

**FEDERAL RESERVE SYSTEM****12 CFR Part 229****[Regulation CC; Docket No. R-1409]****RIN No. 7100-AD68****Availability of Funds and Collection of Checks****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Proposed rule, request for comment.

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

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

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

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.
- *FAX:* 202/452-3819 or 202/452-3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal

Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

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

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

**SUPPLEMENTARY INFORMATION:****Background**

Regulation CC (12 CFR part 229) implements the Expedited Funds Availability Act (EFA Act) and the Check Clearing for the 21st Century Act (Check 21 Act).<sup>1</sup> The Board implemented the EFA Act in subparts A, B, and C of Regulation CC. The EFA Act was enacted to provide depositors of checks with prompt funds availability and to foster improvements in the check collection and return processes. Subpart A of Regulation CC contains general information, such as definitions of terms. Subpart B of Regulation CC specifies availability schedules within which banks must make funds available for withdrawal. Subpart B also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest. These provisions implement specific requirements set forth in the EFA Act. The provisions of subpart C were adopted by the Board pursuant to the authority granted to it in §§ 609(b) and (c) of the EFA Act.<sup>2</sup> Section 609(b) directs the Board to consider requiring that depository institutions and Federal Reserve Banks take certain steps to improve the check-processing system, such by taking steps necessary to automate the check-return process (§ 609(b)(4)).<sup>3</sup> Section 609(c) grants the

Board authority to regulate any aspect of the payment system and any related function of the payment system with respect to checks.<sup>4</sup> Subpart C includes rules to speed the collection and return of checks, such as rules covering the expeditious return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns, check indorsement standards, and same-day settlement of checks presented to the paying bank.

Subpart C's provisions presume that banks generally handle checks in paper form. Since the provisions were adopted in 1988, however, banks have largely migrated to an electronic interbank check collection and return system.<sup>5</sup> This migration was facilitated by the Check 21 Act,<sup>6</sup> which became effective in October 2004 and is implemented in subparts A and D of Regulation CC. The Check 21 Act permits banks to use a properly prepared substitute check in place of the original check, which enables banks to take the original check out of the collection and return process and to handle check images for much of the check collection and return process without having to retain the original check. The Check 21 Act has been a catalyst for rapid growth in banks' electronic handling of checks over the last 5 years. For example, at year-end 2005, the Reserve Banks received about 4 percent of checks deposited with them for collection in electronic form and presented approximately 28 percent of their checks in electronic form.<sup>7</sup> In December 2010, the Reserve Banks received about 99.7 percent of checks deposited for forward collection electronically, and presented about 98.4 percent of checks electronically. In addition, at the end of 2005 virtually all returned checks handled by the Reserve Banks were sent to and from the Reserve Banks in paper form. By December 2010, the Reserve Banks received 97.1 percent of returned checks

regulation, that \* \* \* the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks." 12 U.S.C. 4008(b)(4).

<sup>4</sup> Section 609(c)(1) states that "[i]n order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks." 12 U.S.C. 4008(c)(1).

<sup>5</sup> Certain provisions, such as the same-day settlement provisions in § 229.36(f), were adopted at later times.

<sup>6</sup> Public Law 108-100, 117 Stat. 1177 (codified at 12 U.S.C. 5001-5018) (2003).

<sup>7</sup> Prior to the Check 21 Act, the Reserve Banks presented about 20 to 25 percent of their check volume electronically, primarily under MICR-presentation programs.

<sup>1</sup> Expedited Funds Availability Act, 12 U.S.C. 4001 *et seq.*; Check Clearing for the 21st Century Act, 12 U.S.C. 5001 *et seq.*

<sup>2</sup> 12 U.S.C. 4008 (b) and (c).

<sup>3</sup> Section 609(b)(4) states that "[i]n order to improve the check processing system, the Board shall consider (among other proposals) requiring, by

electronically, and delivered about 76.7 percent of returned checks to depository banks electronically.<sup>8</sup> Based on information from banking industry sources, the Board believes that these trends with respect to checks handled by the Reserve Banks are representative of trends nationwide.<sup>9</sup>

## Overview of the Proposal

### I. Amendments To Encourage Electronic Check Clearing and Check Return

As a general matter, the Board believes that electronic check-clearing and check-return methods improve the efficiency of the check system. Electronic methods are faster and more resilient, and, at the same time, they are less costly and less error prone. Despite the increasing number of checks presented and returned electronically, some banks continue to demand paper returned checks or present paper checks for same-day settlement under § 229.36(f) of Regulation CC. The full benefits and cost savings of the electronic methods, however, cannot be realized so long as some banks continue to employ paper-processing methods. Accordingly, under its authority provided in § 609(c) of the EFA Act, the Board is proposing amendments to subpart C of Regulation CC to provide incentives for depository banks to receive, and paying banks to send, returned checks electronically. The Board also is proposing amendments to the same-day settlement provisions to promote electronic presentment of checks. Further, based on experience since the Check 21 Act became effective, the Board is proposing minor amendments to subpart D of Regulation CC with respect to substitute checks.

#### A. *Expeditious-Return Rule*

##### 1. Current Rule

Regulation CC currently provides that if a paying bank determines not to pay a check, it must return the check in an expeditious manner, as provided under either the “two-day/four-day test” (§ 229.30(a)(1)), or the “forward-

collection test” (§ 229.30(a)(2)).<sup>10</sup> To meet the two-day/four-day test, a paying bank must send a returned local check in a manner such that the check would normally be received by the depository bank not later than 4 p.m. local time of the depository bank on the second business day following the banking day on which the check was presented to the paying bank. For nonlocal checks, a paying bank must send a returned check in a manner such that the check would normally be received by the depository bank not later than 4 p.m. local time of the depository bank on the fourth business day following the banking day on which the check was presented to the paying bank. Because there now is only one Federal Reserve Bank check-processing region, there are no longer any nonlocal checks, and the four-day test applies to a null set of checks.<sup>11</sup>

The forward-collection test is satisfied if a paying bank sends the returned check in a manner that a similarly situated bank would send a check (i) of similar amount as the returned check, (ii) drawn on the depository bank, and (iii) deposited for forward collection in the similarly situated bank by noon on the banking day following the banking day on which the check was presented to the paying bank.<sup>12</sup>

When these tests were adopted in the late 1980s, the expeditious-return standard presumed that banks could use the same modes of transportation for returned checks that they used for forward-collection checks. Delivering returned checks in the same time and manner as forward checks would satisfy the regulation’s expeditious-return requirements. Today, by contrast, forward-check collection is almost entirely electronic, and the dedicated air and ground transportation for paper checks has largely been discontinued. Some depository banks, however, continue to require that returned checks be delivered to them in paper form, making it difficult for paying banks and returning banks to meet the expeditious-return requirement. Accordingly, the full benefits and cost savings of electronic check-return methods cannot be realized if paying banks and returning banks must incur substantial

expense to deliver returned checks to the banks that continue to require that paper checks be returned. Moreover, as technology has improved, the Board understands that the initial implementation and ongoing costs incurred by a depository bank to receive returned items electronically have decreased substantially. For example, the Reserve Banks now provide electronic copies of returned checks in .pdf files to small depository banks, which can use the .pdf file to print substitute checks on their own premises if necessary. Compared to alternative means of receiving electronic returns, this approach involves only minimal upfront costs to a depository bank, such as the purchase of a printer capable of double-sided printing and magnetic-ink toner cartridges.<sup>13</sup> After printing the electronic copies, the depository bank can process them in the same way it processes paper checks that are physically delivered to it.

##### 2. Proposed Expeditious Return Requirement

The Board believes that a fully-electronic check-return system benefits the nation’s payment system, as well as consumers and businesses. Additionally, the Board believes that electronic check return substantially reduces risks to the check system and that the costs to a bank to receive returned checks electronically have markedly declined. Therefore, the Board believes that it is appropriate for the risk of non-expeditious return to rest with a depository bank that chooses not to accept electronic returns. Accordingly, to encourage depository banks to agree to receive returned checks electronically, and to avoid imposing increased cost on paying banks to return checks expeditiously to depository banks that do not accept electronic returns, the Board proposes to amend Regulation CC to provide that a depository bank would not be entitled to expeditious return unless it agrees to receive electronic returns directly or indirectly from the paying bank returning the check.<sup>14</sup> The Board proposes to define a new term,

<sup>8</sup> The proportion of returned checks the Reserve Banks delivered electronically to the depository bank increased from 28 percent in June 2009 to 76.7 percent in December 2010. The proportion of depository banks to which the Reserve Banks deliver returns electronically, while lower, has also increased, from 8 percent in June 2009 to 52 percent in December 2010.

<sup>9</sup> The Electronic Check Clearing House Organization (ECCHO) collects data from various check-clearing intermediaries, including the Reserve Banks, to estimate the percent of interbank checks that are presented electronically. See [http://www.eccho.org/check\\_ps.php](http://www.eccho.org/check_ps.php).

<sup>10</sup> Section 229.31(a) sets forth similar tests for returning banks.

<sup>11</sup> A local check is a check drawn on a paying bank located in the same check-processing region as the depository bank. 12 CFR 229.2(r). A nonlocal check is a check drawn on a paying bank located in a different check-processing region as the depository bank. 12 CFR 229.2(v).

<sup>12</sup> The forward-collection test is satisfied if the paying bank “returns a check by means as swift as the means similarly situated banks would use for the forward collection of a check drawn on the depository bank.” See commentary to § 229.30(a)(2).

<sup>13</sup> Prior to developing the capability of providing the electronic .pdf copies, it may have been necessary for a depository bank, or its processor, to develop systems capable of automated processing of incoming electronic data files (e.g., X9.100–187 files) representing returned checks and to integrate these systems with the bank’s other existing systems, such as the bank’s demand-deposit-account systems that maintain the bank’s customer balances.

<sup>14</sup> The paying bank initiating the return would still be subject to the midnight deadline for all returned checks. See Uniform Commercial Code (UCC) § 4–302.

“electronic return,” and to establish requirements for an item to qualify as an electronic return.<sup>15</sup> Under the proposal, an electronic return would be treated as if it were a check for purposes of subpart C of the regulation (*See* § 229.33 in the section-by-section analysis).<sup>16</sup>

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

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

business days of a check’s presentment to the paying bank. Accordingly, the Board believes that the forward-collection test is not necessary in light of the Board’s proposal.

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

### 3. Alternate Approaches Considered

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

<sup>17</sup> For example, a depository bank may collect checks through a correspondent bank or processor, but have returned checks delivered directly to the depository bank itself. Conversely, a depository bank may arrange with another bank to apply the other bank’s indorsement as the depository-bank indorsement, such that depository bank’s returned checks are handled by the other bank. *See* § 229.35(d).

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

### B. Notice of Nonpayment Requirement

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

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

### C. Same-Day Settlement Rule

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

<sup>15</sup> *See* proposed § 229.2(v) (definition of “electronic return”) in the section-by-section analysis.

<sup>16</sup> *See* proposed § 229.34 in the section-by-section analysis for warranties made with respect to electronic returns.

<sup>18</sup> 57 FR 46956 (Oct. 14, 1992).

part 210), the Reserve Banks obtain same-day settlement at par for checks presented to a paying bank before its cut-off hour, which is generally 2:00 p.m. or later.<sup>19</sup> To reduce the competitive disparity between the Reserve Banks and other collecting banks, and to more equitably balance the bargaining power between collecting and paying banks, the same-day settlement rule (1) required a paying bank to provide same-day settlement to a private-sector collecting bank, provided that presentment was made by 8 a.m. in accordance with reasonable delivery requirements established by the paying bank and (2) prohibited the paying bank from deducting fees from the amount of its settlement for checks presented in accordance with the terms of the rule.<sup>20</sup>

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

<sup>19</sup> Times are stated as local time of the paying bank.

<sup>20</sup> In April 1988 the Board requested comment on a proposal requiring paying banks to settle on the day of presentment for checks presented by any bank prior to 2 p.m., *i.e.*, the same timeframe as is applicable to the Reserve Banks. (53 FR 11911 (Apr. 11, 1988)) The overwhelming majority of commenters, however, objected to the proposed 2 p.m. deadline because they believed that it would severely disrupt corporate cash management and controlled disbursement services, as well as paying banks' operations. *See* 57 FR 46956, 46957 (Oct. 14, 1992).

Further, in March 1998, the Board requested comment on the effect of the same-day settlement rule, and on whether remaining legal discrepancies between the Reserve Banks and private-sector collecting banks, such as the 8 a.m. versus 2 p.m. presentment time for same-day settlement, should be further reduced (63 FR 12700, Mar. 16, 1998). Most commenters did not believe that the six-hour difference in presentment deadlines or other remaining legal disparities were a significant impediment to the ability of private-sector collecting banks to compete with the Reserve Banks. *See* 63 FR 68701, 68703 (Dec. 14, 1998). The Board concluded that the costs associated with reducing the remaining legal disparities would outweigh any payments system efficiency gains, and therefore decided not to propose any specific regulatory changes.

To encourage the banking industry's ongoing transition to fully-electronic interbank check clearing, the Board proposes to allow a paying bank to require checks presented for same-day settlement to be presented electronically as "electronic collection items." A paying bank, however, must have agreed to receive electronic collection items from the presenting bank under proposed § 229.36(a). Similar to electronic returns, the Board proposes to define a new term, "electronic collection item," and to establish substantive requirements for an item to qualify as an electronic collection item. Under the proposal, the timeframes, deadlines, and settlement methods for same-day settlement presentments of electronic collection items would be the same as those currently in effect for same-day settlement presentments of paper checks. The proposed definition of an electronic collection item and the ways by which a paying bank agrees to accept electronic presentment items from a presenting bank are discussed more below in the section-by-section analysis of proposed §§ 229.2(s) and 229.36(a), respectively.

The proposed rule would not preclude interbank presentment of checks in paper form; settlement for such presentments would be subject to the UCC, § 229.36(d) if the paying bank has not specified that checks presented for same-day settlement be presented as electronic collection items, or Regulation J.<sup>21</sup> The Board requests comment on the proposed modification to the same-day settlement rule.

## II. Electronic Items Not Derived From Checks

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

An electronically-created item is not derived from an original paper check, and therefore it cannot be used to create a substitute check that meets the

requirements of the Check 21 Act and Regulation CC.<sup>22</sup> As a practical matter, a bank (including perhaps the depository bank) receiving an electronically-created item cannot distinguish the item from any other image of a check that it receives electronically. The bank, nonetheless, may transfer the image as if it were an electronic collection item or electronic return, or produce a paper item that is indistinguishable from a substitute check (although not a valid substitute check because the item never existed in paper). A bank that transfers an image as if it were an electronic collection item or electronic return may be liable under the proposed new warranties (*see* proposed § 229.34) related to electronic collection items and electronic returns, or may be liable for breach of the Check 21 Act's warranty that a substitute check accurately represents all of the information from the original check as of the time the original check was truncated. In order to protect a bank that receives an electronically-created item from another bank from potential liability, the Board proposes that any bank transferring an electronically-created image and related information as either an electronic collection item or an electronic return would make any warranty the bank would make if the electronically-created item were in fact an electronic collection item or an electronic return (in other words, as if the item were derived from a paper check). As discussed in the section-by-section analysis of proposed § 229.34, the proposal would apply the same warranties to electronic collection items and electronic returns that would apply had those items been handled as paper checks (including remotely created checks) or substitute checks.

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

<sup>22</sup> Under the terms of the Check 21 Act, a substitute check is a paper reproduction of an original check that contains an image of the front and back of the original check. Regulation CC defines *original check* as "the first paper check issued with respect to a particular payment transaction." In the case of an electronically created item, there is no original check of which a substitute check can be a reproduction.

<sup>21</sup> *See* UCC 4-213 and 4-301.

know and to protect itself contractually against the risk that it did not.

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

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

### III. Amendments Related to the Elimination of Nonlocal Checks

In response to the continued nationwide decline in check usage and banks' rapidly increasing use of electronic check-clearing methods since the Check 21 Act, as well as to meet the cost recovery requirements of the

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

In March 2008, the Reserve Banks published an estimate, based on visual inspection of a sample of about 35,000 checks, that about one percent of all checks in 2007 were remotely created. See page 33 of the Reserve Banks' 2007 *Check Sample Study*: [http://www.frbservices.org/files/communications/pdf/research/2007\\_check\\_sample\\_study.pdf](http://www.frbservices.org/files/communications/pdf/research/2007_check_sample_study.pdf). The study's definition of the item in question was somewhat different than Regulation CC's definition of a remotely created check.

Monetary Control Act of 1980, the Federal Reserve Banks have ceased check-processing operations at all of their check-processing offices except one.<sup>24</sup>

The EFA Act's and Regulation CC's funds-availability schedule differentiates between "local checks" and "nonlocal checks," which are defined in terms of which "check-processing region" the paying bank is located in relative to the depository bank.<sup>25</sup> The EFA Act and Regulation CC define a "check-processing region" in terms of the geographical area served by a Federal Reserve Bank check-processing center.<sup>26</sup> The Reserve Banks' office closures have had the effect of reducing to one the number of check-processing regions. Accordingly, there are no more "nonlocal checks," because all paying banks and depository banks are located in the same check-processing region.<sup>27</sup>

Because there are no more nonlocal checks, certain provisions in the regulation can be substantially simplified. Specifically, the Board proposes to delete the definitions in subpart A that relate to distinguishing local from nonlocal checks (specifically, the definitions of "check-processing region," "local check," "local paying bank," "nonlocal check," and "nonlocal paying bank"), as well as the related portions of appendix A to the regulation. The Board also proposes to streamline the funds-availability and

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

<sup>25</sup> 12 CFR 229.2(r) and 229.2(v). A "local check" is one that is payable by a bank located in the same check-processing region as the depository bank. By contrast, a "nonlocal check" is one that is payable by a bank located in a different check-processing region than the depository bank.

<sup>26</sup> Section 602(9) of EFA Act defines check processing region as "the geographical area served by a Federal Reserve Bank check processing center or such larger area as the Board may prescribe by regulations." Section 229.2(m) defines check processing region as "the geographical area served by an office of a Federal Reserve Bank for purposes of its check-processing activities."

<sup>27</sup> A deposit of a "local check" receives two-day funds availability under the regulation, whereas nonlocal checks received five-day availability. The elimination of nonlocal checks therefore has improved funds availability for banks' customers.

disclosure provisions in subpart B and to update the model funds-availability forms set forth in appendix C to the regulation.<sup>28</sup> The Board proposes that a bank basing its disclosures on the models currently in the appendix would continue to receive a safe harbor for doing so up to 12 months after a final rule becomes effective, provided that the disclosures accurately reflect the bank's policies and practices. Finally, the Board proposes to update the preemption determinations, with respect to states' funds-availability laws, that are set forth in appendix F to the regulation.<sup>29</sup>

### IV. Dodd-Frank Act Amendments

#### A. EFA Act Dollar Amounts

Section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amends the EFA Act by increasing from \$100 to \$200 the amount of deposited funds that banks must make available for withdrawal by opening of business on the next day.<sup>30</sup> The effective date of this provision of the act is the "designated transfer date," which the Secretary of the Treasury has determined to be July 21, 2011.<sup>31</sup> This provision of the EFA Act is implemented in § 229.10(c)(1)(vii). Additionally, the model disclosure forms set forth in current appendix C reflect the requirement that a bank must make \$100 of the deposit available on the next business day. When the Dodd-Frank Act's increase to \$200 becomes effective, banks should ensure that their disclosures reflect the new funds-availability schedule and that customers are notified of the changes in policy in accordance with § 229.18(e). Specifically, effective July 21, 2011, a bank basing its funds-availability disclosure on current model C-3, C-4, or C-5 must ensure that its disclosure indicates that the first \$200 (rather than \$100) of a check deposit will be

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

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

<sup>30</sup> See § 1086(e) of the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>31</sup> See § 1062 of the Dodd-Frank Act. The designated transfer date is subject to an extension to up to 18 months after the Dodd-Frank Act's date of enactment.

available on the next business day after the day of deposit.<sup>32</sup>

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

#### B. Rule-Writing Authority

Section 1086 also amends the Board's rule-writing authority under the EFA Act by making certain rule-writing authorities joint with the Bureau. Specifically, as of the transfer date, the Board's authority to implement the EFA Act's provisions (EFA Act § 609(a)), reduce hold periods (EFA Act § 603(d)(1)), establish exceptions to the funds-availability schedule (EFA Act § 604(f)), and publish model disclosure provisions (EFA Act § 605(f)(1)) will become joint with the Bureau. Accordingly, after the transfer date, any rules promulgated pursuant to these authorities will be done so jointly with the Bureau.

#### C. Administrative Enforcement

The Dodd-Frank Act eliminates the Office of Thrift Supervision as of July 21, 2011, the "transfer date" provided in § 311 of the Dodd-Frank Act, and transfers enforcement authority for insured savings associations under § 8 of the Federal Deposit Insurance Act to the Office of the Comptroller of the

Currency.<sup>34</sup> Accordingly, as of the transfer date, compliance with part 229 will be enforced by the Office of the Comptroller of the Currency in the case of savings associations with deposits insured by the Federal Deposit Insurance Corporation. The administrative enforcement provisions are contained in § 229.3.

#### V. Other Proposed Amendments

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

#### Section-by-Section Analysis

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

#### I. Subpart A

##### A. Section 229.1—Authority and Purpose, Organization

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

##### B. Section 229.2—Definitions

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

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

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

substance by this proposed clarifying definitional change.

##### 2. Section 229.2(c)—Automated Teller Machine or ATM

The Board proposes to clarify that an automated teller machine (ATM) includes only those devices at which a person may make deposits by cash or paper check. For example, a remote deposit capture device would not be considered an ATM because a bank's customer would be depositing an image of the check, not the paper check, into the account. The Board proposes conforming amendments to the commentary of this section. Additionally, the Board proposes to provide an example of the "other account transactions" that may be performed at an automated teller machine (ATM); specifically, making cash withdrawals from an account.

##### 3. Section 229.2(r)—Depository Bank

The Board proposes to clarify that a bank that rejects a check submitted for deposit is not a depository bank. The rationale for this proposed change is discussed in more detail below in this section-by-section analysis under § 229.52.

##### 4. Section 229.2(s)—Electronic Collection Item

The Board proposes in new § 229.2(s) to define the new term "electronic collection item" as an electronic image of and information related to a check that a bank sends for forward collection and that a paying bank has agreed to receive under § 229.36(a), and that is sufficient to create a substitute check.<sup>35</sup> Under the proposed definition, the image and information must conform to American National Standard Specifications for Electronic Exchange of Check and Image Data—X9.100–187, in conjunction with its Universal Companion Document, (hereinafter collectively referred to as ANS X9.100–187), unless the parties otherwise agree.<sup>36</sup> If an electronic collection item satisfies the requirements set forth in proposed § 229.2(s), then, as stated in proposed § 229.33, the provisions of subpart C would apply to the electronic collection item as if it were a check. (See proposed commentary to

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

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

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

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

<sup>36</sup> X9.100–187 is available from <http://www.x9.org>. The UCD for X9.100–187 is available at [http://www.checkimagecentral.org/pdf/UCD\\_X9\\_100-187-2008\\_Version\\_1.2.pdf](http://www.checkimagecentral.org/pdf/UCD_X9_100-187-2008_Version_1.2.pdf).

§ 229.2(s)).<sup>37</sup> Some electronic presentment agreements, however, may not require an image of the check. Electronic items presented under these agreements would not be electronic collection items because they are not sufficient to create a substitute check, nor would they be treated as checks for purposes of subpart C. The proposed commentary also explains that an electronic collection item that contains an image of the front and back of a substitute check (as opposed to an original check) would be an electronic representation of a substitute check, as that phrase is defined in proposed § 229.2(hh) (current § 229.2(xx)). Not all electronic representations of substitute checks, however, would qualify as an electronic collection item, because, to be an electronic collection item, an electronic representation of a substitute check must contain sufficient information to create a substitute check.

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

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

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

<sup>37</sup> For example, a paying bank receiving presentment of an electronic collection item would be subject to the regulation's expeditious-return requirement, provided the depository bank has agreed to accept electronic returns from the paying bank under § 229.32(a).

6. Section 229.2(v)—Electronic Return

The Board proposes in new § 229.2(v) to define the new term “electronic return” as an electronic image of and information related to a check that a paying bank has determined not to pay and that a depository bank has agreed to receive under § 229.32(a), and that is sufficient to create a substitute check. The image and information must conform to ANS X9.100–187, unless the parties otherwise agree. The proposed commentary explains that if an electronic return satisfies the requirements set forth in § 229.2(v), then the provisions of subpart C apply to the electronic return as if it were a check (See proposed § 229.33).<sup>38</sup>

The proposed commentary to § 229.2(v) explains that a depository bank's agreement with a returning bank to accept .pdf files that are sufficient to create substitute checks would be one example of banks varying by agreement the regulation's requirement that an electronic return conform with ANS X9.100–187. By agreeing with a returning bank to accept an electronic return in the form of a .pdf file, a depository bank would thereby be entitled to expeditious return. The Board requests comment on the proposed standard for an electronic return and whether any other standard should be specified in the regulation.

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

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

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

The Board proposes to modify the commentary to the definition of this term to note that an electronic representation of a substitute check may also be an electronic collection item or electronic return if the electronic representation contains sufficient information for creating a substitute

<sup>38</sup> Like an electronic collection item, an electronic return may be an electronic representation of a substitute check, but not all electronic representations of substitute checks would qualify as an electronic return.

check and conforms to ANS X9.100–187, or another format to which the parties agreed.

#### 9. Section 229.2(pp)—Routing Number

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

#### 10. Deleted Terms

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

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

## II. Subpart B

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

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

#### 1. Section 229.10(c)(1)(vi)

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

branch of the depository bank and drawn on the same or another branch of the same bank.

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

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

## 3. Section 229.10(c)(2)

The Board proposes to delete current § 229.10(c)(2), which states that a depository bank shall make funds available by the second business day after the banking day on which a check is deposited in the case of a check deposit that meets the requirements of §§ 229.10(c)(1)(ii), (iii), (iv), or (v), except the check is not deposited in person.<sup>39</sup> In the absence of nonlocal checks, the checks described § 229.10(c)(2) are subject to the same rule as the general rule set forth in proposed § 229.12. Section 229.10(c)(2) is therefore no longer necessary.

### *B. Section 229.12—Availability Schedule*

#### 1. Proposed § 229.12(a)—In General

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

The Board proposes that new § 229.12(a) set forth the general funds-availability rule for deposits of checks: Unless subject to one of the enumerated exceptions, funds from a check deposit must be made available for withdrawal by the second business day following

the banking day of deposit. Proposed new § 229.12(a) is derived from current § 229.12(b), which sets forth local check availability. In the absence of a distinction between local checks and nonlocal checks, current § 229.12(b)(1), (2), (3), and (4) are subsumed within this general rule, and the Board proposes to delete them.<sup>40</sup> Similarly, current § 229.12(c) applies to nonlocal checks, which is now a null set, and the Board proposes to delete § 229.12(c) and commentary thereto.

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

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

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

As indicated in the EFA Act’s legislative history, Congress adopted the five-day maximum hold on nonproprietary ATM deposits to match the five-day maximum hold on a nonlocal check deposit, because the depository bank did not know the composition of a nonproprietary ATM deposit (that is, whether the deposit consisted of cash, local checks, nonlocal checks, etc.).<sup>41</sup> In the absence of nonlocal checks, however, there is no longer any class of check that is subject to a maximum five-day hold.

EFA Act § 603(d)(1) states that “The Board shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short

a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.” The statute’s legislative history recommends a quantitative benchmark for the Board to use to determine whether to reduce these hold periods: a receiving bank could reasonably expect to learn of the return of two-thirds of the checks in a given category before a bank must make the deposited funds available for withdrawal at the opening of business.<sup>42</sup>

As mentioned above, in December 2010 the Reserve Banks received about 99.7 percent of deposited for forward collection electronically, presented 98.4 percent of their checks electronically, received 97.1 percent of returned checks electronically, and delivered about 76.7 percent of returned checks to depository banks electronically. Thus, about 73.0 percent of checks cleared and returned through the Reserve Banks complete the roundtrip from the depository bank to the paying bank and back again in electronic form. It is reasonable to expect that a check cleared and returned entirely in electronic form would complete this roundtrip in three business days. For example, if a check is deposited on Monday and collected electronically, the check would generally be presented to the paying bank on Tuesday. The paying bank would generally send the return electronically to a returning bank on the night between Wednesday and Thursday, which would electronically deliver the returned check to the depository bank on Thursday.

The Board therefore proposes to reduce in proposed § 229.12(d) (current § 229.12(f)) the maximum hold period for nonproprietary ATM deposits from 5 business days to 4 business days. Four business days will provide the depository bank with reasonable opportunity to learn of the nonpayment of a check deposited at a nonproprietary ATM before it must make the funds available for withdrawal.<sup>43</sup> In the example above, the depository bank can reasonably expect to learn of an unpaid electronically returned check on Thursday, and will be required under the proposed 4-business-day hold period to make funds deposited by check at a nonproprietary ATM

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

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

<sup>42</sup> Conference Report on H.R. 27 (H. Rept. 100–261), 100th Congress, 1st session, 179 (1987), pp. H6906–7.

<sup>43</sup> Section 229.19(b) requires that funds be made available for withdrawal by the opening of business on the day on which funds are required to be made available for withdrawal.

<sup>39</sup> These checks include U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, checks drawn by state or local governments, or cashier’s checks, certified checks, or teller’s checks.

available for withdrawal at the opening of business on Friday.<sup>44</sup>

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

### C. Section 229.13—Exceptions

#### 1. Section 229.13(b)—Large Deposits

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

#### 2. Section 229.13(d)—Repeated Overdrafts

Section 229.13(d) provides the depository bank with an exception to the general availability schedule in § 229.12 for a check deposited into an account that has been repeatedly overdrawn in the preceding six months. The exception relates not only to overdrafts caused by checks, but also those caused by, for example, debit card

transactions. The Board proposes to add a new paragraph, § 229.13(d)(3), clarifying that the exception does *not* include an attempted debit card transaction for which the depository bank declined the authorization request, because in that case no debit card transaction has occurred.

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

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

#### 3. Section 229.13(g)—Notice of Exception

A depository bank must provide notice to its customer when it invokes one of the exceptions in § 229.13 to apply an extended hold to a deposit. Section 229.13(g)(1)(i) sets forth the information that the notice must include. Currently, the notice must include the amount of the deposit that is being delayed. During consumer testing of the model forms, however, consumers were more readily able to recall the deposited check for which the funds were being held when the notice included the total amount of the deposit, rather than only the amount being held. Accordingly, the Board proposes to require that the notice of an exception hold contain the total amount of the deposit, in addition to the amount of the deposit being held. Additionally, consumers more readily understood when funds would be made available if the notice stated the day on which the funds will be made available, rather than explain availability in reference to the date of deposit. Therefore, the Board proposes to require that the notice

specify the day funds will be made available instead of “the time period within which” the funds will be available for withdrawal. The Board proposes conforming changes to proposed model notice C–9.

Section 229.13(g)(1)(ii) states that if the notice is not given at the time of the deposit, the depository bank shall mail or deliver the notice to the customer as soon as practicable, but no later than the first business day following the day the facts become known to the depository bank, or the deposit is made, whichever is later. With the elimination of nonlocal checks, depository banks must generally make check deposits available by opening of business on the second business day following the banking day of deposit. The Board believes that it is desirable for a customer to learn that its bank is extending a hold before the customer would expect the funds to become available under the bank's generally applicable availability policy. Further, it has become more feasible for banks to provide notices to their customers electronically, which results in near instant receipt of the notice to the customer. The Board therefore proposes that, if the customer has agreed to accept notices electronically, the depository bank is required to send the notice such that the bank may reasonably expect the customer to receive it no later than the first business day following the day the deposit is made or the facts become known to the depository bank, whichever is later. For example, the bank could e-mail notice of the hold to the customer. The Board requests comment on whether providing a notice in this fashion is practical.

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

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

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

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

checks be reduced to two business days (from five or six business days), for a total of four business days for all other checks.<sup>45</sup>

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

In adopting Regulation CC's permanent availability schedules, the Board stated that the reasonable extended-hold periods are "designed to provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned."<sup>46</sup> If a check is cleared and returned electronically, the depository bank should receive the returned check in three business days. Checks that are not cleared and returned entirely in electronic form, however, will typically take longer to be returned to the depository bank. The Reserve Banks, however, project that by year-end 2011, 97 percent of their checks will be cleared and returned entirely in electronic form, which the Board believes is representative of the industry as a whole.<sup>47</sup> Therefore, depository banks will receive virtually all returned checks by the third business day after the day of deposit, with the depository bank making funds available at opening of business on the fourth day. Although the proposed reasonable extended-hold period of two business days (four business days total) may increase risk for a depository bank that does not accept electronic returns, the Board believes that the reduction in the exception hold safe harbor is warranted given that it will provide faster availability for depositors as well as an incentive for depository banks to take advantage of electronic check-return infrastructure.

If the paying bank does not return checks electronically, the time required for a check to be delivered from the depository bank to the paying bank and back again may be greater than three business days. A paying bank that does not send returned checks electronically, however, generally will not meet its expeditious return requirement, and the

depository bank may have a claim for any losses it incurs due to the failure of the paying bank to send the returned check expeditiously.

#### *D. Section 229.15—General Disclosure Requirements*

##### 1. Section 229.15(a)

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

##### 2. Section 229.15(b)(1)

Section 229.15(b) states that "[i]n its disclosure, a bank shall describe funds as being available on 'the \_\_\_\_\_ business day after' the day of deposit." The Board's consumer testing of the model disclosures in Appendix C (discussed in more detail below), however, indicated that consumers may more readily understand alternative formulations of statements of when deposited funds will be available for withdrawal. The Board therefore proposes in § 229.15(b)(1) to provide banks with more flexibility regarding this description.<sup>48</sup> The proposal requires a bank in its disclosure or notice to specify the business day on which funds are available for withdrawal by describing that day in relation to the banking day on which the deposit is received, and to use in this description language substantially similar to that set forth in proposed § 229.15(b)(1). Under the proposal, for example, the banking day of receipt may be described as "the same business day," and the business day after the banking day of receipt may be described as "the next business day," or described using either cardinal or ordinal numbers, such as "2 business days" or "the second business day."

#### *E. Section 229.16—Specific Availability Policy Disclosure*

##### 1. Section 229.16(b)(2)

Because the Board is eliminating references to local and nonlocal checks throughout the regulation and commentary, the Board proposes to

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

##### 2. Section 229.16(c)(2)

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

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

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

<sup>45</sup> As described above, the Board proposes to reduce the generally-applicable hold period for nonproprietary ATM deposits from five business days to four. The proposed reasonable hold extension of two business days would therefore provide a total of six business days for nonproprietary ATM deposits.

<sup>46</sup> See 55 FR 21848, 21850 (May 30, 1990).

<sup>47</sup> See the Board's **Federal Register** notice announcing its approval of the Federal Reserve Banks' 2011 fee schedules for priced services, 75 FR 67740 (Nov. 3, 2010).

<sup>48</sup> Under the Board's proposal, a bank that bases its availability-policy disclosure on the models currently provided in Appendix C will continue to receive a safe harbor for doing so. See the discussion of Appendix C below in this section-by-section analysis.

*F. Section 229.19—Miscellaneous*

1. Section 229.19(e)(2)

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

2. Section 229.19(g)(2)

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

*G. Section 229.21(g)—Record Retention*

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

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

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

delete certain listed routing numbers of the Federal Reserve Banks and Federal Home Loan Banks that have been retired.

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

1. Consumer Testing Process

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

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

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

public comments received on this proposal, as appropriate.

2. Model Disclosures Generally

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

In the absence of nonlocal checks, the Board proposes throughout appendix C to delete all references to the nonlocal-check and local-check categories. Instead, the Board proposes that the forms, as applicable, specify the types of check deposits that receive next-day availability, and then state the availability that will be provided for checks "other than those specified."

The Board proposes to modify the format of the model disclosures from a mostly narrative form to a more tabular form. For example, the Board proposes that the portions of the model disclosures specifying funds availability for deposits to established accounts and for deposits to new accounts (accounts open for 30 days or less) be presented within tables. The Board's testing on forms under other rules has consistently indicated that consumers more readily understand information presented in a tabular form.<sup>54</sup>

The Board is not proposing any changes to the model substitute-check-policy disclosure and notices in the appendix.

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

The Board proposes to add to the commentary to appendix C a new paragraph A(4) discussing banks' formatting of disclosures and notices based on the proposed model funds-availability disclosures and notices in the appendix. Specifically, although the regulation does not require banks to use a certain paper size for their funds-availability disclosures and notices, the proposed model funds-availability policy disclosures are generally designed to be printed on an 8½ x 11 inch sheet of paper with black text on a white background, so as to increase their readability for consumers. Further, § 229.15(a) requires that banks generally provide disclosures and notices in a form that the customer may keep.<sup>55</sup> The proposed commentary notes that a bank that provides a disclosure or notice

<sup>49</sup> See UCC 4–215 and commentary to Regulation CC § 229.19(e).

<sup>50</sup> Treasury checks, postal money orders, and checks drawn on the Federal Reserve Banks and Federal Home Loan Banks can be identified by routing number, and these routing numbers will continue to be listed in appendix A. Next-day-availability checks such as cashier's, certified, and teller's checks cannot be identified by routing number, however, and are not listed in the appendix.

<sup>51</sup> See Interim Final Rule on Mortgage Disclosures (Regulation Z), 75 FR 58470 (Sept. 24, 2010).

<sup>52</sup> A sample of the screening instrument used to recruit interview participants is included as Appendix A to the ICF Macro report. Appendix B to the report provides a summary of the demographics of the interview participants.

<sup>53</sup> The sample forms used during the consumer interviews are included as Appendix C to the ICF Macro report.

<sup>54</sup> See 75 FR 58539 at 58542 (September 24, 2010) and ICF Macro report, p. 4.

<sup>55</sup> The commentary to § 229.13(g) indicates that notice of an extended hold should be provided in a form the customer may keep. The proposed commentary to § 229.16(c)(2) indicates that notice of a case-by-case hold should be provided in this form as well.

electronically to a customer would comport with the formatting specifications of the proposed model disclosures and notices by providing a disclosure or notice in a file format, such as a .pdf file format, that electronically represents an 8½ x 11 inch sheet of paper with black text and a white background. In addition, a bank may vary (either enlarge or decrease) the font size of the model forms. As explained in the proposed commentary, a bank that uses too small a font may not be in compliance with § 229.15(a)'s clear-and-conspicuous requirement.

#### ii. Charge Back After Making Funds From Check Deposits Available

Paragraph 5 of the commentary to appendix C states that banks may add information related to funds availability to the model forms. One of the examples currently provided is that a bank's disclosure may state that although funds have become available and the customer has withdrawn them, the customer remains responsible for deposited checks that are returned unpaid. The Board believes that all banks reserve the right to charge back a customer's account if a deposited check is returned unpaid.<sup>56</sup> The Board proposes to incorporate language to this effect within the model availability-policy disclosures themselves and to delete this as an example from paragraph A(5) of the commentary and add a provision to paragraph B(1)(a) describing the charge-back statement in the proposed model disclosures. The Board requests comment on whether this proposed revision reflects the practice of most banks.

#### iii. Reference to Day of Availability

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

ordinal numbers would continue to be permitted (*see* proposed § 229.15(b)).

#### iv. Inclusion of Optional Information

The Board proposes model availability-policy disclosures that would reflect certain provisions of the regulation that apply only to certain banks, depending on the banks' policies and practices. For example, the proposed model disclosures would include language about use of special deposit slips as a condition for next-day availability for certain types of check deposits (*see* § 229.10(c)(2)) and language similar to the appendix's current model clauses C-6 and C-7 related to check cashing, immediate availability, and holds on other funds (*see* § 229.19(e)).<sup>57</sup> The text of these portions of the disclosures would be enclosed within brackets to indicate that a bank should include it in the bank's disclosures only if it is applicable given the bank's policies and practices. The Board proposes that paragraph B(1)(c) of the commentary to appendix C be modified accordingly.

#### v. Same-Day Availability

Although § 229.10(a) of the regulation requires next-day availability for cash deposits, and § 229.10(b) requires next-day availability for electronic payments (as defined in § 229.2(t)), the model availability-policy disclosures in appendix C include clauses that state that funds from electronic direct deposits are available on the day the bank receives the funds. As indicated in paragraph B(1)(b) of the commentary to the appendix, this is because U.S. Treasury regulations and ACH association rules require that preauthorized credits, such as direct deposits, be made available on the day the bank receives the funds.

During the Board's consumer testing, many consumers expressed surprise that the sample disclosures indicated that funds from cash deposits and wire transfers (defined in § 229.2(bbb)) would not be available until the next day. When the models in Appendix C were first published over 20 years ago, most banks updated their demand-deposit-account systems on an overnight basis, such that a cash deposit or incoming wire transfer would not be reflected in the receiving customer's account balance until opening of business the next day. The Board believes, however, that most banks now provide same-day

(if not immediate) availability for cash deposits and wire transfers.

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

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

#### 3. Model C-1—Next-Day Availability

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

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

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

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

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

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

<sup>57</sup> Because the Board proposes to incorporate the information set forth in current model clauses C-6 and C-7 as bracketed information within the model disclosures, the Board proposes to delete model clauses C-6 and C-7 from the appendix.

delays availability on a case-by-case basis, does not impose the cash-withdrawal limitation permitted by § 229.12(b). The second version, proposed C-3B, would be used by a bank that does impose this limitation when it delays availability on a case-by-case basis. The additional text that is included in proposed C-3B, but not C-3A, related to the cash-withdrawal limitation, derives from current model clause C-10, modified to promote consumer comprehension on the basis of the Board's testing.<sup>58</sup> The Board proposes that this text be structured as a bulleted list, because the Board's testing indicated that consumers better noticed and understood the cash-withdrawal limitation (and the distinction between other uses of funds) when it is in this form rather than in a text paragraph.<sup>59</sup>

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

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

<sup>58</sup> Because the Board proposes to incorporate into C-3B and C-4B (discussed below) the information set forth in current model clause C-10, the Board proposes to delete model clause C-10 from the appendix.

<sup>59</sup> See p. vii of the ICF Macro report.

<sup>60</sup> The Board proposes to take an identical approach in proposed model disclosures C-4A and C-4B. Specifically, a bank that bases its disclosure on proposed model C-4A or C-4B would include the bracketed text in its disclosure only if the text corresponds to the bank's policy and practice.

availability of funds deposited at other locations (proposed C-8).

#### 6. Model C-4A—Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation; and Model C-4B—Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation

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

Proposed model disclosure C-4A would be used by a bank that delays availability as allowed under § 229.12 but does not impose the cash-withdrawal limitation permitted by § 229.12(b), whereas proposed model C-4B would be used by a bank that delays availability as allowed under § 229.12 and does impose the cash-withdrawal limitation permitted by § 229.12(b). The Board proposes the position of the text related to the cash-withdrawal limitation in C-4B because the Board's testing indicated that consumers better noticed and understood the information when placed at the proposed location and in the proposed format within the disclosure. Banks that base their availability-policy disclosure on proposed model disclosure C-4A or C-4B and whose availability policy necessitates incorporation of one or more of the proposed appendix's remaining model clauses (proposed C-6, C-7, or C-8) would append those model clauses to the end of the second page of proposed model C-4A or C-4B.

#### 7. Proposed Model Clauses

The Board proposes to delete current model clauses C-6 (holds on other funds (check cashing)), C-7 (holds on other funds (other account)), and C-10 (cash-withdrawal limitation), all of which the Board proposes to be incorporated into other model forms. The Board also proposes to delete current model clause C-8 (Appendix B availability (nonlocal checks)) because it is obsolete in the absence of nonlocal checks. Within current model clause C-9 (Automated Teller Machine Deposits (Extended Hold)) (proposed C-6), the Board proposes to change "fifth business day" to "fourth business day" to conform to the changes in proposed § 229.12(d), discussed above in this section-by-section analysis.

#### 8. Proposed Model Notices

##### i. Format

As with the proposed model funds-availability policy disclosures, the Board proposes to modify the format of the model notices, where appropriate, from a mostly narrative form to a more tabular form. For example, the Board proposes to convert current model notice C-18 (notice at locations where employees accept consumer deposits (case-by-case holds)) (proposed C-14) to a table.

##### ii. Proposed Model C-9—Exception or Reasonable-Cause Hold Notice

Current models C-12 and C-13 each include a checklist of reasons for which a bank may apply an exception hold. The Board's consumer testing on other disclosures has found that consumers may be confused by a listing of reasons, even though only one reason is checked and the others do not apply to the consumer's situation.<sup>61</sup> The Board therefore proposes model notices that describe only one reason for the hold, instead of a checklist of reasons. A bank using proposed model C-9 would insert the reason for the hold that is applicable to the consumer's situation in the location designated by "(reason for hold)." The checklist of reasons that is included in the current model would be moved to the proposed commentary, with proposed revisions for clarity. The proposed commentary also states that a bank may insert, in place of "(reason for hold)," a reason other than those listed in the commentary.

Current model C-12 (proposed C-9) indicates that a bank's notice of an exception hold should refer to the dollar amount being held from a deposit.<sup>62</sup> The Board proposes that proposed models C-12 also refer to the dollar amount of the deposit from which funds are being held. During the Board's testing, consumers more readily understood this approach and thought that the amount of the deposit would be more helpful in remembering the deposit in question.<sup>63</sup>

##### iii. Proposed Model C-12A—Case-by-Case Hold Notice Without Cash-Withdrawal Limitation and Proposed Model C-12B, Case-by-Case Hold Notice With Cash-Withdrawal Limitation

Current model C-16 (case-by-case hold notice) states that the day on

<sup>61</sup> See 75 FR 58539 at 58560 (September 24, 2010), discussing the results of the Board's testing of model forms related to the suspension or reduction of a home equity line of credit. See also the ICF Macro report, page viii.

<sup>62</sup> Specifically, the model reads "We are delaying the availability of \$(amount being held) from this deposit."

<sup>63</sup> See ICF Macro report, p. ix.

which funds will be available for withdrawal may be “([*subject to our cash-withdrawal limitation policy*]).” The limitation is material to the length of the hold, and, without additional inquiry, consumers may not know what the limitation is. Accordingly, the Board proposes to include in appendix C two versions of a model case-by-case hold notice: proposed C–12A may be used by a bank that imposes a case-by-case hold, but does not have a policy of imposing the cash-withdrawal limitation, whereas proposed model notice C–12B may be used by a bank that imposes such a hold and does have such a policy. Each of the two proposed versions would incorporate the specific days by which funds would be available.

Current model C–16 indicates that a bank’s notice of an exception hold should refer to the dollar amount being held from a deposit. The Board proposes that proposed models C–12A, and C–12B also refer to the dollar amount of the deposit from which funds are being held, because consumers thought that the amount of the deposit would be more helpful in remembering the deposit in question.<sup>64</sup>

iv. Proposed Model C–13—Notice at Locations Where Employees Accept Consumer Deposits and Proposed Model C–14—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)

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

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

and wire transfers available on the day they are received would modify the notice accordingly.

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

#### J. Appendix F—Official Board Interpretations; Preemption Determinations

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

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

### III. Subpart C

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

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

###### i. Section 229.30(a)(1)

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

###### ii. Section 229.30(a)(3)

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

###### iii. Section 229.30(a)(6)

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

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

###### i. Section 229.30(b)(1)

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

<sup>64</sup> See ICF Macro report, p. ix.

accounts.<sup>65</sup> As described above, the Board proposes that a paying bank have a duty of expeditious return only if the depositary bank has agreed to accept electronic returns from the paying bank under proposed § 229.32(a). The Board proposes to set forth this rule as an exception to the general rule stated in proposed § 229.30(a)(1). Accordingly, proposed § 229.30(b)(1)(i) states that a paying bank need not return a check expeditiously if a depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a). Although not imposing an expeditious return requirement on the paying bank in this situation will expose the depositary bank to risk, the Board believes that risk should rest with the bank choosing not to take advantage of an electronic infrastructure that provides expeditious return.

The proposed commentary to § 229.30(b)(1) includes an example of when the paying bank's duty of expeditious return would and would not apply. For example, assume that a depositary bank has not agreed to accept electronic returns directly from the paying bank, but has agreed to accept electronic returns from Returning Bank A, which has agreed to handle returns expeditiously under § 229.31(a). If Returning Bank A has not held itself out as willing to accept electronic returns directly or indirectly from the paying bank (*e.g.*, the returning bank has not published electronic return service set-up guides), the depositary bank has not agreed to accept electronic returns from the paying bank under proposed § 229.32(a). If a check is presented to the paying bank on Monday, the paying bank would not need to send the returned check such that the depositary bank normally would receive the returned check by 4 p.m. (local time of the depositary bank) on Wednesday. The paying bank, however, must comply with any deadlines under the Uniform Commercial Code, Regulation J (if sent through the Reserve Banks), or § 229.30(c).

Under the proposed approach, a paying bank that returns checks in paper form would be subject to the expeditious return requirement if the depositary bank has agreed to accept electronic returns from a returning bank that holds itself out as willing to accept electronic returns directly or indirectly from the paying bank and agrees to return checks expeditiously. The Board, however, notes that if the returning

bank from which the depositary bank has agreed to accept electronic returns has either not held itself out as willing to accept electronic returns directly or indirectly from the paying bank or has not agreed to return checks expeditiously, then the paying bank would not be subject to the expeditious return requirement under the proposal.

#### ii. Section 229.30(b)(2)

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

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

In other cases, however, the depositary bank's indorsement may not be in an addenda record associated with an electronic image, and also may be absent from or illegible within the image of the check that is presented to the paying bank. In these cases, the paying bank may be unable to identify the depositary bank and the expeditious-return requirement would not apply to the paying bank. If the paying bank has an agreement to send electronic returns

to a bank that handled the check for forward collection, the paying bank may under § 229.30(b)(2) send the electronic return to that bank, subject to that agreement. Such a bank may be better able to identify the depositary bank. In general, the paying bank must advise the bank to which the return is sent that it is unable to identify the depositary bank. The Board proposes to clarify in the commentary that, in the case of electronic returns, the paying bank meets this requirement by inserting the routing number of the bank to which it is sending the return where the paying bank otherwise would have inserted the routing number of the depositary bank. The Board requests comment on whether the regulation and commentary provide the appropriate level of detail with respect to paying banks' preparation and addressing of electronic returns in cases where it is unable to identify the depositary bank.

#### 3. Section 229.30(c)—Extension of Deadline

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

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

<sup>65</sup> In the current regulation, these exceptions to a paying bank's duty of expeditious return are set forth, respectively, in §§ 229.30(b) and 229.30(e). The exceptions to a returning bank's duty are in §§ 229.31(b) and 229.31(e).

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

<sup>67</sup> The current paragraph provides a further extension if the paying bank uses a "highly expeditious" means of return, or if the paying bank's deadline for return falls on a Saturday that is a banking day for the paying bank under the UCC. (Saturday is never a banking day under Regulation CC.)

it reaches the depository bank by 4 p.m. on the second business day after the banking day on which the check was presented to the paying bank; *i.e.*, such that the return would ordinarily reach the depository bank within the time required by the two-day expeditious-return test. The proposed 4 p.m. deadline would correspond to the expeditious return deadline in proposed § 229.30(a). As noted in the proposed commentary, a paying bank may rely on the return schedules of a returning bank in determining whether the returned check or electronic return would “ordinarily” reach the depository bank by 4 p.m. on the second business day after the banking day on which the check was presented to the paying bank.

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

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

##### i. Placement of Reason for Return on a Substitute Check

Section 229.30(d) currently states that “[a] paying bank returning a check shall clearly indicate on the face of the check that it is a returned check and the reason for return. If the check is a substitute check, the paying bank shall place this information within the image of the original check that appears on the front of the substitute check.” When current § 229.30(d) became effective in 2004, the placement on substitute checks was consistent with the industry standard for substitute checks, American National Standard Specifications for an Image Replacement Document—IRD, X9.100–140 (ANS X9.100–140). Under the terms of the revised industry standard, however, the reason for return of a substitute check must be placed above a substitute check’s image of the original check—*i.e.*, not within the image of the original check that appears on the front of the substitute check, but nonetheless within the portion of the front of the substitute check that is “clipped” when an image

of the substitute check is captured.<sup>68</sup> The change to the standard is intended to make it less likely that the return-reason information will obscure underlying data from the original check, such as the name of the payee or the amount of the check, while continuing to ensure that the reason for the return is retained in any captured image of the substitute check, as well as on any subsequent substitute check.

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

##### ii. Refer-to-Maker Reason for Return

Current commentary to § 229.30(d) states that “refer to maker” may be a permissible reason for return in appropriate cases but does not elaborate as to which cases may be appropriate. The Board, however, does not believe that “refer to maker,” by itself, is an appropriate reason for return in any case. “Refer to maker” is an instruction rather than a reason for return. Alone, it does not provide the depository bank with sufficient information to determine whether it should represent the check. Accordingly, the Board proposes to amend the commentary to § 229.30(d) to state that “refer to maker” is insufficient

as a reason for return, because “refer to maker” is an instruction to the recipient of the returned check and not a reason for return (*e.g.*, insufficient funds). A paying bank may use “refer to maker” in addition to the reason for return. The Board requests comment on whether there are circumstances in which it is appropriate to use only “refer to maker” when returning a check.

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

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

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

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

Because notice in lieu of return must include the information required for a notice of nonpayment, and the Board

<sup>68</sup>In addition to the image of the front of the original check, the portion of the front of the substitute check that is clipped includes the area on the check above the original check image and the routing number of the truncating bank to the left of the image.

proposes to eliminate the notice of nonpayment requirement, the Board proposes to move the information requirements for a notice in lieu of return from current § 229.33(b) to new § 229.30(e)(2). The Board proposes that the information requirements for a notice in lieu of return remain unchanged.

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

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

<sup>69</sup> If the depository bank chooses to re-clear a check on the basis of an image of the check it captured when it took the check for deposit, it should ensure that the re-cleared check reflects the fact that the check has already been returned one time.

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

provision for notice in lieu of return continues to be necessary.

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

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

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

##### 1. Section 229.31(a)—Expeditious Return of Checks

###### i. Section 229.31(a)(1)

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

###### ii. Section 229.31(a)(3)

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

that handled the check for forward collection if it was not a collecting bank with respect to the check, or to a prior collecting bank if it was a collecting bank.

###### iii. Section 229.31(a)(4)

The substance of proposed § 229.31(a)(4) (currently in § 229.31(a)) currently provides that a returning bank's time for expeditious return under the forward-collection test and its deadline for return are extended by one business day if the returning bank converts a returned check to a qualified returned check.<sup>71</sup> This extension does not apply to the two-day/four-day test, and it does not apply when the returning bank sends the check directly to the depository bank, because in that case qualifying the check does not expedite its handling by the bank to which it is sent.

The Board proposes to eliminate this extension. The extension does not apply to the two-day test for expeditious return, which the Board proposes to be the sole test. Further, the extension, if retained, might benefit returning banks that choose to qualify and send paper returned checks destined for depository banks that have agreed to accept returns electronically; a result that is inconsistent with the policy of encouraging electronic return of checks. In addition, if a returned check is destined for a depository bank that does not accept returned checks electronically (*i.e.*, if the returned check is one to which the proposed two-day test does not apply), the Board believes that a returning bank's midnight deadline affords it sufficient time to process and send the returned check, irrespective of whether the returning bank qualifies the returned check or not.

A qualified return check is prepared for automated return by placing the check in a carrier envelope or placing a strip on the check. According to current industry practice, however, such envelopes should be used only in situations in which the check has been mutilated and cannot be imaged or handled by automated check-processing equipment. Therefore, the Board requests comment on whether the regulation should continue to allow a bank to prepare a check for automated return by placing the check in a carrier envelope. Further, in today's predominantly electronic check-clearing environment, qualification of paper

<sup>71</sup> A qualified returned check is "a returned check that is prepared for automated return to the depository bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink." Current 12 CFR 229.2(bb).

returned checks happens only rarely and it is not clear that qualification continues to be a means of expediting returned checks' delivery to the depository bank because carrier envelope's inhibit check imaging. The Board requests comment on whether the regulation's provisions for qualifying of paper returned checks by paying banks and returning banks should be deleted.

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

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

A returning bank does not have a duty to expeditiously return the check if the returning bank is not able to identify the depository bank with respect to a returned check. Section 229.31(b) of the regulation currently provides, however, that if a paying bank is not able to identify the depository bank with respect to a returned check and sends the returned check under the terms of § 229.30(b) to a returning bank, but the returning bank can identify the depository bank (for example, on the basis of its records from the forward collection of the check), then the returning bank must thereafter return the check expeditiously to the depository bank. The Board proposes to remove this requirement from the regulation (proposed § 229.31(b)(1)(iv)), because it may be difficult for a returning bank to meet the two-day test for expeditious return where the paying bank likely sent the return as if the return was not subject to the expeditious return requirement. In the absence of an expeditious-return requirement, the UCC would nonetheless require a returning bank in this situation to use ordinary care when returning the item.<sup>72</sup>

#### 3. Section 229.31(d)—Charges

The Board proposes to clarify in § 229.31(d) that a returning bank may impose a charge for handling a returned

check on the bank that sent the returned check to it, rather than another party.

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

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

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

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

#### C. Section 229.32—Depository Bank's Responsibility for Returned Checks

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

###### i. Section 229.32(a)(1)

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

Secondly, under proposed § 229.32(a)(1)(ii), a depository bank could have a direct contractual relationship with a returning bank to accept electronic returns. In turn, that returning bank must hold itself out as willing to accept electronic returns directly or indirectly (e.g., from another returning bank) from the paying bank and must have agreed to handle returned checks expeditiously under § 229.31(a) in order for the depository bank to have agreed to receive electronic returns from the paying bank under § 229.32(a). The proposed commentary to proposed § 229.32(a) provides an example of such an arrangement. The Board proposes to provide examples in the proposed commentary to proposed § 229.32(a) of how a returning bank

holds itself out as willing to accept electronic returns directly or indirectly from the paying bank. Specifically, a returning bank would be considered to hold itself out as willing to accept electronic returns if it published information about its generally available electronic return service, such as information about signing up for the service and fees. The Board requests comment on whether it should provide more specificity as to under what circumstances a returning bank is deemed to hold itself out as willing to accept electronic returns directly or indirectly from a paying bank.

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

###### ii. Section 229.32(a)(2)

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

###### iii. Section 229.32(a)(3)

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

<sup>72</sup> UCC § 4-202 states that a collecting bank exercises ordinary care "by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness."

## 2. Section 229.32(b)—Acceptance of Paper Returned Checks

The Board proposes to clarify that current § 229.32(a) (proposed to be redesignated as § 229.32(b)) is limited to setting forth the locations at which a depository bank must accept paper returned checks. Further, because there are no more nonlocal checks, the Board proposes to delete current § 229.32(a)(2)(iii) from the regulation, which states that if the address in the depository bank's indorsement is not in the same check-processing region as the address associated with the routing number in its indorsement, the depository bank must accept returned checks both at a location consistent with the address in the indorsement and at an office associated with the routing number.<sup>73</sup> Under the proposal, a depository bank that includes its address in its indorsement is required to receive paper returned checks at a location consistent with the address (proposed § 229.32(b)(1)(ii)(A)) and at a location, if any, at which it requests presentment of paper checks (proposed § 229.32(b)(1)(i)). Moreover, the depository bank may structure its operations such that these two locations are the same, *i.e.*, such that the depository bank accepts paper returned checks at only one location.

The Board proposes that a depository bank is entitled to expeditious return only if it agrees to accept an electronic return under § 229.32(a). The Board anticipates that virtually all depository banks will agree to do so, and that a depository bank that accepts electronic returns will generally prefer to receive all returns in electronic form. Further, return of a paper check to such a depository bank should be rare, because under the Board's proposal a paper returned check must be delivered to the bank within the two-day timeframe for expeditious return, and delivery of a paper check within that timeframe is generally difficult and costly. The Board believes it is therefore appropriate for a depository bank to be able to limit to one the number of locations at which it must accept returned checks. If the bank specifies a location for delivery of paper returned checks that is difficult to reach, and the depository bank has not agreed to accept electronic returns from the paying bank, the risk of any delay falls mainly on the depository bank itself.

<sup>73</sup> The Board also proposes to delete the second sentence of paragraph 8 of the commentary to § 229.35(a), which states that if the address in the indorsement is not consistent with the routing number, then the depository bank must accept returned checks at a branch or head office consistent with the routing number.

## 3. Section 229.32(e)—Charges

In § 229.32(e), the Board proposes to clarify that a depository bank may not impose a charge for accepting and paying the check on the bank returning a check to it, as opposed to other parties on which it is permitted to impose charges.

## 4. Section 229.32(f)—Notification to Customer

Current § 229.33(d) states that if the depository bank receives a returned check, it must provide notice of the facts to its customer by midnight of the banking day following the banking day on which it received the returned check, or within a longer reasonable time. The Board proposes to redesignate current § 229.33(d) as § 229.32(f). The commentary to this section is proposed to be revised to remove outdated provisions.

### *D. Current § 229.33—Notice of Nonpayment*

For the reasons discussed above, the Board proposes to delete the requirement in current § 229.33 that a paying bank provide notice of nonpayment of a check in the amount of \$2,500 or more. Further, the Board proposes, where appropriate, to delete references to notices of nonpayment throughout subpart C.

### *E. Section 229.33—Electronic Returns and Collection Items*

The Board's proposal defines two new items: electronic returns and electronic collection items. The proposal permits paying banks to send electronic returns to depository banks that have agreed to receive them, either directly or indirectly, from the paying bank; the proposal also permits paying banks to require that items presented for same-day settlement be presented as electronic collection items. Because such items are intended to take the place of original paper checks or substitute checks, proposed new § 229.33 provides that electronic collection items and electronic returns are subject to the requirements of subpart C as if they were checks, unless the subpart provides otherwise. For example, if a paying bank receives presentment of an electronic collection item and returns it unpaid, it would be subject to the regulation's expeditious-return requirement, provided the depository bank has agreed to accept electronic returns from the paying bank under § 229.32(a). Similarly, a depository bank that receives an electronic return must so notify its customer, as required under § 229.32(f).

## *F. Section 229.34—Warranties and Indemnities*

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

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

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

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

Because the Board proposes to delete the regulation's provision for notice of nonpayment, the Board proposes to

delete the warranty applicable to such notice that is set forth in current § 229.34(b).

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

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

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

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

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

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

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

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

Under proposed § 229.34(e), a bank that transfers or presents an electronic image and related electronic information as if it were an electronic collection item or electronic return would make all the warranties in § 229.34 as if the image and information were an electronic collection item or electronic return. In turn, because electronic collection items and electronic returns would be treated as if they were checks or returned checks under § 229.33, a bank also would make the warranties in § 229.34 as if the images and related electronic information were checks or returned checks. This proposal protects recipients of these items that likely will not be able to distinguish them from similar items that originated as paper checks and therefore meet the definitions of "electronic collection item" and "electronic return."

In order for a substitute check to be the legal equivalent of the original check, the image and information contained in the substitute check must be of a paper check. Accordingly, the Board proposes definitions that require electronic collection items and electronic returns be derived from an item that existed as paper. In some cases, a bank may receive an electronic image and electronic information that looks like an electronic collection item or electronic return, but is neither, because it was originally created electronically and there was never a paper check. Banks that receive such images and related electronic information usually cannot differentiate them from actual electronic collection items or electronic returns. Nonetheless, a bank that unknowingly receives an electronic image and related electronic information not derived from a paper instrument may nonetheless transfer the image and related electronic information as if it were derived from a paper instrument. Therefore, the Board believes that electronic images and

related electronic information transferred as electronic collection items or electronic returns should be subject to the same warranties as electronic collection items and electronic returns, and therefore, the same warranties as checks and returned checks (see proposed § 229.34(a)).

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

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

In appendix D, the Board proposes to require a depository bank that transfers an electronic collection item to another bank to apply its indorsement to that item electronically in accordance with ANS X9.100-187, unless the parties otherwise agree.<sup>74</sup> Similarly, the Board also proposes to require a collecting bank that transfers an electronic collection item, or a returning bank that transfers an electronic return, to another bank to apply its indorsement electronically in accordance with ANS X9.100-187, unless the parties otherwise agree. In general, the Board believes that inclusion of banks' indorsements as addenda records accompanying electronic collection items and electronic returns will facilitate the automated handling of the items by subsequent banks. In particular, inclusion of the depository bank's indorsement as an addenda record accompanying an electronic collection item will facilitate the automated routing of electronic returns by paying banks and returning banks.

### H. Section 229.36—Presentment and Issuance of Checks

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

##### i. Section 229.36(a)(1)

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

<sup>74</sup>This new requirement would not alter the flexibility provided by § 229.35(d) to a depository bank to arrange with another bank to apply the other bank's indorsement as the depository-bank indorsement.

collection item directly from the presenting bank. Second, a paying bank may have otherwise agreed with the presenting bank to accept an electronic collection item. The proposed commentary indicates that one example of such an agreement would be where the paying bank and presenting bank are both members of the same check clearing house, under the rules of which the paying bank has agreed to accept electronic collection items from the presenting bank.

ii. Section 229.36(a)(2)

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

iii. Section 229.36(a)(3)

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

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

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

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

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

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

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

I. Section 229.37—Variation by Agreement

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

J. Section 229.38—Liability

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

K. Section 229.40—Mergers

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

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

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

IV. Subpart D

A. Section 229.52—Substitute-Check Warranties

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

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

As noted in the commentary to the definition of transfer and consideration, the Check 21 Act contemplates that a nonbank person that receives a substitute check from a bank will receive warranties and indemnities with

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

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

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

#### *B. Section 229.53—Substitute-Check Indemnity*

In addition to imposing the substitute check warranties on a bank that rejects a check for deposit, the Board similarly

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

### **Other Requests for Comment**

#### **I. Effective Date**

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

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

#### **II. Potential Future Changes To Reduce Risks to Depository Banks**

Given that there are no longer any nonlocal checks, a depository bank must make funds available to the depositor for withdrawal by the second business day after the banking day of deposit,

unless one of the time-period adjustments in § 229.12 or one of the exceptions in § 229.13 is applicable. Even assuming that banks collect and return all checks electronically, depository banks will in many cases nonetheless be required to make the funds represented by a check deposit available for withdrawal before learning whether the check has been returned unpaid. The Board therefore requests comment on whether this risk is significant and whether there are feasible means to help reduce any risk to depository banks. For example, the deadline in the UCC by which a paying bank must initiate return of an unpaid check is generally midnight of the banking day following the banking day of receipt of the check by the paying bank, except as the deadline may be extended by § 229.30(c) of Regulation CC. As delivery of forward-collection and returned checks becomes increasingly electronic, this amount of time (typically about 36 hours) afforded to the paying bank takes up a substantial portion of the total time required for a check to be sent from the depository bank to the paying bank and back again. The Board requests comment on whether it would be desirable to reduce the amount of time afforded to the paying bank to decide whether or not to pay a check that has been presented to it. The Board also requests comment on whether there are other, preferable, ways to reduce this risk to depository banks.

#### **Paperwork Reduction Act**

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

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

<sup>75</sup> These requirements are that the substitute check (1) accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and (2) bears the legend, "This is a legal copy of your check. You can use it the same way you would use the original check."

confidential pursuant to Section (b)(8) of the Freedom of Information Act. 5 U.S.C. 552(b)(8). This information collection is mandatory.

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

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

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

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

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of

information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearance Officer, Division of Research and Statistics, Mail Stop 95-A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0235), Washington, DC 20503.

### Regulatory Flexibility Act

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

The Board is proposing the foregoing amendments to Regulation CC pursuant to its authority under the EFA Act and the Check 21 Act. The proposed amendments would apply to all banks regardless of their size, and the Board anticipates that the proposal would reduce banks' overall costs of collecting and returning checks.

By providing that a depository bank preserves its right to expeditious return only if it agrees to receive returned checks electronically, the proposed rule would encourage, but not require, depository banks to accept check returns in electronic form. A depository bank that currently receives returned checks in paper form and that chooses, as encouraged by the proposal, to begin to receive returned checks electronically, will incur some cost associated with that transition. The Board expects that these costs would be relatively low for a small depository bank, which typically would receive only a small volume of returned checks. For example, as mentioned above, the Federal Reserve Banks now offer a product under which they deliver electronically to small depository banks copies (.pdf files) of

returned checks, which the banks can print on their own premises if necessary.<sup>76</sup> To receive returned checks in this fashion, a depository bank may need to establish and maintain an electronic connection to the Reserve Banks, or another returning bank that offers a similar service, and to purchase certain equipment, such as a printer capable of double-sided printing and magnetic-ink toner cartridges. Depending on the volume of returned checks that a small depository bank receives, the Board estimates that this transition would cost a small depository bank approximately \$5,000 in net-present-value terms.<sup>77</sup> Conversely, a small depository bank that does not choose to accept returned checks electronically would, under the proposal, incur additional risk associated with that decision. Specifically, the bank would not retain its right to expeditious return of a check, and a returned check may not be delivered to the bank in a timely fashion. While this risk is difficult to quantify, it is reasonable to expect that each small depository bank will weigh the costs and benefits of whether to accept returns electronically. If the bank determines that the net present value of the risk is greater than the cost to receive returned checks electronically, then the bank can minimize its cost associated with the Board's proposal by accepting returned checks electronically.

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

<sup>76</sup> After printing the .pdf files, the depository bank would be able to process the checks exactly as it would process paper checks physically delivered to it.

<sup>77</sup> This estimate takes into account the cost to a small depository bank to establish and maintain an electronic connection to the Reserve Banks, which is estimated to be \$110 per month. See 75 FR 67731 at 67747 (Nov. 3, 2010). Some small banks, however, may already have such a connection. Further, a small depository bank may choose to receive its returns electronically in a manner that does not require this connection, such as through a different returning bank, an electronic check clearinghouse, or a nonbank processor.

policies did not change; instead, in accordance with the regulation, a bank would need to provide the disclosures at the time a customer opens an account, and upon request.

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

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

arrangements to receive electronic check returns by the time the Board adopts a final rule. The Board specifically requests comment on the cost of its proposed rule to a small depository institution.

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

#### *Text of Proposed Revisions*

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

#### **List of Subjects in 12 CFR Part 229**

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

#### **Authority and Issuance**

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

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

#### **Subpart A—General**

1. Section 229.1 is revised to read as follows:

##### **§ 229.1 Authority and purpose; organization.**

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

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

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

(i) The authority, purpose, and organization;

(ii) Definition of terms; and

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

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

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

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

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

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

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

(8) Appendix E of this part contains Board interpretations, which are labeled "Commentary," of the provisions of this

<sup>78</sup> U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at [http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/serv\\_sstd\\_tablepdf.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf).

<sup>79</sup> The proposed rule would not impose costs on any small entities other than depository institutions.

<sup>80</sup> See 12 CFR 210.3(f).

part. The Commentary provides background material to explain the Board's intent in adopting a particular part of the regulation and provides examples to aid in understanding how a particular requirement is to work. The Commentary is an official Board interpretation under section 611(e) of the EFA Act (12 U.S.C. 4010(e)).

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

2. Section 229.2 is revised to read as follows:

#### § 229.2 Definitions.

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

(a) *Account*. (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, *account* means a deposit as defined in 12 CFR 204.2(a)(1)(i) that is a transaction account as described in 12 CFR 204.2(e). As defined in these sections, *account* generally includes ▶an◀ account[s] at a bank from which the account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, electronic payment, or other similar means for the purpose of making payments or transfers to third persons or others. *Account* also includes ▶an◀ account[s] at a bank from which the account holder may make third party payments at an ATM, remote service unit, or other electronic device, including by debit card, but the term does not include ▶a◀ savings deposit[s] or account[s] described in 12 CFR 204.2(d)(2) even though such accounts permit third party transfers. An account may be in the form of—

- (i) A demand deposit account,
- (ii) A negotiable order of withdrawal account,
- (iii) A share draft account,
- (iv) An automatic transfer account, or
- (v) Any other transaction account described in 12 CFR 204.2(e).

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

States, or where the direct or indirect account holder is the Treasury of the United States.

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

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

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

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

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

(e) ▶(1)◀ *Bank* means—

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

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

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

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

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

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

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

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

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

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

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

(h) *Cash* means United States coins and currency.

(i) *Cashier's check* means a check that is—

- (1) Drawn on a bank;
- (2) Signed by an officer or employee of the bank on behalf of the bank as drawer;
- (3) A direct obligation of the bank; and
- (4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

(j) *Certified check* means a check with respect to which the drawee bank

certifies by signature on the check of an officer or other authorized employee of the bank that—

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

(ii) The bank has set aside funds that—

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

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

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

(k) ▶(1) ◀ *Check* means—

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

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

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

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

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

▶(6) ▶(vi) ◀ A traveler's check drawn on or payable through or at a bank.

▶(7) ▶(2) ◀ The term *check* includes an original check and a substitute check.

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

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

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

(l) [Reserved] ▶ *Claimant bank* means a bank that submits a claim for a recredit for a substitute check to an indemnifying bank under § 229.55. ◀

(m) [ *Check processing region* means the geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities. ] *Collecting bank* means any bank handling a check for forward collection, except the paying bank.

(n) *Consumer* means a natural person who—

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

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

(o) *Consumer account* means any account used primarily for personal, family, or household purposes.

(p) *Contractual branch*, with respect to a bank, means a branch of another

bank that accepts a deposit on behalf of the first bank.

(q) *Customer* means a person having an account with a bank.

(r) [ *Local check* means a check payable by or at a local paying bank, or a check payable by a nonbank payor and payable through a local paying bank. ] *Depository bank* means the first bank to which a check is transferred even though it is also the paying bank or the payee. A check deposited in an account is deemed to be transferred to the bank holding the account into which the check is deposited, even though the check is physically received and indorsed first by another bank. ▶ A bank that rejects a check submitted for deposit is not a depository bank with respect to that check. ◀

(s) [ *Local paying bank* means a paying bank that is located in the same check processing region as the physical location of the branch, contractual branch, or proprietary ATM of the depository bank in which that check was deposited. ] ▶ *Electronic collection item* means an electronic image of and information related to a check that a bank sends for forward collection and that—

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

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

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

(t) *Electronic payment* means a wire transfer or an ACH credit transfer.

(u) ▶ *Electronic presentment point* means the electronic location that a paying bank has designated for receiving electronic collection items. ◀

(v) [ *Nonlocal check* means a check payable by, through, or at a nonlocal paying bank. ] ▶ *Electronic return* means an electronic image of and information related to a check that a paying bank determines not to pay and that—

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

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

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

(w) [ *Nonlocal paying bank* means a paying bank that is not a local paying bank with respect to the depository

bank. ] ▶ *Electronic return point* means the electronic location that the depository bank has designated for receiving electronic returns. ◀

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

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

(z) *Good faith* means honesty in fact and observance of reasonable commercial standards of fair dealing.

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

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

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

(dd) *Merger transaction* means—

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

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

(ee) [ *Similarly situated bank* means a bank of similar size, located in the same community, and with similar check handling activities as the paying bank or returning bank. ] *Noncash item* means an item that would otherwise be a check, except that—

(1) A passbook, certificate, or other document is attached;

(2) It is accompanied by special instructions, such as a request for special advice of payment or dishonor;

(3) It consists of more than a single thickness of paper, except a check that qualifies for handling by automated check processing equipment; or

(4) It has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

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

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

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

(ii) (1) *Paying bank* means—

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

[(2)] (ii) The bank at which a check is payable and to which it is sent for payment or collection;

[(3)] (iii) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;

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

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

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

[Note:] ▶(3)◀ For purposes of subpart D of this part and, in connection therewith, this subpart A, *paying bank* also includes the Treasury of the United States or the United States Postal Service for a check that is payable by that entity and that is sent to that entity for payment or collection.

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

(kk) *Proprietary ATM* means an ATM that is ▶(1)◀ —

[(1)]▶(i)◀ Owned or operated by, or operated exclusively for, the depository bank;

[(2)]▶(ii)◀ Located on the premises (including the outside wall) of the depository bank; or

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

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

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

(mm) *Reconverting bank* means—

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

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

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

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

(pp) *Routing number* means—

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

(2) The ▶bank-identification◀ number in a bank's indorsement in fractional or nine-digit form [.]▶; or

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

(qq) *State* means a state, the District of Columbia, Puerto Rico, or the U.S.

Virgin Islands. For purposes of subpart D of this part and, in connection therewith, this subpart A, state also means Guam, American Samoa, [the Trust Territory of the Pacific Islands,] the Northern Mariana Islands, and any other territory of the United States.

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

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

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

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

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

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

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

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

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

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

(2) A bank that transfers a substitute check or a paper or electronic representation of a substitute check directly to a person other than a bank has received *consideration* for the substitute check or other paper or

electronic representation of the substitute check if it has charged, or has the right to charge, the person's account or otherwise has received value for the original check, a substitute check, or a representation of the original check or substitute check.

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

(1) Is drawn on or payable through or at a bank;

(2) Is designated on its face by the term *traveler's check* or by any substantially similar term or is commonly known and marketed as a traveler's check by a corporation or bank that is an issuer of traveler's checks;

(3) Provides for a specimen signature of the purchaser to be completed at the time of purchase; and

(4) Provides for a countersignature of the purchaser to be completed at the time of negotiation.

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

(xx) *Truncating bank* means—

(1) The bank that truncates the original check; or

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

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

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

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

(bbb) *Wire transfer* means an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted

by electronic or other means through Fedwire, the Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. *Wire transfer* does not include an electronic fund transfer as defined in section 903(6) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(6)).

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

#### § 229.3 Administrative enforcement.

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

(1) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 *et seq.*) in the case of—

(i) National banks, Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

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

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

►(4)◄The terms used in paragraph (a)(1) of this section that are not defined in this part or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

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#### Subpart B—Availability of Funds and Disclosure of Funds Availability Policies

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

#### § 229.10 Next-Day availability.

\* \* \* \* \*

(b) *Electronic payments*—(1) *In general.* A bank shall make funds

received for deposit in an account by an electronic payment available for withdrawal not later than the business day after the banking day on which the bank received the electronic payment.

(2) *When an electronic payment is received.* An electronic payment is received when the bank receiving the payment has received both—

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

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

►(3) *Extent of payment received.*◄ A bank receives an electronic payment only to the extent that the bank has received payment in actually and finally collected funds.

(c) *Certain check deposits*—(1) **[General rule]**►*In general*◄. A depository bank shall make funds deposited in an account by check available for withdrawal not later than the business day after the banking day on which the funds are deposited, in the case of—

(i) A check drawn on the Treasury of the United States and deposited in an account held by a payee of the check;

(ii) A U.S. Postal Service money order deposited—

(A) In an account held by a payee of the money order; and

(B) In person to an employee of the depository bank.

(iii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank and deposited—

(A) In an account held by a payee of the check; and

(B) In person to an employee of the depository bank;

(iv) A check drawn by a state or a unit of general local government and deposited—

(A) In an account held by a payee of the check;

(B) In a depository bank located in the state that issued the check, or the same state as the unit of general local government that issued the check;

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

(D) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depository bank under paragraph (c)◄(3)►(2)◄ of this section.

(v) A cashier's, certified, or teller's check deposited—

(A) In an account held by a payee of the check;

(B) In person to an employee of the depository bank; and

(C) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depository bank under paragraph (c)◄(3)►(2)◄ of this section.

(vi) A check deposited in a branch of the depository bank and drawn on the same or another branch of the same bank [if both branches are located in the same state or the same check processing region]; and,

(vii) The lesser of—

(A) \$100, or

(B) The aggregate amount deposited on any one banking day to all accounts of the customer by check or checks not subject to next-day availability under paragraphs (c)(1)(i) through (vi) of this section.

[(2) *Checks not deposited in person.* A depository bank shall make funds deposited in an account by check or checks available for withdrawal not later than the second business day after the banking day on which funds are deposited, in the case of a check deposit described in and that meets the requirements of paragraphs (c)(1)(ii), (iii), (iv), and (v), of this section, except that it is not deposited in person to an employee of the depository bank.]

[(3)]►(2)◄ *Special deposit slip.* (i) As a condition to making the funds available for withdrawal in accordance with this section, a depository bank may require that a state or local government check or a cashier's, certified, or teller's check be deposited with a special deposit slip or deposit envelope that identifies the type of check.

(ii) If a depository bank requires the use of a special deposit slip or deposit envelope, the bank must either provide the special deposit slip or deposit envelope to its customers or inform its customers how the slip or envelope may be prepared or obtained and make the slip or envelope reasonably available.

5. Section 229.12 is revised to read as follows:

**§ 229.12 Availability schedule.**

[(a) *Effective date.* The availability schedule contained in this section is effective September 1, 1990.]

[(b) *Local checks and certain other checks.*]►(a) *In general.*◄ Except as provided in ►§ 229.10(c),◄ paragraphs ►(b), (c), and◄ (d)[, (e), and (f)] of this section, ►and in § 229.13,◄ a depository bank shall make funds deposited in an account by a check available for withdrawal not later than the second business day following the banking day on which funds are deposited.◄[, in the case of—]

[(1) A local check;

(2) A check drawn on the Treasury of the United States that is not governed by the availability requirements of § 229.10(c);

(3) A U.S. Postal Service money order that is not governed by the availability requirements of § 229.10(c); and

(4) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to in this paragraph (b)(4) is a local check that is not governed by the availability requirements of § 229.10(c).]

[(c) *Nonlocal checks—(1) In general.* Except as provided in paragraphs (d), (e), and (f) of this section, a depository bank shall make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day on which funds are deposited, in the case of—

(i) A nonlocal check; and

(ii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; a cashier's, certified, or teller's check; or a check deposited in a branch of the depository bank and drawn on the same or another branch of the same bank, if any check referred to in this paragraph (c)(1)(ii) is a nonlocal check that is not governed by the availability requirements of § 229.10(c).

(2) Nonlocal checks specified in appendix B-2 to this part must be made available for withdrawal not later than the times prescribed in that appendix.]

[(d)]►(b)◄ *Time period adjustment for withdrawal by cash or similar means.* A depository bank may extend by one business day the time that funds deposited in an account by one or more checks subject to paragraphs [(b), (c), or (f)] ►(a) or (d)◄ of this section are available for withdrawal by cash or similar means. Similar means include electronic payment, issuance of a cashier's or teller's check, [or] certification of a check, or other irrevocable commitment to pay, but do not include the granting of credit to a bank, a Federal Reserve Bank, or a Federal Home Loan Bank that presents a check to the depository bank for payment. A depository bank shall, however, make \$400 of these funds available for withdrawal by cash or similar means not later than 5 p.m. on the business day on which the funds are available under paragraph[s] (b), (c), or (f)] ►(a) or (d)◄ of this section. This \$400 is in addition to the \$100 available under § 229.10(c)(1)(vii).

[(e)]►(c)◄ *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The depository bank may extend the time periods set forth in this section by one business day in the case of any deposit, other than a deposit described in § 229.10, that is—

(1) Deposited in an account at a branch of a depository bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and

(2) Deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depository bank.

[(f)]►►(d)◄ *Deposits at nonproprietary ATMs.* A depository bank shall make funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the [fifth] ►fourth◄ business day following the banking day on which the funds are deposited.

6. Section 229.13 is revised as follows:

**§ 229.13 Exceptions.**

(a) *New accounts.* For purposes of this paragraph, checks subject to § 229.10(c)(1)(v) include traveler's checks.

(1) A deposit in a new account—

(i) Is subject to the requirements of § 229.10(a) and (b) to make funds from deposits by cash and electronic payments available for withdrawal on the business day following the banking day of deposit or receipt;

(ii) Is subject to the requirements of § 229.10(c)(1)(i) through (v) [and § 229.10(c)(2)] only with respect to the first \$5,000 of funds deposited on any one banking day; but the amount of the deposit in excess of \$5,000 shall be available for withdrawal not later than the ninth business day following the banking day on which funds are deposited; and

(iii) Is not subject to the availability requirements of §§ 229.10(c)(1)(vi) and (vii) and 229.12.

(2) An account is considered a new account during the first 30 calendar days after the account is established. An account is not considered a new account if each customer on the account has had, within 30 calendar days before the account is established, another account at the depository bank for at least 30 calendar days.

(b) *Large deposits.* Sections 229.10(c) and 229.12 do not apply to the aggregate amount of deposits by one or more checks to the extent that the aggregate amount is in excess of \$5,000 on any one banking day. For customers that have multiple accounts at a depository bank, the bank may apply this exception to the aggregate deposits to all accounts held by the customer, even if the customer is not the sole holder of the accounts and not all of the holders of the accounts are the same.

(c) *Redeposited checks.* Sections 229.10(c) and 229.12 do not apply to a

check that has been returned unpaid and redeposited by the customer or the depository bank. This exception does not apply—

(1) To a check that has been returned due to a missing indorsement and redeposited after the missing indorsement has been obtained, if the reason for return indication on the check states that it was returned due to a missing indorsement; or

(2) To a check that has been returned because it was post dated, if the reason for return indicated on the check states that it was returned because it was post dated, and if the check is no longer post dated when redeposited.

(d) *Repeated overdrafts.* (1) If any account or combination of accounts of a depository bank's customer has been repeatedly overdrawn, then for a period of six months after the last such overdraft, §§ 229.10(c) and 229.12 do not apply to any of the accounts.

(2) A depository bank may consider a customer's account to be repeatedly overdrawn if—

(i) On six or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative if checks or other charges to the account had been paid; or

(ii) On two or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative, in the amount of \$5,000 or more, if checks or other charges to the account had been paid.

(iii) For purposes of this paragraph (d)(2), such other charges to the account shall not include attempted charges initiated by debit card that the depository bank declines to authorize.

(e) *Reasonable cause to doubt collectibility.* (1) *In general.* Sections 229.10(c) and 229.12 do not apply to a check deposited in an account at a depository bank if the depository bank has reasonable cause to believe that the check is uncollectible from the paying bank. Reasonable cause to believe a check is uncollectible requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. Such belief shall not be based on the fact that the check is of a particular class or is deposited by a particular class of persons. The reason for the bank's belief that the check is uncollectible shall be included in the notice required under paragraph (g) of this section.

(2) *Overdraft and returned check fees.* (i) A depository bank that extends the time when funds will be available for withdrawal as described in paragraph (e)(1) of this section, and does

not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks of other debits to the account, if—

(i) (A) The overdraft or return of the check would not have occurred except for the fact that the deposited funds were delayed under paragraph (e)(1) of this section; and

(ii) (B) The deposited check was paid by the paying bank.

(ii) Notwithstanding the foregoing, the depository bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice of exception required in paragraph (g) of this section and, when required, refunds any such fees upon the request of the customer. The notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the exception is paid and how to obtain a refund.

(f) *Emergency conditions.* Sections 229.10(c) and 229.12 do not apply to funds deposited by check in a depository bank, if the depository bank exercises such diligence as the circumstances require, in the case of—

(1) An interruption of communications or computer or other equipment facilities;

(2) A suspension of payments by another bank;

(3) A war; or

(4) An emergency condition beyond the control of the depository bank, if the depository bank exercises such diligence as the circumstances require.

(g) *Notice of exception.* (1) *In general.* Subject to paragraphs (g)(2) and (g)(3) of this section, when a depository bank extends the time when funds will be available for withdrawal based on the application of an exception contained in paragraphs (b) through (e) of this section, it must provide the depositor with a written notice.

(i) The notice shall include the following information—

(A) A number or code, which need not exceed four digits, that identifies the customer's account;

(B) The date of the deposit;

(C) The total amount of the deposit;

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

(E) The reason the exception was invoked; and

(F) The time period within which the funds will be available for withdrawal.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time

of the deposit, unless the deposit is not made in person to an employee of the depository bank, or, if the facts upon which a determination to invoke one of the exceptions in paragraphs (b) through (e) of this section to delay a deposit only become known to the depository bank after the time of the deposit. If the notice is not given at the time of the deposit, the depository bank shall mail or deliver the notice to the customer as soon as practicable, but no later than the first business day following the day the facts become known to the depository bank, or the deposit is made, whichever is later. If the customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer no later than the first business day following the day the facts become known to the depository bank, or the deposit is made, whichever is later.

(2) *One-time exception notice.* (i) In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depository bank that extends the time when the funds deposited in a nonconsumer account will be available for withdrawal based on an exception contained in paragraph (b) or (c) of this section may provide a single notice to the customer that includes the following information—

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

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

(ii) This one-time notice shall be provided only if each type of exception cited in the notice will be invoked for most check deposits in the account to which the exception could apply. This notice shall be provided at or prior to the time notice must be provided under paragraph (g)(1)(ii) of this section.

(3) *Notice of repeated overdrafts exception.* (i) In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depository bank that extends the time when funds deposited in an account will be available for withdrawal based on the exception contained in paragraph (d) of this section may provide a notice to the customer for each time period during which the exception will be in effect. The notice shall include the following information—

(i) (A) [The account number of the customer] A number or code, which need not exceed four digits, that identifies the customer's account;

(ii) (B) The fact that the availability of funds deposited in the customer's account will be delayed

because the repeated overdrafts exception will be invoked;

[(iii)] (C) The time period within which deposits subject to the exception generally will be available for withdrawal; and

[(iv)] (D) The time period during which the exception will apply.

[(ii)] This notice shall be provided at or prior to the time notice must be provided under paragraph (g)(1)(ii) of this section and only if the exception cited in the notice will be invoked for most check deposits in the account.

(4) *Emergency conditions exception notice.* When a depository bank extends the time when funds will be available for withdrawal based on the application of the emergency conditions exception contained in paragraph (f) of this section, it must provide the depositor with notice in a reasonable form and within a reasonable time given the circumstances. The notice shall include the reason the exception was invoked and the time period within which funds shall be made available for withdrawal, unless the depository bank, in good faith, does not know at the time the notice is given the duration of the emergency and, consequently, when the funds must be made available. The depository bank is not required to provide a notice if the funds subject to the exception become available before the notice must be sent.

(5) *Record retention.* A depository bank shall retain a record, in accordance with § 229.21(g), of each notice provided pursuant to its application of the reasonable cause exception under paragraph (e) of this section, together with a brief statement of the facts giving rise to the bank's reason to doubt the collectibility of the check.

(h) *Availability of deposits subject to exceptions.* (1) If an exception contained in paragraphs (b) through (f) of this section applies, the depository bank may extend the time periods established under §§ 229.10(c) and 229.12 by a reasonable period of time.

(2) If a depository bank invokes an exception contained in paragraphs (b) through (e) of this section with respect to a check described in § 229.10(c)(1) (i) through (v) [or § 229.10(c)(2)], it shall make the funds available for withdrawal not later than a reasonable period after the day the funds would have been required to be made available had the check been subject to § 229.12.

(3) If a depository bank invokes an exception under paragraph (f) of this section based on an emergency condition, the depository bank shall make the funds available for withdrawal not later than a reasonable period after the emergency has ceased or the period

established in §§ 229.10(c) and 229.12, whichever is later.

(4) For the purposes of this section, a "reasonable period" is an extension of up to one business day for checks described in § 229.10(c)(1)(vi) [and two [five] business days for [checks described in § 229.12(b) (1) through (4), and six business days for checks described in § 229.12(c) (1) and (2) or § 229.12(f)] all other checks. A longer extension may be reasonable, but the bank has the burden of so establishing.

7. Section 229.14 is revised to read as follows:

#### § 229.14 Payment of interest.

(a) *In general.* A depository bank shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the depository bank receives credit for the funds. For the purposes of this section, the depository bank may—

(1) Rely on the availability schedule of its Federal Reserve Bank [Federal Home Loan Bank] or correspondent bank to determine the time credit is actually received; and

(2) Accrue interest or dividends on funds deposited in interest-bearing accounts by checks that the depository bank sends to paying banks or subsequent collecting banks for payment or collection based on the availability of funds the depository bank receives from the paying or collecting banks.

(b) *Special rule for credit unions.* Paragraph (a) of this section does not apply to any account at a bank described in § 229.2(e)(4), if the bank—

(1) Begins the accrual of interest or dividends at a later date than the date described in paragraph (a) of this section with respect to all funds, including cash, deposited in the account; and

(2) Provides notice of its interest or dividend payment policy in the manner required under § 229.16(d).

(c) *Exception for checks returned unpaid.* This subpart does not require a bank to pay interest or dividends on funds deposited by a check that is returned unpaid.

8. Section 229.15 is revised to read as follows:

#### § 229.15 General disclosure and notice requirements.

(a) *Form of disclosures and notices.* A bank shall make the disclosures and notices required by this subpart clearly and conspicuously in writing. Disclosures and notices other than those posted at locations where employees accept consumer

deposits and ATMs and the notice on preprinted deposit slips, must be in a form that the customer may keep. The disclosures shall be grouped together and shall not contain any information not related to the disclosures required by this subpart. If contained in a document that sets forth other account terms, the disclosures shall be highlighted within the document by, for example, use of a separate heading.

(b) *Uniform reference to day of availability.* In its disclosures and notices, a bank shall [describe funds as being available for withdrawal on "the \_\_\_\_\_ business day after" the day of deposit. In this calculation, the first business day is the business day following the banking day the deposit was received, and the last business day is the day on which the funds are made available.] specify the business day on which funds are available for withdrawal by describing that day in relation to the banking day on which the bank received the deposit. A bank shall use the following, or substantially similar, language—

(1) The banking day of receipt may be described as "the same business day;"

(2) The business day after the banking day of receipt may be described as "the next business day;" and

(3) A business day after the banking day of receipt may be described using a phrase that includes—

(i) A cardinal number, such as "1 business day" or "2 business days;" or

(ii) An ordinal number, such as "the first business day" or "the second business day."

(c) *Multiple accounts and multiple account holders.* A bank need not give multiple disclosures to a customer that holds multiple accounts if the accounts are subject to the same availability policies. Similarly, a bank need not give separate disclosures to each customer on a jointly held account.

(d) *Dormant or inactive accounts.* A bank need not give availability disclosures to a customer that holds a dormant or inactive account.

9. Section 229.16 is revised to read as follows:

#### § 229.16 Specific availability policy disclosure.

(a) *General.* *In general.* To meet the requirements of a specific availability policy disclosure under §§ 229.17 and 229.18(d), a bank shall provide a disclosure describing the bank's policy as to when funds deposited in an account are available for withdrawal. The disclosure must reflect the policy followed by the bank in most cases. A bank may impose longer delays on a case-by-case basis or by invoking

one of the exceptions in § 229.13, provided this is reflected in the disclosure.

(b) *Content of specific availability policy disclosure.* The specific availability policy disclosure shall contain the following, as applicable—

(1) A summary of the bank's availability policy;

(2) A description of any categories of deposits or checks that are subject to differing availability (such as local or nonlocal) and other checks; how to determine the category to which a particular deposit or check belongs; and when each category will be available for withdrawal (including a description of the bank's business days and when a deposit is considered received);<sup>[1]</sup>

<sup>[1]</sup> A bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose that certain checks, such as some credit union share drafts that are payable by one bank but payable through another bank, will be treated as local or nonlocal checks based upon the location of the bank by which they are payable and not on the basis of the location of the bank whose routing number appears on the check. A bank that makes funds from nonlocal checks available for withdrawal within the time periods required for local checks under §§ 229.12 and 229.13 is not required to provide this disclosure on payable-through checks to its customers. The statement concerning payable-through checks must describe how the customer can determine whether these checks will be treated as local or nonlocal, or state that special rules apply to such checks and that the customer may ask about the availability of these checks.

(3) A description of any of the exceptions in § 229.13 that may be invoked by the bank, including the time following a deposit that funds generally will be available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions;

(4) A description, as specified in paragraph (c)(1) of this section, of any case-by-case policy of delaying availability that may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy; and

(5) A description of how the customer can differentiate between a proprietary and a nonproprietary ATM, if the bank makes funds from deposits at nonproprietary ATMs available for withdrawal later than funds from deposits at proprietary ATMs.

(c) *Longer delays on a case-by-case basis—(1) Notice in specific policy disclosure.* A bank that has a policy of making deposited funds available for withdrawal sooner than required by this subpart may extend the time when funds are available up to the time periods allowed under this subpart on a case-by-case basis, provided the bank includes the following in its specific policy disclosure—

(i) A statement that the time when deposited funds are available for withdrawal may be extended in some cases, and the latest time following a deposit that funds will be available for withdrawal;

(ii) A statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until later than the time periods stated in the bank's availability policy; and

(iii) A statement that customers should ask if they need to be sure about when a particular deposit will be available for withdrawal.

(2) *Notice at time of case-by-case delay—(i) In general.* When a depository bank extends the time when funds will be available for withdrawal on a case-by-case basis, it must provide the depositor with a written notice. The notice shall include the following information—

(A) A number or code, which need not exceed four digits, that identifies the customer's account.

(B) The date of the deposit;  
 (C) The total amount of the deposit;

(D) The amount of the deposit that is being delayed; and  
 (E) The day the funds will be available for withdrawal.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not made in person to an employee of the depository bank or the decision to extend the time when the deposited funds will be available is made after the time of the deposit. If notice is not given at the time of the deposit, the depository bank shall mail or deliver the notice to the customer not later than the first business day following the banking day the deposit is made. If the customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer not later than the first business day following the banking day the deposit is made.

(3) *Overdraft and returned check fees.*  
 (i) A depository bank that extends the time when funds will be available for withdrawal on a case-by-case basis

and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks or other debits to the account, if—

(i) (A) The overdraft or return of the check or other debit would not have occurred except for the fact that the deposited funds were delayed under paragraph (c)(1) of this section; and  
 (B) The deposited check was paid by the paying bank.

(ii) Notwithstanding the foregoing, the depository bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice required in paragraph (c)(2) of this section and, when required, refunds any such fees upon the request of the customer. The notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the delay is paid and how to obtain a refund.

(d) *Credit union notice of interest payment policy.* If a bank described in § 229.2(e)(4) begins to accrue interest or dividends on all deposits made in an interest-bearing account, including cash deposits, at a later time than the day specified in § 229.14(a), the bank's specific policy disclosures shall contain an explanation of when interest or dividends on deposited funds begin to accrue.

10. § 229.17 is republished to read as follows:

#### § 229.17 Initial disclosures.

Before opening a new account, a bank shall provide a potential customer with the applicable specific availability policy disclosure described in § 229.16.

11. § 229.18 is republished to read as follows:

#### § 229.18 Additional disclosure requirements.

(a) *Deposit slips.* A bank shall include on all preprinted deposit slips furnished to its customers a notice that deposits may not be available for immediate withdrawal.

(b) *Locations where employees accept consumer deposits.* A bank shall post in a conspicuous place in each location where its employees receive deposits to consumer accounts a notice that sets forth the time periods applicable to the availability of funds deposited in a consumer account.

(c) *Automated teller machines.* (1) A depository bank shall post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

(2) A depository bank that operates an off-premises ATM from which deposits

are removed not more than two times each week, as described in § 229.19(a)(4), shall disclose at or on the ATM the days on which deposits made at the ATM will be considered received.

(d) *Upon request.* A bank shall provide to any person, upon oral or written request, a notice containing the applicable specific availability policy disclosure described in § 229.16.

(e) *Changes in policy.* A bank shall send a notice to holders of consumer accounts at least 30 days before implementing a change to the bank's availability policy regarding such accounts, except that a change that expedites the availability of funds may be disclosed not later than 30 days after implementation.

13. Section 229.19 is revised to read as follows:

**§ 229.19 Miscellaneous.**

(a) *When funds are considered deposited.* For the purposes of this subpart—

(1) Funds deposited at a staffed facility, ATM, or contractual branch are considered deposited when they are received at the staffed facility, ATM, or contractual branch;

(2) Funds mailed to the depository bank are considered deposited on the day they are received by the depository bank;

(3) Funds deposited to a night depository, lock box, or similar facility are considered deposited on the day on which the deposit is removed from such facility and is available for processing by the depository bank;

(4) Funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depository bank are considered deposited on the day the funds are removed from the ATM, if funds normally are removed from the ATM not more than two times each week; and

(5) Funds may be considered deposited on the next banking day, in the case of funds that are deposited—

(i) On a day that is not a banking day for the depository bank; or

(ii) After a cut-off hour set by the depository bank for the receipt of deposits of 2 p.m. or later, or, for the receipt of deposits at ATMs, contractual branches, or off-premise facilities, of 12 noon or later. Different cut-off hours later than these times may be established for the receipt of different types of deposits, or receipt of deposits at different locations.

(b) *Availability at start of business day.* Except as otherwise provided in § 229.12[(d)]▶(b)◀, if any provision of this subpart requires that funds be made available for withdrawal on any

business day ▶ after the banking day of deposit ◀, the funds shall be available for withdrawal by the later of:

(1) 9 a.m. (local time of the depository bank); or

(2) The time the depository bank's teller facilities (including ATMs) are available for customer account withdrawals.

(c) *Effect on policies of depository bank.* This part does not—

(1) Prohibit a depository bank from making funds available to a customer for withdrawal in a shorter period of time than the time required by this subpart;

(2) Affect a depository bank's right—

(i) To accept or reject a check for deposit;

(ii) To revoke any settlement made by the depository bank with respect to a check accepted by the bank for deposit, to charge back the customer's account for the amount of a check based on the return of the check or receipt of a notice of nonpayment of the check, or to claim a refund of such credit; and

(iii) To charge back funds made available to its customer for an electronic payment for which the bank has not received payment in actually and finally collected funds;

(3) Require a depository bank to open or otherwise to make its facilities available for customer transactions on a given business day; or

(4) Supersede any policy of a depository bank that limits the amount of cash a customer may withdraw from its account on any one day, if that policy—

(i) Is not dependent on the time the funds have been deposited in the account, as long as the funds have been on deposit for the time period specified in §§ 229.10, 229.12, or 229.13; and

(ii) In the case of withdrawals made in person to an employee of the depository bank—

(A) Is applied without discrimination to all customers of the bank; and

(B) Is related to security, operating, or bonding requirements of the depository bank.

(d) *Use of calculated availability.* A depository bank may provide availability to its nonconsumer accounts based on a sample of checks that represents the average composition of the customer's deposits, if the terms for availability based on the sample are equivalent to or more prompt than the availability requirements of this subpart.

(e) *Holds on other funds.* (1) A depository bank that receives a check for deposit in an account may [not] place a hold on any funds of the customer at the bank, [where]▶ only if ◀—

(i) The amount of funds that are held ▶ does not ◀ exceed [s] the amount of the check; [or] ▶ and ◀

(ii) The funds are [not] made available for withdrawal within the times specified in §§ 229.10, 229.12, and 229.13.

(2) A depository bank that cashes a check for a customer over the counter [ , other than a check drawn on the depository bank, ] may [not] place a hold on funds in an account of the customer at the bank, ▶ only ◀ if—

(i) The amount of funds that are held ▶ does not ◀ exceed [s] the amount of the check; [or]

(ii) The funds are [not] made available for withdrawal within the times specified in §§ 229.10, 229.12, and 229.13 [ . ] ▶ ; and

(iii) The check is not drawn on the depository bank. ◀

(f) *Employee training and compliance.* Each bank shall establish procedures to ensure that the bank complies with the requirements of this subpart, and shall provide each employee who performs duties subject to the requirements of this subpart with a statement of the procedures applicable to that employee.

(g) *Effect of merger transaction—*[(1) *In general*]. For purposes of this subpart, except for the purposes of the new accounts exception of § 229.13(a), and when funds are considered deposited under § 229.19(a), two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

[(2) *Merger transactions on or after July 1, 1998, and before March 1, 2000.* If banks have consummated a merger transaction on or after July 1, 1998, and before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.]

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

**§ 229.20 Relation to state law.**

(a) *In general.* ▶(1)◀ Any provision of a law or regulation of any state in effect on or before September 1, 1989, that requires funds deposited in an account at a bank chartered by the state to be made available for withdrawal in a shorter time than the time provided in subpart B, and, in connection therewith, subpart A, shall—

[(1)]▶(i)◀ Supersede the provisions of the EFA Act and subpart B, and, in connection therewith, subpart A, to the extent the provisions relate to the time by which funds deposited or received for deposit in an account are available for withdrawal; and

[(2)]▶(ii)◀ Apply to all federally insured banks located within the state.

▶(2)◀ No amendment to a state law or regulation governing the availability

of funds that becomes effective after September 1, 1989, shall supersede the EFA Act and subpart B, and, in connection therewith, subpart A, but unamended provisions of state law shall remain in effect.

(b) *Preemption of inconsistent law.* Except as provided in paragraph (a), the EFA Act and subpart B, and, in connection therewith, subpart A, supersede any provision of inconsistent state law.

(c) *Standards for preemption.* A provision of a state law in effect on or before September 1, 1989, is not inconsistent with the EFA Act, or subpart B, or in connection therewith, subpart A, if it requires that funds shall be available in a shorter period of time than the time provided in this subpart. Inconsistency with the EFA Act and subpart B, and in connection therewith, subpart A, may exist when state law—

(1) Permits a depository bank to make funds deposited in an account by cash, electronic payment, or check available for withdrawal in a longer period of time than the maximum period of time permitted under subpart B, and, in connection therewith, subpart A; or

(2) Provides for disclosures or notices concerning funds availability relating to accounts.

(d) *Preemption determinations.* The Board may determine, upon the request of any state, bank, or other interested party, whether the EFA Act and subpart B, and, in connection therewith, subpart A, preempt provisions of state laws relating to the availability of funds.

(e) *Procedures for preemption determinations.* (1) A request for a preemption determination shall include the following—

[(1)] (i) A copy of the full text of the state law in question, including any implementing regulations or judicial interpretations of that law; and

[(2)] (ii) A comparison of the provisions of state law with the corresponding provisions in the EFA Act and subparts A and B of this part, together with a discussion of the reasons why specific provisions of state law are either consistent or inconsistent with corresponding sections of the EFA Act and subparts A and B of this part.

[(2)] A request for a preemption determination shall be addressed to the Secretary, Board of Governors of the Federal Reserve System.

14. Amend § 229.21 by revising paragraphs (f) and (g) to read as follows:

#### § 229.21 Civil liability.

\* \* \* \* \*

(f) *Exclusions.* This section does not apply to claims that arise under

subpart C or D of this part or to actions for wrongful dishonor.

(g) *Record retention.* (1) A bank shall retain evidence of compliance with the requirements imposed by this subpart for not less than two years. Records may be stored by use of microfiche, microfilm, magnetic tape, electronic storage media or other methods capable of accurately retaining and reproducing information.

(2) If a bank has actual notice that it is being investigated, or is subject to an enforcement proceeding by an agency charged with monitoring that bank's compliance with the EFA Act and this subpart, or has been served with notice of an action filed under this section, it shall retain the records pertaining to the action or proceeding pending final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

#### Subpart C—Collection of Checks

15. Revise § 229.30 to read as follows:

#### § 229.30 Paying bank's responsibility for return of checks.

(a) *Expeditious return of checks.* (1) If a paying bank determines not to pay a check [it shall return the check in an expeditious manner as provided in either paragraph (a)(1) or (a)(2) of this section], the paying bank shall send the returned check expeditiously such that the depository bank normally would receive the returned check no later than 4 p.m. (local time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank.

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

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

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

[(2) If the last business day on which the paying bank may deliver a returned check to the depository bank is not a banking day for the depository bank, the paying bank [meets the two-day/four-day test] satisfies its expeditious return requirement if the

returned check is received by the depository bank on or before the depository bank's next banking day.

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

(i) Of similar amount as the returned check;

(ii) Drawn on the depository bank; and

(iii) Deposited for forward collection in the similarly situated bank by noon on the banking day following the banking day on which the check was presented to the paying bank.]

[(3) Subject to the requirement for expeditious return, a paying bank may send a returned check to the depository bank, [or] to any other bank agreeing to handle the returned check expeditiously under § 229.31(a), or, under § 229.30(b)(2), to any bank that handled the check for forward collection.

[(4) A paying bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a "2" in the case of an original check (or a "5" in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100-140.

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

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

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

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

(ii) The check is deposited in a depository bank that does not maintain accounts; or

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

(2) A paying bank that is unable to identify the depository bank [with respect to a check] may send the

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

(c) *Extension of deadline.* (1) The deadline for return [or notice of nonpayment] under the U.C.C. or Regulation J (12 CFR part 210), or [§ 229.36(f)(2)] § 229.36(d)(3) is extended to the time of dispatch of such return [or notice of nonpayment] where a paying bank uses a means of delivery that would ordinarily result in receipt by the depository bank [to which it is sent] by 4 p.m. (local time of the depository bank) on the second business day after the banking day on which the check was presented to the paying bank. —

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

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

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

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

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

[(e) *Depository bank without accounts.* The expeditious return requirements of paragraph (a) of this section does not apply to checks deposited in a depository bank that does not maintain accounts.]

[(f)] ► (e) ◀ *Notice in lieu of return.* (1) ◀ If a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in [§ 229.33(b)] ► paragraph (e)(2) of this section. ◀ The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other [requirements] ► provisions ◀ of this subpart.

► (2) The notice must include, if available, the—

(i) Name and routing number of the paying bank;

(ii) Name of the payee(s);

(iii) Amount of the returned check;

(iv) Date of the indorsement of the depository bank;

(v) Account number of the customer(s) of the depository bank;

(vi) Branch name or number of the depository bank from its indorsement;

(vii) Trace number associated with the indorsement of the depository bank; and

(viii) Reason for return.

(3) The notice may include other information from the check that may be useful in identifying the check being returned and the customer and must include the name and routing number of the depository bank from its indorsement.

(4) If the paying bank is not sure of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy. ◀

[(g)] ► (f) ◀ *Reliance on routing number.* A paying bank may [return] ► send ◀ a returned check based on any routing number designating the depository bank appearing on the [returned] check in the depository bank's indorsement ► or in the electronic image of or information related to the check. ◀

16. Revise § 229.31 to read as follows:

**§ 229.31 Returning bank's responsibility for return of checks.**

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

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

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

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

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

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

(i) Of similar amount as the returned check;

(ii) Drawn on the depository bank; and

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

► (3) ◀ [Subject to the requirement for expeditious return, t] ► T ◀ the returning bank may send the returned check to the depository bank, [or] to

any bank agreeing to handle the returned check expeditiously under § 229.31(a)▶, or, under § 229.31(b)(2), to any bank that handled the check for forward collection◀.

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

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

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

(ii) The check is deposited in a depository bank that does not maintain accounts;

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

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

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

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

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

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

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

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

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

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

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

[(f)▶(e)◀ *Notice in lieu of return.* If a check is unavailable for return, the returning bank may send in its place a copy of the front and back of the returned check, or, if no copy is available, a written notice of nonpayment containing the information specified in

[§ 229.33(b)]▶§ 229.30(e)(2)◀. The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other [requirements]▶provisions◀ of this subpart.

[(g)▶(f)◀ *Reliance on routing number.* A returning bank may [return]▶send◀ a returned check based on any routing number designating the depository bank appearing on the returned check in the depository bank's indorsement▶,◀ [or] in magnetic ink on a qualified returned check▶, or in the electronic image or information included in the electronic return◀.

17. Revise § 229.32 to read as follows:

**§ 229.32 Depository bank's responsibility for returned checks.**

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

(i) Directly from the paying bank;

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

(iii) As otherwise agreed with the paying bank.

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

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

[(a)]▶(b)◀ *Acceptance of paper returned checks.* ▶(1)◀ A depository bank shall accept▶paper◀ returned checks [and written▶ notices of nonpayment].

[(1)]▶(i)◀ At a location▶, if any,◀ at which presentment of▶paper◀

checks for forward collection is requested by the depository bank; and

[(2)(i)]▶(ii)(A)◀ At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;

[(ii)]▶(B)◀ If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check;

[(iii) If the address in the indorsement is not in the same check processing region as the address associated with the routing number of the bank in its indorsement on the check, at a location consistent with the address in the indorsement and at a branch or head office associated with the routing number in the bank's indorsement; ] or

[(iv)]▶(C)◀ If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank.

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

[(b)]▶(c)◀ *Payment.* ▶(1)◀ A depository bank shall pay the returning▶bank◀ or paying bank returning the check to it for the amount of the check prior to the close of business on the banking day on which it received the check (“payment date”) by—

[(1)] (i) Debit to an account of the depositary bank on the books of the returning bank or paying bank;

[(2)] (ii) Cash;

[(3)] (iii) Wire transfer; or

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

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

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

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

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

18. Revise § 229.33 to read as follows.

**§ 229.33 Electronic collection items and electronic returns.**

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

(b) [Reserved]

19. Revise § 229.34 to read as follows:

**§ 229.34 Warranties.**

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

(1) Each bank that transfers or presents

an electronic collection item or an electronic return and receives a settlement or other consideration for it warrants that—

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

(ii) No person will receive a transfer, presentment, or return of, or otherwise be charged for, an electronic collection item, an electronic return, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid.

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

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

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

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

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

(3) The check has not been materially altered.

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

[(c) *Warranty of settlement amount, encoding, and offset*

(b) *Warranties for all items*. (1) Each bank that presents one or more checks to a paying bank and in return receives a settlement or other consideration warrants to the paying bank that the total amount of the checks presented is equal to the total amount of the settlement demanded by the presenting bank from the paying bank.

(2) Each bank that transfers one or more checks or returned checks to a collecting bank, returning bank, or depositary bank and in return receives a settlement or other consideration warrants to the transferee bank that the accompanying information, if any, accurately indicates the total amount of the checks or returned checks transferred.

(3) Each bank that presents or transfers a check or returned check warrants to any bank that subsequently handles it that, at the time of presentment or transfer, the information encoded after issue in magnetic ink or as electronic information on the check or returned check is [correct] accurate. For purposes of this paragraph, the information encoded after issue on the check or returned check includes any information placed in the MICR line of a substitute check or in the electronic information of an electronic collection item or electronic return [that represents that check or returned check].

(4) If a bank settles with another bank for checks presented, or for returned checks for which it is the depositary bank, in amount exceeding the total amount of the checks, the settling bank may set off the excess settlement amount against subsequent settlements for checks presented, or for returned checks for which it is the depositary bank, that it receives from the other bank.

[(d)] (c) *Transfer and presentment warranties with respect to a remotely created check*.

(1) A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. For purposes of this paragraph (d)(1), “account” includes an account as defined in § 229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

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

[(a) *Warranties*] (d) *Warranty of returned check*. (1) Each paying bank or returning bank that transfers a

returned check and receives a settlement or other consideration for it warrants to the transferee returning bank, to any subsequent returning bank, to the depository bank, and to the owner of the check, that—

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

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

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

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

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

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

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

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

[(g)](h) *Notice of claim.* Unless a claimant gives notice of a claim for breach of warranty under this section to the bank that made the warranty within 30 days after the claimant has reason to know of the breach and the identity of the warranting bank, the warranting

bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

**§ 229.35 Indorsements.**

\* \* \* \* \*

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

\* \* \* \* \*

24. Revise § 229.36 to read as follows:

**§ 229.36 Presentment [and issuance] of checks.**

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

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

(i) Directly from the presenting bank; or

(ii) As otherwise agreed with the presenting bank.

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

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

(b) *Receipt of paper checks.* (1) A check in paper form is considered

received by the paying bank when it is received:

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

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

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

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

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

[(c) Reserved.]

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

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

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

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

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

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

(i) (A) As an electronic collection item to the electronic presentment point designated by the paying bank, if the paying bank agrees to receive electronic collection items from the presenting bank under § 229.36(a); or

►(B)◄ At a location designated by the paying bank for receipt of checks under this paragraph [(f)]►(d)◄ [that is in the check processing region consistent with the routing number encoded in magnetic ink on the check and] at which the paying bank would be considered to have received the check under paragraph (b)►(1)◄ of this section or, if no location is designated, at any location described in paragraph (b)►(1)◄ of this section; and

(ii) By 8 a.m. on a business day (local time of the location described in paragraph [(f)(1)(i)]►(d)(1)(i)◄ of this section).

►(2) A paying bank may require that checks presented under paragraph (d)(1) for settlement pursuant to paragraph (d)(3) of this section be presented as electronic collection items and be presented electronically to a designated electronic presentment point.◄

[A paying bank may require that checks presented for settlement pursuant to this paragraph (f)(1) be separated from other forward-collection checks or returned checks.]

[(2)]►(3)◄ If presentment of a check meets the requirements of paragraph [(f)(1)]►(d)(1)◄ of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on the business day it receives the check, it either:

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

(ii) Returns the check.

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

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

(ii) Returns the check.

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

25. Revise § 229.38 to read as follows:

#### § 229.38 Liability.

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

(b) *Paying bank's failure to make timely return.* If a paying bank fails both to comply with § 229.30(a) and to comply with the deadline for return under the U.C.C., Regulation J (12 CFR part 210), or § 229.30(c) in connection with a single nonpayment of a check, the paying bank shall be liable under either § 229.30(a) or such other provision, but not both.

(c) *Comparative negligence.* If a person, including a bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§ 229.35), accepting a returned check [or notice of nonpayment] (§§ 229.32(a) and [229.33(c)]►(b)◄), or otherwise, the damages incurred by that person under § 229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

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

a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A reconverting bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a substitute check transferred, presented, or returned by it—

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

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

[Note:]►(2)◄ Responsibility under this paragraph (d) shall be treated as negligence of the paying bank, depository bank, or reconverting bank for purposes of paragraph (c) of this section.

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

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

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

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

(e) *Timeliness of action.* If a bank is delayed in acting beyond the time limits set forth in this subpart because of interruption of communication or computer facilities, suspension of payments by a bank, war, emergency conditions, failure of equipment, or other circumstances beyond its control, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

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

(g) *Jurisdiction.* Any action under this subpart may be brought in any United States district court, or in any other court of competent jurisdiction, and shall be brought within one year after

the date of the occurrence of the violation involved.

(h) *Reliance on Board rulings.* No provision of this subpart imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, regardless of whether the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after the act or omission has occurred.

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

**§ 229.39 Insolvency of bank.**

\* \* \* \* \*

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

\* \* \* \* \*

27. Revise § 229.40 to read as follows:

**§ 229.40 Effect of merger transaction.**

[(a) *In general.*] For purposes of this subpart, two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

[(b) *Merger transactions on or after July 1, 1998, and before March 1, 2000.*] If banks have consummated a merger transaction on or after July 1, 1998, and before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.]

28. Revise § 229.41 to read as follows:

**§ 229.41 Relation to [S]►s◄tate law.**

The provisions of this subpart supersede any inconsistent provisions of the U.C.C. as adopted in any state, or of any other state law, but only to the extent of the inconsistency.

29. Revise § 229.42 to read as follows:

**§ 229.42 Exclusions.**

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

30. Revise § 229.43 to read as follows:

**§ 229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands.**

(a) *Definitions.* The definitions in § 229.2 apply to this section, unless otherwise noted. In addition, for the purposes of this section—

(1) *Pacific island bank* means an office of an institution that would be a bank as defined in § 229.2(e) but for the fact that the office is located in Guam, American Samoa, or the Northern Mariana Islands;

(2) *Pacific island check* means a demand draft drawn on or payable through or at a Pacific island bank, which is not a check as defined in § 229.2(k).

(b) *Rules applicable to Pacific island checks.* To the extent a bank handles a Pacific island check as if it were a check defined in § 229.2(k), the bank is subject to the following sections of this part (and the word “check” in each such section is construed to include a Pacific island check)—

(1) § 229.31, except that the returning bank is not subject to the requirement to return a Pacific island check in an expeditious manner;

(2) § 229.32;

(3) § 229.34 ►(a), (b), ◄(c)(2), (c)(3), (d), [(e), and] (f)►, and (g)◄;

(4) § 229.35; for purposes of § 229.35(c), the Pacific island bank is deemed to be a bank;

(5) [(§ 229.36(d))►] § 229.36(b)◄;

(6) § 229.37;

(7) § 229.38(a) and (c) through (h);

(8) § 229.39(a), (b), (c) and (e); and

(9) §§ 229.40 through 229.42.

**Subpart D—Substitute Checks**

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

**§ 229.52 Substitute check warranties.**

(a) *Content and provision of substitute check warranties.* ►(1)◄ A bank that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) for which it receives consideration warrants to the parties listed in paragraph (b) of this section that—

[1] (i) The substitute check meets the requirements for legal equivalence described in § 229.51(a)(1)–(2); and

[2] (ii) No depository bank, drawee, drawer, or indorser will receive presentment or return of, or otherwise be charged for, the substitute check, the original check, or a paper or electronic representation of the substitute check or original check such that that person will be asked to make a payment based on a check that it already has paid.

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

\* \* \* \* \*

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

**§ 229.53 Substitute check indemnity.**

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

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

\* \* \* \* \*

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

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

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

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

a thrift institution. Thus, 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

**Fourth Federal Reserve District**

Federal Reserve Bank of Cleveland

*Head Office*

<sup>1</sup> 0110	0215
0111	0216
0112	0219
0113	0220
0114	0223
0115	0260
0116	0280
0117	0310
0118	0311
0119	0312
0210	0313
0211	0319
0212	0360
0213	0410
0214	0412
0420	0441
0421	0442
0422	0510
0423	0514
0430	0515
0432	0519
0433	0520
0434	.....
0440	
0521	0650
0522	0651
0530	0652
0531	0653
0532	0654
0539	0655
0540	0660
0550	0670
0560	0710
0570	0711
0610	0712
0611	0719
0612	0720
0613	0724
0620	0730
0621	0739
0622	0740
0630	0749
0631	0750
0632	0759
0640	0810
0641	0812
0642	0813
0815	0960
0819	1010
0820	1011
0829	1012
0830	1019
0839	1020
0840	1021
0841	1022
0842	1023
0843	1030
0863	1031
0865	1039
0910	1040
0911	1041
0912	1049
0913	1070
0914	1110
0915	1111
0918	1113
0919	1119
0920	1120
0921	1122

0929
1130
1131
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1163
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3020	3210
3021	3211
3022	3212
3023	3213
3030	3220
3031	3221
3039	3222
3040	3223
3041	3224
3049	3230
3070	3231
3110	3232
3111	3233
3113	3240
3119	3241
3120	3242
3122	3243
3250	3252
3251	

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

Federal Reserve Banks

0110 0001 5	0539 0008 9
0111 0048 1	0610 0014 6
0210 0120 8	0620 0019 0
0212 0400 5	0630 0019 9
0213 0500 1	0640 0010 1
0220 0026 6	0650 0021 0
0310 0004 0	0660 0010 9
0410 0001 4	0710 0030 1
0420 0043 7	<b>[0711 0711 0]</b>
0430 0030 0	0720 0029 0
0440 0050 3	0730 0033 8
0510 0003 3	<b>[0740 0020 1]</b>
0519 0002 3	.....
0520 0027 8	<b>[0750 0012 9]</b>
0530 0020 6	0810 0004 5
0820 0013 8	1120 0001 1
0830 0059 3	1130 0004 9
0840 0003 9	1140 0072 1
0910 0008 0	1210 0037 4
0920 0026 7	1220 0016 6
1010 0004 8	1230 0001 3
1020 0019 9	1240 0031 3
1030 0024 0	1250 0001 1
1040 0012 6	
1110 0003 8	

Federal Home Loan Banks

0110 0053 6	0740 0101 9
0212 0639 1	<b>[0810 0091 9]</b>
0260 0973 9	<b>[0910 0091 2]</b>
0410 0291 5	<b>[1010 0091 2]</b>
0420 0091 6	1011 0194 7
0430 0143 5	1110 1083 7
<b>[0430 1862 2]</b>	1119 1083 0
0610 0876 6	1210 0070 1
0710 0450 1	1240 0287 4
0730 0091 4	1250 0050 3
►U.S. Treasury	0000 0051 8
Checks and Postal	
Money Orders	Postal Money Orders
U.S. Treasury Checks	0000 0119 3
0000 0050 5	0000 0800 2◀

34. Revise Appendix C to Part 229 to read as follows:

### Appendix C to Part 229—Model Availability-Policy Disclosures, Clauses, and Notices; Model Substitute-Check-Policy Disclosure and Notices

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

#### Model Disclosures

- C-1 Next-day availability  
 C-2 Next-day availability and section 229.13 exceptions  
 C-3▶A◀ Next-day availability, case-by-case holds to statutory limits▶without cash-withdrawal limitation◀, and section 229.13 exceptions  
 ▶C-3B Next-day availability, case-by-case holds to statutory limits with cash-withdrawal limitation, and section 229.13 exceptions◀  
 C-4▶A◀ Holds to statutory limits on all deposits [(includes chart)]▶without cash-withdrawal limitation◀  
 C-[5]▶4B◀ Holds to statutory limits on all deposits▶with cash-withdrawal limitation◀  
 C-5[A] Substitute-Check-Policy Disclosure Model

#### Model Clauses

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

#### Model Notices

- C-[12]▶9◀ Exception▶or reasonable-cause◀ hold notice  
 [C-13 Reasonable-cause hold notice]  
 C-[14]▶10◀ One-time notice for large-deposit and redeposited-check exception holds  
 C-[15]▶11◀ One-time notice for repeated-overdraft exception holds  
 C-[16]▶12A◀ Case-by-case hold notice▶without cash-withdrawal limitation  
 C-16[B]▶12B◀ Case-by-case hold notice with cash-withdrawal limitation◀  
 C-[17]▶13◀ Notice at locations where employees accept consumer deposits  
 C-[18]▶14◀ Notice at locations where employees accept consumer deposits (case-by-case holds)  
 C-[19]▶15◀ Notice at automated teller machines  
 C-[20]▶16◀ Notice at automated teller machines (delayed receipt)  
 C-[21]▶17◀ Deposit-slip notice  
 C-[22]▶18◀ Expedited-Recredit Claim, Valid-Claim Refund Notice  
 C-[23]▶19◀ Expedited-Recredit Claim, Provisional-Refund Notice

- C-[24]▶20◀ Expedited-Recredit Claim, Denial Notice  
 C-[25]▶21◀ Expedited-Recredit Claim, Reversal Notice  
 [C-1 Next-Day Availability

#### YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use them to pay checks that you have written. For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and Federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.  
 C-2—Next-Day Availability and Section 229.13 Exceptions

#### YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and Federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

#### Longer Delays May Apply

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

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

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

#### Special Rules for New Accounts

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

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of

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

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

C-3—Next-Day Availability, Case-by-Case Holds to Statutory Limits, and Section 229.13 Exceptions

#### YOUR ABILITY TO WITHDRAW FUNDS

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

#### Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit. The first \$100 of your deposits, however, will be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit. If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

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

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

**Special Rules for New Accounts**

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

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

C-4—Holds to Statutory Limits on All Deposits (Includes Chart)

**YOUR ABILITY TO WITHDRAW FUNDS**

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

**Determining the Availability of a Deposit**

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

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

**Same-Day Availability**

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

**Next-Day Availability**

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you
- Wire transfers
- Checks drawn on (bank name) [unless (any limitations related to branches in different states or check-processing regions)]

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

- Cash
- State and local government checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)]
- Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)]
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you

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

**Other Check Deposits**

To find out when funds from other check deposits will be available, look at the first four digits of the routing number on the check:

*Personal Check*

The diagram shows a personal check form with the following fields:
 

- Pay to the order of: \_\_\_\_\_
- \_\_\_\_\_ 19\_\_\_\_
- \$ \_\_\_\_\_
- \_\_\_\_\_ dollars
- (Bank Name and Location) \_\_\_\_\_
- 123456789 000000000 000
- A callout box labeled "Routing number" points to the first four digits "123456789".

*Business Check*

The diagram shows a business check form with the following fields:
 

- Name of Company \_\_\_\_\_
- Address, City, State \_\_\_\_\_
- Pay to the order of: \_\_\_\_\_
- \_\_\_\_\_ 19\_\_\_\_
- \$ \_\_\_\_\_
- \_\_\_\_\_ dollars
- (Bank Name and Location) \_\_\_\_\_
- 000000000 123456789 000000000 000
- A callout box labeled "Routing number" points to the first four digits "123456789".

Some checks are marked “payable through” and have a four- or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the

bottom of the check, to determine if these checks are local or nonlocal. Once you have determined the first four digits of the routing number (1234 in the examples above), the chart below will show you when funds from

the check will be available. If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

<i>First four digits from routing number</i>	<i>When funds are available</i>	<i>When funds are available if a deposit is made on a Monday</i>
[local numbers]	\$100 on the first business day after the day of your deposit.	Tuesday
	Remaining funds on the second business day after the day of your deposit.	Wednesday
All other numbers	\$100 on the first business day after the day of your deposit.	Tuesday
	Remaining funds on the fifth business day after the day of your deposit.	Monday of the following week

#### Longer Delays May Apply

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

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

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

#### Special Rules for New Accounts

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

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit

of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit. Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

#### C-5—Holds to Statutory Limits on All Deposits

##### YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

##### Determining the Availability of a Deposit

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

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

##### Same-Day Availability

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

#### Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you

- Wire transfers
- Checks drawn on (bank name) [unless (any limitations related to branches in different states or check-processing regions)]

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

- Cash
- State and local government checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)]
- Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)]
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you

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

#### Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

### Personal Check

The diagram shows a personal check with the following fields and labels:

- Pay to the order of**: A line for the payee's name.
- Amount**: A line for the dollar amount, with a vertical line separating the dollar sign (\$) from the number, and a line for the year (19\_\_).
- dollars**: A line for the word representation of the amount.
- (Bank Name and Location)**: A line for the bank's name and location.
- Routing number**: A box containing the number 123456789, with a line pointing to the label "Routing number" below it.
- Account number**: A line containing the number 0000000000 000.

### Business Check

The diagram shows a business check with the following fields and labels:

- Name of Company Address, City, State**: A line for the company's name and address.
- Pay to the order of**: A line for the payee's name.
- Amount**: A line for the dollar amount, with a vertical line separating the dollar sign (\$) from the number, and a line for the year (19\_\_).
- dollars**: A line for the word representation of the amount.
- (Bank Name and Location)**: A line for the bank's name and location.
- Routing number**: A box containing the number 123456789, with a line pointing to the label "Routing number" below it.
- Account number**: A line containing the number 000000000 0000000000 000.

If the first four digits of the routing number (1234 in the examples above) are (list of local numbers), then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows.

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

2. Nonlocal checks. The first \$100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the fifth business day after the day of your deposit.

For example, if you deposit a \$700 nonlocal check on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is available on Monday of the following week.

#### Longer Delays May Apply

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

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

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit. If you deposit both categories of checks, \$100 from the checks will be available on the first business day

after the day of your deposit, not \$100 from each category of check.

#### Special Rules for New Accounts

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

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

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

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► *Model C-1- Next-day availability*

### DEPOSIT AVAILABILITY POLICY

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

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

#### Availability Timeline

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> <li>• Wire transfer</li> <li>• Cash</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• Check</li> </ul>	<ul style="list-style-type: none"> <li>• The next business day</li> </ul>

#### What is a "Business Day?"

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

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

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

*C-2— Next-Day Availability and Section 229.13 Exceptions***DEPOSIT AVAILABILITY POLICY**

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

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

**Availability Timeline for Deposits to Established Accounts**

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

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> <li>• Wire transfer</li> <li>• Cash</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• Check</li> </ul>	<ul style="list-style-type: none"> <li>• The next business day</li> </ul>

**What is a “Business Day?”**

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

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

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

**Longer Delays May Apply**

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

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

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

## C-2— Next-Day Availability and Section 229.13 Exceptions

## DEPOSIT AVAILABILITY POLICY (continued)

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

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> <li>• Wire transfer</li> <li>• Cash</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• U.S. Treasury check payable to you</li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>new-account amount</i>) is available on the next business day</li> <li>• Any remainder over \$(<i>new-account amount</i>) is available in 9 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Government, cashier's, certified, teller's, or traveler's check that is payable to you [and deposited with a special deposit slip*]</li> <li>• Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check payable to you</li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>new-account amount</i>) is available on the next business day if deposited with a teller, otherwise 2 business days</li> <li>• Any remainder over \$(<i>new-account amount</i>) is available in 9 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Other checks not specifically described above</li> </ul> <p style="margin-left: 20px;"><i>For example, personal checks, or checks not written to you</i></p>	<ul style="list-style-type: none"> <li>• In (<i>number</i>) business days</li> </ul>

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

*C-3A— Next-Day Availability, Case-by-Case Holds to Statutory Limits Without Cash-Withdrawal Limitation, and Section 229.13 Exceptions*

**DEPOSIT AVAILABILITY POLICY**

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

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

**Availability Timeline for Deposits to Established Accounts**

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

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> <li>• Wire transfer</li> <li>• Cash</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• Check</li> </ul>	<ul style="list-style-type: none"> <li>• Usually the next business day, but see "Longer Delays May Apply" below</li> </ul>

**What is a "Business Day?"**

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

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

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

**Longer Delays May Apply**

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

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

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

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

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