



June 3, 2011

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

Re: Comments on Fed Proposed Revisions to Regulation CC / Docket #R-1409

Dear Ms. Johnson:

This letter represents the views of the League of Southeastern Credit Unions (LSCU) on the Board's proposal to amend Regulation CC to increase availability and encourage the use of electronic check return and presentment among credit unions. By way of background, LSCU is a credit union advocacy organization serving the needs of credit unions in Alabama and Florida. LSCU represents 303 state and federal credit unions, which serve more than six million members.

*Summary of the Proposal*

The Federal Reserve Board (Board) proposal seeks to, among other things, amend Regulation CC to increase the amount of deposited funds made available to consumers from \$100 to \$200 for next business day availability by July 21, 2011. As part of this revision, credit unions must update the next business day availability consumer disclosures to show \$200 and provide its members with a change-in-terms notice by August 21, 2011. Under the proposal, a credit union (the first institution to which a check is transferred) would be entitled to an expeditious check return only if it agrees to receive returned checks electronically. The "two-day test" for an expeditious return would only apply to electronic check returns. The proposal would permit paying institutions for same-day settlement to require electronic presentment of checks. The proposal also applies check collection and return provisions, including warranties, to electronically-created items. Revisions to the Expedited Funds Availability Act (EFA) also remove all references to "non-local" checks. The reasonable additional hold extension period would be shortened from 5 to 2 business days for most checks (total hold of 4 business days). And finally, the proposal seeks to update the model disclosure forms and provides 12 month safe harbor protection to those credit unions using the current model forms.

As the Federal Reserve Board knows, the cumulative regulatory burden on credit unions is at an all-time high, due not only to NCUA's activities but also to the flood of new rules being issued by multiple agencies, including regulations pursuant to the Dodd-Frank Act. The Fed's own chairman last month cautioned against overwhelming financial markets as he acknowledged the ever increasing regulatory burden on institutions. These revisions are ambitious and will require a great deal of time and resources on the part of credit unions to analyze, implement, and test for proper performance. Therefore, for these and reasons to follow, LSCU maintains some serious concerns with several aspects of the Board's proposal as presented for comment.

#### *Increase in Dollar Amount Available for Withdrawal*

Section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amends the EFA by increasing from \$100 to \$200 the amount of deposited funds that credit unions must make available for withdrawal by opening of business on the next day. This increase would be the first such increase since the EFA's initial enactment in the early 90s and we believe the amount will not present an issue for our members from an operational standpoint. However, we are concerned that the potential exist for a spike in the amount of funds affected by fraudulent activities. Credit unions are countering this expected increase by revisiting policies and re-orienting personnel with the requirements of the Act and we expect this to aid in reducing the effects of the \$200 amount. It is very unfortunate that the Act will require the dollar amount to be made available for withdrawal to be revised through the use of a method of indexing to the rate of inflation every five years. Credit unions cannot impact the rate of inflation upon which this potential dollar amount will be based. Given that fact, credit unions could be required to make funds available for withdrawal in an amount well beyond a figure that would be considered safe and sound. LSCU believes any increase should be considered only when justified by verifiable industry figures showing safe and sound amounts for credit unions to make available. Finally, the effective date of this provision which changes disclosures to \$200 is to be July 21, 2011 with a change-in-terms notice provided to members as stipulated by statute 30 days later on August 21, 2011. This is a very ambitious schedule and we would like to see the Board request more time from Congress in order to provide a reasonable timeframe for implementation of these complex operational revisions. In this instance a timeline we believe would be more conducive to an orderly application of the Act's amendments would be six months at a minimum. This extension would allow for adequate time to address operational issues such as vendor action, IT revisions, and personnel orientation.

The Board has adopted the position that electronic check-clearing and check-return methods improve the efficiency of the check system. There is no debate that electronic processing methods, when working properly, are faster and offer greater flexibility while in many instances reducing cost and errors. We do not dispute these beliefs and also acknowledge the fact that there are an increasing number of checks presented and returned electronically each year. However, some credit unions continue to demand paper returned checks or present paper checks for same-day settlement under § 229.36(f) of Regulation CC and we support their decision to do so. We oppose steps requiring the adoption of

electronic presentment and return methods until it is financially or operationally feasible for a credit union to do so. The full benefits and cost savings of electronic check presentment methods will eventually be realized but to reach that point at the expense of so many within the industry during this challenging economic period is unacceptable. We oppose this effort.

*Proposed Shortening of Reasonable Hold Periods*

The proposal presented would shorten the reasonable hold extension from 5 to 2 business days for most checks (total hold of 4 business days) with no changes to the holds regarding on-us checks. Deposit holds made at nonproprietary ATMs would decrease from 5 to 4 business days, and the reasonable hold extension would decrease from 6 to 2 business days. While we support the general hold period of 2 business days, LSCU does not support the reduction of the reasonable hold extension to 2 business days as proposed. It is our belief that reducing the days to three serves credit unions better. By retaining the reasonable hold extension total at 5 days the credit unions are better served from a fraud prevention, training, and implementation standpoint. LSCU fully supports a depository institutions continued ability to apply a longer hold if proper documentation can show that the extended period is reasonable. We believe these revised hold periods (as shown below) serve the account holders ability to access funds in a timely manner while serving credit union’s need to protect its operations from fraudulent activity. It is reasonable, in our view, that a depository credit union that does not accept electronic returns would incur additional risks because of hold reductions.

The following table shows the current and LSCU proposed safe harbor hold periods.

Type	General Hold (Business Days)		Reasonable Hold (Business Days)	
	Current	Proposed	Current	Proposed
Local Checks	2	No Change	5	3
Non-Local Checks	5	-	6	-
Deposits to Nonproprietary ATMs	5	4	6	3

*Same-Day Settlement Standard*

LSCU supports the Board’s proposal permitting paying credit unions for same-day settlement to require electronic presentment of checks as “electronic collection items” with the same timeframes, deadlines, and settlement that currently apply to the same day settlement of checks. LSCU views the electronic presentment requirement as being more equitable for both collecting and paying credit unions. The Check 21 Act brought about substantial changes in the manner in which checks are now collected. Many paying credit unions now receiving check presentments electronically have indicated that they prefer to receive the majority of their check presentments electronically. LSCU is supportive of technological advancement whenever the process serves to improve the back-office operations and cost reductions associated with check processing. Some collecting credit unions, however, continue to present paper checks to these paying credit unions under the Regulation CC same-day settlement rule and we urge the Board to be mindful of the issues

that may limit the ability of these institutions to make the conversion to an electronic based check presentment and return system. Current economic factors such as NCUSIF Assessments, reduced income, low loan demand, and investment limitations remain challenging to credit unions.

LSCU supports the proposal that the existing warranties related to remotely created checks be extended to electronically created items that resemble images of remotely created checks for those credit unions choosing to present electronically. Warranties that currently apply to paper checks, remotely-created, or substitute checks should apply to electronic collection items and returns. We believe in this age of smart-phones and apps where a drawer is able to execute a “handwritten” signature on the phone’s screen, and attach a signature is an electronic “check” that the drawer then sends via the Internet to the payee, for the payee’s subsequent electronic deposit with its bank is a technical advancement that is deserves coverage. Given the advancement of the process, warranties should apply.

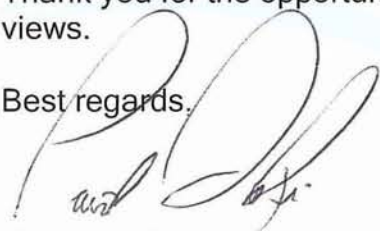
*Notice of Nonpayment Requirement*

The Board believes that proposed changes will provide depository credit unions with a strong incentive to make arrangements to receive returns electronically. Under the proposal, a depository credit union that does not agree to receive electronic returns from the paying institution will not receive a notice of nonpayment. In the proposal, since a depository credit union should receive the returned check itself within the current notice-of-nonpayment timeframe, the Board proposes to delete the notice of nonpayment provision as unnecessary. We view this step as mutually supporting both electronic and non-electronic credit unions in their return efforts. In the current presentment environment, if a paying credit union chooses not to pay a check in the amount of \$2,500 or more, a notice of nonpayment must be provided so that it is received by the depository credit union by 4 p.m. on the second business day following the transaction day on which the check was presented to the paying credit union. Return of the check itself satisfies the nonpayment notice requirement if it meets the timeframe requirement. The current two day timeframe for notice of nonpayment is the same as the two-day timeframe for expeditious return set forth in the proposal. We support the removal of this unnecessary procedure.

Finally, we believe the Board’s estimate of 80 hours and \$5,000 in costs to convert to electronic returns significantly understates the actual costs to develop new model forms and disclosures, train staff, and implement operational changes.

Thank you for the opportunity to comment. I appreciate the Board’s consideration of our views.

Best regards,



Patrick La Pine  
President and CEO