Overview of Regulation CC Subpart B Final Amendments

July 23, 2019
2:30-3:30pm ET
DISCLAIMER

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The comments today are my own and not necessarily those of The Clearing House or the ECCHO membership.
AGENDA

• Background

• Changes to Regulation CC Subpart B:
  – Inflation adjusted amounts
  – Extending EFAA coverage

• Not Covered in Final Amendments
ECCHO

• ECCHO was established in 1990 to electronify checks, has approximately 3,000 members, and is a business line of The Clearing House

• Member services include:
  – Rules for private-sector electronic check exchange
  – Advocacy for the check payment system
  – Check education
  – National Check Professional (NCP) certification

• For more info, www.eccho.org

• The Clearing House was established in 1853

• For more info, www.theclearinghouse.org
FYI: Acronyms, Abbreviations & Terms

• Agencies – Federal Reserve Board and CFPB
• CFPB – Consumer Financial Protection Bureau
• CPI-W - Consumer Price Index for Urban Wage Earners and Clerical Workers
• ECCHO – formerly Electronic Check Clearing House Organization—now ECCHO, a business line of The Clearing House
• EFAA – Expedited Funds Availability Act
• EGRRCPA - Economic Growth, Regulatory Relief, and Consumer Protection Act
• FRB – Federal Reserve Board
• RDC – Remote Deposit Capture
• Reg CC – Regulation CC
• RFC – Request for Comment
• TCH – The Clearing House
Subpart B—Availability of Funds and Disclosure of Funds Availability Policies

- §229.10 Next-day availability.
- §229.11 [Reserved]
- §229.12 Availability schedule.
- §229.13 Exceptions.
- §229.14 Payment of interest.
- §229.15 General disclosure requirements.
- §229.16 Specific availability policy disclosure.
- §229.17 Initial disclosures.
- §229.18 Additional disclosure requirements.
- §229.19 Miscellaneous.
- §229.20 Relation to state law.
- §229.21 Civil liability.
Reg CC Subpart B Final Rule

BACKGROUND & SUMMARY OF CHANGES
Background on Subpart B Rulemaking Process

- March 2011, FRB requested comment on proposed amendments to Reg CC Subpart B (regarding funds availability) along with certain changes to Subpart A, C, D
- July 2011, the Dodd-Frank Act became effective, providing FRB and CFPB with joint rule-making authority for Reg CC Subpart B
- FRB did not move forward with Subpart B amendments when publishing July 2018 final amendments to Subparts A, C and D
- November 2018, FRB and CFPB jointly published proposed rulemaking to Reg CC Subpart B to implement statutory requirements/make technical changes. The Agencies also re-opened the 2011 Subpart B proposal (regarding funds availability) for additional comment
  - Comment letters were due by February 8, 2019
    - Agencies received 32 comment letters
      - TCH/ECCHO provided a comment letter
  - Final Rule on Regulation CC Subpart B (statutory requirements/technical changes) was issued on June 24, 2019
Summary of Changes to Reg CC Subpart B

• To implement statutory requirements:
  – Inflation updates to dollar amounts
  – Expanding EGRPCPA coverage to certain American territories:
    • American Samoa
    • Commonwealth of the Northern Mariana Islands
    • Guam

• Makes certain other technical amendments:
  – To reflect joint-rulemaking authority of FRB and CFPB over certain EFA provisions (Reg CC 229.1(a))
  – Non-substantive error correction in Reg DD Appendix A
Reg CC Subpart B Final Rule

INFLATION ADJUSTED AMOUNTS
Background of Mandated Inflation Adjustment

• Under the Dodd-Frank Act, the Agencies are required to adjust the EFAA dollar amounts for inflation
• Dodd-Frank reference: Section 1086(f)
  – Added Section 607(f) to the EFAA
    • Provides that the dollar amounts under the EFAA shall be adjusted every five years after December 31, 2011
    • Adjusted by the annual percentage increase in the CPI-W (Published by Bureau of Labor Statistics) and rounded to nearest multiple of $25
Inflation-Adjusted Amounts effective July 1, 2020

• The Final Rule establishes a methodology for various amounts referenced in Subpart B to reflect inflation, as required by the statute.

• The first set of adjustments appear below:
  - 229.10(c)(1)(vii) – minimum amount will be $225
  - 229.12(d) – cash withdrawal amount will be $450
  - 229.13(a) new-account amount will be $5,525
  - 229.13(b) – large-deposit threshold will be $5,525
  - 229.13(d) – repeatedly overdrawn threshold 5,525
  - 229.21(a) – civil liability amounts for failing to comply with EFAA’s requirements will be $100, $1,100 and $552,500

• For each subsequent set of adjustments, the Agencies anticipate issuing a rule in the Federal Register with the adjusted dollar amounts at least one year before their effective date.
Inflation Adjustment Process

• New section 229.11 and commentary to implement the CPI-W index calculation method

• Inflation Measurement Periods: 229.11(b)(1)
  – July 1, 2020 – first set of adjustments (using aggregate percentage change in CPI from July/2011 to July/2018)
  – July 1, 2025 – second set of adjustments (using aggregate percentage change in CPI from July/2018 to July/2023)
  – Subsequent adjustments effective July 1 every fifth year after 2025 (using the same method for determining the aggregate change in CPI for each subsequent five-year period)

• Indexing Procedure: 229.11(b)
  – Uses the July CPI-W (released in August) during the applicable inflation measurement period
  – Agencies will not adjust dollar amount if no aggregate percentage increase or aggregate percentage increase does not round to multiple of $25

• Inflation adjustments will always be zero or upward, never downward
Inflation Adjustment Calculation

• First set of adjustments, effective July 1, 2020, used the change in the CPI-W for the adjustment period:
  – July 2011 CPI-W: 222.686
  – July 2018 CPI-W: 246.155

• Formula: Adjustment Amount = Aggregate % Change x Existing $ Amount

Round Adjustment Amount to Nearest $25
(No change if 0 or Negative)

• Minimum Amount (229.10(c)(1)(vii)) adjusted to $225
• Cash Withdrawal Amount (229.12(d)) adjusted to $450
More on Inflation-Adjusted Amounts

• Agencies plan to publish adjusted dollar amounts within Reg CC at least one year prior to the date the adjustments will take effect
  – Adjustments effective July 1, 2020 were published in the Federal Register
  – Agencies anticipate publishing adjustments in the Federal Register in the first half of 2024 to be effective July 1, 2025

• Final rule’s inflation adjustments and changes to disclosures will impact all depository institutions—including those with no more than $10 billion in assets
Notices to Consumer Customers

- Depository institutions (DIs) are required to send written notice to consumer account holders at least 30 days before implementing changes to their funds-availability policy (Reg CC 229.18(e)). Changes to the dollar amounts in Reg CC would trigger this notice requirement.

- Despite requests, the Agencies declined to establish in Reg CC an exception to the required change in terms notice as it is required by statute.
  - Agencies believe the one-year timeframe provides DIs enough time to plan/send their change in terms notices
  - The Agencies noted several ways that depository institutions could lower their costs under the rule:
    - Providing required notice electronically
    - Sending notice with the monthly account statement
Reg CC Subpart B Final Rule

EXTENDING EFA ACT COVERAGE
Background of Mandated Extension of EFAA

- Implements the EGRRCPA by extending Reg CC funds availability, payment of interest, and disclosure requirements to financial institutions in:
  - American Samoa
  - The Commonwealth of the Northern Mariana Islands
  - Guam
- Amends the defined terms “state” and “United States” to include these territories in 229.2(ff) and 229.2(jj)
- Adds these territories to the list of locations that are eligible for one-day extension of the availability schedules under 229.12(e) of Reg CC and EFAA
- Effective date for mandated EFAA changes is September 3, 2019
Reg CC Subpart B Final Rule

NOT COVERED IN FINAL RULE
June 2019 Amendments did not Address

- 2011 Funds Availability Proposal
- Deposits made by customers via RDC
  - RDC deposits are governed under customer/account/RDC agreements with the depository institution
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“The art and science of asking questions is the source of all knowledge” Thomas Berger
Questions?

THANK YOU

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