



June 3, 2011

**VIA EMAIL**

Ms. Jennifer J. Johnson  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW.,  
Washington, DC 20551  
Docket No. R-1409 and RIN No. 7100-AD68  
[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

**RE: Proposed Rule on Availability of Funds and Collection of Checks: Docket No. R-1409 and RIN No. 7100-AD68**

Dear Ms. Johnson:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's (FRB's) proposed rule to revise Regulation CC, which implements the Expedited Funds Availability Act (EFA Act).

FRB's proposal is multi-faceted and complex. In fact, it goes well beyond merely updating the Regulation to remove obsolete terms and provisions, and to implement section 1086(e) of the Dodd-Frank Act (DFA), which, beginning July 21, 2011, requires \$200 rather than \$100 be made available the next business day after the day of deposit. Furthermore, the proposal comes at a time when financial institutions' personnel and financial resources are already *extremely* burdened with implementation of numerous other regulatory revisions and new requirements.

While WBA and its members support the EFA Act's general purpose to provide depositors of checks with prompt funds availability and to foster improvements in the check collection and return processes, FRB must not forget the fact that financial institutions suffer *significant* losses due to the negotiation of fraudulent checks. To that end, FRB must balance the Act's general purpose against the need for financial institutions to protect against and reduce such losses. An illustration of the need for such balance is FRB's proposed reduction of the presumed reasonable period for an exemption hold.

FRB has proposed to reduce the presumed reasonable period for an exception hold from seven (7) to four (4) days. The basis for the change is on the assumption that an all-electronic check processing system provides greater efficiency, and thus, a shorter hold period. WBA believes the proposed 4 day period would significantly expose financial institutions to loss due to the release of funds before research into any particular fraud-situation is completed. WBA believes the proposed 4 day period is too short and does little to protect financial institutions against losses which could be more easily prevented should the reasonable hold period remain intact. WBA strongly believes that such a drastic reduction in the hold period will result in bank loss, and should not be implemented merely based upon assumptions; rather, further studies must first be conducted to identify whether, in an all-electronic check processing environment, a reduction in the presumed hold period would be warranted.

In addition, WBA acknowledges that much of the check negotiation process has moved into an electronic era; however, FRB must recognize that not all financial institutions operate in a fully electronic environment and that its proposal will result in *substantial* costs to financial institutions, most significantly for Wisconsin community banks.

An example of just how drastic FRB's proposal would affect financial institutions is the provision regarding same day settlement. In an effort to encourage the financial industry's ongoing move towards a fully-electronic interbank check-clearing process, FRB has proposed to allow a paying bank to require checks presented for same-day settlement to be presented electronically as "electronic collection items." FRB has suggested that many paying banks that receive check presentments electronically have indicated a preference to receive all interbank check presentments electronically to streamline operations and eliminate costs associated with paper-check presentment.

While WBA supports efforts which would result in greater operational efficiencies and cost effectiveness, FRB's proposal is too vague. Furthermore, imposing such a requirement on banks at this time is too harsh, and we fear it will actually result in greater operational burdens and costs than the gain in efficiencies and cost effectiveness the proposal suggests.

In addition to the costs incurred to implement some of FRB's electronic processing requirements (additional staff and new technology), financial institutions would also be required to: create disclosures with new formatting and content; develop new programming to collect, disclose and deliver the new content (e.g. deposit amount and electronic delivery of hold notices); test core systems; and train staff. Financial institutions will incur *significant* costs to implement these requirements.

Again, FRB's proposal comes at a time when financial institutions' personnel and financial resources are already *extremely* burdened with implementation of numerous other regulatory revisions and new requirements. And, while WBA supports the EFA Act's general purpose to provide depositors of checks with prompt funds availability and to foster improvements in the check collection and return processes, the Act's general purpose must be balanced against the need for financial institutions to protect against *significant* losses suffered from fraudulent check negotiations and the *substantial* costs associated to implement FRB's proposal—most significantly for Wisconsin community banks.

For these reasons WBA respectfully requests FRB and the Consumer Financial Protection Bureau postpone this rulemaking (except to the extent of implementing DFA-mandated changes and eliminating obsolete terms and provisions) until after the impact of these proposed sweeping changes is more fully studied.

Once again, WBA appreciates the opportunity to comment on the proposal.

Sincerely,



Rose M. Oswald Poels  
President/CEO