



Consumers Union opposes the Check Truncation Act because:

- Many consumers still get their checks back; this marketplace option would be eliminated by the Act.
- By restricting the right of recredit and the indemnity to involuntarily truncated checks, the Act would encourage banks to put a voluntary truncation clause in their account agreements, thereby eliminating the consumer's right of recredit.
- The Act contains does not guarantee that consumers can ever get the original checks back without a fee.
- The Act contains no privacy protections on the secondary use of the information on the check which has been converted into an electronic image.
- The Act may speed up check clearing without shortening the amount of time a bank can hold a consumer's funds.
- The Act uses a comparative negligence standard, which may complicate consumers' ability to recover for losses from forgery.

What the Check Truncation Act Would Do and How It Would Affect Consumers

Approximately ninety percent of consumers have checking accounts. Over 35 billion checks a year are written on U.S. banks. The Federal Reserve Board's proposed Check Truncation Act would fundamentally change the way checks are processed, making it impossible for consumers and businesses alike to get their original checks returned with checking account statements each month.

The Federal Reserve Board's proposed Check Truncation Act would foster check truncation, which is the practice of holding a check at the place of deposit or somewhere else along the check collection chain, but not sending the original check back to the consumer or to the consumer's bank. Under this Act, banks, businesses, and consumers who desire original checks with their statements would instead be given a paper copy of an electronic image of the original check called a "substitute check."

This “involuntary truncation” would be imposed on consumers and businesses who now get their checks back. The substitute check would show all of the information on the front and back of the original check, except for things that can’t be copied, such as the pressure applied to the pen by the checkwriter or by a forger. The substitute check would be legally equivalent to the original check. When there is a dispute about a check, the Act would give consumers whose checks are involuntarily truncated a right to have the bank replace the disputed funds within one business day. Consumers and businesses whose account agreements call for voluntary truncation would not be guaranteed copies of their checks. A copy of a voluntarily truncated check would not be the legal equivalent of the original check. Consumers with account agreements calling for voluntary truncation would not receive the one day right of recredit. Instead, those consumers may have to wait months to get their funds returned, since the law places no time limits on how long a bank can take to resolve a dispute about a check.

Questions and Answers About the Check Truncation Act

Could I still get my checks back?

No. The Act would make it impossible for consumers to get their original checks returned, because the Act would force banks which require the original check for processing to accept a copy of an electronic image of the original check.

The original check could stop at any bank in the collection chain. The check would stop for one of two reasons. First, any bank can replace the original check with an electronic message containing the pertinent information, if that bank and the next bank in the chain have an agreement to send and accept electronic presentment of checks. Second, the Act would permit any bank to send a “substitute check”—a paper copy made from the original check or from an electronic image of the original check—to another bank even if that other bank only processes paper checks. Since the original check would no longer be returned to the consumer’s bank, it would be impossible for the consumer to get his or her bank to simply return all original checks every month. The consumer’s bank no longer would have all of those checks. Consumers who get their checks back now would experience a loss of convenience under this Act.

What would consumers lose?

Consumers would lose the choice of whether get back their original checks. Today, consumers can choose to get their checks back at many banks.

Would the substitute check be a full size check?

No. Consumers who want to get their checks back would receive a “substitute check,” which is a paper copy of an electronic image of the original check. The substitute check may be of any size, so long as it meets industry standards for a substitute check.

Would a “substitute check” be as useful as an original check?

No. The substitute check will be legally equivalent, under state and federal law, to an original check. However, the substitute check will not be as useful as the original check for proving forgery or alteration, because it can't be used to determine pen pressure, and is less useful for handwriting analysis.

Would all electronic images of checks be legally equivalent to an original check?

No. A consumer whose account agreement does not require the return of original (or substitute) checks may receive copies of electronic images, but those copies will not be legally equivalent to the original check.

Does the check truncation act require voluntarily truncated checks to meet any standards for size, readability, or the like?

No. Existing state law requires that banks maintain a legible copy of checks for seven years, but not that the copies returned to consumers with statements be legible. Some banks often return check images with statements with ten images per page, which can be hard to read.

Does the Act require that original checks be returned within a specific time period if the consumer needs the original check for any reason?

No.

Does the Act restrict the fee that a bank can charge for finding and returning the original check?

No.

What would happen to the original checks under this Act?

The Act does not impose any minimum time period on banks to keep original checks. Under state law, Uniform Commercial Code Article 3, original checks can be destroyed at any time, so long as the bank has the capacity to provide a legible copy of the check for seven years. UCC section 4-406(a).

Will banks be able to use information from the electronic images of checks to invade the privacy of a consumer or a business?

Yes. The Act places no limits on the use of information contained in the check images. A bank might build a database using check images to determine which consumers shop at certain kinds of retailers, or what kinds of suppliers are used by a business customer. The Act lacks a prohibition on all secondary use of the information on an electronic check image, an electronic message presenting a check, or a paper substitute check by any bank in the chain of check collection.

Who gets a choice under the Act?

The proposal offers maximum choice to banks, but not to consumers. Banks may continue to choose to process paper substitute checks rather than electronic images. A bank that wants to process paper will receive from the prior bank in the collection chain a paper "substitute check" rather than the original check, for processing. Consumers may no longer choose to get back their original checks.

Does the proposed Act speed up the time when consumers get access to funds that they deposit?

No. The material supporting the Act states that funds might become available sooner, but there is no corresponding change in the funds availability regulations to ensure that the benefit of faster check clearing is passed on to the consumer.

Are there any benefits to consumers?

Yes, the Act gives a one business day right of recredit of disputed funds, but in very narrow circumstances. The Federal Reserve Board recognizes that consumers who have a dispute with the bank over the validity of a charge to a checking account should not have to wait to resolve the dispute while the bank tries to learn where the original check is in the check collection system, and while the original check is being returned to the consumer's bank.

Why do consumers need the right of recredit?

Transferring the check back and forth between paper and electronic formats creates a risk that both the electronic image and the original check or the paper "substitute" check might get into the system for collection. Switching back and forth between paper and electronic form also creates the risk that the amount on the paper check might be changed when it is turned into an electronic image for processing. It may also be impossible to prove that a check has been forged or altered without the original check. The recredit right is needed so that consumers can have the use of their money while the bank is seeking out the original check to sort out these problems.

How long will it take to get the disputed funds recredited?

The recredit must occur within one business day, but the funds need not be made available until the next business day. For a consumer with a dispute reported on a Friday, the funds will become available the following Tuesday.

Since the Act would give consumers a new one day right of recredit, why don't consumer groups want the Act?

If this right applied to all truncated checks, it would be real and significant. However, it does not apply to any check truncated by voluntary agreement. This means that the recredit right could be easily eliminated by provisions in the account agreement stating that check truncation is voluntary. Once the consumer is given an account agreement that calls for voluntary truncation, both the recredit right and the legal equivalence of the copies would disappear. Voluntarily truncated checks do not trigger the right of recredit, even though the funds are still missing from the consumer's account, and even when the dispute can't be resolved unless the original check is found and returned to the consumer.

What is the purpose of the recredit right?

The proposed Act would permit checks to be transferred back and forth between three different formats: the original check, an electronic image or electronic presentment message, and a paper "substitute" check (a copy of the electronic image). The conversion and reconversion into and out of a paper format could occur several times in the check collection chain. Each time the check is converted to electronic form, there is a small but real risk that both the paper check and the electronic check will be sent forward for collection, resulting in a double debit to the consumer's account. There is also a risk of misreading and miscoding. The wrong amount could be removed from the account of a consumer or a business.

When the original check is in the possession of the consumer, it is easier to prove to the bank that the wrong amount was removed, or that the check was debited twice. Under the proposed Act, the original check would not be held by the consumer or the consumer's bank. Instead, one of the multiple banks in the collection chain would have the original check. It is likely to take longer to find the check, and to get it back, than if the consumer or the consumer's bank were holding it. The recredit right permits the consumer, not the bank, use of the funds while waiting to get the original check to clear up the dispute. **The recredit right would be important and valuable if it applied to all truncated checks, including both voluntary and involuntary truncation.**

Will any recredit right promote fraud against a bank?

No. The recredit right has exceptions designed to reduce the risk of fraud. First, the recredit is limited to the first \$2,500 of any amount in dispute. Section 6(c). Second, a bank need not make any recredited funds available until 20 business days (a full month) after the recredit if the account is less than 30 days old, if the account balance has been negative a certain number of times in the past six months, or if the bank has reasonable cause, based on facts, to believe that the claim is fraudulent. Section 6(d).

Will it be hard to prove the bank's responsibility if something goes wrong?

Yes. The Act applies a standard called "comparative negligence." Under this standard, a bank which violates its obligations may partially escape responsibility for its acts if it shows that the consumer also contributed to the loss. The fact that the bank can assert that the consumer was partly at fault will make these cases more time consuming and expensive to resolve.

Is check truncation coming anyway?

Maybe, but check truncation has been available to consumers for years, yet many consumers still opt to get their checks back. The federal government should not force check truncation on consumers who don't want it, particularly without a meaningful recredit right for all truncated checks, faster funds availability, minimum standards for copies of all truncated checks, restrictions on fees for retrieving the original checks, full bank liability for bank errors rather than comparative negligence, and safeguards for privacy of the information on the check.

Is the paper check a mere redundancy?

Redundancy may have value in an age of increasing dependence upon electronic systems which can fail and can be compromised. The increasing dependence of our financial system on electronic images presents a short term efficiency gain, but also exposes U.S. consumers to a heightened risk in the event of disruptions to electronic communications.

Does the Act treat checks written by consumers and businesses the same as U.S. Treasury checks?

No. The Act requires all U.S. Treasury checks to be returned to a Federal Reserve Bank. A check written by a consumer or a business can be left with any bank in the check collection chain. This difference in treatment will give law enforcement authorities a greater ability to catch forgers of Treasury checks than of other checks.

Prepared by:

*Gail Hillebrand
Senior Attorney
Consumers Union
West Coast Regional Office
1535 Mission St.
San Francisco, CA 94606
415-431-6747 (phone)
415-431-0906 (fax)
hillga@consumer.org
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