May 1, 2014

Robert deV. Frierson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Via Agency Web site: http://www.federalreserve.gov

RE: Comments Regarding Proposed Rule 12 CFR 229
Regulation CC, Docket No. R-1409, RIN 7100-AD68

Dear Sir:

SECU is a not-for-profit, member-owned cooperative managing over $2.7 billion in assets. SECU provides a broad line of financial products and services to over 225,000 members.

We appreciate the opportunity to submit the following comments on the Board's proposed rule for Regulation CC, Availability of Funds and Collection of Checks.

INDEMNITY RELATED TO REMOTE DEPOSIT CAPTURE - §229.34(g)

The Board proposes to add a new indemnity in §229.34(g) related to remote deposit capture that would indemnify a depositary bank for its losses in connection with accepting an original check that was previously deposited remotely and has already been paid. This proposed indemnity would allow a depositary bank that accepts deposit of an original check to recover directly from a bank that permitted its customer to deposit the check through remote deposit capture.

This proposal is based on the Board's belief that the depositary bank that introduces the risk of multiple deposits of the same check by offering a remote deposit capture service should bear the losses associated with multiple deposits of a check.

The Board requested comments on all aspects of this proposed indemnity, including any unintended consequences that might result. The Board also requested comments on whether there are more efficient or practical remedies to address the underlying problem.

SECU does not support this proposed new indemnity. In the technological age in which we operate today, there has been a significant shift on a global scale to move towards electronic transactions. This shift towards adoption of electronic transactions has been supported by the government and regulatory agencies. For example, the Electronic Signatures in Global and National Commerce Act (ESIGN) was enacted in 2000 to ensure electronic signatures,

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contracts and other records relating to an electronic transaction are legally enforceable. In addition, the Check Clearing for the 21st Century Act (Check 21), implemented by the Federal Reserve Board in 2004, was designed to enable banks to handle more checks electronically to make check processing faster and more efficient. In fact, the Federal Reserve Board itself acknowledges the importance of efficiencies from electronic check collection and return in the proposed rule that we are commenting on today.

The proposed indemnity related to remote deposit capture could have the unintended consequence of discouraging financial institutions from offering remote deposit capture services to its customers, despite increasing consumer preferences for remote and mobile services. It could also result in financial institutions charging consumers for their use of remote deposit capture services. Both of these potential outcomes would be harmful to consumers and would be contrary to the global initiative towards adoption of electronic transactions.

We believe the proposed rule should be amended as shown below to encourage financial institutions who offer remote deposit capture services to require a remote deposit restrictive endorsement on the back of the check such as "for remote deposit at XXX Credit Union/Bank only". We believe any depositary bank who accepts a paper check that includes a remote deposit restrictive endorsement should bear the loss associated with multiple deposits of a check. This change should help to remedy the underlying problem since depositary banks offering the remote deposit capture service would be accountable for requiring a remote deposit restrictive endorsement on checks deposited remotely and the depositary bank accepting a check deposit would be accountable for reviewing the check for a remote deposit restrictive endorsement prior to accepting the check for deposit; similar to how they are accountable for reviewing checks for other types of restrictive endorsements today.

Recommended Change to §229.34(g):

(g) *Truncating bank indemnity.* (1) The indemnity described in paragraph (g)(2) of this section is provided by a depositary bank that—
(i) Is a truncating bank under § 229.2(eee)(2) because it accepts deposit of an electronic check related to an original check **which does not have a mobile deposit restrictive endorsement;**
(ii) Does not receive the original check;
(iii) Receives settlement or other consideration for an electronic check or substitute check related to the original check; and
(iv) Does not receive a return of the check unpaid.
(2) A bank described in paragraph (g)(1) of this section shall indemnify a depositary bank that accepts the original check for deposit **which does not have a mobile deposit restrictive endorsement** for losses incurred by that depositary bank if the loss is due to the check having already been paid.

NOTICE OF NONPAYMENT WARRANTIES – §229.34(f)

The Board proposed two alternatives for §229.34 paragraph (f) "Notice of nonpayment warranties". In Alternative 1 for Paragraph (f), the rule would retain warranties related to notices of nonpayment. Whereas in the original 2011 proposal would have eliminated the notice of nonpayment requirement and related warranties. Under Alternative 2, proposed §229.34(f) would be reserved, because Alternative 2 does not include provisions relating to notice of nonpayment.

Because we typically receive returns electronically, we usually receive the return before we receive the notice of nonpayment which essentially renders the notice of nonpayment useless and creates unnecessary work. As such, we recommend Alternative 2.

Recommendation for §229.34(f):

Alternative 2: "Reserved".

APPENDIX E TO PART 229 – COMMENTARY
229.31(e) IDENTIFICATION OF RETURNED CHECK

In the original 2011 proposal, the Board proposed to amend the commentary to current §229.30(d) to state that "refer to maker" is insufficient by itself as a reason for return, because "refer to maker" is an instruction to the recipient of the returned check and not a reason for return (e.g., insufficient funds).

Some commenters to the 2011 proposed rule noted that industry standards do not currently permit using a second reason for return in addition to "refer to maker" and modifications to processes and systems to accommodate multiple return reasons would be costly and time consuming (with estimates of approximately two years to complete).

Other commenters stated that the Board did not sufficiently explain any changes in circumstances that would warrant no longer permitting "refer to maker" to be used as a reason for return.

In the current proposed rule the Board states after consideration of the comments received in response to the 2011 proposal, the Board continues to believe that "refer to maker" is an instruction to the recipient of the returned check (rather than a reason for return), but recognizes that there may be circumstances in which it may be necessary for "refer to maker" to be used as a reason for return. Subsequently, the Board proposes to provide greater clarity on the circumstances in which "refer to maker" by itself may be used as a reason for return, such as when a drawer with a positive pay arrangement instructs the bank to return the check.

We believe that the proposed commentary to new §229.31(e) should include even greater clarity. Rather than simply include one example of a circumstance in which "refer to maker" by itself would not be permissible as a reason for return (such as when a check is being returned due to the paying bank having already paid the item), we believe the Board should specifically state additional return reasons where it is impermissible to use a reason for return of "refer to maker" by itself. For example if it is impermissible to use a return reason of "refer to maker" for stop payments, the commentary should explicitly include this example to ensure understanding of, and compliance with, the rule.

In addition, rather than adding another reason code in addition to "refer to maker" (using two codes which systems do not currently accommodate), we believe financial institutions should simply use a more specific reason code such as "insufficient funds", "stop payment", etc. in order to avoid costly and time consuming updates to systems and processes.

Recommendation Changes to Appendix E - Commentary to 229.31(e):

- **Amend the commentary to provide greater clarification, such as providing additional examples of return reasons which should not use "refer to maker" (such as insufficient funds, stop payment, etc...)**
- **Clarify in the Section by Section Analysis of this item in the final rule that financial institutions are not expected to use multiple return reasons such as "refer to maker" plus a more specific return reason.**

EFFECTIVE DATE

The Board proposes that the proposed amendments would become effective six months following publication of a file rule.

Should we be required to use multiple return reason codes such as "refer to maker" plus a more specific return reason, as discussed above (which we do not support), we request an effective date of eighteen months following publication of the final rule to provide us with enough time to modify systems and processes.

Recommendation for Effective Date:

Eighteen months if we are required to use an additional return reason code along with "refer to maker". Otherwise, we support a six month implementation period.

Rod Staatz
President/CEO