



February 8, 2019

*Via Electronic Delivery*

Ann E. Misback, Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

Comment Intake  
Bureau of Consumer Financial Protection  
1700 G Street, N.W.  
Washington, DC 20552

Re: Federal Reserve Board Docket No. R-1637; RIN 7100 AF 28, Bureau of Consumer Financial Protection Docket No. CFPB-2018-0035; RIN 3170-AA31 Availability of Funds and Collection of Checks (Regulation CC)

Dear Ms. Misback and Bureau of Consumer Financial Protection:

The Clearing House Payments Company, L.L.C.,<sup>1</sup> which includes ECCHO, respectfully submits this comment letter to the Board of Governors of the Federal Reserve System (the “Board”) and the Bureau of Consumer Financial Protection (“Bureau”), (collectively, “the Agencies”) in response to the Agencies’ notice and request for comment on proposed modifications to Regulation CC that were published in the *Federal Register* on December 10, 2018 (the “2018 Proposal”).<sup>2</sup>

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<sup>1</sup> Since its founding in 1853, The Clearing House has delivered safe and reliable payments systems, facilitated bank-led payments innovation, and provided thought leadership on strategic payments issues. Today, in addition to operating the Image Exchange Network, The Clearing House is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. It continues to leverage its unique capabilities to support bank-led innovation, including launching the RTP® network. The Clearing House also operates ECCHO, the national provider of private sector check image exchange rules. Through ECCHO and The Clearing House Association, The Clearing House provides informed advocacy and thought leadership on critical payments-related issues facing financial institutions today, including on behalf of the thousands of banks and credit unions that are ECCHO members. The Clearing House is owned by 24 financial institutions and supports hundreds of banks and credit unions through its core systems and related services.

<sup>2</sup> Availability of Funds and Collection of Checks (Regulation CC), 83 Fed. Reg. 63431 (December 10, 2018).

### Statutory Changes

The 2018 Proposal would implement a requirement under the Dodd-Frank Act to adjust the dollar amounts in the Expedited Funds Availability Act (“EFAA”), implemented by Regulation CC, for inflation.<sup>3</sup> The Clearing House generally supports the proposal to update the dollar amounts throughout Subpart B of Regulation CC, and related commentary, with the adjusted dollar amounts, and to reflect these updates by the date on which financial institutions must comply with the adjusted figures. To provide depository institutions sufficient time to update their disclosures, systems, and related processes, we believe the Agencies should publish these updates to Regulation CC at least one year prior to the date the adjustments will take effect. In addition, we support the Agencies approach to not adjust a dollar amount if (i) there is no aggregate percentage increase during the inflation measurement period; or (ii) the aggregate percentage change when applied to the dollar amount does not result in a change because of rounding.

### Funds Availability

The 2018 Proposal also announced that the Agencies reopened the comment period regarding proposed amendments to Subpart B of Regulation CC on which the Board had previously accepted public comments in 2011, before the Agencies shared joint rulemaking authority (“2011 Proposal”).<sup>4</sup>

The Agencies indicated that comments on the 2011 Proposal that were previously submitted during the initial comment period, which ended on June 3, 2011, remain part of the rulemaking docket, and asked commenters submitting new comment letters to “clarify the relationship [(e.g., whether comments on the 2018 Proposal supplement or supersede comments on the 2011 Proposal)] between their two comments.” The Clearing House and ECCHO<sup>5</sup> submitted comments on the 2011 Proposal.<sup>6</sup> Those comments were provided in chart format and organized sequentially to match the order of the proposed revisions in the 2011 Proposal. We have organized our comments on the 2018 Proposal in the same fashion in the attached chart (Appendix A), and indicated whether our new comments supplement or supersede our comments on the 2011 Proposal.

In addition, we understand that the application of Subpart B availability requirements to check images that are transmitted by a customer to the depository bank by means of remote deposit capture (RDC) is not within the scope of the 2018 Proposal.<sup>7</sup> However, we believe it is important to note that our

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<sup>3</sup> Specifically, section 1086(f) of the Dodd-Frank Act added section 607(f) of the EFAA, which provides that “[t]he dollar amounts under [the EFAA] shall be adjusted every 5 years after December 31, 2011, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of \$25.”

<sup>4</sup> Availability of Funds and Collection of Checks, 76 Fed. Reg. 16862 March 25, 2011.

<sup>5</sup> At the time of the 2011 Proposal, The Clearing House and ECCHO were separate organizations. However, in December 2017, The Clearing House acquired ECCHO. The Clearing House now operates ECCHO, the national provider of private sector check image exchange rules.

<sup>6</sup> The Independent Community Bankers of America (ICBA) and BITS, which joined our comments on the 2011 Proposal, have not joined these updated comments.

<sup>7</sup> 83 Fed. Reg. 63431, 63438 (December 10, 2018).

banks' experience with check images transmitted by a customer to the depository bank by means of RDC since our 2011 comment letter indicates that these deposits have significantly different risk profiles, depending on various factors such as the depository bank's customer base, the characteristics of a specific customer's account relationship, and the channels and processes used to accept these check image deposits. Given the complexity of this issue, we request that the Agencies not take any further action on this issue without additional notice and request for comment.

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Thank you for your consideration and review of our comments. If you have any questions or wish to discuss this letter, please do not hesitate to contact me using the contact information provided below.

Yours very truly,

A handwritten signature in black ink that reads "Alaina Gimbert". The signature is written in a cursive, flowing style.

Alaina Gimbert

Senior Vice President and Associate General  
Counsel

(336) 769-5302

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Appendix A

TCH/ECCHO COMMENT CHART  
 2019 COMMENTS TO 2011 PROPOSED AMENDMENTS TO REGULATION CC SUBPART B

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
<p><i>Subpart B - Funds Availability</i></p> <p><i>General Application of Subpart B to Remote Deposit Capture (RDC) deposits</i></p>	<p>As currently drafted, the Proposed Rule does not require the application of subpart B availability requirements to check images that are transmitted by the customer to the depositary bank by means of RDC. We view the Proposed Rule’s approach on this issue as consistent with the approach under current Regulation CC. The Proposed Rule does apply subpart C of the Regulation to “electronic collection items” (See proposed Section 229.33) as if such electronic collection items were “checks.”</p> <p>We support the approach in the Proposed Rule, as well as current Regulation CC, to not apply subpart B of Regulation CC to RDC deposits of check images. A depositary bank enters into a written agreement with each customer that governs the terms of the check image deposit by remote deposit capture, including when a check image is deemed received at the depositary bank. We believe it is appropriate for the depositary bank to have the flexibility to determine all issues relating to the RDC deposit, including method/timing</p>	<p>Please see TCH cover letter.</p> <p>2011 TCH/ECCHO Comment supplemented by 2019 TCH/ECCHO comment.</p>

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
	<p>of receipt, funds availability and possible holds on the deposit of check images.</p> <p>For example, a bank may develop different receipt requirements, internal/external controls, availability rules, etc. for a large corporate user of RDC deposits as compared to an infrequent user of RDC deposits. The FFIEC has issued extensive guidance to the financial services industry regarding the nature of risks associated with RDC transactions, including the obligation on a financial institution to have contracts in place with its RDC customers to address these types of issues. We believe that continuing to place these funds availability issues under an agreement/contract approach is consistent with the FFIEC guidance.</p> <p>We request that the Commentary to the final rule include a statement that expressly states that deposits of images by RDC or other transmission to a depository bank are not subject to subpart B of Regulation CC.</p>	
<p><i>§ 229.10(c)(1)-5 Commentary</i></p> <p>Defines “\$100” as the “minimum amount,” and replaces subsequent references to “\$100” with references to “the minimum amount.”</p>	<p>As a drafting matter, we found the new proposed Commentary to this Section somewhat difficult to understand, as it uses the term “minimum amount” as opposed to an actual number like “\$200”. We suggest that the Commentary use an actual dollar</p>	<p>We support the 2018 Proposal to amend Section 229.10, and related commentary, to include the revised inflation-adjusted amount in subpart B regulation and commentary. We agree with the Agencies’ proposal to update the dollar amounts with the adjusted dollar</p>

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
	amount in the example, and note that the dollar amount may change over time as new minimum dollar amounts are established.	amounts throughout subpart B of Regulation CC, and the related commentary, and to do so going forward prior to each new set of adjustments taking effect.  2011 TCH/ECCHO Comment supplemented by 2019 TCH/ECCHO comment.
<p><i>§ 229.10(c)(2)</i></p> <p>Delete this section which states that a depository bank shall make funds available by the second business day after the banking day on which a U.S. Postal Service money order, check drawn on a Federal Reserve Bank or Federal Home Loan Bank, check drawn by a state or unit of a general local government, cashier’s check, certified check or teller’s check is deposited if the check is not deposited in person to an employee of the depository bank.</p>	No comment.	<p>For the reasons indicated in the 2011 Proposal, we support the 2018 Proposal to delete Section 229.10(c)(2).</p> <p>2011 TCH/ECCHO Comment supplemented by 2019 TCH/ECCHO comment.</p>
<p><i>§ 229.12(b) Commentary</i></p> <p>Replaces references to “\$400” with references to “the cash withdrawal amount.</p>	No comment	<p>We support the 2018 Proposal to amend Section 229.12, and related commentary, to include the revised inflation-adjusted amount in subpart B regulation and commentary. Please see our comments above to Section 229.10(c)(1)-5.</p>

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
		2011 TCH/ECCHO Comment superseded by 2019 TCH/ECCHO comment.
<p><i>§ 229.12(d) – Deposits at nonproprietary ATMs</i></p> <p>Reduces the maximum hold period for nonproprietary ATM deposits from 5 business days to 4 business days.</p>	<p>The Proposed Rule requested comment as to whether or not there was still support for maintaining the distinction between proprietary and non-proprietary ATMs. We support maintaining the current distinction between proprietary ATMs and non-proprietary ATMs. While many ATMs are being enabled with image deposit capability, there are still ATMs that accept paper checks for deposit that cannot be truncated to images at the point of deposit. As a result, depository banks may still experience delays in waiting for settlement or processing of checks that are deposited at non-proprietary ATMs.</p>	<p>We understand that nonproprietary check deposit-taking ATMs that do not have imaging capability continue to exist. Anecdotal evidence suggests that these nonproprietary ATMs have been targeted by fraudsters. For example, we have heard reports of fraudsters depositing checks not payable to the depositor or that have been otherwise forged or altered in nonproprietary ATMs in an effort to withdraw funds before these checks are returned to the depository bank. We continue to support the distinction between proprietary ATMs and non-proprietary ATMs in Regulation CC.</p> <p>2011 TCH/ECCHO Comment supplemented by 2019 TCH/ECCHO comment.</p>
<p><i>§ 229.13(b) Commentary</i></p> <p>Replaces references to “\$5,000” with references to “the large deposit amount.”</p>	<p>No comment</p>	<p>We support the 2018 Proposal to amend Section 229.13 and related commentary to include the revised inflation-adjusted amount in subpart B regulation and commentary. Please see our comments above to Section 229.10(c)(1)-5.</p>

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
		2011 TCH/ECCHO Comment superseded by 2019 TCH/ECCHO comment.
<p><i>§ 229.13(e)-4 – Reasonable cause to doubt collectability-- Commentary</i></p> <p>A depositary bank may not invoke this exception for funds availability because a paying bank demands paper presentment and the depositary bank knows it will not receive the return prior to the time by which it must make the deposited funds available.</p>	<p><u>No Extended Hold for Lack of Electronic Exchange Connection.</u> We support the approach in the final rule in which a depositary bank is not permitted to place an extended hold on deposited funds solely because the depositary bank does not have an image exchange agreement with the paying bank, even though the item will be collected through paper handing and any return of the item will likely occur beyond the 2 day hold period. Permitting the depositary bank to extend the hold for this reason will only incent banks not to establish agreements for forward and return exchange of check images.</p> <p><u>Retired Routing Number.</u> We recommend that the Federal Reserve include in the final rule an additional exception for funds availability to address paying bank routing numbers that the depositary bank determines have been retired in accordance with industry practice for retiring bank routing numbers.</p> <p>Customers will on occasion seek to deposit items that are drawn on routing numbers of paying banks that have been retired. In many cases, these items will be processed by the paying bank and paid, as the paying bank is</p>	<p>Our 2019 comments are limited to the retired routing number issue we raised in the 2011 TCH/ECCHO Comment. In addition to the recommendations we provided in 2011, we also recommend that any retired or not otherwise used routing numbers be deleted from Appendix A of Regulation CC. The continued listing of these inactive routing numbers in Appendix A facilitates fraudsters' improper use of these routing numbers in an effort to delay the collection and return of the fraudulent item beyond the next-day availability required for these routing numbers.</p> <p>2011 TCH/ECCHO Comment supplemented by 2019 TCH/ECCHO comment.</p>



Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
	<p>still willing to accept and pay items on old, retired routing numbers (such as in the case of a merger). In other cases, the retired routing numbers are indicative of (a) a potential fraud (e.g., where the fraudster has intentionally included a retired routing number on the fraudulent check in an effort to delay the collection and return of the check so that the depository bank is not aware the check will be returned upon lifting the hold on the related deposited funds), or (b) a closed account, and there is the potential for these items to be returned unpaid.</p> <p>Furthermore, because the routing numbers are retired, it may take longer for the collecting banks and paying bank to process the item, even if the item is handled as an image in both the forward and return process. This is because the depository bank, collecting banks, and/or the paying bank, will have to research the item, determine the appropriate routing number, and in the case of the paying bank determine if the account previously assigned to that routing number is still active at the paying bank under a different routing or account number. In addition, because these items are drawn on retired routing numbers, it is likely that these routing numbers are not turned on for image exchange through private sector image exchange, and the item may have to be exchanged and returned as an</p>	

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
	<p>original check or a substitute check.</p> <p>We believe it is preferable to provide a protection to the depository bank in the form of a permissible extended hold on the item, in order to encourage the depository bank to take the item for deposit. Otherwise, depository banks may seek to protect themselves from the risks associated with these items by rejecting these items at the time of deposit.</p>	
<p><i>§ 229.13(g) – Notice of exception –</i></p> <p>Requires that the notice of an exception hold contain the total amount of the deposit, in addition to the amount of the deposit being held.</p> <p>Requires that the notice specify the “day the funds will be made available for withdrawal” instead of “the time period within which” the funds will be available for withdrawal.</p>	<p>We are opposed to this proposed change in the notice exception. Requiring disclosure of the “total amount of deposit” in the notice of the exception would only provide a small incremental, if any, improvement in the ability of the customer to understand the notice regarding the exception. There is no indication from banks’ experience that the current form for notices is not understandable to customers.</p> <p>Moreover, implementing this change to the notice would be operationally complicated. For example, how would split deposits be handled where the customer is splitting a large deposit into two different accounts? If the hold only applies to the funds that are going into one account, it would be confusing to place on the notice the total amount of the</p>	<p>For the reasons discussed in the 2011 TCH/ECCHO Comment, we continue to oppose the proposed requirement that the exception hold notice contain the total amount of the deposit, in addition to the amount of the deposit being held.</p> <p>However, given financial institutions’ experience with these notices since the 2011 TCH/ECCHO Comment, we do not oppose the proposed replacement in the notice of “the time period within which” the funds will be available for withdrawal with the “day the funds will be made available for withdrawal”.</p> <p>2011 TCH/ECCHO Comment superseded in part as to “day the funds will be made available for withdrawal” requirement by 2019 TCH/ECCHO comment.</p>

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
	<p>deposit that was being made to the two accounts when the notice is applicable to only one account. Similarly, how would a cash back deposit be handled where the customer is receiving cash first and only depositing a portion of the amount to his or her account?</p> <p>Finally, implementing this change in the notice requirement will be complex and require costly reprogramming of numerous bank systems (ATM, teller deposit, back office etc.). The limited incremental value of the additional disclosure must be weighed against the expected increases in complexity and cost.</p> <p>At a minimum, this proposed change should be adopted as an available option for the disclosure, not as a mandatory substitute. Based on the Commenters' review of the Proposed Rule with their respective member banks, it appears that a number of banks have already implemented a notice system that includes some of the new information (such as actual deposit amount), that would be required to be disclosed under the Proposed Rule. If the final rule made the disclosures items optional, it would encourage additional banks to migrate over time to the new format, without imposing the costs of bank systems changes within a fixed time period.</p>	

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
<p><i>§ 229.13(g)(1)(ii) – Timing of Notice</i></p> <p>If the customer has agreed to accept notices electronically, the depository bank shall send the notice such that the bank may reasonably expect the customer to receive it no later than the first business day following the day the deposit is made or the facts become known to the depository bank, whichever is later.</p>	<p>While we support inclusion within the final rule of the ability of financial institutions to provide notices and disclosures required under Regulation CC to customers in electronic format, we have a number of serious concerns, set forth below, with the Proposed Rule’s approach to electronic communications.</p> <p>First, the Commentary in the final rule should clarify that there must be an agreement or course of conduct in place between the bank and customer for the communication of notices specifically regarding deposits by means of electronic communications. That is, an agreement that relates solely to communicating electronically credit card statements or bank statements should not constitute an agreement for electronic communications of funds availability notices.</p> <p>A bank should not be <u>required</u> to communicate the notice of exception to the customer by means of electronic communications just because the bank is communicating electronically with the customer for other banking services, such as home banking, bill payment or credit cards. These are different services at a bank, and each service is not generally linked to the deposit teller system and the back-office</p>	<p>For the reasons discussed in the 2011 TCH/ECCHO Comment, we continue to oppose any <u>requirement</u> that a bank communicate a notice of exception or other notice or disclosure required under Regulation CC to customers in electronic format, regardless of whether the bank otherwise communicates electronically with that customer.</p> <p>No revision to 2011 TCH/ECCHO Comment; 2011 TCH/ECCHO Comment not superseded in whole or in part by 2019 TCH/ECCHO comment.</p>

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
	<p>deposit processing system. Not all banks can communicate electronically to the customer for all types of notices across all platforms, just because one bank product or service is using electronic communications. For example, a bank may be using a vendor to operate its home banking services, and that vendor may control the electronic communications with the customer. In such a case, the bank’s deposit processing system may not link directly into that system for electronic communication purposes.</p> <p>Second, even where a bank and its customer have set up a process for electronic communication of notices regarding deposits, we do not support mandating the use of these electronic communications in the final rule. The bank should have the flexibility under the final rule to send paper communication of a notice if necessary or appropriate. Most bank regulations relating to communications are permissive in the use of electronic communications, and not mandatory.</p> <p>Third, we recommend that the final rule should not have a standard for notice timeliness that is dependent on when the customer is expected to receive the notice. Rather, we recommend that the final rule provide that the electronic notice is timely if the financial institution sends the notice not</p>	

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
	<p>later than the first business day following the banking day of deposit. The financial institution cannot control when a customer is expected to receive an electronic notice. For example, in many cases, a customer receives notices for his/her deposit account in an electronic email box maintained within the home/online banking site of the financial institution. In some cases, customers will not visit this email box for extended periods of time. The notice sent by the institution should still be effective if timely sent by the financial institution (i.e., made available to the customer).</p> <p>Fourth, the Commentary to this section in the final rule should clarify that the electronic notice, if provided by the financial institution to the customer, satisfies the notice obligation. There is no need for the financial institution to send a separate written notice to the customer. We are concerned that the express requirement to send an electronic notice in the Proposed Rule could be read as a separate notice requirement in addition to (and not as substitute for) the paper notice requirement. If the customer has agreed to receive electronic notices, there should be no reason to send an additional notice in paper form.</p>	

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
<p><i>§ 229.13(h) – Availability of deposits subject to exceptions</i></p> <p>Safe harbor for the reasonable hold extension for a deposit of on-us checks remains one business day.</p> <p>Safe harbor for the reasonable hold extension for other checks is reduced to two business days.</p>	<p>The final rule should provide additional time for the safe harbor for non-on-us items, beyond the additional two days set forth in the Proposed Rule. First, there are situations where it will take longer than 4 business days to collect an item, even using electronic collection methods. This may occur, for example, where the item has been fraudulently altered to delay its collection and return (e.g., the item bears a fictitious or non-matching routing number and account) or where there is another problem with the electronic collection or return and manual intervention is required. Second there will remain a small subset of items that are not eligible for image exchange. If items subject to a deposit hold exception are collected and returned in the paper process, the time period for forward and return exchange may extend beyond 4 business days.</p> <p>ECCHO has surveyed a select number of financial institutions regarding the increased risk of loss to depository banks from the reduction in the safe harbor time period. Based on this review of the data from these financial institutions, there is the potential for substantial monetary risk to the depository bank from the reduction of the safe harbor period to under a total of five business days (2 days plus 3 additional days). We have set</p>	<p>For the reasons set forth in the 2011 TCH/ECCHO Comment, we continue to oppose the proposal to reduce the safe harbor for the reasonable hold extension for non-on-us checks to two business days. Notwithstanding that most checks now are collected and returned via electronic processes, there continue to be situations in which it takes longer than four business days for a depository bank to receive a return, and we believe the vast majority of these returned checks (or at least a significantly higher percentage than returned checks generally) are subject to a hold exception. We believe this proposed reduction in the safe harbor for the reasonable hold extension to two business days would result in a significant risk of loss to depository banks.</p> <p>In addition, we believe that having an effective hold period for the availability exceptions protects both the depository bank and its customers. We believe that, in many situations, the customer will be in a better position if the hold is extended for a few days to allow for the fraud to be identified and/or the check to be returned, as opposed to the depository bank debiting the customer’s account for the returned check after the funds in question have been withdrawn by the customer. Moreover, the availability of</p>

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	<p>forth a summary of this survey data in Attachment 1 to this Chart.</p> <p>It is our view that this data strongly supports the conclusion that it is premature to reduce the safe-harbor period to four days as provided in the Proposed Rule. Accordingly, we recommend that the final rule provide for a safe harbor of at least a total of five business days.</p>	<p>effective Regulation CC hold exceptions, and the ability to place holds and mitigate risk and potential losses when needed, may encourage some banks to give faster availability than is required under Regulation CC in the normal non-exception circumstances.</p> <p>Given the check fraud losses banks currently are incurring, our preference would be for there to be no change to the current safe harbor. However, if the Agencies determine to shorten the current safe harbor for non-on-us items, for the reasons set forth above and in the 2011 TCH/ECCHO Comment, the safe harbor should provide for holds of at least a total of five business days for non-on-us checks.</p> <p>2011 TCH/ECCHO Comment supplemented by 2019 TCH/ECCHO comment.</p>
<p><i>§ 229.15(b)(1) – Reference to Day of Availability</i></p> <p>Requires depository bank to disclose availability of deposit in relation to the banking day the deposit was received.</p> <p>Depending on bank’s availability policy, bank may use terms “next business day,” or describe the business day after receipt using</p>	<p>We support the general goal of the Proposed Rule to provide notices that consumers will find to be clear and easy to understand.</p> <p>We support the proposed change to this Section which we read as allowing a financial institution to continue to use the approach under current Section 229.15(b)(1) for referencing the day on which funds would be available. The Proposed Rule provides</p>	<p>No revision to 2011 TCH/ECCHO Comment; 2011 TCH/ECCHO Comment not superseded in whole or in part by 2019 TCH/ECCHO comment.</p>



Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
<p>phrases that include cardinal (#) or ordinal (word) numbers.</p>	<p>additional optional methods for describing the day on which funds are available.</p> <p>We would not support any change to the final rule that mandated that banks shift to a new approach for describing availability days in either disclosures or notices. If these disclosure changes were to be mandated in the final rule, any marginal improvement in clarity of the disclosures must be weighed against the expectation that implementing a mandated change in the availability disclosure will be complex and require costly reprogramming of numerous bank systems (ATM, teller deposit, back office, etc.). The limited incremental value of mandating a new form of alternative disclosure must be weighed against the expected increases in cost.</p>	
<p><i>§ 229.16(b)(2) – Specific Availability Policy Disclosure</i></p> <p>Eliminate the requirement that banks that distinguish between local and nonlocal checks in their availability policy include specified disclosures about how the customer can distinguish local and nonlocal payable through checks</p>	<p>No comment.</p>	<p>We support the elimination of this requirement because there are no more nonlocal checks.</p> <p>2011 TCH/ECCHO Comment superseded by 2019 TCH/ECCHO comment.</p>

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
<p><i>§ 229.16(c)(2)(i) – Notice at time of case-by-case delay</i></p> <p>Amends the case-by-case notice requirement to require that a case-by-case notice of delayed availability include the total amount of the deposit.</p>	<p>The Proposed Rule requested comment on whether banks found the case-by-case hold option still useful. The final rule should continue to support the ability of banks to impose case-by-case holds on deposited items. Even with the shorter collection time frames as a result of image collection, there are situations where a bank may seek to extend the hold on individual deposited items, such as in a suspected check kiting situation. Our discussion with member banks indicated that banks are still using the case-by-case holds. In addition, some member financial institutions during our review of the Proposed Rule commented that the elimination of the case-by-case hold option may encourage some banks to use the maximum regulatory hold periods for all customers as opposed to giving faster availability, since the depository bank could not place a case-by-case hold when needed on a particular account.</p> <p>Regarding the Proposed Rule’s proposed new informational items for the notice, the final rule should not require the inclusion in the notice of the amount of the deposit in the notice of the case-by-case hold. As noted above in the comment to section 229.13(g)(1)(i), including the full amount of the deposit in the notice raises a number of operational and implementation issues. The</p>	<p>No revision to 2011 TCH/ECCHO Comment; 2011 TCH/ECCHO Comment not superseded in whole or in part by 2019 TCH/ECCHO comment.</p>

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
	placement of the deposit amount on the notice does not materially improve the quality of the notice to the customer such that it would outweigh these operational and implementation difficulties and costs.	
<p><i>§ 229.16(c)(2)(ii) – Timing of Notice for Case-by-Case Delay</i></p> <p>Use of electronic communications.</p>	<p>Please see our comments above in Section 229.13(g)(1)(ii) regarding mandating use of electronic communications and what it means for a customer to have agreed to receive electronic communications.</p>	<p>Please see our comments above in Section 229.13(g)(1)(ii) regarding mandating use of electronic communications.</p> <p>No revision to 2011 TCH/ECCHO Comment; 2011 TCH/ECCHO Comment not superseded in whole or in part by 2019 TCH/ECCHO comment.</p>
<p>Appendix C—Model Availability-Policy Disclosures, Clauses, and Notices; Model Substitute Check-Policy, Disclosures and Notices</p> <p>In addition to the proposed revisions to the Model Policy Disclosures, Clauses and Notices addressed previously in this chart, additional revisions to these Model Policy Disclosures, Clauses and Notices were proposed; for example, formats were proposed to be modified from a mostly narrative to a more tabular form, provisions related to nonlocal checks and local check categories were proposed to be eliminated, replacement of</p>	<p>No comment.</p>	<p>We support the proposed inclusion, in the proposed model initial disclosures (proposed Models C-1, C-2, C-3A, C-3B, C-4A and C-4B), of a statement that advises the customer that, if the customer withdraws available funds from a check deposit and the check is later returned unpaid, the bank may charge the check back to the customer’s account. We agree that this is important information to convey in this disclosure to the customer, so that the customer is not surprised by a subsequent charge to the customer’s account in the event the check is subsequently returned.</p>

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
<p>ordinal numbers with cardinal numbers was proposed, model disclosures were proposed in brackets that would apply only to certain banks depending on their policies and practices, and language was proposed to be added regarding a bank’s right to charge back a customer’s account if a deposited check is returned unpaid.</p>		<p>Similarly, we believe this information should be conveyed to the customer at the time the customer receives notice of a hold, and accordingly recommend that this disclosure be added to the proposed model hold notices (proposed Models C-9, C-10, C-11, C-12A and C-12B), as well as to the proposed notices at locations where employees accept consumer deposits (proposed Models C-13 and C-14).</p> <p>Concern also has been expressed that the proposal requires the following funds availability disclosures and notices (C-1, C-2, C-3A, C-3B, C-4A, C4-B, C-9, C-10, C-11, C-12A and C-12B) to be provided to customers on an 8 ½ x 11 inch sheet of paper to qualify for the safe harbor provided for use of the models. Not all banks currently provide each of these disclosures and notices on 8 ½ x 11 inch paper. Accordingly, we recommend that the proposal be clarified to provide that these model disclosures and notices can be provided in sizes other than 8 ½ x 11 inches, provided the other requirements for the model disclosure or notice in question are satisfied.</p> <p>2011 TCH/ECCHO Comment supplemented by 2019 TCH/ECCHO comment.</p>

Section of 2011 Proposed Rule and Summary of 2011 Proposed Change	2011 TCH/ECCHO Comment	2019 TCH/ECCHO Comment
<p><i>Effective Date of Subpart B Amendments</i></p> <p><i>The 2011 Proposed Rule did not address the effective date of any amendments to Subpart B</i></p>	<p>No comment</p>	<p>The 2018 Proposal provides that the dollar amount inflation adjustments shall be effective on April 1, 2020, April 1, 2025, and on April 1 of every fifth year after 2025.</p> <p>As an initial matter, it is essential that banks be provided at least a full calendar year to implement any changes to subpart B.</p> <p>Further, we encourage the Agencies to make the effective date for any other impending subpart B amendments the same date as the effective date of the dollar amount inflation adjustments, even if this means that the effective date of the dollar amount inflation adjustments needs to be delayed beyond the dates prescribed in the 2018 Proposal. It will be efficient for banks and promote customer understanding to have all subpart B amendments go into effect at the same time, rather than for example to have subpart B disclosures changed at one time for the dollar amount inflation adjustments and at another time for other subpart B amendments.</p> <p>2011 TCH/ECCHO Comment supplemented by 2019 TCH/ECCHO comment.</p>