NAVY FEDERAL Credit Union

Office of the President

May 1, 2014

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

Re: Regulation CC, Availability of Funds;
Document No. R-1409

Dear Mr. Frierson:

Navy Federal Credit Union ("Navy Federal") appreciates the opportunity to provide our comments regarding the Board of Governors of the Federal Reserve System (Board) rulemaking on changes to Regulation CC, Availability of Funds and Collection of Checks. Navy Federal is the nation's largest natural person credit union with $58 billion in assets and over 4.7 million members.

It is Navy Federal's policy to make funds available to our members as soon as practicable. In many cases, this commitment to our members means that funds are available sooner than otherwise required by applicable regulations. Consistent with our policy, we support the Board's efforts to update and modernize Regulation CC to better reflect the manner in which funds are made available. Nonetheless, we have identified several points of concern which we ask the Board to address.

Changes to the Expeditious Return Rule – Two Alternatives

The first component of the proposal contemplates two alternatives for changes to the expeditious return rule. The purpose of the changes is to create incentives to clear and return checks electronically. Alternative 1 eliminates the current expeditious return requirement; however, paying banks remain subject to the Uniform Commercial Code midnight deadline and returning banks must use ordinary care when returning an item. Alternative 1 also proposes to limit the current notice of nonpayment requirement only to situations when the paying bank sends the return check in paper form. In addition, the Board is seeking comments on whether to

increase the current threshold that triggers the notice of non-payment requirement from $2,500. Alternative 2 would retain the expeditious return requirement (but only use the two-day test), while also eliminating the notice of non-payment requirement entirely.

Navy Federal supports the goal of creating incentives for financial institutions to clear and return checks electronically and generally supports the proposed elimination of the expeditious return requirement. However, this support is tempered by our goal to minimize losses to our membership and to take reasonable precautions to prevent fraud. For these reasons, we do not support the retention of the notice requirement limited to paper checks returned in an amount greater than $2,500 under Alternative 1, nor do we support the elimination of the notice of nonpayment requirement under Alternative 2.

In our view, increasing the trigger threshold for the notice requirement to $5,000 would increase Navy Federal's risk for fraud and losses. Approximately half of all of Navy Federal's nonpayment notifications are currently for returns on checks that are less than $5,000. Thus, if the Board increases the trigger threshold to $5,000, a significant number of these notifications would not be sent (or received) and the risk of fraud and loss would greatly increase. Also, we are not convinced that requiring notification for all paper returns is the proper approach to encourage institutions to clear or return checks electronically.

For similar reasons, Navy Federal does not support the elimination of the notice of nonpayment requirement under Alternative 2. In many cases, we rely on the notice of nonpayment to act expeditiously to prevent loss and fraud against our credit union and our members. Currently, we receive a notice approximately 98 percent of the time before a return is received, allowing us an opportunity to take action to prevent losses and fraud. Eliminating the notice requirement would almost certainly make loss and fraud prevention more difficult and costly.

Funds Availability—Reduction in Hold Times

Previously, the Board proposed to reduce the current exception hold times from five business days to two business days. Exception holds are generally used in limited circumstances, such as with new accounts, large items, and reason to doubt collectability. Navy Federal is concerned that reducing the exception hold time so significantly would substantially increase the risk of fraud-related loss. Two business days simply does not provide sufficient time to determine whether these types of transactions are genuine. Consequently, losses will almost certainly increase as will the resulting costs of doing business (which, ultimately can only be

passed on to our membership). We strongly encourage the Board to retain the current extension period of five business days for these exceptions.

The Board also previously proposed to reduce the maximum hold time for deposits made at nonproprietary ATMs from five to four business days. In many cases, four business days may not provide financial institutions with sufficient time to learn about nonpayment of a check before the funds must be made available for withdrawal. When these checks are returned to us by the Federal Reserve, it is often not within the five day period. Therefore, by reducing this hold to four business days, Navy Federal will be unreasonably subject to a greater risk for losses. Absent significant improvements in the Federal Reserve's check return practices, we urge the Board to retain the current hold period of five business days for deposits in nonproprietary ATMs.

Remote Deposit Capture (RDC) Indemnity

The Board identifies multiple presentments as one of the added risks of Remote Deposit Capture. In the proposed rule, it seeks to address this risk by establishing a truncating bank indemnity. Multiple presentment occurs when a member electronically deposits an image of a check via mobile phone or scanner with one financial institution (truncating bank), then deposits the original paper check with another financial institution. Most often, the paper check is returned to the second financial institution as already having been paid. The Board proposes to require the truncating bank to indemnify the financial institution that accepts the original check for deposit for losses incurred by that financial institution due to the check having already been paid.

Navy Federal strongly supports agency efforts to address multiple presentments; however, we ask the Board to consider altering the terms of the indemnity to include additional provisions. Federal Financial Institutions Examination Council guidance suggests that in order to reduce the risks associated with offering RDC, financial institutions should require the consumer to use a restrictive endorsement in order to accept the item. As such, many financial institutions require depositors to write a restrictive endorsement on the back of the check prior to taking a picture of the check and depositing the check via RDC. The decision on whether to accept the check for deposit hinges, in part, on this restrictive endorsement being on the check in the image received by the financial institution. If the restrictive endorsement is not present in the image, the check will not be accepted for deposit. Therefore, if there is a restrictive endorsement on the check (for example, something similar to "*For electronic deposit only at --- financial institution*"), the paper check should not be accepted for deposit at another financial institution.

We encourage the Board to add a provision to the proposed indemnity which provides an exception in the case where the truncating bank requires a restrictive endorsement on a check that is used in RDC. Therefore, if a holder of a check seeks to deposit that check at another financial institution, the financial institution would be required to check for a restrictive endorsement and not accept the check for deposit if one exists. If the financial institution chooses to deposit the check with the restrictive endorsement despite the restriction, and the check is returned as already having been paid, the indemnity should not apply.

Check Warranty Indemnifications

Finally, the Board has proposed a new indemnity that would provide a bank that transfers an electronic image or information not derived from a paper check an indemnity against loss, claim or damage that results from the fact the image or information was not derived from a paper check. Navy Federal supports this additional indemnification as it would provide existing paper check warranties to electronic items that never existed in paper form. This will provide financial institutions the flexibility to create remotely created checks without having to first create the item in paper form.

We appreciate the opportunity to provide comments on the Board's proposed amendments to Regulation CC. If you have any questions, please contact Cassaundra Meeks, Compliance Analyst II, at 850-912-5179.

Sincerely,

Cutler Dawson
President/CEO

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