Supporting Statement for the Disclosure Requirements in Connection with Regulation CC to Implement the Expedited Funds Availability Act (Reg CC; OMB No. 7100-0235)

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the Disclosure Requirements in Connection with Regulation CC to Implement the Expedited Funds Availability Act (EFAA).[1] The Paperwork Reduction Act (PRA) classifies reporting, recordkeeping, or disclosure requirements of a regulation as an information collection.[2]

Regulation CC requires banks[3] 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. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

Although Regulation CC applies to all banks, not just state member banks, the Federal Reserve accounts for the paperwork burden only for the 1,160 state member banks and uninsured state branches and agencies of foreign banks that are deemed respondents for purposes of the PRA.[4] The annual burden for Reg CC for those entities is estimated to be 202,396 hours. The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the banks for which they have administrative enforcement authority.

Background and Justification

The EFAA 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

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[1] The EFAA was enacted in 1987 and is codified at 12 U.S.C. § 4008 et seq. Regulation CC is located at 12 C.F.R. Part 229.

[2] 44 U.S.C. § 3501 et seq

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

[4] For the purpose of this supporting statement state member banks and uninsured state branches and agencies of foreign banks are referred to as banks, collectively. The 1,160 Federal Reserve-supervised creditors were obtained from numbers published in the Board of Governors of the Federal Reserve System 95th Annual Report 2008: 862 state member banks, 198 uninsured state branches and agencies of foreign banks.

availability date, changing the bank's funds availability policies, or in response to a customer's request. The Check Clearing for the 21st Century Act (Check 21 Act) requires banks to provide a consumer awareness disclosure regarding substitute 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 EFAA 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 EFAA, the Federal Reserve has published model disclosure forms and clauses to facilitate compliance with the disclosure requirements of that law. The EFAA 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 EFAA's disclosure requirements. As required by the Check 21 Act, the Federal Reserve 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 Federal Reserve 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;

[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.

- 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 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 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)), 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 depositary bank by 4:00 p.m. on the second business day after the day of presentment.

Notification to customer - If the depositary 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). For purposes of the PRA, 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 (section 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 § 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 EFAA 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

[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).

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.

Consumer awareness (section 229.57)

This section of the EFAA 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 Federal Reserve 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 Federal Reserve to comply with Section 229.57 of the EFAA 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.

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 EFAA, as amended, and the Check 21 Act authorize the Federal Reserve to issue regulations to carry out the provisions of those Acts (12 U.S.C. § 4008 and 12 U.S.C. 5014, respectively). Because the Federal Reserve 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 EFAA 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. 5U.S.C. § 552(b)(8).

Sensitive Questions

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

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System. All of the Board's rulemaking activities under Reg CC are subject to the notice and comment requirements of the Administrative Procedure Act. 5 U.S.C. 551 et seq. On June 15, 2010, the Federal Reserve published a notice in the *Federal Register* (75 FR 33806) requesting public comment for 60 days on the extension, without revision, of FR HMDA/LAR. The comment period for this notice expires on August 16, 2010.

Estimate of Respondent Burden

The current 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 following table reflects the burden estimate of the Federal Reserve System for the 1,060 banks under its supervision. The total annual burden for this information collection is estimated to be 202,396 hours. These disclosure requirements represent 2.54 percent of total Federal Reserve paperwork burden.

	Number of respondents	*Estimated annual frequency*	*Estimated average hours per response*	*Estimated annual burden hours*
Bank burden				
Specific availability policy disclosure **(229.16)** & Initial disclosures **(229.17)**	1,060	500	1 minute	8,833
Longer delays on a case-by-case basis. Notice in specific policy disclosure. **(229.16(c))**	1,060	700	3 minutes	37,100
Notice of exceptions **(229.13(g))**	1,060	2,000	3 minutes	106,000
Locations where employees accept consumer deposits. **(229.18(b))** ATMs **(229.18(c))**	1,060	1	15 minutes	265
Annual notice of new ATMs **(229.18(e))**	1,060	1	5 hours	5,300
ATM changes in policy **(229.18(e))**	100	2	20 hours	4,000
Notice of nonpayment **(229.33(a) & (d))**	1,060	890	1 minute	15,723
Expedited recredit for consumers **(229.54(a))**	1,060	35	15 minutes	9,275
Expedited recredit for banks **(229.55)**	1,060	15	15 minutes	3,975
Consumer awareness **(229.57)**	1,060	300	1 minute	5,300
Consumer burden				
Expedited recredit claim notice **(229.54(b)(2))**	1,060	25	15 minutes	6,625
Total				202,396

The estimated cost to the public for this information collection is $8,381,084.[7]

[7] Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rate (30% Office & Administrative Support @ $16, 45% Financial Managers @ $48, 15% Legal Counsel @ $54, and 10% Chief Executives @ $76). Hourly rate

Estimate of Cost to the Federal Reserve System

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

Financial Industry Burden Averages

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.[8] These agencies are permitted, but are not required, to use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total current estimated annual burden for the approximately 16,200 commercial banks, savings associations, credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA subject to Reg CC would be approximately 3,578,714 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices.

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for each occupational group are the median hourly wages (rounded up) from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages 2008, www.bls.gov/news.release/ocwage.nr0.htm Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/

[8] Federal Enforcement Agencies – of Regulation CC lists those federal agencies that enforce the regulation for particular classes of business. The federal financial agencies include: the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA).