Office of Regulatory Activities

Handbook: Compliance Activities  
Section: 335

Expedited Funds Availability Act

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

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. 86-1259 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 public comment on the interim rule pending its consideration of a final rule.

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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 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.

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. 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 - 0048). The comment period runs until December 30, 1988 and the proposal is available from the Federal Reserve Board.

Attachment
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 amendment to Regulation CC to the Expedited Funds Availability Act (the "Act") (Title VI of Pub. L. No. 99-101, 100 Stat. 552; 12 U.S.C. 4601 et seq.) on 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 based on the location of the payor bank, not by reference to the payable through 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 depositary 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 clarifying notices in regularly scheduled meetings.

Approximately 99 percent of the 155 comments the Board received on the interim rule objected to the treatment of checks 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 depositary 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-0068.) 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. To 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, as amended by Docket Nos. R-3120-3129 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:


2. Section 229.2(3)(iv) is revised to read as follows:

§ 229.2 Definitions.

(3) * * *

(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.

William S. Wiles,
Secretary of the Board.

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