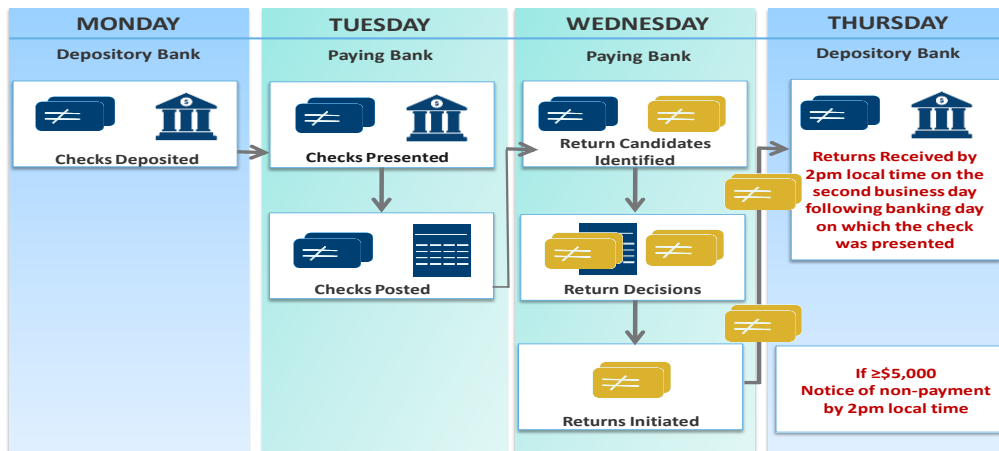*Regulation CC modifies check return requirements including: a new liability for not accepting Electronic Returned Checks, as well as changes to expeditious return deadlines, notice of non-payment & notice in lieu.*

New Liability

New Reg CC approach (229.33(a)): Depositary banks that do not accept electronic returns by "commercially reasonable means" may not hold a paying/returning bank liable for failure to return a check expeditiously. This approach is intended to encourage all banks to accept electronic returns. The new condition does not require a depositary bank to have a direct return arrangement but does place the burden of establishing that the arrangement is commercially reasonable on the depositary bank.

Return Deadlines

Reg CC (229.31(b)) moves the expeditious return deadline up two hours from 4pm to 2pm. This requires all checks to be returned such that they will "normally be received" by the depositary bank no later than 2pm (depositary bank local time) on the second business day following banking day on which the check was presented to the paying bank. Reg CC commentary states that the paying bank may rely on the returning bank's return deadlines and availability schedules to determine the "normally" standard, unless the paying bank has reason to believe the schedule does not reflect actual return timeframes.

MONDAY	TUESDAY	WEDNESDAY	THURSDAY
Depository Bank	Paying Bank	Paying Bank	Depository Bank
Checks Deposited	Checks Presented	Return Candidates Identified	Returns Received by 2pm local time on the second business day following banking day on which the check was presented
	Checks Posted	Return Decisions	
		Returns Initiated	If ≥$5,000 Notice of non-payment by 2pm local time

Note: UCC return deadline remains unchanged requiring the paying bank to make the determination to pay or return the item or send notice of dishonor by midnight of the day following the day of presentment (UCC 4-302).

NONP & NIL

Reg CC (229.31(c)) imposes 2pm deadline (depositary bank local time) for notice of non-payment (NONP) – which syncs to the return deadline change.
NONP threshold increased to $5,000 – increasing from previous threshold of $2,500.
There are changes to the content requirements for the NONP and a new exception for the paying bank from the notice requirement if the depositary bank is unidentifiable. At a minimum, the paying bank must provide the information contained in the MICR line in the NONP. (See 229.31(c)(2))

Reg CC (229.31(f)) requires a bank that has the information necessary to create a substitute check to do so rather than sending a notice in lieu (NIL). A NIL may be used by a bank handling a returned check only when the check is unavailable and there is insufficient data to create the substitute check.