

**ATTUS Technologies**  
Reg CC Webinar – January 20, 2010  
Q&A

**QUESTION 1:** *We are required to notify all consumer customers no later than 30 days after the change is made. Can this be a message on a customer's bank statements? What should the disclosure say?*

**Response:** According to the Commentary to Reg E (Appendix E to Part 229), the notice informing consumer customers of a change in the bank's funds availability policy may be given in any form as long as it is clear and conspicuous. If the bank chooses to satisfy this requirement by sending the amended availability disclosure in its entirety, the bank must direct the customer to the changed terms by use of a letter or insert, or by highlighting in the disclosure, the changed terms. Therefore, the method used to convey the change in terms must pass the "clear and conspicuous" test.

**QUESTION 2:** *In relation to the disclosed availability, an institution states they have next day availability but they have a memo credit/debit system that increases and decreases customer available balances based on teller transactions and electronic debit/credit activity - should the disclosure state next day or same day availability?*

**Response:** In a memo posting environment the total balance available can be affected by other items that may be pending. However, this is not relevant to your funds availability disclosure. Your disclosure must describe when your bank makes **deposited** funds available in **most cases**. If your bank memo posts all deposits and in most cases makes the funds available immediately (same day), the verbiage in Model C-1, which is designed for "next-day-availability" may be altered by substituting the word "immediately" in place of "on the first business day after the day we receive your deposit." Keep in mind that you would still want to reserve the right to delay availability on a case-by-case basis and to invoke an exception hold when necessary. This too would need to be included in your disclosure.

**QUESTION 3:** *I'm confused about the \$400 availability requirement as shown in several of the examples. Cash and Next Day Availability items are not included in the \$400? That's new for me - Thanks.*

**ANSWER:** In accordance with Section 229.12 (d), if this extension is invoked, you must make \$400 of the deposit available for withdrawals by cash or similar means no later than 5:00 p.m. on the day the funds would have been available under the normal schedule. As defined by this section, "similar means" include electronic payment, issuance of a cashier's or teller's check, or certification of a check, or other irrevocable commitment to pay. It does not include the granting of credit to a bank, a Federal Reserve Bank, or a Federal Home Loan Bank that presents a check to the depository bank for payment (i.e. items presented for payment that may be dishonored by the bank). This extension only applies to local check deposits, certain checks that are generally next day items but do not meet the conditional requirements, and deposits at non-proprietary ATMs. This is in addition to the first \$100 subject to next-day availability.

Here is another example - if a customer deposits a \$1,500 local check, the first \$100 must be available the next business day; on the second business day \$400 must be available by 5:00 p.m. while \$1,400 must be available for the payment of any item that may be dishonored or returned by the bank. With respect to withdrawals that are irrevocable, such as cash, you may delay availability of \$1,000 until the start of the third business day following the day of the deposit.

This rule is intended to provide one additional day for the bank to learn of the non-payment of a check deposit. So, using the example above, the bank has until midnight of the third business day to return items that are presented for payment on the 2<sup>nd</sup> business day. Therefore, if the \$1,500 check deposit is returned by the paying bank but the depository bank does not learn of the return until the 3<sup>rd</sup> business day, your maximum exposure to loss is \$500, which would be items paid that may not be returned.

Clear as mud now? To apply this extension the bank's core system must be able to accommodate the rules. I have rarely seen it invoked.



**QUESTION 4:** *What about all the fraudulent cashier's checks?*

**ANSWER:** First of all, if you know the check is fraudulent the bank is under no obligation to accept the deposit. In fact, the bank is under no obligation to accept any deposit. In addition, if the depositor is involved in the commission of the fraud, you may be required to file a Suspicious Activity Report.

If you do not know of any facts that would cause you to believe the item will not be paid, you also have the option of sending the item for collection or if feasible ask the depositor to cash the check at the paying bank.

Otherwise, Cashier's checks are generally next-day items but are subject to Exception holds as applicable. With respect to the "Doubt of Collectability" exception, Reg CC prohibits the bank from invoking this exception based on the class of checks or persons.

**QUESTION 5:** *Section 229.10 Next Day Items - \$100 rule. Doesn't that apply only to Case-by-Case holds? If we have an Exception or new account hold (except Large Deposit), can't we hold all?*

**ANSWER:** The first \$100 rule only applies to Case-by-Case holds and when a Large Deposit exception hold is invoked. However, with respect to the Large Deposit hold, the first \$5,000 of the deposit is subject to the "normal" availability schedule. Therefore, if the first \$5,000 you make available includes a check that is not subject to next-day availability (such as a local check), the rule would apply.

**QUESTION 6:** *On exception holds and "new account"--what if the client opened a certificate of deposit more than 30 days ago and then opens a checking account?*

**ANSWER:** An "account" is defined in Reg CC Part 229.2 as any account from which the holder can make unlimited transfers or withdrawals. Therefore, the term "account" used within Subpart B, would not include any time accounts, including a certificate of deposit.

**QUESTION 7:** *When sending the change-in-terms notice do you need to send the full disclosure, or just a short statement of what changed?*

**ANSWER:** See Question 1

**QUESTION 8:** *I did not see that you stated what time the Traveler's checks must be available. I believe they are under the same rules as the Cashier's checks in both established customers and new customers- is that right?*

**ANSWER:** The availability of Traveler's checks is only addressed in 229.13 (a), which establishes the rules for deposits to new accounts.

**QUESTION 9:** *You stated the case-by-case notice must provide number or code of maximum 4 digits. I do not see this restriction in the Reg - can you point the section out?*

**ANSWER:** Notice of Exception 229.13(g)(i)(A) states: A number or code, which need not exceed four digits, that identifies the customer's account.

**QUESTION 10:** *Notice of Exception 229.13(g)(i)(A) states: A number or code, which need not exceed four digits, that identifies the customer's account. That does not say "must not". Is the use of the full account number on the notice okay?*

**ANSWER:** You are correct in that this provision of Reg CC does not say "must not" but rather "need not". However, based on the truncation requirements set forth under The FACT Act with respect to receipts at electronic terminals, and the requirement to develop a Red Flag program that helps prevent identity theft, truncating the account number on a printed notice is a best practice.

**QUESTION 11:** *Can a hold be placed on a Cashier Check?*

**ANSWER:** See Question 4



**QUESTION 12:** Under 'Special Rules for New Accounts' in our Funds Availability Disclosure it states, "The checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (OTHER THAN A U.S. TREASURY CHECK) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit." Is the part 'OTHER THAN A U.S. TREASURY CHECK' correct?

**ANSWER:** Check deposits under Sec. 229.10(c)(1)(v) include cashier's, certified, or teller's check deposited--

- (A) In an account held by a payee of the check;
- (B) In person to an employee of the depository bank; and,
- (C) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depository bank under paragraph (c)(3) of this section.

If the checks described are not deposited in person, Reg CC permits availability to be delayed until the 2<sup>nd</sup> business day.

However, with respect to deposits to New Accounts, Traveler's checks not deposited in person should be treated as a local or non-local item. Therefore, until 2/27/2010, if these checks are included in the first \$5,000 and they are not deposited in person, availability could be delayed until the 2<sup>nd</sup> business day if local or until the 5<sup>th</sup> business day if non-local. After the elimination of the non-local category, all Traveler's checks will be local items so this portion of the disclosure could be changed.

**QUESTION 13:** We have 30 days AFTER 2/27/2010 to send a change-in-terms notice...correct?

**ANSWER:** Correct: With the elimination of the non-local check category, check deposits that could previously be delayed 5 business days under the normal availability schedule and 11 business days when certain exceptions were invoked will be available sooner, Reg CC requires the change-in-terms notice be sent to consumer customers no later than 30 days after the change is implemented. This is because the change is favorable to the consumer. If the change adversely affects consumer customers, notice must be sent 30 days *prior* to its implementation.

**QUESTION 13:** If your bank has an Authorized Overdraft Program and this customer has AOD can you still evoke the repeated overdraft exception if you have authorized an overdraft on the account?

**ANSWER:** If you are speaking of an overdraft program or "bounce protection" and not a line of credit, to my knowledge guidance addressing this practice has not been issued. If you are referring to transfers from a traditional line of credit, you may only consider items that exceed or would have exceeded the credit line if the check and/or other charges had been paid.

Regarding overdrafts under an Authorized OD Program or Bounce Protection, the practice is left to the discretion of each bank. And, as to whether your core system would allow you to define what is or is not counted.

**QUESTION 14:** Thought all checks were going to be local and no longer non local?

**ANSWER:** On February 26<sup>th</sup> 2010, the Atlanta check processing region will be merged into the Cleveland center, which will be the only check processing center. As a result, on February 27<sup>th</sup>, all banks will be in the same check processing region therefore, the non-local check category will be eliminated.

**\*\*We will be offering this webinar again on February 25th at 3 pm ET**

