The Wisconsin Credit Union League
One League, One Focus - Your Success!

Submitted via email: regs.comments@federalreserve.gov

May 1, 2014

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Proposed Rule: Availability of Funds & Collection of Checks
[Regulation CC; Docket No. R-1409; RIN No. 7100-AD68]

Dear Mr. deV. Frierson:

On behalf of Wisconsin's credit unions and their 2.4 million members, the Wisconsin Credit Union League welcomes the opportunity to comment on the Federal Reserve System's proposed amendments to Regulation CC, governing the availability of funds and collection of checks.

Indemnity related to Remote Deposit Capture (RDC)

We generally applaud efforts to modernize federal regulations, like Regulation CC, in light of evolving electronic banking technologies; however, we oppose the proposed addition of special indemnity rules to §229.34(g).

The proposal addresses just one dual presentment scenario– when a check is deposited by RDC and in original paper form at different institutions. The proposed amendment fails to address indemnity – and it does nothing to clarify liability – when a check is deposited by RDC at more than one institution. Nor does the proposal consider that high-quality photocopies and computer generated checks can also be presented in paper form at more than one institution. As such, the proposed indemnity provision is incomplete, and it unfairly penalizes depository institutions only in one particular dual presentment scenario.

In addition, the indemnification provision could have the unintended consequence of stifling the growth of RDC, a technology that is gaining in popularity among consumers and financial institutions alike. Smaller institutions, in particular, are likely not to implement RDC (or to discontinue existing RDC programs) rather than bear the increased costs of indemnifying other institutions that accept paper originals. Thus, the proposal would have the perverse effect of discouraging efficient electronic banking technologies like RDC by penalizing the institutions that adopt them.

Instead, the Federal Reserve might consider amending its Commentary to Regulation CC, to clarify that dual presentment liability is the same for RDC deposits as for any other deposits: The paying bank is responsible for denying and timely returning a check that has been presented more than once. A depository bank receiving such a check return is then left to recover from the wrongdoer – its depositor who caused the loss – regardless how that person presented the check to that institution. The depository institution's position is just the same as it would be if the consumer had deposited a check drawn on insufficient funds or on a closed account. This approach is preferable to forcing the institution that accepted the check via RDC to be liable for the actions of its dishonest or negligent depositor.

N25 W23131 Paul Road Pewaukee, Wisconsin 53072-5779
Phone: (262) 549-0200 or (800) 242-0833 Fax: (262) 549-7722 Web: www.theleague.coop
Member Credit Union National Association

Also, many credit unions have agreements in place with members who use RDC, requiring them to add restrictive endorsements to original paper checks before depositing them by RDC. For example, a credit union may require members to endorse checks "For Remote Deposit Only." Some also require the endorsement to include credit union's name and the member's account number. Any new indemnification rule should apply only to paper checks that have not been restrictively endorsed in this way. In this way, an institution accepting a paper original would be responsible for verifying that it contains no restrictive endorsement related to RDC.

Return requirements

We support proposed alternative #2 on check return requirements: Retaining the current expeditious-return requirement (with the existing two-day test) only for checks returned to a depositary financial institution electronically via another financial institution, and eliminating the notice-of-nonpayment requirement for all types of checks. Eliminating the notice-of-nonpayment requirement would encourage depository banks to receive check returns electronically. A separate notice of nonpayment is unnecessary for institutions that accept returns electronically, since returned items are typically received within the timeframe allowed for the notice.

Other proposals

We support the remaining proposals:

- The current same-day settlement rule should remain unchanged and should not be extended to electronic checks. Financial institutions that use electronic check presentment may determine the terms of presentment by agreement.

- Electronic images and electronic information should be treated as "checks" under Regulation CC (unless otherwise agreed by the sending and receiving parties), to eliminate confusion and inconsistent standards on the collection and return of checks.

- Financial institutions sending electronically-created items or electronic payment orders should indemnify subsequent transferees for losses caused by the fact the item was not derived from a paper check. Expanding existing Regulation CC check presentment warranties to these items would be unwieldy. The new indemnity provisions would protect credit unions that receive an electronically created item and mistakenly create a substitute check from it, unaware that the item was not derived from a paper check. As the proposal points out, a credit union may not be able to distinguish electronically-created items from other check images that it receives electronically.

Effective date

We ask that the Federal Reserve allow 12 months (or more) before compliance with these regulatory changes is required. Credit unions will need time to coordinate with their check processing vendors to implement the changes. They will also need to update training programs, check processing procedures, disclosures and agreements internally. Six months is not enough time to address all of these issues, especially for smaller institutions that rely on paper returns; they will be burdened disproportionately. Also, all financial institutions offering RDC will need time to make risk management and other changes to comply with the proposed RDC revisions.

In addition, all financial institutions are struggling with substantial compliance burdens, including numerous significant changes to Consumer Financial Protection Bureau's rules. They are also assessing potential changes from the Federal

Reserve's proposed Payment System Risk Policy and Regulation J changes from November 2013, which would expedite the posting of certain checks and automated clearing house transactions.

In closing, we appreciate the Federal Reserve System's efforts to modernize Regulation CC, but we are wary that the proposed indemnity rule would discourage institutions, especially small credit unions, from pursing RDC technologies. It cannot be the regulators' intention to discourage electronic banking systems that benefit the financial services industry and consumers.

Thank you.

Sincerely,

Paul Guttormsson
Legal Counsel
The Wisconsin Credit Union League