

Federal Reserve System

§ 229.55

business day after the banking day on which the bank makes that determination. This notice shall—

(i) Include the original check or a sufficient copy, except as provided in § 229.58;

(ii) Demonstrate to the consumer that the substitute check was properly charged or the consumer's warranty claim is not valid; and

(iii) Include the information or documents (in addition to the original check or sufficient copy), if any, on which the bank relied in making its determination or a statement that the consumer may request copies of such information or documents.

(3) *Notice of a reversal of recredit.* A bank that reverses an amount it previously recredited to a consumer account shall send notice to the consumer no later than the business day after the banking day on which the bank made the reversal. This notice shall include the information listed in paragraph (e)(2) of this section and also describe—

(i) The amount of the reversal, including both the amount of the recredit (including the interest component, if any) and the amount of interest paid on the recredited amount, if any, being reversed; and

(ii) The date on which the bank made the reversal.

(f) *Other claims not affected.* Providing a recredit in accordance with this section shall not absolve the bank from liability for a claim made under any other provision of law, such as a claim for wrongful dishonor of a check under the U.C.C., or from liability for additional damages, such as damages under § 229.53 or § 229.56 of this subpart or U.C.C. 4-402.

§ 229.55 Expedited recredit for banks.

(a) *Circumstances giving rise to a claim.* A bank that has an indemnity claim under § 229.53 with respect to a substitute check may make an expedited recredit claim against an indemnifying bank if—

(1) The claimant bank or a bank that the claimant bank has indemnified—

(i) Has received a claim for expedited recredit from a consumer under § 229.54; or

(ii) Would have been subject to such a claim if the consumer account had been charged for the substitute check;

(2) The claimant bank is obligated to provide an expedited recredit with respect to such substitute check under § 229.54 or otherwise has suffered a resulting loss; and

(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 any warranty claim connected with such substitute check.

(b) *Procedures for making claims.* A claimant bank shall send its claim to the indemnifying bank, subject to the timing, content, and form requirements of this section.

(1) *Timing of claim.* The claimant bank shall submit its claim such that the indemnifying bank receives the claim by the end of the 120th calendar day after the date of the transaction that gave rise to the claim.

(2) *Content of claim.* The claimant bank's claim shall include the following information—

(i) A description of the consumer's claim or the warranty claim related to the substitute check, including why the bank believes that the substitute check may not be properly charged to the consumer account;

(ii) A statement that the claimant bank is obligated to recredit a consumer account under § 229.54 or otherwise has suffered a loss and an estimate of the amount of that recredit or loss, including interest if applicable;

(iii) The reason why production of the original check or a sufficient copy is necessary to determine the validity of the charge to the consumer account or the warranty claim; and

(iv) Sufficient information to allow the indemnifying bank to identify the substitute check and investigate the claim.

(3) *Requirements relating to copies of substitute checks.* If the information submitted by a claimant bank under paragraph (b)(2) of this section includes a copy of any substitute check, the claimant bank shall take reasonable steps to ensure that the copy cannot be mistaken for the legal equivalent of the check under § 229.51(a) or sent or

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handled by any bank, including the indemnifying bank, for forward collection or return.

(4) *Form and submission of claim; computation of time.* The indemnifying bank may, in its discretion, require the claimant bank to submit the information required by this section in writing, including a copy of the paper or electronic claim submitted by the consumer, if any. An indemnifying bank that requires a written submission—

(i) May permit the claimant bank to submit the written claim electronically;

(ii) Shall inform a claimant bank that submits a claim orally of the written claim requirement at the time of the oral claim; and

(iii) Shall compute the 10-day time period for acting on the claim described in paragraph (c) of this section from the date on which the bank received the written claim.

(c) *Action on claims.* No later than the 10th business day after the banking day on which the indemnifying bank receives a claim that meets the requirements of paragraph (b) of this section, the indemnifying bank shall—

(1) Recredit the claimant bank for the amount of the claim, up to the amount of the substitute check, plus interest if applicable;

(2) Provide to the claimant bank 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 paragraph (c)(1) or (c)(2) of this section.

(d) *Recredit does not abrogate other liabilities.* Providing a recredit to a claimant bank under this section does not absolve the indemnifying bank from liability for claims brought under any other law or from additional damages under § 229.53 or § 229.56.

(e) *Indemnifying bank's right to a refund.* (1) If a claimant bank reverses a recredit it previously made to a consumer account under § 229.54 or otherwise receives reimbursement for a substitute check that formed the basis of its claim under this section, the claimant bank shall provide a refund promptly to any indemnifying bank that previously advanced funds to the claimant bank. The amount of the re-

fund to the indemnifying bank shall be the amount of the reversal or reimbursement obtained by the claimant bank, up to the amount previously advanced by the indemnifying bank.

(2) If the indemnifying bank provides the claimant bank with the original check or a sufficient copy under paragraph (c)(2) of this section, § 229.53(b)(3) governs the indemnifying bank's entitlement to repayment of any amount provided to the claimant bank that exceeds the amount of losses the claimant bank incurred up to that time.

§ 229.56 Liability.

(a) *Measure of damages—(1) In general.* Except as provided in paragraph (a)(2) or (a)(3) of this section or § 229.53, any person that breaches a warranty described in § 229.52 or fails to comply with any requirement of this subpart with respect to any other person shall be liable to that person for an amount equal to the sum of—

(i) The amount of the loss suffered by the person as a result of the breach or failure, up to the amount of the substitute check; and

(ii) Interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.

(2) *Offset of recredits.* The amount of damages a person receives under paragraph (a)(1) of this section shall be reduced by any amount that the person receives and retains as a recredit under § 229.54 or § 229.55.

(3) *Comparative negligence.* (i) 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 to that person under paragraph (a)(1) of this section shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.

(ii) Nothing in this paragraph (a)(3) reduces the rights of a consumer or any other person under the U.C.C. or other applicable provision of federal or state law.

(b) *Timeliness of action.* Delay by a bank beyond any time limits prescribed or permitted by this subpart is excused if the delay is caused by interruption of communication or computer