OHIO CREDIT
UNION LEAGUE

Submitted via email: regs.comments@federalreserve.gov

May 2, 2014

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

Re: Availability of Funds and Collection of Checks
[Regulation CC; Docket No. R–1409, RIN 7100–AD68]

Dear Mr. deV. Frierson,

The Ohio Credit Union League (OCUL) appreciates the opportunity to comment on the Federal Reserve Board's (FRB) Proposed Regulation on Availability of Funds and Collection of Checks (Regulation CC).

OCUL is the trade association for credit unions in Ohio and advocates on behalf of Ohio's 339 federal- and state-chartered credit unions, serving 2.7 million members. The comments reflected in this letter represent the recommendations and suggestions that OCUL believes would be in the best interest of Ohio credit unions.

OCUL generally supports efforts to improve the check clearing process and to account for the shift towards fully electronic checks, but we have concerns with the effect of these changes on small financial institutions that do not currently use electronic check clearing processes. In addition, the proposed changes relating to remote deposit capture (RDC) raise some concerns. Further, there should be a delayed effective date of at least one year to provide adequate time for credit unions and others to implement any changes.

Electronic Returns

The proposed rule provides two alternative approaches to encourage all financial institutions to use electronic returns. Under Alternative 1, the expeditious-return requirement currently imposed on paying and returning financial institutions for returned checks would be eliminated. Also, there would be a notice-of-nonpayment requirement only for paying institutions that send a paper return. Under Alternative 2, the current expeditious-return requirement - using the current two-day test - would be retained only for a depositary institution that has agreed to accept returned checks electronically, but the notice-of-nonpayment requirement would be eliminated for all types of checks. Currently, a paying institution that determines not to pay a check must return the check in an expeditious manner, under the "two-day test" or "forward-collection test."

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The vast majority of check returns (as much as 99%) are electronic, however, a significant number of smaller financial institutions, including many credit unions, still rely on paper returns. Although there are many benefits to using the electronic return process, these smaller institutions may not have the resources to quickly convert from paper returns. Any changes to the current system that favor electronic returns over paper returns would disadvantage these smaller institutions. Therefore, OCUL cautions FRB to be mindful of the impact this proposed change might have on these smaller participants in the check collection system, and to limit changes to Regulation CC that would maintain an expedited check-return process.

Remote Deposit Capture

Under the proposal, a financial institution that accepts an original paper check would not bear the loss if that check has been deposited multiple times through remote deposit capture (RDC). Because duplicate presentment is a problem that must be addressed in order to provide certainty to RDC, the proposed rule would allow a depositary financial institution that accepts the original paper check to recover directly from the financial institution that permitted the check to be deposited through RDC when there has been duplicate presentment. A new indemnity relating to RDC is added to cover institutions that receive the deposit of an original paper check returned unpaid because it was previously deposited (and paid) using RDC.

While regulation in this area is welcome, OCUL is concerned that any proposal take into account the current practices used to mitigate risk in RDC that are being used by financial institutions today. Many financial institutions offering RDC have policies and procedures in place to reduce the risk of duplicate presentments and the likelihood that other institutions will deposit the paper check again after they have honored it. As an example, financial institutions often require members or customers to restrictively endorse the original paper checks before accepting the RDC (e.g., marking the check with the words, "For deposit only / account number / financial institution name / signature"). In light of that, FRB should consider whether the proposed indemnity could be applied only to paper checks that have not been restrictively endorsed.

OCUL also cautions that the proposal might lead to a reduction in the availability of RDC because of increased risk and liability to financial institutions offering the service. FRB should fully assess and minimize such unintended consequences.

Delayed Effective Date

As discussed previously, smaller financial institutions frequently lack resources to change practices quickly. The proposed changes favoring electronic returns would have a significant impact on these smaller institutions and their ability to serve their members (or customers.) Financial institutions currently offering RDC, or contemplating offering those services, will need time to incorporate the proposed changes into existing risk management practices around those services. We are therefore requesting a delayed effective date of at least one year from the issuance of a final rule to provide adequate time for credit unions and others to implement any Regulation CC changes. In general,

financial institutions will need time to make training, processing, disclosure/agreement updates, and other necessary changes, both internally and with payment processors.

In addition, all financial institutions are currently facing significant compliance burdens, including implementing the Consumer Financial Protection Bureau's (CFPB's) rules and assessing potential impacts from the FRB's Payment System Risk Policy and Regulation J changes proposed last November, which propose expedited posting of certain checks and automated clearing house (ACH) transactions.

Conclusion

OCUL urges FRB to re-examine its proposed alternatives making changes to the check return regulations, being mindful of the impact to smaller financial institutions still using paper return systems. Such smaller institutions should not be unnecessarily disadvantaged by changes to the check collection process.

Additionally, OCUL urges FRB to take into account current risk mitigation practices used by financial institutions for RDC, and modify its proposed regulations to extend a warranty to checks captured through RDC that carry a restrictive endorsement.

Finally, OCUL requests an extended implementation period for the proposed rule to allow credit unions and other financial institutions sufficient time to modify current practices and policies, including sufficient time to make modifications to agreements with third party payment processors.

The Ohio Credit Union League appreciates the opportunity to provide comments on the FRB's proposed rules an Availability of Funds and Collection of Checks, and is available to provide additional comments or information on this proposal if so requested. If you have any questions, please do not hesitate to contact me at (800) 486-2917 or jkozlowski@ohiocul.org.

Sincerely,

John F. Kozlowski
General Counsel

Carole McCallister
Manager, Regulation & Information

cc: Barry Shaner, OCUL Chair
OCUL Board of Directors
OCUL Government Affairs Committee
Paul Mercer, OCUL President