

June 3, 2011

Jennifer J. Johnson
Secretary, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Subject: Northwest Credit Union Association Comments Regarding Proposed Rule,
Regulation CC - Availability of Funds and Collection of Checks, Docket No. R-1409;
RIN No. 7100-AD68

Ms. Johnson:

Thank you for the opportunity to comment on proposed changes to Regulation CC regarding the availability of funds and collection of checks. The Northwest Credit Union Association represents 4.2 million credit union members across Oregon and Washington; this includes 193 credit unions with over \$46 billion in collective assets.

General Comments

The Association appreciates the task the Federal Reserve Board (Board) is taking on in updating and modernizing Regulation CC as well as complying with Dodd-Frank. We support many of the changes, however, we believe that more study and implementation time are needed for many of these provisions in order to adequately ensure institutions are not unnecessarily exposed to increased fraud.

Additionally, we must again object to the ever-increasing compliance burden brought on by what seem to be continuous changes to regulations. Included in this proposal are new requirements including new forms, disclosures, and processes which will take time and resources to implement. The Association cannot support this continuous barrage of new requirements and asks the Board to consider proposing and implementing regulations that are necessary and to take care in creating implementation dates so that changes can be processed periodically—in conjunction with other requirements and agencies—rather than sporadically, without thought or consideration for the overall burden of financial institutions, especially smaller credit unions.

Right to expeditious return

The Board has proposed that only institutions utilizing an electronic returns process would be entitled to an expeditious check return. While we understand the idyllic notion of a “fully-electronic check-return system” it is not a reality that all institutions can implement. This proposal puts small institutions at a particular disadvantage because such a system requires expertise and technology that many smaller institutions do not have and cannot afford.

Because the volume of checks at many institutions is low, there has not been a demonstrated need to employ the technology.

Taking away a financial institution's right to an expeditious return—knowing when a payment is or is not good in a timely manner—opens them up to more fraud and associated expense, moving them even further from being able to maintain an electronic clearing system.

We urge the Board not to remove any institution's right to an expeditious return.

Notice of nonpayment requirement

The Board proposes to eliminate the current requirement that a paying bank refusing to pay a check in excess of \$2,500 must provide notice of nonpayment to the depository bank by 4 p.m. on the second business day following its receipt of the check. We disagree with this proposal and ask that it not be implemented.

Not only does this proposal, once again, add to the liability of those institutions that cannot implement an electronic return process (likely smaller institutions), but even those currently using the electronic return process may receive notice more quickly via a notice of nonpayment than the electronic return. While moving to an all-electronic system is a laudable goal, eliminating notices would do a disservice to financial institutions. Because this proposal potentially reduces other hold times, there will be even more opportunity for fraud, of which an educated perpetrator can easily take advantage.

This required notice helps to reduce fraud and allows institutions to make better decisions about when to release funds.

We strongly oppose the elimination of notices of nonpayment.

Reference to "local" and "nonlocal" checks

Because of the consolidation of the check-clearing system there is now only one location at which checks clear. Eliminating multiple "check-processing regions" removes the need for the terms associated with, and delineations between, "local" and "nonlocal" checks. We agree with this update in terms and believe it simplifies language within the regulation.

Increase in next-day availability

The Dodd-Frank Act amends the EFA Act requiring institutions to change next-day availability of funds from \$100 to \$200. While we understand the Board is simply implementing this requirement as intended by Congress, we also recognize that this will increase the liability and fraud exposure of financial institutions. Institutions will be liable for that additional \$100, and in cases such as empty deposit envelopes, insufficient funds, or fake checks; this is an unwanted increase in risk.

Additionally, this requirement takes effect July 21, 2011, with depository institutions responsible for updating disclosures and issuing change-in-terms notices by August 21, 2011. Again, this is another incremental change in disclosures and forms requiring significant expense.

Although this is required by Congress, we ask that consideration be given to similar requirements so that required changes could be aggregated and implemented together rather than bit-by-bit.

Reduced hold time for nonproprietary ATMs

We do not support the proposed reduction in hold times for deposits made at nonproprietary ATMs. We believe the increased exposure for fraud is too great. Even changes in technology cannot alleviate the additional potential for fraud this would create. This change would disproportionately impact credit unions over banks. Shared branching is a service in which many credit unions participate, allowing members to use designated kiosks as if they were their own bank—many in convenient non-banking locations such as 7-11. Reducing the total hold time of deposits makes such services more risky and could reduce participation in this and similar programs—a unique service provided by credit unions that many members utilize.

The Association contests the reduction in hold times for deposits made at nonproprietary ATMs.

Overall reduced hold periods

Throughout the proposed rule are changes which would reduce funds availability hold times and opportunities for reasonable holds. We do not support these reductions and believe that before such changes are made additional research should be done. Further, these reductions put smaller institutions in significant jeopardy for additional fraud and increased liability as they are likely to be late adopters of technology and need more time to process payments.

Credit unions and other financial institutions have seen marked increases, not decreases, in fraud. Our members find that forms of payment once held out as low-risk, such as cashier's checks, are now some of the most unreliable forms of payment. Reducing protections is counterintuitive. We propose that reductions in hold times only be implemented after there has been additional study of fraud and fraud-protection measures that would apply equally to all institutions.

Costs and time requirements

The Board estimates that it will take 80 hours to update compliance requirements with a cost of \$5,000 for a small depository to transition to electronic processing. The Association finds this significantly underestimates the actual costs that would be incurred. In addition to technology costs would be costs to update model forms and disclosures as well as processing updates. Further, staff training and changes to processes would require additional time and resources.

Not included in this \$5,000 estimate are the inevitable losses smaller institutions (and other institution unable to immediately begin electronic processing) would be forced to accept due to increased fraud brought on by the decreased hold times and reductions in safeguards currently in place.

Implementation dates

The proposed implementation dates for the various sections of this proposal are particularly onerous. Instead of 30 days (for subparts A and B), 6 months (for subparts C and D), and 12 months (for subparts B and model forms in Appendix C), we would propose 90 days for subparts A and B and 12 months for the remaining sections.

Conclusion

The Association appreciates the opportunity to comment on this proposal. Overall we find that while the modernization of terms and language is appropriate, the push by the Board to implement a fully electronic check-return infrastructure is not best advocated through changes to Regulation CC. Further, these changes disproportionately impact smaller institutions, removing established fraud protections and setting them as outliers—perpetuating their inability to adopt the latest technology and resources needed to become a part of the electronic return infrastructure.

Respectfully yours,

Jaycee Winn
Director of Regulatory Advocacy
Northwest Credit Union Association