



Consumer Federation of America

**Consumer Action**  
Education and Advocacy Since 1971

Via Overnight Mail and Email

October 31, 2006

Dr. Ben Bernanke, Chairman  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street & Constitution Avenue, NW  
Washington, DC 20551

Re: Request to craft the ongoing check hold study to address all the necessary questions to facilitate a prompt rulemaking to reexamine check hold times.

Dear Chairman Bernanke and Members of the Board of Governors,

We ask the Board of Governors of the Federal Reserve to ensure that the study of check processing times required by Congress under the "Check 21" law provides sound basis for a rulemaking process to reexamine check hold times for potential reductions. We also ask you to commit now to starting a rulemaking process to reexamine check hold times as soon as the study is completed.

Two years after the start of the federal "Check 21" law, industry statistics show that nearly half of all checks are clearing using images, which speeds up check clearing, but consumers are still waiting for an improvement in check hold times. The Board has an obligation under the Expedited Funds Availability Act (EFAA) to reduce check hold periods "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." EFAA, 12 U.S.C. § 4002(d)(1).

The Board has stated to Congress that it has: "adopted rules that substantially revise the process by which banks return unpaid checks, which has expedited the receipt of those checks by depository banks and ensure prompt notice of large-dollar returned checks." Testimony of Roger W. Ferguson, Jr., before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services, U.S. House of Representatives, September 25, 2002, note 5. In spite of these new efficiencies, the Board has not exercised its statutory authority to reduce hold times for local and nonlocal checks under the permanent schedule since it began to apply in 1990. Consolidation in check processing regions has had the effect of moving some checks among the categories, but the second day and fifth business day time periods have not been shortened in more than 15 years. When the Board withdrew a proposal to reduce the hold time for certain nonlocal checks in 1999, it promised the public that: "the Board will continue to monitor the time periods need to return unpaid nonlocal checks and may consider further action if return times improve significantly." Order of July 7, 1999, Regulation CC Docket No. R-1031. It is time to make good on this promise. The Board can do so by ensuring that the study is complete and by setting a date immediately following the study to begin a rulemaking process to examine and reduce local and nonlocal check hold times and to adjust the dollar amount in the safeguards exception.

The time periods set forth in the statute don't reveal the full impact of allowable check hold times on consumers. Second business day availability for local checks means waiting from Friday to Tuesday – a long time for a family on a tight budget. Fifth day availability means waiting a whole week – even when the check is drawn on the bank where it is deposited. The extra days provided under the safeguards exception for checks totaling \$5,000 deposited on one day make consumers wait as long as eleven business days for many

insurance proceeds checks, mutual fund withdrawals, home sale proceeds checks, and some other types of payments.

Image clearing, which speeds check processing, has spread very rapidly in the past year. According to statistics posted by the Electronic Check Clearing House Organization (ECCHO), the volume of image-based clearings, including images and substitute checks, grew nearly ten-fold in the 12 months ending in July of 2006, from 20.3 million a month in July 2005 to 217.7 million items per month in July 2006. ECCHO's home page reports that for August 2006, 283.3 million items per month cleared using images. ECCHO projects an annualized 2006 volume of 3.4 billion items clearing using images. ECCHO reports that in August 2006, 47.2% of checks were clearing using images. [www.ECCHO.org](http://www.ECCHO.org)<sup>1</sup>

We appreciate the openness that Board staff has shown in discussing the study with Consumers Union. We ask that the full Board take an active interest in the shape of the study now, so that when it is completed, it can provide a thorough and sound basis for a rulemaking proceeding designed to reexamine and reduce maximum allowable check hold times. In addition, we ask the Board to select and announce a date on which a rulemaking process to reexamine local and nonlocal check hold times, and the safeguard exemptions, will begin.

We ask the Board to see that the study addresses certain issues which are essential to a full evaluation of check holds. Consumers Union made these recommendations in more detail to the relevant Board staff by letter of October 18, 2006. We ask that:

- The study should include an analysis of what types of consumers or consumer accounts experience check holds and the impact of holds on those consumers.
- The study should compare the allowable check hold times with the speed with which all types of debits, including checks converted to ACH payments, are made to consumers' accounts.
- The study should compute, and analyze the effect of, inflation adjustments for all the dollar cutoffs and thresholds used in the Expedited Funds Availability Act, particularly the \$100 next day availability cutoff and the \$5,000 threshold for longer hold times on larger deposits.
- The study should evaluate whether all "on us" checks should be subject to a shorter hold period to match the period for local "on us" checks.
- The study should evaluate the effect of weekend check processing on the need for the second and fifth business day time periods for local and nonlocal checks.
- The study should evaluate the function of the hold period for in-person cash deposits.
- The study should consider whether the consolidation in check processing regions has led to any change in check loss trends.
- The loss data collected from financial institutions may have to be adjusted to subtract losses from checks already subject to extensions of the basic local and nonlocal hold times.
- The data from the survey instrument should be updated within three months of the study release date, to keep the information relevant to the very fast-changing check processing environment.

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<sup>1</sup> These numbers were taken from publicly available material posted on ECCHO's website. On December 18, 2006, Consumers Union received a copy of a letter ECCHO sent to Chairman Bernanke stating that the publicly posted statistics in which ECCHO stated in part: "with 47.2% of the volume clearing by image in August 2006" referred to that subset of checks cleared by images and not to the volume of all checks. ECCHO's letter goes on estimate that approximately 9.4% of total checks cleared using images in August 2006. ECCHO does not dispute the use of their other posted statistics, including that for August 2006, 283.3 million items per month cleared using images.

- The study should examine the relationship between imposition of check holds and assessment of NSF and overdraft fees.

Check processing is speeding up. The payments consumers make from their checking accounts are moving out of their accounts more quickly than ever. The checks consumers deposit into their accounts also are clearing faster than ever, but consumers won't receive the full benefit of that increased speed until the maximum allowable check hold times are reduced. The pattern of complaints to consumer organizations suggests that while some consumers don't experience check holds, others face them frequently. The complaints consumer groups receive also suggest that the safeguards exemption for larger checks is out of date, given the type and size of checks that consumers now receive.

Check holds can significantly disrupt family finances, including causing checks to "bounce" or triggering overdraft loan fees. This study represents an important opportunity to determine what types of consumers are most affected by check holds, to describe how check hold times compare with the speed at which payments are leaving consumers' accounts due to advances in both check processing and electronic payments processing, and to evaluate the ways in which check hold times can be reduced consistent with both safety and soundness in the banking system and increased fairness for consumers. We respectfully ask that you use the study to prepare for a rulemaking to reexamine check hold times for potential reductions, and that you make a commitment now to begun such a regulatory process as soon as the study is issued.

Very truly yours,

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