



**International Bancshares  
Corporation**

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February 8, 2019

***Via Email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)***

Ms. Ann E. Misback  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

***Via email: [www.regulations.gov](http://www.regulations.gov)***

Comment Intake  
Bureau of Consumer Financial Protection  
1700 G Street, NW  
Washington, DC 20552

Re: FRS-Docket No. R-1637, RIN 7100-AF 28; CFPB Docket No. CFPB-2018-0035, RIN 3170-AA31; Comments to Availability of Funds and Collection of Checks (Regulation CC)

Ladies and Gentlemen:

The following comments are submitted on behalf of International Bancshares Corporation ("IBC"), a publicly-traded multi-bank financial holding company headquartered in Laredo, Texas. IBC owns five state nonmember banks serving Texas and Oklahoma. With approximately \$12 billion in total consolidated assets, IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

On November 21, 2018, the Board of Governors of the Federal Reserve System (the "Board") and the Bureau of Consumer Finance Protection (the "Bureau") jointly proposed amendments to Regulation CC to implement a statutory requirement in the Expedited Funds Availability Act ("EFA Act") to adjust the dollar amounts in the EFA Act and Regulation CC every five years and to make certain technical revisions to Regulation CC (the "2018 Proposal"). The 2018 Proposal is very important to IBC's subsidiary banks. IBC appreciates the opportunity to comment on the 2018 Proposal.

I. Subjecting items to decreased hold times will increase losses to banks.

IBC recognizes that the Expedited Funds Availability Act may require the Board and the Bureau to periodically adjust the dollar thresholds for banks to make funds available upon deposit. See 12 U.S.C. § 4001(f) ("The dollar amounts under this chapter shall be adjusted every 5 years after December 31, 2011, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of \$25.").

The 2018 Proposal only proposes limited indexing to the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W")—there will be no constant baseline for this indexing, and instead cumulative changes will only be used to calculate adjustments over two five-year periods. See 12 C.F.R. § 229.11 (proposed) ("[T]he cumulative change in the CPI-W over the two (or more) inflation measurement periods will be used in the calculation until the

cumulative change results in publication of an adjusted dollar amount in the regulation.”). Thus, in certain hypothetical instances of sustained decreases of CPI-W, the dollar amount thresholds may not be adjusted to match the true future value of the dollar, resulting in risks to banks greater than Congress intended.

IBC agrees that “[a]ccounting for upward and downward movements in the CPI-W in calculating any cumulative increase to the dollar amounts is consistent with the approach Congress took in the EFA Act of balancing the interests of depository institutions and their customers.” However, limiting the accounting for downward movements, but not upward movements, may not adequately protect the interests of depository institutions in certain future economic scenarios. IBC trusts that the Board and the Bureau will be amenable to revising Regulation CC in the future should this theoretical concern pose actual increased risks to banks.

Moreover, IBC would simply note that these increased dollar thresholds will require banks to make larger payments on account of certain items in a quicker timeframe, further increasing the losses suffered by banks from check fraud. Indeed, IBC has seen significant increases of check fraud. IBC remains concerned about the overall increases in losses to banks resulting from the expedited funds availability requirements of the EFA Act and its implementing regulations.

## II. The Board and the Bureau should implement regulations to reduce costs to banks resulting from periodic changes to funds availability rules.

These periodic changes to funds availability requirements will result in increased costs to banks. Some costs will be unavoidable—systems will need to be reprogrammed, signage will need to be changed, and staff will need to be trained. However, the Board and the Bureau could amend Regulation CC to alleviate some costs resulting from these periodic changes, such as the requirement to send notice to holders of consumers accounts of changes that expedites the availability of funds no later than 30 days after the implementation of such change. See 12 C.F.R. § 229.18(e).

The Board and Bureau should reduce costs for banks by amending this disclosure rule to specify that additional disclosures need not be provided when funds availability policies are being further expedited as a result of periodic dollar amount adjustments mandated by Regulation CC. In addition to reducing these expenses for banks, we believe not requiring a separate additional disclosure for every periodic adjustment will reduce risks of confusion for bank customers.

## III. Reiterating Comments to the 2011 Funds Availability Proposal

IBC has previously filed several comments on the 2011 Funds Availability Proposal and many of those comments still apply today and should continue to be taken into account. We would particularly like to reiterate our opposition to two provisions from the 2011 Funds Availability Proposal.

### A. *IBC Opposes Shortening The Safe Harbor For Exception Holds*

Under the current rule, a bank may apply a long exception hold to a check deposit in certain circumstances where there is higher risk the check will be returned unpaid. The safe-harbor period for exception holds is currently seven business days. Under the 2011 Funds

Availability Proposal, the safe harbor period would be shortened from seven business days to four business days.

IBC continues to strongly oppose implementing any changes that would reduce its ability to guard and protect against fraud losses. The purpose of holding items is to reduce the risk of an item not being collected. A longer hold period can provide a bank with valuable time to track down fraud issues with a particular customer or within a particular payment channel. Instances of fraud continue to rise, and new check acceptance methods such as remote and mobile deposit capture (both commercial and consumer) have introduced new types of fraud activity that banks are still working to address. Investigation time is critical to sorting these new fraud challenges out and protecting the bank. The last thing the Board and Bureau should do is eliminate tools that can help banks like IBC mitigate risk of loss of funds due to fraud within and across new and evolving payment channels. IBC opposes changes to the exception hold period because financial institutions will unfairly be forced to accept more fraud risk, which can, in turn, have very real and detrimental effects on an institution's safety and soundness.

*B. IBC Opposes the Mandatory Electronic Notices of Exceptions*

Under the current rule, a bank must provide notice to its customer when it applies an extended hold to a deposit. Under the 2011 Funds Availability Proposal, if a customer has agreed to accept notices electronically, then financial institutions would be required to provide notice of an extended hold "such that the bank may reasonably expect it to be received by the customer no later than the first business day following the day the facts become known to the depository bank, or the deposit is made, whichever is later."

While IBC believes that having an option to send an electronic notice of exception is good, it is not reasonable to require that a bank send an electronic communication regarding any notice of exception. Such a requirement would take a great deal of staff time and be very costly to implement, therefore this provision should be optional to allow the bank to make its own internal business decision regarding the most effective and efficient solution. Therefore IBC continues to oppose any change that would make it mandatory to send electronic notices to its customers.

Thank you for your consideration.

Respectfully,



Judith I. Wawroski  
Executive Vice President and Treasurer  
International Bancshares Corporation