

RESCINDED

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Transmittal – See OCC 2020-11

12 CFR 229 (Regulation CC) - Availability of Funds and Collection of Checks: Final Rule Implementing Check Clearing for the 21st Century Act

On July 26, 2004, the Federal Reserve Board (Board) released final amendments to Regulation CC and its commentary to implement the Check Clearing for the 21st Century Act (Check 21 Act), which was enacted on October 28, 2003, and becomes effective on October 28, 2004. The amendments were published as a final rule in the *Federal Register* on August 4, 2004.

These amendments set forth the requirements of the Check 21 Act that apply to banks, a model consumer awareness disclosure and other model notices, and indorsement and identification requirements for substitute checks. The final amendments also clarify some existing provisions of the rule and commentary.

To facilitate check truncation and electronic check exchange, the Check 21 Act authorizes a new negotiable instrument called a "substitute check." A substitute check is a paper reproduction of the original check that contains an image of the front and back of the original check and can be processed just like the original check. The Check 21 Act provides that a properly prepared substitute check is the legal equivalent of the original check for all purposes. The Check 21 Act does not require any bank to create substitute checks or to accept checks electronically. It includes new warranties, an indemnity, and expedited recredit procedures that protect substitute check recipients.

Banks should note that even if they choose not to create substitute checks, they will be subject to new disclosure requirements if they provide paid checks to consumer customers with periodic account statements or if they otherwise provide substitute checks to a consumer customer. This notice must state that a substitute check is the legal equivalent of the original check and describe the recredit rights that apply when a consumer believes a substitute check was not properly charged to their account. Banks must provide this disclosure to consumer customers who receive paid original or paid substitute checks in their periodic statements no later than the bank's first regularly scheduled communication after October 28, 2004. For new customers after that date, the notice must be provided when a customer relationship begins. Additionally, the disclosure must be provided each time a consumer receives a substitute check in response to requests for an original check or a copy of a check or when a substitute check is given as a returned item.

The amendments to Regulation CC contain model language that banks should consider in developing their customer disclosures. Use of the model language for the Substitute Check Policy Disclosure constitutes compliance with the disclosure requirements so long as the information disclosed accurately describes the bank's policies and practices.

To

Chief Executive Officers and
Compliance Officers of All
National Banks, Federal
Branches and Agencies,
Department and Division Heads,
and All Examining Personnel

While not required by the final rule, banks may want to take this opportunity to advise customers that the Check 21 Act and other changes in the payments systems are likely to cause customer checks to clear more rapidly than previously and, thereby, reduce customer check "float."

This rule is effective on October 28, 2004, except for model form C-5A in Appendix C, which is effective immediately, and paragraph (4) of Appendix D, which is effective on January 1, 2006.

Questions may be directed to your OCC supervisory office or the Compliance Division at (202) 649-5470.

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Related Links

- [69 FR 47290](#)

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