
REG CC SHIFTS COMING: HOLD POLICY CHANGES NO LONGER ON HOLD

Don't miss ripple effects of upcoming Reg CC amendments

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The Federal Reserve, on March 25th, proposed changes to Regulation CC (Expedited Funds Availability Act) that have one primary goal of transitioning the check processing system to a fully electronic interbank collection and return system. There are also two secondary goals:

- • Elimination of all references to and unnecessary provisions relating to "nonlocal checks," which have been previously eliminated as a result of the consolidation of the check processing functions of the Federal Reserve System.

- • Shortening the maximum hold periods that banks can place on check deposits (which further encourages fully electronic presentment).

Lot of Reg CC changes going on

While the changes to Regulation CC are still in proposed form, don't confuse that with the announced change in the dollar amount of check deposits that are required to be given next day availability-the "\$100 rule."

On July 21, 2011, regardless of the status of the Regulation CC proposal, the requirement to provide next-day availability for the first \$100 of a deposit not otherwise subject to next day availability will be changed. The \$100 threshold amount will increase to \$200 (with indexed changes to occur every 5 years). That means that, for example, if you decide to place a case-by-case hold on a check deposit, you will have to give the customer availability on the first \$200, instead of \$100, of that deposit by the next business day.

This change will impact your disclosures as well as your hold-placing practices. To get ready for this change, keep in mind the following:

1. Changes to your funds availability policy. The bank's funds availability policy will need to be updated and, as with any bank policy, approved by the board of directors.

2. Changes to your funds availability policy disclosure. The disclosure you provide when new accounts are opened will need to be changed and ready to go by July 21.

3. Changes to your hold notice. Depending on what is printed on your hold notice, you may need to change your hold notice forms or otherwise make changes in the notice content.

4. Changes to teller window signage. Also depending on what is printed on your signs posted at the teller windows and any locations where consumer deposits are accepted, changes may be needed to those signs.

5. Employee training. Employees that are affected by hold policies need to be trained on the change and how to respond to customer questions, if any.

(Since this is a positive change for customers, the few that might notice may not raise a question, thinking that the bank made a mistake in their favor and it would be better to keep their mouth shut.)

6. Change in terms notice. Even though this is a change that favorably impacts the consumer, a change in terms notice is still required. However, because the change favorably impacts the consumer, notice can be provided within 30 days after the change is effective. By Aug. 21, 2011, consumers must be notified of the change in the "first \$200 rule."

More Reg CC compliance cleanup coming

Other Regulation CC compliance changes that are anticipated when the rule is finalized (and depending on the outcome of the proposal) are:

- • Shortened hold periods. Since there are no more nonlocal checks, all checks would be subject to a 2-day hold (unless the bank gives next-day availability as a general practice, and then the 2-day hold is only applicable to case-by-case holds). Hold periods for exception holds would be reduced to 1 extra day for on-us checks and 2 extra days for all other checks. The maximum hold for deposits at ATMs not owned by the bank would be 4 days instead of the current 5 days.

- • Changes to large deposit exception hold. Get ready for a lot of indexing. The \$5,000 exclusion from the large deposit exception hold would become an indexed amount that can change every 5 years. The threshold amount that causes a deposit to be a "large deposit" and subject to the large deposit exception would become an indexed amount that is subject to change every 5 years. It is unclear from the proposal whether the \$5,000 amount will change right away or 5 years from now.

- • Exception hold and case-by-case hold content. The "total amount of the deposit" would have to be added to the hold notices in addition to the amount of the deposit that is being held, which is already disclosed.

- • Re-designed model notices. The Fed's love affair with the tabular format will affect the newly re-designed model notices.

- • Electronic hold notices. Since hold notices that are mailed to the consumer when a bank makes the decision to place the hold (which is often after the consumer leaves the bank), would generally not get to the consumer in a timely fashion with the new, shortened hold periods, the Fed is proposing to require banks to provide the hold notice to consumers electronically if the consumer has agreed to receive notices electronically.

More to chew on

Although not specifically written into the proposed regulation, the Fed is also looking for input on the idea of eliminating case-by-case holds altogether. How would this affect your bank? How would all of these proposed changes impact your bank?

Furthermore, if your bank has not fully migrated to an electronic interbank check collection and return system, there are many more issues to consider and plan for as a result of the Regulation CC proposed changes.

About Nancy Derr-Castiglione

"Lucy and Nancy's Common Sense Compliance" is blogged by both Lucy Griffin and Nancy Derr-Castiglione, both ABA Banking Journal contributing editors on compliance.

Nancy, a Certified Regulatory Compliance Manager, is owner of D-C Compliance Services, an independent regulatory compliance consulting services business that has provided expertise in compliance training, monitoring, risk assessment, and policies and procedures to financial institutions since 2002.

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In addition to serving as a Contributing Editor of ABA Banking Journal, Nancy has served on the ABA Compliance Executive Committee; National and Graduate Compliance Schools board; conference planning committees, and the Editorial Advisory Board for the ABA Bank Compliance magazine. She can be reached at nancycastiglione@comcast.net

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