

**Supporting Statement for the
Disclosure Requirements Associated with Regulation CC
(FR CC; OMB No. 7100-0235)**

***Availability of Funds and Collection of Checks
(Docket No. R-1409; RIN 7100-AD68)***

Summary

The Board of Governors of the Federal Reserve System (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the Disclosure Requirements Associated with Regulation CC (FR CC; OMB No. 7100-0235) which implements the Expedited Funds Availability Act of 1987 (EFA Act)¹ and the Check Clearing for the 21st Century Act of 2003 (Check 21 Act)². Regulation CC - Availability of Funds and Collection of Checks³ requires banks⁴ to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and potentially costly) overdrafts, and allow customers to compare the policies of different banks before deciding at which bank to deposit funds. Regulation CC also requires notice to the depository bank and to a customer of nonpayment of a check. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

The Board adopted a final rule that revises the disclosure requirements in sections 229.31(c) and 229.33(h) of Regulation CC. Section 229.31 of the final rule imposes a notice of nonpayment requirement on paying banks that determine not to pay a check, both paper and electronic, in the amount of \$5,000 or more. Section 229.33(h) requires a depository bank to notify its customer if the depository bank receives a returned check, notice of nonpayment, or notice of recovery under section 229.35(b). The revisions are effective July 1, 2018. Although Regulation CC applies to all banks, the Board accounts for only the burden imposed on the 997 state member banks and uninsured state branches and agencies of foreign banks that it supervises. The estimated total annual burden for the FR CC is 190,605 hours. The proposed revisions would decrease the burden by 8,059 hours to 182,546 hours.

Background and Justification

The EFA Act requires banks to provide customers and potential customers specific written notices and disclosures on the occurrence of specific events, such as opening an account, delaying availability of the proceeds of a deposited check beyond the usual availability date, changing the bank's funds availability policies, or in response to a customer's request. The Check 21 Act requires banks to provide a consumer awareness disclosure regarding substitute

¹ See 12 U.S.C. 4001 et seq.

² See 12 U.S.C. 5001 et seq.

³ See 12 CFR Part 229.

⁴ For purposes of Regulation CC, banks are commercial banks, savings associations, credit unions, and U.S. branches and agencies of foreign banks.

checks in certain circumstances.⁵ In addition, if a consumer uses the special procedure that the Check 21 Act provides to resolve errors associated with substitute checks, the Check 21 Act requires the consumer's bank to provide a notice to the consumer regarding disposition of the consumer's claim. All of the notice and disclosure requirements of Regulation CC, which are discussed in more detail below, are found expressly in the EFA Act or the Check 21 Act, except for the notice of a delay under a case-by-case hold policy and the notice of a returned check.

As required by the EFA Act, the Board has published model disclosure forms and clauses to facilitate compliance with the disclosure requirements of that law. The EFA Act specifically provides that banks are not required to use these model forms and clauses. However, a bank that uses one of the model forms appropriately is deemed to be in compliance with the EFA Act disclosure requirements. As required by the Check 21 Act, the Board published a model disclosure that a bank may, at its option, use as a safe harbor to satisfy the general consumer awareness disclosure requirements of that law. The Board also published model notices that banks may use to satisfy their notice obligations regarding substitute check error resolution claims, but neither the Check 21 Act nor Regulation CC provide a safe harbor for using these notices.

Description of Information Collection

Specific availability policy disclosure (section 229.16) and Initial disclosures (section 229.17)

Before accepting a deposit to open a new transaction account, banks must provide written disclosures stating when deposited funds generally will be available for withdrawal, referred to as a specific availability-policy disclosure. The disclosure must reflect the availability policy followed by the bank in most cases, that is, as to most transaction accounts and most deposits into those accounts. The disclosure must include, to the extent applicable, a description of

- the categories of deposits or checks the bank uses when it delays availability, how to determine into which category a check or deposit falls, and when each category of check or deposit is available for withdrawal
- any of the exceptions permitted by Regulation CC to the availability requirements of the regulation that may be invoked by the bank
- any case-by-case policy of delaying availability longer than the time periods stated in the specific availability policy, if the specific availability policy makes funds available for withdrawal sooner than required by Regulation CC
- a description of how to differentiate between proprietary and nonproprietary automatic teller machines (ATMs) if the bank's availability policy differs between the two

When a bank receives a written request by mail to open an account and the request includes a deposit, the bank may open the account, but must mail the disclosures no later than the

⁵ To facilitate check truncation and electronic check exchange, the Check 21 Act authorizes a new negotiable instrument called a substitute check and provides that a properly prepared substitute check is the legal equivalent of the original check for all purposes. A substitute check is a paper reproduction of the original check that can be processed just like the original check. The Check 21 Act does not require any bank to create substitute checks or to accept checks electronically.

next business day following the banking day on which the deposit was received. When a telephone request is made to open an account and includes a request to transfer funds from another account to make the initial deposit, the initial disclosures must be mailed no later than the next business day following the banking day on which the request was made.

Disclosure of specific availability policy to any person upon request (sections 229.16 and 229.18(d))

Section 229.18(d) provides that a bank must provide the specific availability-policy disclosure described in section 229.16, to any person who makes an oral or written request regarding the policy.

Longer delays on a case-by-case basis: Notice in specific policy disclosure (section 229.16(c))

If a bank has a policy of generally making funds available for withdrawal sooner than required under Regulation CC, but delaying availability on a case-by-case basis, the customer must receive not only advance notice of the policy (as described above), but also notice each time a delay is imposed. The notice must include the date of deposit, the amount being delayed, and the date funds will be available for withdrawal. If the notice is not provided at the time of deposit, it must be mailed or delivered no later than the first business day following the banking day of the deposit.

Notice of exceptions (section 229.13(g))

Regulation CC permits banks to invoke certain exceptions to the availability schedules required by the regulation. Whenever a bank invokes such an exception, it must notify the customer in writing (special rules apply to exceptions pertaining to large dollar deposits and redeposited checks into nonconsumer accounts, as well as an exception pertaining to repeated overdrafts). The notice must include the date of deposit, the amount being delayed, the reason the exception was invoked, and when funds will be available for withdrawal. If the notice is not provided at the time of deposit, it must be mailed or delivered by the later of: the first business day following the banking day of the deposit, or the first business day following the day the bank becomes aware of the facts upon which the exception hold is based.

Notice on preprinted deposit slips (section 229.18(a))

The preprinted deposit slip notice must inform the customer, on the face of the deposit slip, that deposits may not be available for immediate withdrawal. This notice is a standardized, machine-generated form and does not change from one individual account to another; thus, the burden for this requirement is negligible.

Locations where employees accept consumer deposits (section 229.18(b)) and Automated teller machines (ATMs) (section 229.18(c))

A bank must post conspicuously in each location where consumers may make deposits a notice of its funds availability policy for consumer accounts. The notice must be posted so that consumers are likely to see it prior to making a deposit. A bank must also ensure that a notice is posted at all ATMs accepting deposits for the bank that ATM deposits may not be available for immediate withdrawal. Such notice may be posted on a sign, on the screen of the ATM, or included on the deposit envelopes provided at the ATM.

Notice of changes in policy (section 229.18(e))

A bank is required to send consumer account holders notice of changes in its availability policy at least thirty days before the change becomes effective. However, where a change in policy results in faster availability, the notice may be sent no later than thirty days after the change.

If a bank provides its customers with a list of ATMs in its availability policy (to fulfill the requirement that it explain its availability policy for proprietary and nonproprietary ATMs), it must update the list annually if any changes occurred during the year.

Notices of nonpayment (section 229.33(a) and (d))

Notification to banks - If a bank on which a check is drawn in an amount of \$2,500 or more determines not to pay the check, the bank must notify the depository bank by 4:00 p.m. on the second business day after the day of presentment.

Notification to customer - If the depository bank receives a returned check or notice of nonpayment, regardless of the amount, it must send notice to its customer generally by midnight of the banking day following the banking day on which it received the returned check or notice (a longer time than may be deemed reasonable in some cases). This requirement is considered not to cause the bank additional burden because, were the requirement not to exist, banks presumably would nonetheless provide a similar notification to customers in the usual and customary course of their business.

Expedited recredit for consumers (sections 229.54(a) and (b)(2))

This section of the rule provides that a consumer may make an expedited recredit claim with respect to a substitute check if the consumer asserts in good faith that (1) the bank holding the consumer's account charged that account for a substitute check that was provided to the consumer (although the consumer need not be in possession of the substitute check at the time he or she submits a claim), (2) the substitute check was not properly charged to the consumer

account or the consumer has a “warranty claim”⁶ with respect to the substitute check, (3) the consumer suffered a resulting loss, and (4) production of the original check or a sufficient copy of the original check is necessary to determine whether or not the substitute check in fact was improperly charged or whether the consumer’s warranty claim is valid.

The consumer’s claim must include certain information described in the Check 21 Act and section 229.54 of Regulation CC.

Notices relating to consumer expedited recredit claims (validation, denial or reversal) (section 229.54(e))

This notice is required when a bank validates, denies, or reverses a consumer’s recredit claim. Although the statute does not explicitly discuss providing a notice when a bank validates a claim, the bank’s ability to respond to a claim by determining that the claim is valid is implicit in the “timing of the recredit” section of the statute (section 7(c)(2)(A)), which requires the bank to provide a recredit the day after it determines that the consumer’s claim is valid.

If a bank determines that the consumer’s claim is invalid, the bank must provide the consumer with the original check or a copy of the original check sufficient to determine the validity of the claim and must demonstrate why the substitute check was properly charged to the consumer account. The bank must either demonstrate that a charge was proper or explain why the warranty claim is not valid, as appropriate in light of the consumer’s claim.

Expedited recredit claim for banks (section 229.55)

This section of the EFA Act provides that a bank may make a claim against an indemnifying bank if (1) the claimant bank or a bank that the claimant bank has indemnified has received a claim for expedited recredit from a consumer or would have been subject to such a claim if the consumer account had been charged for the substitute check; (2) the claimant bank is obligated to provide a consumer expedited recredit with respect to such substitute check or otherwise has suffered a resulting loss; and (3) the production of the original check or a sufficient copy of the original check is necessary to determine the validity of the charge to the consumer account or the validity of any warranty claim connected with such substitute check.

The content requirements for an interbank expedited recredit claim essentially parallel those for a consumer expedited recredit claim but also state that a bank that provides a copy of a substitute check with its claim must take steps to ensure that such copy is not mistaken for a legally equivalent substitute check or handled for forward collection or return. An indemnifying bank may require the claim to be in writing and may permit the claimant bank to submit it electronically. In addition, section 229.60 provides that banks involved in an interbank expedited recredit claim under section 229.55 may vary the terms of that section by agreement, but otherwise no person may vary the terms of subpart D by agreement.

⁶ When a bank transfers, presents, or returns a substitute check for consideration (or any paper or electronic representation of a substitute check), the bank makes two warranties (1) that the substitute check meets the requirements for legal equivalence and (2) that no depository bank, drawee, drawer, or indorser will be asked for payment based on a check that it already has paid. See 69 FR 1476 published on January 8, 2004.

Consumer awareness (section 229.57)

This section of the EFA Act provides a description of the disclosure that banks must provide to consumers to promote awareness of substitute checks. Banks are required to provide a one-time consumer awareness disclosure at the time the customer relationship is initiated to consumers who will routinely receive paid checks with their periodic account statements in accordance with their deposit agreements. Banks also must provide the substitute check consumer awareness disclosure (1) any time a consumer receives a substitute check in response to a consumer's request for a check or check copy or (2) any time a check that the consumer deposited is later returned unpaid to the consumer in the form of a substitute check. Section 12(c) of the Check 21 Act requires the Board to publish model disclosures that banks can use to satisfy the content requirements of the consumer awareness disclosure required by that section. The statute provides that a bank that uses the model disclosure published by the Board to comply with section 229.57 of the EFA Act shall be treated as complying with that section if it accurately describes the bank's policies and practices. The model disclosure explains in very simple terms what a substitute check is, when the consumer expedited recredit right applies, and what a consumer must do to exercise that right.

Proposed Revisions

On June 15, 2017, the Board published a final rule (82 FR 27552). The final rule is effective July 1, 2018. The Board amended subparts A, C, and D of Regulation CC which implements the EFA Act, the Check 21 Act, and the official staff commentary to the regulation. In the final rule, the Board modified the current check collection and return requirements to reflect the virtually all-electronic check collection and return environment and to encourage all depository banks to receive, and paying banks to send, returned checks electronically. The Board has retained, without change, the current same-day settlement rule for paper checks. The Board is also applying Regulation CC's existing check warranties under subpart C to checks that are collected electronically, and in addition, has adopted new warranties and indemnities related to checks collected and returned electronically and to electronically-created items. The revised disclosure requirements are found in sections 229.31(c) and 229.33(h).

Under 229.31(c) of the final rule, a paying bank is required to provide a notice of nonpayment if a paying bank determines not to pay a check in the amount of \$5,000 or more. (Return of the check itself would continue to satisfy the notice requirement if the return meets the timeframe requirement for notice.) Regulation CC also requires a depository bank to notify its customer when it receives a returned check or notice of nonpayment related to that customer's account. Under section 229.33(h) of the final rule, the depository bank must notify its customer when the bank receives a notice of recovery under 229.35(b). The Board expects that its final rule will reduce the number of notices that banks must send. The Board has updated its annual frequency estimates by sampling returned check volumes sent through the Reserve Banks to determine the estimated average annual number of (1) total returned items and (2) returned items over \$5,000 a Reserve Bank customer receives, which would trigger the notice of nonpayment and customer notification requirements.

Time Schedule for Information Collection

The notice and disclosure requirements for Regulation CC are triggered by specific events and must be provided to consumers within the time periods established by the law and regulation. There is no reporting form associated with the requirements of Regulation CC; disclosures or notifications, pertaining to a particular transaction or consumer account, are not publicly available. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

Legal Status

The Board's Legal Division has determined that the EFA Act and the Check 21 Act authorize the Board to issue regulations to carry out the provisions of those Acts (12 U.S.C. 4008 and 12 U.S.C. 5014, respectively). All banks are required to comply with Regulation CC, thus the information collection is mandatory. However, the information that Regulation CC requires of consumers who are making an expedited recredit claim is to obtain a benefit. Because the Board does not collect any information, no issue of confidentiality arises. However, if, during a compliance examination of a financial institution, a violation or possible violation of the EFA Act or the Check 21 Act is noted then information regarding such violation may be kept confidential pursuant to section (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(8)).

Consultation Outside the Agency

On December 10, 2018, the Board published an initial notice in the Federal Register (83 FR 63431) requesting public comment for 60 days on the extension with revision of the FR CC. The comment period for this notice expires on February 8, 2019.

Estimate of Respondent Burden

The estimate of the burden per response (i.e., per instance of disclosure) caused by a particular notice or disclosure requirement depends on several factors, including whether the notice is machine-generated and whether it is customer-specific. The notices given at account opening and upon request and the notices posted where consumers make deposits are disclosures concerning the bank's policy. They are machine-generated and are not customer-specific; thus the burden per response is minimal. The notice of changes in policy (including the annual notice updating the ATM list, if necessary) is not customer-specific, but likely requires more time to prepare. Also, the timing for these is more uncertain because they are event-triggered and not given a standard schedule; therefore, the burden per response is greater than for other notices. Notices given when a bank invokes a case-by-case hold or an exception permitted by the regulation are customer-specific; therefore the burden per response associated with these notices is slightly greater. The notice of nonpayment is also customer-specific; however, it is machine-generated. Therefore, the burden per response associated with this notice is less than the burden per response associated with other customer-specific notices.

For purposes of the PRA, no paperwork burden is associated with the recordkeeping requirement of Regulation CC. Section 229.21(g) requires banks to retain evidence of

compliance for no less than two years but does not specify the kind of records that must be retained for this purpose.

The total current annual burden for FR CC is estimated to be 190,605 hours and with the proposed changes is estimated to decrease by 8,059 hours to 182,546 hours. These disclosure requirements represent 1.45 percent of total Federal Reserve paperwork burden.

FR CC Current	<i>Number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
Disclosure				
<i>Bank burden</i>				
Sections 229.16 and 229.17 Specific availability policy disclosure and Initial disclosures	997	500	1 minute	8,308
Section 229.16(c) Longer delays on a case-by-case basis: Notice in specific policy disclosure	997	700	3 minutes	34,895
Section 229.13(g) Notice of exceptions	997	2,000	3 minutes	99,700
Sections 229.18(b) and 229.18(c) Locations where employees accept consumer deposits, and ATMs	997	1	15 minutes	249
Section 229.18(e) Annual notice of new ATMs	997	1	5 hours	4,985
Section 229.18(e) Changes in policy	100	2	20 hours	4,000
Sections 229.33(a) and (d) Notice of nonpayment	997	890	1 minute	14,789
Section 229.54 Expedited recredit for consumers	997	35	15 minutes	8,724
Section 229.55 Expedited recredit for banks	997	15	15 minutes	3,739
Section 229.57 Consumer awareness	997	300	1 minute	4,985
<i>Consumer burden</i>				
Section 229.54(b)(2) Expedited recredit claim notice	997	25	15 minutes	6,231
<i>Total</i>				190,605

FR CC Proposed	<i>Number of respondents⁷</i>	<i>Annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
Disclosure				
<i>Bank burden</i>				
Sections 229.16 and 229.17 Specific availability policy disclosure and Initial disclosures	997	500	1 minute	8,308
Section 229.16(c) Longer delays on a case-by-case basis: Notice in specific policy disclosure	997	700	3 minutes	34,895
Section 229.13(g) Notice of exceptions	997	2,000	3 minutes	99,700
Sections 229.18(b) and 229.18(c) Locations where employees accept consumer deposits, and ATMs	997	1	15 minutes	249
Section 229.18(e) Annual notice of new ATMs	997	1	5 hours	4,985
Section 229.18(e) Changes in policy	100	2	20 hours	4,000
Section 229.31(c) Notice of nonpayment on paying bank	997	35	1 minute	582
Section 229.33(h) Notification to customer	997	370	1 minute	6,148
Section 229.54 Expedited recredit for consumers	997	35	15 minutes	8,724
Section 229.55 Expedited recredit for banks	997	15	15 minutes	3,739
Section 229.57 Consumer awareness	997	300	1 minute	4,985
<i>Consumer burden</i>				
Section 229.54(b)(2) Expedited recredit claim notice	997	25	15 minutes	6,231
<i>Total</i>				182,546
<i>Change</i>				(8,059)

⁷ Of these respondents, 631 are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets) www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards.

The total cost to the public for this information collection is estimated to decrease from \$10,284,139 to \$9,841,700 with the proposed revisions.⁸

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

Since the Board does not collect any information, the cost to the Federal Reserve System is negligible.

⁸ For bank burden, the total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$18, 45% Financial Managers at \$67, 15% Lawyers at \$67, and 10% Chief Executives at \$93). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2016*, published March 31, 2017, www.bls.gov/news.release/ocwage.nr0.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/. For consumer burden, the average consumer cost of \$26 is estimated using data from the BLS Economic News Release (USD-16-0462) www.bls.gov/news.release/cewqtr.nr0.htm.