

the general status of the program and the administrative details of the review process. During the closed session, the Board will be reviewing research and development applications. This review involves oral comments, discussion of site visits, staff and consultant critiques of research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance, and competence of individual research investigator. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

Thus, the closing is in accordance with 5 U.S.C. 552b (c)(4) and (c)(6) and the determination of the Administrator of Veterans Affairs under section 10(d) of Pub. L. 92-463 as amended by section 5(c) of Pub. L. 94-409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Jon Peters, Program Manager, Rehabilitation Research and Development Service, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420, (Phone: 202-233-5177), at least five days before the meeting.

Dated: December 1, 1987.

By Direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-28441 Filed 12-10-87; 8:45 am]

BILLING CODE 8320-01-M

Availability of Report of 38 U.S.C. 219 Program Evaluation

Notice is hereby given that the evaluation of the Veterans

Administration's Department of Memorial Affairs has been completed.

Single copies of the Department of Memorial Affairs Report are available. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mr. H. Raymond Wilburn, Director, Studies and Evaluation Service, Veterans Administration (072), 810 Vermont Avenue NW., Washington, DC 20420.

Dated: December 4, 1987.

By direction of the Administrator.

Raymond S. Blunt,

Director, Office of Program Analysis and Evaluation.

[FR Doc. 87-28440 Filed 12-10-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 52, No. 238

Friday, December 11, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Tuesday, December 15, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

1. Enforcement Matter OS# 4458

The Commission will consider Enforcement Matter OS#4458.

2. Enforcement Matter OS# 4119

The staff will brief the Commission on issues relating to Enforcement Matter OS#4119.

*Agenda revised 12/8/87 to change descriptions of item 2.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20807 301-492-6800. Sheldon D. Butts, Deputy Secretary.

[FR Doc. 87-28554 Filed 12-8-87; 4:31 pm]
BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 17, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westward Avenue, Bethesda, MD.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Cigarette Lighter Petition, PP 85-2

The staff will brief the Commission on Cigarette Lighter Petition, PP 85-2, from Diane Denton, Kosair Children's Hospital, which requests that all disposable lighters be required to be child-resistant.

2. Small Parts Petition, HP 87-2

The staff will brief the Commission on Small Parts Petition, HP 87-2, from the Consumer Federation of America and the New York State Attorney General's office, which requests amendment of the small parts regulation.

3. Pool Covers: Options

The staff will brief the Commission on pool cover safety options.

Closed to the Public

4. Enforcement Matter OS #5960

The staff will brief the Commission on issues relating to Enforcement Matter OS #5960.

*Agenda revised 12/8/87 to add item 4.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westward Ave., Bethesda, MD 20807 301-492-6800. Sheldon D. Butts, Deputy Secretary.

[FR Doc. 87-28555 Filed 12-8-87 8:45 am]
BILLING CODE 6355-01-M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 1:00 p.m., Monday, December 21, 1987.

PLACE: In the Board Room, 6th Floor, 1700 G St. NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee, (202-377-6679).

MATTERS TO BE CONSIDERED:

Uniform accounting standards
Troubled debt restructuring
Appraisal policies and practices of insured institutions and service corporations
Classification of Assets

John M. Buckley, Jr., Secretary.

No. 15, December 8, 1987.

[FR Doc. 87-28580 Filed 12-9-87; 11:42 am]
BILLING CODE 6720-01-M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: At 2:00 p.m., Tuesday, December 22, 1987.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee, (202-377-6679).

MATTERS TO BE CONSIDERED:

Capital forbearance
Minimum capital regulatory requirements for individual insured institutions

Qualified thrift lender test; savings and loan holding company amendments; Federal Home Loan Bank advances

John M. Buckley, Jr., Secretary.

No. 16, December 8, 1987.

[FR Doc. 87-28581 Filed 12-9-87; 11:42 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., December 16, 1987.

PLACE: Hearing Room One, 1100 L Street NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Docket No. 85-20—Harrington & Company, Inc. and Palmetto Shipping & Stevedoring Company, Inc. v. Georgia Ports Authority—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking Secretary.

[FR Doc. 87-28559 Filed 12-9-87; 9:47 am]
BILLING CODE 6730-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Amendment of Agenda

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: December 10, 1987.

PREVIOUS ANNOUNCED TIME AND DATE OF MEETING: A closed Executive Session will commence at 8:00 p.m. on Thursday, December 17, and continue until 11:00 p.m. in the Indigo Room. The open meeting will commence at 11:00 a.m. on Friday, December 18, 1987, and continue until 12:30 p.m. It will reconvene at 1:45 p.m. and continue until all official business is completed.

EXPLANATION OF CHANGE: Item number nine of the previously announced agenda (Update on the National Commission for Legal Services), has been deleted.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: December 9, 1987.

Maureen R. Bozell, Secretary.

[FR Doc. 87-28629 Filed 12-9-87; 3:14 pm]
BILLING CODE 6820-35-M

SECURITIES AND EXCHANGE COMMISSION Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 14, 1987:

A closed meeting will be held on Wednesday, December 16, 1987, at 2:30 p.m. An open meeting will be held on Thursday, December 17, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, December 16, 1987, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Settlement of administrative proceeding of an enforcement nature.
Formal order of investigation.
Opinion.

The subject matter of the open meeting scheduled for Thursday, December 17, 1987, at 10:00 a.m., will be:

1. Consideration of amendments to 17 CFR 200.735.5, which contains the restrictions on securities ownership and transactions applicable to Commission members and employees. For further information, please contact Myrna Siegel at (202) 272-2430.

2. Consideration of whether to adopt amendments to: (1) Eliminate filing requirements for preliminary proxy and information statements under certain circumstances; (2) delete the limitation in Exchange Act Rule 14a-8(a)(1)(ii) on the inclusion of shareholder proposals in

registrants' proxy materials and make other changes with regard to shareholder proposals; and (3) make technical and clarifying changes to Schedule 14A. For further information, please contact Barbara J. Green or Elizabeth M. Murphy at (202) 272-2589.

3. Consideration of whether to issue an order amending Rule 45(b) under the Public Utility Holding Company Act of 1935 to exempt from the requirement of a declaration certain routine agreements whereby parent companies in registered holding company systems guarantee, assume joint liability upon, or act as surety or indemnitor for the obligations of their subsidiary companies. For further information, please contact Martha C. Baker (202) 272-2073.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272-2014.

Jonathan G. Katz,
Secretary.

December 8, 1987.

[FR Doc. 87-28626 Filed 12-9-87; 2:50 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 52, No. 238

Friday, December 11, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

Fire and Rescue Loans

Correction

In rule document 87-26395 beginning on page 43724 in the issue of Monday, November 16, 1987, make the following corrections:

§ 1942.1 [Corrected]

1. On page 43725, in the third column, in § 1942.1(a), in the sixth line, "firm" should read "fire".

§ 1942.17 [Corrected]

2. On page 43726, in the first column, in amendatory instruction 4, in the first line, "1942.7" should read "1942.17".

§ 1942.114 [Corrected]

3. On page 43728, in the third column, in § 1942.114(c)(1), in the second line, "equipments" should read "equipment".

§ 1942.126 [Corrected]

4. On page 43732, in the first column, in § 1942.126(l)(2)(iii), in the second line, "have significant" should read "have a significant"; in paragraph (l)(2)(iii)(B), in the third line "then" should read "than"; and in paragraph (l)(3), in the fourth line from the bottom of the column, after "rehabilitation" insert "of existing buildings, the project inspector should make inspections".

§ 1942.127 [Corrected]

5. On the same page, in the third column, in § 1942.127(e)(1), in the third line, "From" should read "Form".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Department Hearings and Appeals Procedures

Correction

In rule document 87-28005 beginning on page 46355 in the issue of Monday, December 7, 1987, make the following correction:

PART 4—[CORRECTED]

§ 4.5 [Corrected]

On page 46355, in the third column, in § 4.5(a)(1), in the second line, "state" should read "stage".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-370]

Occupational Exposure to Hepatitis B Virus and Human Immunodeficiency Virus

Correction

In proposed rule document 87-27424 beginning on page 45438 in the issue of Friday, November 27, 1987, make the following correction:

On page 45438, in the first column, under **DATES**, the third line should read "January 26, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-220]

Organization and Delegation of Powers and Duties

Correction

In rule document 87-27971 beginning on page 46478 in the issue of Tuesday, December 8, 1987, make the following correction:

On page 46478, in the third column, in the heading, the docket no. should appear as set forth above.

BILLING CODE 1505-01-D

Federal Reserve

Friday
December 11, 1987

Part II

Federal Reserve System

12 CFR Parts 210 and 229

Availability of Funds and Collection of
Checks; Proposed Rule

Federal Reserve Bank Services and
Proposals for Long-Term Improvements
to the Check Collection System; Notices

FEDERAL RESERVE SYSTEM**12 CFR Parts 210 and 229**

[Docket No. R-0620]

Availability of Funds and Collection of Checks (Regulation CC) and Collection of Checks and Other Items and Transfers of Funds (Regulation J)**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Proposed rules.

SUMMARY: The Board is publishing for comment a proposed new rule (Regulation CC) to implement the Expedited Funds Availability Act. The proposed rule sets out the requirements that banks and other depository institutions make funds deposited into accounts available according to specified time schedules and that institutions disclose funds availability policies to their customers. The proposed regulation also establishes rules designed to speed the return of unpaid checks.

The Board is also proposing to amend its existing Regulation J, which governs the collection of checks and other items by Federal Reserve Banks, to conform that regulation to the new standards proposed in Regulation CC.

DATES: Comments must be submitted on or before February 8, 1988. No extension of time for comment will be provided.

ADDRESSES: Comments, which should refer to Docket No. 0620, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file, and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: For information regarding Subparts A and C of Regulation CC (Part 229) and Regulation J (Part 210), contact Joseph R. Alexander, Senior Attorney, Legal Division (202/452-2489).

For information on §§ 229.10 through 229.14 and §§ 229.19 through 229.21 of Subpart B of Regulation CC, contact Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452-2789).

For information on §§ 229.15 through 229.18 of Subpart B of Regulation CC, contact Gerald P. Hurst, Senior Attorney, Division of Consumer and Community Affairs (202/452-3667).

For the hearing impaired only: Telecommunications Device for the

Deaf, Earnestine Hill or Dorothea Thompson (202/452-3254).

SUPPLEMENTARY INFORMATION: The Expedited Funds Availability Act, Title VI of Pub. L. 100-86, requires banks and other depository institutions (collectively referred to as "banks" in the proposed regulation) to make funds deposited into accounts available to depositors within time periods specified by the Act and to disclose funds availability policies to their depositors. The Board is given responsibility to prescribe regulations to implement the Act. The Act also provides the Board with broad authority to adopt regulations to improve the check processing system so that checks may be cleared and, if necessary, returned within the funds availability schedules mandated by the Act.

The Board is today requesting comment on a series of proposals, Docket Nos. R-0620, R-0621, and R-0622, that will exercise its responsibilities under the Act. Docket No. R-0620 consists of a proposed regulation (Regulation CC, 12 CFR Part 229) that will clarify the definitions of the Act, provide detailed rules to facilitate compliance with the availability and disclosure requirements, and make several substantive changes to the current law on the collection of checks to encourage faster return of unpaid checks, thus minimizing the losses that could result from compliance with the availability schedules. Docket No. R-0621 also proposes several changes to the Board's current Regulation J (12 CFR Part 210), which governs the collection of checks and other items by Federal Reserve Banks, so that it conforms to the new standards adopted in Regulation CC.

Docket No. R-0622 requests comment on proposed new services to be offered by the Federal Reserve Banks to assist in the new check collection rules established in Regulation CC. Docket No. R-0622 requests comment on some possible services that the Federal Reserve is studying as well as longer-term improvements to the nation's check collection system.

Overview

Delayed availability—the holds that some banks¹ place on checks deposited

into their customers' accounts before the funds may be withdrawn—was a subject of growing concern in the Congress for a number of years. Many argued that the holds placed by many banks were unduly long, and that depositors have a right to prompt access to their funds. Banks that impose holds responded that their availability schedules reflect the time needed for the collection and return of checks dishonored by the paying bank and provide a measure of protection against the risk that the bank could not recover funds from the depositor if those funds had already been withdrawn from the depositor's account.

The Congress concluded that federal legislation was required to address delayed availability practices and passed the Expedited Funds Availability Act (the "Act") (Title VI of the Competitive Equality Banking Act, enacted on August 10, 1987). The Act seeks to ensure prompt availability of funds and to expedite the return of checks; the Board is directed to issue regulations to implement the Act, which becomes effective on September 1, 1988.

The Act includes specific and detailed provisions requiring banks to: (1) Make funds available to their customers within specified time frames, (2) pay interest on interest-bearing transaction accounts not later than the day the bank receives provisional credit, and (3) disclose their funds availability policy to their customers. These statutory provisions provide the Board with little flexibility in developing rules to implement the Act's requirements.

The Act 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 cashier's checks, be made available for withdrawal by the business day after the day of deposit. The time when the depository bank must make other check deposits available for withdrawal depends on whether the check is "local" or "nonlocal" to the depository bank. 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 nonlocal check is a check deposited in a different check processing region than the paying bank. There are a total of 48 Federal Reserve check processing offices in the United States, and the territory served by each office constitutes a region.

Under the temporary schedule that becomes effective on September 1, 1988,

the proposed Regulation CC for the complete definitions of these terms.)

¹ The proposed Regulation CC terminology corresponds with the terminology of the Uniform Commercial Code, with some modifications. "Bank" is defined to include all depository institutions. A "paying bank" is the bank on which the check is drawn. In the case of payable through drafts, the payable through bank is the paying bank. A "returning bank" is an intermediary bank handling a returned check. A "depository bank" is the bank in which the check was first deposited. (See § 229.2 of

a depository bank must make the proceeds of local checks available for withdrawal by the third business day following deposit; that is, the proceeds of local checks deposited on a Monday must be available for withdrawal by the following Thursday. The depository bank must make the proceeds of nonlocal checks available for withdrawal by the seventh business day following deposit; that is, the proceeds of a Monday deposit must be available for withdrawal by Wednesday of the following week. On September 1, 1990, these time periods are reduced. At that time, proceeds of local and nonlocal checks must be available for withdrawal by the second and fifth business day following deposit, respectively. Special rules are provided for cash withdrawals, deposits at nonproprietary automated teller machines, and deposits made in banks outside the continental United States.

Although the proposed improvements to the check system will accelerate the return of most checks, many checks will not be returned to the depository bank by the time funds must be made available for withdrawal under the temporary schedule—a number that will increase when the permanent schedule becomes effective. In order to reduce the risk to banks from making funds available to customers before learning that the check has not been paid, Congress provided several exceptions to the availability schedules. When a bank invokes one of these exceptions, it may extend the hold on its customer's account beyond the statutory schedule. Nevertheless, the Board must establish limits on the additional hold that may be placed on checks subject to these exceptions.

The statute requires banks to disclose their availability policies to their customers and inform their customers that deposited funds may not be available for immediate withdrawal. Banks are required to provide disclosures to new customers prior to opening an account, to existing customers, and to any person upon request. In addition, disclosures are required on preprinted deposit slips, at staffed locations where consumers make deposits, and at automated teller machines. Banks must also provide notice to their customers whenever their availability policies change.

The Act gives the Board authority to make improvements in the check collection and return system in order to shorten the time within which depository banks learn of the nonpayment of checks, and thereby reduce the number of situations when

the bank will be required by law to make funds available to its customers before it learns a check has been dishonored. The Board's authority is broad and general, and extends to checks that are not cleared through the Federal Reserve System. Previously, the Federal Reserve generally had the authority to regulate only those checks it collected.

Upon enactment of the Act, Board staff formed a Steering Committee to develop proposals to implement the law's requirements. The Steering Committee consists of representatives from three Divisions of the Board's staff and three Federal Reserve Banks. In developing these proposals, the Steering Committee considered: (1) Costs to the banking industry, businesses, and consumers; (2) the ability of banks to select from several alternative approaches to comply with the Act and the Board's regulation; (3) the ability of the private sector and the Federal Reserve to provide services to expedite the return of unpaid checks; and (4) the extent to which the improvements to the check collection system reduce risk.

In developing the proposals, Board relied heavily on input from the private sector. The Board staff discussed the proposal with the Consumer Advisory Council and the Return Item Advisory Committee, which is a joint Federal Reserve/banking industry group. In addition, the staff met on over 20 occasions with representatives from consumer groups, banking and corporate trade associations, and individual banks. Two consulting firms were retained to assess the effect of certain aspects of its proposals on the banking industry. Many of the major concepts underlying the proposal have been suggested by the private sector.

The proposed Regulation CC (12 CFR Part 229), *Availability of Funds and Collection of Checks*, contains three subparts. Subpart A defines terms and provides for administrative enforcement. Subpart B specifies 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. Subpart C includes rules to expedite the collection and return of checks. These rules cover the means by which the paying and returning banks must return checks to the depository bank, authorization of direct returns, notification of nonpayment of large-dollar returns by the paying bank, check indorsement standards, and other related changes to the check collection system.

Subpart A—Definitions

The Act defines a number of terms, many of which required little additional clarification in the regulation. Nevertheless, the definition of two terms in the regulation are significant. The Act applies to deposits in transaction accounts, but does not precisely define the term. The Board proposes to define "account" in terms of a transaction account as described in the Board's Regulation D (12 CFR 204.2(e)). The Board believes that using the transaction account definition in Regulation D—a definition already familiar to banks—will avoid confusion about the coverage of the regulation and is consistent with the statute. The Board proposes that the definition of "account" exclude correspondent accounts; that is, accounts held by a bank at another bank.

The definition of "paying bank" in the regulation is critical in determining whether a check is local or nonlocal, as well as determining the duties of the various parties to expedite returns. The Board proposes to define paying bank to include payable through banks for the purposes of the requirements of the regulation. As a result, payable through drafts that often are used by credit unions and insurance companies are considered local or nonlocal checks based on the location of the payable through bank. In addition, the payable through bank would be subject to the prompt return requirements imposed on paying banks, and thus would be required to return checks one or two days faster than may be the case today. The Board believes that this definition most accurately reflects the statutory requirement that schedules be based on where the check is sent for collection—the location of the payable through bank—and not the location of the organization on which the check is drawn.

Subpart B—Funds Availability and Disclosure Requirements

Availability schedules. The proposed regulation reflects the availability schedules provided in the Act. Thus, deposits of cash and electronic payments, as well as certain checks deposits, including Treasury checks, state and local government checks, and depository checks, must be made available for withdrawal on the next business day. Longer schedules are provided for other checks, based on whether the checks are local or nonlocal. The following charts depict the schedules for these checks. The Board proposes that: (1) The application of the

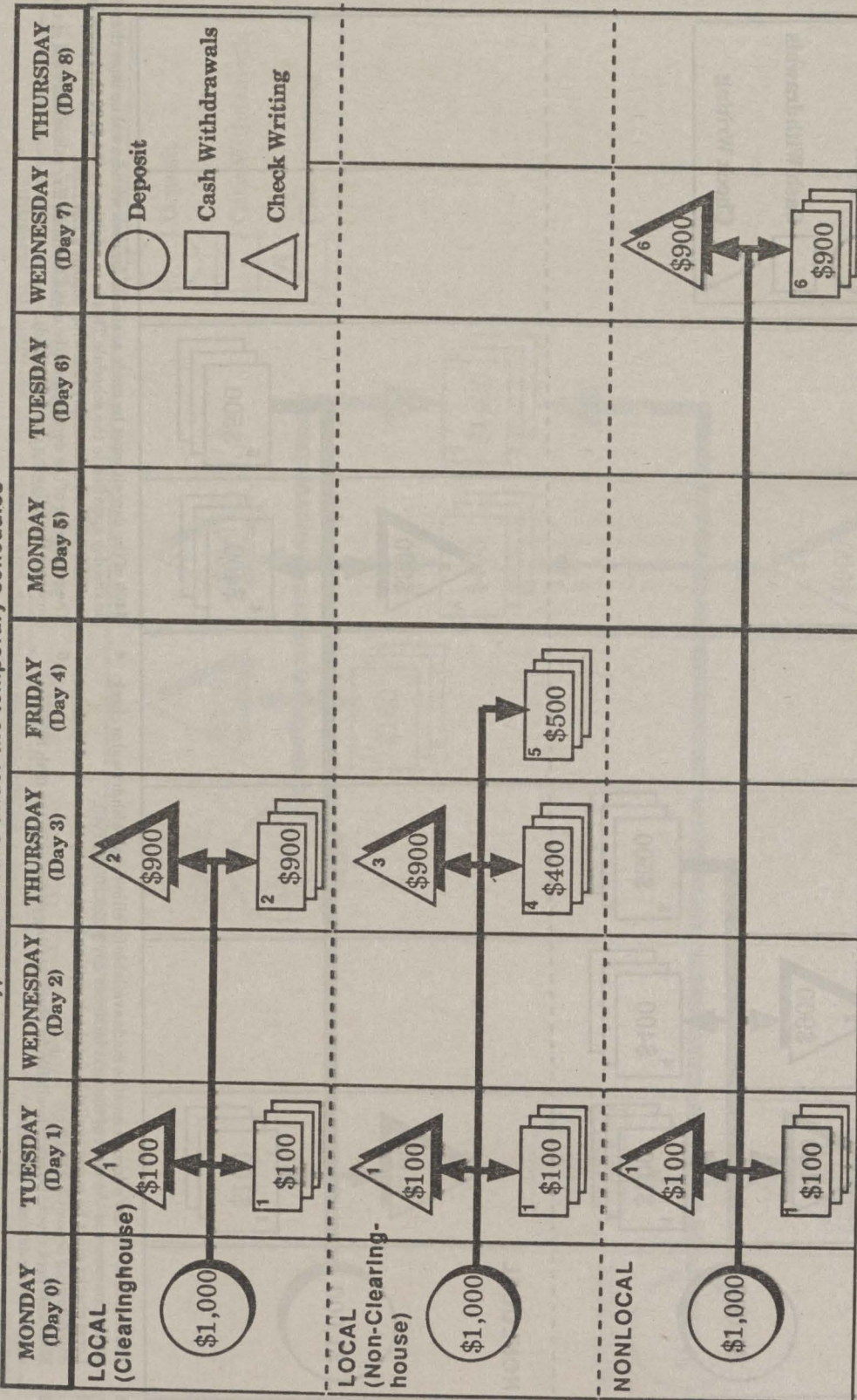
schedules to certain categories of checks be clarified; (2) the schedules for certain nonlocal checks be shortened; (3) the holds that can be placed on deposits subject to an exception provided in the Act be limited; and (4) the effect of this regulation on depositors' rights to withdraw cash be clarified.

BILLING CODE 6210-01-M

Temporary Funds Availability Schedules

Figure 1

Illustrates availability of different types of checks under the temporary schedules



For local checks cleared outside a local clearinghouse, \$400 of the deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This amount is in addition to the \$100 that must be made available on the business day following the day of deposit § 229.11(b)(2). The remainder of the deposit must be available for cash withdrawal at the start of business on the following day § 229.11(b)(2).

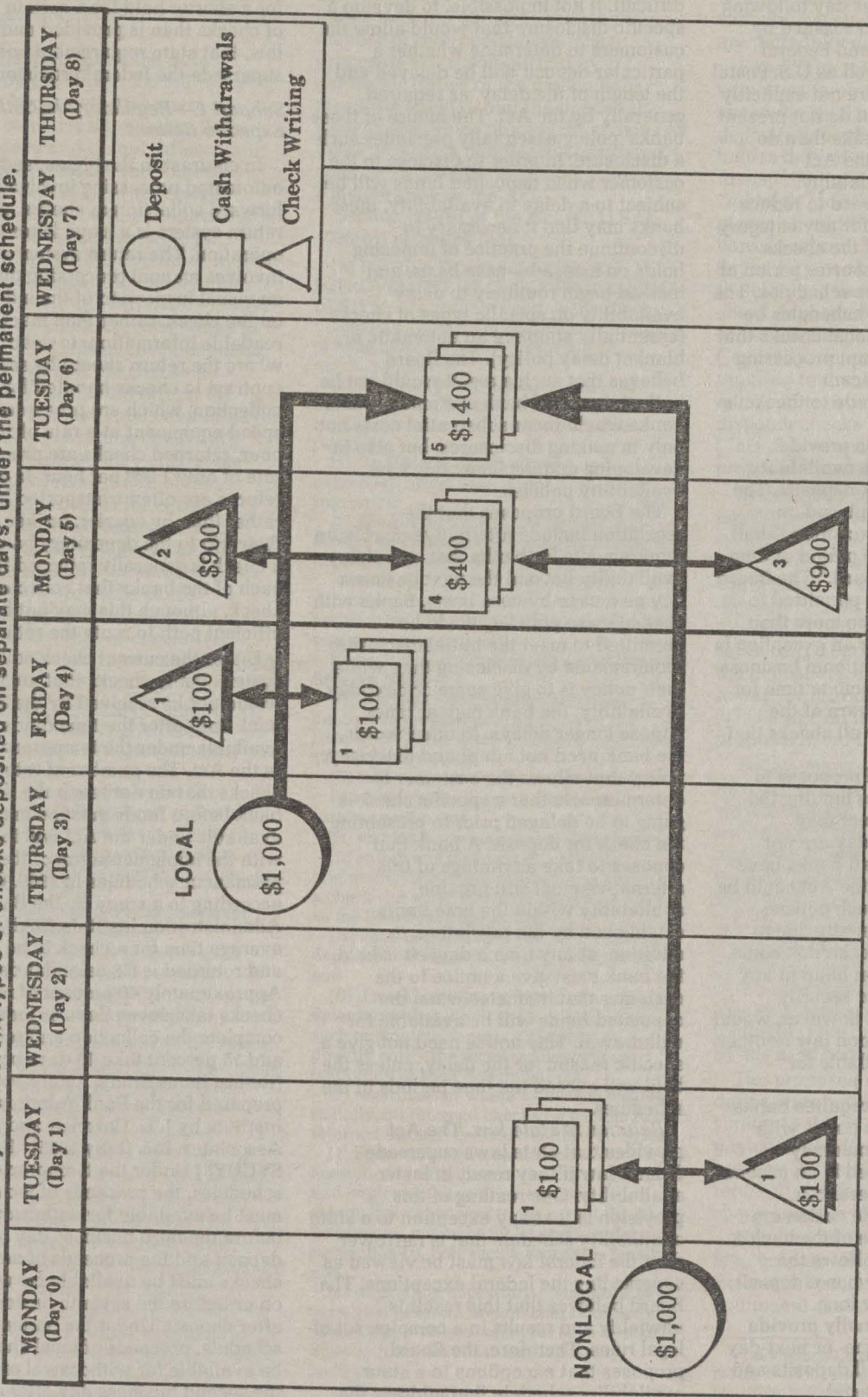
For nonlocal checks, the remainder of the deposit must be made available for either cash withdrawal or check writing purposes by the seventh business day following the day of deposit § 229.11(b)(2).

- 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 For local checks cleared through a local clearinghouse, the remainder of the deposit must be made available for either cash withdrawal or check writing purposes by the third business day following the day of deposit § 229.11(b)(1).
- 3 For local checks cleared outside a local clearinghouse, the remainder of the deposit must be made available for check writing purposes by the third business day following the day of deposit § 229.11(b)(2).
- 4 For local checks cleared outside a local clearinghouse, \$400 of the deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This amount is in addition to the \$100 that must be made available on the business day following the day of deposit § 229.11(b)(2). The remainder of the deposit must be available for cash withdrawal at the start of business on the following day § 229.11(b)(2).
- 5 For nonlocal checks, the remainder of the deposit must be made available for either cash withdrawal or check writing purposes by the seventh business day following the day of deposit § 229.11(b)(2).
- 6 For nonlocal checks, the remainder of the deposit must be made available for either cash withdrawal or check writing purposes by the seventh business day following the day of deposit § 229.11(b)(2).

Permanent Funds Availability Schedules

Figure 3

Illustrates availability of different types of checks deposited on separate days, under the permanent schedule.



- 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 deposit must be made available for cash withdrawal no later than 5:00 p.m. on the day specified in the schedule. This applies to the aggregate amount of deposits that must be made available on a specified day, and 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).

The Board proposes that certain additional categories of checks not specified in the Act be subject to the requirement that funds be made available on the business day following the day of deposit. Checks issued by Federal Reserve Banks and Federal Home Loan Banks, as well as U.S. Postal Service money orders, are not explicitly addressed in the Act, but do not present greater risk of loss to banks than do other checks for which the Act mandates next day availability.

The Act directs the Board to reduce the statutory schedules for any category of checks where most of the checks would be returned in a shorter period of time than provided in the schedules. The Board proposes that the schedules be reduced for certain nonlocal checks that are subject to more prompt processing and return, where significant improvements can be made to the Act's schedules.

The Act and regulation provide certain exceptions to the availability schedules for higher-risk deposits. The Act states that the hold placed on deposits subject to an exception "shall not exceed a reasonable period of time as determined by the Board." The Board proposes that a bank be permitted to extend the schedule by no more than four business days when an exception is invoked. These four additional business days should provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned.

In addition, the Board proposes to clarify that bank policies limiting the amount of cash a customer may withdraw on any given day are not affected by the Act. Small banks have expressed concern that the Act could be interpreted to prohibit such policies. These restrictions are usually due to limits on the amount of cash that some small banks may keep on hand at any one time for insurance or security reasons. The regulation, however, would not supersede any common law or other duty to make funds available for withdrawal by cash.

Disclosures. The Act requires banks to disclose their specific policy with respect to when a customer may withdraw funds deposited in an account. The regulation, as a general rule, requires banks to provide customers with an initial disclosure of the bank's availability policy that allows the customer to determine when a deposit will be held and for how long.

Numerous banks normally provide their customers with same- or next-day availability for almost all deposits and only impose holds in special circumstances, determined on a case-by-

case basis. In many cases, the banks provide the customer with notice of the delay at the time the deposit is made.

Banks with such policies may find it difficult, if not impossible, to develop a specific disclosure that would allow the customers to determine whether a particular deposit will be delayed and the length of the delay, as required generally by the Act. The nature of these banks' policy essentially precludes such a disclosure. In order to disclose to the customer when deposited funds will be subject to a delay in availability, these banks may find it necessary to discontinue the practice of imposing holds on a case-by-case basis, and instead begin routinely to delay availability on specific types of checks (essentially adopting an automatic or blanket delay policy). The Board believes that such a result would not be in the interest of bank customers. Also, banks would incur substantial costs not only in making disclosures, but also in developing and implementing new availability policies.

The Board proposes that the regulation include alternative disclosure requirements for banks that only delay availability beyond the next business day on a case-by-case basis. Banks with case-by-case policies would be permitted to meet the initial disclosure requirements by disclosing that, while their policy is to give same or next-day availability, the bank may at times impose longer delays. In other words, the bank need not adopt and disclose a policy that allows the customer to determine whether a specific check is going to be delayed prior to presenting the check for deposit. A bank that chooses to take advantage of this alternative must still provide availability within the time limits established by the regulation. In addition, at any time a deposit is held, the bank must give a notice to the customer that indicates when the deposited funds will be available for withdrawal. This notice need not give a specific reason for the delay, unless the hold will exceed the time periods in the schedules.

Relation to state law. The Act provides that state laws supersede federal law if they result in faster availability. One reading of this provision is that any exception to a state availability schedule that is narrower than the federal law must be viewed as superseding the federal exceptions. The Board believes that this result is unwieldy and results in a complex set of legal rules. Therefore, the Board proposes that exceptions to a state availability schedule that address the same situation as the federal exceptions

be preempted even if the exception might, under some circumstances, result in faster availability of a particular deposit. However, if state law provides for a shorter hold for a certain category of checks than is provided under federal law, that state requirement will supersede the federal provision.

Subpart C—Regulatory Initiatives To Expedite Returns

In contrast to the high-speed automated processing involved in the forward collection of checks, the check return system is a slow, labor intensive operation. The return system generally involves manual processing that relies on visual inspection of the indorsements on the check, rather than machine-readable information, to determine where the return should be sent. In contrast to checks handled for forward collection, which are processed on high-speed equipment at a rate of 100,000 per hour, returned checks are processed at a rate of only 1,000 per hour. In addition, returns are often transported by mail, rather than by courier, further slowing their trip to the depository bank. Finally, a check is generally returned through each of the banks that collected the check, although this may not be the most efficient path to route the return.

Under the current check collection system, many checks that are returned would not be received by the depository bank until after the time funds must be available under the temporary schedules in the Act. The number of returned checks that do not reach the depository bank before funds must be made available under the Act will increase with the implementation of the permanent schedules in 1990. Currently, according to a study by the Bank Administration Institute (BAI), the average time for a check to be collected and returned is 6.8 calendar days. Approximately 40 percent of returned checks take seven days or longer to complete the collection and return cycle and 15 percent take 10 days or longer. (Return Items Study, Final Report, prepared for the Bank Administration Institute by J. D. Carreker and Associates, Inc. (May 1985) "BAI STUDY") Under the temporary schedules, the proceeds of local checks must be available for withdrawal on or before the third business day after deposit and the proceeds of nonlocal checks must be available for withdrawal on or before the seventh business day after deposit. Under the permanent schedule, proceeds of local checks must be available for withdrawal on or before the second business day after deposit and proceeds of nonlocal checks must

be available for withdrawal on or before the fifth business day after deposit. Approximately one-third of the checks handled by the Federal Reserve Banks would be considered nonlocal under the Act.

It is difficult to relate the data collected by the BAI to the statutory schedules because the BAI data are based on calendar days rather than business days and do not differentiate between local and nonlocal checks. Nevertheless, it is clear that large numbers of checks will be returned after funds must be made available for withdrawal under the schedules in the Act. The requirement to make funds available for withdrawal before many checks are returned exposes banks to risks if the proceeds of check deposits are withdrawn and the checks are subsequently returned. Further, the requirement to make funds available for withdrawal before some checks are likely to be returned may encourage check fraud. In recognition of these risks, the Act provides for certain exceptions to the statutory schedules and, in section 609(b), provides that the Board shall consider a number of proposals to improve the check processing system to speed the collection and return of checks. (12 U.S.C. 4008(b)). Further, section 609(c) of the Act (12 U.S.C. 4008(c)) provides that:

(c) REGULATORY RESPONSIBILITY OF BOARD FOR PAYMENT SYSTEM.—

(1) RESPONSIBILITY FOR PAYMENT SYSTEM.—In 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; and

(B) any related function of the payment system with respect to checks.

(2) REGULATIONS.—The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

Under this Board authority, the Board believes that it is appropriate to propose changes to the way that checks are collected and returned by both the Federal Reserve Banks and other banking institutions in order to speed the collection and return of checks and to improve the efficiency of the check collection system. Subpart C of the regulation contains proposed rules designed to reduce the risk to depository banks resulting from the prompt availability requirements of the Act. In many cases, these regulations modify provisions of state law applicable to the collection of checks, including the Uniform Commercial Code as enacted in the various states. The proposals in

Subpart C: (1) Expedite returns to the depository bank; (2) expand the requirements for notification of large-dollar returned checks; and (3) provide banks with the ability to reduce the number of returned checks. These proposals are accomplished by modifying duties of the paying bank, returning bank(s), and the depository bank in the return process. In arriving at these proposals, the Board considered each of the proposals listed for Board consideration in the Act.

Section 609(b) of the Act (12 U.S.C. 4008(b)) provides that:

(b) REGULATIONS RELATING TO IMPROVEMENT OF CHECK PROCESSING SYSTEM.—In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that—

(1) depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;

(2) the Federal Reserve banks and depository institutions provide for check truncation;

(3) depository institutions be provided incentives to return items promptly to the depository institution of first deposit;

(4) the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks,

(5) each depository institution and Federal Reserve bank—

(A) place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and

(B) take such actions as are necessary to—

(i) automate the process of reading endorsements; and

(ii) eliminate unnecessary endorsements;

(6) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution determine whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institution directly notify the receiving depository institution of such determination;

(7) regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

(8) Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board determines, pursuant to the study under subsection (f), that such a process is feasible; and

(9) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

The proposals contained in Subpart C either implement or are closely related

to many of the proposals listed in the Act, and the Board is studying many of the other proposals as potential longer-term improvements to the check collection system. The Board's proposals are more fully described below.

Expediting returns. A number of the regulatory proposals are designed to speed the return of checks to the depository bank. Today, the paying bank's duty of prompt return is limited to dispatching a returned check by its "midnight deadline."² The proposal places an additional duty on the paying bank to return the check to the depository bank in a manner similar to the efficient manner used to collect a check deposited in the paying bank and drawn on the depository bank. Generally, the paying bank would be required to dispatch returns using the means of transportation used to dispatch checks for forward collection. (This duty is similar to the third proposal listed in the Act.)

To facilitate prompt returns, the paying bank would not be required to return a check to the bank that presented it. Instead, the paying bank could return a check directly to the depository bank or to a Reserve Bank or other bank providing check return services. To encourage direct returns, the depository bank would be required to pay for returns on the day of receipt. (This proposal is similar to the ninth proposal listed in the Act.)

Today, many banks do not dispatch their returned checks by courier with the checks that are being sent for forward collection, if the courier leaves after midnight. Instead, they mail their returns by their midnight deadline in order to meet their legal responsibility under the U.C.C., but by doing so delay the completion of the return process. The proposed regulation encourages the use of couriers to handle returned checks by allowing banks to dispatch returns after midnight if the returns will be received by the next bank that day.

The proposed regulation imposes duties on returning banks that are similar to the duties imposed on the paying banks to expedite the return process. A returning bank must handle a returned check as expeditiously as a check handled for forward collection.

One way to speed the return process is to prepare the returned check for automated processing by high-speed equipment. Returned checks can be

² The Uniform Commercial Code requires a paying bank to dispatch checks it is returning unpaid by midnight of the next banking day following the banking day on which the checks were presented for payment.

automated by either the paying bank or returning bank by placing the return in a carrier envelope or by placing a strip on the bottom of the check, and encoding the envelope or strip with the routing number of the depository bank, the amount of the check, and a special returned check identifier. Automated returns allow for far more efficient processing by returning banks. The proposed regulation facilitates the preparation by returning banks of automated returned checks by providing an additional business day to the bank's time for prompt return. (This proposal is similar to the fourth proposal listed in the Act.)

One of the obstacles to efficient processing of returns is the lack of uniformity in depository banks' indorsements. Today, clerks often have difficulty determining the bank to which the check will be returned. The indorsements on the back of the check are often faint, blurred, incomplete, and overlapping. Under the proposal, this difficulty would increase since many checks will not be returned through the same banks that handled the checks during forward collection. The determination of a remote depository bank would often be difficult if its indorsement were not readily distinguishable from the other indorsements on the check.

Therefore, the proposal requires the depository bank to provide specific information in its indorsement, including its nine-digit routing number. In addition, the depository bank's indorsement must be readily identifiable through the use of a unique color ink and by placement in a specified area on the back of the check. Subsequent indorsements may not be in the same color, or be placed in the same location as the indorsement of the depository bank. (This proposal is similar to the fifth proposal listed in the Act.)

Notification of nonpayment. Even with improvements to the check return system, the depository bank will not receive all returned checks by the time it must make the proceeds available to the customer for withdrawal. The depository bank's risk is larger in the case of large-dollar returns. Therefore, the Board proposes to require paying banks to provide notification of nonpayment for all large-dollar returned checks.

Notification of large-dollar returns is now required only for those checks collected through the Federal Reserve. The proposal expands the large-dollar notification requirement to include all checks of \$2,500 or more, regardless of the channel through which they were cleared. In addition, the proposal

reduces the time period within which notification must be provided. Under the proposal, the paying bank must ensure that notification is received by the depository bank by 4:00 p.m. (local time of depository bank) on the second business day following presentment. Federal Reserve regulations currently require notice to be received by midnight on the third business day following presentment. (This proposal is similar to the sixth proposal listed in the Act.)

Reducing the volume of returns. The Board proposes extending the paying bank's midnight deadline for low-dollar checks. Over one-half of all returned checks are in amounts of \$100 or less. Many depository banks routinely redeposit that portion of these returns that are returned due to insufficient or uncollected funds (or direct the Federal Reserve to redeposit the checks on their behalf) in an effort to obtain payment. On average, over 60 percent of these redeposited checks are paid on the second presentment. A significant number of returned checks could be eliminated entirely if the paying bank held low-dollar checks several days beyond its midnight deadline. This concept has received the long-standing support of several banking industry trade groups. The proposal permits a paying bank to hold checks of \$100 or less for two business days beyond its midnight deadline in an effort to secure payment.

Regulation J Amendments

Changes are also proposed to Regulation J so that it conforms to the proposed requirements of Regulation CC, Subpart C. Regulation J governs the collection and return of checks by Federal Reserve Banks.

Proposed Federal Reserve Bank Services (Docket No. R-0621)

Returned check services. In order to achieve the objectives of the proposed regulatory requirements to speed the return of checks, it is essential that the Federal Reserve Banks and private-sector correspondent banks provide new return services. The Board proposes a wide array of Reserve Bank services to facilitate bank compliance with these requirements. The Board anticipates that a number of correspondent banks will offer similar services.

Several of the proposed service changes are designed to facilitate direct returns permitted in proposed Regulation CC. Under the proposal, Reserve Banks would accept and process any returned check; today the Federal Reserve only accepts returned checks that it collected. The Federal

Reserve would return checks directly to the local depository bank, bypassing any intermediary collecting banks in the indorsement chain. A depository bank may designate its correspondent bank or service bureau as the location to which the Federal Reserve should send that bank's returns. Reducing the number of banks handling a returned check will shorten the length of time required for the return process. The Federal Reserve Bank of Dallas is conducting a pilot program of the direct return process, which indicates that, in the case of 43 percent of local returned checks handled by the Bank, at least one collecting bank in the forward collection indorsement chain is bypassed by delivering the return directly to the depository bank. (This proposal is similar to the seventh proposal listed in the Act.)

Reserve Banks would accelerate their processing of returned checks. New returned check deposit deadlines are proposed that are similar to the deadlines for checks handled for forward collection. By September 1988, local returns will be processed on an overnight basis and dispatched with the forward collection checks the next morning. In contrast, today the returns are processed during the day and dispatched one day later. Nonlocal returns that have been automated for high-speed processing by the paying bank or a prior returning bank will be processed and dispatched to the second Reserve Bank office on the night of the day the Reserve Bank received them. Most other nonlocal returns will be automated by the Reserve Bank and sent to the second Reserve Bank office the following night. Today, both Reserve Bank offices manually process the returned check, which adds an extra day to the return process.

Currently, the Federal Reserve does not explicitly price returned checks; instead, the costs of handling returns are incorporated in the Reserve Banks' forward collection fees. The Board is proposing to price returns explicitly, imposing returned check fees on the paying or returning bank depositing returns with the Federal Reserve. Under this proposal, return costs cannot be recovered through the Reserve Banks' forward collection fees as they are today, since some returned checks handled by the Federal Reserve will not follow the same route that they followed in the process of collection, and thus may not be subject to the Reserve Banks' forward collection fees. In addition, paying and returning banks could deposit returned checks with the Federal Reserve in various ways that result in different costs being incurred

by the Reserve Bank. For example, automated returns would be less expensive for the Federal Reserve to handle than nonautomated returns. Reserve Banks would initially charge a fee for returned checks that have been prepared for automated processing similar to that charged for similar checks handled in forward collection. A higher fee would be charged for "raw" returns that require manual processing. The Board estimates that the charge for returned checks that require manual processing will range from \$0.25 to \$1.00.

The proposal also addresses modifications to the Reserve Banks' notification services for large-dollar returns. Reserve Banks will offer same-day notification services for all large-dollar checks to facilitate bank compliance with the proposed requirements to provide notice of nonpayment for all large-dollar checks within shorter time periods. The Board proposes that beginning on January 1, 1989, any depository bank that has an on-line electronic connection with the Federal Reserve be required to receive large-dollar notifications electronically.

Cost of proposed services. Reserve Banks have provided preliminary estimates of the costs of offering the proposed new returned check services. They have projected that the proposed initiatives would require an additional 1988 capital expenditure of approximately \$15,000,000, and additional 1988 operating expenditures of approximately \$15,000,000. The costs of providing these services will be recovered by the Reserve Banks through the fees assessed for the services.

Truncation and extended MICR capture services. The Board proposes expansion of the Federal Reserve's truncation pilot program to a permanent service. In truncation, the physical checks are not delivered to the paying bank; instead, the MICR-line information on the checks is captured and presented to the paying bank electronically. The benefits of truncation include expeditious check processing and return and a reduction in the number of times the paper check is handled. Truncation may also create savings in transportation costs, and storage, equipment, and personnel costs for the paying bank.

Initially, it is proposed that the Reserve Banks offer truncation services to interested local paying banks. However, the benefits of truncation increase as checks are truncated earlier in the collection process. Therefore, the Board believes that after more experience is gained, Reserve Banks will be able to provide inter-bank truncation services; that is, truncation at the

Federal Reserve Bank of first deposit. One Reserve Bank is now engaged in inter-bank truncation on a pilot basis under the rules of the National Association for Check Safekeeping. (The truncation proposal is similar to the first and second proposals listed in the Act.)

The Board also proposes a service that offers many of the same benefits of truncation without stopping the flow of the paper check—the extended MICR capture service. Under this service, which is now provided on a pilot program basis, Reserve Banks would deliver payment information by electronic transmission or magnetic tape, provide returned check and retrieval services, and deliver the checks to the paying bank several days later using less time-critical transportation.

Extended MICR capture would provide the paying bank and its customers an opportunity to test all aspects of the truncation services without giving up receipt of the physical check. The benefits of extended MICR capture are not as great as those of truncation; however, extended MICR would serve as a stepping stone for developing broader acceptance of truncation.

For a further discussion of these services see Docket R-6021, Federal Reserve Bank Services.

Longer-term initiatives (Docket No. R-0622). In addition to these proposed initiatives to expedite returned checks, which would be implemented by September 1988, the Federal Reserve is also exploring various new technologies to improve the check system in the longer term. One such effort involves testing of digitized image processing in a high-speed environment to determine the feasibility of using this technology to transmit check images to the paying bank and the depository bank, and also as a substitute for microfilming checks.

Further, the Board is requesting comment on a variety of initiatives, including: (1) The feasibility of a machine-readable depository bank indorsement, possibly by inclusion of a bar code of the nine-digit routing number, to facilitate further automation of returned check processing; (2) the feasibility of an electronic clearinghouse concept; (3) the feasibility of establishing electronic clearing zones, in which all banks in a specified area agree to accept electronic presentment of their checks; (4) further actions that should be considered to address delayed disbursement practices of certain corporations and banks; (5) an alternative method of preparing returned checks for automated processing that does not require the MICR-encoding of

the returned check with the amount and routing number of the depository bank; and (6) concepts for several potential future Federal Reserve services to depository banks, specifically, a service to ascertain the authenticity of cashier's, certified, and teller's checks and a service to communicate information regarding returned checks to depository banks prior to the physical delivery of the checks. (The electronic clearinghouse proposal is based on the eighth proposal listed in the Act.)

Impact of the Proposal

Cost impact. The requirements of the Act and the proposed regulation will result in several benefits to the public. Transaction account customers will be given specific information on when funds will be made available for withdrawal, which should help them better manage their accounts. In addition, many customers will gain earlier access to their funds. However, it is difficult to quantify these benefits.

The overall cost impact on the banking industry may be quite significant. The disclosure and funds availability provisions in the Act may result in higher operating expenses, lost investment income due to earlier withdrawal of collected balances, and increased bad check losses. It is also difficult to estimate the cost impact of these changes.

On the other hand, the improvements to the check collection system may actually reduce overall bank costs. The proposed regulations would change the duties of the paying bank, returning banks, and depository bank, and would require modifications to the operations of each bank in the return process. Initially, these new initiatives may increase costs. Some of these costs are one-time transition costs, such as the costs to the depository bank to modify its check processing equipment to comply with the new standard indorsement. Other costs are ongoing, such as costs for expedited handling of returns at returning banks.

However, the proposals in the aggregate have the potential for substantial longer-term cost reductions in the return process. Returns will be received by the depository bank more quickly than they are today, reducing the bank's risk from providing prompt availability of funds to its customers. The number of returns may be significantly reduced due to the authority granted to paying banks to extend their midnight deadline for small-dollar returns. The regulation's availability and disclosure requirements may also result in reduced returns

because funds may be made available for withdrawal sooner and customers would know more precisely when they may withdraw funds from their accounts. The proposal would encourage more direct exchange of returned checks, reducing the number of intermediary banks involved in the return process. Most importantly, the new indorsement standard should, over the long term, reduce the cost of return processing by facilitating the more efficient processing of returns. Future enhancements to the indorsement standard would allow all parties in the check collection system to automate completely their return processing.

Competitive impact. An important factor considered in the development of the regulatory framework for expedited returns and related Reserve Bank services was the impact on competition in the check collection system. The public has benefited from the competitive environment that has existed between the Federal Reserve and correspondent banks, and among correspondent banks in providing check collection services. The Board has sought to ensure that the proposed regulatory requirements and Federal Reserve service offerings were designed to provide options to banks in the return process and to facilitate a competitive environment.

Although a number of the Reserve Bank services proposals—such as acceptance of any returned checks, the explicit pricing of returns and corresponding decrease in the forward collection fees, and direct return by the Federal Reserve to the depository bank—may have significant competitive implications, it is difficult to determine what that impact would be. For example, lower Federal Reserve check collection fees could make the Reserve Banks' forward collection check services more attractive, and acceptance of all returns could increase return volume. On the other hand, a bank that uses the Federal Reserve for both forward collection and return services may experience an increase in its total charges for check services. In addition, the acceptance of universal returns by the Federal Reserve has the potential to result in a reduction of Federal Reserve forward collection check volume, since returns are often viewed as nuisance items in the collection process that have deterred banks from competing for forward collection volume.

Correspondent banks will have the opportunity to compete with the Federal Reserve in providing returned check services. For example, approximately 4,000 banks that do not collect checks

through the Federal Reserve currently mail returned checks to their Reserve Bank. Under this proposal, these paying banks may deliver these returned checks along with their forward collection checks to their correspondent bank, rather than establishing separate transportation to deliver their returns to the Federal Reserve. This practice could result in additional volume of returned checks for correspondents.

For a further discussion of these initiatives see Docket R-6022, Proposals for Long-Term Improvements to the Check Collection System.

Educational Efforts

During the public comment period, Federal Reserve Banks plan to conduct seminars designed to increase the understanding of depository institutions regarding the implications of the Act and better prepare the public to comment on the Board's proposed regulations and operating issues. Reserve Banks will sponsor another series of seminars after approval of the final regulations by the Board to assist the industry in preparing for the regulatory and operational changes to be effective on September 1, 1988. In addition, Federal Reserve staff is working closely with various industry groups as they prepare to offer similar seminars to their constituencies.

Summary of Proposals

The Board is issuing for public comment the following proposals to implement the provisions of the Expedited Funds Availability Act:

(1) Docket R-0620, Proposed Regulation CC and Amendments to Regulation J, which

(a) Requires banks to provide for availability of deposits within specified time periods, to disclose their availability policies to customers, and to begin to accrue interest on deposits to accounts not later than the day they receive provisional credit for the deposits; and

(b) Requires banks to expedite the return of checks, including authorizing direct return, and requires the depository bank to use a standard indorsement.

This docket also includes amendments to Regulation J, which governs the collection of checks by Federal Reserve Bank so that it conforms to the proposed rules to expedite the return of checks.

(2) Docket R-0621, Federal Reserve Bank Services, which proposes Reserve Bank services to facilitate bank compliance with the proposed requirements to expedite returns and improve the check collection system,

including expansion of Reserve Bank check truncation and extended MICR capture services from pilot programs to permanent services.

(3) Docket R-0622, Proposals for Long-Term Improvements to the Check Collection System, which requests public comment on longer-term initiatives to improve the check system.

Effect of the Proposals on the Check Collection System

The following is an explanation of the current process for returning checks and a description of the responsibilities of paying, returning, and depository banks now and in the future, if the Board's proposals are adopted. This overview should assist the reader in better understanding the impact of the proposed changes to expedite the return of checks on paying banks, returning banks, and depository banks.

In contrast to the forward collection process, the returned check process is a slow, relatively labor intensive, and costly operation. The BAI study concluded that, while the forward collection process takes an average of 1.6 days to complete, the return process takes an average of 5.2 days. The BAI study found that, during the return process, the average returned check is handled by 3.4 banks: The paying bank, an average of 1.4 returning banks, and the depository bank. Even though less than one percent (the study estimated 0.86 percent) of all checks are returned, the absolute volume of returns (the study estimated 350 million annually) is relatively large.

Both correspondent banks and Federal Reserve offices frequently act as returning banks between the paying and depository banks in the return process. Correspondent banks may route forward collection checks for payment either through the Federal Reserve or through private channels. Thus, the return process currently may include one or more correspondents and the Federal Reserve before the returned check reaches the depository bank. The more intermediate processing steps a returned check must pass through on its route to the depository bank, the greater the probability that additional time will be necessary to complete the process.

Many checks are collected through local clearing arrangements, clearinghouses, and direct exchange arrangements. Such arrangements consist of two or more banks agreeing to exchange checks drawn on each other. There are many such arrangements, and they are a very efficient and fast means of collecting and returning certain checks. The returned check processes of

local clearinghouses should be largely unaffected by the Board's proposals, although the individual participants are subject to the provisions of the Act.

The Paying Bank

Current. Today, the paying bank's principal duty when dishonoring a check is to assure timely dispatch of the check back to the presenting bank. The U.C.C. and the Federal Reserve's Regulation J specify that the paying bank must dispatch a check it has determined not to pay by midnight of the banking day following the day the paying bank received the check for payment (the "midnight deadline"). This obligation may be satisfied by dispatching the returned check by courier or U.S. mail. The return of checks presented for payment through clearinghouses is usually subject to the rules of the clearinghouse and these checks are dispatched accordingly.

Typically, paying banks receive checks for payment throughout the day. From correspondents, the Federal Reserve, or through a clearinghouse. Checks received on a Monday, for example, would be posted to customers' accounts on Monday night and any checks that are not to be paid (due to insufficient funds, account closed, etc.) are rejected from the system and reports are prepared for management review. The decision to actually return a check can be made automatically as a matter of bank policy or following review by management on Tuesday. The checks to be returned are then sent by courier with the bank's forward collection checks, by mail or courier to other collecting banks, or by messenger to the clearinghouse. The return process in this example must begin by midnight Tuesday to conform to the U.C.C. Because the return process must begin by midnight, many paying banks return checks by mail when a courier leaving after midnight would be faster. If a check to be returned was presented by the Federal Reserve and is \$2,500 or more, the paying bank is also obligated to provide notice of return to the depository bank by midnight of the third banking day following receipt (Thursday in this example). Receipt of the physical check by the depository bank within this time frame would fulfill this notification requirement.

Many paying banks currently receive checks from more than one collecting bank and, therefore, dispatch returned checks to each of those banks. If the paying bank does not deposit checks for collection with the bank to which it is returning checks, these checks are usually returned through the mail. In some cases, mail is also used by paying

banks to transport returns to the bank to which it sends its forward collection checks in order to ensure compliance with the midnight deadline. The paying bank currently has little incentive to make an effort to speed the return process and is generally not concerned about the return process after a returned check has been dispatched timely.

Proposed. A major impetus for change in the role of the paying bank will be the responsibility placed on the paying bank by § 229.30 of the proposed regulation. This section states that the return process must be accomplished in an "expeditious manner," thus providing the incentive to the paying bank to take steps to speed the flow of returned checks. Under this proposed new duty, once the paying bank decides not to pay a check, the paying bank must dispatch returned checks with the same speed and diligence that it would dispatch forward collection checks received for deposit before noon on the banking day after the day of presentment of the returned check. This means that a check presented to the paying bank on Monday that is not paid must be dispatched as quickly as a check deposited in that bank on Tuesday morning that is drawn on the depository bank. The Federal Reserve would provide new deadlines for deposit of returned checks and other new or enhanced services, which would assist paying banks in meeting the proposed new duties.

Some of the changes in the return process from the perspective of the paying bank are anticipated to be:

1. In many cases, paying banks will dispatch returns by the same manner, and at the same time, as they send forward collection checks. This will usually mean that returns will be sent via courier rather than mail. The paying bank will be required to meet the deposit deadlines and sorting requirements set by any returning bank to which the returned check is sent.

2. Additional options will be available to send returns. Returns would not be required to follow the indorsement chain through which the check was originally collected. This means that the paying bank could return all checks to a single returning bank rather than sending them to multiple presenting banks. Paying banks could return checks to the depository bank or to a bank agreeing to process returns, including the Federal Reserve. If the paying bank cannot identify the depository bank from the indorsement, it may find it necessary to send that returned check back to the presenting bank. The Federal Reserve would accept returned checks from all

paying banks and explicitly charge for this service. Other returning banks are likely to establish similar services.

3. Under the proposal, using the example above, checks for \$100 or less, which a paying bank would normally return, may be held for two business days beyond the paying bank's midnight deadline without the paying bank incurring additional liability. The paying bank must attempt to obtain payment on the day the check is actually returned. If widely implemented by paying banks, this procedure is expected to reduce the total number of checks that would be returned unpaid.

4. Paying banks will have the option to prepare a returned check for automated processing by high-speed equipment. This option will be used only when the paying bank is sending the returned check to a returning bank. The bank can produce a "qualified returned check" (QRC) by enclosing a returned check in a carrier envelope or attaching a strip to the bottom of the check, and encoding the carrier or strip with the nine-digit routing number of the depository bank, a special returned check identifier, and the amount of the check. By creating QRCs, the paying bank facilitates expeditious return of the check to the depository bank. Preparation of QRCs by paying banks also reduces the cost of the overall return process because returning banks will be able to handle these checks more efficiently. To encourage paying banks to prepare QRCs, the Federal Reserve will provide later deposit deadlines at lower prices for QRCs than for returned checks that are not qualified. The Board believes that correspondent banks will adopt a similar strategy.

5. Paying banks will be required to provide notification of nonpayment on all returned checks of \$2,500 or more, regardless of the channel of collection, at an earlier time than required today. Notifications will have to be received by the depository bank by 4:00 p.m. (local time) on the second business day following presentment of a check to the paying bank. This means that if a decision is made to return a check of \$2,500 or more that was presented on Monday, the paying bank must ensure that the notification is received by the depository bank no later than 4:00 p.m. Wednesday. The Federal Reserve will provide timely notification to the depository bank provided that the message is originated by Fedwire by noon on the due date or that the physical returned check or a telephone message is given to the Federal Reserve by 9:00 a.m. on the due date.

Returning Banks, Including Federal Reserve Banks

Current. Returning banks currently receive returned checks from paying banks and from other returning banks, and subsequently send those returned checks to depository banks and to other returning banks. Banks that act as collecting banks during the forward collection process also act as returning banks during the return process. Generally, a returning bank receives a returned check from the bank to which it sent the check for collection or payment. The returning bank then sends the returned check to its prior indorser. In sending the returns to its prior indorser, returning banks are under a duty similar to the duty applicable to paying banks to dispatch returned checks by the midnight deadline. One of the advantages to the practice of returning through the indorsement chain is that parties in the return process have established account relationships that were used during the forward collection process. The payment for the returned check is typically a reversal of the payment made during the forward collection process.

The Federal Reserve functions as a returning bank in the current return process only for checks that it handled in the forward collection process. The Federal Reserve receives returned checks from paying banks and sends them to depository banks and other returning banks. Approximately 43 percent of the returns currently handled by the Federal Reserve are sent to correspondent banks acting as returning banks. In some Federal Reserve regions, where correspondent banking is particularly active, the Federal Reserve office currently sends well over 50 percent of the returns it handles to correspondents in their role as returning banks.

Proposed. Under the proposal, returning banks will be held to a standard similar to paying banks. That is, returning banks must handle returned checks in an "expeditious manner", i.e., returned checks must be processed and dispatched in the same general manner as forward collection checks. This means that returning banks must process returned checks in a much shorter time frame than is typical today.

Federal Reserve Banks will establish new deposit deadlines for returned checks that closely parallel those for forward collection checks. It is expected that other returning banks will also establish new deposit deadlines for returned checks. While these deadlines need not be the same as for checks received for forward collection,

returning banks may wish to establish these deadlines so as to permit paying or other returning banks to send returned checks to them on the same courier as forward collection checks. Returning banks may return a check directly to the depository bank or to another returning bank as long as the route chosen for the return is expeditious. Generally, it would not be expeditious for a returning bank to send returned checks to another returning bank if it sends forward collection checks drawn on that depository bank directly to the depository bank.

Returning banks would have the option, but not be required, to convert returns to QRCs. If a returning bank chooses to prepare a QRC, it may take a day to do so beyond the time when the check would otherwise have been dispatched. An extra day is not available when returning directly to the depository bank, because preparation of a QRC would not speed the return of such checks.

It is anticipated that one of the most significant changes in the return processing system for non-Federal Reserve returning banks will be the effect of the Federal Reserve's direct return policy. Federal Reserve offices will no longer send returned checks to other non-Federal Reserve returning banks. This potential shift in volume (about 43 percent of current Federal Reserve return volume) could significantly reduce the number of returned checks that are handled by these returning banks.

The Depository Bank

Current. The depository bank receives returned checks from both paying and returning banks. Generally, a returned check is received from the bank used by the depository bank for forward collection. Depository banks also receive notifications of nonpayment on checks of \$2,500 or more collected through the Federal Reserve. Some depository banks currently redeposit low-dollar returned checks for collection because a significant proportion of these checks are paid upon second presentment.

Proposed. The depository bank's requirement to place a standard indorsement on the check is critical to improvements in the return process. By following the proposed new indorsement standard and imprinting a complete, legible indorsement on the check, the depository bank will greatly assist paying and returning banks in identifying the depository bank and, therefore, in processing the return promptly. To comply with the standard, depository banks may have to install

new indorsement plates and may need to modify some equipment. Some banks may want to work with corporate customers that encode checks prior to deposit to have the corporate customer place the depository bank's indorsement on the check according to the new standard. Failure to follow the indorsement standard may increase the risk of loss to the depository bank because paying and returning banks may be relieved of liability for delay in return if the delay is due to a nonstandard indorsement.

Depository banks may receive returns from returning banks with which the depository bank currently does not have a forward check collection relationship. Many depository banks will, for the first time, begin receiving returned checks directly from the Federal Reserve. If the depository bank requests courier delivery of its returned checks at a location where the Federal Reserve does not currently provide courier service, the depository bank may be charged for the transportation.

Some depository banks that currently are charged by a returning bank for returned checks will begin receiving returned checks without a per item charge. Depository banks must pay, in same-day funds, for returned checks on the day the checks are received. If paying banks and returning banks that return checks directly do not wish to receive same-day payment by wire transfer, cash, or Federal Reserve net settlement, or if the paying or returning bank does not maintain an account relationship with the depository bank, the banks may agree as to the form of payment. The form of payment may be a check or an ACH payment.

Depository banks that have an on-line connection with the Federal Reserve will have to receive notifications of nonpayment through that terminal after January 1, 1989.

It is anticipated that depository banks will experience fewer returns, faster receipt of those checks that are returned, and more comprehensive notification of nonpayment on large-dollar returned checks. It is also anticipated that fewer returns will be redeposited for collection by depository banks because some paying banks will have retained the small-dollar checks for an extra two days to attempt to secure payment.

Regulation CC

Section-by-Section Analysis

The Board intends to include a section-by-section analysis with the final regulation that will be an official

commentary on the regulation and will be an official Board interpretation within the meaning of section 611(e) of the Act (12 U.S.C. 4010(e)). Accordingly, the Board requests commenters to address issues raised by the commentary as well as making comments on the regulation itself.

Subpart A—General

Section 229.1 Authority and purpose; organization.

This section summarizes the Board's authority to adopt this regulation and provides a description of how the regulation is organized.

Section 229.2 Definitions.

This section defines the terms used in the regulation. For the most part, terms are defined as they are in section 602 of the Expedited Funds Availability Act (12 U.S.C. 4001). The Board is, however, proposing changes for the sake of clarity or to conform the terminology to that which is familiar to the banking industry and defining terms that are not defined in the Act. The Board proposes to incorporate by reference the definitions of the Uniform Commercial Code where appropriate, continuing a practice adopted for Regulation J (12 CFR Part 210). Some of the Regulation CC's definitions are self explanatory and therefore are not discussed in this commentary.

Account. The Act defines account to mean "a demand deposit account or similar transaction account at a depository institution." The proposed regulation defines "account" in terms of the definition of "transaction account" in the Board's Regulation D (12 CFR Part 204). Thus the definition applies to accounts with general third party payment powers but does not cover time deposits or savings deposits, including money market deposit accounts, even though they may have limited third party payment powers. The Board believes that it is appropriate to exclude these accounts because of the reference to demand deposits in the Act, which suggests that the Act is intended to apply only to accounts that permit unlimited third party transfers. The definition proposed for Regulation CC differs from the definition of "transaction account" found in Regulation D, as the Regulation CC definition excludes deposits, such as nondocumentary obligations (see 12 CFR 204.2(a)(1)(vii)), that are not represented by accounts but that are covered under Regulation D.

The Board also proposes to exempt inter-bank deposits and accounts from Regulation CC.

Automated clearinghouse (ACH). The Board proposes to define automated clearinghouse as a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular governing automated clearinghouse items or the rules of an ACH association. ACH credit transfers are included in the definition of "electronic payment."

The reference to "credit transfers" and "debit transfers" is not meant to refer to the corresponding credit and debit entries that are part of the same transaction, but the kinds of ACH payments. In an ACH credit transfer, the originator orders that its account be debited and another account credited. In an ACH debit transfer, the originator, with prior authorization, orders another account to be debited and its account to be credited.

A facility that handles only "wire transfers" (defined elsewhere) would not be an ACH, although some organizations, for example, the New York Clearing House, operate both an ACH and a wire transfer network.

Automated teller machine (ATM) is not defined in the Act. The Board proposes to define an ATM as an electronic or mechanical device at which a natural person may make deposits to accounts by cash or check and perform other transactions. Point-of-sale terminals, machines that only dispense cash, night depositories, and lobby deposit boxes are not ATMs within the meaning of the proposed definition, either because they do not accept deposits (point-of-sale terminals) or because they only accept deposits (night depositories) and cannot perform other transactions. Deposits to night depositories and lobby boxes are treated as deposits at the teller windows of the branches of the depository banks where they are located for the purpose of determining when funds must be made available for withdrawal.

Available for withdrawal. The Act does not define what it means for funds to be "available for withdrawal." The Board proposes to define this phrase in order to clarify the Act. Under the proposal, when funds become "available for withdrawal," it means that funds may be put to any use for which the depositor may use actually and finally collected funds in the depositor's account under the depositor's account agreement with the bank. Examples of such uses include payment of checks drawn on the account, electronic payments, and cash withdrawals.

Bank. The Act uses the term "depository institution," which it defines by reference to section 19(b)(1)(A) (i)

through (vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A) (i) through (vi)). The Board proposes to use the term "bank," a term that conforms to the usage the Board has previously adopted in Regulation J. "Bank" is also the operative term in Article 4 of the Uniform Commercial Code.

"Bank" is defined to include depository institutions, as defined in the Act, and U.S. branches of foreign banks.

Unless otherwise specified, the term bank includes all of a bank's offices in the United States.

Banking day and Business day. The Act defines only "business day" and that only as any day excluding Saturdays, Sundays, and legal holidays. "Legal holiday," however, is not defined, and the variety of local holidays, together with the practice of some banks to close midweek, makes the Act's definition difficult to apply. The Board believes that two kinds of business days are relevant. First, when dealing with the day a deposit is made or a bank's duty to perform some action (such as returning a check), the focus should be on a day that the bank is actually open for business. Second, when counting days for purposes of determining when funds must be available under the regulation or for the time limits banks must meet in returning checks, there would be confusion and uncertainty in trying to follow the schedule of a particular bank, and there is less need to identify a day when a particular bank is open. Most banks that act as intermediaries (large correspondents and Federal Reserve Banks) follow the same holiday schedule. Accordingly, the Board proposes to adopt two definitions: "business day" is defined to follow the standard Federal Reserve holiday schedule (which is followed by most large banks), and "banking day" is defined to mean a business day on which a bank is open for substantially all of its banking activities.

The definition of banking day follows the definition of banking day in U.C.C. 4-104(1)(c), but changes it by defining a banking day in terms of a "business day." Thus, if a bank is open on Saturday, Saturday might be a banking day for purposes of the U.C.C., but it would not be a banking day for purposes of Regulation CC because Saturday is never a "business day" under the regulation.

Under the proposal, a bank may observe a banking day on a per branch basis. The fact that one branch is open to the public for substantially all of its banking business does not necessarily mean that that day is a banking day for other branches. For deposits made at an

ATM, if the branch of the depository bank that holds the account of the person making the deposit is open for substantially all of its banking activities on the day of deposit, that day is considered a banking day for that deposit.

Cash means U.S. coins and currency. The phrase in the Act "including Federal Reserve notes" has been deleted as unnecessary. (See 31 U.S.C. 5103.)

Cashier's check. The Board proposes to add to the second item in the Act's definition of "cashier's check" the language, "on behalf of the bank as drawer," to clarify that the term "cashier's check" is intended to cover only checks that a bank draws on itself.

Certified check. The Act defines a certified check as one to which a bank has certified that the drawer's signature is genuine and that the bank has set aside funds to pay the check. Under the Uniform Commercial Code, certification of a check means the bank's signed agreement that it will honor the check as presented (U.C.C. 3-410, 3-411). The Board proposes to define "certified check" to include both the Act's and U.C.C.'s definitions.

Check is defined in the Act as a negotiable demand draft drawn on or payable through an office of a depository institution located in the United States, excluding noncash items. The Act also mandates prompt availability for drafts drawn on the U.S. Treasury and state governments. The Board proposes to define "check" to include these items as well.

Principal and interest payments on federal debt instruments are often paid with checks drawn on a Federal Reserve Bank as fiscal agent of the United States, and these "fiscal agency checks" are indistinguishable from other checks drawn on Federal Reserve Banks. Federal Reserve checks are also used by some banks as substitutes for cashier's checks and therefore are analogous to depository checks under the regulation. Similarly, savings and loan associations often use checks drawn on Federal Home Loan Banks as substitutes for cashier's checks. The Board proposes to treat checks drawn on Federal Home Loan Banks and Federal Reserve Banks in the same manner as it treats depository checks.

The Act treats drafts payable through a bank as checks, even though under the U.C.C. the payable through bank is a collecting bank to make presentment and is generally not authorized to make payment (U.C.C. 3-120). The Act does not address items that are payable at a

bank.³ For purposes of this regulation, the Board proposes to treat both payable through and payable at demand drafts as payable by the bank designated as the payable through or payable at bank. The Board believes that treating demand drafts payable at a bank as checks will not have a substantial effect on the operations of payable at banks—by far the largest proportion of payable at items are not negotiable demand drafts, but time items, such as commercial paper, bonds, notes, bankers' acceptances, and securities. These time items are not covered by the requirements of the Act or of this regulation. (The treatment of payable through drafts is discussed in greater detail in connection with the definitions of "local check" and "paying bank.")

The Board proposes to include negotiable demand drafts, or warrants, drawn on a state government in the definition of check. The Board has not proposed to address checks drawn on local governments under paragraph (3) in the definition of check because it is not aware of any local government that draws drafts directly on itself. If any commenter is aware of a local government that draws drafts directly on itself, it should include this information in its comment.

The Board proposes to treat U.S. Postal Service money orders as checks even though under Postal Service regulations they are not negotiable. The Board does not propose to provide specific rules for other types of money orders; these instruments are generally drawn on or payable through or payable at banks and are treated as checks on that basis.

The Board proposes to treat nonnegotiable cash items as checks for purposes of Subpart C. The Board requests comment on how to treat cash items drawn on entities that are not banks for purposes of this regulation (for example private banks and industrial banks).

Check clearinghouse association follows the definition in the Act, but makes it clear that using the premises of a Federal Reserve Bank to exchange checks does not constitute the handling of checks for collection by the Reserve Bank. This provision was added

because several clearinghouses meet at Reserve Banks to exchange checks among their members.

The Act defines a clearinghouse as serving "a local area, including a metropolitan area." Some clearinghouses (for example, the California Bankers Clearing House Association), however, cover wide areas, including whole states that are served by more than one Federal Reserve office. The members of these clearinghouses may not all be "local paying banks" as contemplated by the Act. The Board requests comment on how to treat clearinghouses covering large geographic areas, and whether all participants in a clearinghouse should be regarded as local paying banks with respect to all other clearinghouse participants regardless of whether they are all located in the same check processing region.

Check processing region. The Act defines this term as "the geographic area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations." The Board proposes to adopt as the relevant check processing regions those territories served by one of the 48 Federal Reserve head offices, branches, or regional check processing centers. Appendix A lists all the Federal Reserve offices and gives the Federal Reserve routing symbols associated with each office territory. The definition of check processing region is key to determining whether a check is considered local or nonlocal.

Depository bank. The Board proposes to use this term rather than the term "receiving depository institution." "Receiving depository institution" is a term unique to the Act, while "depository bank" is the term used in Article 4 of the U.C.C. and Regulation J. "Depository bank" is therefore more familiar to the banking industry than is the Act's terminology.

A depository bank includes the bank in which the check is first deposited. If a customer deposits a check in its account at a bank, that bank is the depository bank with respect to the check. If a foreign bank sends checks to its U.S. correspondent bank for forward collection, the U.S. correspondent is the depository bank.

A bank may act as both the depository bank and the paying bank with respect to a check, if the check is drawn on, payable at, or payable through the bank in which it was deposited.

A bank is also considered a depository bank with respect to checks it receives as payee. For example, a

³ The U.C.C. provides alternative treatment for payable at items (U.C.C. 3-121). In 32 states, the payable at bank, like the payable through bank, is not authorized to pay the item solely because it is designated as the payable at bank. In 18 states, the District of Columbia, and the U.S. Virgin Islands, an item that is payable at a bank is treated as a draft drawn on that bank. Thus, under current law, a large number of payable at items are treated as drafts drawn on the payable at bank.

bank is a depository bank with respect to checks it receives for loan repayment, although these checks are not deposited in an account at the bank.

Depository check is defined in the Act to include cashier's checks, certified checks, teller's checks, "and any other functionally equivalent instrument as determined by the Board." The Board does not propose to include any other instruments in this definition.

Electronic payment is defined to mean a wire transfer or an ACH credit transfer. The Act makes no mention of ACH transfers, but the Board believes that ACH credit transfers have some of the characteristics of wire transfers and should be treated in the same manner as wire transfers. ACH debit transfers, even though they may be transmitted electronically, are not defined as electronic payments because the receiver of an ACH debit transfer has the right to return the transfer, which would reverse the credit given to the originator. Thus, ACH debit transfers are more like checks than wire transfers. Further, those that receive funds by originating ACH debit transfers are primarily large corporate customers who would generally be able to negotiate with their banks for prompt availability.

Forward collection is a term used in Subpart C. It is defined to mean the process by which a depository bank sends a check to the paying bank for payment as distinguished from the process by which the check is returned after nonpayment. Noncash collections are not included in the term "forward collection."

Local check is defined as a check drawn on, payable through, or payable at a local paying bank. A bank may rely on the routing number on a check in identifying a local check; consequently, a person can determine which checks are local by reference to the routing number. A routing number is generally printed in magnetic ink near the bottom of the check (the "MICR strip"; see American National Standards Committee on Financial Services, *Specification for the Placement and Location of MICR Printing, X9.13* (Sept. 8, 1983) hereinafter referred to as "ANSI X9.13-1983").

A check, such as a check drawn on a local bank but payable through a nonlocal bank, could have two paying banks, one local and one nonlocal, depending on how the check is collected. This definition allows the depository bank to rely on the routing number on the check, generally the payable through bank's routing number, in determining whether the check is local or nonlocal.

Appendix A is a list of routing numbers arranged by Federal Reserve Bank office to enable persons to determine whether or not a check is local.

Local paying bank is defined as a paying bank to which a check is sent for forward collection located in the same check processing region as the branch or proprietary ATM of the depository bank. (See comments on definition of "paying bank".)

Noncash item. The Act's definition of "check" states that noncash items are excluded, and defines noncash items as checks to which another document is attached or accompanied by special instructions. Under the Act, "noncash item" also includes other items as determined by the Board's regulations. The Board proposes to define "noncash item" in terms of the Federal Reserve Banks' uniform operating circular on the collection of noncash items. The proposal also defines noncash item to include checks that consist of more than a single thickness of paper (except checks that qualify for handling by automated check processing equipment, e.g. those placed in carrier envelopes) and checks that have not been preprinted or post-encoded in magnetic characters with the paying bank's routing number.

A photocopy of a check is neither a check nor a noncash item, but may be treated as either. The Federal Reserve Banks generally agree to handle a properly prepared photocopy of a check as a check if it contains a guarantee of authenticity and an indemnity by the depository bank or a collecting bank.

Paying bank. The Board proposes to use this term in lieu of the Act's "originating depository institution," and to define it, as in Regulation J (12 CFR Part 210), to include the payor bank, the payable at bank, and the payable through bank.

Under other provisions of the proposal, a bank designated as a "payable through bank" would be responsible for performing all of the duties (payment, return, notice, etc.) of the payor bank and within the same time frames. The Board believes that the Act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable through bank additional time to forward checks to the payor, and await return or pay instructions from the payor, would delay the return of these checks, increasing the risks to depository banks.

Federal Reserve Banks and Federal Home Loan Banks are also treated as paying banks with respect to checks drawn on them, even though they are

not defined as "banks" in the regulation. A state government that issues warrants drawn on itself would also be a paying bank for purposes of the regulation, and thus would be subject to the paying bank's duties under Subpart C.

Proprietary ATM. Under the temporary schedule, all deposits at nonproprietary ATMs are treated like deposits of nonlocal checks and deposits at proprietary ATMs are generally treated like deposits at banking offices. The Conference Report on the Act indicates that the special availability rules for deposits received through nonproprietary ATMs are provided because "nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits" (H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987)). Thus, during the temporary schedule, a deposit of any combination of cash and checks at a nonproprietary ATM may be treated like a deposit of nonlocal checks, because the depository bank does not know the makeup of the deposit and consequently is unable to place different holds on cash, local check, and nonlocal check deposits made at the ATM.

A colloquy between Senators Proxmire and Dodd during the floor debate on the Competitive Equality Banking Act (133 Cong. Rec. S11289 (Aug. 4, 1987)) indicated that whether a bank operates the ATM is the primary criterion to determining whether the ATM is proprietary to that bank. Since a bank should be capable of ascertaining the composition of deposits made to an ATM operated by that bank, an exception to the availability schedules is not warranted for these deposits.

The Board believes that generally ATMs are owned or operated by one bank and should be considered proprietary to that bank, even if deposits can be made by customers of other banks at that ATM. Nonetheless, the Act also includes location as a factor in determining whether an ATM that is neither owned nor operated by a bank is proprietary to that bank. Thus, the Board has included, as criteria for what constitutes a proprietary ATM, an ATM located on the premises of the bank—either inside the branch or on its outside wall. Since the Act also defines a proprietary ATM as one that is "in close proximity" to the bank, the Board proposes to define an ATM located within 50 feet of a bank to be proprietary to that bank. The Board believes that the statutory proximity test was designed to apply to situations where it would appear to the depositor that the ATM was run by its bank,

because of the proximity of the ATM to the bank. The Board believes that ATMs located within 50 feet of a banking office would be presumed proprietary to that bank unless they are clearly identified as being owned or operated by another bank.

The Board proposes to limit the applicability of this definition by stating that an ATM is not considered to be proprietary to more than one unaffiliated bank. If more than one bank meets the criteria set forth in the definition, the ATM will be considered proprietary to the bank that satisfies the criterion stated in the lowest numbered paragraph. Thus, generally an ATM will be proprietary to the bank that owns or operates it. If more than one bank meets the owns or operates criterion, the ATM shall be considered proprietary to the bank that operates it.

Qualified returned check. The proposal provides for the return of checks to the depository bank by the paying bank by the same general means used for forward collection of a check from the depository bank to the paying bank. One way to speed the return process is to prepare the returned check for automated processing. Returned checks can be automated by either the paying bank or a returning bank by placing the return in a carrier envelope or by placing a strip on the bottom of the return, and encoding the envelope or strip with the routing number of the depository bank, the amount of the check, and a special return identifier. Returns may be identified by placing a "2" in position 44 of the MICR line. (See ANSI X9.13-1983.) Generally, under the standard of care imposed by § 229.38, a paying or returning bank would be liable for any damages incurred due to misencoding of the routing number, the amount of the check or return identifier on a qualified returned check unless the error was due to problems with the depository bank's indorsement. (See also discussion of § 229.38(c).) A qualified returned check need not contain the elements of a check drawn on the depository bank, such as the name of the depository bank, as is required under the direct return provision of U.C.C. 4-212(2). Because indorsements on carrier envelopes will not appear on a returned check itself, banks will wish to retain carrier envelopes with their check records.

Returning bank is defined to mean any bank (including a Federal Reserve Bank or a Federal Home Loan Bank, but excluding the paying bank) handling a returned check under the return procedures established in Subpart C. A returning bank may or may not be a

bank that handled the returned check in the forward collection process.

Routing number. Each bank is assigned a routing number by Rand McNally & Co. as agent for the American Bankers Association. The routing number takes two forms: A fractional form and a nine-digit form. A paying bank is identified by both the fractional form routing number (which normally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink in a strip along the bottom of the check). Subpart C proposes to require banks to place their routing numbers in nine-digit form in their indorsements.

Uniform Commercial Code is defined as the version of the Code adopted by the individual states. Citations in the regulation are to the official text published by the Code's sponsors.

Wire transfer. The Act delegates to the Board the authority to define the term "wire transfer." The Board proposes to define wire transfer as an order to a bank to pay a fixed or determinable amount of money to a beneficiary. The order must unconditionally permit the bank receiving the wire transfer to pay the beneficiary. A wire transfer may be transmitted by electronic or other means. "Electronic means" include computer-to-computer links, on-line terminals, telegrams (including TWX, TELEX, or similar methods of communication), telephone calls, or other similar methods. The Board believes that Fedwire (the Federal Reserve's wire transfer network), CHIPS (Clearing House Inter-bank Payments System, operated by the New York Clearing House), and book transfers among banks or within one bank would be covered by this definition.

Subpart B—Availability of Funds

Section 229.10 Next-day availability for certain deposits.

(a) **Cash deposits.** The Act provides next-day availability for cash deposits to accounts at a depository bank "staffed by individuals employed by such institution."³ In its proposal, the Board has eliminated this condition for receipt of next-day availability for cash deposits as well as for checks subject to next-day availability under paragraph (c). Current law generally provides for next-day availability for cash deposits. (See U.C.C. 4-213(5).) The Board is not aware of any impediments to providing

next-day availability for cash deposits received at a proprietary ATM, night depository, lobby deposit box, or through the mail, but requests comment on any problems this requirement may pose for depository banks.

This provision, as well as other provisions in this subpart governing the availability of funds, provides that funds must be made available for withdrawal not later than a specified number of "business days" following the "banking day" on which the funds are deposited. Thus, a deposit is only considered made on a banking day, i.e., a day that the bank is open to the public for carrying on substantially all of its banking functions. For example, if a deposit is made at an ATM on a Saturday, Sunday, or other day on which the bank is closed to the public, the deposit is considered received on that bank's next banking day. Nevertheless, "business days" are used to determine the number of days following the banking day of deposit that funds must be available for withdrawal. For example, if a deposit of a local check were made on a Monday under the temporary schedule, which calls for availability on the third business day after deposit, funds must be made available on Thursday regardless of whether the bank was closed on Wednesday for other than a standard legal holiday as specified in the definition of "business day."

Under this provision, cash deposited in an account on a Monday, except for cash deposited at a nonproprietary ATM, must become available for withdrawal by the start of business on Tuesday.

(b) **Electronic payments.** The Act provides next-day availability for funds received for deposit by wire transfer. The regulation uses the term "electronic payment," rather than "wire transfer," because the Board is proposing that ACH credit transfers also be accorded next-day availability. (See discussion of definition of "electronic payment.")

The Act requires that funds be available for withdrawal not later than the business day following the day a wire transfer is received. This provision clarifies what constitutes receipt of an electronic payment. For the purposes of this section, receipt is determined by when the bank receives payment in finally collected funds. For example, finally collected funds generally are received for an ACH credit transfer when they are posted to the receiving bank's account on the settlement day. In the case of Fedwire, the bank receives finally collected funds at the time the payment is made. (See 12 CFR 210.36.)

³ Nothing in this regulation or in the Act affects terms of account arrangements, such as negotiable order of withdrawal accounts, that require prior notice of withdrawal. See 12 CFR 204.2(e)(2).

This provision establishes when an electronic payment is considered received. The "to the extent" language in the provision is intended to address cases where a participant on a private network fails to settle, and the bank receives finally settled funds representing only a partial amount of the payment.

(c) *Government checks, depository checks, checks drawn on the depository bank, and certain other checks.* The Act generally requires that funds be made available on the business day following deposit for Treasury checks, state and local government checks, depository checks, and "on us" checks under specified conditions. One condition to receipt of next-day availability placed on Treasury checks, state and local government checks, and depository checks is that the check must be "endorsed only by the person to whom it was issued." The Act could be interpreted to include a check that has been indorsed in blank and deposited into an account of a third party that is not named as payee. The Board believes that such a check presents greater risks than a check deposited by the payee and, therefore, proposes that funds should be available on the business day following deposit only if the check "is deposited in an account of a payee of the check."

The Board is proposing to require next-day availability for additional types of checks not addressed in the Act. Under the proposal, checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank and U.S. Postal Service money orders must be made available on the next business day following deposit if the check is deposited in an account of a payee of the check.

A check deposited in a branch of the depository bank, and drawn on the same or another branch of the same bank, must be made available at the start of the next business day if both branches are located in the same state or the same check processing region.

The Act and proposed regulation also require that \$100 of the aggregate deposit by check(s) or checks on any one banking day be made available on the next business day. For example, if \$70 were deposited in an account by check(s) on a Monday, the entire \$70 must be available for withdrawal at the start of business on Tuesday. If \$200 were deposited by check(s) on a Monday, the Act requires that \$100 of the funds be available for withdrawal at the start of business on Tuesday.

Under the Act, a depository bank may require the use of a special deposit slip as a condition to providing next-day

availability for certain types of checks. This condition was included in the Act because a number of banks determine the availability of their customers' check deposits in an automated manner by reading the MICR-encoded routing number on the deposited checks. Using these procedures, a bank can determine whether a check is a local or nonlocal check; is a check drawn on the Treasury, a Federal Reserve Bank, a Federal Home Loan Bank, or a branch of the depository bank; or is a U.S. Postal Service money order. The bank cannot require a special deposit slip for these checks. The bank, however, would not be able to distinguish whether the check was a state or local government check or a depository check by reading the MICR-encoded routing number, because these checks bear the same routing number as other checks drawn on the same bank that are not accorded next-day availability. Therefore, a bank may require a special deposit slip for these checks.

The regulation specifies that, if a bank decides to require the use of a special deposit slip as a condition to granting next-day availability and the deposit slip that must be used is different from the bank's regular deposit slips, the bank must either provide the special slips to its customers or inform its customers how such slips may be obtained and make the slips reasonably available to the customers. Providing customers with an order form for the special deposit slips and allowing sufficient time for the customer to order and receive the slips before this condition is imposed, is one way this requirement may be met. If a bank provides deposit slips in its branches for use by its customers, it should also provide the special deposit slips in the branches. If the bank simply requires the customer to segregate the checks subject to next-day availability and indicate on a regular deposit slip that government checks and/or depository checks are being deposited, the bank should so instruct its customers.

Section 229.11 Temporary schedule.

(a) *Effective date.* Checks, other than those that must be accorded next-day availability, are categorized as either local or nonlocal, with different availability schedules attached to each. These schedules will become effective on September 1, 1988, and will be superseded by more stringent schedules on September 1, 1990.

(b) *Local checks.* This paragraph sets forth the maximum hold period that can be placed on local checks during the temporary schedule. The regulation refers to the day on which funds must be

available for withdrawal as within a specified number of business days after deposit, rather than after a specified number of intervening business days, as provided in the Act. A depository bank must make funds from the deposit of a local check available on the third business day following the banking day on which the check is deposited. This requirement corresponds to the two intervening business days specified in the Act. Thus, under the temporary schedule, a local check deposited on a Monday must be available for withdrawal on Thursday, except in the case of deposits at nonproprietary ATMs and deposits to accounts in banks located outside the 48 contiguous states.

The Act provides a further adjustment to the availability rules for cash withdrawals. During the temporary schedule, the Act provides that funds from local checks collected outside a check clearinghouse arrangement need not be available for cash withdrawal until 5:00 p.m. on the day specified in the schedule. This special rule does not apply to deposits of nonlocal checks under the temporary schedule. At 5:00 p.m., \$400 of the deposit must be made available for cash withdrawal. This \$400 is in addition to the first \$100 of a day's deposit, which must be made available for withdrawal, including cash withdrawal, at the start of business on the next business day following deposit. The remainder of the funds must be available for cash withdrawal at the start of business on the business day following the business day specified in the schedule.

The Act recognizes that the \$400 that must be provided on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit, and explicitly provides that the Act does not supersede the bank's policy in this regard. The Board believes that the rationale for accommodating a bank's ATM withdrawal limit also applies to other cash withdrawal limits established by that bank. In the proposed regulation, the relation between a bank's cash withdrawal limit (for over-the-counter cash withdrawals as well as ATM cash withdrawals) and the requirements of this subpart is addressed in § 229.19(c)(4).

The Board believes that the Congress included this special cash rule to provide a depository bank with additional time to learn of the nonpayment of a check before it must make funds available to its customer. If a customer deposits a local check on a Monday, and that check is returned by the paying bank, the depository bank may receive the check on Thursday (the

day funds must be made available under the temporary schedule), but would most likely not receive the return by the opening of business on Thursday, even with the payments improvements proposed in Subpart C of this regulation. Checks written by the customer that are presented to the depository bank on Thursday are typically not posted to the customer's account until late Thursday night. Any returns that have been received on that day are debited to the customer's account before these checks are posted. Thus, for the purpose of checks written by the customer, the fact that a return is not received until sometime during the day on which funds must be made available does not increase the bank's risk. However, the depository bank's risk does increase significantly if the customer withdraws the funds in cash, because the withdrawal may occur before the return is received and posted. The intent of the special cash withdrawal rule is to minimize this risk to the depository bank.

For this rule to minimize the depository bank's risk, it must apply not only to cash withdrawals, but also to withdrawals by other means that result in an irrevocable debit to the customer's account or commitment to pay by the bank on the customer's behalf during the day. Thus, the Board proposes to expand the cash withdrawal rule to also include withdrawals by electronic payment, issuance of a depository check, or other irrevocable commitment to pay, such as authorization of an on-line point-of-sale debit. The cash withdrawal rule does not apply to checks and other provisional debits presented to the bank for payment that the bank has the right to return.

The regulation provides that Treasury checks and U.S. Postal Service money orders be treated as local checks, where the conditions to receiving next-day availability are not met. These checks are treated as local checks because they are payable at any Federal Reserve office. Thus, under this rule a Treasury check or a postal money order that is indorsed and deposited in an account not held by the payee must be made available in accordance with the schedule for local checks. Other types of checks described in § 229.10(c), such as checks drawn on a Federal Reserve Bank or Federal Home Loan Bank, state and local government checks, and depository checks, for which next-day availability does not apply (e.g., because they were not deposited in an account of a payee of the check), are treated as either local or nonlocal checks,

depending on the check processing region in which they are payable.

(c) *Nonlocal checks.* Under the temporary schedule, funds deposited by nonlocal checks must be made available for withdrawal not later than the seventh business day following the banking day the funds are deposited, except in the case of deposits at nonproprietary ATMs or in accounts of banks located outside the 48 contiguous states. Thus, funds from a nonlocal check deposited on a Monday must be available for withdrawal by Wednesday of the following week. The Act does not establish a special rule for cash withdrawals for nonlocal checks under the temporary schedule. Therefore, subject to § 229.19(c), the full amount of the deposit becomes available for cash withdrawal on the business day specified in the schedule.

Section 603(d)(1) of the Act (12 U.S.C. 4002(d)(1)) requires the Board to reduce the statutory schedules for any category of checks where most of those checks would be returned in a shorter period of time than provided in the schedules. The conferees indicated that "if the new system makes it possible for two-thirds of the items of a category of checks to meet this test in a shorter period of time, then the Federal Reserve must shorten the schedules accordingly." H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987).

Reduced schedules are proposed for certain nonlocal checks, where significant improvements can be made to the Act's schedules. Specifically, shorter schedules are provided for checks deposited in banks located in certain Federal Reserve cities and drawn on banks located in certain other Federal Reserve cities, where transportation arrangements allow for faster collection and return. In addition, shorter schedules are proposed for checks drawn on certain banks that are served by two Federal Reserve offices, and certain checks deposited in and drawn on banks in the New York City metropolitan area, where the proximity of the Federal Reserve offices facilitates faster clearing and return of these checks.

Appendix B-1 sets forth the specific reduction of schedules applicable to banks located in each check processing region.

(d) *Deposits at nonproprietary ATMs.* The Act provides a special rule for deposits made at nonproprietary ATMs. During the temporary schedule, a depository bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks. A

deposit at a nonproprietary ATM on a Monday, including a deposit by cash or checks that would otherwise be subject to next-day availability, must be made available for withdrawal not later than Wednesday of the following week.

This rule does not apply to deposits made at proprietary ATMs. Availability of deposits at proprietary ATMs is governed by the same rules as deposits made directly at branches of depository banks.

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The Act provides an extension of the availability schedules for banks located in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. The schedules for local checks, nonlocal checks, and deposits at nonproprietary ATMs are extended by one business day for checks deposited to accounts in banks located in these jurisdictions that are drawn on or payable at or through a paying bank not located in the same jurisdiction as the depository bank. For example, a check deposited in a bank in Hawaii and drawn on a San Francisco paying bank must be made available for withdrawal not later than the fourth business day following deposit. This extension does not apply to deposits that must be made available for withdrawal on the next business day.

The Congress did not provide this extension of the schedules to checks drawn on a paying bank located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands and deposited in an account at a depository bank in the 48 contiguous states. Therefore, a check deposited in a San Francisco bank drawn on a Hawaii paying bank must be made available for withdrawal not later than the third business day following deposit.

The availability rules of § 229.11 are illustrated in Figure 1.

Section 229.12 Permanent schedule.

(a) *Effective date.* The permanent schedule will supersede the temporary schedule on September 1, 1990. The Board requests comment on whether the permanent schedule should be made effective on an earlier date.

(b) *Local checks.* When the permanent schedule becomes effective, local checks and Treasury checks and U.S. Postal Service money orders not subject to next-day availability under § 229.10(c) must be made available for withdrawal not later than the second business day following deposit. Exceptions are made for withdrawals by cash or similar means, deposits at nonproprietary ATMs, and deposits in banks located

outside the 48 contiguous states. Thus, the proceeds of a local check deposited on a Monday must be made available for withdrawal on Wednesday.

(c) *Nonlocal checks.* Under the permanent schedule, the time period for availability of nonlocal checks is also reduced. Nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit, i.e., proceeds of a nonlocal check deposited on a Monday must be made available for withdrawal on the following Monday. Adjustments are made to the schedule for withdrawals by cash or similar means, deposits at nonproprietary ATMs, and deposits in banks located outside the 48 contiguous states.

As described in the discussion of § 229.11(c), the Board is required to shorten the schedules for any category of check where most of those checks can be returned to the depository bank in a shorter period of time than provided in the schedule. Appendix B sets forth the reductions to the schedule for certain nonlocal checks.

(d) *Time period adjustment for withdrawal by cash or similar means.* Unlike the temporary schedule, the Act applies the special cash withdrawal rule to both local and nonlocal checks under the permanent schedule. The Board's proposed regulation implementing this rule is described in the discussion of the temporary schedule at § 229.11(b). In the permanent schedule, if the proceeds of local and nonlocal checks become available for withdrawal on the same business day, the withdrawal limitation applies to the aggregate amount of the funds.

(e) *Deposits at nonproprietary ATMs.* This provision provides a limited exception to the permanent schedule for deposits at nonproprietary ATMs. Cash and checks subject to next-day availability under § 229.10 that are deposited in an account at a nonproprietary ATM must be available for withdrawal not later than the second business day following the banking day on which the deposit was made. Other deposits at nonproprietary ATMs must be made available in accordance with the schedule in the regulation applicable to the category of check being deposited.

Section 603(e)(4) of the Act directs the Board to "establish and maintain a dialogue" with banks and ATM vendors regarding the ability of ATM systems to communicate to the depository bank the composition of a deposit made at a nonproprietary ATM. The Board requests comment on how depository banks plan to comply with the availability schedules for deposits made

at nonproprietary ATMs under the permanent schedule.

(f) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The extension of the availability schedules provided to banks located in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands under the temporary schedule also applies when the permanent schedule becomes effective. Explanation of this provision is provided in the discussion of § 229.11(d).

The availability rules of § 229.12 are illustrated in Figures 2 and 3.

Section 229.13 Exceptions.

While certain safeguard exceptions (such as those for new accounts and checks the bank has reasonable cause to believe are uncollectible) are established in the Act, the Congress gave the Board the discretion to determine whether certain other exceptions should be included in these regulations. Specifically, the Act gives the Board the authority to establish exceptions to the schedules for large or redeposited checks and for accounts that have been repeatedly overdrawn. These exceptions do not apply to checks or other deposits that must be accorded next-day availability under § 229.10.

Although proposed improvements to the check collection system will accelerate the return of most checks, many checks will not be returned to the depository bank by the time funds must be made available for withdrawal under the temporary schedule—a number that will likely increase when the permanent schedule is adopted. In order to reduce risk to depository banks, the Board believes that it is appropriate to adopt the exceptions to the schedules permitted by the Act in the regulation to allow the bank to extend the time within which it is required to make funds available. The exceptions provided in this section apply to the schedules for local and nonlocal checks during the temporary and permanent schedules, and, in some cases, to the next-day availability requirement for certain check deposits.

The Act also gives the Board the authority to suspend the schedules for any classification of checks, if the schedules result in an unacceptable level of fraud losses. The Board will adopt regulations to implement this statutory authority, if and when circumstances requiring its implementation arise.

(a) *New accounts.* The Act provides an exception to the availability schedule for new accounts. An account is defined as a new account during the first 30 calendar days after the account has

been established. However, if the customer opening the account has an established transaction account relationship with the bank, or has had an established transaction account relationship with the bank within 30 calendar days of opening the other account, the newly established account would not be subject to this exception.

Thus, if a customer that has had one account with a bank for more than 30 days opens a second account with that bank, that customer would not be considered a new depositor during the first 30-day period following the establishment of the second account.

If a customer's account was closed and another account established as a successor to the original account (due, for example, to the theft of checks or a debit card used to access the original account), the customer would not be considered a new depositor with regard to the successor account, assuming the original account relationship is at least 30 days old. Similarly, if a customer closed an established account and opens a separate account within 30 days, the new account is not subject to this exception, if the closed account was at least 30 days old.

A customer that has a joint account at a depository bank and subsequently establishes an individual account with that bank would not be a new depositor, assuming the joint account relationship is at least 30 days old.

If a customer establishes an account with a depository bank with which it has no other current or recent account relationship, that customer is considered a new depositor and may be subject to the new account exception for the first 30 days of the account relationship. During the new account period, the schedules for local and nonlocal checks do not apply, but deposits received by cash and electronic payment must be given next-day availability in accordance with § 299.10. The first \$5,000 of funds deposited to a new account on any one banking day by Treasury checks, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, U.S. Postal Service money orders, state and local government checks, and depository checks must be made available for withdrawal at the start of business on the following business day. Funds in excess of the first \$5,000 deposited by these types of checks on a banking day must be available for withdrawal not later than at the start of business on the ninth business day following the banking day of deposit. For the purposes of new accounts only, traveler's checks are treated as depository checks.

(b) *Large deposits.* A depository bank may extend the hold placed on local and nonlocal check deposits only to the extent that the amount of the aggregate deposit on any banking day exceeds \$5,000. While the first \$5,000 of a day's deposit is subject to the availability provided for local or nonlocal checks, the amount in excess of \$5,000 may be held for an additional four business days, as provided in § 229.13(h). Deposits by cash, electronic payment, or checks that must be granted next-day availability under the regulation are not subject to this exception for large deposits.

Where a customer has multiple accounts with a depository bank, the bank may apply the large-dollar deposit exception to the aggregate deposits to all of the customer's accounts, if the holders of the accounts to be aggregated are the same. Thus, a depository bank may aggregate the deposits made to two separate accounts at that bank held by the same individual. A bank, however, may not aggregate the deposits of an individual and a joint account for the purpose of applying the large-dollar deposit exception, because the holders of the accounts are not the same. Aggregation of deposits to multiple accounts is proposed because the Board believes that the risk to the depository bank associated with large deposits is similar regardless of how the deposits are allocated among the customer's accounts.

(c) *Redeposited checks.* The Act gives the Board the authority to promulgate an exception to the schedule for checks that have been returned unpaid and redeposited. The proposal provides such an exception for checks that have been returned unpaid and redeposited by the customer or the depository bank.

The Board proposes this exception because there is an increased risk to the depository bank that checks that have been returned once will be uncollectible when they are presented to the paying bank a second time. The Board, however, does not believe that this increased risk is present for checks that have been returned due to a missing indorsement. Thus, the exception being proposed does not apply to checks returned unpaid due to missing indorsements and redeposited after the missing indorsement has been obtained, if the reason for return stamp on the check states that it was returned due to a missing indorsement. For the same reasons, this exception does not apply to a check returned because it was postdated (future dated), if it is no longer postdated when redeposited. In the cases of both checks with missing

indorsements and postdated checks, the time for making the funds available begins to run again as of the date of redeposit.

(d) *Repeated overdrafts.* The Act gives the Board the authority to establish an exception for "deposit accounts which have been overdrawn repeatedly." While the Act does not indicate how this rule should operate, the conferees stated that they believe that a reasonable definition would be one that specifies that an account (or a successor account) be overdrawn at least on 3 separate and distinct occasions within any 6 month period. The funds availability schedule would not apply to any such account for a period of six months following the last occasion involved.

H.R. Rep. No. 261, 100th Cong. 1st Sess. at 181. (1987).

The proposed regulation generally adopts this standard for determining the accounts that are subject to the repeated overdraft exception. The Board proposes that, if on three instances in any six-month period any account or combination of accounts of the customer goes from a positive balance to a negative balance, or would have done so if checks or other charges against the account were paid rather than returned, the exception would apply. Any three consecutive banking days during which the account had a negative balance due to a continuing overdraft, or would have had a negative balance due to the presentment of additional checks on any of the three days, are considered part of the same instance. If the account has or would have had a negative balance for more than three consecutive banking days, each consecutive three banking-day period constitutes a separate instance. Thus, an overdraft continuing for four banking days is two instances. The Board requests comment on this approach to determining whether an account is subject to the repeated overdraft exception.

The exception relates not only to accounts subject to check overdrafts, but also accounts subject to check or other debit items (such as ACH debits or point of sale transactions) of amounts in excess of available funds, regardless of whether the items were paid or returned unpaid. The exception excludes accounts with overdraft lines of credit, unless the credit line has been exceeded.

(e) *Reasonable cause to doubt collectibility.* A depository bank may extend the hold placed on funds in a customer's account from the deposit of a local or nonlocal check, a check drawn on a Federal Reserve Bank or Federal Home Loan Bank, or a depository check,

if the bank has reasonable cause to believe the check is uncollectible. For example, if the bank received a notification from the paying bank that a check was not paid and is being returned to the depository bank, the depository bank would have a basis to apply this exception. The exception could be invoked even if the notice were incomplete, if the bank had reasonable cause to believe that the notice applied to a particular check. The fact that a check is deposited more than six months after the date on the check is a reasonable indication that the check may be uncollectible, because under U.C.C. 4-404 a bank has no duty to its customer to pay a check that is more than six months old. A bank could also reasonably conclude that a check being deposited is uncollectible based on its reasonable belief that the depositor is engaging in kiting activity. Reasonable belief as to the insolvency of the drawer or drawee may also trigger this exception. Other facts may give a bank reasonable cause to doubt the collectibility of a check. The Board does not intend to provide a comprehensive list of the cases in which this exception may be invoked. If this exception is invoked, the bank must include in the notice to its customer, required by § 229.13(g), the reason that the bank believes that the check is uncollectible.

The regulation provides that the determination that a check is uncollectible shall not be based on a class of checks or persons. For example, a depository bank cannot invoke this exception simply because the check is drawn on a paying bank in a rural area and the depository bank knows it will not have the opportunity to learn of nonpayment of that check before funds must be made available under the availability schedules. Similarly, a depository bank cannot apply the reasonable cause exception based on the race or national origin of the depositor.

If a depository bank invokes this exception with respect to a particular check and does not provide a written notice to its customer at the time of deposit, the depository bank may not assess any overdraft fee (such as an NSF charge) or charge interest for use of overdraft credit, if the check is finally paid by the paying bank and these charges would not have occurred had the exception not been invoked.

(f) *Emergency conditions.* Certain emergency conditions may arise that delay the collection or return of checks, or delay the processing and updating of customer accounts. In the circumstances specified in this paragraph, the

depository bank may extend the holds that are placed on deposits of local and nonlocal checks that are affected by such delays, if the bank exercises such diligence as the circumstances require.

(g) *Notice of exception.* If a depository bank invokes any of the safeguard exceptions to the schedules listed above, other than the new account exception, and extends the hold on a deposit beyond the time periods permitted in §§ 229.10, 229.11, and 229.12, it must provide a notice to its customer stating the reason the exception was invoked and the day funds will be available for withdrawal.

The requirement that the notice state the day the funds shall be made available may be satisfied if the date the deposit is received and the number of days until funds are available for withdrawal are provided in the notice. Appendix C contains a model form of this exception notice.

For deposits made in person to an employee of the depository bank, the notice generally must be given to the customer at the time of deposit. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, or through the mail, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made.

Notice to the customer may be provided at a later time, if the facts upon which the determination to invoke the exception do not become known to the depository bank until after notice would otherwise have to be given. In these cases, the bank must mail the notice to the depositor as soon as practicable, but not later than the business day following the day the facts become known. The Board has clarified in the regulation when a depository bank is deemed to have knowledge of the facts upon which the determination is made. A bank is deemed to have knowledge when the facts are brought to the attention of the persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

If the depository bank extends the hold placed on a deposit due to an emergency condition, the regulation provides that the bank need not provide a notice if the funds would be available for withdrawal before the notice must be sent. For example, if on the last day of a hold period the depository bank experiences a computer failure and customer accounts cannot be updated in a timely fashion to reflect the funds as available balances, notices are not

required, if the funds are made available before the notices must be sent.

(h) *Availability of deposits subject to exceptions.* Section 604(f) of the Act (12 U.S.C. 4003(f)) provides that holds placed on deposits subject to an exception (other than the new account exception) "shall not exceed a reasonable period of time as determined by the Board." If a depository bank invokes any exception other than the new account exception, the bank may extend the period of time within which funds must be made available under the schedule by four business days. With respect to checks subject to the next-day availability requirement, the depository bank may extend the time funds must be made available for withdrawal by four business days beyond the delay that would have been applicable had the checks not been subject to the next-day availability requirement. Thus, for depository checks, state and local government checks, and checks drawn on Federal Reserve Banks or Federal Home Loan Banks, the four business days are added to the local or nonlocal schedule that would apply based on the location of the paying bank.

Under an improved check collection system, these four business days, in addition to the time period provided in the schedule, should provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned.

In the case of the application of the emergency conditions exception, the depository bank may extend the hold placed on a check by not more than four business days following the end of the emergency.

Section 229.14 Payment of interest.

(a) *In general.* This section requires that a depository bank begin accruing interest on interest-bearing accounts not later than the day on which the depository bank receives provisional credit for the funds deposited. Because "account" includes only transaction accounts, other interest-bearing accounts of the depository bank, such as money market deposit accounts, savings deposits, and time deposits, are not subject to this requirement. The Board intends the term interest to refer to payments to or for the account of any depositor as compensation for the use of funds, but to exclude the absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service. (See 12 CFR 217.2(d).)

It may be difficult for a depository bank to track which day the depository bank receives provisional credit for specific checks in order to accrue

interest properly on the account to which the check is deposited. This difficulty may be pronounced if the bank uses different means of collecting checks based on the time of day the check is received, the dollar amount of the check, and/or the paying bank to which it must be sent. The Board proposes that, for the purpose of the interest accrual requirement, a bank may rely on an availability schedule from its Federal Reserve Bank, Federal Home Loan Bank, or correspondent in determining when the depository bank receives provisional credit. A bank that accrues interest from the day of deposit, or from the day following deposit, meets this payment of interest requirement.

(b) *Special rule for credit unions.* The Act provides an exemption from the payment of interest requirements for credit unions that do not begin to accrue interest or dividends on their customer accounts until a later date than the day the credit union receives provisional credit for those deposits, including cash deposits. These credit unions are exempt from the payment of interest requirements, as long as they provide notice of their interest accrual policies in accordance with § 229.18(f). For example, if a credit union has a policy of computing interest on all deposits received by the 10th of the month from the first of that month and all deposits received after the 10th of the month from the first of the next month, that policy is not superseded by this regulation, if the credit union provides proper disclosure of this policy to its customers.

The Act limits this exemption to credit unions; other types of depository institutions must comply with the payment of interest requirements. In addition, credit unions that now compute interest from the day of deposit or day of provisional credit should not change their existing practices in order to avoid compliance with the requirement that interest accrue from the day of provisional credit.

(c) *Exception for checks returned unpaid.* This provision is based on section 606(c) of the Act (12 U.S.C. 4005(c)) and provides that interest need not be paid on funds deposited in an interest-bearing account by check that has been returned unpaid.

Section 229.15 General disclosure requirements.

(a) *Form of disclosures.* This paragraph sets forth the general requirements for the disclosures required under Subpart B. All of the disclosures must be given in a clear and conspicuous manner, be in writing, and, in most cases, be in a form the customer

may keep. The required disclosures at branch locations, at ATMs, and on preprinted deposit slips need not be in a form that the customer may keep.

The regulation requires that the availability disclosures be grouped together and not contain any information that is not directly related to the disclosures required by this subpart. Therefore, banks may not intersperse the required availability disclosures with other account disclosures or include other account information that is not related to their availability policy within the text of the required disclosures. Banks may, however, include information related to their availability policies. For example, a bank may include a notice to their customers stating that, even though the bank has made funds available, the customer is still responsible if there is a problem with the deposit, such as the return of a deposited check.

The regulation does not require that the disclosures be segregated from other account terms and conditions. Banks may include the required disclosures in a booklet or pamphlet that sets out the terms and conditions of the bank's accounts. The required disclosures must, however, be grouped together and highlighted or identified in some manner, for example, by use of a separate heading for the disclosures.

(b) *Uniform reference today of availability.* This paragraph requires banks to disclose their availability policies to customers in a uniform manner. Banks that delay availability must disclose when deposited funds are available for withdrawal by stating the business day on which the customer may begin to withdraw funds. The business day funds will be available must be disclosed as "on the business day after" the day of deposit, or substantially similar language. The business day of availability is determined by counting the number of business days starting with the business day following the banking day on which the deposit is received, as determined under § 229.19(a), through the business day on which the customer may begin to withdraw funds. For example, an institution that imposes delays of four intervening business days for nonlocal checks must describe those checks as being available "on the fifth business day after" the day of the deposit. This requirement is intended to enable customers to compare more easily the availability policies of different banks and minimize the possibility of confusion about the policies of various banks.

(c) *Multiple accounts and multiple account-holders.* This paragraph

clarifies that banks need not provide multiple disclosures under the regulation. A single disclosure to a customer that holds multiple accounts, or a single disclosure to one of the account holders of a jointly-held account, satisfies the disclosure requirements of the regulation.

(d) *Dormant or inactive accounts.* This paragraph provides that banks need not provide disclosure of their specific availability policy to accounts that are dormant or inactive, and thus do not receive mailings from the bank. The Board believes that this provision will avoid imposing significant costs on banks, while not significantly reducing the protections of the law. The other disclosure requirements—disclosures at locations where deposits may be made, disclosures at ATMs, and disclosures on preprinted deposit slips—should ensure that these customers are made aware of the possibility of delays in availability, if they choose to use the dormant or inactive account in the future. The regulation also requires that the customer be given a full statement of the bank's availability policy upon an oral or written request.

Section 229.16 Content of specific availability policy disclosure.

(a) *Specific availability policy disclosure.* This section describes the information that must be disclosed by banks to comply with §§ 229.17 and 229.18(d) requiring that banks furnish a notice of their specific policy regarding availability of deposited funds. The information that must be disclosed by banks will vary considerably depending upon a bank's particular availability policy. For example, a bank that does not delay availability beyond the next business day need simply disclose that deposited funds will be available for withdrawal on the business day following the banking day of deposit, the bank's business days, and when deposits are considered received. On the other hand, a bank that routinely delays availability on a blanket basis up to the maximum time allowed under the federal law—that is, automatically imposes delays on most check deposits, with the length of the delay determined by the type and routing number of the check being deposited—must provide a more complex disclosure. These latter banks must provide all of the information set forth in this section, including the types of deposits that will be subject to delays, how the customer can determine the type of deposit being made, and the corresponding length of any delay. The bank is also required to include a brief summary of its policy at the beginning of the disclosure and to

describe any circumstances when actual availability may vary from the schedules disclosed. Such circumstances would arise, for example, when the bank invoked one of the exceptions set forth in the statute and regulation.

(b) *Alternate disclosure for banks that have case-by-case hold policies.* The Board believes that numerous banks currently do not routinely delay the availability of deposited funds. Normally, these banks provide customers with immediate or next-day availability for deposited funds, and impose delays only in special circumstances—determined on a case-by-case basis. Often these banks provide the customer with notice of any delay at the time the deposit is made.

Banks with case-by-case hold policies may find it difficult, if not impossible, to develop a disclosure that tells the customer specifically when a deposit will be subject to a delay—in fact, the nature of the bank's policy essentially precludes such a disclosure. In order to be able to give a specific notice to the customer of when deposited funds will be subject to a delay in availability, as required, for example, before opening new accounts, these banks may find it necessary to discontinue the practice of imposing holds on a case-by-case basis and instead begin routinely to delay availability on specific types of checks (essentially adopting an automatic or blanket delay policy). The Board believes that such a result would be adverse to many bank customers. Also, banks would incur substantial costs not only in making disclosures, but also in developing and implementing new availability policies.

Accordingly, this paragraph allows banks that delay availability of deposited funds on a case-by-case basis to continue the practice by setting forth a disclosure alternative for such banks. Banks with case-by-case hold policies must still provide a specific policy disclosure; but, their disclosure need not be as detailed as that required by paragraph (a). Specifically, these banks need not give disclosures that allow customers to determine when a hold, in fact, will be placed on a deposit. In addition to disclosure of their specific availability policy, banks with case-by-case hold policies must give customers a notice when availability of funds from a deposit will be delayed. The bank must give the notice at the time of the deposit, if the deposit is made directly to a bank employee. If the deposit was not made directly to a bank employee—for example, if the deposit were by mail—the bank must send customers a notice on the day the deposit is received. This

notice must indicate both that a delay is being imposed and the day the funds will be available. By requiring that banks provide a notice of delay at the time a deposit is made, the Board intends to ensure that customers will know with specificity when deposited funds that are being delayed will be available.

In some situations a bank employee accepting a deposit from a customer may not know whether a deposit will, in fact, be held, but knows that the deposit needs to be reviewed by another bank employee that is unavailable at that time. The regulation includes special rules to avoid placing the bank in the position of refusing to accept the deposit, or requiring the customer to wait for notice of whether the deposit will be subject to a delay. A bank may notify the customer that availability of funds will be delayed after the time of the deposit, even though the deposit was made directly to a bank employee, if two conditions are met. First, the bank must notify the customer at the time of the deposit that the deposit may be subject to a delay. Second, the bank must notify the customer on the day of the deposit if a delay is imposed and tell the customer the day funds will be available for withdrawal. The bank may not meet this notification requirement by mailing a notice to the customer; the customer must receive the notice of the delay on the day of the deposit.

A bank that imposes holds on a case-by-case basis is still subject to the availability requirements of this subpart. If the bank imposes a hold on a particular deposit that is not longer than the availability required by §§ 229.11 or 229.12 for local and nonlocal checks, the reason for the hold need not be based on the exceptions provided in § 229.13. If the hold exceeds the time periods permitted under §§ 229.11 or 229.12, however, it must be based on an exception provided in § 229.13, and the bank must comply with the § 229.13 notice and time requirements.

Section 229.17 Initial disclosures.

(a) *Notice for new accounts.* This paragraph requires banks to provide a notice of their availability policy to all potential customers prior to opening an account. The Board believes that the requirement of a notice prior to opening an account requires banks to provide disclosures prior to accepting any deposit to open an account. If a bank, however, receives a written request by mail from a person asking that an account be opened that includes an initial deposit, the bank may open the account provided the bank mails the required disclosures to the customer not

later than the business day following the banking day on which the bank receives the deposit.

(b) *Existing accounts.* This section requires banks to send a notice of their specific policy with respect to the availability of deposited funds to all existing account customers in the first scheduled mailing to customers occurring after September 1, 1988. The notice must be sent not later than October 31, 1988 (60 days after the effective date of the law). Thus, banks must include a notice in the first statement mailing to customers after September 1, 1988, unless the bank has provided a notice to its customers of its availability policy that meets the requirements of § 229.16 prior to the mailing of this statement.

Banks may not furnish the required notice to customers by including the notice with promotional material, such as a solicitation for health or hospitalization insurance, unless that material is included with the account statement. A bank is permitted to provide the notice by furnishing the customer with a booklet or pamphlet that describes the terms and conditions of the bank's accounts generally. The bank, however, must then direct the customer's attention to the disclosures required by this section of the regulation by, for example, use of a special insert or a letter.

Section 229.18 Additional disclosure requirements.

(a) *Notice on deposit slips.* This paragraph requires banks that delay availability on deposits to include a notice on all preprinted deposit slips furnished to customers. This notice must indicate that deposited checks may not be available for immediate withdrawal. The notice is required only on preprinted deposit slips—those printed with the customer's account number and name. A bank need not include the notice on those special deposit slips that are used to identify deposits that will be available the next business day after deposit under § 229.10(c).

(b) *Notice at branch locations.* This paragraph describes the statutory requirement that a bank post a notice of availability policies pertaining to consumer accounts at each location where its employees receive consumer deposits. The notice that is required must specifically state the availability periods for the various deposits that may be made to consumer accounts. A notice need not be posted at each teller window, but the notice must be posted in a place where consumers seeking to make deposits will likely see it before making their deposit. For example, the

notice might be posted in the lobby at the point where the line forms for teller service. A notice is also required to be posted at any drive-through teller windows. The notice need not be provided at locations where consumer deposits are not accepted.

(c) *Notice at or on ATMs.* This paragraph sets forth the required notices for ATMs. An owner or operator of an automated teller machine, at which deposits may be made that may be subject to delays in availability, must post or provide a notice at each ATM location or on each ATM. This notice may be posted on a sign, may be shown on the screen, or may be included on the deposit envelopes that must be used to make deposits into the machine. This disclosure must be given before the customer has made the deposit. Therefore, a notice provided on the customer's deposit receipt or appearing on the ATM's screen after the customer has made the deposit would not satisfy this requirement.

If an ATM is nonproprietary with respect to some users of the ATM, a notice must be provided at the ATM that identifies the bank(s) for which the ATM is proprietary, and that deposited funds may not be available until the seventh business day after the day of deposit.

(d) *Disclosure upon request.* This paragraph requires banks to provide written notice of their specific availability policy to any person upon that person's oral or written request. This provision does not contain a time period within which such notice shall be given, but it should be sent within a reasonable period of time following receipt of the request.

(e) *Changes in policies.* This paragraph sets forth the Act's requirement that banks send notice to their customers when they change their availability policies. Generally, banks must send a notice at least 30 calendar days before implementing any change in their availability policy. If the change results in faster availability of deposits—for example, if the bank changes its availability for nonlocal checks from the fifth business day after deposit to the fourth business day after deposit—the bank need not send advance notice. The bank must, however, send notice of the change within 30 calendar days after the change is implemented. A change-in-terms notice may be given in any form as long as it is clear and conspicuous. If the bank gives notice of a change by sending the customer a new availability disclosure, the bank must direct the customer to the changed terms in the disclosure by use of a letter or insert, or

by highlighting the changed terms in the disclosure.

(f) *Notice of interest payment policy.* This paragraph sets forth the special disclosure requirement for credit unions that delay accrual of interest or dividends for all cash and check deposits beyond the date of receiving provisional credit for checks being deposited. (The interest payment requirement is set forth in § 229.14(a).) The credit union is required to describe its policy with respect to accrual of interest or dividends on deposits.

Section 229.19 Miscellaneous.

(a) *When deposits are considered made.* The time funds must be made available under the regulation is determined by the day the deposit is made. This paragraph provides that a deposit mailed to the depository bank is considered made when it is received by the depository bank. This paragraph also provides that a deposit received on a day that the bank is closed, or after the bank's cut-off hour, is considered made on the next banking day. Different cut-offs may be established for different types of deposits. For example, a bank may establish a 2:00 p.m. cut-off for the receipt of check deposits, but a later cut-off for the receipt of wire transfers. Different cut-offs may also be established for deposits received at different locations. For example, a different cut-off time may be established for ATM deposits than for over-the-counter deposits. However, no cut-off hour can be earlier than 2:00 p.m. local time.

(b) *Availability at start of business day.* Except for withdrawals governed by the special rule for withdrawal by cash or similar means set forth in §§ 229.11(b)(2) and 229.12(d), if funds must be made available for withdrawal on a business day, the funds must be available for withdrawal by the later of 7:00 a.m. or the time the depository bank's teller facilities, including ATMs, are available for customer transactions. Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 9:00 a.m., funds must be available for customer withdrawal beginning at 9:00 a.m. If the bank, however, has ATMs that are available 24 hours a day, rather than establishing 12:01 a.m. as the start of the business day, this paragraph sets 7:00 a.m. as the start of the day with respect to ATM withdrawals. The Board believes that this rule provides banks with sufficient time to update their accounting systems to reflect the available funds in customer accounts for that day.

(c) *Effect on policies of depository bank.* This subpart establishes the maximum hold that may be placed on customer deposits. A depository bank may provide availability to its customers in a shorter time than prescribed in this subpart. A depository bank may also adopt different funds availability policies for different segments of its customer base, as long as each policy meets the schedules in the regulations. For example, a bank may differentiate between its corporate and consumer customers, or may adopt different policies for its consumer customers based on whether the customer has an overdraft line of credit associated with the account.

This regulation does not affect a depository bank's right to accept or reject a check for deposit. If a check is accepted for deposit and subsequently returned, the depository bank has the right to charge-back its customer's account, or to recover the amount of the check from the customer if sufficient funds are not in the customer's account to cover the amount of the returned check.

Nothing in the regulation requires a depository bank to have facilities open for customers to make withdrawals at specified times or on specified days. For example, even though the regulation 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. The bank complies with this regulation 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.

The special cash withdrawal rule in the Act recognizes that the \$400 that must be made available for cash withdrawal by 5:00 p.m. on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit and explicitly provides that the Act does not supersede a bank's policy in this regard. As a result, if a bank has a policy of limiting cash withdrawals from automated teller machines to \$250 per day, the regulation would not require that the bank disburse \$400 of the customer's deposit that must be made available for cash withdrawal.

Even though the Act clearly provides that the bank's ATM withdrawal limit is not superseded by the federal availability rules on the day funds must first be made available, the Act does not specifically apply this rule to withdrawals made at ATMs on subsequent days, when the entire amount of the deposit must be made available for withdrawal. The Board believes that the rationale behind the Act's provision that a bank's ATM withdrawal limit is not superseded by the requirement that funds be made available for cash withdrawal applies on subsequent days and to other types of cash withdrawal. A number of small credit unions, due to lack of secure facilities, keep no cash on hand and hence offer no cash withdrawal capability to their customers. Other institutions limit the amount of cash on their premises due to bonding requirements and consequently reserve the right to limit the amount of cash each customer can withdraw on a given day. Nothing in the regulation is intended to prevent a bank from limiting the amount of cash withdrawals if the bank has a policy limiting the amount of cash that may be withdrawn, and that policy is applied equally to all customers of the bank, is based on security or bonding requirements, and is not dependent on the length of time the funds have been in the customer's account, as long as the hold has expired. This limitation could apply to staffed teller facilities as well as ATMs. The regulation, however, does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

(d) *Use of calculated availability.* Depository banks may provide availability to their nonconsumer accounts, or determine the day from which interest must accrue on those accounts, on a calculated availability basis. 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. Use of calculated availability is permitted in order to determine when interest must be paid on deposited funds only if, on average, the calculated availability results in interest being computed from the time provisional credit is actually received on the average deposit of the nonconsumer customer.

(e) *Limitation on placing holds on certain funds in accounts.* Section 607(d) of the Act (12 U.S.C. 4006(d)) provides that once funds are available for withdrawal under the Act, such funds shall not be frozen solely due to the subsequent deposit of additional checks that are not yet available for withdrawal. This provision of the Act is designed to prevent evasion of the Act's availability requirements.

The regulation clarifies that, if the 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 funds that are held are made available for withdrawal within the times required in this subpart.

If a customer cashes over-the-counter a check drawn on another bank, the bank may hold funds in the customer's account for the amount of the check, as long as the hold does not exceed the hold that could be placed on that check, if the check had been deposited in the account.

(f) *Employee training and compliance.* The Act requires banks to take such actions as may be necessary to inform fully each employee that performs duties subject to the Act of the requirements of the Act, and to establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

This provision provides guidance to banks regarding their employee training and compliance requirements. Each bank must provide a statement of the requirements of this subpart to all employees that perform duties that relate to the bank's compliance with these requirements. Banks must also establish procedures to ensure compliance with these requirements and provide these procedures to the employees responsible for carrying them out. In addition, a bank must conduct an audit at least annually to determine its compliance with the procedures it established.

Section 229.20 *Relation to state law.*

(a) *In general.* A number of states have enacted laws that govern when banks in those states must make funds available to their customers. The Act provides that any state law in effect on September 1, 1989, that provides for more prompt availability than provided in this regulation will supersede the time periods in the Act and the regulation. The Conference Report on the Act clarifies this provision by stating that any state law enacted on or before September 1, 1989, may supersede federal law to the extent that the law

relates to the time funds must be made available for withdrawal. H.R. Rept. No. 261, 100th Cong. 1st Sess. at 182 (1987).

Thus, if a state wishes to adopt a law governing funds availability, it must do so by September 1, 1989. Laws adopted after that date will not supersede federal law, even if they provide for shorter availability periods than are provided under federal law. If a state that has a law governing funds availability in effect before September 1, 1989 amends its law after that date, the amendment will not supersede federal law. If a state provides for 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 their holds on whether the check being deposited is drawn on an in-state or out-of-state institution. If a state is located in 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. Thus, the state schedule would supersede the federal schedule to the extent that it applies to in-state, nonlocal checks.

The Act also provides that any state law that provides for 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. This provision subjects federally chartered institutions only to those provisions of state law governing the time funds must be available for withdrawal; it does not subject federally chartered institutions to state disclosure requirements. Federally chartered institutions will be subject to state availability requirements on September 1, 1988, when the Act becomes effective.

(b) *Preemption of inconsistent law.* This paragraph reflects the statutory provision that other provisions of state law are preempted that are inconsistent with federal law.

(c) *Preemption determinations.* The Board will issue preemption determinations upon the request of an interested party in a state. The determinations will relate only to the provisions of Subpart B; generally the Board will not issue individual preemption determinations regarding the relation of state U.C.C. provisions to the requirements of Subpart C.

(d) *Standards for preemption.* The Board has proposed certain standards that will be used in making determinations on whether federal law will preempt state laws governing funds availability in effect prior to September 1, 1989. State law will be considered inconsistent with federal law if it

provides for a longer hold than is provided for under federal law.

State law will also be deemed inconsistent, and thus will be preempted, if it provides for an exception to its availability schedule that addresses the same situation as the federal exception, but in a different manner. For example, if a state provides an exception to its schedules to address risk related to large-dollar checks or large-dollar deposits that is different from the federal exception for deposits in excess of \$5,000, the state exception is preempted by the federal exception. Thus, a state law that provides an exception for checks of \$2,500 or greater would be preempted by the federal large-dollar deposit exception.

(e) *Procedures for preemption determinations.* This provision sets forth the information that must be included in a request by an interested party for a preemption determination by the Board. Given the short lead time between spring 1988, when the Board anticipates that it will finalize this proposed regulation, and the September 1, 1988 effective date, the Board will accept requests for preemption determinations before the regulation becomes final. If an interested party requests a preemption determination prior to the final approval of this regulation, the comparison of the state law provisions with the provisions of the Act and regulation should be based on the requirements of this proposed regulation.

Section 229.21 *Civil liability.*

(a) *Civil liability.* This paragraph sets forth the statutory penalties for failure to comply with the requirements of this subpart.

(b) *Class action awards.* This paragraph sets forth the provision in the Act concerning the factors that should be considered by the court in establishing the amount of a class action award.

(c) *Bona fide errors.* A depository bank is shielded from liability under this section for a violation of a requirement of this subpart if it can demonstrate, by a preponderance of the evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. Examples of what constitutes, and does not constitute, a bona fide error are provided.

(d) *Jurisdiction.* This paragraph provides the jurisdiction and statute of limitations for civil actions for violations of this subpart.

(e) *Reliance on Board rulings.* This provision shields banks from civil

liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the commentary to this regulation, which will be issued as an official Board interpretation, as well as on the regulation itself.

(f) *Exclusions.* This provision clarifies that liability under this § 229.21 does not apply to violations of the requirements of Subpart C of this regulation, or to actions for wrongful dishonor of a check by a paying bank's customer.

(g) *Record retention.* Banks must keep records to show compliance with the requirements of this subpart for at least two years. This record retention period is extended in the case of civil actions and enforcement proceedings.

Subpart C—Collection of Checks

Section 229.30 Paying bank's responsibility for return of checks.

(a) *Return of checks or notice of nonpayment.* This paragraph requires a paying bank that determines not to pay a check to return the check more expeditiously than is currently required. Generally, the paying bank may use the same transportation method and banks for return that it would ordinarily use for forward collection of checks and satisfy the requirement of an "expeditious" return, provided that the bank selected to process the return agrees to handle the return under the standards for returning banks in § 229.31. The paying bank's normal method of sending a check for collection would not be expeditious, however, if it is materially slower than that of other banks of similar size in its community. In effect, the paying bank acts as an agent or subagent of the depository bank in selecting the means of return.

The paying bank must handle, route, and transport a check being returned in a way that returns the check back to the depository bank in a manner designed to be at least as fast as the paying bank would collect a forward collection check (1) of similar amount, (2) drawn on the depository bank, and (3) received by the paying bank for forward collection before noon on the banking day following the banking day of presentment of the returned check. This section refers to similarly situated banks to indicate a general minimum community standard. A similarly situated bank is defined as a bank of similar asset size, in the same community and with similar check payments activity as a paying or returning bank. For example, a paying bank returning a check has similar

payments activity to other banks that handle similar volumes of checks for collection. The Board believes that under this standard banks that use inefficient means of handling returned checks will have to improve their procedures. Under this standard, ordinarily paying banks may not use less efficient means of routing or transporting returned checks than they use for forward collection checks.

A number of examples will illustrate the application of this duty to paying banks. First, if a check is presented to a paying bank on Monday and the depository bank and the paying bank are participants in the same clearinghouse, the paying bank should deliver the returned check to the depository bank by Wednesday, which would be the same day it would deliver a forward collection check drawn on the depository bank that the paying bank received for deposit by noon on Tuesday.

Second, if a check is presented to a paying bank on Monday and the depository bank is a bank in another city, but the paying bank ordinarily sends its forward collection checks drawn on the depository bank direct to the depository bank, ordinarily the paying bank would be expected to send the returned check to the depository bank with the forward collection checks drawn on the depository bank that the paying bank received for deposit early on Tuesday.

Third, if a check is presented to a paying bank on Monday and the paying bank would ordinarily collect forward collection checks drawn on the depository bank by sending the forward collection checks to a correspondent or a Federal Reserve Bank by courier, the paying bank could send the returned check to its correspondent or Federal Reserve Bank provided that the correspondent has agreed to handle returned check under the standards established for returning banks in § 229.31. The paying bank must deliver the returned check to the correspondent or Federal Reserve Bank by the correspondent's or Federal Reserve Bank's cut-off hour for returned checks that corresponds to its cut-off hour for forward collection checks drawn on the depository bank that the paying bank received for deposit early on Tuesday. A returned check cut-off hour corresponds to a forward collection cut-off hour if it applies to checks destined for the same banks and has similar sorting requirements. Delivery to the correspondent or a Federal Reserve Bank by the appropriate cut-off hour satisfies the paying bank's duty even if use of the correspondent or Federal

Reserve Bank is not the most expeditious means of returning the check. Thus a paying bank may send a returned check to a correspondent instead of a Federal Reserve Bank even if the correspondent then sends the returned check to a Federal Reserve Bank as a qualified returned check. Where forward collection checks are delivered by courier to the correspondent or the Federal Reserve Bank, mailing returned checks would not meet the duty established by this section for paying banks.

Fourth, if a paying bank ordinarily mails its forward collection checks to its correspondent or Federal Reserve Bank in order to avoid the costs of a courier delivery, but other banks of similar size and handling similar volumes of checks for collection in the paying bank's community use a courier to deliver checks to their correspondent or Federal Reserve Bank, the paying bank would have to send its returned checks by courier to its correspondent or Federal Reserve Bank. (The Board believes that these situations will be unusual.)

The dollar amount of the returned check has a bearing on how it must be returned. Thus, if the paying bank presents large dollar checks drawn on the depository bank directly to the depository bank, but uses the Federal Reserve to collect small dollar checks, the ordinarily paying bank would be expected to send its large dollar returns directly to the depository bank but could use the Federal Reserve for its small dollar returns.

In meeting the requirements of this section, the paying bank is responsible for its own actions but not for those of the depository bank or returning banks. For example, if the paying bank starts the return of the check in a timely manner but return is delayed by a returning bank, generally the paying bank has met its requirements (See § 229.38).

The paying bank is free to use alternate methods of return if the method results in delivery of the returned check to the depository bank as quickly as the forward collection of a check drawn on the depository bank. The paying bank is authorized to route the returned check in a variety of ways:

1. It may send the returned check to the bank that presented the check or through the clearinghouse through which it was presented as currently required by section 4-301(4) of the U.C.C.;
2. It may send the returned check directly to the depository bank, bypassing intermediaries;
3. It may send the returned check to any returning bank willing to handle the

returned check under the standards established for returning banks in § 229.31; or

4. It may send the returned check to a Federal Reserve Bank, whether or not the Federal Reserve Bank handled the check during forward collection. (Docket No. R-0621 discusses proposed Reserve Bank services to enable paying banks to return checks through the Federal Reserve Banks.)

If the paying bank elects to return the check directly to the depository bank, it is not necessarily required to return the check to the branch of first deposit. The check may be returned to the depository bank at any location permitted under § 229.32.

Except for the exceptions discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under sections 4-301 and 4-302 of the U.C.C., which continue to apply. Under section 4-302 a paying bank is "accountable" for the amount of a demand item other than a documentary draft if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under section 3-418 of the U.C.C., late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, retaining this requirement gives the paying bank an additional incentive to make a prompt return.

This regulation creates a number of exceptions to the paying bank's midnight deadline in the U.C.C.:

1. Under § 229.30(a), a paying bank may satisfy the U.C.C. midnight deadline by sending notice of nonpayment;

2. Under § 229.30(b), a paying bank may extend the midnight deadline for small-dollar checks; and

3. Under § 229.30(c), a paying bank may extend the midnight deadline in a good faith effort to expedite delivery.

If the paying bank cannot start return of the check soon enough to comply with this section, it may send a notice of nonpayment that meets the requirements of § 229.33, including the timeliness of the notice, and the notice may be given on checks of less than \$2,500.

The liability section of this regulation (§ 229.38) provides that a paying bank is not subject to both "accountability" for missing the midnight deadline under the U.C.C. and liability for missing the timeliness requirements of this regulation.

This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

1. Section 4-212(2), in that direct return by the paying bank is now permitted in all jurisdictions even though not all jurisdictions have adopted this optional provision. Also the paying bank does not have to create a draft on the depository bank.

2. Section 4-301(4), in that in addition to returning a check through a clearinghouse or to the presenting or last collecting bank, a paying bank may return a returned check to the depository bank, to a returning bank, or to a Federal Reserve Bank.

3. Section 4-301(1), in that time limits specified in that section may be shortened by the additional requirement to make an expeditious return.

The Board requests comment on:

1. Whether the duty of the paying bank should be stated in a more concrete manner, such as that a paying bank must return a check so that it reaches the depository bank on the second business day following the day of presentment for local checks and the third business day following the day of presentment for nonlocal checks;

2. Whether paying banks should be required to prepare qualified returned checks for all checks being returned through a returning bank; and

3. Whether the option allowing a paying bank to send notice of nonpayment should be retained as an effective alternative to expeditious return of the actual check. (See also the discussion of returning banks' duties under § 229.31.)

(b) *Extension of deadline for small-dollar checks.* Over one half of all returned checks are in amounts of \$100 or less. Today, many of these returned checks that are returned due to insufficient or uncollected funds are routinely redeposited in an effort to obtain payment. On average, over 60 per cent of these redeposited checks are paid on the second presentment. Thus, a significant number of checks returned today would not be returned if the paying bank could hold the check for an additional period of time without becoming accountable for it under section 4-302 of the U.C.C. If the drawer of the check funds its account shortly after the paying bank's midnight deadline, the paying bank could pay it at that time and avoid the necessity of returning the check and possible subsequent representment. This paragraph permits the paying bank to hold small-dollar checks (under \$100) to achieve this efficiency. The extension is not limited to checks drawn on insufficient funds and could be used by the paying bank to hold checks to be returned for other reasons. The Board believes that this extension of the time

for return will help to reduce the number of returned checks, thereby allowing the remaining returned checks to be handled more efficiently.

This extension applies to the time for return or notice of nonpayment under § 229.30(a) as well as the paying bank's midnight deadline under the U.C.C. 4-301 and 4-302. The paying bank may extend these time limits on a check-by-check basis; that is, it need not treat all checks under \$100 the same. This provision allows the paying bank to extend the time limits by one day rather than two days. A one-day extension may be operationally easier to implement than a two-day extension. This right to extend is similar to a provision (section 4-108(1)(b)) in a proposed revision of the U.C.C. being developed by the National Conference of Commissioners on Uniform State Laws ("NCCUSL").⁴

If the paying bank elects to extend its deadline for return, it must reexamine the basis on which the check was not paid as of the day on which it returns the check or sends notice of nonpayment. The bank need not pay the check on reexamination under this provision, however, even if the original basis for nonpayment no longer exists. If the paying bank did not comply with the requirements of this section, such as the requirement to review its initial decision to return the check, it could be accountable for the amount of the check for exceeding the time for return under U.C.C. 4-301, § 210.12 of Regulation J (12 CFR 210.12), or this section. The requirement to reexamine the original decision not to pay is similar to a provision in draft section 4-402(2) of the NCCUSL proposal.

This small-dollar extension may be used by the paying bank in combination with the extension for expedited delivery (§ 229.30(c)).

This paragraph directly affects sections 4-301 and 4-302 of the U.C.C. (and § 210.12 of Regulation J, 12 CFR 210.12) at the option of the paying bank for checks of \$100 or less and may affect other sections.

(c) *Extension of deadline for expedited delivery.* Many paying banks do not dispatch their returned checks by

⁴ The NCCUSL is the organization responsible for drafting and revising the Uniform Commercial Code. It has commissioned an effort to draft amendments to U.C.C. Articles 3 and 4, which address many of the issues raised in Regulation CC. The NCCUSL proposal has been helpful in drafting this regulation and the commentary to the regulation refers to the parallel provisions in the NCCUSL proposal. The NCCUSL proposal referred to is the draft prepared for the NCCUSL meeting on July 31—August 7, 1987. This proposal has not been approved by the Commissioners on Uniform State Laws.

courier with the checks that are sent for forward collection if the courier leaves after midnight. Instead, they mail their returns by their midnight deadline in order to meet their legal responsibility under the U.C.C., but by doing so delay the completion of the return process. This paragraph removes the constraint of the midnight deadline if the check reaches either the depository bank or the returning bank to which it is sent on the banking day following the expiration of the midnight deadline or other applicable time for return. The extension also applies if the check reaches the bank to which it is sent later than the close of that bank's banking day, if highly expeditious means of transportation are used. For example, west coast banks may use this further extension to ship returned checks by air courier directly to east coast banks even if the checks arrive after the close of the east coast banks' banking day.

The time limits that the paying bank may extend are the paying bank's midnight deadline in sections 4-301 and 4-302 of the U.C.C. (and § 210.12 of Regulation J, 12 CFR 210.12) and the time for the start of return in § 229.30(a). The paying bank may use this provision to add to the extended midnight deadline for checks of \$100 or less in § 229.30(b) of this regulation. Even if the return deadlines are not extended, the paying bank satisfies its midnight deadline under the U.C.C. by dispatching returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the midnight deadline.

This paragraph directly affects sections 4-301 and 4-302 of the U.C.C. (and § 210.12 of Regulation J, 12 CFR 210.12) to the extent that this paragraph applies by its terms and may affect other provisions.

(d) *Identification of returned check.* Most paying banks currently use some form of stamp indicating the reason for return. This paragraph makes this practice mandatory. No particular form of stamp is required; but the stamp must indicate the reason for return.

(e) *Depository bank without accounts.* The Act and this regulation apply only to "checks" deposited in transaction-type "accounts." Thus, a depository bank with only time or savings accounts need not comply with the availability requirements of Subpart B. Collecting banks will not have couriers delivering checks to these depository banks because they do not have checks drawn on them to present. Consequently, the costs of using a courier or other expedited means to deliver returned checks directly to the depository bank may not be justified. Thus, the expedited

return requirement of § 229.30(a) does not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in sections 4-301 and 4-302 of the U.C.C. (and § 210.12 of Regulation J, 12 CFR 210.12) would continue to apply to these checks. Returning banks would also be required to act on such checks within their midnight deadline. Further, in order to avoid complicating the process of return of checks generally, banks without accounts are required to use the standard indorsement, and their checks are returned by returning banks and paid for by the depository bank under the same rules as checks deposited in other banks, with the exception of the expeditious return requirements of §§ 229.30 and 229.31.

(f) *Notice in lieu of return.* A check that is lost or otherwise unavailable for return may be returned by sending a notice of nonpayment complying with § 229.33 that clearly indicates it is a substitute for the returned check. However, the time and amount limits of § 229.33 do not apply to a notice in lieu of return. The indication that the notice is a substitute for the returned check is necessary so that the returning and depository banks are informed that the notice carries value. The requirement of this section supersedes the requirement of section 4-301(1) of the U.C.C. as to the form and information required of a notice of dishonor or nonpayment. A photocopy of the returned check would constitute a notice in lieu of return if identified as such. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

The notice in lieu of return is subject to the provisions of § 229.30 and is treated like a returned check for settlement purposes. If the original check was over \$2,500, the notice of nonpayment under § 229.33 is still required, but may be satisfied by the notice in lieu of return if the notice in lieu meets the time and information requirements of § 229.33.

The Board requests comment on whether any additional information would be desirable on the notice in lieu of return to make it useful to the depository bank, and whether the transmission of an electronic notice in lieu of return could cause accounting problems for the returning and depository banks that must settle for these notices as they settle for returned checks.

(g) *Reliance on routing number.* Although § 229.35 and Appendix D require that the depository bank indorsement contain its nine-digit

routing number, it is possible that a returned check will bear the routing number of the depository bank in fractional, eight-digit, nine-digit, or other form. The routing number may also be in regular ink or, especially on qualified returned items, in magnetic ink. This paragraph permits paying banks to rely on the routing number of the depository bank as it appears on the check (in the depository bank's indorsement or in magnetic characters on a qualified returned check) when it is received by the paying bank.

If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depository bank. That is, the paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under § 229.38(a).

Section 229.31 Returning bank's responsibility for return of checks.

(a) *Return of checks.* The standards for return of checks established by this section are similar to the requirements on paying banks in § 229.30(a). A returning bank must handle a returned check or notice of nonpayment in the same manner that it (or a similarly situated collecting bank) would handle a similar check for forward collection. As in the case of a paying bank, a similarly situated bank is one of similar asset size and check payments activity in the same community. For a returning bank, another bank has similar payments activity if it handles a similar volume of checks for collection. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depository bank.

Under this section, a returning bank must accept returned checks including both qualified and other returned checks ("raw returns") at the same general times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless it extends its time limit by one day to convert the raw return to a qualified returned check as provided in § 229.31(b). A returning bank may establish earlier cut-off hours for receipt of returned checks than it established for receipt of forward collection checks provided that the cut-off hour for returned checks is not earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank need not accept returned checks as late

in the day as it accepts forward collection checks and may set an earlier cut-off hour to allow extra processing time for returns. All returned checks received by that cut-off hour on that banking day must be processed and dispatched by the returning bank by the time that it would dispatch forward collection checks received at that time on the same banking day that are drawn on the depository bank. Generally, the returning bank should send the returned checks by the same route and by the same means of transportation used for forward collection of checks that are drawn on the depository bank. The Board requests comment on whether the 2:00 p.m. limit on the cut-off hours established by returning banks is adequate to avoid delays in the return process or whether a later limit is necessary in order to ensure the expeditious handling of returns.

A number of examples will illustrate the application of this duty to returning banks. First, if a returning bank receives a returned check by its cut-off hour for returned checks on Monday and the depository bank and the returning bank are participants in the same clearinghouse, the returning bank should deliver the returned check to the depository bank in a clearinghouse exchange on Tuesday, which would be the same day that it would deliver a forward collection check drawn on the depository bank and received by the returning bank at the same time on Monday.

Second, if a returning bank receives a returned check by its cut-off hour for returned checks on Monday and the depository bank is a bank in another city, but the returning bank ordinarily sends its forward collection checks drawn on the depository bank direct to the depository bank, ordinarily the returning bank would be expected to send the returned check to the depository bank with forward collection checks drawn on the depository bank received by the returning bank for collection at the same time on Monday.

Third, if a returning bank receives a returned check by its cut-off hour on Monday, and the returning bank would ordinarily collect forward collection checks drawn on the depository bank by sending the forward collection checks to a correspondent or a Federal Reserve Bank by courier, the returning bank could send the returned check to its correspondent or Federal Reserve Bank, provided that the correspondent has agreed to handle the returned check under the standards established for returning banks in this § 229.31. The returning bank must deliver the check to

the correspondent or Federal Reserve Bank by the correspondent's or Federal Reserve Bank's cut-off hour for returned checks that corresponds to its cut-off hour for forward collection checks drawn on the depository bank and received by the returning bank for collection at the same time on Monday. However, a returning bank may take a day to convert a check to a qualified returned check. Where the forward collection checks are delivered by courier, mailing the returned checks would not meet the duty established by this section for returning banks.

The returning bank may convert the returned check to a qualified returned check and thus extend its time limits under § 229.31(b) by one day, but may not satisfy its duty to return in an expeditious manner by substituting a notice of nonpayment for the returned check. A returning bank must handle a notice in lieu of return within the same time limits as for returned checks.

The returning bank is authorized to route the returned check in a variety of ways:

1. It may send the returned check to the bank that had sent the check to it during forward collection (if the returning bank handled the check for forward collection) as currently required by U.C.C. 4-212;

2. It may send the returned check directly to the depository bank;

3. It may send the returned check to any returning bank willing to handle the returned check under the standards established for returning banks under this § 229.31; or

4. It may send the returned check to a Federal Reserve Bank, whether or not the Federal Reserve Bank handled the check during forward collection.

If the returning bank elects to return the returned check directly to the depository bank, it is not required to return the check to the branch of first deposit. The returned check may be returned to the depository bank at any location permitted under § 229.32.

In meeting the requirements of this section, the returning bank is responsible for its own actions but not those of the paying bank, other returning banks, or the depository bank. For example, if the paying bank has delayed the start of the return process, but the returning bank acts timely, the returning bank has satisfied the requirements of this section even if the delayed return results in a loss to the depository bank. (See § 229.38.)

The Board recognizes that the duty imposed on returning banks by this section will require operational changes at returning banks. If the returning bank

accepts returns as late in the day as it accepts forward collection checks, the duty established by this section could require returning banks to process unsorted, raw returns in only a few hours unless the returning bank creates a qualified returned check, in which case it will have a day to create the qualified returned check. The Board considered alternate approaches to expediting the return of checks. Under one alternative, the paying bank would have to convert all returns sent to returning banks into qualified returned checks. This alternative might result in faster returns in some cases. This requirement would impose burdens on paying banks, including many small banks that may be ill-equipped for the conversion process. This alternative would facilitate compliance for returning banks at the expense of paying banks. The Board does not believe that the benefits in terms of reduction in risk to depository banks and reductions in processing requirements on returning banks, clearly warrant the increased burden on paying banks.

A second alternative would be to rely on the incentive for prompt return created by the removal of the right of charge-back. Currently, banks returning checks often charge-back prior collecting banks' accounts even before the checks reach the prior collecting banks. Under the proposal, payment is made for returned checks upon their delivery to the depository bank. Therefore a paying or returning bank has an incentive to send returned checks to the depository bank expeditiously. Under this alternative, a returning bank's time to process and dispatch returns would be limited only by its midnight deadline. This alternative would also reduce the burden on returning banks but would result in fewer checks being returned to depository banks before funds must be made available for withdrawal under the Act. The Board requests comment on whether the proposal strikes the appropriate balance between the interests of depository banks in receiving prompt returns and the burdens imposed on paying and returning banks.

This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

1. Section 4-212(2), in that direct return by the returning bank is now permitted in all jurisdictions even though not all jurisdictions have adopted this optional provision;

2. Section 4-202(2), to the extent that this subsection states a shorter time

limit for action than the midnight deadline.

(b) *Extension of deadline for qualified returned checks.* This paragraph authorizes the returning bank to extend its time limits to prepare a check for automated handling (a qualified returned check). A returned check prepared for automated handling will be handled by subsequent returning banks more efficiently than a returned check that must be handled manually. This paragraph gives a returning bank a day beyond the time otherwise required to handle the returned check to prepare a qualified returned check. If the returning bank is sending the returned check direct to the depository bank, this day is not available because preparing a qualified returned check will not expedite handling by other banks. The Board recognizes that returning banks may have difficulty in identifying those returned checks that are eligible for this extension. The Board requests comment on whether returning banks should be permitted a day to create qualified returns for checks returned directly to depository banks. Although paying banks also may wish to prepare qualified returned checks because they will be handled at a lower cost by returning banks, the extension is not available to paying banks because of the longer time that a paying bank has to dispatch the check. Ordinarily, paying banks will be able to convert a check to a qualified returned check at any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning.

This paragraph directly affects the returning bank's midnight deadline in section 4-202(2) of the U.C.C. and may affect other sections or provisions.

(c) *Acceptance by collecting bank.* This paragraph provides that a collecting bank may not refuse to accept the return of a check that it handled for forward collection. This is consistent with section 3-414 of the U.C.C., which requires an indorser to take up a check that has been dishonored. Further, if a paying bank cannot identify the depository bank, return of the check to the presenting bank may be its most expeditious means of return, as each bank in the collection chain should be best able to identify the bank sending the check to it.

(d) *Settlement.* Under the U.C.C., a collecting bank receives settlement for a check when it is presented to the paying bank. The paying bank may recover the payment when the paying bank returns the check to the presenting bank. Under

this regulation, however, the paying bank may return the check directly to the depository bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the payment made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. Thus, any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward collection checks. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection. Under § 229.32(b), provisional credits between banks for the forward collection of the check become final upon expiration of the time for payment for a returned check by the depository bank.

A special rule applies to checks returned by insolvent banks. (See § 229.39(a).)

This paragraph affects section 4-212(1) of the U.C.C. in that a paying or collecting bank does not have a right to charge-back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions.

(e) *Charges.* This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank for its service in handling a returned check. The depository bank may not charge such a fee to a prior returning bank.

(f) *Reliance on routing number.* This paragraph is similar to § 229.30(g) and permits a returning bank to rely on routing numbers appearing on a returned check. (See the comment to § 229.30(g).)

(g) *Depository bank without accounts.* This paragraph is similar to § 229.30(e) and relieves a returning bank of its obligation to make expeditious return to a depository bank that does not maintain any accounts. (See the comment to § 229.30(e).)

(h) *Notice in lieu of return.* This paragraph is similar to § 229.30(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. (See the comment to § 229.30(f).)

Section 229.32 Depository bank's responsibility for returned checks.

(a) *Acceptance of returned checks.* This regulation seeks to encourage direct returns by paying and returning banks and may result in a number of banks sending checks to depository banks with no preexisting arrangements as to where the returned checks should be delivered. This paragraph states where the depository bank is required to accept returned checks and written notices of nonpayment. (These locations differ from locations at which a depository bank must accept electronic notices.) It is derived from section 3-504(2) of the U.C.C., which specifies that presentment for payment may be made at the place specified in the instrument or, if there are none, at the place of business of the party to pay. In the case of returned checks, the depository bank does not print the check and can only specify the place of "payment" of the returned check in its indorsement.

The paragraph specifies four locations at which the depository bank must accept returned checks:

1. If the depository bank indorsement states the name and address of the depository bank, it must accept returned checks at the branch or head office indicated by the address. If the address is too general to identify a particular branch or the head office then the depository bank must accept returned checks at any branch or head office, consistent with the address. If, for example, the address was "New York, New York," each branch in New York City must accept returned checks. The address may be a processing center.

2. If no address appears in the depository bank's indorsement, the depository bank must accept returned checks at any branch or head office associated with the depository bank's routing number. The offices associated with the routing number of a bank are found in a publication of Rand McNally, *Key to Routing Numbers*, which lists a city and state address for each routing number.

3. If no routing number or address appears in its indorsement, the depository bank must accept a returned check at any branch or head office of the bank. The indorsement requirement of § 229.35 and Appendix D requires that the indorsement contain both a routing number, name, and location. Consequently, this provision, as well as provision (2), only applies where the depository bank has failed to comply with its responsibility for indorsement.

4. In addition to (1), (2), or (3), the depository bank must accept returned

checks at the location at which it accepts checks as a paying bank.

(b) *Payment.* As discussed in the comment to § 229.31(e), under this regulation, a paying or returning bank does not obtain credit for a returned check by charge-back but by, in effect, presenting the returned check to the depository bank. This paragraph imposes an obligation to "pay" a returned check that is similar to payment of a check, except that the depository bank may not return a returned check for which it is the depository bank and certain means of payment such as remittance drafts can only be used with the agreement of the returning bank.

The depository bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to section 4-107 of the U.C.C., which permits the bank to establish a cut-off hour, generally not earlier than 2:00 p.m., and treat checks received after that hour as being received on the next banking day.

Payment must be made so that the funds are available for use by the bank returning the check to the depository bank on the day the check is received by the depository bank. For example, a depository bank meets this requirement if it wire transfers funds to the Federal Reserve or correspondent bank account of the returning bank on the day it receives the returned check, even if the returning bank has closed for the day or net settles with the returning bank on that day. Banks with current Federal Reserve net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for cash items if they so desired. If, for purposes of establishing additional control or to establish a new settlement arrangement, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement would have to be established with the local Federal Reserve office.

If payment is not made, the depository bank is accountable, i.e., liable, to the paying or returning bank for the amount of the returned check. If the returned check is returned to a bank that is not the depository bank, that bank has no obligation to pay under this paragraph, but must pay for the check as a returning bank would pay for the check—it should handle the misrouted item as indicated in § 229.32(d). A returning bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants

the costs of same day payment. Thus, a returning bank may agree to accept payment through an automated clearinghouse credit or debit that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

This paragraph is similar to draft section 4-301(5) of the NCCUSL proposal, which in turn is based on optional section 4-212(2) of the U.C.C. concerning direct return of checks.

The Board requests comment on whether a penalty is required to ensure that payment is made as required by this paragraph.

(c) *Recovery by depository bank from collecting bank.* A depository bank may not have received full provisional settlement for the check when it was sent for collection or may have received no settlement at all. When the depository bank pays the returning bank for the returned check, it will have lost the difference between what it paid the returning bank and what it received from the bank to which it sent the check for forward collection. This paragraph permits the depository bank to recover the difference from the bank that did not make full settlement. This rule applies whether the depository bank sold the check to the next bank or merely transferred it to that bank as an agent for collection.

(d) *Misrouted returned checks.* Today a bank receiving a misrouted returned check often sends the check back to the party that sent it so that party can research it and identify the correct bank. This paragraph attempts to hasten the process by requiring a bank that received the misrouted returned check to send it to the correct depository bank if it can identify the correct depository bank. Failing that, the bank receiving the misrouted returned check would return it to the returning or paying bank sending the check to it. In either case the bank to which the returned check was misrouted could receive settlement for the check. If the check was originally received "free," that is, without a charge for the check, the bank incorrectly receiving the check would have to return the check, without a charge, to the bank from which it came.

Section 229.33 Notice of nonpayment.

(a) *Requirement.* Notice of nonpayment serves several different functions in this regulation, but each notice provided for must follow the general requirements of this section:

1. The paying bank may send a notice of nonpayment as a way of meeting its duty to initiate return under § 229.30. If the notice is used to comply with § 229.30, nevertheless it must be

provided within the time limits prescribed by this section. This notice carries no value and does not relieve the paying bank of the requirement to return the check;

2. The paying bank must send a notice of nonpayment complying with this section if it decides not to pay a check of \$2,500 or more. The notice carries no value, and the check itself must be returned; and

3. A paying or returning bank may send notice in lieu of return if the check itself is unavailable for return under §§ 229.30(f) and 229.31(h) regardless of the amount of the check. This notice is subject to the content requirements of this section but to the timing requirements of §§ 229.30 and 229.31 rather than this section. The notice in lieu of return carries value and substitutes for the returned check itself, which is not returned. Because these notices are used when the check cannot be returned, they must be used if the paying or returning bank is to recover its settlement for the check.

The notice of nonpayment is modeled after the notice required by Regulation J (12 CFR 210.12) except the notice in this regulation is required even if the check were not collected through a Federal Reserve Bank, and the time limit for providing notice to the depository bank is shorter by one business day. Under this section, the paying bank must ensure that the notice is received by the depository bank by 4:00 p.m. on the second business day following presentment. Regulation J currently requires the notice to be received by midnight of the third banking day following presentment. Draft section 4-304 of the NCCUSL proposal contains a similar provision on notice of nonpayment.

The Board requests comment on whether notices should be required for checks of \$2,500 and over or \$5,000 and over.

(b) *Content of notices.* The content specified follows the content currently required under Regulation J. If the paying bank cannot identify the depository bank, it should send the notice of nonpayment to the first collecting bank in the forward collection process that it can identify. This paragraph also provides that, in the case of written notices, the name and routing number of the depository bank are required.

(c) *Acceptance of notice.* This paragraph also follows current practice under Regulation J. In the case of a written notice, the depository bank is required to accept notices at the locations specified in § 229.32(a). In the

case of telephone notices, the bank may not refuse to accept notices at these numbers but may transfer calls, or use a recording device.

(d) *Charge-back.* This paragraph adopts the view of *Appliance Buyers Credit Corp. v. Prospect National Bank*, 708 F.2d 290 (7th Cir. 1983), that sending a returned check or notice of nonpayment to the depository bank's customer in a timely manner is not a condition precedent to charge-back to the customer's account by the depository bank. Draft section 4-212(2) of the NCCUSL proposal contains a similar provision.

(e) *Cancellation of notice.* This paragraph follows a similar provision in Regulation J. The Board requests comment on whether other provisions from Regulation J on notice of nonpayment should be adopted in this regulation.

Section 229.34 Warranty by paying bank and returning bank.

(a) *Warranty.* This paragraph incorporates the warranties of timely return in § 210.12(b) of Regulation J (12 CFR 210.12(b)) and adds the warranties that the paying or returning bank is authorized to return the check and that the returned check has not been materially altered.

(b) *Damages.* This paragraph adopts for the new warranties in § 229.34(a) the warranty damages of section 4-207(3) of the U.C.C.

(c) *Tender of defense.* This paragraph adopts for this regulation the vouching provisions of section 3-803 of the U.C.C. or § 210.5 of Regulation J (12 CFR 210.5).

Section 229.35 Indorsements.

(a) *Indorsement standards.* One of the major difficulties in returning a check is reading the indorsements of the depository and collecting banks, and obtaining useful information from them. Current indorsements are often faint, blurred, incomplete and overlapping. The indorsement standards in Appendix D address indorsement problems by specifying the information the indorsement must contain and its location and ink color. Depository, collecting and returning banks are required to place their indorsements on checks as specified in Appendix D. In order to avoid confusion in routing returned checks, paying banks are not required to indorse returned checks. The regulation's indorsement requirements adopt the components of the standards developed, but not finally adopted, by the American National Standards Institute ("ANSI"). An ANSI working group, comprised of representatives of

banks, check processing equipment manufacturers, and other interested parties adopted those standards over the past two years. This regulation does not incorporate the ANSI standard by reference, however, but requires that indorsements have these particular elements.

For many banks, compliance with the indorsement standard would entail replacement of indorsement plates and/or stamps. For some banks additional changes may be necessary. A collecting bank may indorse checks deposited by its retail customers on encoding equipment using the depository bank indorsement required by this regulation, and apply its transit indorsement to checks sent by its respondents on its high-speed equipment. (This section does not prohibit a bank from applying both a depository bank indorsement and transit indorsement on the same check.) Alternatively, the bank may need to apply two different indorsements on its high-speed equipment: the depository bank indorsement, where it is the depository bank, and a transit indorsement when it acts as a collecting bank.

Second, where a corporation encodes its own checks prior to deposit, the corporation often applies its own indorsement and the bank applies its indorsement on its high-speed equipment. Under the proposal, either the corporation or the depository bank must apply the depository bank indorsement. For lock-box locations or corporations that deposit into multiple depository banks, either the corporation or lock-box depositor would have to apply the depository bank indorsements to the checks being collected by each bank, or the depository bank must apply its depository bank indorsement.

Third, high-speed sorters may not be immediately capable of placing a depository bank indorsement in the location specified by the standard. Depository banks may wish to indorse on other equipment, such as encoding equipment. When depository bank indorsements are applied on high-speed equipment, banks are encouraged to use special ink and include the information required by the standard even if the indorsements are not placed in the correct location initially.

Fourth, the proposed standard, following the approach developed by ANSI, requires all depository bank indorsements to avoid the carbon band location. An indorsement placed over a carbon band often would not be legible. This restriction will make it more difficult for depository banks to comply with the location requirements of the

standard. An alternative approach is to shift the burden to the paying bank whose customers use checks with carbon bands. Under this approach, the paying bank either would have to stop issuing carbon band checks or select a carbon technique that would not interfere with reading the depository bank indorsement. Further, the paying bank might be required to qualify all carbon band returns as qualified returned checks rather than depositing these returns raw with an intermediary.

The Board requests comment on how these problems might be minimized. In addition, the Board requests comment on whether the indorsement standard should restrict placement of the indorsement in the carbon band area, and what responsibilities should be placed on paying banks that issue carbon band checks.

As discussed in connection with § 229.38 on liability, failure to follow these indorsement standards may relieve a paying or returning bank of liability for delay in returning a check where the delay is due to the failure to use the proper indorsement.

(b) *Contract of indorser.* Under section 3-414 of the U.C.C., an indorser engages that upon dishonor he will take up the instrument. When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depository bank through the collecting and presenting banks to the paying bank. This section extends the indorsement chain through the paying bank to the returning banks and would permit each to recover from prior indorsers if the paying or returning bank were unable to obtain payment for the returned check from the depository bank. Under this section, in the event of the depository bank's insolvency, the bank that accepted the check for forward collection from the depository bank would ultimately be responsible for the check as the next prior indorser, as is the case under U.C.C. 3-414.

Section 229.36 Presentment of checks and delivery of returned checks.

(a) *Payable through and payable at checks.* The regulation defines a payable through or payable at bank (which could be designated the collectible through or collectible at bank) as a paying bank. The duties imposed on a paying bank under this regulation, such as the expeditious return requirements of § 229.30(a), are imposed on a payable through or payable at bank. This paragraph treats payable through and payable at banks as payor banks under the U.C.C. for

purposes of time for return or notice of dishonor. This treatment substantially shortens the time for return of these checks and may have a significant effect, for example, on credit unions using payable through share drafts and insurance companies using payable through drafts.

(b) *Receipt at bank office or processing center.* The provision seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depository bank and clarifies the law as to the effect of presentment by routing number. This paragraph differs from § 229.32(b) because presentment of checks differs from delivery of returned checks.

The paragraph specifies four locations at which the paying bank must accept presentment of checks:

1. If the check specifies the name and address of a branch or head office, the check may be presented by delivery to that office. If the address is too general to identify a particular office, presentment may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment. The designation of an address on the check is generally in the control of the paying bank.

2. If the check specifies the name of the paying bank but no address, the bank must accept presentment at any office. Thus, there is a tradeoff for a paying bank between specifying a particular address on a check and simply stating the name of the bank to encourage wider currency for the check. This provision is consistent with existing section 3-504(2) of the U.C.C., which states that presentment for payment may be made at the place specified in the instrument, or, if there are none, at the place of business of the party to pay. Presentment according to the name and address (if any) on a check would generally be made by individuals, rather than collecting banks. Collecting banks generally rely on the routing number.

3. Presentment may also be made at an office of the paying bank associated with the routing number on the check. The office associated with the routing number of a bank is found in a publication of Rand McNally, *Key to Routing Numbers*, which lists a city and state address for each routing number. Checks are generally handled by collecting banks on the basis of the routing number in magnetic characters (or in fractional form if the magnetic characters are obliterated) on the check, rather than the printed name or address. The definition of a paying bank in

§ 229.2 includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number. There is no requirement in the regulation that the name and address agree with the address associated with the routing number on the check. A bank may generally control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center. In some cases, a paying bank may have several offices in the city associated with the routing number. In such a case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. Generally, a collecting bank would deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to quickly determine whether to pay the check.

4. In addition, delivery of checks may be made, and presentment is considered to occur, at a location, such as a processing center, requested by the paying bank. This is the way most checks are presented by banks today. This provision would adopt the common law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also U.C.C. 4-204(3).)

(c) *Truncation.* Truncation is a procedure in which the physical check is held by the depository or collecting bank and the information from the check is transmitted to the paying bank. This process has the potential of improving the efficiency of check processing, but use of truncation has been limited, partly because of uncertainties about whether the U.C.C. permits it without the agreement of all parties. This paragraph allows truncation by agreement with the paying bank; however, such agreement may not prejudice the interests of prior parties to the check. For example, a truncation agreement may not extend the paying bank's time for return. Such an extension could damage the depository bank, which must make funds available to its customers under mandatory availability schedules. Draft section 4-109 of the NCCUSL proposal has similar provisions on "electronic presentment."

Section 229.37 Inquiry to paying bank.

Under § 229.10, a depository bank must make funds available for cashier's, certified, and teller's checks on the business day after the banking day of deposit. Because these checks cannot be presented and returned before funds must be available for withdrawal, some depository banks may want to obtain assurance from the paying bank that the checks are not fraudulent. This paragraph requires the paying bank to respond to telephone inquiries with available information about the check. With respect to teller's checks, the drawing bank must also respond to inquiries from the depository bank.

The Board requests comment on:

1. Whether this is a workable arrangement as proposed or whether it should be revised, for example, to guarantee the information;
2. What standard of promptness should be placed on paying and drawing banks in responding to inquiries;
3. Whether the paying bank should be permitted to charge for providing information; and
4. Whether this requirement should be limited to checks over a certain dollar amount.

Section 229.38 Liability.

(a) *Standard of care; liability; measure of damages.* The standard of care established by this section applies to any bank covered by the requirements of Subpart C of the regulation. Thus, it applies to a paying bank under §§ 229.30, 229.33, and 229.37; to a returning bank under § 229.31; to a depository bank under §§ 229.32 and 229.33; to a bank erroneously receiving a returned check or notice of nonpayment as depository bank under § 229.32(d); and a bank indorsing a check under § 229.35. The standard of care is similar to the standard imposed by sections 1-203 and 4-103(1) of the U.C.C.

A bank not meeting this standard of care is liable to the depository bank, the owner of the check, or another party to the check. The measure of damages stated derives from sections 4-103(5) and 4-202(3) of the U.C.C.

This paragraph also states that it does not affect a paying bank's liability to its customer. Under section 4-402 of the U.C.C., for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

The Board requests comment on whether a bank's liability under this paragraph should be limited to the depository bank and owner of the check.

(b) *Paying bank's failure to make timely return.* Section 229.30(a) imposes requirements on the paying bank for expeditious return of a check and leaves in place the U.C.C. time limits, which may allow return at a different time. This paragraph clarifies that the paying bank could be liable for failure to meet either standard but not for failure to meet both. The regulation intends to preserve the paying bank's "accountability" for missing its midnight deadline under the U.C.C., a concept that is not incorporated in this regulation, but may be useful in other circumstances.

(c) *Comparative negligence.* This paragraph establishes a "pure" comparative negligence standard for liability under Subpart C of this regulation. This comparative negligence rule may have particular application where a paying or returning bank delays in returning a check because of difficulty in identifying the depository bank. Two examples will illustrate liability in such cases. In each example, it is assumed that the returned check is received by the depository bank after it has made funds available to its customer, that it may no longer recover the funds from its customer, and that the inability to recover the funds from the customer is due to a delay in returning the check contrary to the standards established by §§ 229.30(a) or 229.31(a). First, if a depository bank fails to use the indorsement required by this regulation and a paying or returning bank is delayed in returning the check because additional time is required to identify the depository bank or find its routing number, the paying or returning bank's liability to the depository bank would be reduced or eliminated.

Second, if the depository bank uses the standard indorsement but that indorsement is obscured by a subsequent collecting bank's indorsement and a paying or returning bank is delayed in returning the check because additional time was required to identify the depository bank or find its routing number, the paying or returning bank may not be liable to the depository bank because the delay was not due to its negligence. However, the collecting bank may be liable to the depository bank to the extent that its negligence in indorsing the check caused the paying or returning bank's delay.

(d) *Timeliness of action.* This paragraph excuses certain delays. It incorporates the standard of section 4-108(2) of the U.C.C. with the addition of "failure of equipment" and "interruption of computer facilities" as causes of delay. The addition of these two causes

makes explicit what was previously generally accepted under the U.C.C. Draft section 4-108(2) of the NCCUSL proposal makes a similar change.

(e) *Exclusion.* This paragraph provides that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611(a) and 611(b) of the Act (12 U.S.C. 4010 (a) and (b)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Allowing punitive damages for delays in the return of checks where no actual damages are incurred would only encourage litigation and provide little or no benefit to the check collection system.

(f) *Bona fide errors.* A depository bank is shielded from liability under this section for a violation of a requirement of this subpart if it can demonstrate, by a preponderance of evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. An error in legal judgment does not constitute a bona fide error.

(g) *Jurisdiction.* This section provides the jurisdiction and statute of limitations for civil actions for violations of this subpart.

(h) *Reliance on Board rulings.* This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the commentary to this regulation, which will be issued as an official Board interpretation, as well as on the regulation itself.

Section 229.39 *Insolvency of bank.*

If a paying bank fails without having made provisional settlement with the presenting bank for checks presented, it or its trustee could theoretically return the checks directly to the depository bank or through a returning bank other than the presenting bank under § 229.30(a). This situation would result in the paying bank, or its estate, receiving value for returned checks for which it never gave value. This section avoids this inequity and similar results involving failed collecting, depository, and returning banks. This section is similar to the insolvency provisions from section 4-214 of the U.C.C.

Section 229.40 *Relation to state law.*

This section specifies that state law relating to the collection of checks is only preempted to the extent that it is inconsistent with this regulation. Thus, this regulation is not a complete

replacement for state laws relating to the collection or return of checks.

Section 229.41 *Exclusions.*

Checks drawn upon the account of the United States Treasury, or indorsed by the Treasury, and U.S. Postal Service money orders are excluded from the coverage of the expeditious return requirements of Subpart C of this regulation.

Appendix A—Routing Number Guide to Local Checks

This appendix lists the routing numbers that are considered local to each check processing region. The numbers in the Appendix represent the first four numbers of the routing numbers of paying banks in each region.

Appendix B—Time Period Adjustments for Nonlocal Checks

The Act directs the Board to reduce the statutory schedules for any category of checks where most of those checks can be returned, under an improved check collection and return system, in a shorter period of time than provided in the schedule. Appendix B describes, by routing number, those categories of checks for which reduced schedules apply. The time period adjustments are listed by check processing region, so that a bank need only refer to the region(s) in which it has offices to determine those adjustments that are applicable to that bank. In a number of cases, the reduced schedules only apply to banks located in the same city as the Federal Reserve check processing office. The routing numbers of the banks to which these reductions apply are provided. In other cases, the reductions would apply to all banks located in the region.

The proposed reductions in schedules were determined by each Federal Reserve Bank check processing office. Reductions are proposed for certain nonlocal checks, where significant improvements can be made to the Act's schedules. For the most part, shorter schedules are provided for:

1. Checks deposited in banks located in certain Federal Reserve cities and drawn on banks located in certain other Federal Reserve cities;
2. Checks drawn on certain banks that are served by two Federal Reserve Bank offices; and
3. Checks deposited in and drawn on banks in the New York City metropolitan area, where the proximity of the Federal Reserve Bank offices facilitates faster clearing and return of these checks.

Appendix B-1 provides the reductions to the nonlocal schedule that are applicable during the temporary schedule.

Appendix B-2 provides the reductions that will be applicable when the permanent schedule becomes effective.

Appendix C—Model Forms

Appendix C contains thirteen model forms that may be used by banks to meet their disclosure responsibilities under the regulation. Each form is designed for a particular use, as indicated in the titles identifying each form. Information to be inserted by a bank using the forms is highlighted by the use of parentheses and bold type.

Although use of the model forms is not required, banks using them properly will be deemed to be in compliance with the regulation with regard to the particular disclosures. Banks may make certain changes in the format or content of the forms and delete any disclosures that are inapplicable without losing the Act's protection from liability. The rearrangement of the model forms may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Banks making revisions with that effect will lose their protection from civil liability. Acceptable changes include, for example:

- Using "customer" and "bank" instead of pronouns.
- Not using bold type for headings.
- Incorporating certain state "plain English" requirements.
- Deleting inapplicable disclosures by whiting out, blocking out, crossing out, leaving blanks, checking a box for applicable items, or circling applicable items.

Banks are cautioned against using the attached forms without reviewing their own policies and practices and the current state and federal law regarding the time periods required for availability of specific types of checks. A bank's use of a model form will result in its being in compliance with the Act and the regulation only if the disclosures actually correspond to the bank's availability policy. Shorter time periods for availability may always be substituted, and, in fact, may be required under applicable state law.

Models C-1 through C-7 generally. These forms are models for the specific policy disclosure described in § 229.16 of the regulation. The forms were designed to accommodate a variety of availability practices (within the regulation's maximum time periods). Models C-3 and C-4 reflect the alternative disclosure for banks with case-by-case hold policies described in § 229.16(b).

Model C-1. Use of this form is appropriate when a bank's policy is to make funds from any type of deposit available to customers the day after the deposit is made, with no holds placed on deposited funds.

Model C-2. Use of this form is appropriate when a bank's policy is to make funds from any type of deposit available the day after the deposit is made, except that the bank would take advantage of the regulation's new account and other exceptions in § 229.13. Under the special rules for new accounts section, a bank should insert, where indicated, its outside limit for availability of deposits other than those deposits into new accounts that are available on the next business day. The requirements referred to with regard to the checks that receive next-day availability when deposited in new accounts are those requirements outlined in § 229.10(c)(1)—specifically, that the checks be deposited into an account of the payee and, in some cases, be made with a special deposit slip.

Model C-3. Use of this form is appropriate when a bank's policy is to routinely make funds from all types of deposits available the day after the deposit is made, but occasionally to delay availability on a particular deposit. A bank using this form is assumed not to exercise either the new account or safeguard exceptions in § 229.13 of the regulation. As a result, the delays imposed may not be longer than the applicable maximums in §§ 229.11 and 229.12 of the regulation.

Model C-4. Use of this form is appropriate when a bank has the same policy as described under Model C-3, except that a bank using this form would take advantage of the safeguard exceptions found in § 229.13.

Model C-5. Use of this form is appropriate when a bank's policy is to impose delays to the full extent allowed by the schedules and exceptions in the regulation. The disclosure of availability for local checks and that the bank limits the customer's cash withdrawals to \$400 on the third business day after deposit assumes that the bank is not a member of a clearinghouse. (Banks that are members of a clearinghouse may restrict cash withdrawals until the fourth business day only as to non-clearinghouse local checks.) In making this disclosure, a bank must insert a time after which the customer may withdraw up to \$400. A bank may not, under the regulation, insert a time of day later than 5:00 p.m.

Model C-6. Use of this form is appropriate for a bank with the same policy as outlined under Model C-5. The only difference between the forms is

that a chart showing the bank's availability policy for local and nonlocal checks is substituted for the narrative material in Model C-5 regarding the availability times for local and nonlocal checks.

Model C-7. Use of this form is appropriate when a bank's policy is to delay availability based on the deposit categories (next-day availability items, local and nonlocal checks, deposits at automated teller machines) in the regulation, but the delay periods are shorter than the maximum times allowed under the regulation. (The form is identical to Model C-5 except that the pertinent time limits have been deleted and reminders for inserting the information added.)

Model C-8. Use of this form satisfies the written notice requirement of § 229.13(g) of the regulation when a bank places a hold based on an exception to the availability schedules. The form may be modified to indicate that a hold is being placed on more than one check in a deposit. However, each check must be described separately, and, if different reasons apply to the checks, a separate reason must be given for each hold placed.

Model C-9. Use of this form satisfies the notice requirement of § 229.16(b)(2) when a bank with a case-by-case hold policy imposes a delay on a deposit. This notice does not require a specific reason for the hold. (A specific reason is required only when an exception hold is placed. See Model C-8.)

Model C-10. Use of this form satisfies the notice requirement of § 229.18(b), notice at branch locations. The form assumes the bank's actual availability policy is the same as the schedules in the regulation.

Model C-11. Use of this form satisfies the notice requirements for preprinted deposit slips under § 229.18(a) and the notice requirements at proprietary automated teller machines under § 229.18(c)(1). It may also be used at drive-through teller facilities in lieu of Model C-8 to satisfy the notice requirements of § 229.18(b). The bracketed material is not required on preprinted deposit slips.

Model C-12. Use of this form satisfies the notice requirements of § 229.18(c)(2) for nonproprietary automated teller machines.

Model C-13. Use of this form, incorporated as part of a credit union's specific policy disclosure, satisfies the notice requirement under § 229.14(b) for credit unions not accruing interest from the date of provisional credit. This disclosure is only an example based on a hypothetical policy.

Appendix D—Indorsement Standards

This appendix provides the indorsement standards for depository banks and transit banks. It includes rules regarding the content, location, and color of the indorsements.

Initial Regulatory Flexibility Analysis

Of the items required to be contained in an initial regulatory flexibility analysis by 5 U.S.C. 603(b), the first ("a description of the reasons why action by the agency is being considered") and the second ("a succinct statement of the objectives of, and legal basis for, the proposed rule") are found elsewhere in this preamble.

The proposed rule contains a number of requirements that are also described elsewhere in the preamble. The Board proposes that all of these requirements be applicable to all banks and other entities subject to the rule regardless of size. The Board considered exempting very small banks, those that fall below the threshold for filing reports of deposit under the Board's Regulation D (12 CFR Part 204) (currently those with deposits of less than \$2.9 million) from the rule's requirements. However, the Act does not provide an exemption according to the size of bank; all banks, regardless of size, that maintain transaction-type accounts are required to provide availability to their depositors according to the Act's schedules, and all banks must make the required disclosures to their customers. In order to minimize the risks arising from these requirements, all banks, regardless of size, must be subject to the expedited return procedures established by Subpart C. Exemption of small banks from these requirements would mean that checks drawn on small banks would continue to be returned by the current inefficient manual processing of returns leading to increased losses for depository banks that accept for deposit checks drawn on small banks. The Board believes that the availability schedules and the expeditious return of checks can be made to work only if all banks are subject to the same rules.

The Board does not believe that the proposed rule would impose reporting or recordkeeping burdens on small institutions that require specialized professional skills not available to them. Many small institutions, particularly credit unions, are not subject to the Act's availability, disclosure, and payment of interest requirements, due to the fact that they do not hold transactions accounts. The Act does provide relief for certain credit unions that are subject to the Act, generally those that are very small and lack

sophisticated operations, from the requirement regarding accrual of interest. The proposed regulations contain other provisions that will facilitate compliance with the Act's requirements for small institutions, particularly pertaining to their disclosure responsibilities.

Regulation J Amendments

The Board proposes amendments to its Regulation J, Subpart A (12 CFR Part 210), Collection of Checks and Other Items and Wire Transfers of Funds, governing the collection of checks by Federal Reserve Banks, so that it conforms to the proposed Regulation CC, Subpart C. Under the proposed amendments, Federal Reserve Banks would accept for handling all returned checks, including checks (as defined in Regulation CC) not handled by Federal Reserve Banks for forward collection. Federal Reserve Banks, like other returning banks, would handle returned checks in accordance with Regulation CC, Subpart C. The details of their returned check services would be set forth in uniform Federal Reserve Bank operating circulars, as is currently the case. These details will include availability schedules, cut-off hours, charges, and provisions governing the handling of notices of nonpayment.

Except as required to conform to Regulation CC, Regulation J would remain unchanged. It would continue to govern the handling of items by Reserve Banks for forward collection, including both cash and noncash items. Most of the terms currently defined in Regulation J, such as "sender" and "cash item," would continue to apply only to forward collection of items through Reserve Banks. A new term, "returned check," is proposed to include all checks subject to Regulation CC (including cash items and other checks) that are returned through Federal Reserve Banks.

A new paragraph has been added to § 210.7(b) to provide that when Reserve Banks present checks as defined in § 229.2 of Regulation CC, they may make presentment in accordance with Regulation CC.

Section 210.2 has been revised to refer generally to Regulation CC for the terms governing the handling of returned checks. Also included in § 210.12 are provisions governing the handling of returned checks that parallel other provisions in Regulation J. These include the agreement of a bank sending a returned check to a Federal Reserve Bank, provisions governing tender of defense of warranty claims, and a provision authorizing direct sends of returned checks. Section 210.12(g)

provides that automatic charge agreements covering cash items also will be used to settle for returned checks. The Board proposes to delete the provision of § 210.12 that requires notice of nonpayment for checks of \$2,500 or more. The Regulation J notice requirement currently covers only those checks collected through a Federal Reserve Bank. As the Board is proposing a similar notice requirement in Regulation CC that would cover all checks, the Regulation J notice requirement would be redundant.

At a later date, to avoid confusion between different definitions of terms in Regulation J and Regulation CC, a further revision of Regulation J may be desirable.

As the Regulation J amendments merely conform that regulation to Regulation CC, the same concerns that led the Board not to exempt small entities from Regulation J justify not incorporating similar exemptions for small entities into Regulation J.

List of Subjects in 12 CFR Parts 210 and 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, Title 12, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 229 is added to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

Subpart A—General

- Sec.
229.1 Authority and purpose; organization.
229.2 Definitions.
229.3 Administrative enforcement.

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

- 229.10 Next day availability.
229.11 Temporary availability schedule.
229.12 Permanent availability schedule.
229.13 Exceptions.
229.14 Payment of interest.
229.15 General disclosure requirements.
229.16 Content of specific availability policy disclosure.
229.17 Initial disclosures.
229.18 Additional disclosure requirements.
229.19 Miscellaneous.
229.20 Relation to state law.
229.21 Civil liability.

Subpart C—Collection of Checks

- 229.30 Paying bank's responsibility for return of checks.
229.31 Returning bank's responsibility for return of checks.
229.32 Depository bank's responsibility for returned checks.
229.33 Notice of nonpayment.

229.34 Warranties by paying bank and returning bank.

229.35 Indorsements.

229.36 Presentment of checks.

229.37 Inquiry to paying bank.

229.38 Liability.

229.39 Insolvency of bank.

229.40 Relation to state law.

229.41 Exclusions.

Appendix A—Routing Number Guide to Local Checks

Appendix B-1—Reduction of Schedules for Certain Nonlocal Checks Under the Temporary Schedule

Appendix B-2—Reduction of Schedules for Certain Nonlocal Checks Under the Permanent Schedule

Appendix C—Model Disclosure Forms

Appendix D—Indorsement Standards

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

Subpart A—General

§ 229.1 Authority and purpose; organization.

(a) *Authority and purpose.* This part (Regulation CC; 12 CFR Part 229) is issued by the Board of Governors of the Federal Reserve System ("Board") to implement the Expedited Funds Availability Act ("Act"), which is contained in Title VI of Pub. L. 100-86.

(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 both temporary and permanent 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. 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, rules regarding indorsements and presentment, the liability of banks for failure to comply with Subpart C of this part, and other matters.

§ 229.2 Definitions.

As used in this part, unless the context requires otherwise:

"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). "Account" generally includes accounts 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, or 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 savings deposits or accounts described in 12 CFR 204.2(d)(2) even though such accounts permit third party transfers. An account may be in the form of—

- (1) A demand deposit account,
- (2) A negotiable order of withdrawal account,
- (3) A share draft account,
- (4) An automatic transfer account or
- (5) Any other transaction account described in 12 CFR 204.2(e) that are not time or savings deposits under 12 CFR Part 204.

"Account" does not include an account where the account holder is a bank.

"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 teller machine" or "ATM" means an electronic or mechanical device at which a natural person may make deposits by cash or check to accounts and perform other transactions.

"Available for withdrawal" with respect to funds deposited means available for any use generally permitted to the depositor for actually and finally collected funds under the bank's account agreement or policies, such as for payment of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

"Bank" means—

(1) 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) A "mutual savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

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

(4) 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) A "member" as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422);

(6) An "insured institution" as defined in section 401 of the National Housing Act (12 U.S.C. 1724) or an institution that is eligible to make application to become an insured institution under section 403 of that Act (12 U.S.C. 1726); or

(7) A "branch" of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101);

that is located in the United States. Unless otherwise specified, the term "bank" includes all of a bank's offices in the United States.

"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.

"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.

"Cash" means United States coins and currency.

"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; and
- (3) A direct obligation of the bank.

"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.

"Check" means—

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

(2) A negotiable demand draft drawn on the Treasury of the United States;

(3) A negotiable demand draft drawn on a state government;

(4) A negotiable demand draft drawn on a Federal Reserve Bank;

(5) A negotiable demand draft drawn on a Federal Home Loan Bank;

(6) A United States Postal Service money order; or

(7) A traveler's check.

The term "check" does not include a noncash item. A draft may be a "check" even though it is described on its face by another term, such as "money order." For purposes of Subpart C of this part, the term "check" also includes a demand draft of the type described above that is nonnegotiable.

"Check clearinghouse association" means any arrangement by which participants exchange checks in a specified area. The term "check clearinghouse association" may include arrangements using the premises of a Federal Reserve Bank, but it does not include the handling of checks for forward collection or return by a Federal Reserve Bank.

"Check processing region" means the geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities.

"Consumer account" means any account used primarily for personal, family, or household purposes.

"Depository bank" means the first bank to which a check is transferred even though it is also the paying bank or the payee. For the purposes of Subpart C of this part, the term also includes a Federal Reserve Bank or a Federal Home Loan Bank to which a check is transferred by a person other than a bank.

"Depository check" means a cashier's check, certified check, or teller's check.

"Electronic payment" means a wire transfer or an ACH credit transfer.

"Forward collection" means the process by which a depository bank sends a check on a cash basis to the paying bank for payment.

"Local check" means a check drawn on or payable through or at a local paying bank. A depository bank may rely on the routing number that appears on a check in magnetic characters to determine whether a check is a local check. Appendix A to this part lists the routing numbers that are considered local to each check processing region.

"Local paying bank" means a paying bank to which a check is sent for forward collection that is located in the same check processing region as the branch or proprietary ATM of the depository bank in which that check was deposited.

"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 characters with the routing number of the paying bank.

"Nonlocal check" means a check payable by, through, or at a nonlocal paying bank.

"Nonlocal paying bank" means a paying bank that is not a local paying bank with respect to the depository bank.

"Nonproprietary ATM" means an ATM that is not a proprietary ATM.

"Notice of nonpayment" means the notice of nonpayment given as provided in § 229.33.

"Participant" means a bank that—

(1) Is located in the geographic area served by a check clearinghouse association; and

(2) Both collects and receives for payment checks through the check clearinghouse association either directly or through an intermediary.

"Paying bank" means—

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

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

(3) The bank whose routing number appears on a check in magnetic characters or in fractional form and to which the check is sent for payment or collection;

(4) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable; or

(5) The state on which a check is drawn.

"Proprietary ATM" means an ATM that is—

(1) Owned or operated by, or operated exclusively for, the depository bank;

(2) Located on the premises (including the outside wall) of the depository bank; or

(3) Within 50 feet of the premises of the depository bank.

An ATM is not considered to be proprietary to more than one unaffiliated bank. If the criteria provided in paragraphs (1) through (3) of this definition are met by more than one bank with respect to any ATM, the ATM

will be proprietary to the bank that satisfies the criterion stated in the lowest numbered paragraph in this definition. If more than one bank meets the owned or operated criterion of paragraph (1) of this definition, the ATM is considered proprietary to the bank that operates it.

"Qualified returned check" means a check that is prepared for handling by automated check processing equipment for return to the depository bank. A qualified returned check must be encoded in magnetic ink with the routing number of the depository bank, the dollar amount of the check, and a return identifier in the form of a 2 in position 44 of the American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (Sept. 8, 1983). 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.

"Returning bank" means a bank (other than the paying or depository bank but including a Federal Reserve Bank or Federal Home Loan Bank) handling a returned check or notice in lieu of return.

"Routing number" means—

(1) The number printed on the face of a check in fractional form or in magnetic characters that identifies a paying bank; or

(2) The number in a bank's indorsement, in fractional or nine-digit form.

"Similarly situated bank" means a bank of similar size, located in the same community, and with similar check payments activities as the paying bank or returning bank.

"State" means a state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands.

"Teller's check" means a check drawn by a bank on another bank.

"Traveler's check" means an instrument for the payment of money that—

(1) 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;

(2) Is in the sum of ten dollars (\$10) or a whole multiple thereof if less than one hundred dollars (\$100), or in the sum of one hundred dollars (\$100) or a whole multiple thereof;

(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.

"Uniform Commercial Code," "Code," or "U.C.C." means the Uniform Commercial Code as adopted in a state. For purposes of uniform citation, all citations to the U.C.C. in this part will refer to the Official Text as approved from time to time by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

"United States" means the states, including the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

"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.

"Wire transfer" means an order to a bank transmitted by electronic or other means to pay a fixed or determinable amount of money to a beneficiary if the bank receiving the order is unconditionally permitted to pay the beneficiary upon receipt or on a day stated in the order.

Unless the context requires otherwise, the terms not defined in this section have the meanings set forth in the U.C.C.

§ 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) in the case of—

(i) National banks by the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks) by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) Section 5(d) of the Home Owners Loan Act of 1933 (12 U.S.C. 1464(d)), section 407 of the National Housing Act (12 U.S.C. 1730), and section 17 of the Federal Home Loan Bank Act (12 U.S.C. 1437), by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation) in the case of any institution subject to those provisions; 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 insured credit union.

(b) *Additional powers.* (1) For the purposes of the exercise by any agency

referred to in paragraph (a) of this section of its powers under any statute referred to in that paragraph, a violation of any requirement imposed under this Act is deemed to be a violation of a requirement imposed under that statute.

(2) In addition to its powers under any provision of law specifically referred to in paragraph (a) of this section, each of the agencies referred to in that paragraph may exercise, for purposes of enforcing compliance with any requirement imposed under this part, any other authority conferred on it by law.

(c) *Enforcement by the Board.* (1) Except to the extent that enforcement of the requirements imposed under this part is specifically committed to some other government agency, the Board shall enforce such requirements.

(2) If the Board determines that—

(i) Any bank that is not a bank described in paragraph (a) of this section, or

(ii) Any other person subject to the authority of the Board under the Act and this part,

has failed to comply with any requirement imposed by this part, the Board may issue an order prohibiting any bank, any Federal Reserve Bank, or any other person subject to the authority of the Board from engaging in any activity or transaction that directly or indirectly involves such noncomplying bank or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks and any related function of the payment system with respect to checks).

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

§ 229.10 Next day availability.

(a) *Cash deposits.* A bank shall make funds deposited in an account by cash available for withdrawal not later than the business day after the banking day on which the cash is deposited.

(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 funds.

(2) *When an electronic payment is received.* An electronic payment is received when, and to the extent that, the bank receiving the payment has received payment in actually and finally collected funds for the electronic payment.

(c) *Government checks, depository checks, checks drawn on the depository bank, and certain other checks.* (1) 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 in an account held by a payee of the money order;

(iii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank and deposited in an account held by a payee of the check;

(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; and

(C) With a special deposit slip, if such slips are required by the depository bank under paragraph (c)(2) of this section;

(v) A depository check deposited—

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

(B) With a special deposit slip, if such slips are required by the depository bank under paragraph (c)(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 \$100 or the aggregate deposited on any one banking day by check or checks other than checks subject to paragraph (c)(1) (i) through (vi) of this section.

(2) *Special deposit slip.* (i) As a condition to making the funds available for withdrawal on the next business day, a depository bank may require that a state or local government check or a depository check be deposited with a special deposit slip that identifies the type of check.

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

§ 229.11 Temporary availability schedule.

(a) *Effective date.* The temporary availability schedule contained in this section is effective from September 1, 1988, through August 31, 1990. For the

permanent availability schedule, which is effective September 1, 1990, see § 229.12.

(b) *Local checks*—(1) *In general.* A depository bank shall make funds deposited in an account by a check available for withdrawal not later than the third business day following the banking day on which funds are deposited, in the case of—

(i) A local check;

(ii) A check drawn on the Treasury of the United States that is not subject to next day availability under § 229.10(c); and

(iii) A U.S. Postal Service money order that is not subject to next day availability under § 229.10(c).

(2) *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 a local check are available for withdrawal by cash or similar means unless the check is drawn on a paying bank that is a participant in the same check clearinghouse association as the depository bank. Similar means include electronic payment, issuance of a depository check, or other irrevocable commitment to pay, but do not include the granting of provisional credit to a bank, Federal Reserve Bank, or Federal Home Loan Bank that presents a check to the depository bank for payment. The depository bank shall, however, make \$400 of these funds available for withdrawal by cash or similar means not later than 5:00 p.m. on the business day on which the funds are available under paragraph (b)(1) of this section. This \$400 is in addition to the \$100 available under § 229.10(c)(1)(vii).

(c) *Nonlocal checks.* (1) A depository bank shall make funds deposited in an account by a nonlocal check available for withdrawal not later than the seventh business day following the banking day on which funds are deposited.

(2) Nonlocal checks specified in Appendix B-1 to this part must be made available for withdrawal not later than the times prescribed in that Appendix.

(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 seventh business day following the banking day on which the funds are deposited.

(e) *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 that is—

(1) Deposited in an account at a branch of a depository bank 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.

§ 229.12 Permanent availability schedule.

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

(b) *Local checks.* 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 subject to next day availability under § 229.10(c); and

(3) A U.S. Postal Service money order that is not subject to next day availability under § 229.10(c).

(c) *Nonlocal checks.* (1) A depository bank shall make funds deposited in an account by a nonlocal check available for withdrawal not later than the fifth business day following the banking day on which funds are deposited.

(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) *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 are available for withdrawal by cash or similar means. Similar means include electronic payment, depository check, or other irrevocable commitment to pay, but do not include the granting of provisional 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 not later than 5:00 p.m. on the business day on which the funds are available under paragraphs (b) and (c) of this section. This \$400 is in addition to the \$100 available under § 229.10(c)(1)(vii).

(e) *Deposits at nonproprietary ATMs.* The requirements of §§ 229.10 and 229.12 apply to deposits made at nonproprietary ATMs, except that the depository bank shall make funds deposited in an account at a nonproprietary ATM by cash or by a check described in § 229.10(c) available

for withdrawal not later than the second business day following the banking day on which the deposit is made.

(f) *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 located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and

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

§ 229.13 Exceptions.

(a) *New accounts.* (1) A deposit in a new account—

(i) Is subject to the requirements in § 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;

(ii) Is subject to the requirements of § 229.10(c)(1) (i) through (v) 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), 229.11, and 229.12.

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

(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 the customer has had, within 30 calendar days before the account is established, another account at the depository bank for at least 30 days.

(b) *Large deposits.* Sections 229.11 and 229.12 do not apply to the aggregate amount of deposits by one or more checks that 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 of the customer if all of the holders of each account are the same. A depository bank may not aggregate the deposits in an individual and a joint account for the purpose of this exception.

(c) *Redeposited checks.* Sections 229.11 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 stamp 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 postdated, if the check is no longer postdated when redeposited.

(d) *Repeated overdrafts.* 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 instance, §§ 229.11 and 229.12 do not apply to any of the accounts. An account may be considered "repeatedly overdrawn" if there have been three or more instances within a given six-month period in which the balance of the account has gone, or would have gone if checks or other charges to the account had been paid, from positive (or zero) to negative. Periods of up to three consecutive banking days during which an account is negative due to overdrafts, or during which additional checks or other charges to the account are returned or rejected, are considered part of the same instance. A separate instance occurs if an account has a negative balance for more than three consecutive banking days or if charges or checks are rejected or returned over a period of longer than three consecutive banking days.

(e) *Reasonable cause to doubt collectibility.*—(1) *In general.* Sections 229.10(c)(1) (iii) and (v), 229.11, and 229.12 do not apply with respect to any check deposited in an account at a depository bank if the 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 fees.* The depository bank shall not assess any fee for any subsequent overdraft (including the use of a line of credit) or return of a check or other unpaid charge, if—

(i) The depository bank has extended the period between the time when funds are deposited in an account by check

and when those funds are made available for withdrawal beyond the time periods provided in §§ 229.10(c)(1) (iii) and (v), 229.11, and 229.12 based on the bank's belief that the check is uncollectible;

(ii) The depositor was not provided with the written notice required under paragraph (g) of this section with respect to such determination at the time the deposit was made;

(iii) The overdraft or return of the check or other unpaid charge would not have occurred except for the fact that the funds so deposited were not available but would have been available if the exception were not invoked; and

(iv) The check was finally paid by the paying bank.

(f) *Emergency conditions.* Sections 229.11 and 229.12 do not apply to funds deposited by check in a depository bank 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.* If a depository bank extends the times for availability beyond those provided in §§ 229.10(c)(1) (iii) and (v), 229.11, or 229.12, based on the application of an exception contained in paragraphs (b) through (f) of this section, the depository bank shall provide notice to the customer of—

(i) The reason the exception was invoked; and

(ii) The day the funds will be available for withdrawal, unless the emergency conditions exception in paragraph (f) of this section has been invoked and the depository bank in good faith does not know, at the time notice must be provided, the duration of the emergency and, consequently, when the funds will be available for withdrawal.

(2) *Timing of notice.* The notice shall be provided as follows—

(i) In the case of a deposit made in person to an employee of the depository bank, the depository bank shall provide the notice in writing to the depositor at the time of deposit.

(ii) In the case of any other deposit, or if the facts upon which the determination of the applicability of an exception contained in paragraphs (b) through (f) of this section to any deposit only become known to the depository bank after the time notice is required

under paragraph (g)(2)(i) of this section, the depository bank shall mail the notice to the depositor as soon as practicable, but not later than the first business day following the calendar day the facts become known to the depository bank, or the deposit is made, whichever is later, subject to paragraph (9)(2)(iii) of this section. The depository bank is deemed to have knowledge of the facts upon which the determination is made when the facts are brought to the attention of the person(s) in the depository bank responsible for making the determination, and, in any event, from the time when the facts would have been brought to their attention if the bank had exercised due diligence.

(iii) If the availability of funds is delayed under the emergency conditions exception provided in paragraph (f) of this section, the depository bank is not required to provide notice if the funds subject to the exception become available for withdrawal before the notice must be sent under paragraph (g)(2)(ii) of this section.

(3) *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.

(h) *Availability of deposits subject to exceptions.* (1) If an exception contained in paragraphs (b) through (e) of this section applies, not more than four business days shall be added to any time period established under §§ 229.11 and 229.12.

(2) If a depository bank invokes an exception contained in this section with respect to a check that is subject to § 229.10(c)(1) (i) through (v), the depository bank shall make the funds available for withdrawal not later than four business days after the day the funds would have become available had the check been subject to §§ 229.11 or 229.12.

(3) If the exception contained in paragraph (f) of this section applies, the depository bank shall make the funds available for withdrawal not more than four business days after the emergency has ceased or the period established in §§ 229.11 and 229.12, whichever is later.

§ 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 provisional credit for the funds, except as provided in paragraphs (b) and (c) of this section. For the purposes of this

section, the depository bank may rely on the availability schedule of its Federal Reserve Bank, Federal Home Loan Bank, or correspondent bank to determine the time provisional credit is actually received.

(b) *Special rule for credit unions.* Paragraph (a) of this section does not apply to any account at a credit union described in section 19(b)(1)(A)(vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(vi)), if the credit union—

(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 § 229.18(f).

(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.

§ 229.15 General disclosure requirements.

(a) *Form of disclosures.* A bank shall make the disclosures required by this subpart clearly and conspicuously in writing. Disclosures, other than those posted at branches and ATMs and printed on deposit slips, must be in a form that the customer may keep.

(1) The disclosures shall be grouped together and shall not contain any information not directly related to the disclosures required by this subpart.

(2) The disclosures, if contained in a document that sets forth other account terms and conditions, shall be highlighted within the document by, for example, use of a separate heading.

(b) *Uniform reference to day of availability.* In its disclosure, a bank shall describe funds as being available "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.

(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 if the bank gives the disclosures to one of the primary account holders.

(d) *Dormant or inactive accounts.* A bank need not give availability disclosures to holders of dormant or inactive accounts.

§ 229.16 Content of specific availability policy disclosure.

(a) *Specific availability policy disclosure.* To meet the requirements of a specific availability policy disclosure under §§ 229.17 and 229.18(d), a bank shall provide a disclosure describing when funds deposited in an account are available for withdrawal. Unless the bank has a case-by-case hold policy as discussed in paragraph (b) of this section, the bank must enable the customer to determine when funds for a particular deposit will be available by disclosing the following, as applicable:

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

(2) A description of the categories of deposits used by the bank when it delays availability (such as local and nonlocal checks), and how to determine the category of a particular deposit;

(3) A description of the availability period corresponding to each of the categories of deposits, including a description of the bank's business days and when a deposit is considered received; and

(4) A description of any exceptions to the bank's availability schedules, including any special rules that may apply to deposits made at nonproprietary ATMs, to certain types of deposits or accounts (such as new accounts), and to cash withdrawals.

(b) *Alternative disclosure for banks that have case-by-case hold policies.* (1) If a bank generally makes funds available for withdrawal by the business day following the banking day funds are deposited, the bank may give the following disclosures to meet the disclosure requirements under §§ 229.17 and 229.18(d):

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

(ii) A statement that the bank may in some cases delay the time funds are available for withdrawal and the maximum delay that may be imposed;

(iii) A description of the exceptions set forth in § 229.13 that the bank reserves the right to invoke, if any, and the maximum delay that may be imposed under the exceptions; and

(iv) A statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal on the business day following the banking day of deposit.

(2) A bank that provides the disclosures required by paragraph (b) of this section instead of paragraph (a) of this section, shall also provide customers with a notice at the time a deposit subject to a delay under paragraph (b)(ii) of this section is made. The notice shall state that availability of

the deposit is being delayed and indicate the day the funds will be available for withdrawal. If the deposit was not made in person to an employee of the depository bank, the notice may be mailed to the customer, provided the notice is sent on the banking day the deposit is made. If the decision to delay a deposit made in person to a bank employee is made after the time of deposit, a delay may be imposed only if—

(i) The customer was told at the time of the deposit that the particular deposit may be subject to a delay; and

(ii) The bank notifies the customer by close of business on the day of the deposit that a delay has been imposed and of the day funds will be available for withdrawal.

§ 229.17 Initial disclosures.

(a) *Disclosure to new accounts.* Before opening an account, a bank shall provide a potential customer with the applicable specific availability policy disclosure described in § 229.16.

(b) *Disclosure to existing accounts.* (1) In the first regularly scheduled mailing to customers after September 1, 1988, but not later than October 31, 1988, a bank shall send to existing customers the applicable specific availability policy disclosure described in § 229.16, unless the bank has previously given disclosures that meet the requirements of that section.

(2) If the disclosure required by paragraph (b)(1) of this section is included with a disclosure of other account terms and conditions, the bank must direct the customer's attention to the availability disclosures by, for example, the use of an insert or a letter.

(3) The disclosure required by paragraph (b)(1) of this section may not be included in a mailing of promotional material, such as a solicitation for a new product or service, unless the mailing also includes the customer's account statement.

§ 229.18 Additional disclosure requirements.

(a) *Notice on deposit slips.* A bank that delays availability on deposits shall include on all preprinted deposit slips furnished to its customers (other than special deposit slips provided to customers under § 229.10(c)), a notice that deposited checks may not be available for immediate withdrawal.

(b) *Notice at branch locations.* A bank shall post in a conspicuous place at each branch 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) *Notice at or on ATMs.*

(1) The owner or operator of one or more ATMs shall post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

(2) If an ATM is considered nonproprietary as to certain customers making deposits at the ATM, the bank to which the ATM is proprietary shall be identified at or on the ATM, and a notice posted or provided that funds may not be available until the seventh business day after deposit.

(d) *Disclosure upon request.* A bank shall provide, 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 customers at least 30 days before implementing a change to the bank's availability policy, except that a change that expedites the availability of funds shall be disclosed not later than 30 days after implementation.

(f) *Notice of interest payment policy.* 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), any notice required to be provided under §§ 229.17 or 229.18(d) shall contain an explanation of when the credit union begins to accrue interest or dividends on the funds.

§ 229.19 *Miscellaneous.*

(a) *When deposits are considered made.* For the purposes of this part—

(1) A deposit mailed to the depository bank is considered made when it is received by the depository bank; and

(2) A deposit is considered made on the next banking day, in the case of a deposit that is made—

(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 2:00 p.m. or later. Different cut-off hours may be established for 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 §§ 229.11(b)(2) and 229.12(d), if any provision of this subpart requires that funds be made available for withdrawal on any business day, the funds shall be available for withdrawal by the later of—

(1) 7:00 a.m. (local time); 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 part;

(2) Affect a depository bank's right—

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

(ii) To revoke any provisional settlement made by the depository bank with respect to a check accepted by the bank for deposit; to charge back the depositor'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 provisional 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 at an ATM or a staffed teller station on any one day, if that policy—

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

(ii) 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, 229.11, or 229.12; and

(iii) Is related to security requirements or bonding limitations of the depository bank.

(d) *Use of calculated availability.* A depository bank may provide availability to, and begin to accrue interest on, its non-consumer accounts based on a sample of checks that represents the average composition of the customer's deposits, provided that the terms for availability or interest payment based on the sample are equivalent to or more prompt than the availability and interest payment requirements of this part.

(e) *Limitation on placing holds on certain funds in accounts.* A depository bank that receives a check for deposit in an account or purchases a check for cash, other than a check drawn on that bank and presented over the counter for payment in cash, may place a hold on any funds of the customer at the bank, if—

(1) The amount of funds that are held do not exceed the amount of the check, and

(2) The funds are made available for withdrawal within the times specified in §§ 229.10, 229.11, and 229.12.

(f) *Employee training and compliance.*

(1) Each bank shall provide a statement detailing the requirements of this subpart to all employees who perform duties that relate to the bank's compliance with the requirements of this subpart.

(2) 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.

(3) Not less than once each year, each bank shall conduct an internal review to determine its employees' compliance with the procedures established in paragraph (f)(2) of this section.

§ 229.20 *Relation to state law.*

(a) *In general.* Any 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 Subparts A and B of this part shall—

(1) Supersede the provisions of the Act and Subparts A and B 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) Apply to all federally insured banks located within the state.

No amendment to a state law or regulation governing the availability of funds that becomes effective after September 1, 1989, shall supersede the Act and Subparts A and B of this part, but unamended provisions of state law shall remain in effect.

(b) *Preemption of inconsistent law.* Except as provided in paragraph (a) of this section, the Act and Subparts A and B of this part supersede any provision of inconsistent state law.

(c) *Preemption determinations.* The Board shall determine, upon the request of any state, bank, or other interested party, whether the Act and this subpart preempt state laws relating to the availability of funds.

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

(1) Provides that funds deposited in an account by cash, electronic payment, or a particular category of check may be available for withdrawal in a longer period of time than provided in this subpart; or

(2) Provides an exception to the time funds deposited in an account must be available for withdrawal for the same general class of deposit or that addresses the same type of risk as an exception provided in this subpart, but the time allowed for the exception, or the exception itself, is different from the exception provided in this subpart.

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

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

(2) A comparison of the provisions of state law with the corresponding provisions in the 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 Act and Subparts A and B of this part.

§ 229.21 Civil liability.

(a) *Civil liability.* Any depository bank that fails to comply with any requirement imposed under this subpart or any provision of state law that supersedes any provision of this subpart with respect to any person is liable to that person in an amount equal to the sum of—

(1) Any actual damage sustained by that person as a result of the failure;

(2) Such additional amount as the court may allow, except that—

(i) In the case of an individual action, liability under this paragraph shall not be less than \$100 nor greater than \$1,000; and

(ii) In the case of a class action—
(A) No minimum recovery shall be applicable to each member of the class; and

(B) The total recovery under this paragraph in any class action or series of class actions arising out of the same failure to comply by the same depository bank shall not be more than the lesser of \$500,000 or 1 percent of the net worth of the depository bank involved; and.

(3) In the case of a successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) *Class action awards.* In determining the amount of any award in

any class action, the court shall consider, among other relevant factors—

(1) The amount of any damages awarded;

(2) The frequency and persistence of failures of compliance;

(3) The resources of the depository bank;

(4) The number of persons adversely affected; and

(5) The extent to which the failure of compliance was intentional.

(c) *Bona fide errors—(1) General rule.* A depository bank is not liable in any action brought under this section for a violation of this subpart if the depository bank demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) *Examples.* Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to the depository bank's obligation under this subpart is not a bona fide error.

(d) *Jurisdiction.* Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

(e) *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 such 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.

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

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

(a) *Return of checks or notice of nonpayment.* If the paying bank determines not to pay a check, it shall return the check or provide notice of nonpayment in an expeditious manner. The paying bank returns the check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check:

(1) Of similar amount as the returned check,

(2) Drawn on the depository bank, and

(3) Deposited for forward collection in the similarly situated bank before noon on the banking day following the banking day on which the returned check was presented to the paying bank.

Subject to the requirement for expeditious return, the paying bank may send the returned check to the bank that presented the check being returned, to the depository bank, or to any other bank (including a Federal Reserve Bank or Federal Home Loan Bank) agreeing to handle the check for return to the depository bank as expeditiously as it would handle a forward collection check drawn on the depository bank as specified in § 229.31. The paying bank may, but is not required to, convert the returned check to a qualified returned check. The paying bank provides notice of nonpayment in an expeditious manner if it provides notice of nonpayment with respect to the check, regardless of amount, in accordance with § 229.33, and also returns the check in a reasonably prompt manner. This paragraph does not affect a paying bank's responsibility for timely return under the U.C.C. or Regulation J (12 CFR Part 210).

(b) *Extension of deadline for small-dollar checks.* A paying bank, in an effort to avoid dishonor of a check in an amount of \$100 or less, may extend the time for return or notice of nonpayment under the U.C.C., Regulation J (12 CFR Part 210), or paragraphs (a) or (c) of this section by not more than two business days without liability to or discharge of any other party. If the paying bank extends such times, it shall review the factors on which a decision to pay or return is based on the business day on which it returns the check or sends notice of nonpayment.

(c) *Extension of deadline for expedited delivery.* A paying bank, in an effort to expedite delivery of a returned

check to a bank, may extend the time for return or notice of nonpayment under the U.C.C., Regulation J (12 CFR Part 210), and paragraph (a) or (b) of this section, provided that the expedited method of delivery would ordinarily result in the returned check being received by the bank to which it is sent on or before that bank's next banking day following the otherwise applicable time for return or such later time as would result from the use of highly expeditious means of transportation.

(d) *Identification of returned check.* 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.

(e) *Depository bank without accounts.* The expeditious return requirements of paragraph (a) of this section do not apply to checks deposited in a depository bank that does not maintain accounts.

(f) *Notice in lieu of return.* If a check is unavailable for return by a paying bank, the bank may send in its place a notice of nonpayment in accordance with § 229.33, without regard to the time or amount limits. The 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 time limits of this section and to other requirements of this subpart.

(g) *Reliance on routing number.* A paying bank may return a returned check based on any routing number designating the depository bank appearing on the returned check in the depository bank's indorsement.

§ 229.31 Returning bank's responsibility for return of checks.

(a) *Return of checks.* A returning bank shall handle and return a returned check in an expeditious manner. A returning bank 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—

- (1) Of similar amount as the returned check,
- (2) Drawn on the depository bank, and
- (3) Received for forward collection by the similarly situated bank at the time the returning bank received the returned check.

A returning bank may set a cut-off hour for the receipt of returned checks that is earlier than its cut-off hour for checks received for forward collection, provided that the cut-off hour is not earlier than 2:00 p.m. Subject to the requirement for expeditious return, the returning bank may return the returned check to the immediate prior collecting bank that had sent the check to the

returning bank during forward collection, to the depository bank, or to any other bank (including a Federal Reserve Bank or a Federal Home Loan Bank) agreeing to handle the returned check as expeditiously as it would handle a forward collection check drawn on the depository bank as specified in this section. The returning bank may convert the returned check to a qualified returned check.

(b) *Extension of deadline for qualified returned check.* A returning bank, in order to convert a returned check to a qualified returned check, may extend by one business day the time for return under the U.C.C., Regulation J (12 CFR Part 210), and paragraph (a) of this section. A returning bank may not, however, extend these times when it is returning a check directly to the depository bank.

(c) *Acceptance by collecting bank.* A bank that handled a check during forward collection may not refuse to handle that check as a returned check.

(d) *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. The settlement shall become final upon the expiration of the time for payment by the depository bank as provided in § 229.32(b).

(e) *Charges.* A returning bank may impose a charge on a bank sending a returned check for handling the returned check.

(f) *Reliance on routing number.* A returning bank may return 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 characters on a qualified returned check.

(g) *Depository bank without accounts.* The expeditious return requirement of paragraph (a) of this section does not apply to checks deposited with a depository bank that does not maintain accounts.

(h) *Notice in lieu of return.* If a check is unavailable for return, the returning bank may send in its place notice of nonpayment in accordance with § 229.33, without regard to the time or amount limits of that section. The notice shall clearly state that it constitutes a notice in lieu of return and is considered a returned check subject to the requirements of this subpart.

§ 229.32 Depository bank's responsibility for returned checks.

(a) *Acceptance of returned checks.* A depository bank shall accept returned

checks and written notices of nonpayment—

(1) At any branch or head office consistent with the name and address of the bank in its indorsement on the check;

(2) If no address appears in the indorsement, at any branch or head office associated with the routing number of the bank in its indorsement on the check;

(3) If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank; and

(4) At any location at which the bank accepts checks as a paying bank.

(b) *Payment.* A depository bank becomes accountable for the amount of a returned check (or notice in lieu of return) at the close of the banking day on which it receives the check or notice ("payment date"). Prior to that time the depository bank shall pay the bank returning the check to it (the paying or returning bank) for the amount of the check by—

(1) Debit to an account of the depository bank on the books of the returning or paying bank,

(2) Cash,

(3) Wire transfer, or

(4) Any other form of payment acceptable to the returning or paying bank,

provided that the proceeds of such payment are available to the returning or paying bank in cash or by credit to an account of the returning or paying bank on or as of the payment date. If the payment date is not a banking day for the returning or paying bank, payment shall be made by the next day that is a banking day for the returning or paying bank. Any provisional credit between banks (including Federal Reserve Banks and Federal Home Loan Banks) for the check arising during the forward collection of the check shall become final upon the expiration of the time for payment by the depository bank.

(c) *Recovery by depository bank from collecting bank.* If, during the forward collection of a check, the depository bank did not receive full provisional settlement for the check, the depository bank may recover for the returned check from the bank (including a Federal Reserve Bank or a Federal Home Loan Bank) to which it sent the check for forward collection the amount of any payment the depository bank made to the bank returning the check for the returned check, less any settlement the depository bank received.

(d) *Misrouted returned checks and notices of nonpayment.* If a bank receives a returned check or notice of

nonpayment on the basis that it is the depository bank, and the bank determines that it is not the depository bank with respect to the check or notice, it shall identify the depository bank and, thereafter, as a returning bank, forward the returned check or notice to the depository bank. If the bank cannot identify the depository bank, it shall, as a returning bank, send the returned check or notice to the bank from which it received the check or notice.

§ 229.33 Notice of nonpayment.

(a) *Requirement.* If a paying bank determines not to pay a check in the amount of \$2,500 or more, it shall provide notice of nonpayment such that it is received by the depository bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was received by the paying bank. If the day the paying bank is required to provide notice to the depository bank is not a banking day for the depository bank, receipt of notice on the depository bank's next banking day constitutes timely notice. Notice may be provided by any reasonable means, including the returned check, a writing (including a photocopy of the check), telephone, Fedwire, telex, or other form of telegraph. Notice of nonpayment initiated under § 229.30 or § 229.31 shall also be given as provided in this section, but no more than one notice is required for a single check.

(b) *Content of notice.* Notice must include the:

- (1) Name and routing number of the paying bank;
- (2) Name of the payee(s);
- (3) Amount;
- (4) Date of the indorsement of the depository bank (or if given to a collecting bank other than the depository bank, the date of indorsement of the collecting bank and the name, routing number, and date of indorsement of any prior collecting bank and the depository bank);
- (5) Account number of the depositor(s) in the depository bank;
- (6) Branch name or number of the depository bank from its indorsement;
- (7) Trace number associated with the indorsement of the depository bank; and
- (8) Reason for return.

The notice may include other information from the check that may be useful in identifying the check being returned and the depositor, and, in the case of a written notice, must include the name and routing number of the depository bank from its indorsement. The notice need not include information that the bank cannot determine with reasonable certainty from the check itself through the exercise of ordinary

care and good faith. If the paying bank is not sure of a piece of information, it may, but is not required to, identify the information with question marks. If the paying bank cannot identify the depository bank, it should send the notice of nonpayment to the first bank that it can identify that handled the check during forward collection.

(c) *Acceptance of notice.* The depository bank shall accept notices during its banking day at the general purpose telephone or telegraph number of its head office or of the branch designated in the indorsement, at the number of its return item unit, at any other number held out by the bank for receipt of notice of nonpayment, and, in the case of written notice, as specified in § 229.32(a).

(d) *Charge-back.* If the depository bank receives a returned check (or notice of nonpayment) and fails to send the returned check or notice of nonpayment to its customer within the time and manner provided in the U.C.C., it may charge-back the amount of any credit given for the check to its customer's account, but is liable to the customer for any loss resulting from any delay in charging-back if the notice contains sufficient information to allow the depository bank to charge-back.

(e) *Cancellation of notice.* If a paying bank gives notice of nonpayment and subsequently determines to pay a check, the paying bank shall provide a second notice as soon as reasonably possible, indicating that it is a second notice cancelling a previous notice and containing all the information in the original notice.

§ 229.34 Warranties by paying bank and returning bank.

(a) *Warranties.* 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) The paying bank returned the check timely under the U.C.C., Regulation J (12 CFR Part 210), or § 229.30 of this part;
- (2) It is authorized to return the check; and
- (3) The returned check has not been materially altered.

(b) *Damages.* Damages for breach of these warranties shall not exceed the consideration received by the paying or returning bank plus finance charges and expenses related to the returned check, if any.

(c) *Tender of defense.* If a returning bank is sued for breach of a warranty

under this section, it may give a prior returning bank or the paying bank written notice of the litigation, and the bank notified may then give similar notice to any other prior returning bank or the paying bank. If the notice states that the paying or returning bank notified may come in and defend and that if the paying or returning bank notified does not do so, it will in any action against it by the paying or returning bank giving the notice be bound by any determination of fact common to the two litigations, then unless after reasonable receipt of the notice the paying or returning bank notified does come in and defend, it is so bound.

§ 229.35 Indorsements.

(a) *Indorsement standards.* A bank, a Federal Reserve Bank, or a Federal Home Loan Bank, other than a paying bank that handles a check during forward collection or a returned check, shall indorse the check in accordance with the indorsement standard set forth in Appendix D to this part.

(b) *Contract of indorser.* A paying bank or returning bank makes the contract of an indorser and may have the rights of a holder with respect to each returned check it handles.

§ 229.36 Presentment of checks.

(a) *Presentment of checks.* A check payable at or through a paying bank is considered to be drawn on that bank for purposes of determining the time for return or notice of nonpayment by the paying bank under the U.C.C., Regulation J (12 CFR Part 210), and this part.

(b) *Receipt at bank office or processing center.* A check is considered received by the paying bank when it is received:

- (1) At any branch or head office if the bank is identified on the check by name without address,
- (2) At any branch or head office consistent with the name and address of the bank on the check,
- (3) At any address of the bank associated with the routing number of the bank on the check, whether in magnetic characters or in fractional form, or
- (4) At a location to which delivery is requested by the paying bank.

(c) *Truncation.* A bank, Federal Reserve Bank, or Federal Home Loan Bank may present a check to a paying bank by transmission of information describing the check in accordance with an agreement with the paying bank. A truncation agreement may not extend return times or otherwise vary the

requirements of this part with respect to parties interested in the check that are not party to the agreement.

§ 229.37 Inquiry to paying bank.

A paying bank shall respond promptly to a telephone or telegraph inquiry from a depository bank with respect to whether a depository check drawn upon it has been issued, certified, or payment stopped thereon, or whether it has been paid, returned, or notice of nonpayment given, and confirm information on the face of the check including the amount and payee. With respect to a teller's check, the drawing bank shall respond promptly to a telephone or telegraph inquiry from a depository bank with respect to whether a teller's check has been issued, or payment has been stopped thereon, and confirm information on the face of the check, including the amount and payee. A paying or drawing bank does not agree to pay the check by responding to such an inquiry.

§ 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 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 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. References to "bank" in this section include a Federal Reserve Bank and Federal Home Loan Bank.

(b) *Paying bank's failure to make timely return.* If a paying bank fails both to comply with § 229.30 and to comply with the requirement of timely return under the U.C.C. or Regulation J (12 CFR Part 210) in connection with a single nonpayment of a check, the paying bank

shall be liable under either § 229.30 or such other provision, but not both.

(c) *Comparative negligence.* If a person, including a bank, Federal Reserve Bank, or Federal Home Loan Bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§ 229.35) or accepting a returned check or notice (§§ 229.32(a) and 229.33(c)), or otherwise, the loss 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) *Timeliness of action.* If a bank, a Federal Reserve Bank, or a Federal Home Loan 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.

(e) *Exclusion.* Section 229.21 of this part and § 611 (a) and (b) of the Act (12 U.S.C. 4010 (a) and (b)) do not apply to this subpart.

(f) *Bona fide errors.* A bank is not liable in any action brought under this section for a violation of this subpart if the bank demonstrates by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. An error of legal judgment with respect to a bank's obligation under this subpart is not a bona fide error.

(g) *Jurisdiction.* Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, 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 such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after such act or omission has occurred.

§ 229.39 Insolvency of bank.

(a) *Duty of receiver.* A check or returned check in, or coming into, the possession of a paying, collecting, depository, or returning bank that suspends payment and which check is not finally paid shall be returned by the

receiver, trustee, or agent in charge of the closed bank to the bank or customer that transferred the check to the closed bank.

(b) *Preference against paying or a depository bank.* If a paying or depository bank finally pays a check or returned check and suspends payment without making a settlement for the check with its customer or the prior bank, which settlement is or becomes final, the customer or prior bank has a preferred claim against the paying or depository bank.

(c) *Preference against collecting or returning bank.* If a collecting 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 or returning bank.

(d) *Final payment of provisional settlement.* If a paying bank gives, or a collecting bank gives or receives, a provisional settlement for a check or returned check and thereafter suspends payment, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of a certain time or the happening of certain events.

§ 229.40 Relation to state 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.

§ 229.41 Exclusions.

The expeditious return requirements of this subpart do not apply to a check drawn upon the account of the United States Treasury, to a check indorsed by, or for credit to the United States Treasury, or to a U.S. Postal Service money order.

Appendix A—Routing Number Guide to Local Checks

Each bank is assigned a routing number by Rand McNally & Co., as agent for the American Bankers Association. The routing number takes two forms: A fractional form and a nine-digit form. A paying bank is normally 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 in a strip along the bottom of the check).

The first four digits of the nine-digit routing number and the denominator of the fractional routing number form the "Federal Reserve routing symbol," which identifies the Federal Reserve District, the Federal Reserve office, and the clearing arrangements used by the paying bank. Because the Expedited Funds Availability Act and Regulation CC define local and nonlocal checks in terms of the Federal Reserve office serving the paying bank, it is possible to determine whether a check is local or nonlocal by reference to the Federal Reserve routing symbol.

The following is a list of Federal Reserve routing symbols associated with each Federal Reserve office. A depository bank should refer to the routing numbers listed below for the Federal Reserve office that serves the territory in which the branch of deposit is located. Checks with these Federal Reserve routing symbols are considered local checks.

First Federal Reserve District

(Federal Reserve Bank of Boston)

Head Office

0110 ¹
2110 ²
0113
2113
0114
2114
0115
2115
0116
2116
0117
2117

Windsor Locks Office

0111
2111
0118
2118
0119
2119
0211
2211

Lewiston Office

0112
2112

Second Federal Reserve District

(Federal Reserve Bank of New York)

Head Office

0210
0211 ³

¹ The first two digits identify the Federal Reserve District. Thus 01 identifies the First Federal Reserve District (Boston), and 12 identifies the Twelfth District (San Francisco).

² 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.

³ Banks in Fairfield County, Connecticut are members of the Federal Reserve Bank of New York and therefore have Second District routing numbers. Their checks, however, are processed by the Windsor Locks office. Thus, checks drawn on banks

2211
0215
2215
0216
2216
0260
2260

Buffalo Branch

0220
2220

0223
2223

Cranford Office

0212
2212

Jericho Office

0214
2214

0280
2280

0219
2219

Utica Office

0213
2213

Third Federal Reserve District

(Federal Reserve Bank of Philadelphia)

Head Office

0310
2310
0360
2360
0311
2311
0312
2312
0313
2313
0319
2319

Fourth Federal Reserve District

(Federal Reserve Bank of Cleveland)

Head Office

0410
2410
0412
2412

Cincinnati Branch

0420
2420

0421
2421

0422
2422

0423
2423

Pittsburgh Branch

0430
2430

0432
2432

0433
2433

0434
2434

Columbus Office

0440
2440

0441
2441

with 0211 or 2211 routing numbers would not be local checks for Second District depository banks.

0442
2442

Fifth Federal Reserve District

(Federal Reserve Bank of Richmond)

Head Office

0510
2510

0514
2514

Baltimore Branch

0520
2520

0521
2521

0522
2522

0540
2540

0550
2550

0560
2560

0570
2570

Charlotte Branch

0530
2530

0531
2531

Columbia Office

0532
2532

0539
2539

Charleston Office

0515
2515

0519
2519

Sixth Federal Reserve District

(Federal Reserve Bank of Atlanta)

Head Office

0610
2610

0611
2611

0612
2612

0613
2613

Birmingham Branch

0620
2620

0621
2621

0622
2622

Jacksonville Branch

0630
2630

0631
2631

0632
2632

Nashville Branch

0640
2640

0641
2641

0642
2642

New Orleans Branch

0650

2650	2839	3040
0651	0863	1041
2651	2863	3041
0652	Memphis Branch	1049
2652	0840	3049
0653	2840	
2653	0841	<i>Eleventh Federal Reserve District</i>
0654	2841	(Federal Reserve Bank of Dallas)
2654	0842	Head Office
0655	2842	1110
2655	0843	3110
Miami Branch	2843	1113
0660		3113
2660	<i>Ninth Federal Reserve District</i>	1111
0670	(Federal Reserve Bank of Minneapolis)	3111
2670	Head Office	1119
	0910	3119
<i>Seventh Federal Reserve District</i>	2910	El Paso Branch
(Federal Reserve Bank of Chicago)	0911	1120
Head Office	2911	3120
0710	0912	1122
2710	2912	3122
0711	0913	1123
2711	2913	3123
0712	0914	1163
2712	2914	3163
0719	0915	Houston Branch
2719	2915	1130
Detroit Branch	0960	3130
0720	2960	1131
2720	0918	3131
0724	2918	San Antonio Branch
2724	0919	1140
Des Moines Office	2919	3140
0730	Helena Branch	1149
2730	0920	3149
0739	2920	
2739	0921	<i>Twelfth Federal Reserve District</i>
Indianapolis Office	2921	(Federal Reserve Bank of San Francisco)
0740	0929	Head Office
2740	2929	1210
0749		3210
2749	<i>Tenth Federal Reserve District</i>	1214
Milwaukee Office	(Federal Reserve Bank of Kansas City)	3214
0750	Head Office	1211
2750	1010	3211
0759	3010	1212
2759	1011	3212
<i>Eighth Federal Reserve District</i>	3011	1213
(Federal Reserve Bank of St. Louis)	1012	3213
Head Office	3012	Los Angeles Branch
0810	1019	1220
2810	3019	3220
0812	Denver Branch	1221
2812	1020	3221
0815	3020	1222
2815	1021	3222
0819	3021	1223
2819	1022	3223
0865	3022	1224
2865	1023	3224
Little Rock Branch	3023	Portland Branch
0820	1070	1230
2820	3070	3230
0829	Oklahoma City Branch	1231
2829	1030	3231
Louisville Branch	3030	1232
0813	1031	3232
2813	3031	1233
0830	1039	3233
2830	3039	Salt Lake City Branch
0839	Omaha Branch	1240
	1040	

3240																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																				</
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Federal Reserve Office	Number of business days following the banking day funds are deposited	Federal Reserve Office	Number of business days following the banking day funds are deposited	Federal Reserve Office	Number of business days following the banking day funds are deposited
Birmingham: Depository banks (0620, 2620) to:		Detroit: Depository banks (0720, 1720) to:		Little Rock: Depository banks (0820, 2820) to:	
0110 2110 0210 0260 2260 0280		0110 2110 0210 0260 2260 0280		0110 2110 0210 0260 2260	
0220 2220 0310 2310 0360 2360		0220 2220 0310 2310 0360 2360		0280 0220 2220 0310 2310	
0410 2410 0420 2420 0430 2430		0410 2410 0420 2420 0430 2430		0360 2360 0410 2410 0420	
0440 2440 0510 2510 0519 2519		0440 2440 0510 2510 0519 2519		2420 0430 2430 0440 2440	
0520 2520 0530 2530 0539 2539		0520 2520 0530 2530 0539 2539		0510 2510 0519 2519 0520	
0610 2610 0630 2630 0640 2640		0610 2610 0620 2620 0630 2630		2520 0530 2530 0539 2539	
0650 2650 0660 2660 0710 2710		0640 2640 0650 2650 0660 2660		0610 2610 0620 2620 0630	
0720 2720 0730 2730 0740 2740		0710 2710 0730 2730 0740 2740		2630 0640 2640 0650 2650	
0750 2750 0810 2810 0820 2820		0750 2750 0810 2810 0820 2820		0660 2660 0710 2710 0720	
0830 2830 0840 2840 0910 2910		0830 2830 0840 2840 0910 2910		2720 0730 2730 0740 2740	
0960 2960 0920 2920 1010 3010		0960 2960 0920 2920 1010 3010		0750 2750 0810 2810 0830	
1020 3020 1030 3030 1040 3040		1020 3020 1030 3030 1040 3040		2830 0840 2840 0910 2910	
1110 3110 1120 3120 1130 3130		1110 3110 1120 3120 1130 3130		0960 2960 0920 2920 1010	
1140 3140 1210 3210 1220 3220		1140 3140 1210 3210 1220 3220		3010 1020 3020 1030 3030	
1223 3223 1230 3230 1240 3240		1223 3223 1230 3230 1240 3240		1040 3040 1110 3110 1120	
1250 3250	5	1250 3250	5	3120 1130 3130 1140 3140	
Jacksonville: Depository banks (0630, 2630) to:		Des Moines: None.		1210 3210 1220 3220 1223	
0110 2110 0210 0260 2260 0280		Indianapolis: Depository Banks (0740, 2740) to:		3223 1230 3230 1240 3240	
0220 2220 0310 2310 0360 2360		0110 2110 0210 0260 2260		1250 3250	5
0410 2410 0420 2420 0430 2430		0280 0220 2220 0310 2310		Louisville: Depository banks (0830, 2830) to:	
0440 2440 0510 2510 0519 2519		0360 2360 0410 2410 0420		0110 2110 0210 0260 2260	
0520 2520 0530 2530 0539 2539		2420 0430 2430 0440 2440		0280 0220 2220 0310 2310	
0610 2610 0620 2620 0640 2640		0510 2510 0519 2519 0520		0360 2360 0410 2410 0420	
0650 2650 0660 2660 0710 2710		2520 0530 2530 0539 2539		2420 0430 2430 0440 2440	
0720 2720 0730 2730 0740 2740		0610 2610 0620 2620 0630		0510 2510 0519 2519 0520	
0750 2750 0810 2810 0820 2820		2630 0640 2640 0650 2650		2520 0530 2530 0539 2539	
0830 2830 0840 2840 0910 2910		0660 2660 0710 2710 0720		0610 2610 0620 2620 0630	
0960 2960 0920 2920 1010 3010		2720 0730 2730 0750 2750		2630 0640 2640 0650 2650	
1020 3020 1030 3030 1040 3040		0810 2810 0820 2820 0830		0660 2660 0710 2710 0720	
1110 3110 1120 3120 1130 3130		2830 0840 2840 0910 2910		2720 0730 2730 0740 2740	
1140 3140	5	0960 2960 0920 2920 1010		0750 2750 0810 2810 0820	
Miami: Depository banks (0660, 2660) to:		3010 1020 3020 1030 3030		2820 0840 2840 0910 2910	
0220 2220 0410 2410 0420 2420		1040 3040 1110 3110 1120		0960 2960 0920 2920 1010	
0430 2430 0510 2510 0519 2519		3120 1130 3130 1140 3140		3010 1020 3020 1030 3030	
0110 2110 0210 0260 2260 0280		1210 3210 1220 3220 1223		1040 3040 1110 3110 1120	
0310 2310 0360 2360 0539 2539		3223 1230 3230 1240 3240		3120 1130 3130 1140 3140	
0710 2710 0730 2730 0740 2740		1250 3250	5	1210 3210 1220 3220 1223	
0750 2750 0810 2810 0820 2820		Milwaukee: Depository banks (0750, 2750) to:		3223 1230 3230 1240 3240	
0440 2440 0520 2520 0530 2530		0110 2110 0210 0260 2260		1250 3250	5
0610 2610 0830 2830 0910 2910		0280 0220 2220 0310 2310		Memphis: Depository banks (0840, 2840)	
0960 2960 0920 2920 1010 3010		0360 2360 0410 2410 0420		0110 2110 0210 0260 2260	
1030 3030 1040 3040 1110 3110		2420 0430 2430 0440 2440		0280 0310 2310 0360 2360	
0620 2620 0630 2630 0640 2640		0510 2510 0519 2519 0520		0410 2410 0510 2510 0220	
0650 2650 1120 3120 1130 3130		2520 0530 2530 0539 2539		2220 0420 2420 0430 2430	
1140 3140 1210 3210 1220 3220		0610 2610 0620 2620 0630		0440 2440 0519 2519 0610	
1223 3223 1230 3230 1240 3240		2630 0640 2640 0650 2650		2610 0710 2710 0810 2810	
1250 3250 0720 2720 0840 2840		0660 2660 0710 2710 0720		1010 3010 1110 3110 0520	
1020 3020	5	2720 0730 2730 0740 2740		2520 0530 2530 0539 2539	
Nashville:		0810 2810 0820 2820 0830		0620 2620 0630 2630 0640	
0613 2613	3	2830 0840 2840 0910 2910		2640 0650 2650 0660 2660	
Depository banks (0640, 2640) to:		0960 2960 0920 2920 1010		0720 2720 0730 2730 0740	
0610 2610 0620 2620 0630 2630		3010 1020 3020 1030 3030		2740 0750 2750 0810 2810	
0650 2650 0660 2660 0530 2530		1040 3040 1110 3110 1120		0820 2820 0840 2840 0910	
0840 2840 0539 2539	5	3120 1130 3130 1140 3140		2910 0960 2960 1010 3010	
New Orleans: Depository banks (0650, 2650) to:		1210 3210 1220 3220 1223		1020 3020 1030 3030 1040	
0110 2110 0210 0260 2260 0280		3223 1230 3230 1240 3240		3040 1120 3120 1130 3130	
0220 2220 0310 2310 0360 2360		1250 3250	5	1140 3140 1240 3240	5
0410 2410 0420 2420 0430 2430		St. Louis: Depository banks (0810, 2810) to:		Minneapolis: Depository banks (0910, 2910, 0960, 2960) to:	
0440 2440 0510 2510 0519 2519		0110 2110 0210 0260 2260		0110 2110 0210 0260 2260 0280	
0520 2520 0530 2530 0539 2539		0280 0220 2220 0310 2310		0220 2220 0310 2310 0360 2360	
0610 2610 0620 2620 0630 2630		0360 2360 0410 2410 0420		0410 2410 0420 2420 0430 2430	
0640 2640 0710 2710 0720 2720		2420 0430 2430 0440 2440		0440 2440 0510 2510 0519 2519	
0730 2730 0740 2740 0750 2750		0510 2510 0519 2519 0520		0520 2520 0530 2530 0539 2539	
0810 2810 0820 2820 0830 2830		2520 0530 2530 0539 2539		0610 2610 0620 2620 0630 2630	
0840 2840 0910 2910 0960 2960		0610 2610 0620 2620 0630		0640 2640 0650 2650 0660 2660	
0920 2920 1010 3010 1020 3020		2630 0640 2640 0650 2650		0710 2710 0720 2720 0730 2730	
1030 3030 1040 3040 1110 3110		0660 2660 0710 2710 0720		0740 2740 0750 2750 0810 2810	
1120 3120 1130 3130 1140 3140		2720 0730 2730 0740 2740		0820 2820 0830 2830 0840 2840	
1210 3210 1220 3220 1223 3223		0750 2750 0820 2820 0830		0920 2920 1010 3010 1020 3020	
1230 3230 1240 3240 1250 3250	5	2830 0840 2840 0910 2910		1030 3030 1040 3040 1110 3110	
Chicago: None.		0960 2960 0920 2920 1010		1120 3120 1130 3130 1140 3140	
		3010 1020 3020 1030 3030		1210 3210 1220 3220 1223 3223	
		1040 3040 1110 3110 1120		1230 3230 1240 3240 1250 3250	5
		3120 1130 3130 1140 3140			
		1210 3210 1220 3220 1223			
		3223 1230 3230 1240 3240	5		
		1250 3250			

Federal Reserve Office	Number of business days following the banking day funds are deposited
<i>Helena: None.</i> <i>Kansas City:</i> 0865 2865 Depository banks (1010, 3010) to: 0110 2110 0210 0260 2260 0280 0220 2220 0310 2310 0360 2360 0410 2410 0420 2420 0430 2430 0440 2440 0510 2510 0519 2519 0520 2520 0530 2530 0539 2539 0610 2610 0620 2620 0630 2630 0640 2640 0650 2650 0660 2660 0710 2710 0720 2720 0730 2730 0740 2740 0750 2750 0810 2810 0820 2820 0830 2830 0840 2840 0910 2910 0960 2960 0920 2920 1020 3020 1030 3030 1040 3040 1110 3110 1120 3120 1130 3130 1140 3140 1210 3210 1220 3220 1223 3223 1230 3230 1240 3240 1250 3250 <i>Denver: None.</i> <i>Oklahoma City: Depository banks (1030, 3030) to:</i> 0110 2110 0210 0260 2260 0280 0220 2220 0310 2310 0360 2360 0410 2410 0420 2420 0430 2430 0440 2440 0510 2510 0519 2519 0520 2520 0530 2530 0539 2539 0610 2610 0620 2620 0630 2630 0640 2640 0650 2650 0660 2660 0710 2710 0720 2720 0730 2730 0740 2740 0750 2750 0810 2810 0820 2820 0830 2830 0840 2840 0910 2910 0960 2960 0920 2920 1010 3010 1020 3020 1040 3040 1110 3110 1120 3120 1130 3130 1140 3140 1210 3210 1220 3220 1223 3223 1230 3230 1240 3240 1250 3250 <i>Omaha: Depository banks (1040, 3040) to:</i> 0110 2110 0210 0260 2260 0280 0220 2220 0310 2310 0360 2360 0410 2410 0420 2420 0430 2430 0440 2440 0510 2510 0519 2519 0520 2520 0530 2530 0539 2539 0610 2610 0620 2620 0630 2630 0640 2640 0650 2650 0660 2660 0710 2710 0720 2720 0730 2730 0740 2740 0750 2750 0810 2810 0820 2820 0830 2830 0840 2840 0910 2910 0960 2960 0920 2920 1010 3010 1020 3020 1030 3030 1120 3120 1130 3130 1140 3140 1210 3210 1220 3220 1223 3223 1230 3230 1240 3240 1250 3250 <i>Dallas: Depository banks (1110, 3110) to:</i> 0110 2110 0210 0260 2260 0280 0220 2220 0310 2310 0360 2360 0410 2410 0420 2420 0430 2430 0440 2440 0510 2510 0519 2519 0520 2520 0530 2530 0539 2539 0610 2610 0620 2620 0630 2630 0640 2640 0650 2650 0660 2660 0710 2710 0720 2720 0730 2730 0740 2740 0750 2750 0810 2810 0820 2820 0830 2830 0840 2840 0910 2910 0960 2960 0920 2920 1010 3010 1020 3020 1030 3030 1120 3120 1130 3130 1140 3140 1210 3210 1220 3220 1223 3223 1230 3230 1240 3240 1250 3250 <i>Houston: Depository banks (1130, 3110) to:</i> 0110 2110 0210 0260 2260 0280 0220 2220 0310 2310 0360 2360 0410 2410 0420 2420 0430 2430 0440 2440 0510 2510 0519 2519 0520 2520 0530 2530 0539 2539 0610 2610 0620 2620 0630 2630 0640 2640 0650 2650 0660 2660 0710 2710 0720 2720 0730 2730 0740 2740 0750 2750 0810 2810 0820 2820 0830 2830 0840 2840 0910 2910 0960 2960 0920 2920 1010 3010 1020 3020 1030 3030 1120 3120 1130 3130 1140 3140 1210 3210 1220 3220 1223 3223 1230 3230 1240 3240 1250 3250	5

Federal Reserve Office	Number of business days following the banking day funds are deposited
<i>San Antonio: Depository banks (1140, 3140) to:</i> 0110 2110 0210 0260 2260 0280 0220 2220 0310 2310 0360 2360 0410 2410 0420 2420 0430 2430 0440 2440 0510 2510 0519 2519 0520 2520 0530 2530 0539 2539 0610 2610 0620 2620 0630 2630 0640 2640 0650 2650 0660 2660 0710 2710 0720 2720 0730 2730 0740 2740 0750 2750 0810 2810 0820 2820 0830 2830 0840 2840 0910 2910 0960 2960 1010 3010 1020 3020 1030 3030 1040 3040 1110 3110 1120 3120 1130 3120 1140 3140 1210 3210 1220 3220 1223 3223 1230 3230 1240 3240 1250 3250 <i>El Paso: Depository banks (1120, 3120) to:</i> 0110 2110 0210 0260 2260 0280 0220 2220 0310 2310 0360 2360 0410 2410 0420 2420 0430 2430 0440 2440 0510 2510 0519 2519 0520 2520 0530 2530 0539 2539 0610 2610 0620 2620 0630 2630 0640 2640 0650 2650 0660 2660 0710 2710 0720 2720 0730 2730 0740 2740 0750 2750 0810 2810 0820 2820 0830 2830 0840 2840 0910 2910 0960 2960 0920 2920 1010 3010 1020 3020 1030 3030 1040 3040 1110 3110 1130 3130 1140 3140 1210 3210 1220 3220 1223 3223 1230 3230 1240 3240 1250 3250 <i>San Francisco: None.</i> <i>Los Angeles: None.</i> <i>Portland:</i> 1250 3250 <i>Salt Lake City: None.</i> <i>Seattle: Depository banks (1250, 3250) to:</i> 1230 3230	5

Appendix B-2—Reduction of Schedules for Certain Nonlocal Checks Under the Permanent Schedule

A depository bank that is located in the following check processing territories shall make funds deposited in an account by a nonlocal check described below available for withdrawal not later than the number of business days following the banking day on which funds are deposited, as specified below.

Federal Reserve Office	Number of business days following the banking day funds are deposited
<i>Windsor Locks:</i> 0211 2211 <i>New York: Depository banks (0210, 0280, 0260, 2260) to:</i> 0214 2214 0219 2219 <i>Jericho:</i> 0210 0280 0260 0260 <i>Cranford:</i> 0210 0260 0280 2260 <i>Utica:</i> 0210 0280 <i>Nashville:</i> 0613 2613 <i>Kansas City:</i> 0865 2865	3

Appendix C—Model Disclosure Forms

Specific Policy Disclosures

- C-1 Where bank gives next-day availability and places no holds
- C-2 Where bank gives next-day availability and places holds on safeguard and new account exceptions bases
- C-3 Where bank gives next-day availability and places holds to statutory limits on local and nonlocal checks, but only on a case-by-case basis, and places no holds on safeguard or new account exceptions bases
- C-4 Where bank gives next-day availability and places holds to statutory limits on local and nonlocal checks, but only on a case-by-case basis, and places holds on safeguard exceptions basis but not on new account exception basis
- C-5 Where bank places holds to statutory limits on all statutory categories of deposits
- C-6 Where bank places holds to statutory limits on all statutory categories of deposits (includes chart)
- C-7 Where bank places holds on all statutory categories of deposits, but for less than the statutory limits

Other Notices

- C-8 Notice of exception
- C-9 Notice of hold (bank gives next-day availability and places holds to statutory limits on local and nonlocal checks, but only on a case-by-case basis)
- C-10 Notice at branch locations
- C-11 Notice at proprietary automated teller machines, drive-in teller facilities, and on preprinted deposit slips
- C-12 Notice at a bank's automated teller machines that may be used for deposits by customers of other banks
- C-13 Interest payment policy insert in specific policy disclosure
- C-1 Where bank gives next-day availability and places no holds

YOUR ABILITY TO WITHDRAW FUNDS AT (bank name and location)

Our policy is to allow you to withdraw funds deposited into your account on the next business day after the day we receive your deposit. Every day except Saturday, Sunday, and a federal holiday is a business day. Your deposit will be considered received, however, only on a day we are open for business. For example, if you deposit on Thanksgiving, we consider the deposit made on Friday, the next day we are open for business. And if you make your deposit after (time of day) on any given business day, we consider it made on the next business day.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

If you have any questions, contact your branch manager.

- C-2—Where bank gives next-day availability and places holds on safeguard and new account exceptions bases

YOUR ABILITY TO WITHDRAW FUNDS AT
(bank name and location)

Our policy is to allow you to withdraw funds deposited into your account on the next business day after the day we receive your deposit. Every day except Saturday, Sunday, and a federal holiday is a business day. Your deposit will be considered received, however, only on a day we are open for business. For example, if you deposit on Thanksgiving, we consider the deposit made on Friday, the next day we are open for business. And if you make your deposit after (time of day) on any given business day, we consider it made on the next business day.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

If you have any questions, contact your branch manager.

LONGER DELAYS MAY APPLY

We may delay your ability to withdraw funds deposited by check into your account an additional number of days for these reasons:

If we believe the check you are depositing is uncollectible.

If you make deposits in any one day that exceed \$5,000.

If you redeposit a check that has been returned unpaid.

If you have overdrawn your account three or more times in the last six months.

We will notify you if we do this, and tell you when you will be able to withdraw the funds. (We will delay for no more than four additional business days.)

SPECIAL RULES FOR NEW ACCOUNTS

If your account has been open 30 days or less, we may further limit your ability to withdraw funds deposited by check, but only during the first 30 days.

You may still withdraw funds on the next business day after the day of your deposit if you made the deposit in cash or by wire transfer. You also have next-day availability for the following deposits (if they meet certain requirements): Government checks, cashier's checks, certified checks, teller's checks, or traveler's checks. However, your withdrawals of these check deposits are limited to the first \$5,000 of a day's total deposits. (The rest is available on the ninth business day after the day of deposit.)

For all other check deposits, you may withdraw the deposited funds after (number) business days.

C-3—Where bank gives next-day availability and places holds to statutory limits on local and nonlocal checks, but only on a case-by-case basis, and places no holds on safeguard or new account exceptions bases

YOUR ABILITY TO WITHDRAW FUNDS AT
(bank name and location)

Our policy is to allow you to withdraw funds deposited into your account on the next business day after the day we receive your deposit. Every day except Saturday, Sunday, and a federal holiday is a business day. Your deposit will be considered received, however,

only on a day we are open for business. For example, if you deposit on Thanksgiving, we consider the deposit made on Friday, the next day we are open for business. And if you make your deposit after (time of day) on any given business day, we consider it made on the next business day.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

If you have any questions, contact your branch manager.

LONGER DELAYS MAY APPLY

In some cases, we may find it necessary to delay your ability to withdraw funds deposited into your account by check beyond the next business day.

When we do extend the delay, you may not withdraw—either in cash or by writing checks to others—more than the first \$100 of the deposit until the hold expires. The length of the delay will vary with the type of check you are depositing. It may last as long as seven business days after the day of your deposit (counting the business day after the day of deposit as day one).

Any time we decide to delay your ability to withdraw funds beyond the next business day, we will notify you at the time of your deposit, and we will specify the date on which you can begin to withdraw these funds. (If your deposit was made other than directly to a bank employee, we will notify you by mail the day after we receive the deposit.)

C-4—Where bank gives next-day availability and places holds to statutory limits on local and nonlocal checks, but only on a case-by-case basis, and places holds on safeguard exceptions basis, but not on new account exception basis

YOUR ABILITY TO WITHDRAW FUNDS AT
(bank name and location)

Our policy is to allow you to withdraw funds deposited into your account on the next business day after the day we receive your deposit. Every day except Saturday, Sunday, and a federal holiday is a business day. Your deposit will be considered received, however, only on a day we are open for business. For example, if you deposit on Thanksgiving, we consider the deposit made on Friday, the next day we are open for business. And if you make your deposit after (time of day) on any given business day, we consider it made on the next business day.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

If you have any questions, contact your branch manager.

LONGER DELAYS MAY APPLY

In some cases, we may find it necessary to delay your ability to withdraw funds deposited into your account by check beyond the next business day.

When we do extend the delay, you may not withdraw—either in cash or by writing

checks to others—more than the first \$100 of the deposit until the hold expires. The length of the delay will vary with the type of check you are depositing. It may last as long as seven business days after the day of your deposit (counting the business day after the day of deposit as day one).

Any time we decide to delay your ability to withdraw funds beyond the next business day, we will notify you at the time of your deposit, and we will specify the date on which you can begin to withdraw these funds. (If your deposit was made other than directly to a bank employee, we will notify you by mail the day after we receive the deposit.)

We may also delay your ability to withdraw funds deposited by check into your account an additional number of days for these reasons:

If we believe the check you are depositing is uncollectible.

If you make deposits in any one day that exceed \$5,000.

If you redeposit a check that has been returned unpaid.

If you have overdrawn your account three or more times in the last six months.

Again, we will notify you if we do this, and tell you when you will be able to withdraw the funds. (We will delay for no more than four additional business days.)

C-5—Where bank places holds to statutory limits on all statutory categories of deposits

YOUR ABILITY TO WITHDRAW FUNDS AT
(bank name and location)

Our policy is to delay your ability to withdraw funds that you deposit by check into your account. The length of the delay varies, and is explained below. When we delay your ability to withdraw funds from a deposit, you may not withdraw the funds in cash, and we will not pay checks you write on your account by using these funds.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

If you have any questions, contact your branch manager.

DETERMINING AVAILABILITY OF YOUR DEPOSIT

When we delay your ability to withdraw funds, the length of the delay is counted in business days from the day of your deposit. Every day except Saturday, Sunday, and a federal holiday is a business day. Your deposit will be considered received, however, only on a day we are open for business. For example, if you deposit on Thanksgiving, we consider the deposit made on Friday, the next day we are open for business. And if you make your deposit after (time of day) on any given business day, we consider it made on the next business day.

1. Next-Day Availability

You may withdraw the first \$100 of any deposit of checks on the next business day after the day of your deposit.

In addition, you may withdraw the entire amount of the following deposits on the next business day after the business day of your deposit:

Cash.

Wire transfers, including preauthorized credits, such as social security benefits and payroll payments.

Checks drawn on us, that is, drawn on the (bank name) unless (any limitations related to branches in different states or check processing regions.).

United States government checks payable to you.

State and local government checks if they are payable to you and if you use a special deposit slip available from (where the form may be obtained).

Cashier's, certified, or teller's checks if they are payable to you and if you use a special deposit slip available from (where the form may be obtained).

2. Availability of Other Check Deposits

Your ability to withdraw deposits other than those listed above depends on whether your check is local or nonlocal.

To determine whether the check you want to deposit is local or a nonlocal check, look at its bank location number. This is the number printed on the lower left-hand corner of the check:

If the first four digits of the bank location number (1234 in the above example) are (bank's local routing numbers), then the check is drawn on a bank that is located in the same check-processing region as us, and we consider it a local check. If the first four digits of the bank location number of the check you are depositing are not listed above, then the check is drawn on a bank outside our check-processing region and we consider it a nonlocal check.

Local checks deposited into your account will be available to pay any checks you have written to others starting on the third business day after the business day of your deposit. (The first \$100 of any checks deposited may be withdrawn on the business day following the day of deposit.) Also, you may withdraw up to \$400 of the deposit in cash at or after (time no later than 5:00 p.m.) on the third business day after the business day of your deposit if your check is a local check. You may withdraw the remaining amount on the fourth business day after the day of your deposit.

For example, if you deposit a local check of \$600 on a Monday, \$100 of the deposit is available Tuesday, and the rest is available to pay checks written to others on Thursday. At or after (time no later than 5:00 p.m.) on Thursday you may withdraw up to \$400 of the deposit in cash, and the rest is available for cash withdrawal on Friday.

Nonlocal checks deposited into your account will be available to pay any checks you have written to others starting on the seventh business day after the business day of your deposit. Also, you may withdraw the funds from the deposit in cash on that day.

For example, if you deposit a nonlocal check on a Monday, the funds from the deposit are available for withdrawal or to pay checks written to others on Wednesday of the next week.

3. Deposits at Automated Teller Machines

You may not withdraw funds from any deposits, whether cash or checks, made at automated teller machines we do not own or operate until the seventh business day after the business day of your deposit.

LONGER DELAYS MAY APPLY

We may delay your ability to withdraw funds deposited by check into your account an additional number of days for these reasons:

If we believe the check being deposited is uncollectible.

If you make deposits in any one day that exceed \$5,000.

If you redeposit a check that has been returned unpaid.

If you have overdrawn your account three or more times in the last six months.

We will notify you if we do this, and tell you when you will be able to withdraw the funds. (We will delay for no more than four additional business days.)

SPECIAL RULES FOR NEW ACCOUNTS

If your account has been open 30 days or less, we may further limit your ability to withdraw funds deposited by check, but only during the first 30 days.

You may still withdraw funds on the next business day after the day of your deposit if you made the deposit in cash or by wire transfer. You also have next-day availability for the following deposits (if they meet certain requirements): government checks, cashier's checks, certified checks, teller's checks, or traveler's checks. However, your withdrawals of these check deposits are limited to the first \$5,000 of a day's total deposits. (The rest is available on the ninth business day after the day of deposit.)

For all other check deposits, you may withdraw the deposited funds after (number) business days.

C-6—Where bank places holds to statutory limits on all statutory categories of deposits (includes chart)

YOUR ABILITY TO WITHDRAW FUNDS AT (bank name and location)

Our policy is to delay your ability to withdraw funds that you deposit by check into your account. The length of the delay varies, and is explained below. When we delay your ability to withdraw funds on a deposit, you may not withdraw the funds in cash and we will not pay checks you write on your account by using these funds.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

If you have any questions, contact your branch manager.

DETERMINING AVAILABILITY OF YOUR DEPOSIT

When we delay your ability to withdraw funds, the length of the delay is counted in business days from the day of your deposit. Every day except Saturday, Sunday, and a federal holiday is a business day. Your deposit will be considered received, however, only on a day we are open for business. For example, if you deposit on Thanksgiving, we consider the deposit made on Friday, the next day we are open for business. And if you make your deposit after (time of day) on any given business day, we consider it made on the next business day.

1. Next-Day Availability

You may withdraw the first \$100 of any deposit of checks on the next business day after the day of your deposit.

In addition, you may withdraw the entire amount of the following deposits on the next business day after the business day of your deposit:

Cash.

Wire transfers, including preauthorized credits, such as social security benefits and payroll payments.

Checks drawn on us, that is, drawn on the (bank name) unless (any limitations related to branches in different states or check processing regions).

United States government checks payable to you.

State and local government checks if they are payable to you and if you use a special deposit slip available from (where the form may be obtained).

Cashier's, certified, or teller's checks if they are payable to you and if you use a special deposit slip available from (where the form may be obtained).

2. Availability of Other Check Deposits

To determine when funds deposited by check will be available to pay any checks you have written to others or for withdrawal, look at the check's bank location number. This is the number printed on the lower-left-hand corner of the check:

Once you have determined the bank location number, look at the first four digits of that number. The following chart can show you the availability time for your deposit:

Bank location number (first four digits) on the check being deposited	When funds are available	Example: When funds are available if a deposit is made on a Monday
(Local bank numbers).	3rd business day to pay checks written to others and \$400 cash for withdrawal at or after (time no later than 5:00 p.m.). 4th business day for rest of cash or to pay checks.	Thursday (third day after the deposit). Friday (fourth day after the deposit).
All other bank numbers.	7th business day.....	Next Wednesday (the week following the deposit).

Deposits at automated teller machines that we do not own or operate, whether cash or check deposits, will not be available for withdrawal until the seventh business day after the date of deposit. (For example, a deposit you made on Monday of this week will not be available for withdrawal until Wednesday of next week.)

LONGER DELAYS MAY APPLY

We may delay your ability to withdraw funds deposited by check into your account an additional number of days for these reasons:

If we believe the check you are depositing is uncollectible.

If you make deposits in any one day that exceed \$5,000.

If you redeposit a check that has been returned unpaid.

If you have overdrawn your account three or more times in the last six months.

We will notify you if we do this, and tell you when you will be able to withdraw. (We will delay for no more than four additional business days.)

SPECIAL RULES FOR NEW ACCOUNTS

If your account has been open 30 days or less, we may further limit your ability to withdraw funds deposited by check, but only during the first 30 days.

You may still withdraw funds on the next business day after the day of your deposit if you made deposit in cash or by wire transfer. You also have next-day availability for the following deposits (if they meet certain requirements): government checks, cashier's checks, certified checks, teller's checks, or traveler's checks. However, your withdrawals of these check deposits are limited to the first \$5,000 of a day's total deposits. (The rest is available on the ninth business day after the day of deposit.)

For all other check deposits, you may withdraw the deposited funds after (number) business days.

C-7—Where bank places holds on all statutory categories of deposits, but for less time than the statutory limits

YOUR ABILITY TO WITHDRAW FUNDS AT (bank name and location)

Our policy is to delay your ability to withdraw funds that you deposit by check into your account. The length of the delay varies, and is explained below. When we delay your ability to withdraw funds, you

may not withdraw the funds in cash, and we will not pay checks you write on your account by using these funds.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

If you have any questions, contact your branch manager.

DETERMINING AVAILABILITY OF YOUR DEPOSIT

When we delay your ability to withdraw funds, the length of the delay is counted in business days from the day of your deposit. Every day except Saturday, Sunday, and a federal holiday is a business day. Your deposit will be considered received, however, only on a day we are open for business. For example, if you deposit on Thanksgiving, we consider the deposit made on Friday, the next day we are open for business. And if you make your deposit after (time of day) on any given business day, we consider it made on the next business day.

1. Next-Day Availability

You may withdraw the first \$100 of any deposit of checks on the next business day after the day of your deposit.

In addition, you may withdraw the entire amount of the following deposits on the next business day after the business day of your deposit:

Cash.

Wire transfers, including preauthorized credits, such as social security benefits and payroll payments.

Checks drawn on us, that is, drawn on the (bank name) unless (any limitations related to branches in different states or check processing regions).

United States government checks payable to you.

State and local government checks if they are payable to you and if you use a special deposit slip available from (where the form may be obtained).

Cashier's, certified, or teller's checks if they are payable to you and if you use a special deposit slip available from (where the form may be obtained).

2. Availability of Other Check Deposits

Your ability to withdraw deposits other than those listed above depends on whether your check is local or nonlocal.

To determine whether the check you want to deposit is a local or a nonlocal check, look at its bank location number. This is the number printed on the lower-left-hand corner of the check:

Pay to the order of _____ 19____	
_____ \$ _____ dollars	
(Bank Name and Location) _____	
1234567890	0000000000 000
_____ bank location number	

If the first four digits of the bank location number (1234 in the above example) are

(bank's local routing numbers), then the check is drawn on a bank that is located in the same check-processing region as us, and we consider it a local check. If the first four digits of the bank location number of the check you are depositing are not listed above, then the check is drawn on a bank outside our check-processing region and we consider it a nonlocal check.

Local checks deposited into your account will be available to pay any checks you have written to others starting on (date). (The first \$100 of any checks deposited may be withdrawn on the business day following the day of deposit.) Also, you may withdraw (amount) of the deposit in cash at or after (time no later than 5:00 p.m.) on (date) if your check is a local check. You may withdraw the remaining amount on (date).

For example, if you deposit a local check of \$600 on a Monday, \$100 of the deposit is available Tuesday, and the rest is available to pay checks written to others on (day). At or after (time no later than 5:00 p.m.) (amount) of the deposit in cash, and the rest is available for cash withdrawal on (day).

Nonlocal checks deposited into your account will be available to pay any checks you have written to others starting on (date). Also, you may withdraw the funds from the deposit in cash on that day.

For example, if you deposit a nonlocal check on a Monday, the funds from the deposit are available for withdrawal or to pay checks written to others on (day).

3. Deposits at Automated Teller Machines

You may not withdraw funds from any deposits, whether cash or checks, made at automated teller machines we do not own or operate until (date).

LONGER DELAYS MAY APPLY

We may delay your ability to withdraw funds deposited by check into your account an additional number of days for these reasons:

If we believe the check being deposited is uncollectible.

If you make deposits in any one day that exceed \$5,000.

If you redeposit a check that has been returned unpaid.

If you have overdrawn your account three or more times in the last six months.

We will notify you if we do this, and tell you when you will be able to withdraw the funds. (We will delay for no more than four additional business days.)

SPECIAL RULES FOR NEW ACCOUNTS

If your account has been open 30 days or less, we may further limit your ability to withdraw funds deposited by check, but only during the first 30 days.

You may still withdraw funds on the next business day after the day of your deposit if you made the deposit in cash or by wire transfer. You also have next-day availability for the following deposits (if they meet certain requirements): government checks, cashier's checks, certified checks, teller's checks, or traveler's checks. However, your withdrawals of these check deposits are limited to the first \$5,000 of a day's total

deposits. (The rest is available on the ninth business day after the day of deposit.)

For all other check deposits, you may withdraw the deposited funds after (number) business days.

C-8—Notice of exception

Exception Hold Notice

(Date hold is placed)

We are placing a hold on the following checks deposited on (date). These funds will be available to you (number of business days) business days after the date the deposit was made. Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks that you deposit that are returned to us unpaid and for any other problems involving your deposit.

(description of items including amount and payee)

We placed the hold for the following reasons:

- ☐ The check you deposited has been returned unpaid and is being redeposited.
- ☐ Your account has been overdrawn three or more times in the last six months.
- ☐ The checks you deposited on this day exceed \$5,000. (This hold applies only to the amount over \$5,000.)
- ☐ We believe the check may be uncollectible for the following reasons:

If you have any questions regarding this notice you may call (telephone number).

C-9—Notice of hold (bank gives next-day availability and places holds to statutory limits on local and nonlocal checks, but only on a case-by-case basis)

Notice of Hold

Date of deposit (today's date).

Amount of deposit (amount).

We are placing a hold on this deposit. These funds will be available to you on (date). Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks that you deposit that are returned to us unpaid and for any other problems involving your deposit.

C-10—Notice at branch locations

FUNDS AVAILABILITY POLICY

Description of deposit	When funds can be withdrawn by cash or check
Cash, wire transfers, checks on us unless (any limitation related to branches in different check processing regions), government, cashier's, certified, or teller's checks.	The business day after the day of deposit.
Local checks	The third business day after the day of deposit.

FUNDS AVAILABILITY POLICY— Continued

Description of deposit	When funds can be withdrawn by cash or check
Nonlocal checks	The seventh business day after the day of deposit.

C-11—Notice at proprietary automated teller machines, drive-in teller facilities, and on preprinted deposit slips

AVAILABILITY OF DEPOSITS

Notice: Deposits may not be available for immediate withdrawal. (Please refer to the bank's rules governing funds availability for details.)

C-12—Notice at a bank's automated teller machines that may be used for deposits by customers of other banks

AVAILABILITY OF DEPOSITS

Notice: If your account is at a bank other than (name of bank), funds deposited by cash or check may not be available until the seventh business day following the day of deposit. Please refer to your bank's rules governing funds availability for details.

C-13—Interest payment policy insert in specific policy disclosure

INTEREST PAYMENT POLICY

If we receive a deposit to your account on or before the tenth of the month, you begin earning interest on the deposit, whether it was a deposit of cash or checks, on the first day of the month. If we receive the deposit after the tenth of the month, you begin earning interest on the deposit as of the first of the following month. For example, a deposit made on June 7 earns interest from June 1, while a deposit made on June 17 earns interest from July 1.

Appendix D—Indorsement Standards

1. The depository bank shall indorse a check according to the following specifications:

- The indorsement shall contain—
- The bank's nine-digit routing number, set off by arrows at each end of the number and pointing toward the number;
- The bank's name/location;
- The indorsement date.

• The indorsement may also contain—

- An optional branch identification;
- An optional trace/sequence number;
- Other optional information provided that the inclusion of such information does not interfere with the readability of the indorsement.

• The indorsement shall be written in dark purple ink.

• The indorsement shall be placed on the back of the check in the following location:

- A block-style indorsement, such as applied by an encoder or microfilmer, shall be wholly contained in the area 3.0 inches to

4.5 inches from the leading edge of the check.¹

—A linear-style indorsement, such as applied by a reader/sorter, shall be placed so that the routing number is wholly contained in the area 3.0 inches to 4.5 inches from the leading edge of the check.

—The indorsement shall not be placed in the MICR clear band, extending along the bottom edge of the check to a height of 0.025 inch, nor in the one-write carbonized band location, extending the length of the check in a line between 1.4 inches and 1.9 inches above the bottom edge of the check.

2. Each subsequent bank indorser shall protect the identifiability and legibility of the depository bank indorsement by:

- Including only its nine-digit routing number (without arrows), the indorsement date, and an optional trace/sequence number;

- Using an ink color other than purple;
- Staying clear of the area 3.0 inches to 4.5 inches from the leading edge of the check specified for the depository bank indorsement.

3. All other indorsing parties, e.g., corporations, should protect the identifiability and legibility of the depository bank indorsement by staying clear of the area 3.0 inches to 4.5 inches from the leading edge of the check specified for the depository bank indorsement.

4. All depository banks shall work with corporate indorsers to arrange that corporate payee indorsements include the name and nine-digit routing number of the bank in which they are depositing the check and the corporation's account number at that bank.

2. Part 210 is amended as follows:

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS AND TRANSFERS OF FUNDS (REGULATION J)

a. The authority citation for Part 210 is revised to read as follows:

Authority: Federal Reserve Act, section 13 (12 U.S.C. 342), section 11(i) (12 U.S.C. 248(i)), section 16 (12 U.S.C. 248(o) and 360), and section 19(f) (12 U.S.C. 464); and the Expedited Funds Availability Act (12 U.S.C. 4001 et seq.).

b. Section 210.1 is revised to read as follows:

§ 210.1 Authority, purpose, and scope.

The Board of Governors of the Federal Reserve System ("Board") has issued this subpart pursuant to the Federal Reserve Act, section 13 (12 U.S.C. 342), section 11(i) (12 U.S.C. 248(i)), section 16 (12 U.S.C. 248(o) and 360), and section 19(f) (12 U.S.C. 464); the Expedited Funds Availability Act (12 U.S.C. 4001 et seq.); and other laws. This subpart

¹ The leading edge is defined as the right side of the check looking at it from the front. See American National Standards Committee on Financial Services, Specification for the Placement and Location of MICR Printing, X 9.13.

governs the collection of checks and other cash and noncash items by Federal Reserve Banks. Its purpose is to provide rules for collecting items and settling balances.

c. In § 210.2, paragraph (e) and the undesignated paragraph at the end of paragraph (g) are revised, paragraph (j) is revised, paragraphs (k) and (l) are redesignated as paragraphs (l) and (m), a new paragraph (k) is added, the redesignated paragraph (l) is amended by adding a second sentence, and the undesignated paragraph at the end of § 210.2 is revised to read as follows:

§ 210.2 Definitions.

(e) "Cash item" means—

- (1) A check other than one classified as a noncash item under this section; or
- (2) Any other item payable on demand and collectible at par that the Reserve Bank of the District in which the item is payable is willing to accept as a cash item.

"Cash item" does not include a returned check.

(g) ***

Unless otherwise indicated, "item" includes both cash and noncash items and a returned check, whether or not sent by a sender.

(j) "Paying bank" means—

- (1) The bank by which an item is payable unless the item is payable or collectible at or through another bank and is sent to the other bank for payment or collection;
- (2) The bank at or through which an item is payable or collectible and to which it sent for payment or collection;
- (3) The bank whose routing number appears on a check in magnetic characters or fractional form and to which the check is sent for payment or collection; or
- (4) The state on which a check described in 12 CFR 229.2 is drawn.

(k) "Returned check" means a cash item or a check as defined in 12 CFR 229.2 returned by a paying bank, including a notice of nonpayment in lieu of a returned cash item or check, whether or not a Reserve Bank handled the check for collection.

(l) *** Sender does not include a paying bank with respect to a returned check. ***

Unless the context otherwise requires, the terms not defined herein have the meanings set forth in 12 CFR 229.2 and the terms not defined herein or in 12

CFR 229.2 have the meanings set forth in the Uniform Commercial Code.

d. Paragraph (b) of section 210.7 is revised to read as follows:

§ 210.7 Presenting items for payment.

(b) *Place of presentment.* A Reserve Bank or subsequent collecting bank may present an item—

- (1) At a place requested by the paying bank;
- (2) In the case of a check as defined in 12 CFR 229.2, in accordance with 12 CFR 229.36;
- (3) At a place requested by the nonbank payor, if the item is payable by a nonbank payor other than through or at a paying bank;
- (4) Under a special collection agreement consistent with this subpart; or
- (5) Through a clearinghouse and subject to its rules and practices.

e. Section 210.10 is revised to read as follows:

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

(a) Each Reserve Bank shall include in its operating circulars a time schedule for each of its offices indicating when the amount of any cash item or returned check received by it (or sent direct to another Reserve office for the account of that Reserve Bank) is counted as reserves for purposes of Part 204 of this chapter (Regulation D) and becomes available for use by the sender. The Reserve Bank shall give either immediate or deferred credit in accordance with its time schedule to a sender other than a foreign correspondent. A Reserve Bank ordinarily gives credit to a foreign correspondent only when the Reserve Bank receives payment of the item in actually and finally collected funds, but, in its discretion, a Reserve Bank may give immediate or deferred credit in accordance with its time schedule.

(b) Notwithstanding its time schedule, a Reserve Bank may refuse at any time to permit the use of credit given for any cash item or returned check for which the Reserve Bank has not yet received payment in actually and finally collected funds.

f. Section 210.12 is revised to read as follows:

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

(a) *Return of cash items.* A paying bank that receives a cash item directly or indirectly from a Reserve Bank, other than for immediate payment over the counter, and that pays for the item as

provided in § 210.9(a) of this subpart, may, before it has finally paid the item, return the item, or if the item is unavailable for return, send notice of nonpayment in lieu of the item, to its Reserve Bank in accordance with the Uniform Commercial Code and Subpart C of Part 229 and its Reserve Bank's operating circular. The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(b) *Return of checks not handled by Reserve Banks.* A paying bank that receives a check as defined in 12 CFR 229.2, other than directly or indirectly from a Reserve Bank, and that determines not to pay the check, may send the returned check or notice of nonpayment in lieu of the returned check to its Reserve Bank in accordance with Subpart C of Part 229 and its Reserve Bank's operating circular. A returning bank may send a returned check to its Reserve Bank in accordance with Subpart C of Part 229 and its Reserve Bank's operating circular.

(c) *Paying bank's and returning bank's agreement.* By sending a returned check to a Reserve Bank, the paying bank or returning bank—

(1) Authorizes the receiving Reserve Bank (and any other Reserve Bank or returning bank to which the returned check is sent) to handle the returned check subject to this subpart and to the Reserve Banks' operating circulars;

(2) Makes the warranties set forth in 12 CFR 229.34; and

(3) Agrees to indemnify each Reserve Bank for any loss or expense (including attorneys' fees and expenses of litigation) resulting from—

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

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

(iii) Any warranty made by the Reserve Bank under 12 CFR 229.34.

(d) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled a returned check based on—

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

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

(3) Any warranty made by the Reserve Bank under 12 CFR 229.34,

the Reserve Bank may, upon the entry of a final judgment or decree, recover from the paying bank or returning bank the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay under the judgment or decree, together with interest thereon.

(e) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (d) of this section by charging any account on its books that is maintained or used by the paying or returning bank (or if the sender is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if—

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

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

The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from the paying or returning bank in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (c)(3) of this section.

(f) A Reserve Bank shall handle a returned check, or a notice of nonpayment, in accordance with Subpart C of Part 229 and its operating

circular. A Reserve Bank may permit or require the paying bank to send direct to another Reserve Bank a returned check with respect to which the depository bank is located within the other Reserve Bank's District, in accordance with § 210.4(b).

(g) A subsequent returning bank or depository bank shall settle for returned checks in the same manner as for cash items presented for payment.

§ 210.15 [Removed]

g. Section 210.15 is removed.

By order of the Board of Governors of the Federal Reserve System, December 3, 1987.

William W. Wiles,

Secretary of the Board.

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