



**International Bancshares
Corporation**

April 29, 2014

Via email Rulemaking Portal: www.regulations.gov

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
10th Street and Constitution Avenue, NW
Washington, DC 20551

**Re: Federal Reserve: Availability of Funds and Collection of Checks
(Regulation CC; RIN 7100-AD68; Docket No. R-1409)**

Dear Mr. deV. Frierson:

The following comments are submitted on behalf of International Bancshares Corporation ("IBC"), a multi-bank financial holding company headquartered in Laredo, Texas. IBC holds four state nonmember banks serving Texas and Oklahoma with each bank having less than \$10 billion in assets. With over \$12 billion in total consolidated assets, IBC is the largest Hispanic-owned financial holding company in the continental United States. IBC is a publicly-traded financial holding company. We appreciate the opportunity to comment on this proposal.

On February 4, 2014, the Board of Governors of the Federal Reserve System ("Fed") re-proposed a rule originally proposed in 2012, which seeks to amend subparts C and D of Regulation CC ("Proposal"). The Proposal would, among other things, encourage depository banks to receive and paying banks to send returned checks electronically. The Fed is requesting comment on two alternative frameworks for return requirements. Under Alternative 1, the expeditious-return requirement currently imposed on paying banks and returning banks for returned checks would be eliminated; a paying bank returning a check would be required to provide the depository bank with a notice of nonpayment of the check—regardless of the amount of the check being returned—only if the paying bank sends the returned check in paper form. Under Alternative 2, the current expeditious-return requirement—using the current two-day test—would be retained for checks being returned to a depository bank electronically via another bank, but the notice-of-nonpayment requirement would be eliminated. The Fed is proposing to retain, without change, the regulation's current same-day settlement rule for paper checks. In addition, the Fed is also requesting comment on applying Regulation CC's existing check warranties to checks that are collected electronically and on new warranties and indemnities related to checks collected electronically and to electronically-created items.

As noted herein, we support applying Regulation CC's existing check warranties to checks that are collected electronically; however, we have comments, including some concerns, with the Proposal's alternatives for return of items and its indemnification requirements.

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Alternative One (No Expeditious Return Option)

We believe that this alternative would provide banks with the simplest manner of check processing as it would eliminate expeditious return requirements for both paying and returning banks regardless of whether electronic or paper checks were utilized. The paying bank would be subject to the UCC's midnight return deadline, and returning banks would be subject to the UCC's requirement of handling return with ordinary care. A notice of non-payment would be required for any check returned by paying bank in paper form, regardless of dollar amount. Again, this alternative would provide banks with the simplest manner of check processing.

Alternative Two (Conditional Expeditious Return)

Under this alternative, expeditious return requirements apply in scenarios where an electronic path has been established directly (through agreements) or indirectly between the paying banks and banks of first deposit.

We agree with the exception to the obligation for expeditious return if the depository bank has not agreed to accept electronic returns. If this alternative is chosen, the final rule should include an additional exception to the expeditious return obligation. The paying bank should not have an expeditious return obligation if the paying bank has received an item (either as an image or a paper check) and the item does not qualify for return as an electronic return under Regulation CC because the image of the item, or related MICR information, is not sufficient to create a substitute check, or otherwise does not qualify for electronic return under the rules of a clearing house, image exchange network, or the Federal Reserve Operating Circular #3 which could be used by the paying bank to return the item. There are situations where, through no fault of the paying bank, the item will not qualify for handling as an image return, notwithstanding the existence of an agreement for electronic returns with the depository bank. In light of the lack of effective methods for timely delivery of the paper item, we believe that Regulation CC should not impose an expeditious return obligation on the paying bank in this scenario. It may be appropriate in the final rule to include a required notice from the paying bank to the depository bank in a situation where the paying bank is aware that the return will be delayed because the check has to be delivered in paper form, as opposed to electronic form.

Truncating Bank Indemnity (Remote Deposit Capture)

The Fed proposes to add a new indemnity in 12 C.F.R. Section 229.34(g) related to remote deposit capture services. The new indemnity would cover situations where a depository bank that is a truncating bank (i.e., because its customer created an image of the front and back of the check and deposited it through a remote deposit capture service) accepts and receives settlement or other consideration for the check deposited through remote deposit capture, but does not receive the original check and does not receive a return of the check unpaid. Under these circumstances, the new indemnity requirement would indemnify another depository bank that accepts the original check for deposit for that bank's losses due to the check having already been paid.

This indemnity would allow a depository 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. The proposed new indemnity permits the second bank of first deposit that accepts original paper checks to make a claim against the first bank of first deposit who accepted the remote deposit capture deposit from its customer. The premise is apparently that the first bank of first deposit opened the door to risk by not properly controlling their remote deposit capture customer; however, it ignores the fact that the bank of first deposit does not have control of the check.

While we understand the concern relating to dual presentment of a remotely deposited item, the proposed new indemnity could be counterproductive to the long-term goals of the payment industry to move toward more expansive electronic banking and is harmful to bank customers who seek to actively use remote deposit capture. A change in the liability of electronically submitted items will have an immediate and permanent impact on the future growth potential of this product. Most community and regional banks will *not* have the financial resources to absorb the added liability that the proposed indemnity requirement would impose. As proposed, it may be easier for banks to discontinue offering the remote deposit product than to mitigate the inherent risks associated with it as the proposed changes would require.

Furthermore, simple, cost effective options exist today that can achieve the desired results and protections that banks seek from accepting a paper item that was previously remotely deposited. To mitigate the risk of dual presentment, there are much more effective methods at our disposal that will actually increase the use of the technology and not harm the immense transition to electronic deposits. Items accepted for electronic deposit can mandate very restrictive endorsements (e.g., account number, bank name) and must clearly and visibly have in clear bold handwriting stating the item is "FOR MOBILE DEPOSIT ONLY at XYZ BANK, date, and account number." This can be included on either the front or the back of the item. Banks that seek to accept items electronically without the required wording would take on the liability should the item get presented physically at a second location (since they failed to follow mobile capture rules). Should the original item clearly note it was electronically deposited elsewhere and a second bank accepts the physical item (with the wording clearly present) that institution would then be liable for the deposited item since they failed to properly inspect the item. This methodology places less emphasis on how the item was submitted and rather holds banks to a common clearing procedure and the notations contained on the item. This is much more consistent with past item exchange governance. Banks which accept electronic deposits that opt-out of adhering to these rules are then left to absorb all liability from a dual presentment.

Delayed Implementation of Proposal

The Proposal's requirements are sweeping and far-reaching and could have a detrimental financial impact on the financial services industry. The implementation date for a final rule should not be earlier than January 1, 2016, in order to allow sufficient time for banks to implement the new requirements.

Mr. Robert deV. Frierson
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Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink, appearing to read "DENNIS E. NIXON", is written over the typed name below.

Dennis E. Nixon
President