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NAFCU CREDIT UNION COMPLIANCE ROADMAP

*Your Companion for Navigating
Federal Credit Union Regulations*



National Association of
Federally-Insured Credit Unions

Official textbook for our award-winning NAFCU
Certified Compliance Officer (NCCO) Designation

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This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. In publishing this text, neither NAFCU nor its staff is engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the individualized services of a professional should be sought.

WELCOME TO NAFCU'S CREDIT UNION COMPLIANCE ROADMAP.

The *Roadmap* is designed to assist credit union professionals as they navigate a complex regulatory environment. The *Roadmap* is a research tool for credit unions that focuses on federal regulatory requirements. It will be helpful to anyone who wants to gain a solid foundation of knowledge about the federal compliance issues facing credit unions. As a daily resource guide, this manual is designed to be used electronically with links to federal laws, regulations, guidance documents and other helpful resources.

The *Roadmap* also serves as the textbook for NAFCU's [Regulatory Compliance School](#) conference as well as for individuals following the [On-Demand Compliance School](#) program.

The *Roadmap* contains tools to help credit unions find answers to their own questions. These include:

- › **NAFCU Notes** – links to relevant NAFCU resources such as Compliance Blog posts and Compliance Monitor articles;
- › **Research Tips** – suggestions on conducting research and links to regulatory resources to assist users in making a deeper dive on a particular topic;
- › **Examples** – illustrations of a concept to contextualize a rule or issue; and
- › **More Information** – other helpful information such as compliance tips, cross-references to another area of the Roadmap that may be helpful, common issues and other insights.

We want to be clear about what this manual *is not*. The *Roadmap* is not an attempt to address every nuance of every law, regulation and guidance document that affects credit unions. Rather, we wanted to highlight major topics and give you the resources and tools so that *you* can research the topics. Our goal was not to give you everything, but to empower you so that you can find anything that you need.

If you are studying for your NCCO designation, this manual is your best study guide. There are [four NCCO exams](#) in total – each testing on information found specifically within this manual.

Finally, we want to say thanks. You either purchased this, your credit union did, or someone from your credit union attended NAFCU's Regulatory Compliance School. *We appreciate that fact.* If we can improve this manual, [just let us know](#).

NATIONAL ASSOCIATION OF FEDERALLY-INSURED CREDIT UNIONS

Founded in 1967, the National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 132 million consumers with personal and small business financial service products. The association [supports](#) a regulatory environment that allows credit unions to grow with a focus on directly shaping the laws and regulations under which federally-insured credit unions operate.

NAFCU provides regulatory compliance assistance to its member-credit unions through a multi-faceted program, including direct access to the association's compliance and regulatory affairs divisions. For more information on NAFCU compliance resources, please visit [our compliance homepage](#).

REGULATORY COMPLIANCE DIVISION

Nick St. John, NCCO, NCBSO is NAFCU's Director of Regulatory Compliance and is responsible for all aspects of the association's multi-faceted compliance assistance program – including answering compliance questions, authoring compliance blog posts and articles as well as speaking at credit union events. Additionally, he oversees all of NAFCU's compliance-related products and services.

Prior to joining NAFCU, Nick managed Banking & Finance content for Bloomberg Law, where he analyzed legal developments relating to FinTech, CFPB regulatory and enforcement actions, and state legislation. He is a graduate of The University of Georgia School of Law, and has a bachelor's degree from CUNY John Jay College.

Rebecca Tetreau, NCCO was named Senior Regulatory Compliance Counsel in August 2022. In this role, Rebecca helps credit unions with a variety of federal regulatory compliance issues. She initially joined NAFCU as regulatory compliance counsel in February 2021.

Prior to joining NAFCU, Rebecca was the Regulatory Change Manager for Quicken Loans, where she managed and reviewed all incoming state and federal legislative and regulatory changes affecting the company, from proposed status through enactment. She is a graduate of the University of the District of Columbia – David A. Clarke School of Law and has a bachelor's degree from Eastern Michigan University.

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Prior to joining NAFCU, Keith worked as a creditor's rights attorney. Keith worked with and advised clients on issues such as collections, repossession, and bankruptcy. Keith is a graduate of the UCLA School of Law and has a bachelor's degree from California Polytechnic University at San Luis Obispo.

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REGULATION LINKS

Recognizing that links break and/or change at times, below is a list of links to regulation main webpages to assist with research and to access regulations discussed throughout this manual. This is *not* intended to be a complete list of all regulations impacting the credit union industry.

Consumer Financial Protection Bureau (CFPB)

Title 12, Chapter X

Regulation B (Equal Credit Opportunity Act) [Part 1002](#)

Regulation C (Home Mortgage Disclosure Act) [Part 1003](#)

Regulation E (Electronic Fund Transfers) [Part 1005](#)

[Regulation F \(Debt Collection Practices\)](#) [Part 1006](#)

Regulation G (S.A.F.E. Mortgage Licensing Act – Federal Registration of Residential Mortgage Loan Originators) [Part 1007](#)

Regulation H (S.A.F.E. Mortgage Licensing Act - State Compliance and Bureau Registration System) [Part 1008](#)

Regulation P (Privacy of Consumer Financial Information) [Part 1016](#)

Regulation V (Fair Credit Reporting Act) [Part 1022](#)

Regulation X (Real Estate Settlement Procedures Act) [Part 1024](#)

Regulation Z (Truth in Lending Act) [Part 1026](#)

Payday, Vehicle Title and Certain High-Cost Installment Loans [Part 1041](#)

Department of Defense (DoD)

Title 32, Chapter I, Subtitle A (Military Lending Act) [Part 232](#)

Department of Justice (DoJ)

Title 28, Chapter I (Americans with Disabilities Act) [Part 36](#)

Federal Communications Commission

Title 47, Chapter I, Subchapter B, Subpart L (Telephone Consumer Protection Act) [Part 64](#)

Federal Reserve System

Title 12, Chapters II

Regulation D (Reserve Requirements of Depository Institutions) [Part 204](#)

Regulation CC (Availability of Funds and Collection of Checks) [Part 229](#)

Regulation J (Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire) [Part 210](#)

Regulation GG (Prohibition on Funding of Unlawful Internet Gambling) [Part 233](#)

Financial Crimes Enforcement Network (FinCEN)

Title 31, Chapter X

Bank Secrecy Act Regulations

General Provisions - [Part 1010](#)

Rule for Banks - [Part 1020](#)

National Credit Union Administration (NCUA)

Title 12, Chapter VII

Subchapter A - Regulations Affecting Credit Unions [Parts 700-761](#)

Office of Foreign Assets Control (OFAC)

Title 31, Chapter V

Subtitle B - Regulations- [Part 500](#)

TABLE OF CONTENTS

CHAPTER 1: Fundamentals

- 1 The Legislative and Regulatory Process | p. 2
- 2 The Federal Credit Union Act and the National Credit Union Administration | p. 12
- 3 The Consumer Financial Protection Bureau | p. 22
- 4 NCUA Supervision and Examination | p. 34
- 5 Federal Credit Union Governance | p. 46
- 6 Federal Credit Union Powers and Limitations | p. 63
- 7 Field of Membership for Federal Credit Unions | p. 77

CHAPTER 2: Member Accounts

- 1 Regulation E | p. 93
- 2 Share Insurance | p. 112
- 3 Regulation CC | p. 132
- 4 Truth in Savings | p. 150
- 5 E-SIGN Act | p. 170

CHAPTER 3: Lending

- 1 NCUA Lending Requirements | p. 178
- 2 Regulation Z - Introduction | p. 201
- 3 Regulation Z - Open-End Credit | p. 206
- 4 Regulation Z - Special Credit Card Rules | p. 216
- 5 Regulation Z - Closed-End Credit | p. 226
- 6 Special Mortgage Rules - Mortgage Origination Rules under RESPA and Regulation B | p. 231

- 7 Special Mortgage Rules - TILA-RESPA Integrated Disclosures Rule | p. 242
- 8 Special Mortgage Rules - Mortgage Origination Consumer Protections Under Regulation Z | p. 263
- 9 Special Mortgage Rules - Mortgage Servicing Rules | p. 291
- 10 Lending to Servicemembers - The MLA and SCRA | p. 322
- 11 Fair Lending and Regulation B | p. 336
- 12 The Fair Credit Reporting Act | p. 354
- 13 Loans in Flood Hazard Areas | p. 376

CHAPTER 4: BSA, Privacy and Security

- 1 The Bank Secrecy Act and OFAC | p. 389
- 2 Privacy of Member Information | p. 414
- 3 Information and Data Security | p. 441
- 4 Vendor Management | p. 457
- 5 Contacting Members: the TCPA and the TSR | p. 470

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CHAPTER 2

Member Accounts

Section 1: Regulation E

Section 2: Share Insurance

Section 3: Regulation CC

Section 4: Truth in Savings

Section 5: E-SIGN Act



CHAPTER 2 — MEMBER ACCOUNTS

SECTION 3 — REGULATION CC

Overview	133
Definitions	133
Availability of Funds and Disclosure Requirements	134
When Funds Are Considered Deposited	134
Timing	135
Availability of Funds	136
Next-Day Availability	136
Second-Day Availability	137
Exceptions	138
Funds Availability Disclosures	141
General Disclosure Requirements	141
Specific Availability Policy Disclosure	141
Additional Disclosure Requirements	142
Relation to State Law	143
Collection of Checks	143
The Expeditious Returns Rule	144
Forged and Altered Checks	144
RDC Indemnity	145
Substitute Checks	146
General Provisions	146
Warranties and Indemnity	146
Expedited Recredit	147
Consumer Awareness	149

OVERVIEW

Regulation CC implements the [Expedited Funds Availability Act](#) (EFA Act). The EFA Act generally governs the availability of members' funds that are deposited into transaction accounts as well as certain aspects of the check collection and return processes. The Federal Reserve Board (Board) has rulemaking authority for [Regulation CC](#), although section 1086 of [Dodd-Frank](#) amended the EFA Act to provide the CFPB with joint rulemaking authority with the Board over certain consumer-related EFA Act provisions.

Regulation CC is divided into several subparts. [Subpart A](#) defines terms and outlines enforcement authority. [Subpart B](#) sets the timing rules for when funds deposited into transaction accounts must be made available for use and requires disclosures regarding funds availability. [Subpart C](#) contains rules regarding the collection and return of checks and electronic checks. [Subpart D](#), which was added to Regulation CC in 2004 to implement the Check Clearing for the 21st Century Act (Check 21), establishes liability and responsibilities for financial institutions that create or receive substitute checks.

DEFINITIONS

This section will not cover all the definitions of Regulation CC, but the following terms are important for understanding the regulation. These definitions can be found in [section 229.2](#) of the regulation.

Account. For purposes of the funds availability rules, the definition of account refers to Regulation D's definition of transaction account and provides that the term "account" generally includes accounts where the account holder is permitted to make transfers and withdrawals. The staff commentary notes that the definition of "account" in the EFA Act suggests that it is intended to apply only to accounts that have unlimited third-party transfers. This definition of account specifically excludes savings accounts as defined by Regulation D. The definition is not limited to consumer accounts – it applies to business and fiduciary accounts as well. Thus, Regulation CC's funds availability rules apply to consumer, business and organizational transaction accounts, but do not apply to savings accounts.

For the substitute check rules, "account" means any deposit, including savings accounts and certificate accounts.

Consumer Account. A consumer account is one used primarily for personal, family or household purposes.

Business Day. Every day except Saturday, Sunday and federal holidays.

Banking Day. The part of any business day for which the credit union is open for carrying on substantially all its banking functions.

Bank. The term “bank” means any depository institution, including credit unions.

Contractual Branch. A branch of another bank that accepts a deposit on your credit union’s behalf. Credit unions often use contractual branches – a shared branch is a contractual branch.

AVAILABILITY OF FUNDS AND DISCLOSURE REQUIREMENTS

Regulation CC provides rules for when various deposits must be made available. Some types of deposits must be given next-day availability, while others must be made available according to Regulation CC’s availability schedule. When funds must be made available is measured by the number of business days following the banking day on which the deposit is made. As a result, one of the most important details in figuring out when funds must be made available is determining when the funds are considered deposited.

When Funds Are Considered Deposited

[Section 229.19](#) of Regulation CC is labeled “Miscellaneous” but it should not be overlooked. Among other things, it provides the rules for determining when funds are considered deposited:

- › [Section 229.19\(a\)\(1\)](#) states funds deposited at a staffed facility, ATM or contractual branch are considered deposited when they are received at the facility, ATM or contractual branch (or a proprietary ATM of the contractual branch). If the credit union has a drop box in its lobby where members may place deposits, such deposits are generally considered deposited when placed in the box. However, the credit union may treat deposits to lobby boxes the same as deposits to night deposit boxes if it provides a notice on the lobby box that states when the deposits will be considered deposited.
- › [Section 229.19\(a\)\(2\)](#) provides that funds mailed to the credit union are considered deposited the day they are received by the credit union. The day they are received is the day the mail is delivered

to the credit union, even if the mail is initially delivered to a mailroom rather than the check processing area.

- › [Section 229.19\(a\)\(3\)](#) explains funds deposited to a night depository, lock box or similar facility are considered deposited on the day on which the deposit is removed from such facility and is available for processing by the credit union.
- › [Section 229.19\(a\)\(4\)](#) states if funds normally are removed from the ATM no more than two times each week, funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depository bank are considered deposited on the day the funds are removed from the ATM.
- › Under [section 229.19\(a\)\(5\)](#), funds may be considered deposited on the next banking day, in the case of funds that are deposited:
 - › On a day that is not a banking day for the depository bank; or
 - › After a cut-off hour set by the depository bank for the receipt of deposits of 2:00pm or later, or for the receipt of deposits at ATMs, contractual branches, or off-premise facilities, of 12:00pm or later. A credit union is not required to stay open until 2pm. If it closes before 2pm, deposits received after the closing may be considered deposited on the next banking day. Different cut-offs may be established for different types of deposits.

EXAMPLE

A credit union may set a 2:00pm cut-off for receipt of check deposits and a later time, such as 4:00pm for receipt of wire transfers. Also, ATMs may have a different cut-off time than over-the-counter deposits. So, a credit union may set a 1:00pm cut-off time for ATM deposits and a cut-off time of 3:00pm for in-person deposits.



Timing

[Section 229.19\(b\)](#) requires funds must be made available at the start of the business day. Thus, the funds must be made available by the later of 9:00am or the time the credit union's teller facilities (including ATMs) are available for account withdrawals on the day they are scheduled to be made available.

EXAMPLE

If the credit union has 24-hour ATM service and teller facilities that open at 10:00am, funds must be available for ATM withdrawal at 9:00am and available for withdrawal by 10:00am at the teller lines. Note the timing is different for the \$450 rule discussed later.



Availability of Funds

Next-Day Availability

[Section 229.10](#) of Regulation CC spells out all of the requirements for next day availability. Cash, electronic payments and certain check deposits must be made available for withdrawal the business day after the banking day on which they were received. These checks are: US Postal Service money orders; Federal Reserve Bank and Federal Home Loan Bank checks; state or local government checks deposited at an institution in the same state as the payor; on-us checks; and cashier, teller or certified checks. To qualify for next-day availability, these checks must be deposited in person at a staffed teller station to an account held by the payee. For next-day availability, Treasury checks must be deposited to an account held by the payee, but do not need to be deposited in person. Credit unions may require that cashier's, certified and teller's checks, as well as state and local government checks be deposited with a special deposit slip to receive next-day availability. In general, if the checks do not meet the criteria for next day availability, they will be treated as local checks subject to the availability rules in [section 229.12](#).

NAFCU NOTE

NAFCU published a *Compliance Blog* [post](#) answering some frequently asked questions regarding Regulation CC's funds availability rules.



\$225 Rule. Under [section 229.10\(c\)\(1\)](#), the credit union must make available the next business day the lesser of \$225 or the aggregate of all check deposits not already subject to next-day availability. This rule does not apply to checks deposited at nonproprietary ATMs.

EXAMPLE

If the member deposited \$225 by check, the credit union would need to make the entire \$225 available by the next business day. If the member deposited a \$100 check and a \$300 check, the credit union would need to make \$225 available the next business day. The remaining amount would be made available on the second business day.



Second-Day Availability

[Section 229.12](#) provides the rules for second-day availability. There used to be a distinction between local and nonlocal checks, and you will still find rules for nonlocal checks in the regulation. Nonlocal checks were those checks payable at or through banks located in different check processing regions than the credit union. The Federal Reserve has removed the nonlocal check category. By eliminating all but one check processing center, all checks are now considered local checks. Local checks must be made available for withdrawal no later than the second business day following the banking day on which the checks are deposited. This would be the amount in excess of the first \$225 discussed above. In addition, checks that do not satisfy the requirements for next-day availability must be made available on the second business day following the day of deposit.

\$450 Rule. This rule, found in [section 229.12\(d\)](#), determines when a credit union must make check deposits available for cash withdrawals. For purposes of this rule, cash withdrawals include electronic payment, issuance of a cashier's or teller's check, or certification of a check, or other irrevocable commitment to pay. In essence, the credit union needs to make a local check available for check withdrawals on the second business day after the day of deposit; however, \$450 of the deposited funds need to be available for cash withdrawals no later than 5:00pm on that same day. At the start of the third business day after the day of deposit, the member must be able to withdraw the entire amount in any manner.

EXAMPLE

John Member deposited a \$1,000 check on Monday. On Tuesday at 9:00am, \$225 of that must be available for cash and/or check withdrawals. On Wednesday, the remaining \$775 must be available for check-writing purposes by 9:00am and \$450 of it needs to be available for cash withdrawal by 5:00pm. On Thursday at 9:00am, the member must be able to withdraw the entire amount in any manner.

Nonproprietary ATMs. According to [section 229.12\(f\)](#), cash or check deposits at nonproprietary ATMs must be made available no later than the fifth business day after the day of deposit. The provisions requiring a depository bank to make up to \$225 of an aggregate daily deposit available for withdrawal on the first business day after the banking day of deposit do not apply to deposits at a nonproprietary ATMs. The [definition](#) states a nonproprietary ATM is one that: (a) is not owned or operated by the credit union, (b) is not located on the credit union's premises and (c) is not located within 50 feet of the credit union's premises and is identified as being owned or operated by a third party.

Exceptions

[Section 229.13](#) provides six exceptions to the general availability schedules. These exceptions allow credit unions to extend the hold period for deposits that carry a higher risk to the institution due to their size, collectability or the member's deposit history (or lack thereof).

- › **New Accounts.** Under [section 229.13\(a\)](#), an account is considered “new” for the first 30 days it is open. This exception is intended for members that do not currently have a transaction account at the credit union. Thus, if a member already has a transaction account at the credit union, which has been open for at least 30 days, then any additional account would not be a “new” account for purposes of this exception. Under this exception, next-day availability applies to cash, electronic deposits and the first \$5,525 of most other next-day items; the remaining funds of the next day items must be made available on the ninth business day. The credit union may choose its availability schedule for on-us checks and local checks.

MORE INFORMATION: If the member has a savings account at the credit union that does not meet the definition of an account, and the member then opens a checking account – the checking account would be subject to the new account exception. For more information, check out the [commentary to Regulation CC](#), specifically [comment 229.13\(a\)-1](#).

- › **Large Deposits.** Under [section 229.13\(b\)](#), the credit union may extend the hold periods when funds, other than cash or electronic deposits, over \$5,525 are deposited by a member in any one banking day. The extended hold may be placed on funds in excess of \$5,525, and the credit union may aggregate deposits made by that member to any of his or her accounts, even joint accounts.
- › **Redeposited Checks.** Under [section 229.13\(c\)](#), the credit union can place an extended hold on a check that had previously been deposited and returned unpaid. This exception does not apply to checks that were returned because they were post-dated and are no longer post-dated or to checks that were returned due to a missing indorsement and the indorsement is no longer missing.
- › **Repeated Overdrafts.** If the member's account(s) has been repeatedly overdrawn, the availability rules for checks do not apply for 6 months after the last overdraft. Under [section 229.13\(d\)](#), there is a specific definition for what constitutes a repeatedly overdrawn account. The credit union may consider an account to be repeatedly overdrawn if:
 - › On six or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative if checks or other charges to the account had been paid; or

- › On two or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative, in the amount of \$5,525 or more, if checks or other charges to the account had been paid.
- › **Reasonable Cause to Doubt Collectability.** Under [section 229.13\(e\)](#), this exception can apply when the credit union has reasonable cause to believe the check is uncollectible. This belief must be based on a set of facts particular to the check and not on the fact that the check is of a particular class or is deposited by a particular class of persons. This exception could not be applied to a check simply because it is a cashier's check, absent other facts particular to that check.
- › **Emergencies.** Hopefully, a credit union will never have to use the exception under [section 229.13\(f\)](#), as it permits the credit union to place an extended hold on deposits in cases of emergencies beyond the credit union's control.

Exception Hold Times. Except for new accounts and emergency holds, the regulation provides a safe harbor for what is considered a reasonable extended hold. It defines a "reasonable period of time" as one additional business day for on-us checks, five additional business days for local checks and six additional business days for deposits at nonproprietary ATMs. Credit unions may impose longer holds but have the burden of proving the period is reasonable.



RESEARCH TIP: Federal Reserve's Consumer Compliance Handbook [section on the Expedited Funds Availability Act](#) and the FDIC's [Expedited Funds Availability Act chapter](#) in its Consumer Compliance Examination Manual provide several graphics and visuals that apply the funds availability rules and exception holds.

Notice of Extended Hold. A credit union usually must provide notice to a member when it invokes one of the above exceptions. [Section 229.13\(g\)](#) states the general notice should be provided when the credit union invokes the large deposit, redeposited checks, repeated overdrafts and reason to doubt collectability exceptions. The general notice must contain the:

- › Account number (the last four digits of a customer's account will suffice);
- › Date of the deposit;
- › Amount that will be delayed;
- › Reason for the delay; and
- › Day the funds will be available or information sufficient to indicate when funds will be available and the amounts that will be available at those times.

These extended hold notices should be provided at the time of the deposit, unless (1) the deposit is not made in person to an employee of the credit union or (2) the credit union uncovers facts after the deposit authorizing the credit union to invoke one of the exceptions.

Under [section 229.13\(g\)\(2\)-\(3\)](#), there are two alternative notices to the general notice required for the large deposit, redeposited checks, repeated overdrafts and reason to doubt collectability exceptions. First, for non-consumer accounts, the credit union may provide a one-time exception notice for large deposits and redeposited checks that explains the reasons these exceptions may be invoked and the time period of the delay. Second, if the credit union is invoking the repeated overdrafts exception, it may provide one notice to the member that includes the above required information as well as the duration of the exception.

[Section 220.13\(g\)\(4\)](#) allows for a different notice when a credit union invokes the emergency conditions exception notice:

“[I]t must provide the depositor with notice in a reasonable form and within a reasonable time given the circumstances. The notice shall include the reason the exception was invoked and the time period within which funds shall be made available for withdrawal, unless the depository bank, in good faith, does not know at the time the notice is given the duration of the emergency and, consequently, when the funds must be made available. The depository bank is not required to provide a notice if the funds subject to the exception become available before the notice must be sent.”



RESEARCH TIP: When researching a Regulation CC question, it is important to first understand what the credit union needs to disclose and what the hold times are for checks? If someone is wondering how long they can hold a check, start with the standard availability times and then ascertain if any exceptions fit. If an exception applies, then how much extra time does it give the credit union and so on. For disclosure questions, it is necessary to know the disclosure requirements and the credit union’s funds availability policies.

Funds Availability Disclosures

General Disclosure Requirements

[Section 229.15\(a\)](#) requires disclosures to be clear and conspicuous, in writing, and except for disclosures posted where employees accept deposits, at ATMs or on preprinted deposits slips, be in a form the consumer may keep. If disclosures are contained in a document that sets forth other account terms, they must be highlighted in some way (i.e., under a separate heading).

Specific Availability Policy Disclosure

[Section 229.16](#) requires credit unions to provide members with a disclosure, before an account is opened, that describes the funds availability policy followed by the credit union in most cases. The disclosure should include:

- › A summary of the availability policy;
- › A description of the categories of deposits or checks used to determine a delay in availability; when funds from those categories will be available; and an explanation of how to determine the category to which a deposit belongs;
- › A description of any exception holds the credit union may impose;
- › A description of any case-by-case hold policy; and
- › A description of how a member may differentiate between a proprietary and non-proprietary ATM.

[Appendix C](#) to Regulation CC contains model forms that help demonstrate the regulatory disclosure requirements.

EXAMPLE

A credit union that has a case-by-case hold policy and makes most deposits available on the next business day except in case-by-case situations, or under one of the exception holds, could look to Model Form C-3 in [Appendix C](#) for an example of how to disclose such a policy.



Many credit unions have a policy of making deposited funds available for withdrawal sooner than required. This allows credit unions to extend the time when funds are available up to the time periods allowed under Regulation CC on a case-by-case basis in accordance with [section 229.16\(c\)\(1\)](#).

If a credit union exercises its ability to use a disclosed case-by-case hold, Regulation CC generally requires notice as described in [section 229.16\(c\)\(2\)](#). Under the regulation, the notice should be provided to the member at the time of deposit, unless the deposit is not made in person to an employee of the credit union, or the credit union is unable to determine whether to exercise the case-by-case hold until after the deposit is made. In those cases, the notice should be mailed or delivered to the member no later than the first business day following the banking day the deposit is made.

Additional Disclosure Requirements

Deposit Slips. [Section 229.18\(a\)](#) requires preprinted deposits slips to include a notice that deposits may not be available for immediate withdrawal.

Locations Where Employees Accept Consumer Deposits. [Section 229.18\(b\)](#) requires such locations to have posted, in a conspicuous place, a notice that provides the funds availability policy for deposits. This notice is not required at drive-through windows or night depository boxes.

MORE INFORMATION: The [staff commentary](#) notes that the disclosure does not need to be at each teller window but must be placed in a location where consumers are likely to see it before making their deposits (i.e., at the teller line).

ATMs. [Section 229.18\(c\)](#) requires credit union to post at its ATMs a notice that funds deposited at the ATM may not be available for immediate withdrawal. If the credit union operates an off-premises ATM and does not remove deposits from it more than twice a week, it must disclose at or on the ATM the days on which funds will be considered received.

Upon Request. [Section 229.18\(d\)](#) requires the specific availability disclosure to be provided before account opening must also be provided to anyone upon oral or written request.

Changes in Policy. [Section 229.18\(e\)](#) requires the credit union to provide a change in terms notice to its consumer account holders at least 30 days in advance of the effective date of the change. However, if the change expedites funds availability, the credit union may provide the change in terms disclosure not later than 30 days after the change. The staff [commentary](#) permits the notice to be provided in any form so long as it is clear and conspicuous. If the credit union delivers it in a new set of account disclosures, the change must be highlighted in some manner.

Relation to State Law

[Section 229.20](#) and its [commentary](#) govern preemption. The EFA Act indicates 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.

MORE INFORMATION: The provision requiring federally chartered institutions to follow more favorable state laws applies only to state laws in effect on or before September 1, 1989. In other words, state laws that went into effect after that date are preempted by Regulation CC.

The [commentary](#) to section 229.20(a) clarifies if a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

As stated in [section 229.20\(b\)](#), provisions of state law that are inconsistent with the EFA Act and Regulation CC are preempted. Preemption does not require a determination by the Federal Reserve Board to be preempted. However, an interested party in a state may request a preemption determination. Any such determination will apply only to Subparts A and B of Regulation CC. Such determinations are found in [Appendix F](#) to the regulation.

COLLECTION OF CHECKS

The rules regarding the collection of checks in [Subpart C](#) of Regulation CC are intended to speed the check return and collection process. These rules cover the return responsibilities of paying and returning banks in this process and require the expeditious return of checks, as well as the warranties and liabilities involved in the check collection process. Subpart C applies to "electronic checks" in addition to paper checks and paper returned checks. Electronic checks are distinguished from "electronically-created items" which are not derived from a paper check. For purposes of discussing

Subpart C and the collection of checks, the word "check" should be read to refer to both paper and electronic checks.

MORE INFORMATION: "[Electronic checks](#)" are defined as "an electronic image of, and electronic information derived from, a paper check [that is] sent to a receiving bank pursuant to an agreement between the sender and the receiving bank [and] conforms with" certain national standards.

The Expeditious Returns Rule

Regulation CC requires the expeditious return of checks. Under [section 229.31\(b\)](#), for a return to be considered expeditious, it must be sent in a manner such that the check would normally be received by the depository bank not later than 2:00pm local time on the second business day after the check was presented to the paying bank. The [commentary](#) to section 229.31(b) clarifies that actual receipt of the returned check by the depository bank is not required; the paying bank need only return the check in a manner that would normally be received by the deadline. For example, a paying bank may rely on a returning bank's return deadlines and availability schedules for electronic returned checks and returned checks scheduled to be delivered to the depository bank. Under [section 229.31\(c\)](#), the paying bank also must provide a notice of nonpayment if the amount of the check is \$5,000 or more. The notice of nonpayment must include the information from the check's MICR line; payee's name; amount; date of the depository bank's indorsement; depository bank's name, routing number and trace or sequence number; and the reason for nonpayment. The notice is also due to the depository bank by 2:00pm (according to the depository bank's local time).

If the paying bank fails to return a check in an expeditious manner, it may be liable to the depository bank. [Section 229.33\(a\)](#) explains the paying bank is liable only if the depository bank has procedures in place that would allow a check to be returned electronically, directly or indirectly, by commercially reasonable means. The burden of proving that these arrangements exist is on the depository bank asserting a claim. If a depository bank does not have policies and procedures in place to receive returned checks electronically, even indirectly, it may forfeit its right to bring a claim against the paying bank for its failure to return the check in an expeditious manner.

Forged and Altered Checks

[Section 229.38\(i\)](#) includes a rebuttable presumption that a check has been altered when there is a dispute over whether the check has been altered or forged and the original check is not available. This presumption is necessary because of the difficulty that may exist in proving whether an original

check contains an alteration or forgery given that the collection and return of checks now overwhelmingly occurs electronically. The presumption can be overcome by proving by a preponderance of the evidence that the check has been forged or by providing the original check for inspection.

RDC Indemnity

[Section 229.34\(f\)](#) of Regulation CC also includes a remote deposit capture (RDC) indemnity. A credit union that accepts deposit of an electronic image or other electronic information related to a paper check for deposit via RDC; does not receive the paper check; receives settlement for the check deposited via RDC; and does not receive a return of the check unpaid is obligated to indemnify a depository bank that subsequently accepts the paper check for deposit and suffers a loss because the check has already been paid. But an indemnity claim is not available if the paper check that was accepted for deposit contained a restrictive indorsement inconsistent with the means of deposit.

NAFCU NOTE

This NAFCU *Compliance Blog* [post](#) provides additional information about the presumption for forged or altered checks while this [post](#) further explains restrictive indorsements for RDC indemnity.



Unfortunately, there is no bright-line rule about what constitutes a restrictive indorsement for the purposes of section 229.34(f). In the [preamble](#) to the final rule, the Federal Reserve Board explained that “for mobile deposit only” is an example of a restrictive indorsement and the [commentary](#) provides another example: “for mobile deposit at Depository Bank A only.” As these are just examples, other indorsements may also be sufficient. State law may also provide some guidance about what constitutes a restrictive indorsement.

SUBSTITUTE CHECKS

General Provisions

A substitute check for which a credit union has provided the warranties described below is the legal equivalent of an original check for all persons and all purposes, including any provision of federal or state law. Under [section 229.52\(a\)\(1\)\(i\)](#), a substitute check:

- › Accurately reflects all the information on the front and back of the original check as of the time the original check was truncated; and
- › Bears the legend “This is a legal copy of your check. You can use it the same way you would use the original check.”

A substitute check that is the legal equivalent of the original check shall be subject to any provision of Regulation CC, the Uniform Commercial Code and other applicable law as if it were the original check, to the extent that such law is not inconsistent with Check 21 or Subpart D of Regulation CC.

A reconverting bank is the bank (as that term is defined in [section 229.2\(zz\)](#)) that either converts the check to a substitute check, or if the person who converts the check is not a bank, the first bank to handle the substitute check. A reconverting bank must ensure that the substitute check bears all indorsements applied by all parties that previously handled the check (in any form), identifies the reconverting bank and identifies the bank that truncated the original check.

Warranties and Indemnity

[Section 229.52](#) requires any credit union that transfers, presents or returns a substitute check (or a paper/electronic representation of a substitute check) and receives consideration for that check warrants that the substitute check meets the legal equivalence requirements and that a check that has already been paid will not be presented for subsequent payment.

[Section 229.53](#) follows with maintaining such a credit union will indemnify any recipient or subsequent recipient of the substitute check for any loss incurred by any recipient if that loss occurred due to the receipt of a substitute check in lieu of the original check.

Expedited Recredit

A consumer may make a claim for expedited recredit under [section 229.54](#) only for a substitute check that he or she has received and for which the credit union charged his or her account. To make such a claim, the consumer must assert in good faith:

- › The credit union holding the account charged the account for a substitute check provided to the consumer;
- › The substitute check was not properly charged to the consumer's account or the consumer has a warranty claim with respect to the substitute check;
- › The consumer has suffered a loss as a result; and
- › Production of the original check or sufficient copy of the original check is necessary to determine whether or not the substitute check was improperly charged, or the consumer's warranty claim is invalid.

EXAMPLE

The [staff commentary](#) provides excellent examples demonstrating these rules: "A consumer who received a substitute check believed that he or she wrote the check for \$150, but the credit union charged his or her account for \$1,500. The amount on the substitute check the consumer received is illegible. If the substitute check contained a blurry image of what was a legible original check, the consumer could have a claim for a breach of the legal equivalence warranty in addition to an improper charge claim. Because the amount of the check cannot be determined from the substitute check provided to the consumer, the consumer, if acting in good faith, could assert that the production of the original check or a better copy of the original check is necessary to determine the validity of the claim. The consumer in this case could attempt to recover his or her losses by using the expedited recredit procedure. The consumer's losses recoverable under section 229.54 could include the \$1,350 he or she believed was incorrectly charged plus any improperly charged fees associated with that charge, up to \$150 (plus foregone interest on the amount of the consumer's loss if the account was an interest-bearing account). The consumer could recover additional losses, if any, under other law, such as U.C.C. 4-401 and 4-402."

To make a claim under [section 229.54\(b\)](#), the consumer must submit his or her expedited recredit claim to the credit union within 40 calendar days of the later of the calendar day on which the credit union mailed or delivered: (1) the periodic account statement containing information concerning the transaction giving rise to the claim, or (2) the substitute check giving rise to the claim. The mailing or delivery of a substitute check could be in connection with a regular account statement, in response to

a consumer's specific request for a copy of a check or in connection with the return of a substitute check to the payee.

The claim must include the following in accordance with [section 229.54\(b\)\(2\)](#):

- › A description of the claim, including a reason why the consumer believes his or her account was improperly charged for the substitute check or the nature of his or her warranty claim;
- › A statement that the consumer suffered a loss and an estimate of such loss;
- › The reason why production of the original check or a sufficient copy is necessary; and
- › Sufficient information to allow the credit union to identify the substitute check and investigate the claim.

The regulation permits a credit union to require that a claim is submitted in writing. If a consumer makes an oral claim to the credit union, the credit union must inform the consumer of the written requirement at that time.

A credit union that receives a claim that satisfies the requirements of section 229.54(b) is required to act on the claim within ten days of receiving it. If the credit union determines that the claim is valid, it must recredit the consumer's account. The recredit should be in the amount of the loss, up to the amount of the substitute check, plus interest on that amount if the account is a dividend-bearing account. The credit union must then notify the consumer of the recredit. If the credit union determines that the claim is not valid, it must notify the consumer of this determination.

If the credit union has not taken action by the 10th business day after receiving the claim, [section 229.54\(c\)\(3\)](#) requires the credit union to recredit the consumer's account for the amount of the consumer's loss, up to the lesser of the amount of the substitute check or \$2,500, plus dividends on that amount if the account is a dividend-bearing account and send the consumer a notice of the recredit. In addition, the credit union shall recredit the consumer's account for the remaining amount of the consumer's loss, if any, up to the amount of the substitute check, plus dividends if the account is a dividend-bearing account, no later than the end of the 45th calendar day after the banking day on which the credit union received the claim and send to the consumer a notice of the recredit, unless the credit union prior to that time has determined that the consumer's claim is or is not valid.

Consumer Awareness

The credit union must provide a notice to its members that describes that a substitute check is the legal equivalent of an original check under [section 229.57](#). The notice must also describe that recredit rights apply when the consumer in good faith believes that a substitute check was not properly charged to the account.

Under [section 229.57\(b\)](#), the credit union must provide this disclosure to members at the time the member relationship is initiated for any member that receives paid substitute or original checks with his or her statement. Members that receive substitute checks only on an occasional basis shall receive the disclosure when they request an original or copy of a check and receive a substitute check. The credit union shall provide the disclosure no later than at the time it provides the substitute check. If a member receives a returned substitute check, the credit union shall provide the notice at the time it provides the substitute check.