



November 2018 Proposal to Revise Regulation CC Subpart B

2018 Proposal Implements Changes Resulting from Statutory and Industry Changes, including:

- Fed & CFPB joint rulemaking authority for Subpart B
- No nonlocal checks
- Inflation updates to dollar amounts

Extends Expedited Funds Availability Act (EFAA) to certain American territories

Re-opens 2011 Subpart B Proposal for Comments

Background. In March 2011, the Federal Reserve Board (FRB) requested comment on proposed amendments to Regulation CC Subparts A, B, C and D. The Dodd-Frank Act became effective in 2011, providing the FRB and Consumer Financial Protection Bureau (CFPB) with joint rule-making authority for Reg CC Subpart B. In July 2018, final amendments to Reg CC Subparts A, C and D became effective. The FRB and CFPB jointly published proposed rulemaking regarding Reg CC Subpart B in November 2018, with comment letters due by February 8, 2019. The Clearing House (TCH), together with the ECCHO Membership, provided a comment letter.

This document provides an overview of the proposed changes to Subpart B, along with the TCH comments.

Reasons for Subpart B Update. Subpart B requires updates due to statutory changes granting the FRB and CFPB sharing rulemaking authority. There have also been changes to the check processing landscape, such as the elimination of nonlocal checks—all checks have been local for many years. There are also statutorily mandated changes that need to be implemented (e.g., inflation updates to dollar amounts and extending EFAA coverage to certain American territories). Additionally, funds availability provisions represent a balancing act that must be reviewed periodically to ensure: 1) the interests of customers to receive funds promptly and 2) the interests of depository institutions to minimize risks from making funds available before learning of the return of a check.

Parts of the Proposal. This proposal contained a new set of proposed Reg CC provisions, and also re-opened the FRB 2011 proposal related to Subpart B for additional review and comment.

New 2018 Proposals

Inflation Update. The Dodd-Frank Act provides that the required minimum availability amounts under the EFAA shall be adjusted every five years after December 31, 2011 by the annual percentage increase in the Consumer Price Index (published by the Bureau of Labor Statistics) and rounded to nearest multiple of \$25. The Proposal provides that the dollar amount inflation adjustments will be effective on April 1st, starting in 2020. See *Proposal for specifics on amounts and calculations.*

TCH Comments: Support Agencies' proposal to update the dollar amounts throughout Subpart B. Support proposal to not update if there is no aggregate increase, or increase does not round to multiple of \$25. Agencies should publish adjusted dollar amounts within Reg CC at least one year prior to the date the adjustments will take effect. We encourage the Agencies to make the effective date for any other Subpart B amendments the same date as the effective date of the dollar amount inflation adjustments.

Extension of EFAA. The proposal implements the Economic Growth, Regulatory Relief, and Consumer Protection Act by extending Reg CC funds availability, payment of interest, and disclosure requirements to financial institutions in American Samoa, Northern Mariana Islands and Guam.

TCH Comment: None.

All Checks are Local in Bank's Availability Policy. Eliminate the distinction between local and nonlocal checks in bank's availability policy.

TCH Comment: Support the elimination of this requirement because there are no nonlocal checks.

Delete Redundant Section. In the absence of nonlocal checks, the checks described 229.10(c)(2) are subject to the same rule as the general rule set forth in proposed 229.12. Section 229.10(c)(2) is therefore no longer necessary

TCH Comment: Support the proposal to delete 229.10(c)(2) because the provision will be redundant in light of the addition of the new general rule in proposed 229.12.



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2018 Proposal Re-opened the FRB's 2011 Proposal.

FRB & CFPB requested review to determine whether comments require changes, additions or replacement.

Reduce Safe Harbor Hold Times Proposal. Safe harbor for the reasonable hold extension for on-us check deposit remains one business day. Safe harbor for the reasonable hold extension for *other* checks is reduced to two business days. **TCH Comment:** Oppose the proposal to reduce the safe harbor hold extension for non-on-us checks to two business days. Even with electronic collection, it can take longer than 4 business days to receive a return (which includes time to present the check). Recommend a safe harbor of at least a total of five business days (2 days plus 3 additional days).

Reduce Holds for Non-Proprietary ATMs Proposal. As indicated in the EFAA's legislative history, Congress adopted the five-day maximum hold on nonproprietary ATM deposits to match the five-day maximum hold on a nonlocal check deposit, because the depository bank did not know the composition of a nonproprietary ATM deposit (that is, whether the deposit consisted of cash, local checks, nonlocal checks, etc.). In the absence of nonlocal checks, however, there is no longer any class of check that is subject to a maximum five-day hold. Therefore, reduces maximum hold for nonproprietary ATM deposits from 5 business days to 4 business days. **TCH Comment:** Continue to support the distinction between proprietary and nonproprietary ATMs in Reg CC.

Provide Electronic Notices & Timing of Notices Proposal. If the customer has agreed to accept notices electronically, the depository bank shall send the notice such that the bank may reasonably expect the customer to receive it no later than the first business day following the day of deposit, or facts become known to the depository bank, whichever is later. **TCH Comments:** Support the ability but oppose a requirement for banks to provide electronic notices to customers. Banks should have flexibility to send paper or electronic notices. There should be an agreement in place with the customer for electronic notices for each specific type of notice (i.e., an agreement to send credit card statements does not constitute an agreement to send funds availability notices). Timeliness should not be based on when electronic notices are received, as banks can't control when customers will pick up electronic notices/visit email or their online banking site.

Add Total Amount to Disclosures Proposals. The notice of exception hold, and the case-by-case notice of delayed availability shall contain the total amount of the deposit. **TCH Comments:** Oppose the requirement that the exception hold notice, or the case-by-case hold notice, contain the total amount of the deposit because this calculation can be technologically complicated when depositors split deposits across accounts, take cash, apply part of deposit to loans, etc. Regarding the case-by-case hold option, the final rule should continue to support banks' ability to place holds on a case-by-case basis as some scenarios require an extended hold, such as in suspected check kiting.

Add Day Funds Available in Exception Notice Proposal. The notice should specify the "day the funds will be made available for withdrawal" rather than "the time period within which" the funds will be available. **TCH Comment:** Do not oppose replacing this language.

Inform Customers about Potential Returns Proposal. Revise language to Model Policy Disclosures, Clauses and Notices regarding a bank's right to charge back a customer's account if a deposited check is returned unpaid. **TCH Comments:** Support the proposed inclusion of a statement within disclosures that advises the customer that if available funds are withdrawn from a check deposit and the check is later returned unpaid, the bank may charge the check back to the customer's account. Similarly, believe that information should be conveyed to the customer at the time the customer receives notice of a hold. Separately, recommend that the proposal be clarified that banks can provide these model disclosures and notices on paper sizes other than 8.5x11 inches.

Additional TCH Comment: Recommend that any retired or not otherwise used routing numbers be deleted from Appendix A because fraudsters use these numbers.