EXPEDITED FUNDS AVAILABILITY ACT

(REGULATION CC)

OVERVIEW

Overview

Regulation CC implements the requirements of the Expedited Funds Availability Act (EFAA). The purpose of the regulation is to ensure prompt availability of funds and to expedite the return of checks.

The major provisions of Regulation CC:

- Establish maximum holds that credit unions can place on deposits; and
- Require credit unions to disclose their funds availability policies to members.

In general, deposited funds fall into one of three categories of availability.

Next Day Availability

Certain types of funds must be made available for withdrawal not later than the business day after the banking day the funds were deposited. The following types of funds generally meet the standards for next-day availability:

- Cash deposits made in person to an employee of the credit union.
- Electronic payments.
- Checks drawn on the Treasury of the United States or a state or local government.
- U.S. Postal Service money order.
- Cashier's, certified, or teller's check.
- Check drawn on a Federal Reserve Bank or Federal Home Loan Bank.
- Checks deposited in a branch of the credit union and drawn on the same or another branch of the same credit union if both branches are located in the same state or the same check-processing region.

In most cases, the types of funds listed above must be deposited in person to an employee of the credit union and in an account of the payee.

Second Day Availability

Except as provided under "exceptions" below, a credit union must make funds deposited in an account by check available for withdrawal not later than the second business day following the banking day the funds are deposited, in the case of:

- A local check;
- A check drawn on the Treasury of the United States that is not governed by the next-day availability requirements;
- A U.S. Postal Service money order that is not governed by the next-day availability requirements
- A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to is a local check that is not governed by the next-day availability requirements.

Fifth Day Availability

Except as provided under "exceptions" below, a credit union must make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day funds are deposited, in the case of:

- A non local check;
- A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; or a check deposited in a branch of the depository credit union and drawn on the same or another branch of the same credit union; if any check referred to is a nonlocal check that is not governed by the next-day availability requirements; and funds deposited in an account at a nonproprietary ATM by cash or check.

Exceptions

Exceptions to the availability schedule apply in the case of:

- Withdrawal by cash or similar means;
- New accounts;
- Large deposits ($5,000 or greater);
- Redeposited checks;
- Repeated overdrafts;
- Reasonable cause to doubt collectibility; and,
- Emergency conditions.

Payment of Interest

A credit union shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the credit union receives credit for the funds unless the credit union meets the Special Rule for Credit Unions in §229.14(b). This provision provides an exemption from the payment of interest requirements for credit unions that do not begin to accrue interest or dividends on their member accounts until a later date than the day the credit union receives credit for those

deposits, including cash deposits. The credit union is exempt from the payment of interest requirements, as long as it provides notice of its interest accrual policies in accordance with §229.16(d) (must contain an explanation of when interest or dividends on deposited funds begin to accrue).

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

Disclosure Requirements

A credit union shall make disclosures clearly and conspicuously in writing. Disclosures, other than those posted at locations where employees accept consumer deposits and ATMs and the notice on preprinted deposit slips, must be in a form that the member may keep. The disclosures shall be grouped together and shall not contain any information not related to the disclosures. If contained in a document that sets forth other account terms, the disclosures shall be highlighted within the document.

Associated Risks

- Transaction risk can occur when proper "holds" are not enforced, resulting in a loss to the credit union,
- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Regulation CC, and
- Reputation risk can occur when the credit union incurs fines and penalties or receives decreased member confidence as a result of failure to comply with Regulation CC.

Additional Information

Additional information is available on the Federal Reserve Board's website at http://www.federalreserve.gov/

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OPERATIONAL REQUIREMENTS

Disclosures / Notices

New Account Availability Disclosure [Sections 229.16(b) and 229.17]
Potential members must be provided with a specific availability policy disclosure prior to opening an account. The content of this disclosure must follow the requirements of Section 229.16, which describes the policy as to when funds deposited in an account are available for withdrawal.

Requesting an Account Availability Disclosure [Section 229.18(d)]
A credit union must provide a copy of its specific availability policy disclosure described in Section 229.16 to any person, upon oral or written request.

Notice of Case-by-Case Holds [Section 229.16 (c)(1) and (2)]
A credit union that has a policy of making deposited funds available for withdrawal sooner than required by the regulation may extend the time when funds are available up to the time periods allowed if:
(1) the credit union provides notice of the possible extension of time for the withdrawal of deposited funds on a case-by-case basis within its specific availability policy disclosure as described in Section 226.16(c)(1); and
(2) the credit union provides a written notice to the member when it actually extends the time when funds will be available on a case-by-case basis for withdrawal in the manner prescribed by Section 229.16(c)(2).

Notice of Exception Hold [Section 229.13(g)]
A credit union extending the time when funds will be available for withdrawal based on the application of an exception contained in Section 229.13(b)(f), must provide the depositor with a written notice as described therein. These exceptions include large deposits, redeposited checks, repeated overdrafts, reasonable cause to doubt collectibility, and emergency conditions.

Deposit Slip Notice [Section 229.18(a)]
A notice must be included on all preprinted deposit slips furnished to members which provides that deposits may not be available for immediate withdrawal.

Lobby Notice [Section 229.18(b)]
A credit union must post a notice in a conspicuous place in each location where its employees accept deposits to consumer accounts which sets forth the time periods applicable to the availability of funds deposited in a consumer account.

Automated Teller Machine Notice [Section 229.18(c)]
A credit union must post a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

Credit unions operating an off-premises ATM from which deposits are not removed more than two times each week must disclose at or on the ATM the days on which deposits made at the ATM will be considered received.

Notice of Changes in Policy [Section 229.18(e)]
A credit union must deliver a notice to holders of consumer accounts at least 30 days prior to implementing a change to its availability policy regarding such accounts, except that a change resulting in expedited availability may be disclosed not later than 30 days after implementation.

Notice of Nonpayment [Section 229.33(d)]
A credit union receiving a returned check or notice of nonpayment must send notice to its member of the facts by midnight of the banking day following the banking day that it received the returned check or notice, or within a longer reasonable time.

Written Programs / Documentation

Procedures for Employee Training and Compliance [Section 229.19(f)]
A credit union must establish and maintain procedures to ensure its compliance with the regulation. It must also provide a statement of applicable portions of the procedures to employees who perform tasks subject to the requirements of the regulation.

Recordkeeping

Record Retention [Section 229.21(g)]
A credit union must retain evidence of compliance with the regulation for at least two years. This record-retention period may be extended in the event of civil actions and enforcement proceedings brought against the credit union.

Enforcement / Liability

Administrative Enforcement Authority [Section 229.3(a)(3)]
The National Credit Union Administration has responsibility for enforcement among both federal and state-chartered credit unions.

Civil Liability [Section 229.21]
Civil liability may be imposed against a credit union for failure to comply with the regulatory requirements in an amount equal to actual damages sustained, additional amounts of up to $1,000 per individual action, and reasonable attorney's fees. In the case of a class action, recovery may not exceed the lesser of $500,000 or one percent of the net worth of the credit union.