

RESCINDED

Expedited Funds Availability Act Program

This document and any attachments are superseded by Comptroller's Handbook - Consumer Compliance - Depository Services.

EXAMINATION OBJECTIVES

Subparts A and B

To determine that the financial institution's funds availability policies are in compliance with the Regulation CC.

To determine that the financial institution has established internal controls for compliance with Regulation CC.

To determine that the financial institution has established a training program for applicable employees concerning their duties with respect to the regulation.

To determine that the financial institution maintains records of compliance with Regulation CC for a period of two years.

EXAMINATION PROCEDURES

A financial institution may delay funds availability for some deposits on a case-by-case basis and on other deposits on an automatic basis. In addition, the institution may make decisions concerning holds and may maintain records at branches, as well as the main office. Therefore, to check for compliance with the holds policies, the examiner must determine not only the types of holds policies employed, but how the decisions are made and where the records are maintained. If a branch makes its decision and maintains its own records, such as in a decentralized structure, sampling may be done at the branch. If the "decision to delay availability is either centralized or made at a regional processing center and records are maintained there, sampling for compliance may be made at that location.

General

1. Review the Matters Requiring Board Attention and Corrective Actions from the three or four previous ROEs to ensure that the board and management have taken appropriate corrective action where necessary and persistent problems have not recurred.

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2. Determine the types of transaction accounts, as defined in Regulation D (204.2(e)) (demand deposits, NOW accounts, ATS accounts) offered by the financial institution.

3. Obtain copies of the forms used by the financial institution for transaction accounts, as applicable.
 - Specific Availability Policy Disclosures
 - Exception Hold Notices
 - Case-by-Case Hold Notices
 - Special Deposit Slips
 - Change in Terms Notices

4. Determine, by account type, the institution's specific funds availability policies with regard to deposits.

5. Determine which individuals actually perform the various activities necessary to comply with the different provisions of Regulation CC, Subpart B. This would include, for example, personnel engaged in:
 - Distributing disclosure statements
 - Employee training
 - Internal reviews
 - Computer program development for deposit accounts (not necessarily a computer programmer)
 - Deposit operations
 - Overdraft administration

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- ATM deposit processing
 - Determining case-by-case holds or exceptions
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6. Review the financial institution's training manual, internal audit or similar reports for Regulation CC, written procedures given to employees detailing their responsibilities under the regulation, and other similar materials.

7. Determine the extent and adequacy of the instruction and training received by those individuals to enable them to carry out their assigned responsibilities in conformance with Regulation CC.

8. Verify that the institution provides employees with a written statement regarding the financial institution's procedures which pertain to that employee's function (§ 229.19(f)).

Initial Disclosures and Subsequent Changes

9. Review the financial institution's specific availability policy disclosures. Determine if the disclosures accurately reflect the financial institution's funds availability policies and meet the requirements under § 229.16 for content.

10. Determine if the financial institution provides the initial disclosure statement prior to accepting funds to open a new transaction account, or mails the disclosures within one business day of receiving a written request by mail, or a telephone request, to open a new account (§ 229.17(a)).

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11. Determine if the financial institution provides its funds availability policy upon an oral or written request within a reasonable time period (§ 229.18(d)).
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12. Determine if the financial institution has made changes to its availability policies since the last examination. If yes, determine whether the depositor was notified in accordance with § 229.18(e).
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Automatic (and/or Automated) Hold Policies

13. Review the financial institution's schedules or other materials relating to its funds availability time periods for the following types of deposits:
- cash (§ 229.10(a))
 - electronic payments (§ 229.10(b))
 - U.S. Treasury checks (§ 229.10(c)(1)(i) and 229.12(b)(2))
 - U.S. Postal Service Money Orders (§ 229.10(c)(1)(ii), 229.10(c)(2) and 229.12(b)(3))
 - checks drawn on Federal Reserve Banks or Federal Home Loan Banks (§ 229.10(c)(1)(iii), 229.10(c)(2), 229.12 (b)(4) and 229.12(c)(1)(ii))
 - state or local government checks (§ 229.10(c)(1)(iv), 229.10(c)(2), 229.12 (b)(4) and 229.12(c)(1)(ii))
 - cashier's, certified and teller's checks (§ 229.10(c)(1)(v), 229.10(c)(2), 229.12 (b)(4) and 229.12(c)(1)(ii))
 - on us checks (§ 229.10(c)(1)(vi) and 229.11(c)(1)(ii))
 - local checks (§ 229.12(b)(1))
 - nonlocal checks (§ 229.12(c)(1)(i))
 - credit union share draft accounts (commentary to § 229.16(b))
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14. Determine that the financial institution's policy for providing funds availability is in accordance with regulatory requirements.
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15. Determine the financial institution's procedures for placing holds.
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16. Selectively sample each of the types of deposits listed in question 2 and verify the funds availability time frames. Determine, for each deposit category, whether the financial institution's procedures provide funds availability within the required time periods. Determine that the procedures and disclosed policy are the same.
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ATM Deposits - Nonproprietary (§ 229.12(f))

(See also §§ 229.19(a)(4), 229.19(a)(5)(ii) and commentary to 229.19(a), (b) for off-premise ATMs.)

17. Determine that the institution makes funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the fifth business day following the day of deposit.
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Availability Rules—\$100 and \$400 (§ 229.10(c) (1)(vii), and 229.11(b)(2))

18. Determine the financial institution's procedures for complying with the \$100 availability rule and, if applicable, the \$400 cash withdrawal rule.
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19. Review records which detail holds placed on accounts. Determine if holds are in accordance with the regulation.
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20. Sample deposit accounts with deposits subject to these rules and verify the institution's compliance with the rules. Verify that actual practices and policies match.
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Extended Holds

Case-by-Case Holds

21. Determine if the financial institution places holds on a case-by-case basis. If yes, review the institution's procedures for placing case-by-case holds.
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22. Review the specific availability policy disclosures to determine whether the case-by-case hold policy has been disclosed.
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23. Review any physical records and/or reports generated from holds placed. (Sample should include records from the main office, as well as branch offices, depending on type of branch system operated.)
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24. Sample a few of the case-by-case holds and determine whether the financial institution makes the funds available for withdrawal within the required time frames.
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25. Determine whether the financial institution provides the customer with a notice of the case-by-case hold as required by § 229.16(c)(2). Determine if the notices meet the timing and content requirements.
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26. If the institution does not provide the notice at the time of deposit, determine whether it either discloses the availability of refunds of overdraft and returned check fees, or does not assess these fees, when the requirements of § 229.16(c)(3) are met.
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Exception Holds (§ 229.13)

27. Determine whether the financial institution places holds on an exception basis. If yes, review procedures for placing exception holds.
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28. Review the specific availability policy disclosures to determine whether the institution has disclosed its exception holds policy.
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29. Review any physical records and/or reports generated from holds placed. (Sample should include records from the main office, as well as branch offices, depending on type of branch system operated.)
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30. Sample a few of the exception holds and determine when the financial institution makes the funds available for withdrawal. Determine that the financial institution does not add more than one business day for “on-us” checks, five business days for local checks, and six business days for nonlocal checks to the maximum time periods in the federal availability schedule for the deposit, unless it can show that a longer delay is reasonable (§ 229.13(h)).
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31. With the exception of new accounts, determine whether the financial institution provides the customer with an exception hold notice as required by § 229.13(g).
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32. Review hold notices. Determine if the notices meet the timing and content requirements for each type of exception hold. (Note: institutions are required to retain copies of “reasonable cause” hold notices.)
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New Accounts (§ 229.13(a))

33. Review financial institution policies for new accounts.

34. Determine how the financial institution defines a “new account” relationship. Determine if the financial institution’s definition is in compliance with Regulation CC.

35. Review the specific availability policy disclosure to determine whether the institution has disclosed its availability policy regarding new accounts.

36. Review a new account report or listing of new account holders. Determine if any holds were placed on the accounts.

37. Sample deposit accounts and request the financial institution to provide documentation concerning the composition of the opening deposit or most recent deposit.

38. Review holds placed and determine if holds are within regulatory limits with respect to time and amount. See § 229.13(a)(1) (Note: No regulatory time limits are set forth for funds availability for local and nonlocal check deposits into new accounts.)

Large Deposits (§ 229.13(b))

39. Determine whether the financial institution has procedures and a special hold policy for “large deposits.” If yes, determine whether the institution considers a large deposit, for purposes of the large deposit exception, to be a day’s aggregate deposit of checks exceeding \$5000.

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40. Determine that the financial institution does not invoke the large deposit exception for cash or electronic payments.

41. Review at least one account deposit on which a large deposit hold was placed and ensure that the hold was placed only on the amount by which a day's deposits of checks exceeds \$5000.

42. Determine if the financial institution provided the customer with a written exception notice which meets the requirements of § 229.13(g) (1) or (g)(2).

43. Determine if the notice was provided within the prescribed time frames of § 229.13(g)(1) or (g)(2).

Redeposited Checks (§ 229.13(c))

44. Determine if the financial institution has procedures and a special hold policy for redeposited checks.

45. If yes, determine if the institution refrains from imposing this exception solely because of a missing endorsement or because the check was post dated.

46. Determine if the financial institution provided the customer with a written exception notice which meets the requirements of § 229.13(g) (1) or (g)(2).

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47. Determine if the notice was provided within the prescribed time frames of § 229.13(g)(1) or (g)(2).
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Repeated Overdrafts (§ 229.13(d))

48. Determine whether the financial institution has procedures or a special hold policy for customers with repeated overdrafts.
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49. If yes, review the financial institution's definition for accounts "repeatedly overdrawn" and determine whether it meets the regulatory definition in § 229.13(d).
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50. Determine that the financial institution returns the account to the financial institution's normal account status when the account has not been repeatedly overdrawn for a six month period following the time the account was characterized as repeatedly overdrawn.
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51. Review the financial institution's overdraft account holder list. (Note: this may or may not be the same overdraft list maintained in the ordinary course of business. The financial institution may maintain a list of recent overdrafts, as well as a list of customers repeatedly overdrawn.)
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52. Review an account classified as repeatedly overdrawn. Determine if the financial institution properly classified the account and followed the regulatory procedures outlined in § 229.13(d).
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53. Determine the date the account was placed in "repeated overdraft" exception status. Review account statements six months prior to the date the account was identified as an overdraft exception.
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54. Determine whether the financial institution provided the customer with an exception notice when an exception hold was placed on the account. If so, review the content of the notice and determine if it meets the requirements of § 229.13(g)(1) or (g)(3).

55. Determine if notice was given within the required time frames (§ 229.12(g)(1) or (g)(3)).

Reasonable Cause to Doubt Collectability (§ 229.13(e))

56. Determine if the financial institution has procedures or a special policy for placing “reasonable cause” holds.

57. If yes, determine who initiates “reasonable cause” holds.

58. Obtain a listing of accounts or checks where this exception was applied. Review the exception notice given to the customer.

59. Determine if the reason for invoking the exception was “reasonable”.

60. Review the content of the notice and determine if it meets the requirements of §229.13(g)(1).

61. Determine if notice was given within the required time frames (§ 229.13(g)(1)).

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62. If the institution imposes a “reasonable cause” exception hold and does not provide the notice at the time of deposit, determine whether it either discloses the availability of refunds of overdraft and returned check fees, or does not assess these fees, when the requirements of § 229.13(e)(2) are met.
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Emergency Conditions (§ 229.13(f))

63. Determine if the financial institution has procedures or a special policy for placing “emergency condition” holds. If yes, review the institution’s procedures for placing these holds.
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64. Determine whether the institution invokes this exception only under the conditions specified in § 229.13(f).
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65. Determine whether the institution makes the funds available for withdrawal within a reasonable time period from either the termination of the emergency or the period in which the deposit would normally be available for withdrawal, whichever is later. (Note: a reasonable period for on-us checks is one business day. A reasonable time for local checks is five business days. For nonlocal checks, six days is usually considered reasonable.) (§ 229.13(h)(3), 229.13(h)(4))
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Miscellaneous Provisions

Special Deposit Slips (§ 229.10(c)(3))

66. Determine if the financial institution requires a special deposit slip for state or local government checks, cashier’s, certified, or teller’s checks in order to provide next business day availability on the deposits (§ 229.10(c)(3)(i)).
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67. If the financial institution requires a special deposit slip, determine that the financial institution: (§ 229.10(c)(3)(ii))

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- provides the deposit slip to its customers; or
 - informs the customers how to obtain and prepare the slips; or
 - makes the special deposit slips “reason-ably available.”
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Additional Disclosure Requirements (§ 229.18)

68. Determine if the financial institution displays a notice of its availability policy in a conspicuous place at locations where employees receive consumer deposits. (§ 229.18(b)) (Note: Drive-up windows and night depositories do not require the notice. See commentary to § 229.18(b))
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69. Determine if the financial institution displays a notice at each of its proprietary ATMs stating that the funds deposited in the ATM may not be available for immediate withdrawal (§ 229.18(c)(1)).
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70. If the financial institution has off-premise ATMs from which funds are not collected more than twice a week, determine if the institution discloses on or at the ATM, the days upon which the deposits made at the ATM will be considered “received.” (§ 229.18(c)(2)).
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71. Determine if the institution includes a notice on all preprinted deposit slips that the deposited funds may not be available for immediate withdrawal (§ 229.18(a)).
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Payment of Interest (§ 229.14)

72. Determine whether the financial institution pays interest as of the date of the deposit, or as of the date provisional credit is granted.
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73. If the financial institution pays interest as of the date provisional credit is granted, review the financial institution's schedule for provisional credit. (This schedule may be from a Federal Reserve Bank or may be based on the time credit is generally received from a correspondent bank.) Select a NOW account statement and ask the financial institution to detail interest rate calculation.

74. Review the financial institution's method for calculating interest on deposits reviewed. Select another NOW account and, using the financial institution's procedures for calculating interest, verify that the financial institution accrues interest as of the date provisional credit is received.

Calculated Availability—Non-consumer Transaction Accounts (§ 229.19(d))

75. Determine if the financial institution uses a formula for calculating funds availability for non-consumer transaction accounts.

76. Review a copy of the financial institution's formula.

77. Select a large corporate account subject to the formula. Ask the financial institution to demonstrate how funds are made available to the customer. Determine whether it appears that the formula accurately reflects the type of deposit mix reasonably expected for this type of account holder. (For example, a local grocery store may have 90% of its deposits made up of local check deposits. Therefore, a formula providing a deposit mix of at least 90% availability within two days may be reasonable. A mail order firm, on the other hand, may have a large percent of nonlocal checks in its check deposits. Therefore, its formula may allow for lengthier availability schedules.)

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Record Retention (§ 229.21(g) and 229.13(g)(4))

78. Determine that the financial institution retains for two years, the notices required when a “reasonable cause” exception is invoked.
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EXAMINER’S SUMMARY, RECOMMENDATIONS, AND COMMENTS

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