

[Banking and Finance Law Daily Wrap Up, CHECKS AND ELECTRONIC TRANSFERS—Funds availability adjustments proposed, \(Nov. 20, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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The Consumer Financial Protection Bureau and Federal Reserve Board have jointly proposed amendments to Reg. CC—Availability of Funds and Collection of Checks (12 CFR Part 229) that would implement a statutory requirement to adjust for inflation the amount of funds depository institutions must make available to their customers. The [proposed amendments](#) would apply in circumstances ranging from next business day withdrawal of check deposits to setting the threshold amount for determining whether an account has been repeatedly withdrawn.

The CFPB and Fed are proposing a calculation methodology for implementing a statutory requirement to adjust the dollar amounts in the Expedited Funds Availability Act (EFA Act) every five years by the aggregate annual percentage increase in the Consumer Price Index for Wage Earners and Clerical Workers rounded to the nearest multiple of \$25. To help ensure that institutions have sufficient time to implement the adjustments, the agencies propose a compliance date that would be at least 12 months after publication of a final rule in the *Federal Register*.

The agencies also propose to implement in Regulation CC, EFA Act amendments made by the Economic Growth, Regulatory Relief, and Consumer Protection Act, which include extending coverage of the EFA Act to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.

Reopening of comment period for 2011 funds availability proposal. Finally, the agencies are providing an additional opportunity for public comment on certain funds-availability amendments in subpart B of Regulation CC that the Fed published in 2011 regarding funds availability schedule provisions and associated definitions. Under the Dodd-Frank Act, the Fed and the CFPB assumed joint rulemaking authority for portions of the proposal.

Recognizing that there may have been important changes in markets, technology, or industry practice, the agencies are providing an opportunity for the public to provide comments with new, additional, or different views on the 2011 funds availability proposal. The agencies are accepting comments on all aspects of the proposed amendments for 60 days following publication in the *Federal Register*.

New issues. The Fed and the Bureau are aware of various issues that were not raised by the 2011 funds availability proposal. For example, some members of the public have suggested that the agencies clarify how the funds availability provisions in subpart B of Regulation CC apply to prepaid accounts and to checks deposited electronically through a process known as "remote deposit capture." In addition, the agencies have received requests to clarify the relationship between Regulation CC availability requirements and banks' responsibilities related to deposit reconciliation.

At this time, the agencies are requesting comment only on the issues raised by the proposed rulemakings. The agencies will consider whether further action is appropriate with respect to new topics in the future.

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