

# Federal Reserve Act, 12 USC

## Sec. 248. - Enumerated powers

The Board of Governors of the Federal Reserve System shall be authorized and empowered:

**(a)** Examination of accounts and affairs of banks; publication of weekly statements; reports of liabilities and assets of depository institutions; covered institutions

**(1)**

To examine at its discretion the accounts, books, and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. Such statements shall show in detail the assets and liabilities of the Federal reserve banks, single and combined, and shall furnish full information regarding the character of the money held as reserve and the amount, nature, and maturities of the paper and other investments owned or held by Federal reserve banks.

**(2)**

To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made

**(A)**

directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under sections 461, 463, 464, 465, and 466 of this title exceed zero, and

**(B)**

for all other reports to the Board through the

**(i)**

Federal Deposit Insurance Corporation in the case of insured State nonmember banks, savings banks, and mutual savings banks,

**(ii)**

National Credit Union Administration Board in the case of insured credit unions,

**(iii)**

the Director of the Office of Thrift Supervision in the case of any savings association which is an insured depository institution (as defined in section 1813 of this title) or which is a member as defined in section 1422 of this title, and

**(iv)**

such State officer or agency as the Board may designate in the case of any other type of bank, savings and loan association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirement shall be made available to the Board. The Board may classify

depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

**(b) Permitting or requiring rediscounting of paper at specified rate**

To permit, or, on the affirmative vote of at least five members of the Board of Governors, to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Board.

**(c) Suspending reserve requirements**

To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirements specified in this chapter.

**(d) Supervising and regulating issue and retirement of notes**

To supervise and regulate through the Secretary of the Treasury the issue and retirement of Federal Reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of notes unfit for circulation, and to prescribe rules and regulations under which such notes may be delivered by the Secretary of the Treasury to the Federal Reserve agents applying therefor.

**(e) Adding to or reclassifying reserve cities**

To add to the number of cities classified as reserve cities under existing law in which national banking associations are subject to the reserve requirements set forth in section 20 of this Act, or to reclassify existing reserve cities or to terminate their designation as such.

**(f) Suspending or removing officers or directors of reserve banks**

To suspend or remove any officer or director of any Federal reserve bank, the cause of such removal to be forthwith communicated in writing by the Board of Governors of the Federal Reserve System to the removed officer or director and to said bank.

**(g) Requiring writing off of doubtful or worthless assets of banks**

To require the writing off of doubtful or worthless assets upon the books and balance sheets of Federal reserve banks.

**(h) Suspending operations of or liquidating or reorganizing banks**

To suspend, for the violation of any of the provisions of this chapter, the operations of any Federal reserve bank, to take possession thereof, administer the same during the period of suspension, and, when deemed advisable, to liquidate or reorganize such bank.

**(i) Requiring bonds of agents; safeguarding property in hands of agents**

To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve notes, money, or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this chapter, and make all rules and regulations necessary to enable said board effectively to perform the same.

**(j) Exercising supervision over reserve banks**

To exercise general supervision over said Federal reserve banks.

**(k) Delegation of certain functions; power to delegate; review of delegated activities**

To delegate, by published order or rule and subject to subchapter II of chapter 5, and chapter 7, of title 5, any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to one or more administrative law judges, members or employees of the Board, or Federal Reserve banks. The assignment of responsibility for the performance of any function that the Board determines to delegate shall be a

function of the Chairman. The Board shall, upon the vote of one member, review action taken at a delegated level within such time and in such manner as the Board shall by rule prescribe.

- (l)** Employing attorneys, experts, assistants, and clerks; salaries and fees  
To employ such attorneys, experts, assistants, clerks, or other employees as may be deemed necessary to conduct the business of the board. All salaries and fees shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the members of said board. All such attorneys, experts, assistants, clerks, and other employees shall be appointed without regard to the provisions of the Act of January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto, or any rule or regulation made in pursuance thereof: Provided, That nothing herein shall prevent the President from placing said employees in the classified service.
- (m)**  
(Repealed)
- (n)** Board's authority to examine depository institutions and affiliates  
To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any request for any such advance or discount by, such depository institution under this chapter.
- (o)** Authority to appoint conservator or receiver  
The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 1821(c)(9) of this title.
- (p)** Authority  
The Board may act in its own name and through its own attorneys in enforcing any provision of this title, <sup>[1]</sup> regulations promulgated hereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Board is a party and which involves the Board's regulation or supervision of any bank, bank holding company (as defined in section 1841 of this title), or other entity, or the administration of its operations.
- (q)** Uniform protection authority for Federal reserve facilities

  - (1)**  
Notwithstanding any other provision of law, to authorize personnel to act as law enforcement officers to protect and safeguard the premises, grounds, property, personnel, including members of the Board, of the Board, or any Federal reserve bank, and operations conducted by or on behalf of the Board or a reserve bank.
  - (2)**  
The Board may, subject to the regulations prescribed under paragraph (5), delegate authority to a Federal reserve bank to authorize personnel to act as law enforcement officers to protect and safeguard the bank's premises, grounds, property, personnel, and operations conducted by or on behalf of the bank.
  - (3)**  
Law enforcement officers designated or authorized by the Board or a reserve bank under paragraph (1) or (2) are authorized while on duty to carry firearms and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States committed or being committed within the buildings and grounds of the Board or a reserve bank if they have reasonable grounds to believe that the person to be

arrested has committed or is committing such a felony. Such officers shall have access to law enforcement information that may be necessary for the protection of the property or personnel of the Board or a reserve bank.

**(4)**

For purposes of this subsection, the term "law enforcement officers" means personnel who have successfully completed law enforcement training and are authorized to carry firearms and make arrests pursuant to this subsection.

**(5)**

The law enforcement authorities provided for in this subsection may be exercised only pursuant to regulations prescribed by the Board and approved by the Attorney General

### **Sec. 248-1. - Rules and regulations for transfer of funds and charges therefor among banks; clearing houses**

The Board of Governors of the Federal Reserve System shall make and promulgate from time to time regulations governing the transfer of funds and charges therefor among Federal reserve banks and their branches, and may at its discretion exercise the functions of a clearing house for such Federal reserve banks, or may designate a Federal reserve bank to exercise such functions, and may also require each such bank to exercise the functions of a clearing house for depository institutions

### **Sec. 248a. - Pricing of services**

**(a)** Publication of pricing principles and proposed schedule of fees; effective date of schedule of fees

Not later than the first day of the sixth month after March 31, 1980, the Board shall publish for public comment a set of pricing principles in accordance with this section and a proposed schedule of fees based upon those principles for Federal Reserve bank services to depository institutions, and not later than the first day of the eighteenth month after March 31, 1980, the Board shall begin to put into effect a schedule of fees for such services which is based on those principles.

**(b)** Covered services

The services which shall be covered by the schedule of fees under subsection (a) of this section are -

**(1)**

currency and coin services;

**(2)**

check clearing and collection services;

**(3)**

wire transfer services;

**(4)**

automated clearinghouse services;

**(5)**

settlement services;

**(6)**

securities safekeeping services;

**(7)**

Federal Reserve float; and

**(8)**

any new services which the Federal Reserve System offers, including but not limited to payment services to effectuate the electronic transfer of funds.

**(c) Criteria applicable**

The schedule of fees prescribed pursuant to this section shall be based on the following principles:

**(1)**

All Federal Reserve bank services covered by the fee schedule shall be priced explicitly.

**(2)**

All Federal Reserve bank services covered by the fee schedule shall be available to nonmember depository institutions and such services shall be priced at the same fee schedule applicable to member banks, except that nonmembers shall be subject to any other terms, including a requirement of balances sufficient for clearing purposes, that the Board may determine are applicable to member banks.

**(3)**

Over the long run, fees shall be established on the basis of all direct and indirect costs actually incurred in providing the Federal Reserve services priced, including interest on items credited prior to actual collection, overhead, and an allocation of imputed costs which takes into account the taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm, except that the pricing principles shall give due regard to competitive factors and the provision of an adequate level of such services nationwide.

**(4)**

Interest on items credited prior to collection shall be charged at the current rate applicable in the market for Federal funds.

**(d) Budgetary consequences of decline in volume of services**

The Board shall require reductions in the operating budgets of the Federal Reserve banks commensurate with any actual or projected decline in the volume of services to be provided by such banks. The full amount of any savings so realized shall be paid into the United States Treasury.

**(e) Parity in clearing**

All depository institutions, as defined in section 461(b)(1) of this title, may receive for deposit and as deposits any evidences of transaction accounts, as defined by section 461(b)(1) of this title from other depository institutions, as defined in section 461(b)(1) of this title or from any office of any Federal Reserve bank without regard to any Federal or State law restricting the number or the physical location or locations of such depository institutions

**Sec. 248b. - Annual independent audits of Federal reserve banks and Board**

The Board shall order an annual independent audit of the financial statements of each Federal reserve bank and the Board

**Notes on Sec. 249.**

Section, act Aug. 8, 1947, ch. 517, 61 Stat. 921, dealt with regulation of consumer credit

**SAVINGS PROVISION**

Repeal by Pub. L. 94-412 not to affect any action taken or proceeding pending at the time of repeal, see section 501(h) of Pub. L. 94-412, set out as a note under section 1601 of Title 50, War and National Defense

### **Sec. 342. - Deposits; exchange and collection; member and nonmember banks or other depository institutions; charges**

Any Federal Reserve bank may receive from any of its member banks, or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation or other items, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or maturing notes and bills: Provided, Such nonmember bank or trust company or other depository institution maintains with the Federal Reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the Federal Reserve bank, and other factors as the Board may deem appropriate: Provided further, That nothing in this or any other section of this chapter shall be construed as prohibiting a member or nonmember bank or other depository institution from making reasonable charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case to exceed 10 cents per \$100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks

### **Sec. 360. - Receiving checks and drafts on deposit at par; charges for collections, exchange, and clearances**

Every Federal reserve bank shall receive on deposit at par from depository institutions or from Federal reserve banks checks and other items, including negotiable orders of withdrawal and share drafts and drafts drawn upon any of its depositors, and when remitted by a Federal reserve bank, checks and other items, including negotiable orders of withdrawal and share drafts and drafts drawn by any depositor in any other Federal reserve bank or depository institution upon funds to the credit of said depositor in said reserve bank or depository institution. Nothing herein contained shall be construed as prohibiting a depository institution from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons. The Board of Governors of the Federal Reserve System shall, by rule, fix the charges to be collected by the depository institutions from its patrons whose checks and other items, including negotiable orders of withdrawal and share drafts are cleared through the Federal reserve bank and the charge which may be imposed for the service of the clearing or collection rendered by the Federal reserve bank

## **Sec. 464. - Checking against and withdrawal of reserve balance**

The required balance carried by a member bank with a Federal Reserve Bank may, under the regulations and subject to such penalties as may be prescribed by the Board of Governors of the Federal Reserve System, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities

## **Sec. 4001. - Definitions**

For purposes of this chapter -

### **(1) Account**

The term "account" means a demand deposit account or other similar transaction account at a depository institution.

### **(2) Board**

The term "Board" means the Board of Governors of the Federal Reserve System.

### **(3) Business day**

The term "business day" means any day other than a Saturday, Sunday, or legal holiday.

### **(4) Cash**

The term "cash" means United States coins and currency, including Federal Reserve notes.

### **(5) Cashier's check**

The term "cashier's check" means any check which -

#### **(A)**

is drawn on a depository institution;

#### **(B)**

is signed by an officer or employee of such depository institution; and

#### **(C)**

is a direct obligation of such depository institution.

### **(6) Certified check**

The term "certified check" means any check with respect to which a depository institution certifies that -

#### **(A)**

the signature on the check is genuine; and

#### **(B)**

such depository institution has set aside funds which -

##### **(i)**

are equal to the amount of the check; and

##### **(ii)**

will be used only to pay such check.

### **(7) Check**

The term "check" means any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States. Such term does not include noncash items.

### **(8) Check clearinghouse association**

The term "check clearinghouse association" means any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System.

### **(9) Check processing region**

The term "check processing region" means the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.

**(10) Consumer account**

The term "consumer account" means any account used primarily for personal, family, or household purposes.

**(11) Depository check**

The term "depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board.

**(12) Depository institution**

The term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 461(b)(1)(A) of this title. Such term also includes an office, branch, or agency of a foreign bank located in the United States.

**(13) Local originating depository institution**

The term "local originating depository institution" means any originating depository institution which is located in the same check processing region as the receiving depository institution.

**(14) Noncash item**

The term "noncash item" means -

**(A)**

a check or other demand item to which a passbook, certificate, or other document is attached;

**(B)**

a check or other demand item which is accompanied by special instructions, such as a request for special advise of payment or dishonor; or

**(C)**

any similar item which is otherwise classified as a noncash item in regulations of the Board.

**(15) Nonlocal originating depository institution**

The term "nonlocal originating depository institution" means any originating depository institution which is not a local depository institution.

**(16) Proprietary ATM**

The term "proprietary ATM" means an automated teller machine which is -

**(A)**

located -

**(i)**

at or adjacent to a branch of the receiving depository institution; or

**(ii)**

in close proximity, as defined by the Board, to a branch of the receiving depository institution; or

**(B)**

owned by, operated exclusively for, or operated by the receiving depository institution.

**(17) Originating depository institution**

The term "originating depository institution" means the branch of a depository institution on which a check is drawn.

**(18) Nonproprietary ATM**



The term "nonproprietary ATM" means an automated teller machine which is not a proprietary ATM.

**(19) Participant**

The term "participant" means a depository institution which -

**(A)**

is located in the same geographic area as that served by a check clearinghouse association; and

**(B)**

exchanges checks through the check clearinghouse association, either directly or through an intermediary.

**(20) Receiving depository institution**

The term "receiving depository institution" means the branch of a depository institution or the proprietary ATM in which a check is first deposited.

**(21) State**

The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

**(22) Teller's check**

The term "teller's check" means any check issued by a depository institution and drawn on another depository institution.

**(23) United States**

The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

**(24) Unit of general local government**

The term "unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

**(25) Wire transfer**

The term "wire transfer" has such meaning as the Board shall prescribe by regulations

**Sec. 4002. - Expedited funds availability schedules**

**(a) Next business day availability for certain deposits**

**(1) Cash deposits; wire transfers**

Except as provided in subsection (e) of this section and in section 4003 of this title, in any case in which -

**(A)**

any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

**(B)**

funds are received by a depository institution by wire transfer for deposit in an account at such institution, such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

**(2) Government checks; certain other checks**

Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of -

**(A)**

a check which -

**(i)**

is drawn on the Treasury of the United States; and

- (ii) is endorsed only by the person to whom it was issued;
- (B) a check which -
  - (i) is drawn by a State;
  - (ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;
  - (iii) is deposited with a special deposit slip which indicates it is a check drawn by a State; and
  - (iv) is endorsed only by the person to whom it was issued;
- (C) a check which -
  - (i) is drawn by a unit of general local government;
  - (ii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;
  - (iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and
  - (iv) is endorsed only by the person to whom it was issued;
- (D) the first \$100 deposited by check or checks on any one business day;
- (E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;
- (F) a cashier's check, certified check, teller's check, or depository check which -
  - (i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;
  - (ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and
  - (iii) is endorsed only by the person to whom it was issued.

**(b) Permanent schedule**

**(1) Availability of funds deposited by local checks**

Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 1

business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which the funds involved are available for withdrawal.

**(2) Availability of funds deposited by nonlocal checks**

Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

**(3) Time period adjustments for cash withdrawal of certain checks**

**(A) In general**

Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2) of this section) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

**(B)**

5 p.m. cash availability Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

**(C)**

\$100 availability

Any amount available for withdrawal under this paragraph shall be in addition to the amount available under subsection (a)(2)(D) of this section.

**(4) Applicability**

This subsection shall apply with respect to funds deposited by check in an account at a depository institution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

**(c) Temporary schedule**

**(1) Availability of local checks**

**(A) In general**

Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

**(B) Time period adjustment for cash withdrawal of certain checks**

**(i) In general**

Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on a local depository institution that is not a participant in the same check clearinghouse association as the receiving depository institution (other than a check described in subsection (a)(2) of this section) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subparagraph (A).

**(ii)**

5 p.m. cash availability Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

**(iii)**

\$100 availability

Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D) of this section.

**(2) Availability of nonlocal checks**

Subject to subsections (a)(2), (d), and (e) of this section and section 4003 of this title, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

**(3) Applicability**

This subsection shall apply with respect to funds deposited by check in an account at a depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4) of this section.

**(d) Time period adjustments**

**(1) Reduction generally**

Notwithstanding any other provision of law, the Board shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) of this section to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

**(2) Extension for certain deposits in noncontiguous States or territories**

Notwithstanding any other provision of law, any time period established under subsection (b), (c), or (e) of this section shall be extended by 1 business day in the case of any deposit which is both -

**(A)**

deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, or the Virgin Islands; and

**(B)**

deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

**(e) Deposits at ATM**

**(1) Nonproprietary ATM**

**(A) In general**

Not more than 4 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

**(B)**

Deposits described in this paragraph <sup>[1]</sup> "subparagraph".

A deposit is described in this subparagraph if it is -

**(i)**

a cash deposit;

**(ii)**

a deposit made by a check described in subsection (a)(2) of this section;

**(iii)**

a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2) of this section); or

**(iv)**

a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2) of this section).

**(2)**

Proprietary ATM - temporary and permanent schedules

The provisions of subsections (a), (b), and (c) of this section shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

**(3) Study and report on ATM's**

The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware available for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after August 10, 1987, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

**(f) Check return; notice of nonpayment**

No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution -

**(1)**

such checks be physically returned to such depository institution; or

**(2)**

any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) of this section or in the regulations issued under any such subsection

**Sec. 4003. - Safeguard exceptions**

**(a) New accounts**

Notwithstanding section 4002 of this title, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the

30-day period (or such shorter period as the Board may establish) beginning on the date such account is established -

**(1) Next business day availability of cash and certain items**

Except as provided in paragraph (3), in the case of -

- (A)** any cash deposited in such account;
- (B)** any funds received by such depository institution by wire transfer for deposit in such account;
- (C)** any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and
- (D)** any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 4002(a)(2) of this title, such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

**(2) Availability of other items**

In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 4002(b), 4002(c), or paragraphs <sup>[1]</sup> (1) of section 4002(e) of this title.

**(3)**

Limitation relating to certain checks in excess of \$5,000

In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds \$5,000 -

- (A)** paragraph (1) shall apply only with respect to the first \$5,000 of such aggregate amount; and
- (B)** not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

**(b) Large or redeposited checks; repeated overdrafts**

The Board may, by regulation, establish reasonable exceptions to any time limitation established under subsection (a)(2), (b), (c), or (e) of section 4002 of this title for -

- (1)** the amount of deposits by one or more checks that exceeds the amount of \$5,000 in any one day;
- (2)** checks that have been returned unpaid and redeposited; and
- (3)** deposit accounts which have been overdrawn repeatedly.

**(c) Reasonable cause exception**

- (1) In general**

In accordance with regulations which the Board shall prescribe, subsections (a)(2), (b), (c), and (e) of section 4002 of this title shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f) of this section.

**(2) Basis for determination**

No determination under this subsection may be based on any class of checks or persons.

**(3) Overdraft fees**

If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if -

**(A)**

the depositor was not provided with the written notice required under subsection (f) of this section (with respect to such determination) at the time the deposit was made;

**(B)**

the overdraft would not have occurred but for the fact that the funds so deposited are not available; and

**(C)**

the amount of the check is collected from the originating depository institution.

**(4) Compliance**

Each agency referred to in section 4009(a) of this title shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution and shall describe in each report to the Congress the extent to which this subsection is being complied with. For the purpose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) of this section as a result of the application of this subsection.

**(d) Emergency conditions**

Subject to such regulations as the Board may prescribe, subsections (a)(2), (b), (c), and (e) of section 4002 of this title shall not apply to funds deposited by check in any receiving depository institution in the case of -

**(1)**

any interruption of communication facilities;

**(2)**

suspension of payments by another depository institution;

**(3)**

any war; or

**(4)**

any emergency condition beyond the control of the receiving depository institution, if the receiving depository institution exercises such diligence as the circumstances require.

**(e) Prevention of fraud losses**

**(1) In general**

The Board may, by regulation or order, suspend the applicability of this chapter, or any portion thereof, to any classification of checks if the Board determines that -

**(A)** depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and

**(B)** suspension of this chapter, or such portion of this chapter, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

**(2) Sunset provision**

No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

**(3) Report to Congress**

**(A) Notice of each suspension**

Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

**(B) Contents of report**

Each report under subparagraph (A) shall contain -

**(i)** the specific reason for prescribing the regulation or issuing the order;

**(ii)** evidence considered by the Board in making the determination under paragraph (1) with respect to such regulation or order; and

**(iii)** specific examples of the check-related fraud giving rise to such regulation or order.

**(f) Notice of exception; availability within reasonable time**

**(1) In general**

If any exception contained in this section (other than subsection (a) of this section) applies with respect to funds deposited in an account at a depository institution -

**(A)** the depository institution shall provide notice in the manner provided in paragraph (2) of -

**(i)** the time period within which the funds shall be made available for withdrawal; and

**(ii)** the reason the exception was invoked; and

**(B)** except where other time periods are specifically provided in this chapter, the availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board.

**(2) Time for notice**



The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

**(A)**

In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

**(B)**

In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

**(C)**

In the case of a deposit to which subsection (d) or (e) of this section applies, notice shall be provided by the depository institution in accordance with regulations of the Board.

**(D)**

In the case of a deposit to which subsection (b)(1) or (b)(2) of this section applies, the depository institution may, for nonconsumer accounts and other classes of accounts, as defined by the Board, that generally have a large number of such deposits, provide notice at or before the time it first determines that the subsection applies.

**(E)**

In the case of a deposit to which subsection (b)(3) of this section applies, the depository institution may, subject to regulations of the Board, provide notice at the beginning of each time period it determines that the subsection applies. In addition to the requirements contained in paragraph (1)(A), the notice shall specify the time period for which the exception will apply.

**(3) Subsequent determinations**

If the facts upon which the determination of the applicability of an exception contained in subsection (b) or (c) of this section to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known to the depository institution

**Sec. 4004. - Disclosure of funds availability policies**

**(a) Notice for new accounts**

Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

**(b) Preprinted deposit slips**

All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board in regulations, that deposited items may not be available for immediate withdrawal.

**(c) Mailing of notice**

**(1) First mailing after enactment**

In the first regularly scheduled mailing to customers occurring after September 1, 1988, but not more than 60 days after September 1, 1988, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institution has provided a disclosure which meets the requirements of this section before September 1, 1988.

**(2) Subsequent changes**

A depository institution shall send a written notice to customers at least 30 days before implementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

**(3) Upon request**

Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into a customer's account.

**(d) Posting of notice**

**(1) Specific notice at manned teller stations**

Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a consumer account.

**(2) General notice at automated teller machines**

In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

**(e) Notice of interest payment policy**

If a depository institution described in section 4005(b) of this title begins the accrual of interest or dividends at a later date than the date described in section 4005(a) of this title with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a) and (c) of this section shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

**(f) Model disclosure forms**

**(1) Prepared by Board**

The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

**(2) Use of forms to achieve compliance**

A depository institution shall be deemed to be in compliance with the requirements of this section if such institution -

**(A)**

uses any appropriate model form or clause as published by the Board, or

**(B)**

uses any such model form or clause and changes such form or clause by -

- (i) deleting any information which is not required by this chapter; or
- (ii) rearranging the format.

**(3) Voluntary use**

Nothing in this chapter requires the use of any such model form or clause prescribed by the Board under this subsection.

**(4) Notice and comment**

Model disclosure forms and clauses shall be adopted by the Board only after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5

**Sec. 4005. - Payment of interest**

**(a) In general**

Except as provided in subsection (b) or (c) of this section and notwithstanding any other provision of law, interest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds.

**(b) Special rule for credit unions**

Subsection (a) of this section shall not apply to an account at a depository institution described in section 461(b)(1)(A)(iv) of this title if the depository institution -

- (1) begins the accrual of interest or dividends at a later date than the date described in subsection (a) of this section with respect to all funds, including cash, deposited in such account; and

- (2) provides notice of the interest payment policy in the manner required under section 4004(e) of this title.

**(c) Exception for checks returned unpaid**

No provision of this chapter shall be construed as requiring the payment of interest or dividends on funds deposited by a check which is returned unpaid

**Sec. 4006. - Miscellaneous provisions**

**(a) After-hours deposits**

For purposes of this chapter, any deposit which is made on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been made on the next business day.

**(b) Availability at start of business day**

Except as provided in subsections (b)(3) and (c)(1)(B) of section 4002 of this title, if any provision of this chapter requires that funds be available for withdrawal on any business day, such funds shall be available for withdrawal at the start of such business day.

**(c) Effect on policies of depository institutions**

No provision of this chapter shall be construed as -

- (1)

prohibiting a depository institution from making funds available for withdrawal in a shorter period of time than the period of time required by this chapter; or

(2)

affecting a depository institution's right -

(A)

to accept or reject a check for deposit;

(B)

to revoke any provisional settlement made by the depository institution with respect to a check accepted by such institution for deposit;

(C)

to charge back the depositor's account for the amount of such check; or

(D)

to claim a refund of such provisional credit.

(d) Prohibition on freezing certain funds in an account

In any case in which a check is deposited in an account at a depository institution and the funds represented by such check are not yet available for withdrawal pursuant to this chapter, the depository institution may not freeze any other funds in such account (which are otherwise available for withdrawal pursuant to this chapter) solely because the funds so deposited are not yet available for withdrawal.

(e) Employee training on and compliance with requirements of this chapter

Each depository institution shall -

(1)

take such actions as may be necessary fully to inform each employee (who performs duties subject to the requirements of this chapter) of the requirements of this chapter; and

(2)

establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements

## **Sec. 4007. - Effect on State law**

(a) In general

Any law or regulation of any State in effect on September 1, 1989, which requires that funds deposited or received for deposit in an account at a depository institution chartered by such State be made available for withdrawal in a shorter period of time than the period of time provided in this chapter or in regulations prescribed by the Board under this chapter (as in effect on September 1, 1989) shall -

(1)

supersede the provisions of this chapter and any regulations by the Board to the extent such provisions relate to the time by which funds deposited or received for deposit in an account shall be available for withdrawal; and

(2)

apply to all federally insured depository institutions located within such State.

(b) Override of certain State laws

Except as provided in subsection (a) of this section, this chapter and regulations prescribed under this chapter shall supersede any provision of the

law of any State, including the Uniform Commercial Code as in effect in such State, which is inconsistent with this chapter or such regulations

## **Sec. 4008. - Regulations and reports by Board**

### **(a)** In general

After notice and opportunity to submit comment in accordance with section 553(c) of title 5, the Board shall prescribe regulations -

- (1)** to carry out the provisions of this chapter;
- (2)** to prevent the circumvention or evasion of such provisions; and
- (3)** to facilitate compliance with such provisions.

### **(b)** Regulations relating to improvement of check processing system

In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that -

- (1)** depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;
- (2)** the Federal Reserve banks and depository institutions provide for check truncation;
- (3)** depository institutions be provided incentives to return items promptly to the depository institution of first deposit;
- (4)** the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks,
- (5)** each depository institution and Federal Reserve bank -
  - (A)** place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and
  - (B)** take such actions as are necessary to -
    - (i)** automate the process of reading endorsements; and
    - (ii)** eliminate unnecessary endorsements;
- (6)** within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe) -
  - (A)** such originating depository institution determines whether it will pay such check; and
  - (B)** if such originating depository institution determines that it will not pay such check, such originating depository institution directly notify the receiving depository institution of such determination;
- (7)**

regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

**(8)**

Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board determines, pursuant to the study under subsection (f) of this section, that such a process is feasible; and

**(9)**

originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

**(c)** Regulatory responsibility of Board for payment system

**(1)** Responsibility for payment system

In order to carry out the provisions of this chapter, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate -

**(A)**

any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

**(B)**

any related function of the payment system with respect to checks.

**(2)** Regulations

The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

**(d)** Reports

**(1)** Implementation progress reports

**(A)** Required reports

The Board shall transmit a report to both Houses of the Congress not later than 18, 30, and 48 months after August 10, 1987.

**(B)** Contents of report

Each such report shall describe -

**(i)**

the actions taken and progress made by the Board to implement the schedules established in section 4002 of this title, and

**(ii)**

the impact of this chapter on consumers and depository institutions.

**(2)** Evaluation of temporary schedule report

**(A)** Report required

The Board shall transmit a report to both Houses of the Congress not later than 2 years after August 10, 1987, regarding the effects the temporary schedule established under section 4002(c) of this title have had on depository institutions and the public.

**(B)** Contents of report

Such report shall also assess the potential impact the implementation of the schedule established in section 4002(b) of this title will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the benefits to consumers. Such report shall also

contain such recommendations for legislative or administrative action as the Board may determine to be necessary.

**(3) Comptroller General evaluation report**

Not later than 6 months after September 1, 1988, the Comptroller General of the United States shall transmit a report to the Congress evaluating the implementation and administration of this chapter.

**(e) Consultation**

In prescribing regulations under subsections (a) and (b) of this section, the Board shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board.

**(f) Electronic clearinghouse study**

**(1) Study required**

The Board shall study the feasibility of modernizing and accelerating the check payment system through the development of an electronic clearinghouse process utilizing existing telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item.

**(2) Consultation; factors to be studied**

In connection with the study required under paragraph (1), the Board shall -

**(A)**

consult with appropriate experts in telecommunications technology; and

**(B)**

consider all practical and legal impediments to the development of an electronic clearinghouse process.

**(3) Report required**

The Board shall report its conclusions to the Congress within 9 months of August 10, 1987

**Sec. 4009. - Administrative enforcement**

**(a) Administrative enforcement**

Compliance with the requirements imposed under this chapter, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this chapter, shall be enforced under -

**(1)**

section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the case of -

**(A)**

national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

**(B)**

member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board of Governors of the Federal Reserve System; and

**(C)**

banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

**(2)**

section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

**(3)**

the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

**(b) Additional powers**

**(1) Violation of this chapter treated as violation of other Acts**

For purposes of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act.

**(2) Enforcement authority under other Acts**

In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on it by law.

**(c) Enforcement by Board**

**(1) In general**

Except to the extent that enforcement of the requirements imposed under this chapter is specifically committed to some other Government agency under subsection (a) of this section, the Board of Governors of the Federal Reserve System shall enforce such requirements.

**(2) Additional remedy**

If the Board determines that -

**(A)**

any depository institution which is not a depository institution described in subsection (a) of this section, or

**(B)**

any other person subject to the authority of the Board under this chapter, including any person subject to the authority of the Board under section 4004(d)(2) or 4008(c) of this title, has failed to comply with any requirement imposed by this chapter or by the Board under this chapter, the Board may issue an order prohibiting any depository institution, any Federal Reserve bank, or any other person subject to the authority of the Board from engaging in any activity or transaction which directly or indirectly involves such noncomplying depository institution or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks and any related function of the payment system with respect to checks).

**(d) Procedural rules**

The authority of the Board to prescribe regulations under this chapter does not impair the authority of any other agency designated in this section to



make rules regarding its own procedures in enforcing compliance with requirements imposed under this chapter

## **Sec. 4010. - Civil liability**

### **(a) Civil liability**

Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this chapter or any regulation prescribed under this chapter with respect to any person other than another depository institution is liable to such person in an amount equal to the sum of -

#### **(1)**

any actual damage sustained by such person as a result of the failure;

#### **(2)**

##### **(A)**

in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or

##### **(B)**

in the case of a class action, such amount as the court may allow, except that -

##### **(i)**

as to each member of the class, no minimum recovery shall be applicable; and

##### **(ii)**

the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of \$500,000 or 1 percent of the net worth of the depository institution involved; and

#### **(3)**

in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

### **(b) Class action awards**

In determining the amount of any award in any class action, the court shall consider, among other relevant factors -

#### **(1)**

the amount of any actual damages awarded;

#### **(2)**

the frequency and persistence of failures of compliance;

#### **(3)**

the resources of the depository institution;

#### **(4)**

the number of persons adversely affected; and

#### **(5)**

the extent to which the failure of compliance was intentional.

### **(c) Bona fide errors**

#### **(1) General rule**

A depository institution may not be held liable in any action brought under this section for a violation of this chapter if the depository institution demonstrates by a preponderance of the evidence that the

violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

**(2) Examples**

Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this chapter is not a bona fide error.

**(d) Jurisdiction**

Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

**(e) Reliance on Board rulings**

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

**(f) Authority to establish rules regarding losses and liability among depository institutions**

The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability