

**Supporting Statement for the
Recordkeeping and Disclosure Requirements Associated with Regulation CC
(FR CC; OMB No. 7100-0235)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), has extended for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation CC (FR CC; OMB No. 7100-0235). Regulation CC - Availability of Funds and Collection of Checks (12 CFR Part 229), which implements the Expedited Funds Availability Act of 1987 (EFA Act)¹ and the Check Clearing for the 21st Century Act of 2003 (Check 21 Act),² requires banks³ to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and potentially costly) overdrafts, and allow customers to compare the policies of different banks before deciding at which bank to deposit funds. Regulation CC also requires notice to the depository bank and to a customer of nonpayment of a check. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance. Although Regulation CC applies to all banks, the Board accounts for only the burden imposed on the 686 state member banks and uninsured state branches and agencies of foreign banks that it supervises.

The estimated total annual burden for the FR CC is 137,840 hours.

Background and Justification

The EFA Act requires banks to provide customers and potential customers specific written notices and disclosures on the occurrence of specific events, such as opening an account, delaying availability of the proceeds of a deposited check beyond the usual availability date, changing the bank's funds availability policies, or in response to a customer's request. The Check 21 Act requires banks to provide a consumer awareness disclosure regarding substitute checks in certain circumstances.⁴ In addition, if a consumer uses the special procedure that the Check 21 Act provides to resolve errors associated with substitute checks, the Check 21 Act requires the consumer's bank to provide a notice to the consumer regarding disposition of the consumer's claim. All of the notice and disclosure requirements of Regulation CC, which are discussed in more detail below, are found expressly in the EFA Act or the Check 21 Act, except for the notice of a delay under a case-by-case hold policy and the notice of a returned check.

¹ See 12 U.S.C. § 4001 et seq.

² See 12 U.S.C. § 5001 et seq.

³ For purposes of Regulation CC, banks are commercial banks, savings associations, credit unions, and U.S. branches and agencies of foreign banks.

⁴ To facilitate check truncation and electronic check exchange, the Check 21 Act authorizes a new negotiable instrument called a substitute check and provides that a properly prepared substitute check is the legal equivalent of the original check for all purposes. A substitute check is a paper reproduction of the original check that can be processed just like the original check. The Check 21 Act does not require any bank to create substitute checks or to accept checks electronically.

As required by the EFA Act, the Board has published model disclosure forms and clauses to facilitate compliance with the disclosure requirements of that law. The EFA Act specifically provides that banks are not required to use these model forms and clauses. However, a bank that uses one of the model forms appropriately is deemed to be in compliance with the EFA Act disclosure requirements. As required by the Check 21 Act, the Board published a model disclosure that a bank may, at its option, use as a safe harbor to satisfy the general consumer awareness disclosure requirements of that law. The Board also published model notices that banks may use to satisfy their notice obligations regarding substitute check error resolution claims, but neither the Check 21 Act nor Regulation CC provide a safe harbor for using these notices.

Description of Information Collection

Recordkeeping Requirements

Section 229.21(g) Record retention

Section 229.21(g) requires banks to retain evidence of compliance for no less than two years but does not specify the kind of records that must be retained for this purpose. The Board estimates no additional burden for this requirement because banks are anticipated to retain records for at least this duration in their usual course of business.

Disclosure Requirements

Section 229.16 Specific availability policy disclosure and Section 229.17 Initial disclosures

Before accepting a deposit to open a new transaction account, banks must provide written disclosures stating when deposited funds generally will be available for withdrawal, referred to as a specific availability-policy disclosure. The disclosure must reflect the availability policy followed by the bank in most cases, that is, as to most transaction accounts and most deposits into those accounts. The disclosure must include, to the extent applicable, a description of:

- the categories of deposits or checks the bank uses when it delays availability, how to determine into which category a check or deposit falls, and when each category of check or deposit is available for withdrawal,
- any of the exceptions permitted by Regulation CC to the availability requirements of the regulation that may be invoked by the bank,
- any case-by-case policy of delaying availability longer than the time periods stated in the specific availability policy, if the specific availability policy makes funds available for withdrawal sooner than required by Regulation CC, and
- a description of how to differentiate between proprietary and nonproprietary automatic teller machines (ATMs) if the bank's availability policy differs between the two.

When a bank receives a written request from someone not in person to open an account and the request includes a deposit, or a request to transfer funds from another account to make

the initial deposit, the initial disclosures must be mailed or delivered no later than the next business day following the banking day on which the request was made.

Sections 229.16 and 229.18(d) Disclosure of specific availability policy to any person upon request

Section 229.18(d) provides that a bank must provide the specific availability-policy disclosure described in section 229.16, to any person who makes an oral or written request regarding the policy.

Section 229.16(c) Longer delays on a case-by-case basis - Notice in specific policy disclosure

If a bank has a policy of generally making funds available for withdrawal sooner than required under Regulation CC, but delaying availability on a case-by-case basis, the customer must receive not only advance notice of the policy (as described above), but also notice each time a delay is imposed. The notice must include the date of deposit, the amount being delayed, and the date funds will be available for withdrawal. If the notice is not provided at the time of deposit, it must be mailed or delivered no later than the first business day following the banking day of the deposit.

Section 229.13(g) Notice of exceptions

Regulation CC permits banks to invoke certain exceptions to the availability schedules required by the regulation. Whenever a bank invokes such an exception, it must notify the customer in writing (special rules apply to exceptions pertaining to large dollar deposits and redeposited checks into non-consumer accounts, as well as an exception pertaining to repeated overdrafts). The notice must include the date of deposit, the amount being delayed, the reason the exception was invoked, and when funds will be available for withdrawal. If the notice is not provided at the time of deposit, it must be mailed or delivered by the later of the first business day following the banking day of the deposit or the first business day following the day the bank becomes aware of the facts upon which the exception hold is based.

Section 229.18(a) Notice on preprinted deposit slips

The preprinted deposit slip notice must inform the customer, on the face of the deposit slip, that deposits may not be available for immediate withdrawal. This notice is a standardized, machine-generated message on forms the Bank would be using in its normal course of business and does not change from one individual account to another; thus, the burden for this requirement is negligible.

Section 229.18(b) Locations where employees accept consumer deposits and Section 229.18(c) Automated teller machines (ATMs)

A bank must post conspicuously in each location where consumers may make deposits a notice of its funds availability policy for consumer accounts. The notice must be posted so that

consumers are likely to see it prior to making a deposit. A bank must also ensure that a notice is posted at all ATMs accepting deposits for the bank that ATM deposits may not be available for immediate withdrawal. Such notice may be posted on a sign, on the screen of the ATM, or included on the deposit envelopes provided at the ATM.

Section 229.18(e) Notice of changes in policy

A bank is required to send consumer account holders notice of changes in its availability policy at least thirty days before the change becomes effective. However, where a change in policy results in faster availability, the notice may be sent no later than thirty days after the change.

If a bank provides its customers with a list of ATMs in its availability policy (to fulfill the requirement that it explain its availability policy for proprietary and nonproprietary ATMs), it must update the list annually if any changes occurred during the year.

Sections 229.11(c) and 229.18(e) Notices of quinquennial inflation adjustment

The dollar amount adjustments, “inflation adjustment,” are prescribed in a several parts of section 229. The dollar amounts are indexed to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as published by the Bureau of Labor Statistics. Given the change in policy caused by the periodic inflation adjustment, Banks will need to update their disclosures to match the new information.

Sections 229.31(c) and 229.33(h) Notices of nonpayment

Notification to banks - If a bank on which a check is drawn in an amount of \$5,000 or more determines not to pay the check, the bank must notify the depository bank by 2:00 p.m. on the second business day after the day of presentment.

Notification to customer - If the depository bank receives a returned check or notice of nonpayment, regardless of the amount, it must send notice to its customer generally by midnight of the banking day following the banking day on which it received the returned check or notice (a longer time than may be deemed reasonable in some cases). The Board estimates no additional burden for this requirement because, were the requirement not to exist, banks presumably would nonetheless provide a similar notification to customers in the usual and customary course of their business. While a specific time period is required, such notice is anticipated to be largely automated.

Sections 229.54(a) and (b)(2) Expedited recredit for consumers

This section of the rule provides that a consumer may make an expedited recredit claim with respect to a substitute check if the consumer asserts in good faith that (1) the bank holding the consumer’s account charged that account for a substitute check that was provided to the consumer (although the consumer need not be in possession of the substitute check at the time he or she submits a claim), (2) the substitute check was not properly charged to the consumer

account or the consumer has a “warranty claim”⁵ with respect to the substitute check, (3) the consumer suffered a resulting loss, and (4) production of the original check or a sufficient copy of the original check is necessary to determine whether or not the substitute check in fact was improperly charged or whether the consumer’s warranty claim is valid.

The consumer’s claim must include certain information described in the Check 21 Act and section 229.54 of Regulation CC.

Section 229.54(e) Notices relating to consumer expedited recredit claims (validation, denial, or reversal)

This notice is required when a bank validates, denies, or reverses a consumer’s recredit claim. Although the statute does not explicitly discuss providing a notice when a bank validates a claim, the bank’s ability to respond to a claim by determining that the claim is valid is implicit in the “timing of the recredit” section of the statute (section 7(c)(2)(A)), which requires the bank to provide a recredit the day after it determines that the consumer’s claim is valid.

If a bank determines that the consumer’s claim is invalid, the bank must provide the consumer with the original check or a copy of the original check sufficient to determine the validity of the claim and must demonstrate why the substitute check was properly charged to the consumer account. The bank must either demonstrate that a charge was proper or explain why the warranty claim is not valid, as appropriate in light of the consumer’s claim.

Section 229.55 Expedited recredit claim for banks

This section of the EFA Act provides that a bank may make a claim against an indemnifying bank if (1) the claimant bank or a bank that the claimant bank has indemnified has received a claim for expedited recredit from a consumer or would have been subject to such a claim if the consumer account had been charged for the substitute check, (2) the claimant bank is obligated to provide a consumer expedited recredit with respect to such substitute check or otherwise has suffered a resulting loss, and (3) the production of the original check or a sufficient copy of the original check is necessary to determine the validity of the charge to the consumer account or the validity of any warranty claim connected with such substitute check.

The content requirements for an interbank expedited recredit claim essentially parallel those for a consumer expedited recredit claim but also state that a bank that provides a copy of a substitute check with its claim must take steps to ensure that such copy is not mistaken for a legally equivalent substitute check or handled for forward collection or return. An indemnifying bank may require the claim to be in writing and may permit the claimant bank to submit it electronically. In addition, section 229.60 provides that banks involved in an interbank expedited recredit claim under section 229.55 may vary the terms of that section by agreement, but otherwise no person may vary the terms of subpart D by agreement.

⁵ When a bank transfers, presents, or returns a substitute check for consideration (or any paper or electronic representation of a substitute check), the bank makes two warranties (1) that the substitute check meets the requirements for legal equivalence and (2) that no depository bank, drawee, drawer, or indorser will be asked for payment based on a check that it already has paid. See 69 FR 1476 published on January 8, 2004.

Section 229.57 Consumer awareness

This section of the EFA Act provides a description of the disclosure that banks must provide to consumers to promote awareness of substitute checks. Banks are required to provide a one-time consumer awareness disclosure at the time the customer relationship is initiated to consumers who will routinely receive paid checks with their periodic account statements in accordance with their deposit agreements. Banks also must provide the substitute check consumer awareness disclosure (1) any time a consumer receives a substitute check in response to a consumer's request for a check or check copy or (2) any time a check that the consumer deposited is later returned unpaid to the consumer in the form of a substitute check. Section 12(c) of the Check 21 Act requires the Board to publish model disclosures that banks can use to satisfy the content requirements of the consumer awareness disclosure required by that section. The statute provides that a bank that uses the model disclosure published by the Board to comply with section 229.57 of the EFA Act shall be treated as complying with that section if it accurately describes the bank's policies and practices. The model disclosure explains in very simple terms what a substitute check is, when the consumer expedited recredit right applies, and what a consumer must do to exercise that right.

Respondent Panel

Although Regulation CC applies to all banks, the Board accounts for only the burden imposed on the 686 state member banks and uninsured state branches and agencies of foreign banks that it supervises.

Time Schedule for Information Collection

The disclosure requirements for Regulation CC are triggered by specific events and must be provided to consumers within the time periods established by the law and regulation. There is no reporting form associated with the requirements of Regulation CC; disclosures or notifications, pertaining to a particular transaction or consumer account, are not publicly available. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

Public Availability of Data

There is no data related to this information collection available to the public.

Legal Status

Section 609 of the EFA Act (12 U.S.C. § 4008), as amended by section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, states that, "the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall prescribe regulations (1) to carry out the provisions of this chapter, (2) to prevent the circumvention or evasion of such provisions, and (3) to facilitate compliance with such provisions." Additionally, section 15 of the Check 21 Act (12 U.S.C. § 5014) authorizes the Board to "prescribe such regulations as the Board determines to be necessary to implement, prevent circumvention or evasion of, or

facilitate compliance with the provisions of this chapter.” The Board is therefore authorized by these statutory provisions to promulgate the recordkeeping and disclosure requirements contained in Regulation CC. The recordkeeping and disclosure requirements in Regulation CC are mandatory. The information that Regulation CC requires of consumers who are making an expedited recredit claim is required to obtain a benefit.

Because records required by Regulation CC are maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information would be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in “examination, operating, or condition reports” obtained in the bank supervisory process (5 U.S.C. § 552(b)(8)).

Consultation Outside the Agency

Pursuant to sections 1086 and 1100H of the Dodd-Frank Wall Street Reform and Consumer Protection Act, effective July 21, 2011, the Board and the Consumer Financial Protection Bureau (CFPB) assumed joint rulemaking authority with respect to subpart B of Regulation CC. Given this joint authority, the Board has communicated with the CFPB regarding this information collection.

Public Comments

On May 24, 2022, the Board published an initial notice in the *Federal Register* (87 FR 31560) requesting public comment for 60 days on the extension, without revision, of the FR CC. The comment period for this notice expired on July 25, 2022. The Board did not receive any comments. The Board adopted the extension, without revision, of the FR CC as originally proposed. On October 13, 2022, the Board published a final notice in the *Federal Register* (87 FR 62101).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR CC is 137,840 hours. The estimated average hours per response caused by a particular notice or disclosure requirement depends on several factors, including whether the notice is machine-generated and whether it is customer-specific. The notices given at account opening and upon request and the notices posted where consumers make deposits are disclosures concerning the bank’s policy. They are machine-generated and are not customer-specific; thus the burden per response is minimal. The notice of changes in policy (including the annual notice updating the ATM list, if necessary) is not customer-specific, but likely requires more time to prepare. Also, the timing for these is more uncertain because they are event-triggered and not given a standard schedule; therefore, the burden per response is greater than for other notices. Notices given when a bank invokes a case-by-case hold or an exception permitted by the regulation are customer-specific; therefore, the burden per response associated with these notices is slightly greater. The notice of nonpayment is also customer-specific; however, it is machine-generated. Therefore, the burden

per response associated with this notice is less than the burden per response associated with other customer-specific notices. These recordkeeping and disclosure requirements represent approximately 2.0 percent of the Board’s total paperwork burden.

FR CC	<i>Estimated number of respondents⁶</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Bank burden				
Sections 229.16 and 229.17 Specific availability policy disclosure and Initial disclosures Section 229.16(c)	686	500	0.02	6,860
Longer delays on a case-by-case basis - Notice in specific policy disclosure Section 229.13(g)	686	700	0.05	24,010
Notice of exceptions Sections 229.18(b) and 229.18(c)	686	2,000	0.05	68,600
Locations where employees accept consumer deposits and ATMs Section 229.11(c)	686	1	0.25	172
Quinquennial inflation adjustments for disclosures (annualized) Section 229.18(e)	686	1	8	5,488
Annual notice of new ATMs Section 229.18(e)	686	1	5	3,430
Changes in policy Section 229.18(e)	100	2	20	4,000
Notification of quinquennial inflation adjustments (annualized) Section 229.31(c)	686	1	4	2,744
Notice of nonpayment on paying bank Section 229.33(h)	686	35	0.02	480
Notification to customer Section 229.54	686	370	0.02	5,076
Expedited recredit for consumers Section 229.55	686	35	0.25	6,003
Expedited recredit for banks	686	15	0.25	2,573

⁶ Of these respondents, 438 of the 686 respondents and 63 of the 100 respondents are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$750 million in total assets), <https://www.sba.gov/document/support-table-size-standards>. There are no special accommodations given to mitigate the burden on small institutions.

Section 229.57				
Consumer awareness	686	300	0.02	4,116
Consumer burden				
Section 229.54(b)(2)				
Expedited recredit claim notice	17,150	1	0.25	<u>4,288</u>
	<i>Total</i>			137,840

The estimated total annual cost to the public for the FR CC is \$8,193,282.⁷

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System for this information collection is negligible.

⁷ For bank burden, the cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$21, 45% Financial Managers at \$74, 15% Lawyers at \$71, and 10% Chief Executives at \$102). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor Statistics (BLS), *Occupational Employment and Wages, May 2021*, published March 31, 2022, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>. For consumer burden, the average consumer cost of \$28 is estimated using data from the BLS, *Occupational Employment and Wages, May 2021*, published March 31, 2022, <https://www.bls.gov/news.release/ocwage.t01.htm>.