

Regulation CC Changes

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The Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection amended Regulation CC, which implements the Expedited Funds Availability Act (EFA), to implement a statutory requirement in the EFA to adjust dollar amounts under the EFA for inflation. The adjustments are based on the Consumer Price Index for Urban Wage Earners and Clerical Workers.

The effective date for the current adjustments to Regulation CC is July 1, 2020. Additional adjustments will be made on July 1 every fifth year thereafter. The changes primarily affect Subpart B regarding availability schedules under which financial institutions must make funds available for withdrawals and exceptions to those schedules. Subpart B contains specific dollar amounts such as:

- Minimum amount of deposited funds that must be made available the next day for certain check deposits
- The amount that must be made available when using the EFA Act's permissive adjustment to the funds-availability rules for withdrawals by cash or other means
- The amount of funds deposited by certain checks in a new account that are subject to next day availability
- The threshold for using an exception to the funds-availability schedules if the aggregate amount of checks on any one banking day exceed the threshold amount
- The threshold for determining whether an account has been repeatedly overdrawn
- The civil liability amounts for failing to comply with the EFA Act's requirements

The following is a list of changes that will be made to various dollar amounts in Regulation CC that will affect a financial institution's funds availability disclosure:

- In §229.10, "\$100" will be removed and "\$225" will be added in its place in paragraph (c)(1)(vii)(A).
- In §229.12, "\$100" will be removed and "\$225" will be added in its place.
- In §229.13 (a), (b) and (c), "\$5,000" will be removed and "\$5,525" will be added in its place.
- In §229.21, "\$100" will be removed and "\$225" will be added in its place in paragraph (a)(2)(i)

Funds availability disclosures should be updated to reflect the changes described below:

- For certain check deposits, a depository bank shall make funds deposited in an account by check available for withdrawal not later than the business day after the banking day on which the funds are deposited the lesser of \$225 or the aggregate amount deposited on any one banking day to all accounts of the customer by check or checks not subject to next day availability.
- A depository bank may extend by one business day the time the funds deposited in an account are available for withdrawal by cash or similar means including, but not limited to, an electronic payment or issuance of a cashier's or teller check. However, the depository bank must make \$400 of these funds available for withdrawal by cash in addition to the \$225 noted under §229.10(c)(1)(vii)
- For new accounts, the depository institution must make available, not later than the business day after the banking day on which the funds were deposited, the first \$5,525 of the funds deposited on any one banking day

- For large deposits, the depository institution must make available, not later than the business day after the banking day on which the funds were deposited, the first \$5,525 of the funds deposited on any one banking day.

Additional changes affect a financial institution's funds availability policies and procedures:

- A bank may consider a customer's account repeatedly overdrawn if, on two or more banking days within the preceding six months, the account balance is negative, or would have become negative, in the amount of \$5,525 or more
- For a bank that fails to comply with a requirement under subpart B, in the case of an individual action, the liability shall not be less than \$225 or greater than \$1,100. In the case of a class action, the liability shall not be more than the less of \$552,200.

Institutions are required to send a written notice to consumer account holders at least 30 days before implementing a change to the institution's funds availability policy however, any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

As these changes expedite the availability of funds (more money is available to bank customers), the notices can be provided not later than 30 days after the effective date.

In addition to updating funds availability disclosures, financial institutions must ensure that all notices and posters at locations where deposits are accepted reflect these changes as well.

Other considerations include system changes that may be necessary, updating policies and procedures, and providing training to affected employees on the new policies, procedures, and disclosure timeframes prior to the effective date of the changes.

As always, we here at UBB Compliance Services are here to help. One of our recommendations is that financial institutions should ensure that all changes are documented and communicated prior to the effective date and that any required system changes have been implemented and tested to ensure a smooth transition on the effective date of the change.