

FEDERAL RESERVE BOARD AND CFPB ISSUE JOINT FINAL AMENDMENTS TO REGULATION CC REGARDING FUNDS AVAILABILITY

The Federal Reserve Board and Consumer Financial Protection Bureau recently jointly issued final amendments to the Expedited Funds Availability Act (Regulation CC) that implements a statutory requirement to adjust for inflation every five years the amount of funds credit unions must make available to their members. The final rule also implements certain measures of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

Effective Dates

The adjustments for inflation become effective July 1, 2020; the EGRRCPA amendments become effective September 3, 2019.

Subpart B of Regulation CC implements the requirements set forth in the EFA Act regarding the availability schedules within which banks must make funds available for withdrawal, exceptions to those schedules, disclosures of funds availability policies, and payment of interest.

Subpart B contains specified dollar amounts, including:

1. The minimum dollar amount of deposited funds that banks must make available for withdrawal by opening of business on the next day for certain check deposits (“minimum amount”);
2. The amount a bank must make available when using the EFA Act’s permissive adjustment to the funds-availability rules for withdrawals by cash or other means (“cash withdrawal amount”);
3. The amount of funds deposited by certain checks in a new account that are subject to next-day availability (“new-account amount”);
4. 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 (“large-amount threshold”);
5. The threshold for determining whether an account has been repeatedly overdrawn (“repeatedly overdrawn threshold”); and
6. The civil liability amounts for failing to comply with the EFA Act’s requirements.

Inflation Adjustments

Dollar amounts will be adjusted every five years by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as published by the Bureau of Labor Statistics, rounded to the nearest multiple of \$25.

The first set of inflation adjustments will be effective July 1, 2020 and based on inflation, as measured by the CPI-W, from July 2011 to July 2018.

The second set of inflation adjustments will be effective July 1, 2025, and will be based on underlying inflation from July 2018 through 2023.

The third set of inflation adjustments will be effective July 1, 2030, and will be based on inflation from July 2023 through 2028.

The minimum dollar amount credit unions must make available for withdrawal by opening of business the next day will change from \$200 to \$225.

The minimum amount of deposited funds that credit unions must make available when using the EFA Act's permissive adjustment to the funds-availability rules for withdrawals by cash will change from \$400 to \$450.

The amount of funds deposited by certain checks in a new account that are subject to next day availability will change from \$5,000 to \$5,525.

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 of \$5,000 will change to \$5,525.

The threshold for determining whether an account has been repeatedly overdrawn will change from \$5,000 to \$5525.

Notice of Change-in-Terms

Section 229.18(e) requires a change-in-terms notice 30 days prior to implementing a change to the funds availability policy. The final rule did not establish an exception to send a change-in-terms notice but suggested several ways that may lower costs under the rule, including providing the notice electronically or sending it with the monthly statement.

Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA)

The final rule also adopts the proposed changes to Regulation CC to implement the EGRRCPA amendments to the EFA Act that extended its application to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. It also updates the definitions of "state" and "United States" in Regulation CC to include these territories as well as other conforming amendments.