

Proposal: 1409 (RIN 7100-AD68) - Reg CC - Availability of Funds and Collection of Checks
Description: The Board request comments on proposed amendments to Regulation CC (Availability of Funds and Collection of Checks) to encourage banks to clear and return checks electronically, add provisions that govern electronic items cleared through the check-collection system, and shorten the "exception" hold periods on deposited funds.

Comment ID: 80972
From: Merchants Bank, Andrew Kloeckner
Subject: Regulation CC

Comments:

Date: Jun 02, 2011

Proposal: Regulation CC - Availability of Funds and Collection of Checks
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Name: Andrew Kloeckner
Affiliation: Merchants Bank
Category of Affiliation: Commercial
Address:
City:
State:
Country: UNITED STATES
Zip:
PostalCode:

Comments:

Thank you for the opportunity to comment on this important change to Regulation CC. In addition to providing uniformity to consumers on when their check deposits will be available, it provides a mechanism by which banks can protect their customers and themselves against the epidemic of fraudulent and otherwise bad checks prevalent in the market today. First, the protections afforded customers and banks under Reg. CC were eroded by the elimination of the 'non-local- check classification which allowed longer hold periods for items clearing a greater distance away. Many of the proposed changes will be a double edged sword to bank customers. On one had, they would make funds available sooner. On the other hand, if their bank has fewer and less effective tools to help combat check fraud, the likelihood increases that funds will be used by bank customers before fraudulent and NSF checks are returned. The customer is then liable under UCC for the item but without the funds available to cover the returned item. While electronic check clearing is far speedier than prior methods, the proposed reduction in hold times and removal of the required notice between banks will only further the effectiveness of the criminals preying on bank customers with fraudulent items. Specifically, these are the items about which we have the most concern. 229.13(g) Notice of Exception - Requirement of an electronic notice of exception would create additional work by requiring banks to separate out notices sent into two groups vs. now sending

them all by one method. 229.13(h) Exceptions - Availability - The proposal to reduce the hold period from 7 to 4 days is a prime example of a reduction in protection of customers and banks from fraudsters. Banks do not indiscriminately place exceptions holds; they are time consuming. When a bank places such a hold, there is a good reason. With the period shortened, there is the greater possibility a customer will withdraw funds before a dishonored check is received by the bank of first deposit. It is crucial to leave the exception hold limit at 7 days. 229.16(c) (2) - Longer delays on case by case holds - PLEASE do not delete the case by case hold. While it does not in itself provide much protection because the hold drops off prior to most checks being returned, it provides a bank time to make phone calls to ascertain the validity of a check in questions of counterfeit items. It remains a valuable tool. Appendix C Model language re: charged back items - The language noted in the proposal is exactly what banks use to protect themselves when items are charged back against a customer account. 229.33 - Notice of nonpayment - We feel strongly that this notice requirement be retained. Even with electronic returns, fraudulent items and others are sometimes altered intentionally to delay the return process. If a returning bank in the process does not do its job, the bank of first deposit may not get the item back in a timely manner and its customer, and ultimately the bank if they can not cover the item, would bear the loss. The notice requirement is still valuable and should be retained. Many of the proposed changes reduce a bank's ability to protect its customers and itself from fraudulent checks, even with the efficiencies of electronic check clearing. The tools that are noted in this comment, when kept intact, allow banks to better provide that protection. Thank you.