

“What Are They Doing To My Check?”

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Topics of Discussion

- Check 21 Act and Substitute Checks
- E-Check Conversions
 - Accounts Receivable Check
 - Point of Purchase Check Conversion

Current Check Collection Process

Check Collection Participants

- Check Writer – consumer writing the check
- Payee – person consumer is paying
- Depository Bank – bank where the payee deposits the check into his/her account
- Collecting Bank – intermediary bank where the depository bank sends the check for collection, i.e., Federal Reserve
- Paying Bank – check writer's bank – Collecting bank presents the check to the paying bank
- Check Writer – “paid” item is presented back to check writer in periodic statement or on-line

Check 21 Act & Substitute Checks



America's Love Affair with the Paper Check?

- 2000 – American's wrote 41.9 billion checks
- 2003 – American's wrote 36.7 billion checks
- 2003 – checks made up 45% of all non-cash retail payments
- Consumers write 52% of all checks

Check 21 Act & Substitute Checks

What Does Check 21 Act Authorize?

- New negotiable instrument called a “Substitute Check”
- Check 21 provides the legal framework for the substitute check

Check 21 Legislative Overview

A substitute check is a paper reproduction of the original check that

- Contains an image of the front & back of the original check
- Conforms to banking industry standards for substitute checks (ANSI X9.100-140)
- Is suitable for automated processing

A substitute check for which a bank has provided Check 21 warranties is the legal equivalent of the original check if it

- Accurately represents all of the information on the front and back of the original check as of the time the original check was truncated, and
- Bears the legend "This is a legal copy of your check. You can use it the same way you would use the original check."

Check 21 & Consumers

Substitute Check Warranties

- A bank that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) warrants that
 - The substitute check meets the requirements of legal equivalence: contains all information on front and back of the original check as of the time it was truncated and required “legend”
 - Parties will not be asked to make payment based on a check that the party has already paid

Check 21 & Consumers

- **Substitute Check Warranties**
- These warranties are provided to all parties that handle the substitute check including a collecting or returning bank, the depository bank, the drawer, the drawee, the payee, the depositor and any indorser.
- These parties receive warranties regardless of whether they received the substitute check or a paper or an electronic representation of a substitute check.

Check 21 & Consumers

Substitute Check Indemnity

- A bank that transfers, presents, or returns a substitute check indemnifies the recipient and any subsequent recipient for any loss incurred if that loss is due to the receipt of the substitute check instead of the original check.
- **If no substitute check warranty breach:** bank is liable for a loss, up to the amount of check, interest and expenses.
- **If substitute check warranty breach:** bank is liable for the amount of any loss proximately caused by the breach of warranty.

Check 21 & Consumers

- “Check 21” warranty & indemnity protections are **“OVER & ABOVE”** existing check law protections
- Existing Check law protections also apply to substitute checks because a substitute check is the **“legal equivalent”** of the original check
- **Uniform Commercial Code and/or Reg. CC provide protections against**
 - A check that was not authorized by a customer
 - A check that was paid by the paying bank not in accordance with the customer agreement
 - A stolen or lost check containing a fraudulent indorsement
 - A duplicate check, including a duplicate of a previously presented substitute check or check image
 - A check that contains fraudulent or altered amounts, or signatures, including a forged drawer customer’s signature
 - A check that is erroneously encoded with the wrong dollar amount in the MICR line

Source: Electronic Check Clearing House Organization

“What Are My Rights As a Consumer?”

Expedited Consumer Recredit Provisions

When do consumer recredit provisions apply?

- Rights apply when a consumer “receives” a substitute check — either a “paid” substitute check or a “returned” substitute check.
- Rights apply only to “consumers” — not business customers.
- Rights apply only to **consumers’ deposit accounts.**

Expedited Consumer Recredit Provisions

When can consumer make a claim under the expedited consumer recredit provisions?

Consumer can make a claim if asserting in good faith that

- A substitute check provided to the consumer was not properly charged to the account or there has been a breach of warranty; and
- The consumer suffered resulting loss.
- The original check or a sufficient copy of the original is needed to resolve the claim.

Expedited Consumer Recredit Provisions

How long does consumer have to make a claim?

- ❑ The bank must receive the claim by the end of the 40th calendar day after the later of the calendar day on which the bank mailed or delivered, by means agreed to by the consumer,
 - The periodic account statement that contains information concerning the transaction that gave rise to the claim; or
 - The date the substitute check is made available to the consumer.
- If “extenuating circumstances” prevent the consumer from making a timely claim, the bank must extend the 40 calendar day window by a reasonable amount of time.

Expedited Consumer Recredit Provisions

What does consumer have to provide to the bank?

1. A description of the claim, including why the consumer believes the account was improperly charged for the substitute check;
2. Statement of loss and amount of loss;
3. Reason why the original check or a sufficient copy is needed to resolve the claim; and
4. Sufficient information to identify the substitute check and to investigate the claim.

If the claim does not provide any portion of this information, the bank must inform the consumer that the claim is incomplete and identify the information that is missing.

Expedited Consumer Recredit Provisions

What if the bank determines that the consumer's claim is valid?

- Recredit the consumer's account for the amount of loss — up to the amount of the substitute check, plus interest if the account is an interest bearing account.
- Recredit no later than COB on the business day following the banking day, the bank determined the claim to be valid.
- Funds available for consumer withdrawal at the start of the next business day.

Expedited Consumer Recredit Provisions

What if the bank cannot determine validity of claim within 10 business days?

- Recredit up to \$2,500 on the 10th business day with interest, if applicable.
 - The remainder of the claim up to the amount of the check plus interest, if applicable, no later than the 45th calendar day following the claim date.
 - Funds available for consumer withdrawal at the start of the next business day.
- Bank may reverse a recredit, plus interest, if it subsequently determines the consumer's account was properly charged.

Expedited Consumer Recredit Provisions

Safeguard Exceptions:

A bank may delay recrediting under the following exceptions:

- **New accounts** less than 30 days old — if the claim is made during this period.
- 6 or more business days in the prior 6 month period on which the consumer had a **negative balance** or the balance would have been negative if checks and other charges were paid.
- 2 or more business days in the prior 6 month period with a **negative balance** of \$5,000 or more or would have been negative if checks and other charges were paid.
- Bank has reasonable cause to believe the claim to be **fraudulent**.

Expedited Consumer Recredit Provisions

How must the bank notify the consumer that the account was recredited?

Bank must send a notice to the consumer that includes:

- The amount of the recredit
- Date on which the recredited funds are available for withdrawal

Notice is to be sent no later than the business day after the banking day on which the bank recredits the consumer's account.

Expedited Consumer Recredit Provisions

What notification is required if the bank denies the recredit?

Bank must send a notice to the consumer that includes the following:

1. The original check or a sufficient “copy” of the original check.
2. An explanation of why the Bank determined that the account was properly charged.

Notice is to be sent no later than the business day following the banking day on which the bank makes the determination.

Exceptions to Timelines

Delays will be excused if caused by:

- Communications or computer interruptions.
- Suspension of payments by another bank.
- War, emergency conditions, failure of equipment, or other circumstances beyond the bank's control.

Consumer Awareness Provisions

Disclosure requirements to consumer customers who receive paid checks with periodic statements:

☐ Substance of Notice

Each bank shall provide a brief **notice** to consumer customers about substitute checks that includes

- The substitute check is the legal equivalent of the original check.
- The consumer recredit rights that apply when a consumer believes a substitute check was not properly charged.

Consumer Awareness Provisions

When must the bank provide the consumer disclosures?

- **Existing consumer customers:** no later than the first regularly scheduled communication after October 28, 2004.
- **New consumer customers after October 28, 2004:** at the time the relationship is established.

Consumer Awareness Provisions

Disclosure requirements DO NOT apply to consumer customers who, by agreement, do not receive paid checks in periodic statements.

Consumer Awareness Provisions

- ❑ Disclosure requirements to consumers who receive substitute checks on a periodic basis
 - Any consumer who requests a copy of a check and receives a substitute check.
 - Any consumer who receives a returned substitute check.

- ❑ **Multiple Account Holders**
 - A bank need not give separate disclosures to each customer on a jointly held account.

Electronic Check Conversion

Electronic Check Conversions

Accounts Receivable Check (ARC) Conversion

Point of Purchase (POP) Conversion

Accounts Receivable Check Conversion

What is the Automated Clearing House?

Electronic clearing system that allows banks to clear electronic payments between themselves

Direct deposit of pay is one of the most common uses

Direct deposit of Social Security pay is another

What is an ARC?

Automated Clearing House debit entry that begins its life as a check

What checks are eligible?

Consumer checks sent to a lockbox or drop box, such as credit card, mortgage and utility payment

Accounts Receivable Check Conversion

How does it work?

Consumer mails his/her mortgage payment using a check to the bank that holds the mortgage

The bank processes the check and electronically captures the MICR line.

MICR line of the check includes the consumers bank number, the consumers account number, the check number and the amount of the check

The Bank uses this data to create an electronic debit entry and sends it to the Federal Reserve's ACH system

The Federal Reserve credits the Bank when it receives the entry, debits the consumer's bank and forwards the electronic entry to the consumers bank

The consumer's bank then debits the consumers account for the amount of the payment

Accounts Receivable Check Conversion

What else happens?

The bank that converted the check to an electronic entry must keep a copy of the check for two years

The bank must destroy the original check within 14 days of receipt

Accounts Receivable Check Conversion

What are my rights as a consumer?

The bank, mortgage company, credit card company or utility that is converting the check to an electronic entry must notify you that they are going to do it

The bank, mortgage company, credit card company or utility must also offer you an opportunity to “opt out” of the electronic conversion

Consumers are given this opportunity to “opt-out” once per year

Bank, mortgage company, credit card company or utility must provide a copy of the consumers check within 10 banking days if requested

Accounts Receivable Check Conversion

Are there any other consumer protections?

The bank that sends the electronic debit entry to the Federal Reserve for collection warrants to the consumer that

- entry information is accurate
- it will keep a copy of the original check
- it will destroy the original check within 14 days
- will not present the original check for payment

The debit entry to the consumer's account is considered an electronic funds transfer. The Federal Reserve's Regulation E provides additional protections as well.

Point of Purchase Check Conversion

What is a POP?

Automated Clearing House debit entry that begins its life as a check

What checks are eligible?

Consumer checks that are presented to a merchant for the purchase of goods or services

Point of Purchase Check Conversion

How does it work?

Consumer purchases a can of paint at the local hardware store and pays by check

The hardware store (merchant) scans the check and captures the data from the checks MICR line and keys in the amount of the check

The merchant then hands the check back to the consumer as a record of purchase

The data is electronically transmitted to the merchant's bank

The merchant's bank sends an electronic debit to the Federal Reserve's ACH system

The Federal Reserve sends the electronic debit to the consumer's bank who then debits the consumer's account

Point of Purchase Check Conversion

What are my rights as a consumer?

The merchant must notify you that your check will be converted to an electronic debit

Merchant must present you with an authorization for you to sign

Merchant must provide you a copy of this authorization and a separate receipt for the purchase

You may choose not to authorize this transaction and continue to pay by check, check credit card or debit card

The debit entry is considered an electronic funds transfer. Federal Reserve's Regulation E provides additional protections

Questions

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