



Helping Credit Unions Serve Their Members

June 3, 2011

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

Re: Docket No. 1409 and RIN No. 7100-AD68

VIA ELECTRONIC MAIL: regs.comments@federalreserve.gov

Dear Ms. Johnson,

The Michigan Credit Union League (MCUL) appreciates the opportunity to comment on the Federal Reserve Board's (the Board) proposal to amend Regulation CC. MCUL is a statewide trade association representing 95% of the credit unions located in Michigan. MCUL respectfully requests that the Federal Reserve Board takes the following letter into serious consideration when deliberating the passage of a final rule.

MCUL understands that the Dodd-Frank Act amended the Expedited Funds Availability Act (EFA Act) to increase from \$100 to \$200 the minimum amount of funds deposited by check or checks on a given business day that a bank must make available by opening of business on the next business day, so there is little opportunity for change regarding this issue. MCUL also supports the removal of the term "non-local check" from the regulation, as there is currently only one check processing center.

MCUL is very concerned that the Board will view the fact that it has not received an overwhelming number of comments to mean that the proposed provisions are supported. On the contrary, the reason why many have not bothered to provide comment is due to the extraordinary length of this proposed rule. MCUL has received comments from its member credit unions that the Board's proposed rules are too lengthy and fail to spell out provisions in plain English. Rather than spend the time necessary to wade through the voluminous specifics, credit unions have chosen to expend their efforts serving their members. MCUL strongly urges the Board to keep this fact in mind when deliberating the passage of a final rule.

Deposits from Nonproprietary ATMs

The proposed rule would reduce the hold period for nonproprietary ATM deposits from 5 business days to 4 business days, resulting in a hold time maximum of 6 business days.

The proposed rule states that "Congress adopted the five-day maximum hold on nonproprietary ATM deposits to match the five-day maximum hold on a nonlocal check deposit, because the depository bank did not know the composition of a nonproprietary ATM deposit (that is, whether the deposit consisted of cash, local checks, nonlocal checks, etc.)." The footnote to this statement provided that "the EFA Act conference report states that "nonproprietary ATMs today

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do not distinguish among check deposits or between check and cash deposits” (emphasis added).

As evidenced by these statements, MCUL believes the fact that there are no longer any “nonlocal” check deposits does not change the fact that nonproprietary ATM deposits require additional time in order to be verified. Such deposits at remote locations expose credit unions to a high risk of fraud, and a reduction in the hold period would only serve to invite additional fraud losses to occur. MCUL urges the Board to afford financial institutions the additional time currently provided to verify nonproprietary ATM deposits.

Reasonable Cause to Doubt Collectibility Exception

Credit union employees are trained to detect check fraud based on certain “markers,” or red flags that a given check may be a counterfeit. Such red flags would raise a reasonable cause to doubt collectibility of a check. MCUL urges the Board to include issues regarding the appearance of a check as an example based on confidential information that is provided in the Commentary to the regulation.

Availability of Deposits Subject to Exceptions

The proposed rule would reduce the reasonable hold extension safe harbor from 5 to 2 business days. MCUL strongly opposes this proposed decrease.

MCUL believes the reduced total exception hold period will expose financial institutions to increased check fraud risk and loss. While the Background to the proposed rule highlighted the statistical increase in the use of electronic transmission, no such study was done regarding the increase in check fraud. MCUL believes that such fraud, due to the improvements in counterfeit technology, will flourish as a result of hold period decreases. MCUL strongly urges the Board to delay passage of any hold period decreases until the check fraud issue can be researched and discussed further.

Additionally, before reducing hold periods, MCUL urges the Board to obtain information from financial institutions regarding whether checks are returned within the required existing timeframes. Many credit unions, even those that accept returned checks electronically, often do not receive returned checks until the fourth business day or after. If the system is not currently working, it certainly will not improve if the hold times are decreased.

Case-by-Case Holds

The proposed rule requested comment on whether the case-by-case hold should be deleted, as it may not be useful. MCUL urges the Board to retain the availability of the case-by-case hold because the credit unions that do not hold deposited checks up to the statutory hold limits sometimes take advantage of the case-by-case hold option to research the validity of checks.

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Format Funds Availability Disclosures and Notices

The proposed rule would require funds availability disclosures to be generally designed to be printed on an 8 ½ x 11 inch sheet of paper with black text on a white background, so as to increase their readability for consumers.

MCUL strongly opposes this provision as a requirement. Many financial institutions consolidate their account disclosures for cost and efficiency purposes, such as through the use of an account disclosure booklet. These booklets are no less readable than a stack of individual 8 ½ x 11 pieces of paper.

MCUL believes the readability issue is a product of the fact that the regulatory disclosure requirement has become overwhelming for the industry, as well as for consumers. When merely 20 individuals are presented with individual disclosures, it is almost certain that they will view each disclosure more favorably when they are presented to them on an individual basis. However, MCUL strongly believes that when consumers are provided with the required account disclosures (e.g., the terms and conditions of their accounts, Truth in Savings, Electronic Fund Transfers and Privacy), consumers would prefer the convenience of a consolidated format.

MCUL strongly urges the Board to withdraw this provision from the final rule.

“Refer to Maker” Reason for Return

The proposed rule would eliminate the use of this term, as it is an instruction to the recipient of the returned check and not a reason for return.

MCUL does not support the removal of the ability to use this term. This term is used to describe issues that another return reason code does not adequately address. The proposed rule provides that the current Commentary does not elaborate as to which cases the use of this term may be appropriate. MCUL urges the Board to elaborate, rather than eliminate.

Notice in Lieu of Return

MCUL supports retaining the notice in lieu of return. However, when a check is lost or destroyed, the required information may not be available or legible. MCUL believes that this notice should require all available information regarding the check in order to provide sufficient identifying information.

Electronic Returns and Collection Items

The proposed rule would delete the requirement that a paying bank provide notice of nonpayment of a check in the amount of \$2,500 or more.

MCUL does not support the elimination of this notice, as it is an important tool to mitigate fraud loss. For institutions that receive electronic returns, this notice may actually be received earlier than the return.

MCUL urges the Board to retain this notice provision in the final rule.

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Warranty of Notice of Nonpayment

As MCUL does not support removing the notice of nonpayment provision (above), MCUL urges the Board to retain warranty of nonpayment notice provisions in the regulation.

Same-Day Settlement

The proposed rule requested comment on whether items presented for same-day settlement should be separated from other checks. MCUL supports this separation, as it would improve the processing and identification of same-day settlement items.

Effective Date

The proposed rule would provide 30 days for revisions to subparts A and B (definitions and availability of funds), 6 months for proposed amendments to subparts C and D (collection of checks and substitute checks, including the expeditious return changes), and 12 months for proposed amendments to subpart B (availability of funds) following the publication of the final rule.

To minimize the compliance costs, MCUL urges the Board to provide a compliance effective date that is 90 days following publication of the final rule for the proposed revisions to subpart A and B and at least 12 months for other changes.

Financial institutions have been overwhelmed by regulatory mandates and amendments over the course of the past year: the myriad of changes to credit card programs as a result of the Credit Card Act; the various changes made to the way closed-end and open-end loan programs are disclosed under Regulation Z; and the multitude of regulatory changes as a result of the Dodd-Frank Wall Street Reform Act of 2010 (Dodd-Frank Act), many of which have yet to be introduced. This impact has been felt more strongly on smaller institutions, which make up the majority of credit unions in this country.

MCUL believes a delayed compliance effective date for this rule would lessen the impact of the deluge of regulatory changes.

Potential Future Changes to the Regulations

MCUL does not believe the Board should consider future changes in order to “improve the check collection system, such as decreasing the time afforded to a paying bank to decide whether to pay a check.” MCUL is concerned that this proposal, as well as any other effort to decrease the time afforded to pay a check, would significantly increase fraud, as well as the costs to combat it, especially for smaller institutions.

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MCUL appreciates the opportunity to comment on this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. DeFors", is centered on a light gray rectangular background.

Michael J. DeFors
VP Regulatory Affairs