



**National Association
of Federal Credit Unions**
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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

May 2, 2014

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

RE: Availability of Funds and Collection of Checks

Dear Mr. Frierson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I write to you regarding the Federal Reserve Banks' (Board) revised proposed rule to amend Subparts C and D of Regulation CC related to the availability of funds and the collection of checks.

Generally, the proposed rule seeks to encourage depositary and paying credit unions or banks (together, institutions) to send and receive returned checks electronically through one of two proposed frameworks. The first proposed framework (Alternative 1) would require a paying institution returning a check to provide the depositary institution with a notice of nonpayment of the check only if the paying institution sends the returned check in paper form. This framework would apply to all returned checks, regardless of the amount, and it would eliminate the current expeditious-return requirement imposed on paying institutions and returning institutions. The second proposed framework (Alternative 2) would retain the current expeditious-return requirement (a two-day test) for checks returned to a depositary institution electronically via another institution. This proposed framework would eliminate the notice-of-nonpayment requirement, but would also retain, without change, the current same-day settlement rule for checks in paper form.

NAFCU believes that the Board should adopt Alternative 2 and apply the current expeditious return requirement to electronically returned checks. Doing so would ensure that depositing credit unions could expect timely and efficient check processing and grant members full access to deposited funds as quickly as possible. Very few credit unions have agreements with other non-Federal Reserve institutions regarding the sending of electronically returned checks and Alternative 2 would promote clear expectations and standards in the absence of private ordering. In addition, the Board should apply the same-day settlement rule to electronic checks to enhance the benefits to members from use of electronic checks and to heighten regulatory consistency with paper checks.

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In response to the proposal, NAFCU believes that the notice-of-nonpayment requirement should be applied to paper return checks in any amount. This would allow for greater assurance for the collection or recovery of the item by the depository bank. Additionally, NAFCU believes that check warranties should be applied to electronically created items. For purposes of this rule, electronically created items should be treated similar to checks, so that if an institution accepts that check in good faith, it becomes a holder in due course. Further, NAFCU believes that the definition of "remotely created checks" should remain as any check not created by the paying institution. Finally, NAFCU supports the continuation of a two business day timeframe within which a paper returned check must be received by the depository institution. NAFCU believes that there is a potential for a longer timeframe to unnecessarily delay the final settlement of the item and may encourage delayed return presentments.

NAFCU notes that depository credit unions that accept original checks for deposit would face significant difficulty in identifying the depository institutions against which they could potentially bring a claim for indemnity, particularly as the number of financial institutions involved increases. In addition, the Board should not eliminate the regulatory restrictions on returning institution fees for returning checks. As member-owned, not-for-profit cooperative entities, credit union members would bear the full cost of any such fees. Instead the Board should look to other means to encourage the efficient adoption of electronic checking in order to continue to reduce any costs incurred by returning institutions.

NAFCU has additional concerns about proposed changes to Subpart C of Regulation CC relating to remote deposit capture. While we appreciate the Board's interest in addressing a potential loophole in a situation where a financial institution accepts an original paper check that has already been deposited multiple times through remote deposit capture, many credit unions already have systems and processes in place to deal with this issue. For example, credit unions may require their members to endorse the check with sufficient information such that a second depository institution would know not to accept the original paper check for deposit. Thus, indemnity provisions are not necessary or the Board should create a safe harbor for institutions with sufficient provisions in place to notify a depository accepting the paper check that the check has already been presented for payment.

Finally, the Board should extend the proposed effective date from six months after publication of the final rule to at least twelve months. Doing so would afford credit unions additional and necessary time to make changes to their systems, vendor agreements, and disclosure operations. NAFCU appreciates the opportunity to provide its comments. Should you have any questions or concerns, please feel free to contact me at ameyster@nafcu.org or (703) 842-2272.

Sincerely,

A handwritten signature in black ink, appearing to read 'Angela Meyster', with a long horizontal flourish extending to the right.

Angela Meyster
Regulatory Affairs Counsel