

From: "Paula Sumimoto" <psumimoto@UHFCU.com> on 03/12/2004 05:20:48 PM
Subject: Availability of Funds and Collection of Checks

Check 21 Comments

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1. The statute measures time from the "business day" a day other than a weekend or legal holiday. The Board proposes to incorporate the term "banking day" as it has for other party of Regulation CC. Banking day means "that part of any business day on which an office of a bank is open to the public for carrying on substantially all of its banking function." The Board believes that "banking day" is an appropriate term when referring to the time limits for a bank to provide a re-credit and make funds available for a re-credit. The Board requests comment on both of these adjustments relating to time period calculations. Does your credit union support these adjustments?

Yes

2. The Board provides sample notice for notifying consumers in the following situations: that their claim is valid; their claim is not valid; their account has been re-credited; and their re-credit has been reversed. Check 21 requires that a financial institution provide these notes, but does not require Federal Reserve to provide sample notices. In addition, Check 21 does not provide safe harbor for these notices. Should the Federal Reserve include these sample notices in its appendix? Please explain if all samples should be kept or if only certain ones should be kept.

Yes, provide sample notices and language. A safe harbor for the notices would be beneficial.

3. The proposed rule notes that, unless the bank already has provided the disclosure, a case-by-case disclosure is required when (1) a consumer receives a substitute check in response to his or her specific request for an original check or a copy of a check or (2) a check deposited by a consumer is returned unpaid to the consumer's account in the form of a substitute check. The Board has proposed two alternative rule provisions regarding when a bank must provide the disclosure to a consumer who requests a copy of a check. One alternative tracks the statute and requires a bank to provide the disclosure at the time of the request, but the other alternative requires provision of the disclosures at the time the bank provides the

substitute check to the consumer. The Board specifically requests comment on which of these alternatives is preferable.

Disclosure given when the substitute check is given to the member since the disclosure will directly apply to them and they are more likely to read it.

4. Is the Check 21 required consumer awareness notice regarding substitute checks clear and conspicuous? Does your Credit Union recommend any changes? Please explain.

Where deposits are made?

5. In the proposal, the Board clarifies that a bank may reserve the interest paid in the re-credit, as well, although the statute did not specifically address this. The Board requests comments on this approach. The commentary also clarifies that a bank may, when appropriate, reverse any amount that it previously re-credited, regardless of whether such amount originally was provided after a determination that a claim was valid or pending the bank's investigation. The Board requests comment on whether additional commentary would be useful and, if so, what specific points should be covered.

The Credit Union should always have the right to reverse dividends if applicable.

6. The Board notes that Check 21 and the proposed rule state that the warranty against duplicative presentment or return applies such that a person will not be asked to make a payment based on a check it already has paid. This language could be read to exclude a situation where a second charge results from an ACH debit that was created using information from an original check or substitute check. Such as ACH debit could be considered an electronic version of a substitute. The Board specifically requests comment on whether using information from a check to create an ACH debit entry should be a payment request covered by this warranty. Please comment

The reconverting bank still has the responsibilities if they created the substitute check inaccurately. It would expedite the collection process. It should be considered, provided it comes with the same warranties and rights.

7. However, the proposed rule provides that the recipient of an item that purports to be but is not substitute check (i.e. a substitute check with the wrong amount in the MICR line) has warranty and indemnity rights, and, where applicable, Re-credit and consumer awareness disclosure rights under subpart D as though the item were a substitute check. The Board requests comments on whether an item that fails to meet any of the other substitute check requirements also should be treated as though it were a substitute check for those limited purposes.

No if the elements are missing it should not be considered a substitute check.

8. The Board requests comment on all aspects of the proposed endorsement and identification standards discussed above.

It will be more difficult to look at signatures and endorsements when fraud is involved – alterations, forged drawer's signature.

9. The Statute does not explicitly address the reversal of interest when reversing a re-credit, and the Board specifically requests comment on whether the proposed approach is appropriate.

The Credit Union should always have the right to reverse dividends, when applicable. Everything should be reversed if the re-credit was found to be inaccurate.

10. The commentary also clarifies that a bank, may, when appropriate, reverse any amount that it previously re-credited, regardless of whether such amount originally was provided after a determination that a claim was valid or pending the bank's investigation of the claim. The Board requests comment on whether additional commentary would be useful and, if so, what specific points should be covered.

Additional commentary would be useful so we can explain to the member more clearly about reversals and re-crediting.

11. The Board asks for comment on the miscellaneous changes to Regulation CC and any other part of Regulation CC.

None

12. The Board also requests comments on whether there are circumstances under which it would be appropriate to reduce the time frame for providing a notice of nonpayment.

None

13. Do you agree that the commentary adequately describes the interaction of Check 21 with other law, such as the UCC? Please explain where more clarification is needed.

Yes, it reduces the amount of time to bring up a claim to dispute a transaction from 60 days to 40 days.

14. The Board request comments on whether it makes sense to incorporate a UCC revision. The UCC revision defines a remotely-created consumer item to mean “an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.” The UCC revision would allow a paying bank to use a warranty claim to absolve itself of responsibility for honoring this type of item if a drawer claims it is unauthorized. This revision rests on the premise that monitoring by depository banks can control this type of fraud more effectively than any practices readily available to paying banks.

It makes sense to make a revision to UCC.

15. Do you agree with the Board’s usage of industry standards?

Yes

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