

February 20, 2004

Ms. Jennifer Johnson
Secretary of the Board
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Dockets R-1176

Dear Ivls. Johnson:

Navy Federal Credit Union provides the following comments in response to the Federal Reserve Board's (Board) proposed amendments to Regulation CC to implement the recently enacted Check Clearing for the 21st Century Act (Check 21 Act). Navy Federal is the nation's largest natural person credit union with over \$20 billion in assets and 2.4 million members.

We commend the Board for proposing rules that will simplify the implementation of the Check 21 Act. Specifically, the Board's proposed reorganization of the statutory provisions concerning "action on claims" under §229.54(c) will enable financial institutions to more readily understand their responsibilities with regard to recredit claims. We also commend the Board for creating sample notices to serve as guidance for financial institutions. We recognize that the Board was not required to provide such sample notices; however, we believe they will be useful to financial institutions when developing their own consumer awareness and recredit notices.

We applaud the Board for using the term "banking day" in lieu of "business day" in §229.54(c)(3). Using the term "banking day" in lieu of "business day" provides financial institutions additional time in some cases to meet their recredit obligations. In addition to this change, we strongly urge the Board to replace the term "business day" with "banking day" throughout this section. Because the term "banking day" in Regulation CC has the same definition as "business day" in Regulation E, defining all of the Check 21 Act's recredit timing rules in terms of banking days would make them consistent with the recredit timing rules for electronic transfers in Regulation E. We believe the consistent application of consumer recredit rules for all types of payments is fundamental to promoting consumers' understanding of their rights and financial institutions' responsibilities in connection with deposit accounts. We urge the Board to consider changes to the definition of "business day" in other regulations, such as Regulation Z's rescission and special home mortgage transaction rules, to achieve greater consistency among all of its consumer protection regulations.

We agree with the Board's proposal that would permit a financial institution to compute the time period for acting on a claim required to be in writing from the date a consumer submits the claim, even if other information was provided earlier in a different form. However, we recommend the Board clarify that a claim is deemed "submitted" the date it is *received* by the financial institution, not the date the consumer mails their claim notice.

The Board proposes to require financial institutions to notify consumers that a claim is valid; however, this requirement is not mandated by the Check 21 Act, nor is it similarly required by the recredit provisions of Regulation E. To remain consistent with the consumer recredit provisions of Regulation E, we recommend this requirement be eliminated.

The Board proposes two alternative rule provisions regarding when a financial institution must provide a disclosure to a consumer who requests a copy of a check. One alternative tracks the statute and requires a financial institution to provide the disclosure at the time of the request, and the other alternative requires provision of the disclosures at the time the financial institution provides the substitute check to the consumer. While we prefer the second alternative, which permits financial institutions to provide a notice with the substitute check, we encourage the Board to offer both options to financial institutions. Offering both options provides financial institutions the flexibility to determine which approach is best suited for communicating with their unique customer base.

The Board requests comment on whether using information from a check to create an ACH debit entry should be a payment request covered by the warranty provisions of §229.52(a). We believe a charge to an account resulting from an ACH debit entry initiated using an original or substitute check should not be subject to the warranties under § 229.52(a). The ACH rules already provide that an originating depository financial institution warrants that the ACH debit entry is authorized, and, under ACH rules, may be returned for recredit if an account holder claims it is unauthorized. Therefore, it is unnecessary to subject an originator of an ACH debit entry to a second set of warranties under the Check 21 Act. To eliminate potential confusion over this issue, we recommend the Board clarify in its rules that an ACH debit entry initiated using information from a check is not an “electronic version” of a check under Regulation CC rules.

In the proposal, the Board clarifies that a financial institution may reverse the interest paid in a recredit even though the statute did not specifically address this. We agree with this proposed clarification.

The proposed rule provides that the recipient of an item that purports to be but is not a substitute check has warranty and indemnity rights, and, where applicable, recredit and consumer awareness disclosure rights under subpart D as though the item were a substitute check. We believe this provision is appropriate. An item could be presented as a substitute check, but not meet the regulatory definition of a substitute check due to standard industry practices for correcting errors. In such cases, we believe the institution that transfers, presents, or returns the item and receives consideration for the item should still be subject to the warranty rules of §§ 229.52 through 229.57.

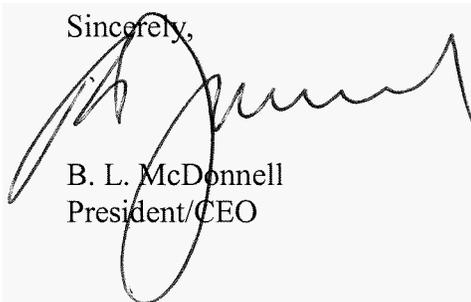
The Board requests comment on its proposed treatment of generally applicable industry standards. We believe the Board’s proposal to reference generally applicable standards in the rule’s text and provide specific industry standards in the proposed commentary is appropriate.

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The Board requests comments on whether it makes sense to incorporate a UCC revision related to remotely-created consumer demand drafts. We believe it makes sense to amend Regulation CC to address the treatment of remotely-created demand drafts. Amending Regulation CC for this purpose would establish uniform rules, rather than state specific rules, for warranting such items. We believe a uniform set of rules governing these items would ease compliance burdens for all parties.

Navy Federal appreciates the opportunity to comment on the Board's proposed regulations implementing the Check 21 Act.

Sincerely,

A handwritten signature in black ink, appearing to read "B. L. McDonnell", is written over a light gray rectangular background. The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

B. L. McDonnell
President/CEO

BLM/scs