

## Expedited Funds Availability Act

The Expedited Funds Availability Act (EFA) (Title VI of Public Law 100-86) was enacted on August 10, 1987 and became effective on September 1, 1988. Regulation CC (12 C.F.R. Part 229) issued by the Board of Governors of the Federal Reserve System implements the EFA. The act and regulation set forth the requirements that depository institutions make funds deposited into transaction accounts available according to specified time schedules and disclose funds availability policies to their customers. The regulation also establishes rules designed to speed the collection and return of unpaid checks.

Regulation CC contains three subparts. Subpart A defines terms and provides for administrative enforcement. Subpart B specifies availability schedules or time frames within which banks must make funds available for withdrawal. It also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest. (Appendix C contains model forms and clauses that may be used by banks to meet their disclosure responsibilities under the regulation). Subpart C sets forth the rules to ensure the expeditious return of checks, the responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns by the paying bank, check endorsement standards, and other related charges to the check collection system. (Appendices A and B provide routing number guides. Appendix D provides standards on how a bank shall indorse a check).

### SUBPART A – GENERAL DEFINITIONS – §229.2

The term “bank” refers to all banks, mutual savings banks, savings banks and savings associations that are insured by the FDIC, and federally-insured credit unions. “Bank” also applies to non-federally insured banks, credit unions and thrifts, as well as branches of foreign banks. The term “paying bank” applies to any bank at which or through which a check is payable and to which it is sent for payment or collection.



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Approved – FFIEC

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. A “non-local” check is a check deposited in a different check processing region than the paying bank. (A payable-through draft is considered local or non-local based on the location of the bank where the draft is payable-not the location of the bank identified in the MICR line of the draft. After February 1, 1991, all drafts must identify a 4 or 9 digit routing number.)

An “account,” as defined in §229.2(a) of Regulation CC, is a demand deposit or other “transaction account”, such as a NOW account. It includes consumer and corporate accounts with general third party payment powers and includes:

- Accounts from which the holder is permitted to make transfers or withdrawals by negotiable or transferable instruments;
- Payment order of withdrawals;
- Telephone transfers; and
- Electronic payments or other similar means such as the use of ATMs, remote service units or other electronic devices for the purpose of making payments or transfers to third persons.

For the purpose of EFA, “account” does not include:

- Savings deposits including time deposits and money market deposit accounts as defined in 12 C.F.R 204.2(d)(2);
- Accounts where the holder is a bank;
- Accounts where the holder is an office of an institution described in §§229.2(e)(1) through 229.2(e)(6);
- Accounts where the holder is an office of a foreign bank as defined in §1(b) of the International Banking Act (12 U.S.C. 3101) that is located outside of the United States; and
- Accounts where the holder is the Treasury of the United States.

For purposes of Subparts B and C, “business day” and “banking day” are defined as follows:

- “Business day”-any day excluding Saturdays, Sundays and legal holidays (standard Federal Reserve holiday schedule).
- “Banking day”-a business day in which a bank is open for substantially all of its banking activities.

Even though a bank may be open for regular business on a Saturday, it is not a banking day for the purpose of Regulation CC because Saturday is never a 'business day' under the regulation. The fact that one branch is open to the public for substantially all of its banking activities does not necessarily mean that day is a banking day for other branches.

### Administrative Enforcement – §229.3

The regulation is to be enforced for banks through Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) and through the Federal Credit Union Act (12 U.S.C. 1751 et seq.). In addition, a supervisory agency may enforce compliance through any other authority conferred on it by law. The Federal Reserve Board shall enforce the requirements of the regulation for depository institutions that are not specifically committed to some other government agency.

## SUBPART B – AVAILABILITY OF FUNDS AND DISCLOSURE OF FUNDS AVAILABILITY POLICIES

### Next-Day Availability – §229.10

Cash, electronic payments, and certain check deposits must generally be made available for withdrawal the business day after the banking day on which they were received. Among the covered check deposits are cashier's, certified, and teller's checks, government checks (including U.S. Treasury checks, U.S. Postal money orders, state and local government checks, checks drawn on Federal Reserve or Federal Home Loan Banks), and certain “on us” checks (checks drawn on the same bank or a branch thereof).

Generally, to qualify for next-day availability, the deposit must be:

- Made at a staffed teller station; and
- Deposited into an account held by the payee of the check.

However, two types of deposits, U.S. Treasury checks and “on us” checks, must receive next-day availability even if the deposit is not made at a staffed teller station. Other next-day check deposits, and cash deposits, that are not made at staffed teller stations must be available for withdrawal on the second business day after the day of deposit under 229.10(a)(2) and 229.10(c)(2).

### *Additional Rules*

A few additional rules also apply. Under §229.10 (c)(1)(iv-v) for state and local government checks to receive next-day availability, the depository bank must be located in the same state as the governmental unit issuing the check. Further, under §229.10(c)(3) the depository bank may require special deposit slips or envelopes for these deposits, as well as for cashier's, certified and teller's check deposits. If the

depository bank requires the use of special deposit slips, it must either provide the slips or inform customers how they may be obtained.

For “on us” checks to receive next-day availability, the checks must be drawn on the same or another branch of the bank where the check is deposited. In addition, both branches must be located in the same state or check processing region.

### *\$100 Rule*

Section 229.10(c)(1)(vii) of the regulation contains a special \$100 rule for check deposits not subject to next-day availability. Under the rule, the depository bank must make available for withdrawal the lesser of \$100 or the aggregate amount deposited to all accounts, including individual and joint accounts, held by the same customer on any one banking day. The \$100 rule does not apply to deposits received at nonproprietary ATMs.

### Availability Schedule – §229.12

The permanent availability schedule became effective on September 1, 1990. (See Permanent Funds Availability Schedule – Figures A & B). Under this schedule local check deposits must be made available no later than the second business day following the banking day of deposit. Deposits of nonlocal checks must be made available no later than the fifth business day following the banking day of deposit. Funds, including cash and all checks, deposited at nonproprietary ATMs must be made available no later than the fifth business day following the banking day on which the funds are deposited.

Checks that would normally receive next-day availability are treated as local or non-local check deposits if they do not meet all the criteria for next-day availability under §229.10(c). (As mentioned earlier, certain checks generally deposited at a staffed teller station and into an account held by the payee of the check receive next-day availability. However, state, local government and certain “on us” checks are subject to additional rules.)

U.S. Treasury checks and U.S. Postal Money orders that do not meet all the requirements for next-day or second day availability as outlined in §229.10(c) receive funds availability as if they were “local” checks. Cashiers, certified, teller's, state and local government and checks drawn on the Federal Reserve or Federal Home Loan Banks which do not meet all the requirements in §229.10(c), receive funds availability as either local or non-local checks, according to the location of the bank on which they are drawn.

### *Cash Withdrawals*

Special rules apply to cash withdrawals from local and non-local check deposits. While §229.12 (d) allows the depository bank to extend the availability schedule for cash or similar withdrawals by one day, the customer must still be allowed to withdraw the first \$100 of any check deposit not subject to next-day availability on the business day following the day of deposit. In addition to the first \$100, a

customer must also be allowed to withdraw \$400 of the deposited funds (or the maximum amount that can be withdrawn from an ATM, but not more than \$400) no later than 5 p.m. on the day funds become available for check withdrawals. The remainder of deposited funds would be available for cash withdrawal on the following business day.

### *Extension of the Schedule for Certain Deposits*

Section 229.12(e) provides that banks in Alaska, Hawaii, Puerto Rico, or the Virgin Islands receiving checks drawn on or payable through banks located in another state may extend the availability schedules for local and non-local checks by one day. This exception, however, does not apply to checks drawn on banks in these states or territories and deposited in banks located in the continental U.S.

### Exceptions – §229.13

The regulation provides six exceptions that allow banks to exceed the maximum hold periods in the availability schedules. The statute regards the exceptions as “safeguards” to the maximum availability time frames because they are intended to offer the institution a means of reducing risk based on the size of the deposit, past performance of the depositor, lack of depositor performance history, or belief that the deposit may not be collectible. These exceptions include:

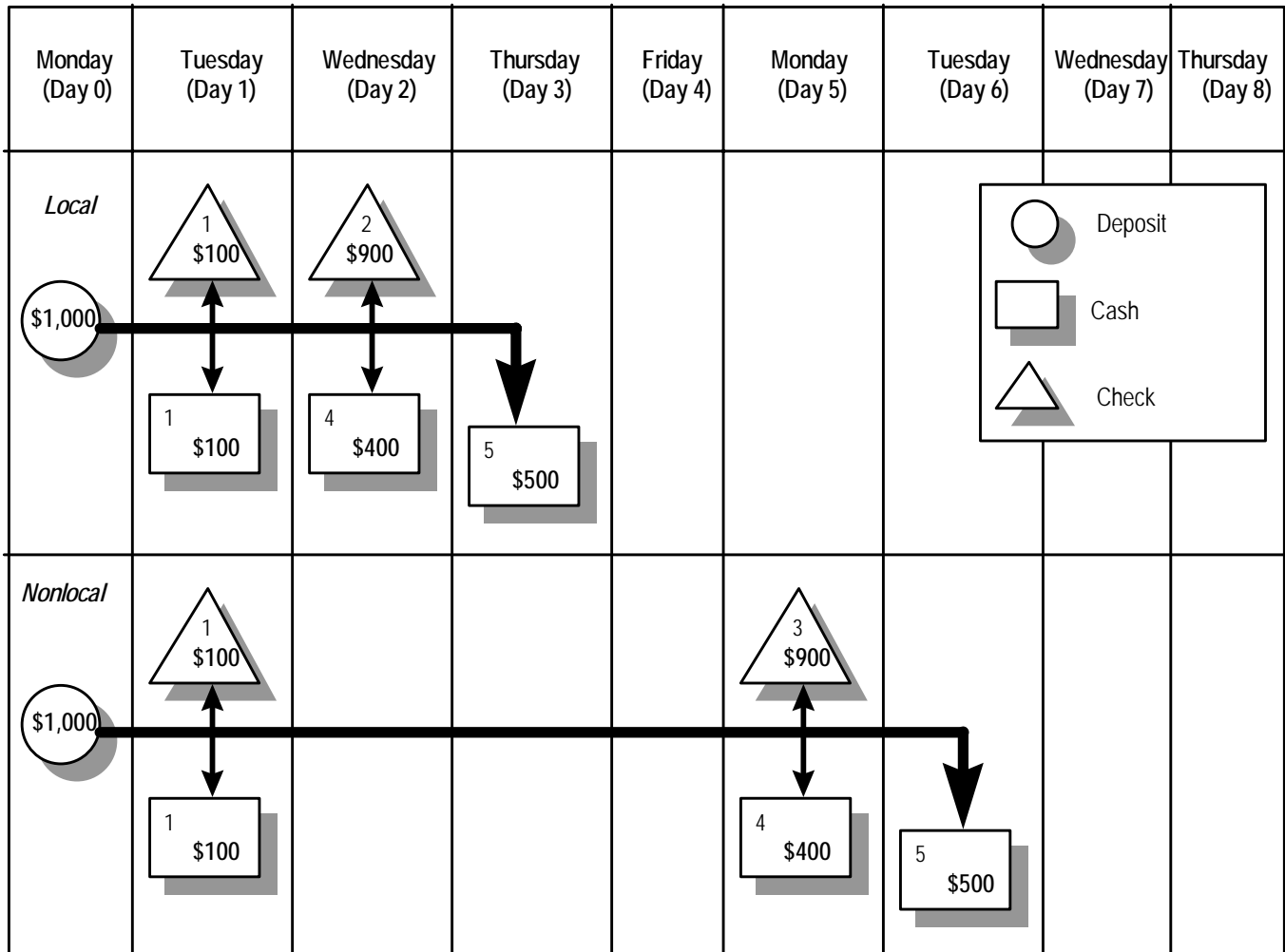
- New accounts;
- Deposits in excess of \$5,000 on any one day;
- Checks that have been returned unpaid and are being redeposited;
- Deposits to accounts that have been repeatedly overdrawn;
- Cases in which the bank has a reasonable cause to believe the check being deposited is uncollectable; and
- Emergency conditions.

While banks may exceed the time frames for availability in these cases, the exceptions may generally not be invoked if the deposit would ordinarily receive next-day availability.

**Availability Schedules**

**Figure A**

Illustrates availability of different types of checks deposited the *same* day, under the schedules.

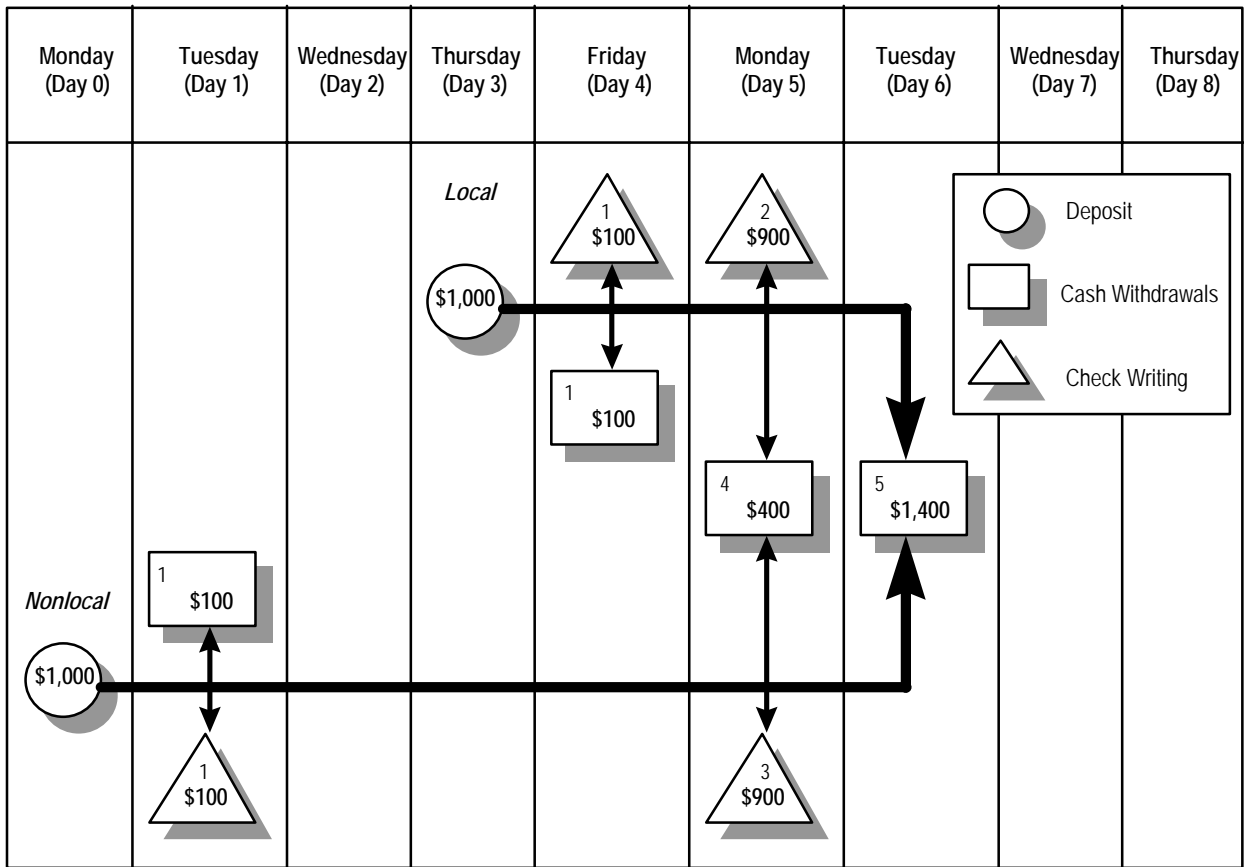


- 1 The first \$100 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).
- 2 Local checks must be made available for check writing purposes by the second business day following deposit § 229.12(b).
- 3 Nonlocal checks must be made available for check writing purposes by the fifth business day following deposit § 229.12(c).
- 4 \$400 of the local deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This is in addition to the \$100 that must be made available on the business day following deposit § 229.12(d).
- 5 The remainder of the deposit must be made available for cash withdrawal at the start of business the following day § 229.12(d).

**Availability Schedules**

**Figure B**

Illustrates availability of different types of checks deposited on *separate* days, under the schedules.



- 1 The first \$100 of a day's deposit must be made available for either cash withdrawal or check writing purposes at the start of the next business day § 229.10(c)(1)(vii).
- 2 Local checks must be made available for check writing purposes by the second business day following deposit § 229.12(b).
- 3 Nonlocal checks must be made available for check writing purposes by the fifth business day following deposit § 229.12(c).
- 4 \$400 of the local deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This is in addition to the \$100 that must be made available on the business day following deposit § 229.12(d).
- 5 The remainder of the deposit must be made available for cash withdrawal at the start of business the following day § 229.12(d).

### *New Accounts Exception*

An account is considered a “new account”, under §229.13(a), for the first 30 days after it is established. An account is not considered “new” if each customer on the account had another established account at the bank for at least 30 calendar days. The new account exception applies only during the 30-day period, beginning on the date the account is established, and does not cover all deposits made to the account.

Although the regulation exempts new accounts from the availability schedules for local and non-local checks, next-day availability is required for deposits of cash, and for electronic payments. Additionally, the first \$5,000 of a day's aggregate deposits of government checks (including federal, state, and local governments), cashier's, certified, teller's, depository or traveler's checks must be given next-day availability. The amount in excess of \$5,000 must be made available no later than the ninth business day following the day of deposit.

To qualify for next-day availability, deposits into a new account must generally be made in person to an employee of the depository bank. If the deposits are not made in person to an employee of the depository bank, such as an ATM deposit, availability may be provided on the second business day after the day of deposit. Treasury check deposits, however, must be given next-day availability regardless of whether they are made at staffed teller stations or proprietary ATMs. Banks are not required to make the first \$100 of a day's deposits of local and non-local checks or funds from “on us” checks available on the next business day.

### *Large Deposit Exception (Deposits over \$5000)*

Under §229.13(b), the large deposit exception, a depository bank may extend hold schedules when deposits other than cash or electronic payments

exceed \$5000 on any one day. A hold may be applied to the amount in excess of \$5,000. To apply the rule, the depository bank may aggregate deposits made to multiple accounts held by the same customer, even if the customer is not the sole owner of the accounts.

### *Redeposited Check Exception*

Under §229.13(c), the depository bank may delay the availability of funds from a check if the check had previously been deposited and returned unpaid. This exception does not apply to checks that were previously returned unpaid because of a missing endorsement or because the check was postdated when presented.

### *Repeated Overdraft Exception*

Section 229.13(d) provides that if a customer's account, or accounts, have been repeatedly overdrawn during the preceding six months, the bank may delay the availability of funds from checks. A customer's account may be considered “repeatedly overdrawn” in two ways. First, the exception may be applied if the account (or accounts) have been overdrawn, or would have been overdrawn had checks or other charges been paid, for six or more banking days during the preceding six months.



Second, the exception may be applied to customers who incur overdrafts on two banking days within the preceding six month period if the negative balance in the account(s) is equal to or greater than \$5000. This exception may also apply if the account would have been overdrawn by \$5000 or more had checks or other charges been paid.

### *Reasonable Cause to Doubt Collectability Exception*

This exception, in §229.13(e), may be applied to all checks. To trigger this exception, the depository institution must have “reasonable cause” to believe that the check is not collectible and must disclose the basis for the extended hold to the customer. For example, reasonable cause may include communication with the paying bank indicating that:

- There has been a stop payment placed on the check;
- There are insufficient funds in the drawer's account to cover the check; or
- The check will be returned unpaid.

The “reasonable cause” exception may also be invoked in cases where:

- The check is deposited six months after the date of the check (stale date);
- The check is postdated (future date);
- The depository bank believes that the depositor may be engaged in check kiting.

The “reasonable cause” exception may not be invoked because of:

- The race or national origin of the depositor; or
- The fact that the paying bank is located in a rural area and the depository bank will not have time to learn of nonpayment of the check before the funds have to be made available under the availability schedules in place.

Whenever this exception is used, the bank must notify the customer, in writing, at the time of deposit. If the deposit is not made in person or the decision to place the hold is based on facts that become known to the bank at a later date, the bank must mail the notice by the business day after the day the deposit is made or the facts become known. The notice must indicate that availability is being delayed and must include the reason that the bank believes the funds are uncollectable. If a hold is placed on the basis of confidential information, as when check kiting is suspected, the depository bank need only disclose to the customer that the hold is based on confidential information that the check may not be paid.

If the bank asserts that the hold was placed due to confidential information, the bank must note the reason on the notice it retains as a record of compliance. The depository bank must maintain a record of each exception notice for a period of two years. This record should contain a brief description of the facts, or any documents, supporting the “reasonable cause” exception.

### *Overdraft and Returned Check Fees*

Under §229.13(e)(2), if a depository bank invokes the “reasonable cause” exception and does not inform the customer, in writing at the time of the deposit, the bank may not charge the customer any overdraft or returned check fees resulting from the hold if:

- The deposited check is paid by the paying bank; and
- The overdraft or returned check would not have occurred had the depository bank not imposed the reasonable cause hold.

However, the depository bank may assess overdraft or returned check fees if, on the exception hold notice, it states that the customer may be entitled to a refund of any overdraft or return check fees imposed and describes how the customer may obtain such a refund. It must then refund the fees upon request.

### *Emergency Conditions*

Section 229.13(f) of the regulation also permits institutions to suspend the availability schedules under emergency conditions. Emergency situations include:

- Any interruption of communication facilities;
- Suspension of payments by another depository institution;
- War; or
- Any emergency condition beyond the control of the receiving depository institution.

### *Notice of Exception*

Whenever a bank invokes one of the exceptions (excluding new accounts) to the availability schedules, it must notify the customer in writing in accordance with §229.13(g). Banks may send notices that comply solely with §229.13(g)(1), or may comply with two alternative notice requirements discussed below.

### *General Notice Requirements*

Banks complying with §229.13(g)(1) must send notices which include:

- The customer's account number;
- The date and amount of the deposit;
- The amount of the deposit that will be delayed;
- The reason the exception was invoked;
- The day the funds will be available for withdrawal (unless unknown, as in an emergency situation).

If the deposit is made at a staffed facility, the written exception notice may be given to the person making the deposit regardless of whether the “depositor” is the customer who holds the account. If the deposit is not made at a staffed facility, the exception notice may be mailed to the customer no later than the business day following the banking day of deposit. If however, the depository bank discovers a reason to delay the funds, subsequent to the time the notice should have been given, the bank must notify the customer of the hold as soon as possible, but not later than the business day after the facts become known. In certain instances, exception holds based on “emergency” situations do not require notification to customers. For example, if deposited funds, subject to holds placed during an “emergency”, become available for withdrawal before the notices are required to be sent, the depository bank is not required to send the notices to its customers.

### *Exception notice for nonconsumer accounts*

If most check deposits to a nonconsumer account permit the bank to invoke either the large dollar or redeposited check exception, the bank may send a notice complying with §229.13(g)(1), or may send a one-time notice in accordance with §229.13(g)(2). The one-time notice must be sent when the first exception is invoked, or can be delivered before that time. The notice must state:

- The reason the exception may be invoked; and
- The time period when the funds will generally be made available.

### *Exception notice for repeated overdrafts*

If most check deposits to an account permit the bank to invoke the repeated overdraft exception, the bank may send a notice complying with §229.13(g)(1), or may send a notice in accordance with §229.13(g)(3). The notice must be sent when the overdraft exception is first invoked. The notice must state:

- The customer's account number;
- The fact that funds are being delayed because the repeated overdraft exception will be invoked;

- The time period the exception will be invoked; and
- The time period when the funds will generally be made available

### *Availability of Deposits Subject to Exceptions*

For exceptions (other than new accounts), §229.13(h) allows the depository bank to delay availability for a “reasonable” time beyond the schedule. Generally, a “reasonable” period will be considered to be no more than one business day for “on-us” checks, five business days for local checks and six business days for non-local checks. If a depository bank extends its availability beyond these time frames, it must be able to prove that such a delay is “reasonable.”

### Payment of Interest – §229.14

#### *General Rule*

A depository bank must begin accruing interest on interest-bearing accounts no later than the business day on which it receives provisional credit for the deposited funds. A depository bank typically receives credit on checks within one or two days following deposit. A bank receives credit on a cash deposit, an electronic payment, and a check that is drawn on itself on the day the cash, check or electronic payment is received. If a nonproprietary ATM is involved, credit is usually received on the day the bank that operates the ATM credits the depository bank for the amount of deposit.

Section 229.14(a)(1) permits a bank to rely on the availability schedule from its Federal Reserve Bank, Federal Home Loan Bank, or correspondent to determine when the depository bank receives credit. If availability is delayed beyond what is specified in the schedule, a bank may charge back interest, erroneously paid or accrued, on the basis of that schedule.

Section 229.14(a)(2) permits a depository bank to accrue interest, on checks deposited to all of its interest-bearing accounts, based on an average of when the bank receives credit for all checks sent for payment or collection. For example, if a bank receives credit on 20 percent of the funds deposited by check as of the business day of deposit (e.g. “on us” checks), 70 percent as of the business day following deposit, and 10 percent on the second business day following deposit, the bank can apply these percentages to determine the day interest must begin to accrue for check deposits on all interest-bearing accounts, regardless of when the bank received credit for funds deposited in any particular account. Consequently, a bank may begin accruing interest on a uniform basis for all interest-bearing accounts, without having to track the type of check deposited to each account.

Nothing in §229.14(a) limits a depository bank policy which provides that interest can only accrue on balances that exceed a specified amount, or on the minimum balance maintained in the account during a given period. However, the balance must be determined according to the date the depository bank receives credit for the funds. This section also does not limit any policy providing that interest can accrue sooner than required by the regulation.

Money market deposit accounts, savings deposits, and time deposits, are not subject to the general rule concerning the timing of interest payment.

However, for simplicity of operation, a bank may accrue interest on such deposits in the same manner that it accrues interest on transaction accounts.

### *Exemption for Certain Credit Unions*

Section 229.14(b) contains an exemption, from the payment of interest requirements, for credit unions that do not begin to accrue interest or dividends on their member accounts until a later date than the day the credit union receives credit for those deposits, including cash deposits. These credit unions are exempt from §229.14(a) as long as they provide notice of their interest accrual policies in accordance with §229.16(d).

Section 229.14(c) provides an exception to the general rule in §229.14(a) for checks that are returned unpaid. Essentially, interest need not be paid on funds deposited in an interest-bearing account by a check that has been returned unpaid, regardless of the reason for return.

## General Disclosure Requirements – §229.15

### *Form of disclosure*

A bank must disclose its specific availability policy to its customers. The required disclosures must be clear and conspicuous, and must also be in writing under §229.15(a). Disclosures, other than those posted at locations where employees accept consumer deposits, at ATMs or on preprinted deposit slips, must be in a form that the customer may keep. These disclosures must not contain information unrelated to the requirements of the regulation. If other account terms are included in the same document, disclosures pertinent to this regulation should be highlighted such as, under a separate heading.

Uniform Reference to Day of Availability §229.15(b) requires banks to refer to the day funds will be available for withdrawal in a uniform manner in all of their disclosures. Disclosures must refer to when funds will be available for withdrawal as on “the \_\_\_\_\_ business day after” the day of deposit. 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.

### *Multiple Accounts and Multiple Account Holders*

The bank does not need to give multiple disclosures to customers who have more than one account if the accounts are subject to the same availability policies. In addition, the bank does not have to give separate disclosures to joint account holders. A single disclosure to one of the holders of the joint account is permissible under §229.15(c).

### *Dormant or Inactive Accounts*

Section 229.15(d) provides the bank does not have to give disclosures to customers who have dormant or inactive accounts.

### Specific Availability Policy Disclosure – §229.16

A bank must provide its customers with a disclosure that describes its funds availability policy. The disclosure must reflect the policy followed by the institution in most cases; however, the institution 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.

### *Content of Specific Availability Policy Disclosure*

The specific availability policy disclosure in §229.16(b) must include, as applicable, the following:

- A summary of the bank's availability policy;
- A description of the categories of deposits or checks used by the bank when it delays availability, such as local or nonlocal 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);
- A description of any of the exceptions in Section 229.13 that may be invoked by the bank, including the time the deposited funds will generally become available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions;
- A description of any case-by-case policy of delaying availability which may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy (see specific requirements under §229.16(c)(1));
- A description of the categories of deposits or checks used by the bank when it delays availability, such as local or nonlocal checks; how to determine the category to which a particular deposit or check (such as payable through drafts) 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).

### *Longer Delays on A Case-by-Case Basis*

A bank that has a policy of making deposited funds available for withdrawal sooner than required, may extend the time when funds are available up to the time periods allowed under the regulation on a case-by-case basis. However, the bank must include the following in its specific policy disclosure under §229.16(c):

- A statement that the time when deposited funds are available for withdrawal may be extended in some cases, and the latest time deposited funds will be available for withdrawal;
- A statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until after the time periods stated in the bank's availability policy; and
- A statement that customers should ask if they need to know when a particular deposit will be available for withdrawal.

When a depository bank extends the time that 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:

- The customer's account number;
- The date and amount of the deposit;
- The amount of the deposit being delayed; and
- The day the funds will be available for withdrawal.

The notice must be provided at the time of the deposit, unless the deposit is not made in person to an employee of the depository bank, or when the decision to delay availability is made after the time of the deposit. If notice is not given at the time of the deposit, the depository bank must mail or deliver the notice to the customer no later than the first business day following the banking day the deposit is made.

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 may 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:

- 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 §229.16(c)(1) of the regulation; and
- The deposited check was paid by the paying bank.

However, the depository bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the disclosure required in §229.16(c)(2) and, when required, refunds any such fees upon the request of the customer. The overdraft and returned check 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 state how to obtain a refund.

## *Credit Union Notice of Interest Payment Policy*

Under §229.16(d), if a credit union 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 institution's specific policy disclosures must contain an explanation of when interest or dividends on deposited funds will begin to accrue.

## Initial Disclosures – §229.17

### *New Accounts*

Section 229.17(a) states a bank must provide potential customers with the disclosures described in §229.16 before an account is opened.

## ADDITIONAL DISCLOSURE REQUIREMENTS – §229.18

### *Deposit Slips*

Under §229.18(a), all preprinted deposit slips given to customers must include a notice that deposits may not be available for immediate withdrawal.

### *Location Where Employees Accept Consumer Deposits*

Section 229.18(b) provides a bank must post, at a conspicuous place at 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.

Automated Teller Machines. Under §229.18(c) a depository bank must post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal. 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), must disclose at or on the ATM the days in which deposits made at the ATM will be considered received.

### *Upon Request*

Section 229.18(d) states a bank must provide a copy of its specific availability policy disclosure described in §229.16 to any person who requests it.

### *Changes in Policy*

Thirty days prior to implementation, a bank must send notification of a change to the bank's availability policy to all account holders, if adversely affected by the change. Under §229.18(e) changes that result in faster availability may be disclosed no later than 30 days after implementation.



### Miscellaneous – §229.19

#### *When Funds are Considered Deposited*

Section 229.19(a) provides rules which govern when funds are considered deposited for purposes of Subpart B of the regulation. The time that funds must be made available for withdrawal is measured from the day the deposit is “received.” Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds mailed to the depository bank are considered deposited on the banking day they are received by the depository bank. The funds are received by the depository bank at the time the mail is delivered to the bank, even if the mail is initially delivered to a mail room, rather than the check processing area.

Funds, however, may also be deposited at an unstaffed facility such as a night depository, lock box or ATM. Funds deposited at a night depository are considered deposited on the banking day the deposit is removed, and the contents of the deposit are accessible to the depository bank for processing. For example, some businesses deposit their funds in a locked bag at the night depository late in the evening and return to the bank the following day to open the bag. Other depositors may have an agreement with their bank that the deposit bag must be opened under the dual control of the bank and the depositor. In these cases, the funds are considered deposited when the customer returns to the bank and opens the deposit bag.

Funds deposited through a lock box arrangement are considered deposited on the day the deposit is removed from the lock box and are accessible to the depository bank for processing. A lock box is a post office box that is typically used by a corporation for the collection of bill payments or other check receipts.

The regulation contains a special rule for off-premise ATMs that are not serviced daily. Funds deposited at these ATMs are considered deposited on the day they are removed from the ATM, if the ATM is not serviced more than two times each week. This special provision is geared toward those banks' whose practice is to service remote ATMs infrequently. If a depository bank uses this provision, it must post a notice at the ATM informing depositors that funds deposited at the ATM may not be considered received on the date of deposit.

Funds deposited on a day the depository bank is closed, or after the bank's cut-off hour, may be considered made on the next banking day. Generally, a bank may establish a cut-off hour of 2:00 p.m. or later for receipt of deposits at its main office or branch offices. A cut-off hour of 12:00 noon or later may be established for deposits made to ATMs, lock boxes, night depositories, or other off-premises facilities. (As specified in the commentary to §229.19(a), the noon cut-off period relates to: the local time of the branch or other location of the depository bank where the account is maintained or the local time of the ATM or off-premise facility.)

Different cut-off hours may be established for different types of deposits. For example, a 2:00 p.m. cut-off for receipt of check deposits and a later time for receipt of wire transfers is permissible. Location can also play a role in the establishment of cut-off hours. For example, a different cut-off hour may be

established for ATM deposits than for over-the-counter deposits, or for different teller stations at the same branch. With the exception of the 12:00 noon cut-off hour for deposits at ATMs and off-premise facilities, no cut-off hour for receipt of deposits can be established earlier than 2:00 p.m.

### *When Funds Must Be Made Available*

Section 229.19(b) discusses funds availability at the start of a business day. Generally, funds must be available for withdrawal by the later of 9:00 a.m. or the time a depository bank's teller facilities including ATMs are available for customer account withdrawals. (Under certain circumstances, there is a special exception for cash withdrawals-see §229.12(d)). Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10:00 a.m., funds must be available for withdrawal by 10:00 a.m. If a bank has 24 hour ATM service, funds must be available by 9:00 a.m. for ATM withdrawals.

The start of business is determined by the local time where the branch or depository bank holding the account is located. For example, if funds in an account at a west coast bank are first made available at the start of business on a given day, and a customer attempts to withdraw the funds at an east coast ATM, the depository bank is not required to make funds available until 9:00 a.m. west coast time (12:00 noon east coast time).

### *Effects of the Regulation on Policies*

Section 229.19(c) describes the effects of the regulation on the policies of a depository bank. Essentially, depository banks are permitted to provide availability to its customers in a shorter time than that prescribed in the regulation. It may also adopt different funds availability policies for different segments of its customer base, as long as each policy meets the schedules in the regulation. For example, it may differentiate between its corporate and consumer customers, or may adopt different policies for its consumer customers based on whether a customer has an overdraft line of credit associated with the account.

The regulation does not affect a depository bank's right to accept or reject a check for deposit, to charge back the customer's account based on a returned check or notice of nonpayment, or to claim a refund for any credit provided to the customer.

Nothing in the regulation requires a depository bank to have its facilities open for customers to make withdrawals at specific times or on specific days. For example, even though the special cash withdrawal rule set forth in §229.12(d) states that a bank must make up to \$400 available for cash withdrawals no later than 5:00 p.m. on specific business days, if a bank does not participate in an ATM system and does not have any teller windows open at or after 5:00 p.m., the bank need not join an ATM system or keep offices open. In this case, the bank complies with this rule if the funds that are required to be available for cash withdrawal at 5:00 p.m. on a particular day are available for withdrawal at the start of business on the following day. Similarly, if a depository bank is closed for customer transactions, including ATMs, on a day funds must be made available for withdrawal, the regulation does not require the bank to open.

If a bank has a policy of limiting cash withdrawals at ATMs to \$250 per day, the regulation would not require that the bank dispense \$400 of the proceeds of the customer's deposit that must be made available for cash withdrawal on that day.

Some small financial institutions do not keep cash on their premises and offer no cash withdrawal capability to their customers. Others limit the amount of cash on-premises for bonding purposes, and reserve the right to limit the amount of cash that a customer can withdraw on a given day, or require advance notice for large cash withdrawals. Nothing in the regulation is intended to prohibit these practices if they are applied uniformly and are based on security, operating, or bonding requirements, and is not dependent upon the length of time the funds have been in the customer's account, as long as the permissible hold has expired. The regulation, however, does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

### *Calculated Availability for Nonconsumer Accounts*

Section 229.19(d) contains the rules for using calculated availability on nonconsumer accounts. Under calculated availability, a specified percentage of funds from check deposits may be made available to the customer on the next business day, with the remaining percentage deferred until subsequent days. The determination of the percentage of deposited funds that will be made available each day is based on the customer's typical deposit mix as determined by a sample of the customer's deposits. Use of calculated availability is permitted only if, on average, the availability terms that result from the sample are equivalent or more prompt than the requirements of this regulation.

### *Holds on Other Funds*

Section 229.19(e) clarifies that, if a customer deposits a check, the bank may place a hold on any of the customer's funds to the extent that the funds held do not exceed the amount of the check deposited, and the total amount of funds held are made available for withdrawal within the times required in this regulation. For example, if a customer cashes a check (other than an "on us" check) over-the-counter, the depository bank may place a hold on any of the customer's funds to the extent that the funds held do not exceed the amount of the cashed check.

### *Employee Training and Compliance*

Section 229.19(f) contains the requirements for employee training and compliance. EFA requires banks to inform each employee who performs duties subject to the Act about its requirements. The act and regulation also require banks to establish and maintain procedures designed to assure and monitor employee compliance with such requirements.

### *Effects of Mergers*

Section 229.19(g) explains the effect of a merger transaction. Merged banks may be treated as separate banks for a period of up to one year after consummation of the merger transaction. However, a customer of any bank that is a party to the merger transaction, and has an established account with the

merging bank, may not be treated as a new account holder under the new account exception of §229.13(a). A deposit in any branch of the merged bank is considered deposited in the bank for purposes of the availability schedules in accordance with §220.19(a). This rule affects the status of the combined entity in a number of areas. For example:

- When the resulting bank is a “participant” in a check clearinghouse association;
- When an ATM is a “proprietary ATM”; and
- When a check is drawn on a branch of the depository bank.

### Relation to State Law 229.20

#### *General Rule*

Section 229.20(a) contains the general rule as to how Regulation CC relates to state laws addressing expedited funds availability.

If a state has a shorter hold for a certain category of checks than is provided for under federal law, that state requirement will supersede the federal provision. For example, most state laws base some hold periods on whether the check deposited is drawn on an in-state or out-of-state bank. If a state contains more than one check processing region, the state's hold period for in-state checks may be shorter than the federal maximum hold period for nonlocal checks. Accordingly, the state schedule would supersede the federal schedule to the extent that it applies to in-state, nonlocal checks.

EFA also indicates that any state law providing availability in a shorter period of time, than required by federal law, is applicable to all federally insured institutions in that state, including federally chartered institutions. If a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

#### *Preemption of Inconsistent Law*

Section 229.20(b) provides that other provisions of state laws which are inconsistent with federal law are preempted. State laws requiring disclosure of availability policies for transaction accounts are preempted by the regulation. Preemption does not require a determination of the Federal Reserve Board in order to be effective.

#### *Preemption Standards and Determinations*

The Federal Reserve Board may issue a preemption determination upon the request of an interested party in a state. The determination will only relate to the provisions of Subparts A and B of the regulation.

### Civil Liability – §229.21

#### *Statutory Penalties*

Section 229.21(a) sets forth the statutory penalties that can be imposed as a result of a successful individual or class action suit brought for violations of Subpart B of the regulation. Basically, a bank could be held liable for:

- Actual damages;
- Not less than \$100 nor more than \$1,000 in the case of an individual action;
- The lesser of \$500,000 or one percent of the net worth of the bank involved in the case of a class action; and/or
- The costs of the action together with reasonable attorney's fees as determined by the court.

These penalties also apply to provisions of state law that supersede provisions of this regulation such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (See Commentary to Appendix D, §229.20) Bona Fide Errors.

Section 229.21(c) state that a bank will not be considered liable for violations of the regulation if it can demonstrate, by a preponderance of evidence, that violations resulted from bona fide errors and that it maintains procedures designed to avoid such errors.

#### *Reliance on Federal Reserve Board Rulings*

Section 229.21(e) provides that a bank will not be held liable if it acts in good faith in reliance on any rule, regulation, model form (if the disclosure actually corresponds to the bank's availability policy), or interpretation of the Federal Reserve Board, even if it were subsequently determined to be invalid. Banks may rely on the commentary as well as on the regulation itself.

#### *Exclusions*

The liability established by this section does not apply to violations of Subpart C (Collection of Checks) of the regulation, or to actions for wrongful dishonor of a check by a paying bank's customer. (Separate liability provisions applying to Subpart C are found in §229.38)

## SUBPART C – COLLECTION OF CHECKS

Subpart C covers the check collection system and includes rules to speed the collection and return of checks. Basically, these rules cover the return responsibilities of paying and returning banks,

authorization of direct returns, notification of nonpayment on large-dollar returns of the paying bank, and mandatory check endorsement standards.

Sections 229.30 and 229.31 require paying and returning banks to return checks expeditiously using one of two standards: the “two-day/four-day” test and the “forward collection” test. Under the “two-day/four-day” test a local check is received by the depository bank two business days after presentment and a nonlocal bank four business days after presentment. The “forward collection” test is when the paying bank uses comparable transportation methods and banks, for returns, as those used for forward collection. The paying bank can return checks directly to the depository bank of any bank agreeing to process the returns, including the Federal Reserve.

Subpart C also requires in §229.33 a bank to provide notification of nonpayment if it determines not to pay a check of \$2,500 or more, regardless of the channel of collection. The regulation addresses the depository bank's duty to notify its customers that a check is being returned and the paying bank's responsibility for giving notice of nonpayment.

Other areas that are covered in Subpart C are endorsement standards, warranties by paying and returning banks, bona fide errors and liability, variations by agreement, insolvency of banks, and the effect of merger transactions.

The provisions of Subpart C §229.41 supersede any state law, but only to the extent that it is consistent with Regulation CC.

The expeditious return requirements of §229.42 do not apply to checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or units of general local government and that are not payable through or at a bank.