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## Eliminating the Paper: The Truncation of Paper Checks

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As the world witnessed the destruction of buildings and loss life on September 11, 2001, the payment system in the United States came to an abrupt halt.<sup>1</sup> Following the attacks, the airline system was grounded for several days causing the national float of bank checks to rise to an estimated \$47 billion dollars.<sup>2</sup> The delay nearly stopped the nation's commerce and after September 11, 2001, the industry decided to find a better way to clear bank checks.<sup>3</sup> The banking industry turned to technology to find that better way which radically changed the way checks are processed.<sup>4</sup> On October 28, 2003 Congress passed the Check Clearing for the 21<sup>st</sup> Century Act (Check 21)<sup>5</sup> that will help facilitate the truncation of checks by encouraging banks to process checks electronically instead of physically processing checks.<sup>6</sup>

The "Check 21 Act brings check processing from the Pony Express era to the computer age".<sup>7</sup> While Check 21 has great benefits it does not have everyone's support. Consumer groups believe Check 21 takes away some consumer rights and does not provide enough safeguards against other rights.<sup>8</sup> While it is true Check 21 does not

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1. Henry Gilgoff, *Check Law Might Put You in Check, Mate: The New "Check 21" Makes Processing Faster, But it May Lead to More Bounced Checks - and Fees*, NEWSDAY (New York), Oct. 10, 2004, at E06.

2. David Hendricks, *Check 21 May Surprise Those Overdrawn at the Bank*, SAN ANTONIO EXPRESS-NEWS, Oct. 6, 2004, at 1E.

3. *Id.*

4. *Id.*

5. Check Clearing for the 21<sup>st</sup> Century Act, 12 U.S.C. § 5001-18 (2005).

6. The Federal Reserve Board, Check Clearing for the 21<sup>st</sup> Century Act Home, (last visited (October 30, 2004), <http://www.federalreserve.gov/paymentsystems/truncation/default.htm>).

7. Lorene Yue, *New Law to Speed Clearing of Checks; Debiting an Account Could Take 24 Hours, Not Usual 3 to 5 Days*, BALT. SUN, Oct. 3, 2004, at 3C.

8. *Id.* Consumers Union and the Consumer Federation are two advocacy groups speaking out against Check 21. *Id.*

give consumers all their previous rights, the benefits to the economy far outweigh the negative impact a small percentage of consumers will face.<sup>9</sup> The electronic processing of checks will save the banking industry billions of dollars in processing fees and will make funds available to bank customers faster.<sup>10</sup>

Check 21 has its roots in the Expedited Funds Availability Act (EFAA) enacted on August 10, 1987.<sup>11</sup> The EFAA was enacted to impose limits on how long banks could withhold access to deposits once a customer made the deposit.<sup>12</sup> In the EFAA, Congress directed the Board of Governors of the Federal Reserve System (Board) to consider ways to provide for check truncation.<sup>13</sup> The EFAA gave the Board full authority to regulate the payment system including any related functions of the payment system affecting checks.<sup>14</sup> The

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9. See Consumers Union, Questions and Answers About the Check Clearing for the 21<sup>st</sup> Century Act (last visited October 30, 2004), <http://www.consumerunion.org/finance/ckclear1002.htm> (discussing consumers rights under the Check 21 Act); See Becky Kremer, *Better Check Twice; New Regulations Will Slash Time Banks Need To Clear Checks*, SPOKANE SPOKESMAN REVIEW, Oct. 6, 2004, at A8 (estimating that Check 21 could save the banking industry \$2 billion annually in transportation and processing fees); Yue, *supra* note 7 (Checks could clear within 24 hours instead of 3 to 5 days); Sherri C. Goodman, *Checks Becoming Payment of the Past Plastic Banking Outstrips the Old Fashioned Way*, BIRMINGHAM NEWS, Oct. 3, 2004, News (quoting Fred Herr and John Hall stating “there is a lot of redundancy in reconciliation; on average 8 to 12 people touch a check during the entire clearing process”).
  10. Kremer, *supra* note 9 and accompanying text. Compare *supra* note 6 and accompanying text (stating checks may reach your banks faster and be paid sooner), with Consumers Union, *supra* note 9 and accompanying text (stating banks are not required to speed up the time when they make funds available).
  11. See 12 U.S.C. § 5001 (2005) (codified Check 21 Act).
  12. See Expedited Funds Availability Act, 12 U.S.C. §§ 4001-10 (2005). The statute governs when a bank must make funds available to a depositor depending on a variety of factors including, whether the check was a local or out-of-town, whether it is a cash deposit or non-cash deposit, whether the check is a personal check or a cashiers check, and other circumstances illustrated in the statute. See 12 U.S.C. §§ 4002-3 (2005); 10 *AM JUR 2D, BANKS AND FINANCIAL INSTITUTIONS* § 785 (“The Expedited Funds Availability Act (EFAA) imposes a duty on a depository institution to make funds deposited by its customer available for withdrawal by the customer based on a schedule of availability established by law”).
  13. 12 U.S.C. § 5001(a)(1) (2005) (stating that Congress first directed the Federal Reserve to consider a system to improve the efficiency of check processing). This provision in the EFAA can be found in 12 U.S.C. § 4008(f) (2005) which required the board to conduct a study on modernizing the check payment system. Congress wanted to avoid the necessity of actual presentment of a check to a payor institution as far back as 1987. *Id.*
  14. 12 U.S.C. § 5001(a)(2)(A) (2005) (provides the Board full authority to

EFAA also gave the Board full authority to pre-empt any state law as well as the Uniform Commercial Code (UCC) in order to carry out their regulations.<sup>15</sup>

Check law is primarily found in state statutes, the UCC articles three and four, and in federal law and regulations.<sup>16</sup> Congress enacted the EFAA in order to protect consumers from excessive periods of float not forbidden by some state statutes and the UCC.<sup>17</sup> The EFAA was the first set of rules to combat the excessive periods of float and Congress believed that by truncating checks the periods of float for a check would be reduced even further, hence Congress enacted Check 21.<sup>18</sup>

Check 21 requires all drawee banks<sup>19</sup> to accept substitute checks from depository banks<sup>20</sup> in lieu of original checks.<sup>21</sup> This requirement provides banks a legal way to send check information electronically to the drawee bank, eliminating the need to physically transport checks.<sup>22</sup> However, because of the enormous cost to require all banks to implement check imaging, Check 21 does not require banks to send information electronically and banks may still use the paper clearing process.<sup>23</sup> The goal of Check 21 is to enable banks to

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regulate all aspects of the payments system). This provision in the EFAA can be found in 12 U.S.C. § 4008(c) (2005). In addition, the Board has the authority to proscribe any regulations that may be appropriate to carry out its regulation of the payment systems. 12 U.S.C. § 4008(c)(2) (2005).

15. 12 U.S.C. § 5001(a)(2)(B) (2005). Both the Check 21 Act and the EFAA preempt state law, including the Uniform Commercial Code as it is in effect in any state, unless the state law was in effect on September 1, 1989, and provided a shorter availability period than the EFAA. 10 *AM JUR* 2D, *BANKS AND FINANCIAL INSTITUTIONS* § 785.
16. See generally Robert K. Rasmussen, *The Uneasy Case Against the Uniform Commercial Code*, 62 *LA. L. REV.* 1097, 1115 (2002).
17. Edward J. Janger, *Predicting When the Uniform Law Process Will Fail: Article 9, Capture, and the Race to the Bottom*, 83 *IOWA L. REV.* 569, 630 (1998) ("Nothing in Article 4 regulated when banks had to make funds available to their customers.")
18. See generally Rasmussen *supra* note 16 and accompanying text. See also 12 U.S.C. 5001(a)(3) (2005).
19. A drawee bank (or paying bank) is the bank in which the check is made payable to. See 12 U.S.C. § 5002(3)(C) (2005).
20. A depository bank is a bank to which a check is transferred for deposit. See 12 U.S.C. § 5002(3)(B) (2005).
21. Archie B. Kelly, *The Future of the Check: How Check 21 and Emerging Technologies Will Change Our Payment System*, *GOVERNMENT FINANCE REVIEW*, Aug. 1, 2004, at 29. Original checks will likely be destroyed by the drawee bank after the electronic image is sent to the depository bank. Yue, *supra* note 7.
22. See *supra* note 6. Check 21 makes a substitute check a legal document. Yue, *supra* note 7.
23. Kelly, *supra* note 21. Only 30% of large and small banks and 40% of

handle more checks electronically, which should improve the speed and efficiency of check clearing.<sup>24</sup>

Check 21 encourages overall efficiency and check truncation by authorizing substitute checks.<sup>25</sup> A substitute check is a paper copy of both sides of the original check.<sup>26</sup> Check 21 allows this new substitute check to act as the legal equivalent of an original check so long as the substitute check accurately reflects all of the information on both sides of the check and bears the legend: "This is a legal copy of your check."<sup>27</sup> A substitute check may be created by the drawee bank once the drawee bank receives the electronic image of the original check from a depository bank.<sup>28</sup> Once the substitute check has been created it can be processed like any other original paper check.<sup>29</sup>

Substitute checks must be accompanied with certain warranties by any bank that transfers, presents, or returns substitute checks.<sup>30</sup> These warranties include the legal equivalence warranty and the duplicative payment warranty.<sup>31</sup> The legal equivalence warranty warrants that the information on a substitute check accurately represents the front and back of the original check.<sup>32</sup> The duplicative payment warranty ensures that a substitute check has not been

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midsize banks have imaging equipment required to produce a sufficient electronic image of a check. Hendricks, *supra* note 2.

24. See *supra* note 6. Though not all banks will begin processing checks electronically, by 2007 all large banks, 80% of midsize banks, and 40-50% of small banks will process checks electronically. Hendricks, *supra* note 2.
25. 12 U.S.C. § 5001(b)(1) (2005).
26. See *supra* note 6. A substitute check is slightly larger than an original check in order to capture a full picture of the original check. *Id.*
27. *Id.* A substitute check must also display a Magnetic Ink Character Recognition (MICR) line containing all the MICR information appearing on the original check, conform in paper stock and dimensions, and by suitable for automated processing the same as an original check. Kelly, *supra* note 21.
28. See *supra* note 6.
29. See Kelly, *supra* note 21. Returned substitute checks will also be processed the same way as an original check. *Id.*
30. Availability of Funds and Collections of Checks, 69 Fed. Reg. 47290 at 47299 (Aug. 4, 2004) (to be codified at 12 C.F.R. pt. 229). If a substitute check is going to be the legal equivalent of an original check then the substitute check must carry certain bank warranties. See *Id.* at 47298.
31. See *Id.* at 47300.
32. See 12 U.S.C. § 5004(1) (2005). The legal equivalence warranty has been criticized because the bank may be liable for something out of its control such as a customer writing a check with ink that cannot be read by the imaging machine. Availability of Funds and Collections of Checks, Availability of Funds and Collections of Checks, 69 Fed. Reg. at 47300.

presented or returned multiple times.<sup>33</sup> The bank that receives the electronic image of a check, prints the check out, and transfers, presents, or returns the newly created substitute check becomes the first warrantor.<sup>34</sup> These warranties continue to flow to the ultimate recipient of the substitute check that pays on the check.<sup>35</sup>

Check 21 was designed to help banks process checks faster and at the same time save banks money.<sup>36</sup> Faster check processing will reduce the float time of checks in many cases from 2-4 days to just a few hours.<sup>37</sup> Faster processing also allows return checks to be processed faster improving risk management for banks.<sup>38</sup>

Perhaps the greatest benefit of Check 21 is the cost savings benefit the banks will incur.<sup>39</sup> In 2003, the Federal Reserve processed 15.5 billion checks a decrease of 4% from 2002; however, the check processing unit cost increased 13.3% to over \$0.05.<sup>40</sup> Check 21 has the potential to save the banking industry \$2 billion annually in transportation and processing costs related to the physical clearing of checks.<sup>41</sup> Cost savings will take smaller banks longer to realize because of the high-tech equipment that will be needed to implement electronic processing; however, smaller banks, especially rural banks, have the greatest incentive to make the switch because of the long distances they must transport their checks.<sup>42</sup>

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33. Availability of Funds and Collections of Checks, 69 Fed. Reg. at 47300. *See also* 12 U.S.C. § 5004(2) (2005). Several commentators have expressed concern that a bank may be liable for a breach of this warranty caused by fraud where the bank is unaware, however, “the duplicative payment warranty does not depend upon the warranting bank’s knowledge or fault.” Availability of Funds and Collections of Checks, 69 Fed. Reg. at 47300.
  34. Availability of Funds and Collections of Checks, 69 Fed. Reg. at 47323.
  35. *Id.* A bank shall also ensure that the substitute check bears all endorsements of parties who handled the check. 12 U.S.C. § 5003(c) (2005). A reconverting bank (that bank that converts the electronic image to a substitute check) must also identify itself as a reconverting bank on all substitute checks it produces. 12 U.S.C. § 5003(d) (2005).
  36. *See* Availability of Funds and Collections of Checks, 69 Fed. Reg. at 47290 (absent Check 21, banks could not take advantage of technology to improve the efficiency and potential cost savings of handling checks electronically).
  37. Hendricks, *supra* note 2.
  38. Kelly, *supra* note 21. Often banks must provide customers credit for checks before the checks actually clear. *See generally* 12 U.S.C. §§ 4002-4003 (2005).
  39. *Compare* Kelly, *supra* note 21 (citing the increase in check processing costs) with Kramer, *supra* note 9. (citing that banks could save \$2 billion annually).
  40. Kelly, *supra* note 21.
  41. Kramer, *supra* note 9. These cost savings will take a few years to be realized because it will take some banks several years to make the transition to electronic processing. *Id.*
  42. Richard Burnett, *Sinking the Float; A New Law Eliminates the Float Period For Check Writers*, ORLANDO SENTINEL, Oct. 7, 2004, at C1. Smaller rural

While Check 21 will save banks money, many consumer advocacy groups such as Consumers Union, believe the new law comes at a big expense to consumers as well as taking away some consumer rights.<sup>43</sup> The increase in bounced checks is one issue that will affect consumers once banks begin to fully implement Check 21.<sup>44</sup> Consumers who routinely play the bank float and write checks that cannot be covered by their accounts will find that their checks are clearing faster giving them less time to cover their checks.<sup>45</sup> Bounced checks are estimated to jump from 35 million to 42 million per month costing consumers approximately \$170 million more per month in bounced check fees.<sup>46</sup>

Consumers Union is also concerned consumers will pay higher bank fees.<sup>47</sup> Banks may begin charging higher fees for those customers who wish to receive the substitute checks as well as charging customers who may wish to obtain a legal copy of one of their checks.<sup>48</sup> Overall, consumer advocacy groups do not want Check 21 to be a new profit center for banks.<sup>49</sup> These groups fear that with higher bank fees, increase bounced check fees, and the possibility of banks selling personal customer information to marketers, banks will create just that.<sup>50</sup>

In addition to costing consumers money, consumer groups believe that Check 21 is affecting certain consumers' rights.<sup>51</sup> The most noticeable right affected by Check 21 is the right for consumers to get

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banks often battle inclement weather during the winter months in order to ship checks to the drawee banks. Kramer, *supra* note 9.

43. See Consumer Union, *supra* note 9. A critical commentary issued by the Consumer's Union pointed out that banks will save money on processing checks but they are not required to share these savings with consumers. Gilgoff, *supra* note 1.
44. See Paul Katzeff, Bank "Float" Is Set To Start Its Fade-Out, INVESTOR'S BUSINESS DAILY, Oct. 11, 2004, at A14 (quoting a senior attorney for Consumers Union "that consumers won't be prepared for how fast their checks clear after Oct. 28").
45. See Gilgoff, *supra* note 1 (quoting critics complaints that faster check clearing will increase bounced checks).
46. United Press International, *Tip: Forget Check Floating After Oct. 28*, Washington, Oct. 5, 2004; Katzeff, *supra* note 44.
47. See Consumers Union, *supra* note 9.
48. Paul Tharp, *If Check is in the Mail, \$\$ Better be in the Bank*, THE NEW YORK POST, Sep. 28, 2004, 36; (check 21 does not prohibit banks from charging fees for legal copies of checks); Katzeff, *supra* note 44.
49. See Consumers Union, *supra* note 9 (stating that Check 21 opens opportunities for new banks fees and new types of invasions of consumer privacy).
50. *Id.*
51. *Id.*

their returned checks back.<sup>52</sup> A bank other than the consumers' bank will be holding the original check.<sup>53</sup> Neither Check 21 nor any other law requires banks to hold the original check for any certain amount of time which means that original checks, which have been sent electronically, will most likely be destroyed by the depository bank.<sup>54</sup> The elimination of original checks means some of the security features such as watermarks will be lost making it difficult to prove check forgery and alteration.<sup>55</sup>

Another feature of Check 21 contains new expedited recredit procedures for consumers who receive substitute checks.<sup>56</sup> This new recredit procedure takes effect if the customer, who in good faith, asserts that the check was not properly payable or there was a breach of warranties and the original check or a better copy of the original check is needed to validate the consumers claim.<sup>57</sup> The statute requires the bank to tentatively recredit a customer's account (up to \$2,500) or begin investigating the customers claim within 10 days of the complaint.<sup>58</sup> If the bank cannot find the customers claim to be invalid, the bank must refund any remaining amount of loss plus interest within 45 days.<sup>59</sup> Consumer's Union has a concern with the right because regulations restrict these new procedures to customers who actually received a substitute check.<sup>60</sup> If a check has been electronically cleared but no substitute check was ever received by the customer, then that customer does not have a right to recredit under Check 21.<sup>61</sup> Consumer's Union believes that consumers should receive this right of recredit for every check electronically processed.<sup>62</sup>

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52. *Id.* About 36% of Americans receive their returned checks along with their monthly bank statement. Yue, *supra* note 7.

53. See Consumers Union, *supra* note 9.

54. Yue, *supra* note 7. Banks however, must keep record of a legible copy of a check for seven years. Consumers Union, *supra* note 9.

55. Kelly, *supra* note 21; Consumers Union, *supra* note 9. Substitute checks will not be as useful as an original check because a substitute check cannot be used to determine pen pressure as well as make handwritings on the check less clear. *Id.*

56. William F. Savino and David S. Widenor, *2002-2003 Survey of New York Law: Commercial Law*, 54 SYRACUSE L. REV. 855, 912 (2004).

57. *Id.* Elements for recredit claims as well as procedures for recredit claims can be found in 12 U.S.C. § 5006 (2005).

58. Katzeff, *supra* note 44.

59. *Id.*

60. Consumers Union, *supra* note 9. If the customer is not provided with a substitute check, the customer does not get the 10 day right of recredit and the check remains under state check law. *Id.*

61. *Id.*

62. Consumers Union, *supra* note 9. Consumer's Union believes that this right

Finally, another complaint with Check 21 is that while checks will be processed faster, funds will not be made available any sooner, because Check 21 does not shorten the amount of time a check may be held.<sup>63</sup> Check 21 does provide for a study that will take place within 2½ years of Check 21 being implemented to evaluate how fast banks are making funds available to customers as well as other studies to evaluate the overall impact of Check 21.<sup>64</sup> These studies may result in Congress amending the Electronic Fund Transfer Act to apply consumer protections to all checks processed electronically.<sup>65</sup>

As midnight October 28, 2004 came and went, all of the immediate concerns of consumers and consumer groups seemed to be largely unfounded.<sup>66</sup> Concerns that that banks would start posting checks in real time, increasing fees, and suspending the practice of returning checks ended up being a huge misconception.<sup>67</sup> As a Bank of America executive put it, “it was the biggest non-event since Y2K.”<sup>68</sup> Even though Check 21 is now in effect, a large majority of those checks thought to be effected are still cleared by the same process as before Check 21 took effect.<sup>69</sup>

Although very few banks have embraced Check 21, consumer advocates are still arguing that Check 21 is hurting consumers.<sup>70</sup> In addition to some consumer advocates misconception of the current effects of Check 21, a few members of Congress have taken action and introduced a bill that changes provisions of the EFAA.<sup>71</sup> The Consumer Checking Account Fairness Act (CCAF) which is

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should exist for all consumers because printing out substitute checks increases the risk the checks will be paid twice, the amounts of the checks might be changed, and may make it impossible to detect forgery or alteration. *Id.*

63. *Id.*

64. See 12 U.S.C. § 5015 (2005) (requiring the Board to conduct a study of funds availability and to submit the report to Congress).

65. See generally Consumers Union, *supra* note 9 (requesting that Congress amend the federal Electronic Fund Transfer Act); 12 U.S.C. § 5015 (2005) (suggesting that Congress may take legislative action based on the Board’s study and recommendations).

66. Michael Sisk, *The Post-October 28 World: It’s Time For A Reality Check On Check 21*, 18 BANK TECHNOLOGY NEWS, at 38 (2005).

67. *Id.*

68. *Id.*

69. Richard Burnett, *Banks Have Check 21 – What About Consumers?*, ORLANDO SENTINEL, Jan. 16, 2005, at H1.

70. See *Id.* Consumer advocates argue that customers are being disadvantaged now because electronic check clearing is potentially close to becoming a reality. *Id.*

71. See Sisk, *supra* note 66 and Ivan Schneider, *Regulation – Cut the Fee, or Wait and See?*, BANK SYSTEMS AND TECHNOLOGY, Jan. 1, 2005, at 18.



designed to address some of the consumer issues was introduced by a member of the House Financial Services Committee.<sup>72</sup> The main provision of the CCAF is to reduce bank deposit hold times, but the CCAF also expands the recredit procedures of Check 21, and eliminate some bank charges for bounced checks.<sup>73</sup>

Since Check 21 has taken effect, banks have yet taken the full advantage Check 21 can provide.<sup>74</sup> Many bank executives and observers believe the industry is years away from routinely exchanging checks digitally and even further from significantly reducing the float of a typical check.<sup>75</sup> Consumer advocate groups as well as the media portrayed Check 21 as having an immediate negative effect on consumers.<sup>76</sup> The reality is that it will take time to get thousands of banks the technology they need in order to implement a totally digitized system.<sup>77</sup>

When Congress enacted Check 21, a provision was included that required the Federal Reserve Board to conduct research to see if the effects of Check 21 was reducing the hold times of bank deposits.<sup>78</sup>

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72. Schneider, *supra* note 71. Rep. Carolyn B. Maloney (D-N.Y.) has sponsored H.R. 5410, 108<sup>th</sup> (2004). *Id.*

73. Burnett, *supra* note 69. Hold times were designed to give banks more time to ship checks from bank to bank. *Id.* Banks have been able to put hold times on checks depending on if checks were local or non-local, government issued or privately issued, and depending on the amount of the check. EFAA, 12 U.S.C. § 4002 (1987). The CCAF act would change the hold times of non-local checks from 4 days to 2 days and also change hold times of checks based on when banks should reasonably expect the non-payment of a check instead of a hard fast number found in the EFAA. H.R. 5410, 108<sup>th</sup> Cong. (2004). The CCAF act also calls for overdraft fees to be suspended if the receiving bank has already been given final or provisional credit from the drawee bank and the overdraft would not have taken place of the funds had already been available to the customer at the time of the customers presented check which caused the overdraft. *Id.* In addition, the CCAF act calls for Saturdays to be counted as business days, recredit procedures to take effect if a fee for a substitute was charged by the bank, as well as several other statutory changes in the EFAA. *Id.*

74. Schneider, *supra* note 71. Even the largest banks have taken Check 21 slow; check volumes have been in the hundreds not the thousands. *Id.* In fact, banks are so efficient at physically moving checks that it is usually cheaper to continue doing so rather than send the check electronically. Sisk, *supra* note 66.

75. Sisk, *supra* note 66.

76. *See Id.*

77. *Id.* John Feldman, a Bank of America executive states “we’ve been spending a lot of time debunking the urban legends.” *Id.*

78. Check 21 Act, 12 U.S.C. § 5015 (2005). The Federal Reserve is to conduct a study regarding, the percentage of checks cleared that are not returned to the paying bank, the extent in which banks are making funds available to consumers prior to expiration of maximum hold times, length of time banks learn of non-payment, and check related losses over the period of the study.

The Federal Reserve's report is due back to Congress in April 2007 and at that time Congress should evaluate what changes should be made to the EFAA or to Check 21, not now when Check 21 is hardly having any impact on the economy.<sup>79</sup> The CCAF however, wants to skip the research process and go straight to fixing an unfairness that has not yet occurred.<sup>80</sup>

Another downside to enacting the CCAF now is that it may increase check kiting and fraud.<sup>81</sup> The reason banks have hold times on checks and are reluctant to give them up is because banks must balance the convenience needs of customers but at the same time prevent check fraud.<sup>82</sup> Bankers argue that the CCAF is an "ill-conceived measure that would disrupt the banking system and increase fraud, which check holds are designed to prevent."<sup>83</sup> While shorter hold times are not necessarily a bad thing for banks, enforcing the CCAF hold times now (instead of waiting for the Federal Reserve's report) would be premature since it will take several years before significant effects of Check 21 will be felt.<sup>84</sup>

It seems that everyone outside the banking community has a misunderstanding of the degree of impact that Check 21 is having. While it is true that Check 21 was designed to help all banks truncate checks, the full effect of this will not be seen for several more years. The cost and the logistics of getting most if not all banks up and running digitally will take time. Congress anticipated this delay and is why they required a study to be preformed by the Federal Reserve several years down the road instead of several months after Check 21 came into effect. The CCAF is a knee jerk reaction to a problem that is not yet a problem. Perhaps in April 2007, the CCAF will be an

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*Id.*

79. Schneider, *supra* note 71. Many industry participants prefer that the Federal Reserve conduct the research on the impact of Check 21 before any new legislation is enacted. *Id.*

80. Burnett, *supra* note 69. Jean Ann Fox of Consumer Federation of America believes that Check 21 is unfair to consumers and believes that it should be remedied. *Id.*

81. *Id.*

82. *Id.*

83. Burnett, *supra* note 69.

84. *Id.* Consumers are not now being disadvantaged because Check 21 is in effect. *Id.* It is going to require a much bigger investment in technology before a widespread majority of banks will be ready to full implement Check 21. *Id.* Until the Federal Reserve issues its report to Congress in April 2007, banks should re-examine their check hold policies and if customers do not like bank policies they should take their business elsewhere. Burnett, *supra* note 69. For Congress to act now, before they have all the information would be a mistake. See Schneider, *supra* note 71.

appropriate response to Check 21, but until the Federal Reserve can properly evaluate the effects Check 21 has on our economy, Congress and consumer groups cannot simply guess what the effects and to what degree Check 21 will have on consumers.