

Comments of
National Consumer Law Center (on behalf of its low income clients)
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union
National Association of Consumer Advocates
National Consumers League
U.S. PIRG
to
Federal Reserve Board
On Regulatory Review under the Economic Growth
and Regulatory Paperwork Reduction Act of 1996
12 C.F.R. Chapter II
Docket ID OP-1491
Regarding
Regulation CC
79 Fed. Reg. 32172 (June 4, 2014)
Submitted Sept. 2, 2014

The National Consumer Law Center, on behalf of its low income clients, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, National Consumers League and U.S. PIRG¹ submit these comments in response to the Federal Reserve Board's (FRB's) request for the public to identify regulations that are outdated, unnecessary, or unduly burdensome for insured depository institutions the following three categories: Applications and Reporting, Powers and Activities, and International Operations.

We submit these comments to make two points. First, regulations should not be reviewed for potential burden on financial institutions without also reviewing them for updates and additions needed to strengthen consumer protection. Second, the Regulation CC is outdated and needs to be updated to ban remotely created checks and remotely created payment orders for consumer transaction and to clarify the deposit hold times for check deposits to prepaid cards and by way of remote deposit capture. The lack of updates not only harms consumers but also imposes burdens on financial institutions.

Review of Regulations

The FRB has solicited comments on whether regulations are outdated, unnecessary or unduly burdensome in order to comply with the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). The question posed is a one-sided inquiry, and the request did not ask a much more important question: are there areas where regulations are insufficient to protect consumers, small

¹ Organizational descriptions are attached as Exhibit 1.

businesses and the general public? The financial crisis and other events of the last several years have made clear that the real problem in this country is the lack of adequate regulations, not too much regulation. Stronger consumer protection regulations would have saved consumers, financial institutions, and the entire economy billions of dollars, far more than compliance with the regulations could ever cost.

Memories are astonishingly short. Certainly, regulations should be carefully crafted to minimize the costs of compliance for institutions of all sizes, while remaining sufficiently strong to accomplish their purposes. But it is essential not to forget that anti-regulatory fervor and the resistance to consumer protection rules in the end harms not only consumers but financial institutions as well.²

Regulation CC is Outdated and Needs Updates

As we discussed in comments filed in December 2013, remotely created checks (RCCs) and remotely created payment orders (RCPOs) have outlived their usefulness. The few remaining legitimate uses can be replaced by more modern payment instruments that carry clearer consumer protections and clearer obligations for financial institutions. Banning RCCs and RCPOs for all consumer transactions would simplify compliance for financial institutions and avoid inadvertent violations of Regulation E and other regulations. Our previous comments are attached as Exhibit 4.

We also filed comments in September 2013 urging the FRB to complete its 2011 rulemaking under Regulation CC and to extend it in several respects to update it for modern technology and practices. Those comments are attached as Exhibit 5. Specifically, we urged the FRB to:

- Until RCCs and RCPOs can be eliminated, extend RCC warranties to RCPOs, clearly cover RCPOs by the protections of Regulation E, and required improved monitoring of both RCCs and RCPOs.
- Treat remotely created items that bear a handwritten electronic “signature” in the same fashion as RCCs and RCPOs.
- Clarify the application of the Expedited Funds Availability Act (EFAA) to ensure that consumers have prompt access to deposits made on mobile and other devices through remote deposit capture (RDC) and to deposits to prepaid cards.

² For example, it is for this reason that we support strengthening of the data reported on Call Reports because of the heightened safety and soundness concerns associated with some fees and products. *See, e.g.*, Comments of NCLC to Department of the Treasury, Office of the Comptroller of the Currency (Attn: 1557-0081), Federal Reserve System (Consolidated Reports of Condition and Income, FFIEC 031 & 041; OMB Number 7100-0036), Federal Deposit Insurance Corp. (Consolidated Reports of Condition and Income, 3064-0052) On Proposed Agency Information Collection Activities (submitted March 3, 2014), attached as Exhibit 2 available at http://www.nclc.org/images/pdf/rulemaking/nclc_comments_info_collection_03032014.pdf; Comments of Center for Responsible Lending to Federal Reserve Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency on Proposed Agency Information Collection Activities (submitted Feb. 21, 2013), attached as Exhibit 3 and available at http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/center-for-responsible-lending_comment-call-report-data-2013_final.pdf.

Modernizing Regulation CC and requiring uniform treatment of RCCs and RCPOs (which are indistinguishable) would also both protect consumers and clarify regulatory treatment in a way that simplifies compliance for financial institutions.

We also urge the FRB to complete the 2011 proposals, which we supported, to amend Regulation CC to:

- Eliminate nonlocal checks and extend the local check available schedule to all checks.
- Reduce the maximum hold period for nonproprietary ATM deposits.
- Exclude declined debit card transactions from the exception that allows banks to extend hold times for consumers who have had “repeated overdrafts.”
- Reduce the reasonable hold extension period for non “on us” checks to two business days.

Thank you for the opportunity to submit these comments.

Yours very truly,

National Consumer Law Center, on behalf of its low income clients
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union
National Association of Consumer Advocates
National Consumers League
U.S. PIRG

Exhibit 1: Descriptions of Commenters

Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

The **Center for Responsible Lending (CRL)** is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, which consists of a state-chartered credit union (Self-Help Credit Union (SHCU)), a federally-chartered credit union (Self-Help Federal Credit Union (SHFCU)), and a non-profit loan fund.

Consumer Action has been a champion of underrepresented consumers nationwide since 1971. A nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change.

By providing financial education materials in multiple languages, a free national hotline and regular financial product surveys, Consumer Action helps consumers assert their rights in the marketplace and make financially savvy choices. More than 8,000 community and grassroots organizations benefit annually from its extensive outreach programs, training materials, and support.

Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

The **Consumer Federation of America** is an association of nearly 300 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

The **National Association of Consumer Advocates (NACA)** is a nonprofit association of more than 1,500 consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an

organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

U.S. Public Interest Research Group (U.S. PIRG) serves as the Federation of State PIRGs, which are non-profit, non-partisan public interest advocacy organizations that take on powerful interests on behalf of their members. For years, U.S. PIRG's consumer program has designated a fair financial marketplace as a priority. Our advocacy work has focused on issues including credit and debit cards, deposit accounts, payday lending, student loans, credit report accuracy, privacy of customer information (including data breaches) and, generally, any unfair and deceptive practices.