electronic representation thereof, or for an electronic check is subject to the following conditions and limitations—

(A) A sender of an original check shall not be liable under paragraph (a)(5)(i) of this section for any amount that the Reserve Bank pays under subpart D of part 229 of this chapter, or under § 229.34 of this chapter with respect to an electronic check, absent the sender's agreement to the contrary; and

(B) Nothing in this subpart alters the liability of a sender of a substitute check or paper or electronic representation of a substitute check under subpart D of part 229 of this chapter, or a sender of an electronic check under § 229.34 of this chapter.

(iii) A sender shall not be liable for any amount that the Reserve Bank pays under this subpart or part 229 of this chapter that is attributable to the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

\* \* \* \* \*

(c) *Recovery by Reserve Bank.*

(1) A Reserve Bank that has handled an item may recover as provided in paragraph (c)(2) if an action or proceeding is brought against (or if defense is tendered to) the Reserve Bank based on—

(i) The alleged failure of the sender to have the authority to make the warranty and agreement in paragraph (a)(1) of this section;

(ii) Any action by the Reserve Bank within the scope of its authority in handling the item; or

(iii) Any warranty or indemnity made by the Reserve Bank under § 210.6(b), part 229 of this chapter, or the U.C.C.

(2) Upon entry of a final judgment or decree in an action or proceeding described in paragraph (c)(1), a Reserve Bank may recover from the sender the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay because of the judgment or decree or the tender of defense, together with interest thereon.

(d) *Methods of recovery.*

(1) The Reserve Bank may recover the amount stated in paragraph (c) of this section by charging any account on its books that is maintained or used by the sender (or by charging a Reserve Bank sender), if—

(i) The Reserve Bank made reasonable written demand on the sender to assume defense of the action or proceeding; and

(ii) The sender has not made any other arrangement for payment that is acceptable to the Reserve Bank.

(2) The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged under this paragraph (d) may recover from its sender in the manner and under the circumstances set forth in this paragraph (d).

(3) A Reserve Bank's failure to avail itself of the remedy provided in this paragraph (d) does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (a)(5) of this section.

(e) *Security interest.* When a sender sends an item to a Reserve Bank, the sender and any prior collecting bank grant to the sender's Administrative Reserve Bank a security interest in all of their respective assets in the possession of, or held for the account of, any Reserve Bank to secure their respective obligations due or to become due to the Administrative Reserve Bank under this subpart or subpart C or D of part 229 of this chapter (Regulation CC). The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender or prior collecting bank, or if the sender or prior collecting bank suspends

payments or is closed, the Reserve Bank may take any action authorized by law to recover the amount of an obligation, including, but not limited to, the exercise of rights of set off, the realization on any available collateral,

and any other rights it may have as a creditor under applicable law.

- 7. Amend § 210.6 by:
  - a. Revising paragraphs (a)(2)(iii), (b), and (c);
  - b. Adding paragraph (a)(2)(iv); and
  - c. Removing paragraph (d).

The revisions and additions read as follows:

**§ 210.6 Status, warranties, and liability of Reserve Bank.**

(a) \* \* \*

(2) \* \* \*

(iii) As provided in an operating circular issued in accordance with § 210.3(a) regarding the sending of items; and

(iv) As provided in subparts C and D of part 229 of this chapter (Regulation CC).

\* \* \* \* \*

(b) *Warranties and liability.* The following provisions apply when a Reserve Bank presents or sends an item.

(1) *Warranties for all items.* The Reserve Bank warrants to a subsequent collecting bank and to the paying bank and any other payor that—

(i) The Reserve Bank is a person entitled to enforce the item (or is authorized to obtain payment of the item on behalf of a person that is either entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item);

(ii) The item has not been altered; and

(iii) The item bears all indorsements applied by parties that previously handled the item for forward collection or return.

(2) *Warranties and indemnities as set forth in Reserve Bank Operating Circulars.* The Reserve makes any warranties and indemnities regarding the sending of items as set forth in an operating circular issued in accordance with § 210.3(a).

(3) *Warranties and indemnities as set forth in Regulation CC and U.C.C.* As applicable and unless otherwise provided, the Reserve Bank makes to a subsequent collecting bank and to the paying bank all the warranties and indemnities set forth in and subject to the terms of subparts C and D of part 229 of this chapter (Regulation CC) and Article 4 of the U.C.C. The Reserve Bank makes all the warranties set forth in and subject to the terms of 4-207 of the U.C.C. for an electronic check as if it were an item subject to the U.C.C.

*(4) Indemnity for substitute check created from an electronic check.*

(i) Except as provided in paragraph (b)(4)(ii) of this section, the Reserve Bank shall indemnify the bank to which it transfers or presents an electronic check (the recipient bank) for the

amount of any losses that the recipient bank incurs under subpart D of part 229 of this chapter (Regulation CC) for an indemnity that the recipient bank was required to make under subpart D of part 229 of this chapter in connection with a substitute check later created from the electronic check.

(ii) The Reserve Bank shall not be liable under paragraph (b)(4)(i) of this section for any amount that the recipient bank pays under subpart D of part 229 of this chapter that is attributable to the lack of good faith or failure to exercise ordinary care of the recipient bank or a person that handled the item, in any form, after the recipient bank.

*(c) Time for commencing action against Reserve Bank.*

(1) A claim against a Reserve Bank for lack of good faith or failure to exercise ordinary care shall be barred unless the action on the claim is commenced within two years after the claim accrues. Such a claim accrues on the date when a Reserve Bank's alleged failure to exercise ordinary care or to act in good faith first results in damages to the claimant.

(2) A claim that arises under paragraph (b)(3) of this section shall be barred unless the action on the claim is commenced within one year after the claim accrues. Such a claim accrues as of the date on which the claimant first learns, or by which the claimant reasonably should have learned, of the facts and circumstances giving rise to the claim.

(3) This paragraph (d) does not alter the time limit for claims under § 229.38(g) of this chapter (which include claims for breach of warranty under § 229.34 of this chapter) or subpart D of part 229 of this chapter.

- 8. In § 210.7, revise paragraphs (a)(1) and (b)(2) to read as follows:

**§ 210.7 Presenting items for payment.**

(a) \* \* \*

(1) A Reserve Bank or a subsequent collecting bank may present an item for payment or send the item for presentment and payment; and

\* \* \* \* \*

(b) \* \* \*

(2) In accordance with § 229.36 of this chapter (Regulation CC);

\* \* \* \* \*

- 9. Amend § 210.9 by:

- a. Revising paragraphs (b)(2)(i), (b)(3)(i)(A), (b)(3)(i)(B), (b)(4) through (b)(6), paragraphs (c) through (e); and
- b. Removing paragraph (f).

The revisions read as follows:

**§ 210.9 Settlement and payment.**

(b) \* \* \*

(2) \* \* \*

(i) On the day a paying bank receives a cash item from a Reserve Bank, it shall settle for the item so that the proceeds of the settlement are available to its Administrative Reserve Bank, or return the item, by the latest of—

(A) The next clock hour or clock half-hour that is at least one half-hour after the paying bank receives the item;

(B) 8:30 a.m. eastern time; or

(C) Such later time as provided in the Reserve Banks' operating circulars.

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) On that day, settle for the item so that the proceeds of the settlement are available to its Administrative Reserve Bank, or return the item, by the latest of the next clock hour or clock half-hour that is at least one half-hour after it ordinarily would have received the item, 8:30 a.m. eastern time, or such later time as provided in the Reserve Banks' operating circulars; or

(B) On the next day that is a banking day for both the paying bank and the Reserve Bank, settle for the item so that the proceeds of the settlement are available to its Administrative Reserve Bank by 8:30 a.m. eastern time on that day or such later time as provided in the Reserve Banks' operating circulars; and compensate the Reserve Bank for the value of the float associated with the item in accordance with procedures provided in the Reserve Bank's operating circular.

\* \* \* \* \*

(4) *Reserve Bank closed.* If a paying bank receives a cash item from a Reserve Bank on a banking day that is not a banking day for the Reserve Bank, the paying bank shall—

(i) Settle for the item so that the proceeds of the settlement are available to its Administrative Reserve Bank by the close of Fedwire on the Reserve Bank's next banking day, or return the item by midnight of the day it receives the item (if the paying bank fails to settle for or return a cash item in accordance with this paragraph (b)(4)(i), it shall become accountable for the amount of the item as of the close of its banking day on the day it receives the item); and

(ii) Settle for the item so that the proceeds of the settlement are available to its Administrative Reserve Bank by 8:30 a.m. eastern time on the Reserve Bank's next banking day or such later time as provided in the Reserve Bank's operating circular, or return the item by midnight of the day it receives the item. If the paying bank fails to settle for or

return a cash item in accordance with this paragraph (b)(4)(ii), it shall be subject to any applicable overdraft charges. Settlement under this paragraph (b)(4)(ii) satisfies the settlement requirements of paragraph (b)(4)(i) of this section.

(5) *Manner of settlement.* Settlement with a Reserve Bank under paragraphs (b)(1) through (4) of this section shall be made by debit to an account on the Reserve Bank's books or other form of settlement to which the Reserve Bank agrees, except that the Reserve Bank may, in its discretion, obtain settlement by charging the paying bank's account. A paying bank may not set off against the amount of a settlement under this section the amount of a claim with respect to another cash item, cash letter, or other claim under § 229.34 of this chapter (Regulation CC) or other law.

(6) *Notice in lieu of return.* If a cash item is unavailable for return, the paying bank may send a notice in lieu of return as provided in § 229.31(f) of this chapter (Regulation CC).

(c) *Noncash items.* A Reserve Bank may require the paying or collecting bank to which it has presented or sent a noncash item to pay for the item by a debit to an account maintained or used by the paying or collecting bank on the Reserve Bank's books or by any other form of settlement acceptable to the Reserve Bank.

(d) *Nonbank payor.* A Reserve Bank may require a nonbank payor to which it has presented an item to pay for it by debit to an account on the Reserve Bank's books or other form of settlement acceptable to the Reserve Bank.

(e) *Liability of Reserve Bank.* Except as set forth in 12 CFR 229.35(b), a Reserve Bank shall not be liable for the failure of a collecting bank, paying bank, or nonbank payor to pay for an item, or for any loss resulting from the Reserve Bank's acceptance of any form of payment other than cash authorized in paragraphs (b), (c), and (d) of this section. A Reserve Bank that acts in good faith and exercises ordinary care shall not be liable for the nonpayment of, or failure to realize upon, any non-cash form of payment that it accepts under paragraphs (b), (c), and (d) of this section.

■ 10. In § 210.10, revise paragraph (a) to read as follows:

#### **§ 210.10 Time schedule and availability of credits for cash items and returned checks.**

(a) Each Reserve Bank shall publish a time schedule indicating when the amount of any cash item or returned check received by it is counted toward the balance maintained to satisfy a reserve balance requirement for

purposes of part 204 of this chapter (Regulation D) and becomes available for use by the sender or paying or returning bank. The Reserve Bank that holds the settlement account shall give either immediate or deferred credit to a sender, a paying bank, or a returning bank (other than a foreign correspondent) in accordance with the time schedule of the receiving Reserve Bank. A Reserve Bank ordinarily gives credit to a foreign correspondent only when the Reserve Bank receives payment of the item in actually and finally collected funds, but, in its discretion, a Reserve Bank may give immediate or deferred credit in accordance with its time schedule.

\* \* \* \* \*

- 11. Amend § 210.11 by:
  - a. Revising paragraph (b) and;
  - b. Removing paragraph (c).

The revision reads as follows:

#### **§ 210.11 Availability of proceeds of noncash items; time schedule.**

\* \* \* \* \*

(b) *Time schedule.* A Reserve Bank may give credit for the proceeds of a noncash item subject to payment in actually and finally collected funds in accordance with a published time schedule. The time schedule shall indicate when the proceeds of the noncash item will be counted toward the balance maintained to satisfy a reserve balance requirement for purposes of part 204 of this chapter (Regulation D) and become available for use by the sender. A Reserve Bank may, however, refuse at any time to permit the use of credit given by it for a noncash item for which the Reserve Bank has not yet received payment in actually and finally collected funds.

■ 12. In § 210.12, revise paragraphs (a) and (c) through (g) to read as follows:

#### **§ 210.12 Return of cash items and handling of returned checks.**

##### **(a) Return of items—**

(1) *Return of cash items handled by Reserve Banks.* A paying bank that receives a cash item from a Reserve Bank, other than for immediate payment over the counter, and that settles for the item as provided in § 210.9(b), may, before it has finally paid the item, return the item to any Reserve Bank (unless its Administrative Reserve Bank directs it to return the item to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars. A paying bank that receives a cash item from a Reserve Bank also may return the item prior to settlement, in accordance with § 210.9(b) of this subpart and the

Reserve Banks' operating circulars. The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(2) *Return of checks not handled by Reserve Banks.* A paying bank that receives a check, other than from a Reserve Bank, and that determines not to pay the check, may send the returned check to any Reserve Bank (unless its Administrative Reserve Bank directs it to send the returned check to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars. A returning bank may send a returned check to any Reserve Bank (unless its Administrative Reserve Bank directs it to send the returned check to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars.

\* \* \* \* \*

(c) *Paying bank's and returning bank's agreement.* The warranties, indemnities, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the returned check bears an indorsement of the paying bank or returning bank. By sending a returned check to a Reserve Bank, the paying bank or returning bank does all of the following.

(1) *Authorization to handled returned check.* The paying bank or returning bank authorizes the paying bank's or returning bank's Administrative Reserve Bank, and any other Reserve Bank or returning bank to which the returned check is sent, to handle the returned check (and authorizes any Reserve Bank that handles settlement for the returned check to make accounting entries) subject to this subpart and to the Reserve Banks' operating circulars.

(2) *Warranties for all returned checks.* The paying bank or returning bank warrants to each Reserve Bank handling a returned check that the returned check bears all indorsements applied by parties that previously handled the returned check for forward collection or return.

(3) *Warranties and indemnities as set forth in Regulation CC.* As applicable and unless otherwise provided, a paying bank or returning bank makes to each Reserve Bank that handles the returned check all the warranties and indemnities set forth in and subject to the terms of subparts C and D of part 229 of this chapter (Regulation CC).

**(4) Paying bank or returning bank's liability to Reserve Bank.**

(i) Except as provided in paragraph (c)(4)(ii) and (iii) of this section, a paying bank or returning bank agrees to indemnify each Reserve Bank for any loss or expense (including attorneys' fees and expenses of litigation) resulting from—

(A) The paying or returning bank's lack of authority to give the authorization in paragraph (c)(1) of this section;

(B) Any action taken by a Reserve Bank within the scope of its authority in handling the returned check; or

(C) Any warranty or indemnity made by the Reserve Bank under paragraph (e) of this section or part 229 of this chapter.

(ii) A paying bank's or returning bank's liability for warranties and indemnities that a Reserve Bank makes for a returned check that is a substitute check, a paper or electronic representation thereof, or an electronic returned check is subject to the following conditions and limitations—

(A) A paying bank or returning bank that sent an original returned check shall not be liable for any amount that a Reserve Bank pays under subpart D of part 229 of this chapter, or under § 229.34 of this chapter with respect to an electronic returned check, absent the paying bank's or returning bank's agreement to the contrary;

(B) Nothing in this subpart alters the liability under subpart D of part 229 of this chapter of a paying bank or returning bank that sent a substitute check or a paper or electronic representation of a substitute check or under § 229.34 of this chapter of a paying bank or returning bank that sent an electronic returned check; and

(iii) A paying bank or returning bank shall not be liable for any amount that the Reserve Bank pays under this subpart or part 229 of this chapter that is attributable to the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

(d) *Paying bank or returning bank's liability under other law.* Nothing in paragraph (c) of this section limits any warranty or indemnity by a returning bank or paying bank (or a person that handled an item prior to that bank) arising under state law or regulation (such as the U.C.C.), other federal law or regulation (such as part 229 of this chapter), or an agreement with a Reserve Bank.

**(e) Warranties by and liability of Reserve Bank.**

(1) The following provisions apply when a Reserve Bank handles a returned check under this subpart.

(i) *Warranties for all items.* The Reserve Bank warrants to the bank to which it sends the returned check that the returned check bears all indorsements applied by parties that previously handled the returned check for forward collection or return.

(ii) *Warranties and indemnities as set forth in Regulation CC.* As applicable and unless otherwise provided, the Reserve Bank makes to the bank to which it sends the returned check all the warranties and indemnities set forth in and subject to the terms of subparts C and D of part 229 of this chapter (Regulation CC).

*(2) Indemnity for substitute check created from electronic returned check.*

(i) Except as provided in paragraph (e)(2)(ii) of this section, the Reserve Bank shall indemnify the bank to which it transfers or presents an electronic returned check (the recipient bank) for the amount of any losses that the recipient bank incurs under subpart D of part 229 of this chapter (Regulation CC) for an indemnity that the recipient bank was required to make under subpart D of part 229 of this chapter in connection with a substitute check later created from the electronic returned check.

(ii) The Reserve Bank shall not be liable under paragraph (e)(2)(i) of this section for any amount that the recipient bank pays under subpart D of part 229 of this chapter that is attributable to the lack of good faith or failure to exercise ordinary care of the recipient bank or a person that handled the item, in any form, after the recipient bank.

(3) A Reserve Bank shall not have or assume any other liability to any person except—

(i) For the Reserve Bank's own lack of good faith or failure to exercise ordinary care;

(ii) As provided in this paragraph (e); and

(iii) As provided in subparts C and D of part 229 of this chapter (Regulation CC).

*(f) Recovery by Reserve Bank.*

(1) A Reserve Bank that has handled a returned check may recover as provided in paragraph (f)(2) if an action or proceeding is brought against (or if defense is tendered to) the Reserve Bank based on—

(i) The alleged failure of the paying bank or returning bank to have the authority to give the authorization in paragraph (c)(1) of this section;

(ii) Any action by the Reserve Bank within the scope of its authority in handling the returned check; or

(iii) Any warranty or indemnity made by the Reserve Bank under paragraph (e)

of this section or part 229 of this chapter,

(2) Upon entry of a final judgment or decree in an action or proceeding described in paragraph (f)(1), a Reserve Bank may recover from the paying bank or returning bank the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay because of the judgment or decree or the tender of defense, together with interest thereon.

*(g) Methods of recovery.*

(1) The Reserve Bank may recover the amount stated in paragraph (f) of this section by charging any account on its books that is maintained or used by the paying bank or returning bank (or by charging another returning Reserve Bank), if—

(i) The Reserve Bank made reasonable written demand on the paying bank or returning bank to assume defense of the action or proceeding; and

(ii) The paying bank or returning bank has not made any other arrangement for payment that is acceptable to the Reserve Bank.

(2) The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged under this paragraph (g) may recover from the paying or returning bank in the manner and under the circumstances set forth in this paragraph (g).

(3) A Reserve Bank's failure to avail itself of the remedy provided in this paragraph (g) does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (c)(4) of this section.

\* \* \* \* \*

- 13. Amend § 210.25 by:
  - a. Revising the introductory text of paragraph (b)(2); and
  - b. Adding paragraph (e).

The revisions and additions read as follows:

**Subpart B—Funds Transfers Through Fedwire**

**§ 210.25 Authority, purpose, and scope.**

\* \* \* \* \*

(b) \* \* \*

(2) Except as otherwise provided in paragraphs (b)(3) and (b)(4) of this section, including Article 4A as incorporated herein, and operating circulars of the Reserve Banks issued in accordance with paragraph (c) of this section, this subpart governs the rights and obligations of:

\* \* \* \* \*

(e) *Financial Messaging Standards.* Financial messaging standards (e.g., ISO

20022), including the financial messaging components, elements, technical documentation, tags, and terminology used to implement those standards, do not confer or connote legal status or responsibilities. This subpart, including Article 4A as incorporated herein, and the operating circulars of the Reserve Banks issued in accordance with paragraph (c) of this section govern the rights and obligations of parties to funds transfers sent through the Fedwire Funds Service as provided in paragraph (b) of this section. To the extent there is any inconsistency between a financial messaging standard adopted by the Fedwire Funds Service and this subpart, this subpart shall prevail.

- 14. In § 210.26, revise paragraph (e) to read as follows:

#### § 210.26 Definitions.

\* \* \* \* \*

(e) *Fedwire Funds Service* and *Fedwire* means the funds-transfer system owned and operated by the Federal Reserve Banks that is used primarily for the transmission and settlement of payment orders governed by this subpart. Fedwire does not include the system for making automated clearing house transfers.

\* \* \* \* \*

#### §§ 210.9, 210.25, and 210.29 [Amended]

- 15. In addition to the amendments set forth above, in 12 CFR part 210, remove the words “Fedwire” and add, in their place, the words “the Fedwire Funds Service” in the following places:
  - (a) Section 210.9(b)(4)(i)(A);
  - (b) Sections 210.25(a), (b)(3); and
  - (c) Section 210.29(b).

Appendix A to subpart B of part 210 [Amended]

- 16. In Appendix A to subpart B of part 210:
  - (a) Under “Section 210.25—Authority, Purpose, and Scope”, add paragraph (e).
  - (b) Under “Section 210.32—Federal Reserve Bank Liability; Payment of Interest”, revise paragraph (b).

The additions and revisions read as follows:

#### Appendix A to Subpart B of Part 210—Commentary

\* \* \* \* \*

Section 210.25—Authority, Purpose, and Scope

\* \* \* \* \*

(e) *Financial messaging standards*. This paragraph makes clear that financial messaging standards, including the financial messaging components, elements, technical documentation, tags, and terminology used to implement those standards, do not confer or connote legal status or responsibilities.

Instead, subpart B of Regulation J and Federal Reserve Bank operating circulars govern the rights and obligations of parties to funds transfers sent through the Fedwire Funds Service as provided in section 210.25(b). Thus, to the extent there is any inconsistency between a financial messaging standard adopted by the Fedwire Funds Service and subpart B of Regulation J, subpart B of Regulation J, including Article 4A as adopted in its appendix, will prevail. In the ISO 20022 financial messaging standard, for example, the term *agent* is used to refer to a variety of bank parties to a funds transfer (e.g., *debtor agent*, *creditor agent*, *intermediary agent*). Notwithstanding use of that term in the standard and in message tags, such banks are not the agents of any party to a funds transfer and owe no duty to any other party to such a funds transfer except as provided in subpart B of Regulation J (including Article 4A) or by express agreement. The ISO 20022 financial messaging standard also permits information to be carried in a funds-transfer message regarding persons that are not parties to that funds transfer (e.g., *ultimate debtor*, *ultimate creditor*, *initiating party*) for regulatory, compliance, remittance, or other purposes. An “ultimate debtor” is not an “originator” as defined in Article 4A. The relationship between the ultimate debtor and the originator (what the ISO 20022 standard calls the “debtor”) is determined by law other than Article 4A.

\* \* \* \* \*

Section 210.32—Federal Reserve Bank Liability; Payment of Interest

\* \* \* \* \*

(b) *Payment of interest*. (1) Under article 4A, a Federal Reserve Bank may be required to pay compensation in the form of interest to another party in connection with its handling of a funds transfer. For example, payment of compensation in the form of interest is required in certain situations pursuant to sections 4A–204 (relating to refund of payment and duty of customer to report with respect to unauthorized payment order), 4A–209 (relating to acceptance of payment order), 4A–210 (relating to rejection of payment order), 4A–304 (relating to duty of sender to report erroneously executed payment order), 4A–305 (relating to liability for late or improper execution or failure to execute a payment order), 4A–402 (relating to obligation of sender to pay receiving bank), and 4A–404 (relating to obligation of beneficiary’s bank to pay and give notice to beneficiary).

(2) Section 210.32(b) requires Federal Reserve Banks to provide compensation through an explicit interest payment. Under section 4A–506(a), the amount of such interest may be determined by agreement between the sender and receiving bank or by funds-transfer system rule. If there is no such agreement, under section 4A–506(b), the amount of interest is based on the federal funds rate.

Similarly, compensation in the form of explicit interest will be paid to government senders, receiving banks, or beneficiaries described in § 210.25(d) if they are entitled to interest under this subpart. A Federal Reserve Bank may also, in its discretion, pay

explicit interest directly to a remote party to a Fedwire funds transfer that is entitled to interest, rather than providing compensation to its direct sender or receiving bank.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, February 28, 2018.

Ann E. Misback,  
Secretary of the Board.

[FR Doc. 2018-04486 Filed 3-14-18; 8:45 am]  
BILLING CODE 6210-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2018-007; Airspace Docket No. 17-AWP-18]

#### Proposed Amendment of Class E Airspace; Mesquite, NV

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Mesquite Airport, Mesquite, NV, by enlarging the area southwest of the airport and updating the airport’s geographic coordinates to match the FAA’s aeronautical database. These changes are necessary to accommodate new area navigation (RNAV) procedures at this airport.

**DATES:** Comments must be received on or before April 30, 2018.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA-2018-007; Airspace Docket No. 17-AWP-18, at the beginning of your comments. You may also submit comments through the internet at <http://www.regulations.gov>.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For