

(d) *Upon request.* A bank shall provide to any person, upon oral or written request, a notice containing the applicable specific availability policy disclosure described in § 229.16.

(e) *Changes in policy.* A bank shall send a notice to holders of consumer accounts at least 30 days before implementing a change to the bank's availability policy regarding such accounts, except that a change that expedites the availability of funds may be disclosed not later than 30 days after implementation.

§ 229.19 Miscellaneous.

(a) *When funds are considered deposited.* For the purposes of this subpart—

(1) Funds deposited at a staffed facility, ATM, or contractual branch are considered deposited when they are received at the staffed facility, ATM, or contractual branch;

(2) Funds mailed to the depository bank are considered deposited on the day they are received by the depository bank;

(3) Funds deposited to a night depository, lock box, or similar facility are considered deposited on the day on which the deposit is removed from such facility and is available for processing by the depository bank;

(4) Funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depository bank are considered deposited on the day the funds are removed from the ATM, if funds normally are removed from the ATM not more than two times each week; and

(5) Funds may be considered deposited on the next banking day, in the case of funds that are deposited—

(i) On a day that is not a banking day for the depository bank; or

(ii) After a cut-off hour set by the depository bank for the receipt of deposits of 2:00 p.m. or later, or, for the receipt of deposits at ATMs, contractual branches, or off-premise facilities, of 12:00 noon or later. Different cut-off hours later than these times may be established for the receipt of different types of deposits, or receipt of deposits at different locations.

(b) *Availability at start of business day.* Except as otherwise provided in § 229.12(d), if any provision of this sub-

part requires that funds be made available for withdrawal on any business day, the funds shall be available for withdrawal by the later of:

(1) 9:00 a.m. (local time of the depository bank); or

(2) The time the depository bank's teller facilities (including ATMs) are available for customer account withdrawals.

(c) *Effect on policies of depository bank.* This part does not—

(1) Prohibit a depository bank from making funds available to a customer for withdrawal in a shorter period of time than the time required by this subpart;

(2) Affect a depository bank's right—

(i) To accept or reject a check for deposit;

(ii) To revoke any settlement made by the depository bank with respect to a check accepted by the bank for deposit, to charge back the customer's account for the amount of a check based on the return of the check or receipt of a notice of nonpayment of the check, or to claim a refund of such credit; and

(iii) To charge back funds made available to its customer for an electronic payment for which the bank has not received payment in actually and finally collected funds;

(3) Require a depository bank to open or otherwise to make its facilities available for customer transactions on a given business day; or

(4) Supersede any policy of a depository bank that limits the amount of cash a customer may withdraw from its account on any one day, if that policy—

(i) Is not dependent on the time the funds have been deposited in the account, as long as the funds have been on deposit for the time period specified in §§ 229.10, 229.12, or 229.13; and

(ii) In the case of withdrawals made in person to an employee of the depository bank—

(A) Is applied without discrimination to all customers of the bank; and

(B) Is related to security, operating, or bonding requirements of the depository bank.

(d) *Use of calculated availability.* A depository bank may provide availability to its nonconsumer accounts based on

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a sample of checks that represents the average composition of the customer's deposits, if the terms for availability based on the sample are equivalent to or more prompt than the availability requirements of this subpart.

(e) *Holds on other funds.* (1) A depository bank that receives a check for deposit in an account may not place a hold on any funds of the customer at the bank, where—

(i) The amount of funds that are held exceeds the amount of the check; or

(ii) The funds are not made available for withdrawal within the times specified in §§ 229.10, 229.12, and 229.13.

(2) A depository bank that cashes a check for a customer over the counter, other than a check drawn on the depository bank, may not place a hold on funds in an account of the customer at the bank, if—

(i) The amount of funds that are held exceeds the amount of the check; or

(ii) The funds are not made available for withdrawal within the times specified in §§ 229.10, 229.12, and 229.13.

(f) *Employee training and compliance.* Each bank shall establish procedures to ensure that the bank complies with the requirements of this subpart, and shall provide each employee who performs duties subject to the requirements of this subpart with a statement of the procedures applicable to that employee.

(g) *Effect of Merger Transaction.* For purposes of this subpart, except for the purposes of the new accounts exception of § 229.13(a), and when funds are considered deposited under § 229.19(a), two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 54 FR 13850, Apr. 6, 1989; 60 FR 51671, Oct. 3, 1995; Reg. CC, 62 FR 13810, Mar. 24, 1997]

§ 229.20 Relation to state law.

(a) *In general.* Any provision of a law or regulation of any state in effect on or before September 1, 1989, that requires funds deposited in an account at a bank chartered by the state to be made available for withdrawal in a shorter time than the time provided in

subpart B, and, in connection therewith, subpart A, shall—

(1) Supersede the provisions of the Act and subpart B, and, in connection therewith, subpart A, to the extent the provisions relate to the time by which funds deposited or received for deposit in an account are available for withdrawal; and

(2) Apply to all federally insured banks located within the state.

No amendment to a state law or regulation governing the availability of funds that becomes effective after September 1, 1989, shall supersede the Act and subpart B, and, in connection therewith, subpart A, but unamended provisions of state law shall remain in effect.

(b) *Preemption of inconsistent law.* Except as provided in paragraph (a), the Act and subpart B, and, in connection therewith, subpart A, supersede any provision of inconsistent state law.

(c) *Standards for preemption.* A provision of a state law in effect on or before September 2, 1989, is not inconsistent with the Act, or subpart B, or in connection therewith, subpart A, if it requires that funds shall be available in a shorter period of time than the time provided in this subpart. Inconsistency with the Act and subpart B, and in connection therewith, subpart A, may exist when state law—

(1) Permits a depository bank to make funds deposited in an account by cash, electronic payment, or check available for withdrawal in a longer period of time than the maximum period of time permitted under subpart B, and, in connection therewith, subpart A; or

(2) Provides for disclosures or notices concerning funds availability relating to accounts.

(d) *Preemption determinations.* The Board may determine, upon the request of any state, bank, or other interested party, whether the Act and subpart B, and, in connection therewith, subpart A, preempt provisions of state laws relating to the availability of funds.

(e) *Procedures for preemption determinations.* A request for a preemption determination shall include the following—