



May 1, 2014

Robert DeV. Frierson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

RE: Comments on Proposed Amendments Availability of Funds and Collection of Checks
(Regulation CC); Docket #R-1409 and RIN No. 7100 AD 68

Dear Mr. Frierson,

Thank you for the opportunity to comment on proposed amendments to Regulation CC-Availability of Funds and Collection of Checks. I am writing to you today on behalf of Credit Union ONE, a Michigan State Chartered Credit Union with over 109,000 members and \$821 million in assets, regarding liability of checks deposited via remote capture. At this time Credit Union ONE does not offer remote deposit capture, but it is a service that we are planning to offer in the near future.

Proposed paragraph (g) of section 229.34 provides specific indemnity and liability provisions associated with remotely deposited items. Specifically, proposed paragraph (g) provides that a truncating bank shall indemnify a depository bank that accepts the original check for deposit for losses incurred by that depository bank if the loss is due to the check having already been paid. It also allows for a depository bank accepting a paper copy of an item that has already been deposited remotely and paid, to recover its losses associated with the item having been previously paid.

The Credit Union disagrees with the indemnity and liability provisions of this section. It is our opinion that the liability should rest on the depository institution and not the truncating institution. This would be in line with current liability provisions with respect to deposits of checks returned for various reasons (NSF, closed account, counterfeit, etc.). The Board reasons that the liability should rest with the truncating institution because the truncating institution opened the door to the risk of multiple deposits.

In all actuality the truncating institution is only doing what is allowed under UCC and Regulation CC. The truncating institution did not open the door to multiple deposits, the regulations did. Additionally, assessing liability on the truncating institution would greatly reduce the efficiencies gained in the check acceptance and collecting process and would have an adverse effect on the use of advances in technology in this arena. Furthermore, the risk presented is no greater to a depository institution than it is for checks that are deposited and returned as NSF, closed account, counterfeit, etc. Depository institutions have no control over these; however, they suffer the loss and can turn to their member (customer) for reimbursement.

If the Board reasons that the truncating institution opened up the door to multiple deposits, then the argument can be made that the institution returning a check as NSF, closed account, or

counterfeit opened up the door to fraud. For example, given the Board's reasoning, would not an institution that closed a member's account (or the member closed it) be liable to the depository institution if a check deposited is returned as a closed account? In this case the institution opened up the door to fraud because it did not collect the outstanding checks from the member upon account closure.

Finally, one recommendation to consider is based on whether or not the truncating institution and the depository institution both offer remote deposit capture. If both institutions offer the service they are aware of the risk and as such there is no reason to shift liability to the truncating institution. If the institution which accepted the paper check has not implemented and does not offer remote deposit capture service then one could consider, in that case, that the truncating institution indemnify and be liable to the depository institution. A possible hybrid approach.

Although Credit Union ONE does not offer this service as of yet, it is a service that we will offer in the near future; however, any final rule that places liability on the truncating institution could impact our decision to implement a remote deposit service. A hybrid approach, as had been described above, may be a good compromise to this issue.

Should you wish to discuss this issue further please do not hesitate to contact me. I appreciate the opportunity to comment on this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'SD', is positioned above the typed name.

Stephen Dedene
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