

§ 229.2(t). This rule affects the status of the combined entity in a number of areas in this subpart. For example:

1. The paying bank's responsibility for expeditious return (§ 229.30).
2. The returning bank's responsibility for expeditious return (§ 229.31).
3. Whether a returning bank is entitled to an extra day to qualify a return that will be delivered directly to a depository bank that has merged with the returning bank (§ 229.31(a)).
4. Where the depository bank must accept returned checks (§ 229.32(a)).
5. Where the depository bank must accept notice of nonpayment (§ 229.33(c)).
6. Where a paying bank must accept presentment of checks (§ 229.36(b)).

XXVII. Section 229.41 Relation to State Law

A. This section specifies that state law relating to the collection of checks is preempted only to the extent that it is inconsistent with this regulation. Thus, this regulation is not a complete replacement for state laws relating to the collection or return of checks.

XXVIII. Section 229.42 Exclusions

A. Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the expeditious return and notice of nonpayment requirements of Subpart C of this regulation. Other provisions of this subpart continue to apply to the checks. This exclusion does not apply to checks drawn by the U.S. government on banks.

XXIX. Appendix C—Model Forms, Clauses, and Notices

A. Introduction

1. Appendix C contains model forms, clauses, and notices that may be used by banks to meet their disclosure responsibilities under the regulation. Banks using the model forms, clauses, and notices properly will be in compliance with the disclosure requirements of the regulation.

2. Certain information that must be inserted by a bank using the forms is italicized within parentheses in the text of the forms. Some forms contain alternative clauses, and these are set forth in brackets and separated by the word "or." Banks may make certain changes in the format or content of the model forms and delete material that is inapplicable without losing the Act's protection from liability for banks that use the forms properly. For example, if a bank does not take advantage of the § 229.13 exceptions, it may delete the material relating to those exceptions. The rearrangement of the model forms, clauses, or notices may not be so extensive, however, as to affect the substance, clarity, or meaningful sequence of the forms. Acceptable changes include, for example:

- a. Using "customer" and "bank" instead of pronouns.
- b. Not using bold type for headings.
- c. Incorporating certain state law "plain English" requirements.

3. Shorter time periods for availability may always be substituted for time periods used in the model forms, clauses, or notices.

4. Banks may also add information related to their availability policies. For example, a bank might indicate that although funds have been made available to a customer and the customer has withdrawn them, the customer is still responsible for problems with the deposit, such as checks that were deposited being returned unpaid. Or a bank could provide in its disclosure a telephone number to be used if a customer has an inquiry regarding a deposit.

5. Banks are cautioned against using the forms, clauses, or notices without reviewing their own policies and practices, as well as state and federal laws regarding the time periods for availability of specific types of checks. A bank using a model form will be in compliance with the Act and the regulation only if its disclosures correspond to the bank's availability policy.

B. Models

1. Models C-1 through C-5 generally.

a. These forms are models for the specific availability policy disclosure described in § 229.16 of the regulation. The forms accommodate a variety of availability policies, ranging from policies of next-day availability to holds on a blanket basis up to the maximum time allowed in the regulation. Model C-3 reflects the additional disclosures discussed in §§ 229.16(b) and (c) for banks that have a policy of extending availability times on a case-by-case basis.

b. As already noted, there are several places in the forms where information must be inserted. This information includes the bank's name and cut-off times, limitations relating to next-day availability, and the first four digits of routing numbers for local banks. In disclosing when funds will be available for withdrawal, the bank must insert the original number (such as first, second, etc.) of the business day the funds will become available.

c. Models C-1 through C-5 generally do not reflect any optional provisions of the regulation, or those that apply only to certain banks. Instead, disclosures for these provisions are included in the model clauses (Models C-6 through C-11). A bank using one of the model forms should also consider whether it must incorporate one or more of the model clauses.

d. While § 229.10(b) of the regulation requires next-day availability for electronic payments, Treasury regulations (31 CFR part 210) and ACH association rules require that preauthorized credits (direct deposits) be made available on the day the bank receives the funds. Model Forms C-1 through C-5 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the day received or on the business day following receipt. Banks should ensure that their disclosures reflect the availability given in most cases for wire transfers.

e. Banks that have used earlier versions of the model forms, clauses, or notices (such as those forms that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after

deposit) are protected from civil liability under § 229.21(e). Banks are encouraged, however, to use current versions of the forms when reordering or reprinting supplies of forms.

2. Model C-1. A bank may use this form when its policy is to make funds from all deposits available on the first business day after a deposit is made. This form may also be used by banks that provide immediate availability by substituting the word "immediately" in place of "on the first business day after the day we receive your deposit."

3. Model C-2. A bank may use this form when its policy is to make funds from all deposits available to its customers on the first business day after the deposit is made, and to reserve the right to invoke the new account and other exceptions in § 229.13 of the regulation.

4. Model C-3. A bank may use this form when its policy, in most cases, is to make funds from all types of deposits available the day after the deposit is made, but to delay availability on some deposits on a case-by-case basis up to the maximum time periods allowed under the regulation. A bank using this form also reserves the right to invoke the exceptions listed in § 229.13 of the regulation. A bank reserving the right to impose the cash withdrawal limitation in § 229.12(d) should disclose that funds may not be available until the sixth (rather than fifth) business day in the first paragraph under the heading "Longer Delays May Apply."

5. Model C-4. A bank may use this form when its policy is the same as that outlined in Model C-5. The only difference between Model C-5 and Model C-4 is that in the latter a chart showing the bank's availability policy for local and nonlocal checks is substituted for the narrative description in the former.

6. Model C-5. A bank may use this form when its policy is to impose delays to the full extent allowed by § 229.12 and to reserve the right to invoke the § 229.13 exceptions.

7. Models C-6 through C-11 generally. These model clauses must be incorporated into a bank's specific availability policy disclosure under certain circumstances. The commentary to each clause indicates when the clause is required.

8. Model C-6. This clause must be incorporated in the specific availability policy disclosure by banks that reserve the right to place a hold on funds already on deposit when they cash a check for the customer, as discussed under § 229.19(e).

9. Model C-7. This clause must be incorporated in the specific availability disclosure by banks that reserve the right to place a hold on funds in an account of the customer other than the account into which the deposit is made, as discussed in § 229.19(e).

10. Model C-8. This clause must be incorporated in the specific availability policy disclosure by banks in check processing regions where the availability schedules for certain nonlocal checks have been reduced, as described in Appendix B of the regulation. Banks using Model C-5 may insert this clause at the conclusion of the discussion titled "Nonlocal checks."