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Compliance Guide to Small Entities

Regulation CC: Compliance Guide

Regulation CC: Availability of Funds and Collection of Checks 12 CFR 229

This description should not be interpreted as a comprehensive statement of the regulation. Rather, it is intended to give a broad overview of the regulation's requirements. The full regulation is available on the Government Printing Office web site.

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The Expedited Funds Availability Act (EFAA), enacted in 1987, addresses the issue of delayed availability of funds by banks. The EFAA requires banks to (1) make funds deposited in transaction accounts available to their customers within specified time frames, (2) pay interest on interest-bearing transaction accounts not later than the day the bank receives credit, and (3) disclose their funds-availability policies to their customers. The EFAA is implemented by Regulation CC.

Regulation CC is divided into four subparts. Subpart A defines terms and outlines enforcement authority. Subpart B specifies schedules within which banks must make funds available for withdrawal, exceptions to the schedules, disclosure of funds-availability policies, and payment of interest. Subpart C contains rules to speed the collection and return of checks. Subpart D contains provisions that pertain to substitute checks.

A general description of the regulation, by section, follows. A more detailed [Guide for Financial Institutions](#) is also available.

Subpart A: General

Section 229.1 Authority and purpose; organization

States that the regulation implements the Expedited Funds Availability Act and governs the availability of funds and the collection and return of checks.

Section 229.2 Definitions

Defines key terms used in the regulation.

Section 229.3 Administrative enforcement

States that compliance with subpart B of the regulation is enforced by each depository institution's federal banking regulatory agency.

Subpart B: Availability of Funds and Disclosure of Funds Availability Policies

Section 229.10 Next-day availability

States that the regulation requires that cash deposits, wire transfers, and certain check deposits that Congress believes pose little risk to the depository bank, such as Treasury checks and cashiers checks, generally be made available for withdrawal by the business day after the banking day of deposit.

Section 229.11 [Reserved]

Section 229.12 Availability schedule

States that proceeds of local and nonlocal checks must generally be made available for withdrawal by the second and fifth business day following deposit, respectively. A local check is a check deposited in a depository bank that is located in the same Federal Reserve check-processing region as the paying bank, and a nonlocal check is one deposited in a different check-processing region than the paying bank. (There are no longer any non-local checks.)

Section 229.13 Exceptions

Provides certain safeguard exceptions to the availability schedule for new accounts, large deposits, repeatedly overdrawn accounts, emergency conditions, and other circumstances. A depository bank that invokes one of the exceptions to extend the availability schedule generally must provide notice to its customer.

Section 229.14 Payment of interest

States that a depository bank must begin accruing interest on interest-bearing transaction accounts not later than the day it receives credit for the funds deposited.

Section 229.15 General disclosure requirements

Requires that disclosures set forth under subpart B be written clearly and conspicuously and in a form that the customer can keep.

Section 229.16 Specific availability-policy disclosure

Stipulates that a bank must provide disclosure statements describing its policy as to when funds deposited in an account are available for withdrawal.

Section 229.17 Initial disclosures

States that banks must disclose their specific availability policies to potential customers prior to opening a new account.

Section 229.18 Additional disclosure requirements

Requires banks to make certain disclosures at all locations where bank employees accept consumer deposits, at automated teller machines, and on all preprinted deposit slips provided to customers. Depositary banks must also send notice to their customers of any changes in their policies and disclose their specific availability policies to anyone upon request.

Section 229.19 Miscellaneous

Provides rules for determining the day funds are considered deposited in various circumstances. Also explains the rules' effects on various bank policies and provisions for employee training and other matters.

Section 229.20 Relation to state law

Specifies that federal law prevails over state law except in some cases in which state law calls for a shorter hold for a certain category of checks.

Section 229.21 Civil liability

Sets forth the statutory penalties for failure to comply with the requirements of subpart B.

Subpart C: Collection of Checks

Section 229.30 Paying bank's responsibility for return of checks

To decrease the risk to a depositary bank that a check will be returned after funds have been made available for withdrawal, Regulation CC requires "expeditious" return of checks. A paying bank returns a check expeditiously if it returns the check to the depositary bank within two business days of presentment. (There are no longer any checks subject to the four-day test because there are no non-local checks). Alternatively, a bank returns a check expeditiously if it sends the check in the same manner as it (or a similarly situated bank) would have sent the check for forward collection.

Section 229.31 Returning bank's responsibility for return of checks

States that the regulation holds returning banks to an expeditious return standard similar to the standard for paying banks.

Section 229.32 Depositary bank's responsibility for returned checks

Requires a depositary bank to accept returned checks and written notices of nonpayment at a branch, head office, or other location, such as a processing center, and to pay for the returned check by the close of the banking day on which it received the returned check.

Section 229.33 Notice of nonpayment

States that paying banks are required to provide notice of nonpayment to the depositary bank on all returned checks of \$2,500 or more. This notice is to be received by the depositary bank no later than 4:00 p.m. local time on the second business day following presentment.

Section 229.34 Warranties

Sets forth specific warranties on returned checks, notices of nonpayment, settlement amounts, encoding, and offsets and specifies damages for breach of these warranties.

Section 229.35 Indorsements

States that banks that handle checks for collection or return are required to indorse the check in the form and location specified in the rule.

Section 229.36 Presentment and issuance of checks

Sets provisions intended to facilitate the efficient presentment of checks to promote the early return or notice of nonpayment to the depositary bank. Also requires paying banks to settle for checks on the day of presentment, under certain conditions.

Section 229.37 Variation by agreement

Allows the provisions of subpart C to be varied by agreement.

Section 229.38 Liability

Establishes a standard of care in complying with the requirements of subpart C and addresses possible liability and measures of damage for failure to exercise such care.

Section 229.39 Insolvency of bank

Provides rules for situations in which a bank becomes insolvent during collection or return of checks.

Section 229.40 Effect of merger transaction

Allows merged banks to be treated as separate banks for a period of up to one year after the merger to allow time to consolidate operations.

Section 229.41 Relation to state law

Specifies that state law relating to the collection of checks is preempted only to the extent that it is inconsistent with this regulation.

Section 229.42 Exclusions

States that the expeditious return, notice of nonpayment, and same-day settlement requirements do not apply to a check drawn on the U.S. 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.

Section 229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands

States that bank offices in the Pacific Islands do not meet the definition of banks because they are not located in the United States. Establishes the rules for Pacific Island checks.

Subpart D: Substitute Checks

Section 229.51 General provisions governing substitute checks

Provides that, in order to be the legal equivalent of an original check, a substitute check that a bank transfers must—(1) accurately represent all of the information from the front and back of the original check at the time it was truncated; and (2) bear the legend, "This is a legal copy of your check. You can use it the same way you would use the original check." The section also specifies the duties of a reconverting bank, which is the bank that creates a substitute check.

Section 229.52 Substitute check warranties

States that a bank that transfers a substitute check warrants that (1) the substitute check meets the requirements for legal equivalence set forth in § 229.51, and (2) no depository bank, drawee, drawer, or indorser will receive presentment or return of the check such that that person will be asked to pay a check that it has already paid. The section also specifies the parties to whom these warranties are made.

Section 229.53 Substitute check indemnity

States that a bank that transfers a substitute check indemnifies any subsequent recipient against any loss the recipient incurs due to the receipt of a substitute check instead of the original check. The section specifies the amount of this indemnity and describes the effect on the amount if the indemnifying bank produces the original check or a copy of the original check sufficient to resolve the claim (a "sufficient copy").

Section 229.54 Expedited recredit for consumers

Provides a consumer with a right to make a claim for expedited recredit if (1) the consumer's bank charged the consumer's account for a substitute check that was provided to the consumer, (2) the substitute check was not properly charged to the consumer's account, (3) the consumer suffered a resulting loss, and (4) production of the original check or a sufficient copy of it is necessary to determine if the consumer's claim is valid. The section specifies procedures for the consumer to make a claim and for the consumer's bank to respond to the claim.

Section 229.55 Expedited recredit for banks

Sets forth the circumstances, procedures, and timeframes under which a bank (the "claimant bank") that is obligated under § 229.54 to provide an expedited recredit to its consumer customer may in turn recover from the bank (the "indemnifying bank") from which the claimant bank received the item. Section 229.55 is the only section of subpart D that may be varied by agreement. (See § 229.60.)

Section 229.56 Liability

Sets forth the general amount of liability for failure to comply with any requirement of subpart D (but see § 229.53 above). States that a person must bring a claim under this subpart within one year of the date on which the person's cause of action accrues and that a cause of action accrues as of the date on which the injured person first learns, or reasonably should have learned, of the facts giving rise to the cause of action.

Section 229.57 Consumer awareness

Specifies the steps that banks must take to promote consumer awareness of substitute checks and of the expedited-recredit rights that apply when a consumer in good faith believes that a substitute check was not properly charged to his or her account.

Section 229.58 Mode of delivery of information

States that a bank may deliver information that it is required to provide under this subpart by U.S. mail or by any other means through which the recipient has agreed to receive account information. If a bank is required to provide an original check or a sufficient copy, the bank instead may provide an electronic image of the original check or sufficient copy if the recipient has agreed to receive that information electronically.

Section 229.59 Relation to Other Law

States that the Check 21 Act and subpart D supersede any provision of federal or state law, including the Uniform Commercial Code, that is inconsistent with the Check 21 Act or this subpart, but only to the extent of the inconsistency.

Section 229.60 Variation by agreement

States that section 229.55 may be varied by agreement of the banks involved, but that no other provision of subpart D may be varied by agreement.

Appendix A Routing number guide to next-day-availability checks and local checks**Appendix B [Reserved]****Appendix C Model availability-policy disclosures, clauses, and notices****Appendix D Indorsement standards****Appendix E Commentary****Appendix F Official Board interpretations: Preemption determinations**

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