**2400.10: Collection of Checks Procedure**

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Regulation CC (12 CFR Part 229) implements the Expedited Funds Availability Act and the Check Clearing for the 21st Century Act (the Check 21 Act). The regulation is divided into subparts and appendices. The guidelines established within this document are to assist the Credit Union with compliance of Subpart C related to the rules to expedite the collection and return of checks and electronic checks and the rules relating to substitute checks. [[CUname]] (Credit Union) will comply with the requirements outlined in Regulation CC.

**DEFINITIONS**

1. **Bank.**
	1. For purposes of subparts C (Collection of Checks) and A (General Overview), the term also includes any person engaged in the business of banking, as well as the Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit acts as a paying bank. In addition:

		1. FDIC insured (or eligible to be insured) bank;
		2. Mutual Savings Bank;
		3. Savings Bank;
		4. NCUA insured (or eligible to be insured) credit union;
		5. Member defined in section 2 of the Federal Home Loan Bank Act;
		6. Savings association that is an insured depositary bank (or eligible); or
		7. Agency or branch of a foreign bank.
	2. For purposes of subpart D (Substitute Checks), bank also includes the Treasury of the United States or the United States Postal Service to the extent that the Treasury or Postal Service acts as a paying bank.
2. **Indemnifying Bank.**A bank that provides an indemnity under 229.34 with respect to remote deposit capture or an electronically-created item, or a bank that provides indemnity under 229.53 with respect to a substitute check.
3. **Copy.** Any paper reproduction of an original check, including a paper printout of an electronic image of the check, a photocopy of the original check or a substitute check; or any electronic reproduction of a check that a recipient has agreed to receive from the sender instead of a paper reproduction.
4. **Sufficient Copy**. Copy of an original check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or is otherwise sufficient to determine whether or not a claim is valid.
5. **Electronic Check (Electronic Returned Check)**. An electronic image of, and electronic information derived from, a paper check or paper returned check, that is sent to a receiving bank pursuant to an agreement between the sender and the receiving bank; and confirms with American National Standard Specifications for Electronic Exchange of Check Image Data – Domestic, X9. 100-187 (ANS X9. 100-187), unless the FRB by rule or order determines that a different standard applies or the parties otherwise agree.
6. **Electronically-created item.**An electronic image that has all the attributes of an electronic check or electronic returned check but was created electronically and not derived from a paper check.
7. **Magnetic ink character recognition line and MICR line.** The numbers, which may include the routing number, account number, check number, check amount, and other information that are:

	1. Printed near the bottom of a check in magnetic ink in accordance with American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (ANS X9.13) for an original check and American National Standard Specifications for an Image Replacement Document – IRD, X9 100-140 (ANS X9.100-140) for a substitute check, or
	2. Contained in a record specified for MICR line data in an electronic check or electronic returned check in accordance with American National Standard Specifications for Electronic Exchange of Check Image Data – Domestic, X9. 100-187 (ANS X9.100-187).

**COLLECTION OF CHECKS**

1. **Electronic Checks.** Electronic checks and electronic returned checks are treated as if they were checks or returned checks, except where “paper check” or “paper returned check” is otherwise indicated.
2. **Writings.** If a bank is required to provide information in writing under this subpart, the bank may satisfy that requirement by providing the information electronically if the receiving bank agrees to receive that information electronically.

**GUIDELINES**

1. **PAYING BANK’S RESPONSIBILITY FOR THE RETURN OF CHECKS.** A paying bank that decides not to pay a check must return the check in an “**expeditious manner,**” meaning returned to the depositary bank no later than 2:00 p.m. (local time of the depositary bank) on the 2nd business day after the banking day on which the check was presented to the paying bank. If the 2nd business day following the banking day on which the check was presented to the paying bank is not a banking day for the depositary bank, the paying bank satisfies the expeditious return requirements if it sends the returned check in a manner that the depositary bank would normally receive the returned check not later than 2:00 pm (local time of the depositary bank) on the depositary bank’s next banking day.

	1. **Return of Checks.** The paying bank may send a returned check to the depositary bank, to any other bank agreeing to handle the returned check, or if the paying bank is unable to identify the depositary bank with respect to a check, to any bank that handled the check for forward collection (indicating that the paying bank is unable to identify the depositary bank). The paying bank can convert a check to a qualified returned check (if encoded properly under the Regulation (229.31(a)(3)).
	2. **Notice of Nonpayment.** If the paying bank does not pay a check in the amount of $5,000 or more, it will provide notice of nonpayment so that it will be received by the depositary bank no later than 2pm local time of the depositary bank, on the second business day following the banking day the check was presented to the paying bank. Notice can be provided by any reasonable means, including a returned check, a writing (including a copy of the check), or telephone. To the extent available, the notice must include the information contained in the check’s MICR line when the check is received by the paying bank, as well as:

		1. The name of the payee(s);
		2. The amount;
		3. The date of the indorsement of the depositary bank;
		4. The bank name, routing number, and trace or sequence number associated with the indorsement of the depositary bank; and;
		5. The reason for nonpayment.
		6. If the paying credit union is not sure of the accuracy of an item, it shall include the above information to the extent possible and identify what is not believed accurate. The notice may also include other information from the check that may be useful in identifying the check being returned and the customer.
	3. **Exceptions to Expeditious Return of Checks and Notice of Nonpayment Requirements.** The requirements for expeditious returns do not apply if:
		1. The check is deposited in a depositary bank that is not subject to the requirements of the regulation for availability of funds and disclosure of funds availability policies (subpart B); or
		2. The paying bank is unable to identify the depositary bank with respect to the check.
	4. **Identification of Returned Check.** The paying bank returning a check will clearly indicate on the front of the check that it is a returned check and the reason for return. If a substitute check or electronic return check is being returned, the paying bank will include this information so that the information would be retained on any subsequent substitute check.
	5. **Notice in Lieu or Return.** If the check is unavailable for return, the paying bank may send a copy of the front and back of the returned check, or a written notice of nonpayment containing the associated requirements. The copy or written notice shall clearly state that it constitutes a notice in lieu of return.
	6. **Extension of Deadline.** The deadline for return or notice of dishonor or nonpayment (under UCC, Regulation J or 229.36(d)(3) and (4)) is extended to the time of dispatch of such return or notice if the depositary bank (or receiving bank, if the depositary bank is unidentifiable) receives the returned check or notice:
		1. On or before the depositary bank’s (or receiving bank’s) next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2pm (local time of the depositary bank or receiving bank) or later set by the depositary bank under UCC 4-108, for all deadlines; or
		2. Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depositary bank), for a deadline falling on a Saturday that is a banking day (as defined in UCC) for the paying bank.
	7. **Reliance on Routing Number.** A paying bank may return a check based on any routing number designating the depositary bank appearing on the returned check in the depositary bank’s indorsement.
2. **RETURNING BANK’S RESPONSIBILITY FOR RETURN OF CHECKS.** A returning bank shall return a check in an “**expeditious manner,**” meaning that the check would normally be received by the depositary bank not later than 2pm (local time of the depositary bank) on the 2nd business day after the banking day on which the check was presented to the paying bank. If the 2nd business day following the banking day on which the check was presented to the paying bank is not a banking day for the depositary bank, the returning bank satisfies the expeditious return requirements if it sends the returned check in a manner that the depositary bank would normally receive the returned check not later than 2:00 pm (local time of the depositary bank) on the depositary bank’s next banking day.
	1. **Return of Checks.** A returning bank that is unable to identify the depositary bank may send the return check to any collecting bank that handled the returned check for forward collection if the returning bank was not a collecting bank with respect to the returned check, or to a prior collecting bank, if the returning bank was a collecting bank with respect to the returned check. The returning bank will advise the bank to which the returned check is sent that the returning bank is unable to identify the depositary bank. The returning bank can convert a check to a qualified returned check (if encoded properly under the Regulation (229.32(a)(3)).
	2. **Exceptions to Expeditious Return of Checks.**The requirements for expeditious returns do not apply if:
		1. The check is deposited in a depositary bank that is not subject to the requirements of the regulation for availability of funds and disclosure of funds availability policies (subpart B);
		2. The paying bank is unable to identify the depositary bank with respect to the check; or
		3. The bank handles a misrouted returned check pursuant to the regulation (229.33(f)).
	3. **Notice in Lieu or Return.** If the check is unavailable for return, the returning bank may send a copy of the front and back of the returned check, or if a copy isn’t available, a written notice of nonpayment containing the associated requirements. The copy or written notice shall clearly state that it constitutes a notice in lieu of return.
	4. **Settlement.** A returning bank will settle with a bank sending a returned check to it for return by the same means that it settles or would settle with the sending bank for a check received for forward collection drawn on the depositary bank. The settlement is final when made.
	5. **Charges**. A returning bank may impose a charge on a bank sending a returned check for handling the returned check.
	6. **Reliance on Routing Number.** A returning bank may return a check based on any routing number designating the depositary bank appearing on the returned check in the depositary bank’s indorsement or in magnetic ink on a qualified return check.
3. **DEPOSITARY BANK’S RESPONSIBILITY FOR RETURNED CHECKS.**
	1. **Acceptance of Paper Returned Checks and Paper Notices of Nonpayment.**A depositary bank should accept paper returned checks and paper notices of nonpayment during its banking day:
		1. At a location requested by the depositary bank for presentment of checks for forward collection; and
		2. At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check.
		3. If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank on its check indorsement; or
		4. At any branch or head office, if no routing number or address appears in the indorsement.
		5. The depositary bank may require that paper returned checks are separated from paper forward collection checks.
	2. **Acceptance of Electronic Returned Checks and Electronic Notices of Nonpayment.**A depositary bank’s agreement with the transferor bank governs the terms under which the depositary bank will accept electronic returned checks and electronic written notices of nonpayment.
	3. **Acceptance of Oral Notices of Nonpayment.**A depositary bank shall accept oral notices of nonpayment during its banking day:
		1. At the telephone number indicated in the indorsement; and
		2. At any other number held out by the bank for receipt of notice of nonpayment.
	4. **Payment.** A depositary bank must pay the returning bank or paying bank returning the check to it for the amount of the check prior to the close of business on the depositary bank’s banking day on which the check is received. Payment may be made by:
		1. Debit to an account of the depositary bank on the books of the returning or paying bank;
		2. Cash;
		3. Wire transfer; or
		4. Any other form of payment acceptable to the returning or paying bank.
	5. **Misrouted Returned Checks and Written Notices of Nonpayment.** If a bank receives a returned check or written notice of nonpayment on the basis that it is the depositary bank, and determines that it is not the depositary bank, it must promptly return the check or notice to the actual depositary bank or to a returning bank that agrees to handle the returned check or notice. The Credit Union can also send the check or notice back to the bank from which it was received.
	6. **Charges.** A depositary bank may not impose a fee for accepting and paying checks being returned to it.
	7. **Right to assert claim.** A paying bank or returning bank may be liable to a depositary bank for failing to return a check in an expeditious manner only if the depositary bank has arrangements in place so that the paying bank or returning back could return a returned check to the depositary bank electronically, directly or indirectly, by commercially reasonable means. The depositary bank that asserts the claim has the burden of proof for demonstrating that their arrangements meet this standard.
	8. **Notification to the Member.** When the depositary bank receives a returned check, notice of nonpayment, or notice of recovery, it must send or give notice to its members of the facts by midnight on the banking day following the banking day on which it received the returned check, notice of nonpayment or notice of recovery, or within a longer reasonable time.
4. **WARRANTIES AND INDEMNTITIES.**
	1. **Warranties for electronic checks and electronic returned checks.**
		1. Each bank that transfers or presents an electronic check or electronic returned check and receives a settlement or other consideration for it warrants that:

			1. The electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated and the electronic information includes an accurate record of all MICR line information required for a substitute check and the amount of the check; and
			2. No person will receive a transfer, presentment, or return of, or otherwise be charged for an electronic check or electronic returned check, the original check, a substitute check or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid.
		2. Each bank that makes the above warranties makes the warranties to:

			1. For transfers for collection or presentment - the transferee bank, any subsequent collecting bank, the paying bank, and the drawer; and
			2. For transfers for return, the transferee returning bank, any subsequent returning bank, the depositary bank and the owner.
	2. **Transfer and presentment warranties for a remotely created check.**If the Credit Union transfers or presents a remotely created check and receives a settlement or other consideration, they warrant that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount and to the payee stated on the check.
	3. **Returned check warranties.**
		1. Each paying or returning bank that transfers a returned check and receives a settlement or other consideration for it, warrants to the transferee returning bank, to any subsequent returning bank, to the depositary bank, and to the owner of the check the following:
			1. The paying bank returned the check within its deadline;
			2. It is authorized to return the check;
			3. The check has not been materially altered; and
			4. In the case of a notice in lieu of return, the original check has not and will not be returned.
		2. The above warranties do not apply to checks drawn on the U.S. Treasury, U.S. Postal Service money orders, or checks drawn on a state or local government that are not payable through or at a bank.
	4. **Notice of nonpayment warranties.**
		1. Each paying bank that gives a notice of nonpayment warrants to the transferee bank, to any subsequent transferee bank, to the depositary bank and to the owner of the check the following:
			1. The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline;
			2. It is authorized to send the notice; and
			3. The check has not been materially altered.
		2. The above warranties do not apply to checks drawn on the U.S. Treasury, U.S. Postal Service money orders, or checks drawn on a state or local government that are not payable through or at a bank.
	5. **Remote Deposit Capture Indemnity.** The indemnity is provided by a depositary bank that is a truncating bank (229.2(eee)(2)), because it accepts deposit of an electronic image or other electronic information related to an original check, does not receive the original check, receives settlement or other consideration for an electronic check or substitute check related to the original check; and does not receive a return of the check unpaid.
		1. That bank shall indemnify a depositary bank that accepts the original check for deposit for losses incurred by that depositary bank if the loss is due to the check having already been paid.
		2. A depositary bank may not make an indemnity claim if the original check it accepted for deposit bore a restrictive indorsement inconsistent with the means of deposit (i.e. “for mobile deposit only”).
		3. The depositary bank, by agreement, may allocate liability for loss incurred from subsequent deposit of the original check to its member/customer that sent the electronic check related to the original check to the depositary bank.
	6. **Indemnities for Electronically-created Items.**Each bank that transfers or presents an electronically-created item and receives a settlement or other consideration for it shall indemnify each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against losses that result from the fact that:
		1. The electronic image or electronic information is not derived from a paper check;
		2. The person on whose account the electronically-created item is drawn did not authorize the issuance of the item in the amount or to the payee stated on the item; or
		3. A person receives a transfer, presentment, or return of, or otherwise is charged for an electronically created items such that the person is asked to make payment based on an item or check it has already paid.
	7. **Indemnity Amounts.**
		1. The amounts of indemnity shall not exceed the sum of:
			1. The amount of the loss of the indemnified bank, up to the amount of the settlement or other consideration received by the indemnifying bank; and
			2. Interest and expenses of the indemnified bank (including costs and reasonable attorney’s fees and other expenses of representation).
		2. If a loss results in whole or in part from the indemnified bank’s negligence or failure to act in good faith, then the indemnity amount shall be reduced in proportion to the amount of negligence or bad faith attributable to the indemnified bank.
	8. **Notice of Claim**. Unless a claimant gives notice or a claim for breach of warranty or for indemnity under this section to the bank that made the warranty or indemnification within 30 days after the claimant has reason to know of the breach or facts and circumstances giving rise to the indemnity and the identity of the warranting or indemnifying bank, the warranting or indemnifying bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.
5. **INDORSEMENTS.**
	1. **Indorsement Standards.** Banks are required to use a standard form of indorsement when indorsing checks during the forward-collection and return process. The standard provides for indorsements by all collecting and returning banks, with unique requirements for depositary banks. These standards are in accordance with American National Stand Specifications and are designed to facilitate faster handling of returned checks and the identification of the depositary bank.
6. **PRESENTMENT AND ISSUANCE OF CHECKS.**
	1. **Receipt of Electronic Checks.**The terms under which a paying bank will accept presentment of an electronic check is governed by the paying bank’s agreement with the presenting bank.
	2. **Receipt of Paper Checks.**A paper check is considered received by the paying bank when it is received:
		1. At a location to which delivery is requested by the paying bank;
		2. At an address of the bank associated with the routing number on the check, whether contained in the MICR line or in fractional form;
		3. At any branch or head office, if the bank is identified on the check by name without an address; or
		4. At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address.
	3. **Liability of Bank During Forward Collection.** Settlements between banks for the forward collection of a check are final when made. However, a collecting bank handling a check for forward collection may be liable to a prior collecting bank, including the depositary bank and the depositary bank’s customer.
	4. **Same-Day Settlement.** A paper check is considered presented, and a paying bank must settle for or return the check, if a presenting bank delivers the check in accordance with reasonable delivery requirements established by the paying bank and demands payment:
		1. At a location designated by the paying bank for receipt of paper checks at which the paying bank would be considered to have received the paper check, or if no location is designated, at any location under this section and by 8am on the business day (local time).
		2. If presentment of a paper check meets the requirements of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on the business day it receives the check it either returns the check or settles with the presenting bank for the amount of the check by credit to an account at a FRB designated by the presenting bank.
		3. If a paying bank closes on a business day and receives presentment of a paper check on that day, the paying bank is accountable to the presenting bank for the amount of the check, unless by the close of Fedwire on its next banking day it either returns the check or settles with the presenting bank by the amount of the check by credit to an account at a FRB designated by the presenting bank.
7. **VARIATION BY AGREEMENT.** The effect of the provisions of the Collection of Checks in Regulation CC may be varied by agreement, except that no agreement may disclaim the responsibility of a bank for its own lack of good faith or failure to exercise ordinary care, or can limit the measure of damages for such lack of care or failure. The parties may agree upon the standards by which such responsibility is to be measured, provided the standards are not unreasonable.
8. **LIABILITY.**
	1. **Standard of Care, Liability, Measure of Damages.** All banks must exercise ordinary care and act in good faith in complying with the regulatory requirements. A bank that fails to exercise ordinary care or act in good faith may be liable to the depositary bank, the depositary bank’s customer, the owner of the check or another party to the check. The measure of damages for failure to exercise ordinary care is the amount of the loss incurred, up to the amount of the check, reduced by the amount of the loss the party would have incurred even if the bank had exercised ordinary care. The standard of care and measure of damages does not affect a paying bank’s liability to its customer under the UCC or other law.
	2. **Paying Bank’s Liability.** If a paying bank fails to make an expeditious return of a check, and fails to comply with the deadline for returns in connection with a single nonpayment of a check, it may be liable for failure to meet either standard (but not for both).
	3. **Comparative Negligence.**If a person (including a bank) fails to exercise ordinary care or act in good faith in indorsing a check, accepting a returned check or notice of nonpayment, or otherwise, the damages incurred by that person will be in proportion to the amount of negligence or bad faith attributable to that person.
	4. **Responsibility for Certain Aspects of the Check.**

		1. The paying bank (or in the case of a check payable through the paying bank and payable by another bank, the bank which the check is payable) is responsible for damages to the extent the condition of the check when issued by or its customer adversely affects the ability of a bank to indorse the check legibly in accordance with regulation.
		2. The depositary bank is responsible for damages to the extent the condition of the back of a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with regulation.
		3. A reconverting bank is responsible for damages to the extent that the condition of the back of a substitute check transferred, presented, or returned by it adversely affects the ability of a subsequent bank to indorse the check in accordance with regulation or causes an indorsement that previously was applied to become illegible.
	5. **Presumption of Alteration.** With respect to any disputes between banks arising under federal or state law as to whether a substitute check or electronic check transferred between those banks contains an alteration or derived from an original check that was issued with an unauthorized signature of a drawer, there is a rebuttable presumption that the substitute check or electronic check contains an alteration unless the original check is made available for inspection.
		1. The presumption of alteration may be overcome by providing a preponderance of evidence that there was not an alteration.
9. **RELATION TO STATE LAW.**The provisions of the regulation related to the collection of checks supersede any inconsistent provisions of the UCC as adopted in any state, or of any state law, but only to the extent of the inconsistency.
10. **GENERAL PROVISIONS REGARDING SUBSTITUTE CHECKS.**
	1. **Legal Equivalence.** A substitute check for which a bank has provided the warranties is the legal equivalent of an original check, if the substitute check:
		1. Accurately represents all the information on the front and back of the original check as of the time the original check was truncated; and
		2. Bears the legend: “This is a legal copy of your check. You can use it the same way you would use the original check.”
	2. **Reconverting Bank Duties.** A bank must ensure that a substitute check for which it is the “reconverting bank”:
		1. Bears all indorsements applied by parties that previously handled the check in any form for forward collection or return;
		2. Identifies the “reconverting bank” in a manner that preserves any previous reconverting bank identifications in accordance with ANS X9. 100-140; and
		3. Identifies the bank that truncated the original check in accordance with ANS X9. 100-140.
	3. **Applicable Law.** A substitute check that is the legal equivalent of an original check will be subject to any provision of Regulation CC, the UCC, and any other applicable federal or state law that the original check would have been subject, so long as such provision is not inconsistent with the Check 21 Act or Subpart D of Regulation CC.
11. **SUBSTITUTE CHECK WARRANTIES.**
	1. **Content and Provision of Substitute Check Warranties.**
		1. A bank that transfers, presents or returns a substitute check (or a paper or electronic representation of a substitute check) for which it receives consideration warrants the following to the parties identified:
			1. The substitute check meets the requirements for legal equivalence; and
			2. No depositary bank, drawee, drawer, or indorser will receive presentment or return of, or be charged for, the substitute check, the original check, or a paper or electronic representation of either such that that person will be asked to make a payment based on a check that it has already paid.
		2. A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) makes these warranties regardless of whether the bank received consideration.
	2. **Warranties Recipients.** A bank makes the warranties to the person to which it transfers, presents or returns the substitute check (or any representation) and to any later recipient, which could include a collecting or returning bank, the depositary bank, the drawer, the payee, the depositor and any endorser. These parties receive the warranties regardless of whether they received the actual substitute check or a representation.
12. **SUBSTITUTE CHECK INDEMNITY.**
	1. **Scope of Indemnity.** A bank that transfers, presents or returns a substitute check (or any representation) for which it receives consideration must indemnify the recipient and any subsequent recipient (including a collecting or returning bank, the depositary bank, the drawer, the drawee, the payee, the depositor and any indorser) for any loss incurred by any recipient of a substitute check if the loss occurred because of the receipt of the substitute check instead of the original check.
		1. A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or representation) shall indemnify the recipient as described above, regardless of whether the bank received consideration.
	2. **Indemnity Amount.**
		1. If the loss resulted from a breach of a substitute check warranty, the amount of the indemnity will be the amount of any loss including interest, costs, reasonable attorney’s fees and other expenses of representation proximately caused by the warranty breach.
		2. If the loss did not result from a breach if a substitute check warranty, the amount of the indemnity will be the sum of the amount of any loss up to the amount of the substitute check, and interest and expenses including costs and reasonable and attorney’s fees and other expenses of representation related to the substitute check. The indemnity amount will be reduced in proportion to the amount of negligence or bad faith attributable to the indemnified party.
		3. The indemnity provisions are intended to put the parties in the position in which they would have been had they received the original check rather than the substitute check. The indemnifying depositary bank may satisfy the indemnity by either paying the amount of the indemnity or by producing the original check or a copy of the original.
		4. If an indemnifying depositary bank produces the original check, it is only liable for losses that have been incurred up to the time the original check was provided to the indemnified party. By providing the original check, a depositary bank may recover any funds already paid under the indemnity that exceeds the losses incurred up to the time of production. Although the provision of the original check will limit the indemnity a depositary bank must provide, it will not affect the bank’s liability for breach of warranty.
		5. An indemnifying bank will be subrogated to the rights of the party that it indemnifies to the extent of the indemnity it has provided and may recover from another party based on a warranty or other claim.
13. **EXPEDITED RE-CREDIT FOR CONSUMERS.**
	1. **Circumstances Giving Rise to a Claim.**A consumer may make a claim for a re-credit with respect to a substitute check if the consumer asserts in good faith that:
		1. The bank holding the consumer’s account improperly charged the consumer’s account for a substitute check (although the consumer need not be in possession of that substitute check at the time he/she submits a claim);
		2. The substitute check was not properly charged to the consumer’s account or the consumer has a warranty claim with respect to the substitute check;
		3. The consumer has suffered a loss; and
		4. Production of the original check or a sufficient copy is necessary to determine whether or not the substitute check was improperly charged or whether the consumer’s warranty claim is valid.
	2. **Timing of Claim.**A consumer must make a claim within 40 days from the later of the date the bank mailed or delivered the periodic statement that contains information about the transaction that gave rise to the claim, or the date the bank mailed or delivered the substitute check that gave rise to the claim. The time to submit the claim may be extended by the bank due to extenuating circumstances of the consumer.
		1. If a consumer makes a claim orally and the bank requires the claim to be in writing, the consumer’s claim is timely if the oral claim is received within the 40-day time limit and the written claim is received within an additional reasonable amount of time.
	3. **Content of Claim.**
		1. The consumer’s claim must include the following information:
			1. A description of the claim, including the reason why the consumer’s account was improperly charged for the substitute check or the nature of the warranty claim;
			2. A statement that the consumer suffered a loss and an estimate of the amount of the loss;
			3. The reason why the production of the original check or a sufficient copy is necessary to determine whether the charge to the consumer’s account was proper or the consumer’s warranty claim is valid; and
			4. Sufficient information to allow the bank to identify the substitute check and investigate the claim.
		2. If any information required for the claim is missing, the consumer must be notified that the claim is incomplete and identify the specific information that is missing.
	4. **Submission of Claim.** A bank that requires consumers to submit claims in writing:
		1. May permit consumers to submit written claims electronically;
		2. Must inform consumers who submit oral claims of the requirement that the claim be submitted in writing (at the time of the oral claim), and may require consumers to submit the written claim within 10 business days after the banking day on which the bank receives the oral claim; and
		3. Must compute the time periods for acting on consumer claims to begin on the banking day the bank receives the written claim.
	5. **Action on Claims.**
		1. **Valid Claim.** If a bank determines that a consumer’s claim is valid, it must do the following:

			1. Re-credit the consumer’s account for the amount of the loss, up to the amount of the substitute check, plus dividends if the account is a dividend-bearing account, no later than the end of the business day after the banking day on which the bank determines that the consumer’s claim is valid; and
			2. Send the consumer the C-22 Expedited Re-Credit Claim, Valid Claim Refund Notice.
		2. **Invalid Claim.** If a bank determines that a consumer’s claim is not valid, it must send the consumer the C-24 Expedited Re-Credit Claim, Denial Notice.
	6. **Status of Claim Undetermined and Provisional Re-Credit.**
		1. If the bank has not made a determination as to the validity of the consumer’s claim before the end of the 10th business day after the banking day on which the claim was received, the bank must do the following:
			1. By the end of that business day, re-credit the consumer’s account of the amount of the loss, up to the lesser of the amount of the substitute check or $2,500, plus dividends on that amount if the account is a dividend-bearing account; and
			2. Send the consumer the C-23 Expedited Re-Credit Claim, Provisional Refund Notice.
		2. The bank will re-credit the consumer’s account for the amount of the remaining amount of the loss, if any, up to the amount of the substitute check, plus dividends if the account is a dividend-bearing account, no later than the end of the 45th calendar day after the banking day on which the claim was received, and send the C-22 notice, unless the bank prior to that time has determined the consumer’s claim is or is not valid.
	7. **Reversal of Re-Credit.** A bank may reverse a re-credit, plus dividends, that have been paid if the bank does the following:
		1. Determines that the consumer’s claim was not valid; and
		2. Provides the proper notices to the consumer.
	8. **Availability of Re-Credit.** The amount of any re-credit must be made available for withdrawal from the consumer’s account no later than the start of the business day after the banking day on which the re-credit was provided.
		1. The availability of a re-credit may be delayed until the start of the earlier of the business day after the banking day on which the bank determines the claim is valid or the 45th calendar day after the banking day on which the bank received the oral or written claim, if:

			1. The consumer submitted the claim within 30-calendar days after opening his or her account;
			2. Not counting the transaction that gave rise to the re-credit claim; (1) on 6 or more business days within the 6-month period preceding the submission of the claim, the balance in the consumer’s account was negative or would have become negative if checks or other charges had been paid, or (2) on two or more business days during the same six month period, the balance in the consumer’s account was negative or would have become negative in the amount of $5,000 or more if checks or other charges had been paid; or
			3. The bank has reasonable cause to believe that the claim is fraudulent.
		2. A bank that delays availability as provided in the above paragraph may not impose an overdraft fee with respect to drafts drawn by the consumer on re-credited funds until the fifth calendar day after the calendar day on which a C-22 or C-23 notice was provided to the consumer.
	9. **Notices Relating to Consumer Expedited Re-Credit Claims.**
		1. **Notices of Re-Credit.**A bank that re-credits a consumer account must send notice to the consumer of the re-credit no later than the business day after the banking day on which the bank re-credits the consumer account. This notice must include the amount of the re-credit and the date on which the re-credited funds will be available for withdrawal.
		2. **Notice of Invalid Claim.** A bank must send a notice (C-24 or similar notice) to the consumer no later than the business day after the banking day the bank determines that the consumer’s claim is invalid because a substitute check was properly charged to the consumer’s account or that the consumer’s warranty claim for the substitute check is not valid. The notice shall also include the original check or a sufficient copy and shall demonstrate that the substitute check was properly charged to the consumer’s account or that the warranty claim is not valid. Additionally, the notice must include information or documents the bank relied on in making its determination or a statement that the consumer may request copies of such documents or information.
		3. **Notice of a Reversal of Re-Credit.**A bank must send notice (C-25 or similar notice) no later than the business day after the banking day the bank reverses an amount it previously re-credited to a consumer account. The notice shall also include the amount of the reversal, including both the amount of the re-credit and the amount of dividends paid on the re-credited amount, and the date the reversal was made.
		4. **Other Claims Not Affected.** Providing a re-credit does not absolve the bank from liability for a claim made under any other provision of law, such as a claim for wrongful dishonor or any additional damages under Regulation CC or the UCC.
14. **EXPEDITED RE-CREDIT FOR FINANCIAL INSTITUTIONS.**
	1. **Circumstances Giving Rise to a Claim.**A bank that has an indemnity claim under Section 229.53 with respect to a substitute check may make an expedited re-credit claim against an indemnifying bank if:
		1. The claimant bank or another bank it has indemnified, has received a claim for expedited re-credit from a consumer or would have been subject to such a claim if the consumer account had been charged for the substitute check.
		2. The bank is obligated to provide an expedited re-credit or has suffered a loss due to the substitute check.
		3. The production of the original check or a sufficient copy is necessary to determine the validity of the charge to the consumer account or the validity of the warranty claim connected with the substitute check.
	2. **Procedures for Making Claims.**A claimant bank must send its claim to the indemnifying bank so that it is received by the end of the 120th calendar day after the date of the transaction that gave rise to the claim.
		1. The claim must include the following information:

			1. A description of the consumer’s claim or the warranty claim related to the substitute check and the reason why the substitute check may not be properly charged to the consumer account;
			2. A statement that the claimant bank is obligated to re-credit a consumer account or otherwise has suffered a loss and an estimate of the amount of the re-credit or loss, including dividends if applicable;
			3. The reason why production of the original check or a sufficient copy is necessary; and
			4. Additional information to allow the indemnifying bank to identify the substitute check and investigate the claim.
		2. If a claimant bank submits a copy of a substitute check, the bank shall take reasonable steps to ensure that the copy cannot be mistaken for the actual substitute check.
		3. The indemnifying bank may require the claimant bank to submit the required information in writing and may permit the claimant bank to submit the written claim electronically. At the time a verbal claim is submitted, the indemnifying bank must inform the claimant institution of the requirement for a written claim. The 10-day time period for acting on a claim shall begin on the date the indemnifying bank receives the written claim.
	3. **Action on Claims.**Within 10 days after receiving a claim and all required information, the indemnifying bank must do the following:
		1. Re-credit the claimant bank for the amount of the claim, up to the amount of the substitute check, plus dividends (if applicable);
		2. Provide the claimant bank with the original check or a sufficient copy; or
		3. Provide information to the claimant bank regarding why the indemnifying bank is not obligated to comply with the above and provide a re-credit or provide the original check or a copy of the original check.
	4. **Re-Credit and Other Liabilities.**Providing a re-credit does not absolve the indemnifying bank from liability for claims brought under any other law or from damages under Sections 229.53 and 229.56.
	5. **Indemnifying Bank’s Right to a Refund.** If a claimant bank reverses a re-credit previously made to a consumer account or receives reimbursement for a substitute check that formed the basis of its expedited re-credit claim, the claimant bank must provide a prompt refund to any indemnifying bank that advanced funds to the claimant. The amount of the refund shall be the amount of the reversal or reimbursement obtained by the claimant, up to the amount previously advanced by the indemnifying bank.
15. **LIABILITY.**
	1. **Measure of Damages.**
		1. The measure of damages for breach of a warranty is an amount equal to the sum of the amount of the loss suffered as a result of the breach, up to the amount of the substitute check, plus any dividends and expenses (including costs and reasonable attorney’s fees and other expenses of representation) related to the substitute check.
		2. The amount of damages received by a person is reduced by the amount received and retained as a re-credit.
		3. If a person incurs damages that resulted in whole or in part from that person’s negligence or failure to act in good faith, then the amount of any damages due that person (under comparative negligence) shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.
	2. **Timeliness of Action.** Delay is excused if caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank and if the bank uses such diligence as the circumstances require.
	3. **Jurisdiction.** A person may bring an action to enforce a claim in any United States district court or in any other court of competent jurisdiction. The statute of limitations for filing a lawsuit shall be one year from the date on which the person’s cause of action accrued. A cause of action accrues as of the date on which the injured person first learns, or by which such person reasonably should have learned of the facts and circumstances giving rise to the cause of action.
	4. **Notice of Claims.**Unless a person gives notice of a claim to the warranting or indemnifying bank within 30 calendar days after the person has reason to know of both the claim and the identity of the warranting or indemnifying bank, the warranting or indemnifying bank is discharged from liability in an action to enforce a claim to the extent of any loss caused by the delay in giving notice of the claim. A timely re-credit claim by a consumer constitutes timely notice.
16. **CONSUMER AWARENESS.**
	1. **General Disclosure Requirement and Content.**Every bank shall provide a disclosure (similar to the Substitute Check Policy Disclosure in Appendix C-5A or one containing similar language) to each of its members/customers that describes the following:
		1. That a substitute check is the legal equivalent of an original check; and
		2. The consumer re-credit rights that apply when a consumer in good faith believes that a substitute check was not properly charged to his or her account.
	2. **Distribution of Disclosure.**
		1. The disclosure only needs to be provided to one account holder in a joint account.
		2. Additionally, the Credit Union will provide the disclosure to members who request an original check or a copy of a check and instead receive a substitute check. The disclosure must be provided no later than the time the consumer receives the substitute check.
		3. The Credit Union will provide the above disclosure to members who receive paid original or substitute checks with periodic statements.

1. **MODE OF DELIVERY OF INFORMATION.** The Credit Union may deliver any required notice, disclosure or other information including original checks, copies of checks and substitute checks by US mail or other means (including electronically) by which the consumer has agreed to receive account information.
2. **RELATION TO OTHER LAW.**The Check 21 Act and Subpart D of Regulation CC supersede any provision of federal or state law, including the UCC that is inconsistent, but only to the extent of the inconsistency.
3. **VARIATION BY AGREEMENT.** No provision of this regulation may be varied by agreement of the parties, except that Section 229.55 may be varied by agreement of the banks involved.