

Rule 9 Reference Guide¹

Is your financial institution presented with checks that turn out to be forged or counterfeit? Are you typically made aware of these items after the return window has expired? As the paying bank, do you write off these items in most instances?

As a paying bank, you might be able to make a claim for these items to the depository bank (also known as the bank of first deposit, or BOFD) through the use of section XIX(O) of the ECCHO Rules—commonly known as “Rule 9.” Under Rule 9, a depository bank that is an ECCHO member (and that has not opted out of Rule 9) gives two warranties to the paying bank (so long as that bank is also an ECCHO member that has not opted out of Rule 9) for electronic checks it sends for collection:

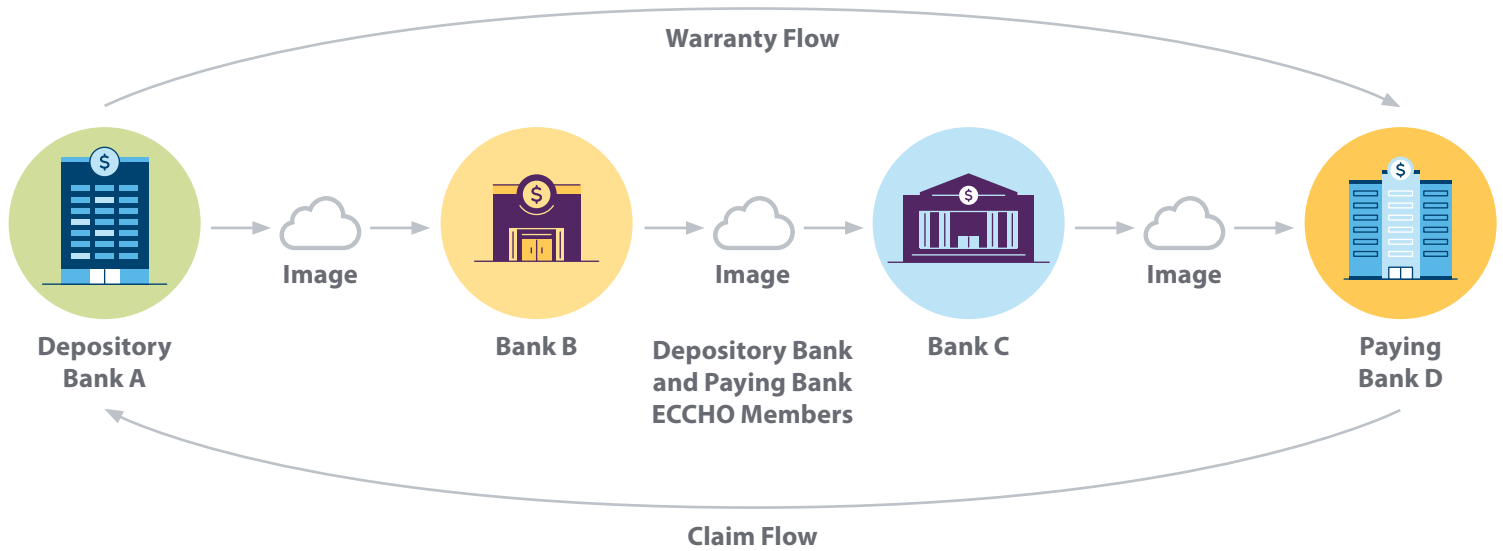
1. The signature of the purported drawer of the paper check was not forged or otherwise unauthorized; and
2. The paper check was not counterfeit.

The ECCHO rules were revised effective March 1, 2024, to allow Rule 9 claims in more instances.

- Effective March 1, 2024, Rule 9 warranties will no longer chain along with the imaged check through each bank in the forward check collection process (as was the case under the prior version of Rule 9).
- Under the revised rules, the Rule 9 warranties are made directly by an ECCHO member that is a depository bank to another ECCHO member that is a paying bank if both members have not opted out of Rule 9.
- The agreement to use Rule 9 is part of the ECCHO rules themselves; it is not necessary for the paying bank and depository bank to have a bilateral or multilateral exchange agreement in place between them to utilize Rule 9.
- All that your institution needs to do to use Rule 9 is to become a member of ECCHO.
- To become an ECCHO member, contact Scott Miller (scott.miller@theclearinghouse.org) or Stephanie Porter (stephanie.porter@theclearinghouse.org).
- To learn more, see www.theclearinghouse.org/ECCHO/Check-Resources.

¹This document is intended to serve as a reference guide for financial institutions to understand key elements of Rule 9. Financial institutions should refer to the text of Rule 9 itself in the ECCHO rules for the authoritative provisions.

New ECCHO Rule 9 Warranty Flow Directly to Paying Bank



Rule 9 Forged or Counterfeit Check Warranty and Claims

A paying bank may have a Rule 9 warranty claim if an electronic check is derived from a paper check that bears a forged or otherwise unauthorized drawer’s signature or that is counterfeit.

The Rule 9 warranties are interbank warranties and only apply between ECCHO members that have not opted out of Rule 9. Rule 9 does not address the relationship between a depository bank and its customer, which is governed by applicable law and the deposit agreement or other agreement that may be in place between them. A depository bank would need to determine whether it is authorized to debit the amount of a Rule 9 claim from the account of its depositing customer (i.e., to charge back the amount of the warranty claim to that account).

Rule 9 Claim Process

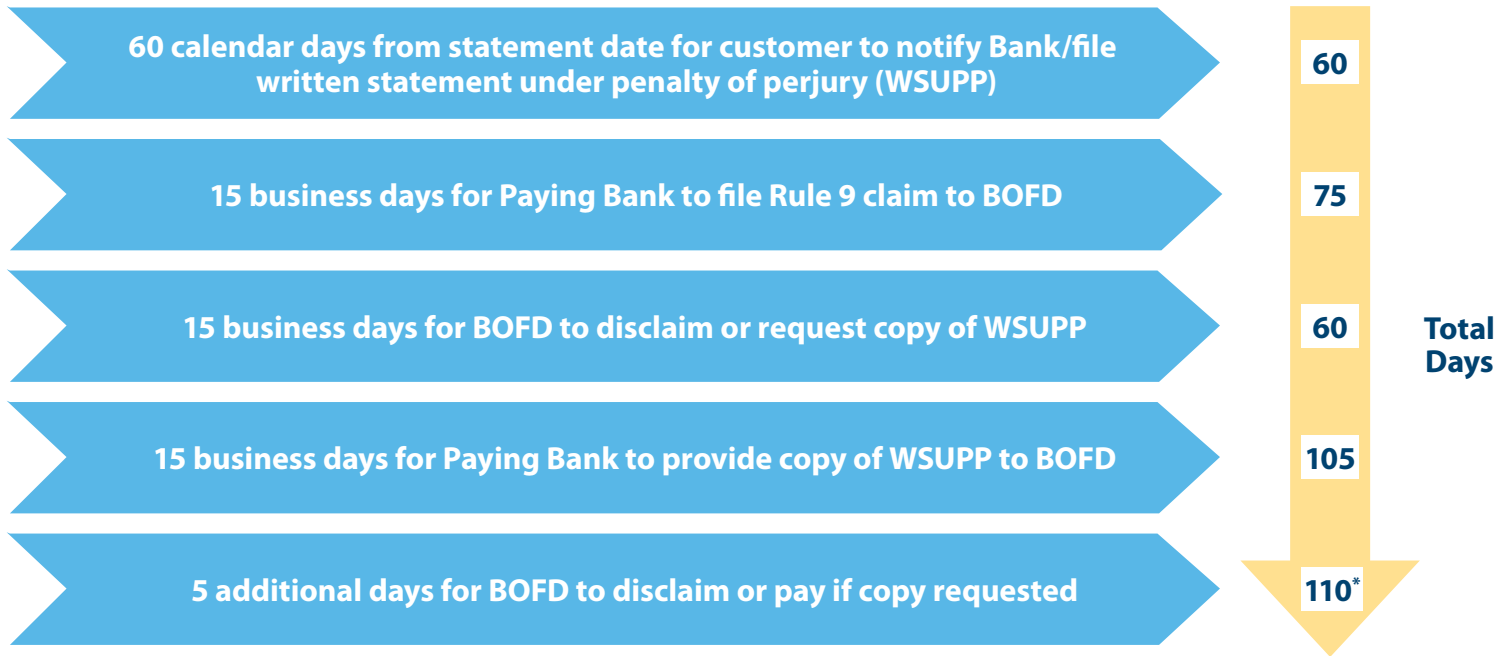
To begin the process for making a Rule 9 warranty claim, the paying bank must obtain from its customer (i.e., the purported drawer of the check at issue) a signed written statement under penalty of perjury that specifies the nature of the warranty breach (i.e., whether the drawer’s signature is forged or otherwise unauthorized or the check is counterfeit, or both). This claim must be received by the paying bank within 60 calendar days of its making the account statement that first reflects the check in question available to the customer.

The paying bank then has 15 business days to make the warranty claim to the depository bank by delivering one of the following: (1) the electronic check (i.e., the check image), (2) a legible photocopy of the front and back of the paper check, or (3) a substitute check. Note that delivery of such an item is the assertion of a warranty claim and not a return of the item, even though in some instances paying banks may use an “administrative returns” channel to deliver the item. Paying banks may also send the claim through certain check adjustment platforms or may deliver the item directly to the depository bank, along with a warranty claim letter (a model letter is included Exhibit V to the ECCHO rules), at a location where the depository bank receives returns of checks or check images in the normal course of check collection (unless the depository bank otherwise agrees to another specific delivery location).

The item being delivered to the depository bank must be accompanied by a notation that indicates “breach of warranty,” “do not redeposit or re-present,” or other similar language or reason code. Under X9 standards, such reason codes are:

- “3” (Warranty Breach), which can be used for either Rule 8 or Rule 9 claims; or
- “5” (Forged and Counterfeit Warranty Breach (Rule 9)), which can be used only for Rule 9 claims. Return code “5” is preferred for Rule 9 claims.

Importance of Depository Bank and Paying Bank Acting Timely



Reasons for Depository Bank to Disclaim a Rule 9 Claim

Under the ECCHO rules, the depository bank may disclaim a Rule 9 warranty claim for a number of reasons:

1. The depositing customer’s account is closed;
2. The amount of the claim exceeds the amount of funds in the depositing customer’s account;
3. The claim was not made timely because:
 - a. The paying bank did not obtain the required written statement from its customer within the prescribed period;
 - b. The paying bank did not make the warranty claim within the prescribed period after receiving the written statement from its customer; or
 - c. The paying bank failed to deliver a copy of the customer written statement within the prescribed period after the depository bank requested it.
4. The claim was made first to a bank other than the depository bank;
5. The depository bank had opted out of Rule 9; or
6. Other defenses as provided by other applicable law.

*Note: Total days are a mix of calendar days and business days.