

General Policy Statement:

Regulation CC (12 CFR Part 229) sets minimum standards for when deposited funds must be made available to members. The Credit Union offers same day or next day availability for most funds deposited with the Credit Union and provides funds availability disclosures required by the Regulation.

Guidelines:

1. DEFINITIONS

- A. **Account.** A transaction account. An account generally includes those from which the accountholder is permitted to make transfers or withdrawals by negotiable instruments, payment order of withdrawal, telephone transfer, electronic payment, or other form of transfer. Account does NOT include a savings account.
- B. **Availability.** For determining the availability of a deposit, every day is a business day, except Saturdays, Sundays and federal holidays. If a federal holiday falls on a Sunday, the next day is not a business day. If a member makes a deposit before [[2400-2]] on a business day that the Credit Union is open, the Credit Union will consider that day to be the day of deposit. However, if a member makes a deposit after [[2400-3]] or on a day the Credit Union is not open, the Credit Union will consider the deposit to have been made on the next business day that the Credit Union is open.

- 2. **SAME-DAY AVAILABILITY.** Cash and Federal government payments made by the automated clearinghouse method, such as Social Security payments, SSI payments, IRS tax refunds, and federal government salary payments, must be made available on the day funds are received or, if the funds are not received on a business day, on the next business day. (See 31 CFR Part 210, "Federal Payments through Financial Institutions by the Automated Clearing House Method." sections 210.2, 210.7.)

- 3. **NEXT DAY AVAILABILITY.** The following funds deposited into a member's account must be available by the next business day:

- A. Cash deposited in person at a teller station. To qualify for next-day availability, members must deposit funds during Credit Union business hours before the cutoff time for receiving deposits. Presently, the cutoff time is [[2400-1]].
- B. Electronic payments (e.g., wire transfers, automated clearinghouse credit transfers). These are considered "received" when the Credit Union has received both:
 - i. Payment in finally collected funds, and
 - ii. Payment instructions indicating the account and the amount to be credited.
- C. U.S. Treasury checks deposited into the payee's account.
- D. The following types of checks, if deposited in person at a teller station into the payee's account:
 - i. U.S. Postal Service Money Orders.

- ii. Federal Reserve Bank checks/Federal Home Loan Bank check.
 - iii. State and local government checks, if the Credit Union is located in the same state as the government entity that issued the check and if the check was accompanied by any special deposit slip required by the Credit Union.
 - iv. Cashier's, certified, or teller's checks, if accompanied by any required special deposit slip.
 - E. "On us" checks, i.e., checks drawn on the Credit Union or one of its branches.
 - F. Drafts covered by member's account, such as situations where the member's account balance exceeds the amount of the draft.
 - G. For checks not described above, the lesser of \$200 or the aggregate amount of such checks must be available, except that:
 - i. If the member receives cash at the time of the deposit, the amount of cash received is not required to be credited. For example, if the member deposits a \$300 check and receives \$100 cash back, the Credit Union need not make an additional \$200 available for withdrawal the following day.
 - ii. If the member has a negative book balance or a negative available balance in the account at the time of the deposit, the \$200 that must be available on the next business day may be made available by applying \$200 to the negative balance, rather than making \$200 available for withdrawal.
4. **SECOND DAY AVAILABILITY.** The following funds deposited into a member's account must be made available no later than the second business day following the deposit.
- A. Funds that would otherwise qualify for next-day availability, except for the fact that funds are not deposited in person at a teller station, i.e., they are deposited by mail or in an ATM owned by the Credit Union.
5. **FIFTH-DAY AVAILABILITY.** Cash or checks deposited into a nonproprietary ATM must be made available no later than the fifth business day following the deposit.
- A. Up to \$400 of the deposited funds must be available by 5 p.m. on the day the funds would be made available under the schedule. Cash withdrawals for the remainder of the funds (over the initial \$400) can be delayed until the following business day.
6. **ADDING A DAY TO AVAILABILITY PERIOD.** The availability period may be extended by one day for a deposit that is made to a Credit Union located in Hawaii or Alaska, is not subject to next-day availability, and is by check drawn on a paying bank not located in the same state as the Credit Union.
7. **"CASE-BY-CASE" HOLDS.** If a Credit Union has a policy of making funds available sooner than required by the foregoing rules, the Credit Union may extend the time when funds are available up to the time periods allowed above on a case-by-case basis, subject to the following requirements.

A. **Initial Disclosure.** Before opening a new account, the Credit Union must disclose its case-by-case hold policy.

B. **Notice at Time of Hold.** The Credit Union must also provide the member with notice at the time of the deposit.

i. **Content.** The notice must state:

1. Statement that the Credit Union is holding the funds.
2. The account number.
3. The date of the deposit.
4. The amount of the deposit that is being delayed.
5. When the funds will be available for withdrawal.
6. How to obtain a refund of returned check fees or overdraft fees if the notice is not given at the time of the deposit, and the check is paid.

ii. **When Given.** Ordinarily, notice is given when deposit is made. If the deposit is not made in person, notice should be given no later than the first business day thereafter.

1. If the notice is not provided at the time of deposit, no overdraft fees may be assessed if the overdraft would not have occurred except for the delay of funds availability and the check was paid. Overdraft fees may be assessed if the institution provides notice of such fees at the time the notice of delayed funds is given, and is willing to refund such fees upon request by the member.

8. "SPECIFIC EXCEPTION" HOLDS.

A. **Description.** The following situations create a "specific exception" to the funds availability rules:

i. **Large Deposits.** A member's aggregate deposits in one day exceed \$5,000. (The exception applies to the amount over \$5,000. The Credit Union may apply this exception to the aggregate deposits to all accounts held by the member, without regard to joint accountholders.

ii. **Re-deposited Checks.** A check has been returned unpaid and re-deposited, unless the reason the check was returned was because it was missing an endorsement or was postdated. \$200 of the deposit does not have to be made available on the next business day. The business day the check is re-deposited is considered to be the day of deposit.

iii. **Repeated Overdrafts.** Within the last six months, a member's account has been overdrawn six or more times, or overdrawn twice by more than \$5,000 for two or more business days (or would have been had the checks and charges been paid). This exception does NOT apply to any next-day availability deposits, despite an overdrawn account. An account will retain its "repeated overdraft" status for six months from the last overdraft.

iv. **Reasonable Cause to Doubt Collectibility.** The Credit Union has reasonable cause to believe the check is uncollectible, such as a stale or postdated check, evidence of check kiting, or a notice dishonor from the payor financial institution. The Credit Union will maintain the notice provided to the member, along with a statement of facts surrounding its reason to doubt the collectibility of the item, for 2 years.

v. **Emergency Conditions,** such as telecommunication or computer breakdowns, war, or some other emergency condition beyond the Credit Union's control. A hold will be placed on the funds for a reasonable time after the emergency has passed.

B. **Effect.** If an exception applies, the Credit Union may:

i. Add one business day for "on us" checks.

ii. Ignore next-day availability requirement for U.S. Treasury checks, U.S. Postal Service money orders, Federal Reserve Bank checks, Federal Home Loan bank checks, state and local government checks, and cashier's, certified, and teller's checks, and treat them as being subject to the availability requirements for local or non-local checks set forth in the immediately following paragraphs.

iii. Add five business days, thus making them available within 7 business days.

C. **Notice Requirement.** The Credit Union may not place a specific exception hold unless it notifies the member that the exception is being invoked.

i. **Content.** The notice must state:

1. The member's name and account number.
2. The date of the deposit.
3. The amount of the deposit being delayed.
4. Statement that the Credit Union is holding funds.
5. What the exception is and why it is being invoked.
6. When the funds will be available for withdrawal.
7. How to obtain a refund of returned check fees or overdraft fees if the notice is not given at the time of the deposit, and the check is paid.

ii. **When Given.** Ordinarily, notice must be given when the deposit is made. If the facts giving rise the exception are not known until after the deposit is made, then notice must be given no later than one business day thereafter.

iii. **How Given.** Notice can be delivered personally to the member when the deposit is made, mailed, or faxed. In addition, it can be delivered by e-mail if the member agrees to receive e-mails and if the e-mail can be downloaded and printed.

9. **NEW ACCOUNTS.** Special rules apply for new accounts (sole account with the Credit Union less than 30 days old, provided none of the members on the account have other transaction

accounts at the Credit Union that have been opened for at least 30 days).

- A. Cash deposits and wire transfers are subject to the next-day availability requirements.
 - B. The first \$5,000 of deposits of U.S. Treasury checks must be made available on the next business day. Any amount over \$5,000 into a new account may be held until the 9th business day.
 - C. The first \$5,000 of an in-person deposit of checks drawn on Federal Reserve Banks and Federal Home Loan Banks, state and local government checks, cashier's checks, certified checks, teller's checks, and, for the purposes of the new account exception only, traveler's checks, must be made available on the next business day. The first \$5,000 of such deposits not made in person must be made available on the second business day. The remainder may be held until the 9th business day.
 - D. Next-day availability is not required for "on us" checks or the first \$200 of a day's deposit.
 - E. Fifth-day availability requirements do not apply.
10. **INITIAL DISCLOSURE.** Before opening a new account, a Credit Union must provide to the member a disclosure that clearly and conspicuously explains the Credit Union's funds availability policy complying with 12 CFR Section 229.16. The Credit Union will use one of the model policies below or develop their own that is substantially similar.
- A. Model Policy C-1: Next-day availability
 - B. Model Policy C-2: Next-day availability and specific exceptions
 - C. Model Policy C-3: Next-day availability, case-by-case holds to statutory limits, and specific exceptions
 - D. Model Policy C-4: Holds to statutory limits on all deposits (includes chart)
 - E. Model Policy C-5: Holds to statutory limits on all deposits
11. **OTHER DISCLOSURES.** A Credit Union must also:
- A. Provide a copy of its funds availability policy to a member who requests it.
 - B. Post a copy of its funds availability policy at every location where deposits are accepted, including ATMs. The Credit Union will also post its availability policy on its website on every page where accounts are opened and/or payments are made online.
 - C. Notify its members of a change in the funds availability policy at least 30 days prior to the change. If the change expedites the availability of funds, the Credit Union may provide the notice 30 days after the change is implemented.
12. **DEPOSIT RECONCILIATION.** Credit discrepancies that are not appropriately reconciled within prescribed timeframes governed under Reg CC, may leave members without timely access to their funds and in violation of the regulation. The Credit Union will have procedures in place to assist employees in processing transactions, reporting discrepancies, taking

appropriate steps to determine the cause of the discrepancy and appropriately reconcile any discrepancy identified within appropriate timeframes. The Credit Union will also provide appropriate training and oversight to ensure compliance with applicable policies and procedures.

13. **CIVIL LIABILITY.** Violation of Reg CC may result in liability by the Credit Union for actual damages and additional amounts not less than \$100 nor greater than \$1,000 for individuals and a maximum of \$500,000 or one percent of net worth for class actions.
14. **TWO-YEAR RECORD RETENTION.** A Credit Union must retain records showing compliance with Reg CC for at least two years (See Section 10000, Table 11).
15. **PAYING BANK'S RESPONSIBILITY FOR THE RETURN OF CHECKS.** A "paying credit union" that decides not to pay a check must return the check in an "expeditious manner," meaning returned to the depository institution by 4:00 p.m. (local time of the depository institution) on the 2nd business day after the banking day on which the check was presented to the paying credit union.
 - A. **Forward Collection Test.** Because the above test is sometimes difficult to meet, under the forward collection test, a paying credit union (or returning credit union) returns a check expeditiously if it returns a check by means as swift as the means a similarly situated institution would use for the forward collection of a check.
 - B. **Unidentifiable Depository Institution.** When a paying credit union cannot identify the depository institution may send the check to any financial institution that handled the check for forward collection, and must also advise the financial institution to which the check is sent that the paying credit union is unable to identify the depository institution.
 - C. **Identification of Returned Checks.** A returned check must be clearly marked on its face that it is being returned, along with the reason for the return. If a check is unavailable for return, either a copy of the front and back of the check, or a written notice of nonpayment containing the following information must be provided instead:
 - i. The name and routing number of the paying institution;
 - ii. The name of the payee(s);
 - iii. The amount;
 - iv. The date of the endorsement of the depository institution;
 - v. The account number of the member(s) or customer(s) of the depository institution;
 - vi. The branch name or number of the depository institution from its endorsement;
 - vii. The trace number associated with the endorsement of the depository institution; and
 - viii. The reason for nonpayment.
16. **RETURNING BANK'S RESPONSIBILITY FOR RETURN OF CHECKS.** The responsibility of the returning institution for the return of checks is the same as it is for paying credit institutions

above.

17. DEPOSITARY BANK'S RESPONSIBILITY FOR RETURNED CHECKS.

- A. **Acceptance of Returned Checks.** A depository institution should accept returned checks and written notices of nonpayment:
- i. At a location requested by the depository institution for presentment of checks for forward collection; and
 - ii. At a branch, head office, or other location consistent with the name and address of the institution in its endorsement on the check.
 - iii. If no address appears in the endorsement, at a branch or main office associated with the routing number of the institution on its check endorsement.
 - iv. At any branch or main office, if no routing number or address appears in the endorsement.
- B. **Payment.** A depository credit union must pay the returning institution or paying institution returning the check to it for the amount of the check prior to the close of business on the banking day the check is received. Payment may be made by:
- i. Debit to an account of the depository institution on the books of the returning or paying institution;
 - ii. Cash;
 - iii. Wire transfer; or
 - iv. Any other form of payment acceptable to the returning or paying institution.
- C. **Misrouted Returned Checks and Written Notices of Nonpayment.** If the Credit Union receives a returned check or written notice of nonpayment on the basis that it is the depository institution, and the Credit Union determines that it is not the depository institution, it must promptly return the check or notice to the actual depository institution or to a returning bank that agrees to handle the returned check.
- D. **Charges.** A depository institution may not impose a fee for accepting and paying checks being returned to it.

18. NOTICE OF NONPAYMENT.

- A. If a paying credit union decides not to pay a check equal to or greater than \$2,500, it must provide a notice of nonpayment to the depository bank prior to 4:00 p.m. on the 2nd business day following the business day the check was received . Notice may be provided by returning the check, by a written notice, by telephone, Fedwire, or telex.
- B. **Content of Notice.** The notice must include the following:
- i. The name and routing number of the paying institution;

- ii. The name of the payee(s);
 - iii. The amount;
 - iv. The date of the endorsement of the depository institution;
 - v. The account number of the member(s) or customer(s) of the depository institution;
 - vi. Branch name or number of the depository institution from its endorsement;
 - vii. The trace number associated with the endorsement of the depository institution;
and
 - viii. The reason for nonpayment.
- C. **Acceptance of Notice.** The depository institution must accept notices during business days either at the telephone number indicated in the indorsement at its general purpose telephone number or at any other number provided for receipt of notice.
- D. **Notification to the Member.** When the depository credit union receives a returned check or notice of nonpayment, it must send its member a notice by midnight of the business day following the day the check or notice was received.

19. **WARRANTIES.**

- A. Each paying or returning institution that transfers a returned check and receives a settlement or other consideration for it, warrants to the transferee returning institution, to any subsequent returning institution, to the depository institution, and to the owner of the check the following:
- i. The paying institution returned the check within its deadline under the UCC, Regulation J (12 CFR 210);
 - ii. It is authorized to return the check or to send notice;
 - iii. The check has not been materially altered; and
 - iv. In the case of a notice in lieu of return, the original check has not and will not be returned.
- B. The above warranties do not apply to checks drawn on the U.S. Treasury, U.S. Postal Service money orders, or checks drawn on a state or local governments that are not payable through or at a bank.
- C. Each institution that presents checks for payment and in return receives a settlement, warrants to the paying institution that the total amount of the checks presented is equal to the total amount of the settlement demanded.
- D. Each institution that transfers checks to a collecting, returning or depository institution and in return receives a settlement, warrants that the accompanying information accurately indicates the total amount of the checks or returned checks transferred.

- E. Each institution that presents or transfers a check warrants that the information encoded after issue in magnetic ink on the check or returned check is correct.
- F. Damages for breach of these warranties must not exceed the consideration received by the institution plus interest and expenses related to the check.
- G. Transfer and Presentment Warranties for Remotely-Created Checks.
 - i. A financial institution that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee institution, any collecting institution, and the paying institution that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and authorized payment to the payee stated on the check.
 - ii. If a paying institution files a claim for breach of warranty with respect to a remotely created check, the warranting institution may defend by proving that the paying institution's customer is prevented under UCC 4-406 from claiming that issuance of the check was unauthorized. For example, this may be the case where the customer failed to discover the unauthorized remotely created check in a timely manner.

20. ENDORSEMENTS.

- A. **Endorsement Standards.** Financial institutions are required to use a standard form of endorsement when endorsing checks during the forward-collection and return process. The standard provides for endorsements by all collecting and returning institutions, with unique requirements for depository institutions. These standards are designed to facilitate faster handling of returned checks and the identification of the depository institution. The standards include requirements for the location, content, and ink color of the endorsement. The standards would apply to any credit union that:
 - i. Accepts items for deposit or cash;
 - ii. Is involved in the forward collection process; or
 - iii. Accepts deposits of return items for subsequent presentment to another returning institution or depository institution.
- B. **Depository Credit Union Endorsement.**
 - i. **Location.** The endorsement must be located in the space on the back of the check that is three inches from the leading edge and one and one-half inches from the trailing edge of the check so that the routing number is wholly contained in the area.
 - ii. **Content.** The endorsement must contain the following information:
 1. The institutions nine-digit routing number (set off by arrows at each end of the number toward the number);
 2. The institution name and location;
 3. The endorsement date;

4. The endorsement may also contain the following information:

- a. A branch identification;
 - b. The institution's trace/sequence number;
 - c. The institution's telephone number for receipt of notification of large-dollar returned checks; and
 - d. Other optional information provided that such information does not interfere with the readability of the endorsement.
- iii. **Color.** The endorsement of the depository institution may be either dark purple or black ink. Purple ink should be used when possible to facilitate better identification, but black ink is permitted to accommodate institutions with equipment providing only one source of ink.

C. Collecting Institution Endorsement.

- i. **Location.** A collecting institution must place its endorsement on the back of the check within the three-inch space between the leading edge of the check and the space for the depository institution's endorsement.
- ii. **Content.** The collecting institution can only place the following information in the required area:
 1. The institution's nine-digit routing number;
 2. The endorsement date; and
 3. An optional trace sequence number on the check.
- iii. **Color.** Collecting institutions may not use purple ink in their endorsement, since that color is for the exclusive use of depository institutions. Collecting institutions can use black ink or any color other than purple.

D. Returning Institution Endorsement.

- i. **Location.** The returning institution is prohibited from placing its endorsement in the areas reserved for the depository institution and the payee. The returning institution cannot place its endorsement in the space between three inches from the leading edge of the check to the trailing edge of the check, but may place its endorsement on the back of the check in the space provided for the collecting institution or anywhere on the face of the check.
- ii. **Content.** There are no specific requirements or limitations for the content of the returning credit union's endorsement.
- iii. **Color.** The returning institution is prohibited from using purple ink, but may use black ink or any color other than purple in its endorsement.
- iv. **Carbon Bands and Other Preprinted Information.** The endorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require institutions to avoid placing their endorsements in these areas. However, paying institutions that permit the use

of carbon-band checks may have an increased risk of liability.

1. Checks may also bear preprinted information such as contracts and security agreements or lien information. All endorsers should arrange their endorsements so as to not interfere with the carbon band. Preprinted contracts and other information must be placed so as to not obscure the depository and collecting institutions' endorsement.

- v. **Liability for Return Check Delays.** The responsibility for loss resulting from a delay in the return of a check due to endorsements that are unreadable because of material on the back of the check is allocated to the institutions according to their endorsement responsibilities.
- vi. **Depository Institution.** The depository institution is responsible for loss resulting from a delay in return caused by the condition of the check after its issuance until its acceptance by the depository institution that made the endorsement illegible.
- vii. **Paying Institution.** The paying institution is responsible for loss resulting from a delay in return caused by endorsements that are not readable because of other material on the back of the check at the time it was issued.
- viii. Both depository and paying institutions may shift these risks to their members or customers by agreement.

E. **Liability for Handling Checks.**

- i. **Liability for Payment.** An institution that handles a check for forward collection or return is liable to any institution that later handles the check to the extent the subsequent institution does not receive payment for the check because of suspension of payments by another institution. If a returning credit union returned a check to an insolvent depository institution and did not receive the full amount of the check from the failed institution, the returning credit union could obtain the un-recuperated amount from any institution prior to it in the collection-and-return chain of endorsement, including the paying institution. Because each institution in the collection-and-return chain could recover from a prior institution, any loss would fall on the first collecting institution that received the check from the depository institution.
- ii. **Recovery.** When a check is returned through the same institutions used for the forward collection of the check, priority during the forward collection process controls over priority in the return process for determining prior and subsequent institutions.
- iii. **Notice.** A credit union's handling a check for collection or return arises regardless of whether the credit union's endorsement appears on the check. A credit union's seeking recovery against a prior institution must send a notice to that prior institution promptly after it learns of facts entitling it to recovery. A written notice that reasonably identifies the check and the basis for recovery is sufficient if the check is not available.

21. **PRESENTMENT AND ISSUANCE OF CHECKS.**

- A. **Payable-through and Payable-at Checks.** A check payable at or through a paying institution is considered drawn on that institution.
 - B. **Receipt at Institution Office or Processing Center.** A check is considered received by the paying institution when it is received:
 - i. At a location to which delivery is requested by the paying institution;
 - ii. At an address of the institution associated with the routing number on the check;
 - iii. At any branch or head office, if the institution is identified on the check by name without an address; or
 - iv. At a branch, head office, or other location consistent with the name and address of the institution on the check if the institution is identified on the check by name and address.
 - C. **Liability of Institution During Forward Collection.** Settlements between institutions for the forward collection of a check are final when made. However, a collecting institution handling a check for forward collection may be liable to a prior collecting institution, including the depository institution and the depository institution's customer or member.
 - D. **Issuance of Payable-Through Checks.** An institution that arranges for checks payable by it to be payable through another institution, must require that the following information is printed conspicuously on the face of each check:
 - i. The name, location and first four digits of the nine-digit routing number of the institution by which the check is payable; and
 - ii. The words "Payable Through," followed by the name of the payable-through institution.
22. **VARIATION BY AGREEMENT.** The effect of the provisions of Subpart C may be varied by agreement, except that no agreement may disclaim the responsibility of an institution for its own lack of good faith or failure to exercise ordinary care, or can limit the measure of damages for such lack of care or failure. The parties may agree upon the standards by which such responsibility is to be measured, provided the standards are not unreasonable.
23. **LIABILITY.**
- A. **Standard of Care, Liability, Measure of Damages.** All institutions must exercise ordinary care and act in good faith in complying with the regulatory requirements. An institution that fails to exercise ordinary care or act in good faith may be liable to the depository institution, the depository institution's member or customer, the owner of the check or another party to the check. The measure of damages for failure to exercise ordinary care is the amount of the loss incurred, up to the amount of the check, reduced by the amount of the loss the party would have incurred even if the institution had exercised ordinary care.
 - B. **Paying Institution's Liability.** The standard of care and measure of damages described above does not affect a paying institution's liability for wrongful dishonor under UCC 4-402, which is different from the above standard of care and measure of damages. If a paying institution fails to make an expeditious return of a check, and fails to comply with the deadline for returns under the UCC and Regulation J with a

single nonpayment of a check, it may be liable for failure to meet either standard (but not for both).

- C. **Comparative Negligence.** This may occur when the paying or returning institution delays in returning a check because neither can identify the depository institution (when, for example, it fails to properly endorse a check). In these cases, the paying or returning institution's liability to the depository institution would be reduced in proportion to the amount of negligence attributable to the each.
- D. **Responsibility for Back of the Check.** The paying institution and depository institution share the responsibility for keeping the back of the check clear for endorsements during the forward collection and return process.
 - i. The paying institution is responsible for the condition of the check when it is issued by it or its member/customer, such as the effect of the carbon band or preprinted endorsement placed on the back of the check before issuance. The paying institution may shift this responsibility by agreement.
 - ii. The depository institution is responsible for the condition of the check after it is issued and before it is accepted by the depository institution, as well as any condition of the check during the handling of the check. The depository institution would be responsible for the adverse effect of a stamp placed on the check by its members of a prior endorser. The depository institution may refuse to accept a check where the back is unreasonably obscured.

24. **RELATION TO STATE LAW.** The provisions of this regulation subpart supersede any inconsistent provisions of the UCC as adopted in any state, or of any state law, but only to the extent of the inconsistency.

25. **GENERAL PROVISIONS REGARDING SUBSTITUTE CHECKS.**

- A. **Legal Equivalence.** A substitute check for which a financial institution has provided the warranties described in Section 229.52 is the legal equivalent of an original check, if the substitute check:
 - i. Accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and
 - ii. Bears the legend: "This is a legal copy of your check. You can use it the same way you would use the original check."
- B. **Reconverting Bank Duties.** The Credit Union must ensure that a substitute check for which it is the "reconverting bank":
 - i. Bears all endorsements applied by parties that previously handled the check in any form for forward collection or return;
 - ii. Identifies the "reconverting bank" in a manner that preserves any previous reconverting bank identifications (in accordance with generally applicable industry standards for substitute checks and Regulation CC); and
 - iii. Identifies the financial institution that truncated the original check.
- C. **Applicable Law.** A substitute check that is the legal equivalent of an original check will be subject to any provision of Regulation CC, the UCC, and any other applicable

federal or state law that the original check would have been subject to, so long as such provision is not inconsistent with the Check 21 Act or Subpart D of Regulation CC.

26. **SUBSTITUTE CHECK WARRANTIES.**

- A. **Content and Provision of Substitute Check Warranties.** A financial institution that transfers, presents or returns a substitute check (or a paper or electronic representation of a substitute check) for which it receives consideration warrants the following to the parties identified:
- i. The substitute check meets the requirements for legal equivalence; and
 - ii. No depository institution, drawee, drawer, or endorser will receive presentment or return of, or be charged for, the substitute check, the original check, or a paper or electronic representation of either such that that person will be asked to make a payment based on a check that it has already paid.
- B. **Warranties Recipients.** A financial institution makes the warranties to the person to which it transfers, presents or returns the substitute check (or any representation) and to any later recipient, which could include a collecting or returning institution, the depository institution, the drawer, the payee, the depositor and any endorser. These parties receive the warranties regardless of whether they received the actual substitute check or a representation.

27. **SUBSTITUTE CHECK INDEMNITY.**

- A. **Scope if Indemnity.** An institution that transfers, presents or returns a substitute check (or any representation) for which it receives consideration must indemnify the recipient and any later recipient (including a collecting or returning institution, the depository institution, the drawer, the drawee, the payee, the depositor and any endorser) for any loss incurred by any recipient of a substitute check if the loss occurred because of the receipt of the substitute check instead of the original check.
- B. **Indemnity Amount.**
- i. If the loss resulted from a breach of a substitute check warranty, the amount of the indemnity will be the amount of any loss including interest, costs, reasonable attorney's fees and other expenses of representation proximately caused by the warranty breach.
 - ii. If the loss did not result from a breach if a substitute check warranty, the amount of the indemnity will be the amount of any loss up to the amount of the substitute check, and interest and expenses including costs and reasonable and attorney's fees and other expenses of representation related to the substitute check. The indemnity amount will be reduced in proportion to the amount of negligence or bad faith attributable to the indemnified party.
 - iii. The indemnity provisions are intended to put the parties in the position in which they would have been had they received the original check rather than the substitute check. The indemnifying depository institution may satisfy the indemnity by either paying the amount of the indemnity or by producing the

original check or a copy of the original.

- iv. If an indemnifying depository institution produces the original check, it is only liable for losses that have been incurred up to the time the original check was provided to the indemnified party. By providing the original check, a depository institution may recover any funds already paid under the indemnity that exceeds the losses incurred up to the time of production. Although the provision of the original check will limit the indemnity a depository institution must provide, it will not affect the institution's liability for breach of warranty.
- v. An indemnifying institution will be subrogated to the rights of the party that it indemnifies to the extent of the indemnity that was provided and may recover from another party based on a warranty or other claim.

28. EXPEDITED RE-CREDIT FOR CONSUMERS.

- A. **Circumstances Giving Rise to a Claim.** A consumer may make a claim for a re-credit with respect to a substitute check if the consumer asserts in good faith that:
 - i. A financial institution improperly charged the consumer's account for a substitute check (although the consumer need not be in possession of that substitute check at the time he/she submits a claim);
 - ii. The substitute check was not properly charged to the consumer's account or the consumer has a warranty claim with respect to the substitute check (the original or substitute check will be necessary); and
 - iii. The consumer has suffered a loss.
- B. **Timing of Claim.** A consumer must make a claim within 40 days from the later of the date the financial institution mailed or delivered the periodic statement that contains information about the transaction that gave rise to the claim, or the date the financial institution mailed or delivered the substitute check that gave rise to the claim. The time to submit the claim may be extended by the financial institution due to extenuating circumstances of the consumer.
 - i. If a consumer makes a claim verbally and the financial institution requires the claim to be in writing, the consumer's claim is timely if the verbal claim is received within the 40-day time limit.
- C. **Content of Claim.** The consumer's claim must include the following information:
 - i. A description of the claim, including the reason why the consumer's account was improperly charged for the substitute check or the nature of the warranty claim;
 - ii. A statement that the consumer suffered a loss and an estimate of the amount of the loss;
 - iii. The reason why the production of the original check or a sufficient copy is necessary to determine whether the charge to the consumer's account was proper or the consumer's warranty claim is valid; and

- iv. Sufficient information to allow the financial institution to identify the substitute check and investigate the claim.
- v. If any information is missing, the consumer must be notified of the specific information that is missing.

D. Submission of Claim. A financial institution that requires consumers to submit claims in writing:

- i. May permit consumers to submit written claims electronically;
- ii. Must inform consumers who submit verbal claims of the requirement that the claim be submitted in writing (at the time of the verbal claim), and may require consumers to submit the written claim within 10 business days after the banking day on which the financial institution receives the verbal claim; and
- iii. Must compute the time periods for acting on consumer claims to begin on the banking day the financial institution receives the written claim.

E. Action on Claims.

i. **Valid Claim.** If a financial institution determines that a consumer's claim is valid, it must do the following:

1. Re-credit the consumer's account for the amount of the loss, up to the amount of the substitute check, plus dividends if the account is a dividend-bearing account, no later than the end of the business day after the banking day on which the financial institution determines that the consumer's claim is valid; and
2. Send the consumer the C-22 Expedited Re-Credit Claim, Valid Claim Refund Notice.

ii. **Invalid Claim.** If a financial institution determines that a consumer's claim is not valid, it must send the consumer the C-24 Expedited Re-Credit Claim, Denial Notice.

iii. **Status of Claim Undetermined and Provisional Re-Credit.**

1. If the financial institution has not made a determination as to the validity of the consumer's claim before the end of the 10th business day after the banking day on which the claim was received, the financial institution must do the following:
 - a. By the end of that business day, re-credit the consumer's account of the amount of the loss, up to the lesser of the amount of the substitute check or \$2,500, plus dividends on that amount if the account is a dividend-bearing account; and
 - b. Send the consumer the C-23 Expedited Re-Credit Claim, Provisional Refund Notice.
2. If the consumer's claim is determined to be valid, the consumer's account will be re-credited for the amount of the remaining amount of the loss, if any, up to the amount of the substitute check, plus dividends if the account is a dividend-bearing account, no later than

the end of the 45th calendar day after the banking day on which the claim was received, and send the C-22 notice.

iv. **Reversal of Re-Credit.** A financial institution may reverse a re-credit, plus dividends, that have been paid if the financial institution does the following:

1. Determines that the consumer's claim was not valid; and
2. Provides the proper notices to the consumer.

F. **Availability of Re-Credit.** The amount of any re-credit must be made available for withdrawal from the consumer's account no later than the start of the business day after the banking day on which the re-credit was provided.

i. The availability of a re-credit may be delayed until the start of the earlier of the business day after the banking day on which the financial institution determines the claim is valid or the 45th calendar day after the banking day on which the financial institution received the verbal or written claim, if:

1. The consumer submitted the claim within 30-calendar days after opening his or her account;
2. Not counting the transaction that gave rise to the re-credit claim; (1) on 6 or more business days within the 6-month period preceding the submission of the claim, the balance in the consumer's account was negative or would have become negative if checks or other charges had been paid, or (2) on two or more business days during the same six month period, the balance in the consumer's account was negative or would have become negative in the amount of \$5,000 or more if checks or other charges had been paid; or
3. The financial institution has reasonable cause to believe that the claim is fraudulent.

ii. A financial institution that delays availability as provided in the above paragraph may not impose an overdraft fee with respect to drafts drawn by the consumer on re-credited funds until the fifth calendar day after the calendar day on which a C-22 or C-23 notice was provided to the consumer.

G. **Overdraft Fees.** A financial institution may not impose an overdraft fee with respect to drafts drawn by the consumer on such re-credited funds until the 5th calendar day after the calendar day on which the financial institution sent the required notice.

H. **Notices Relating to Expedited Re-Credit Claims.**

i. **Notices of Re-Credit.** A financial institution that re-credits a consumer account must send notice to the consumer of the re-credit no later than the business day after the banking day on which the financial institution re-credits the consumer account. This notice must include the amount of the re-credit and the date on which the re-credited funds will be available for withdrawal.

ii. **Notice of Invalid Claim.** A financial institution must send a notice (C-24 or similar notice) to the consumer no later than the business day after the banking day the institution determines that the consumer's claim is invalid because a substitute check was properly charged to the consumer's account or that the consumer's warranty claim for the substitute check is not valid. The

notice shall also include the original check or a sufficient copy and shall demonstrate that the substitute check was properly charged to the consumer's account or that the warranty claim is not valid. Additionally, the notice must include information or documents the institution relied on in making its determination or a statement that the consumer may request copies of such documents or information.

iii. **Notice of a Reversal of Re-Credit.** A financial institution must send notice (C-25 or similar notice) no later than the business day after the banking day the institution reverses an amount it previously re-credited to a consumer account. The notice shall also include the amount of the reversal, including both the amount of the re-credit and the amount of dividends paid on the re-credited amount, and the date the reversal was made.

i. **Other Claims Not Affected.** Providing a re-credit does not absolve the financial institution from liability for a claim made under any other provision of law, such as a claim for wrongful dishonor or any additional damages under Regulation CC or the UCC.

29. EXPEDITED RE-CREDIT FOR FINANCIAL INSTITUTIONS.

A. **Circumstances Giving Rise to a Claim.** A financial institution that has an indemnity claim under Section 229.53 with respect to a substitute check may make an expedited re-credit claim against an indemnifying institution if:

- i. The institution or another institution it has indemnified, has received a claim for expedited re-credit from a consumer or would have been subject to such a claim if the consumer account had been charged for the substitute check.
- ii. The institution is obligated to provide an expedited re-credit or has suffered a loss due to the substitute check.
- iii. The production of the original check or a sufficient copy is necessary to determine the validity of the charge to the consumer account or the validity of the warranty claim connected with the substitute check.

B. **Procedures for Making Claims.** A claimant financial institution must send its claim to the indemnifying institution so that it is received by the end of the 120th calendar day after the date of the transaction that gave rise to the claim.

- i. The claim must include the following information:
 1. A description of the consumer's claim or the warranty claim related to the substitute check and the reason why the substitute check may not be properly charged to the consumer account;
 2. A statement that the claimant institution is obligated to re-credit a consumer account or otherwise has suffered a loss and an estimate of the amount of the re-credit or loss, including dividends if applicable;
 3. The reason why production of the original check or a sufficient copy is necessary; and

4. Additional information to allow the indemnifying institution to identify the substitute check and investigate the claim.
 - ii. If a claimant institution submits a copy of a substitute check, the institution shall take reasonable steps to ensure that the copy cannot be mistaken for the actual substitute check.
 - iii. The indemnifying institution may require the claimant institution to submit the required information in writing and may permit the claimant institution to submit the written claim electronically. At the time a verbal claim is submitted, the indemnifying institution must inform the claimant institution of the requirement for a written claim. The 10 day time period for acting on a claim shall begin on the date the indemnifying institution receives the written claim.
- C. **Action on Claims.** Within 10 days after receiving a claim and all required information, the indemnifying institution must do the following:
- i. Re-credit the claimant institution for the amount of the claim, up to the amount of the substitute check, plus dividends (if applicable);
 - ii. Provide the claimant institution with the original check or a sufficient copy; or
 - iii. Provide information to the claimant institution regarding why the indemnifying institution is not obligated to comply with the above and provide a re-credit or provide the original check or a copy of the original check.
- D. **Re-Credit and Other Liabilities.** Providing a re-credit does not absolve the indemnifying institution from liability for claims brought under any other law or from damages under Sections 229.53 and 229.56.
- E. **Indemnifying Institution's Right to a Refund.** If a claimant institution reverses a re-credit previously made to a consumer account or receives reimbursement for a substitute check that formed the basis of its expedited re-credit claim, the claimant institution must provide a prompt refund to any indemnifying institution that advanced funds to the claimant. The amount of the refund shall be the amount of the reversal or reimbursement obtained by the claimant, up to the amount previously advanced by the indemnifying bank.

30. LIABILITY.

A. Measure of Damages.

- i. The measure of damages for breach of a warranty is an amount equal to the sum of the amount of the loss suffered as a result of the breach, up to the amount of the substitute check, plus any dividends and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.
- ii. The amount of damages received by a person is reduced by the amount received and retained as a re-credit.
- iii. If a person incurs damages that resulted in whole or in part from that person's negligence or failure to act in good faith, then the amount of any damages due that person (under comparative negligence) shall be reduced in

proportion to the amount of negligence or bad faith attributable to that person.

- B. **Timeliness of Action.** Delay is excused if caused by interruption of communication or computer facilities, suspension of payments by another financial institution, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the institution and if the institution uses such diligence as the circumstances require.
- C. **Jurisdiction.** A person may bring an action to enforce a claim in any United States district court or in any other court of competent jurisdiction. The statute of limitations for filing a lawsuit shall be one year from the date on which the person's cause of action accrued. A cause of action accrues as of the date on which the injured person first learns, or by which such person reasonably should have learned of the facts and circumstances giving rise to the cause of action.
- D. **Notice of Claims.** Unless a person gives notice of a claim to the warranting or indemnifying institution within 30 calendar days after the person has reason to know of both the claim and the identity of the warranting or indemnifying institution, the warranting or indemnifying institution is discharged from liability in an action to enforce a claim to the extent of any loss caused by the delay in giving notice of the claim. A timely re-credit claim by a consumer constitutes timely notice.

31. CONSUMER AWARENESS.

- A. **General Disclosure Requirement and Content.** Every financial institution shall provide a disclosure (such as the FRB's C-5A Substitute Check Policy Disclosure or one containing similar language) to each of its members/customers that describes the following:
 - i. That a substitute check is the legal equivalent of an original check; and
 - ii. The consumer re-credit rights that apply when a consumer in good faith believes that a substitute check was not properly charged to his or her account.

32. DISTRIBUTION OF DISCLOSURE.

- A. **Distribution of Disclosure.**
 - i. The Credit Union will provide the above disclosure whenever new accounts are opened.
 - ii. The Credit Union will provide the above disclosure to members who receive paid original or substitute checks with periodic statements.
 - iii. Additionally, the Credit Union will provide the disclosure to members who request an original check or a copy of a check and instead receive a substitute check. The disclosure must be provided no later than the time the consumer receives the substitute check.
 - iv. The disclosure only needs to be provided to one account holder in a joint account.

33. **MODE OF DELIVERY OF INFORMATION.** The Credit Union may deliver any required notice, disclosure or other information including original checks, copies of checks and substitute checks by United States mail or other means (including electronically) by which the consumer has agreed to receive account information.
34. **RELATION TO OTHER LAW.** The Check 21 Act and Subpart D of Regulation CC supersede any provision of federal or state law, including the UCC that is inconsistent, but only to the extent of the inconsistency.
35. **VARIATION BY AGREEMENT.** No provision of this regulation may be varied by agreement of the parties, except that Section 229.55 may be varied by agreement of the Credit Union.