

Office of Regulatory Activities

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Handbook: Compliance Activities
Subject: Expedited Funds Availability Act

Section: 335
TB 9

November 30, 1988

Final Rule Adopting Interim Conforming Amendments to
Federal Reserve Board Regulation CC

RESCINDED

Summary: The Federal Reserve Board has adopted as a final rule to its Regulation CC, interim conforming amendments made necessary by a court decision that found that the regulation's definition of a payable-through-bank as a paying bank was inconsistent with the Expedited Funds Availability Act.

For Further Information Contact:

The Federal Home Loan Bank District in which you are located, or the Division of Compliance Programs of the Office of Regulatory Activities, Washington, D.C.

Supplementary Information:

On May 13, 1988, the Federal Reserve Board issued its Regulation CC (12 CFR 229) to implement the Expedited Funds Availability Act (Title VI of Public Law 100-86). Shortly after the issuance of the regulation, a trade association of credit unions and one credit union whose checks are payable through a nonlocal bank* filed suit against the Federal Reserve Board seeking to overturn the definition of paying bank to the extent that the definition included a payable-through-bank where the check was drawn on a credit union. The court, in *Credit Union National Association v. Board of Governors*, No. 86-1295 OG (D.D.C. July 28, 1988), found that the Federal Reserve Board's regulation was inconsistent with the Act to the extent that it defined the payable-through-bank as the paying bank for purposes of the Act's funds availability requirements.

As a result, the Federal Reserve Board issued, on August 18, 1988, temporary conforming amendments to the regulation and requested pub-

lic comment on the interim rule pending its consideration of a final rule.

Thrift Bulletin 9

The Federal Reserve Board's action became effective October 25, 1988. Substantively, the amendments mirror those contained in the interim rules, which affected the definitions and the disclosure provisions. A copy of the *Federal Register* notice containing the Federal Reserve Board's action is attached (53 FR 44324, November 2, 1988).

Essentially, where a check is payable by one bank (including a thrift) but payable through another bank, the check is considered local or nonlocal by reference to the locations of the payor bank, not by reference to the payable-through-bank. As payable-through checks bear the routing number of the payable-through-bank, not the payor, the provisions in the regulation that enabled a depository bank to rely on the routing number to determine whether a check is local or nonlocal have been amended. For example, under the amended regulation, credit union share drafts (and any similar bank drafts) payable through another bank must be judged local or nonlocal based on the location of the credit union rather than the location of the payable-through-bank whose routing number appears on the face of the check.

In addition, banks whose initial disclosures are affected by the amendment may satisfy the requirements of § 229.16(b) of the regulation by disclosing to their customers that certain checks will be treated as local or nonlocal based on the location of the bank by which they are payable, and not on the basis of the location of the bank whose routing number appears on the checks. However, if a bank makes the proceeds of both local and nonlocal checks available for withdrawal within the time periods required for local checks, it need not provide the additional disclosure.

The public comments received by the Federal Reserve Board on the interim rules indicated that the change may create operational difficulties and increase risks for depository institutions. In response, the Federal Reserve Board has also published for comment in the November 2, 1988 *Federal Register*, several proposals to alleviate these operational problems and risks (Docket R - 0648). The comment period runs until December 30, 1988 and the proposal is available from the Federal Reserve Board.

Attachment

— Darrel Dochow, Executive Director

* As defined in Regulation CC, the term "bank" includes members of the Federal Home Loan Bank System, and insured institutions as defined under the National Housing Act.

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0643]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting as a final rule, with minor technical changes, the interim amendment to Regulation CC it adopted in August. The Board adopted the interim rule to conform the definition of "paying bank" in Regulation CC to the Expedited Funds Availability Act as interpreted by a court decision. The court found that in defining a payable through bank as the paying bank where a check is written on one bank but payable through another, Regulation CC was inconsistent with the language of the Act.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT:

Joseph R. Alexander, Senior Attorney (202/452-2489), Stephanie Martin, Attorney (202/452-3198), Legal Division; Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452-3874); Kathleen Brueger, Staff Attorney, Division of Community and Consumer Affairs (202/452-2412). For the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board issued its Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229) to implement the Expedited Funds Availability Act (the "Act") (Title VI of Pub. L. 100-86). 53 FR 19373 (May 27, 1988). In keeping with the Board's view that the Act established a clear link between the time it normally takes a check to be cleared and returned, and the time within which the depository bank¹ must make the funds available to the depositor, the regulations provided that where a check is payable by one bank but payable through² another and

¹ The Act uses the term "receiving depository institution" to mean "the branch of a depository institution or the proprietary ATM in which a check is first deposited." 12 U.S.C. 4001(20). Because the term "receiving depository institution" is unique to the Act, the Board used the term "depository bank," which, because it is used in the Uniform Commercial Code ("U.C.C.") and the Board's Regulation J (12 CFR Part 210), is familiar to the banking industry.

² When a check states on its face that it is "payable through" a bank, that bank is referred to as the "payable through bank." Under the U.C.C., a

payable through bank for payment or collection, the location of the payable through bank would determine whether a check is local or nonlocal vis-a-vis the depository bank for the purposes of the funds availability schedules in the regulation.

Shortly after the Board issued Regulation CC, a trade association of credit unions and one credit union whose checks are payable through a nonlocal bank filed suit against the Board seeking to overturn the definition of paying bank to the extent that the definition included a payable through bank where the check was drawn on a credit union. The court granted the plaintiffs' motion for a summary judgment and invalidated Regulation CC's definition of paying bank to the extent that it includes a payable through bank where the check is drawn on a credit union. *Credit Union National Association v. Board of Governors*, No. 88-1295 OG (D.D.C. July 28, 1988). The court found that the Board's regulation was inconsistent with the Act to the extent that it defined the payable through bank as the paying bank for purposes of the Act's funds availability requirements.

The Act and Regulation CC took effect five weeks after the court rendered its decision. In order to clarify the duties of banks and others in light of the court's order, the Board issued temporary conforming amendments to Regulation CC. The Board also requested comment on the interim rules pending the Board's consideration of a final rule. 53 FR 31290 (August 18, 1988).

The interim rule primarily affected the definitions and the disclosure rules. Where a check is payable by one bank but payable through another bank, the interim rule provided that the check would be considered local or nonlocal by reference to the location of the payor bank, not by reference to the payable through bank. The interim rule did not affect payable through checks payable by nonbank payors. Further, as payable through checks bear the routing number of the payable through bank, not the payor, provisions in Regulation CC that allowed a depository bank to rely on the routing number to determine whether a check is local or nonlocal were amended. The interim rule also permitted banks whose initial disclosures were affected by the court's decision to comply with the Act by sending to their customers simple

payable through bank is not named as the payor, but is designated as a "collecting bank to make presentment." U.C.C. § 3-120. Under the Board's Regulation J, a payable through bank is the "paying bank." 12 CFR 210.2(j).

clarifying notices in regularly scheduled meetings.

Approximately 93 percent of the 155 comments the Board received on the interim rule objected to the treatment of bank payable through checks as local or nonlocal based on the location of the payor bank, because the rule creates operational difficulties and increases risks for depository banks. Many of the commenters suggested means of addressing these operational problems and risks. In a related action today, the Board has requested comment on several proposals to alleviate these operational problems and risks. (See Docket No. R-0648.)

After consideration of the comments, the Board has determined to adopt in final form the interim rule with two technical changes:

(1) To insert the word "or" after the fourth element in the definition of "paying bank," and

(2) Clarify in the disclosure rules and the Commentary that a bank that makes funds available within the time periods required for local checks is not required to make the special disclosure.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

Accordingly, the interim rule amending Regulation CC, 12 CFR Part 229, which was published at 53 FR 31290-31296 on August 18, 1988, is adopted as a final rule with the following changes:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

1. The authority citation for Part 229 continues to read as follows:

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

2. Section 229.2(z)(4) is revised to read as follows:

§ 229.2 Definitions.

* * * * *

(z) * * *

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

* * * * *

§ 229.16 [Amended]

3. Section 229.16(b)(2) is amended by adding after the first sentence of the footnote the following new sentence to read as follows:

* * * A bank that makes funds from nonlocal checks available for withdrawal within the time periods required for local checks under §§ 229.11, 229.12, and 229.13 is

not required to provide this disclosure on payable through checks to its customers.

4. Appendix E—Commentary to Part 229, is amended by adding following the fourth paragraph of the Commentary to § 229.16(b) a new paragraph to read as follows:

Appendix E—Commentary

Section 229.16 Specific Availability Policy Disclosures

(b) * * *

Generally, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose to its customers that certain checks, such as some credit union payable through drafts, will be treated as local or nonlocal based on the location of the bank by which they are payable (e.g., the credit union), and not on the basis of the location of the bank whose routing number appears on the check. A bank is not required to provide this disclosure, however, if it makes the proceeds of both local and nonlocal checks available for withdrawal within the time periods required for local checks in §§ 229.11, 229.12, and 229.13.

By order of the Board of Governors of the Federal Reserve System, October 25, 1988.

William S. Wiles,

Secretary of the Board.

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