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***By electronic delivery***

Ms. Gail Hillebrand  
Senior Attorney  
West Coast Office  
Consumers Union of U.S. Inc

Jean Ann Fox  
Director of Consumer Protection  
Consumer Federation of America

Dear Ms. Hillebrand and Ms. Fox,

On behalf of our member banks, the American Bankers Association (“ABA”) would like to provide the following comments regarding the Check Clearing for the 21<sup>st</sup> Century Act (Check 21) in response to your letter of 11 August 2004 directed to Bank Chief Executive Officers.<sup>1</sup> We would like to thank you for the opportunity to explain the potential impact of Check 21 – and the misconceptions that are in the marketplace regarding Check 21. In particular, we want to let you know that it is our view that changes to the check processing system will be gradual, and that consumers will continue to be protected against liability for unauthorized check transactions as they are today. For many, little will change immediately.

First, it is important to note that the purpose of Check 21 is to facilitate the electronic processing of checks in order to make the system more efficient and reliable for consumers and banks. Check 21 will help to eliminate the need to use special, dedicated planes and trucks to transport checks around the country. In addition, natural disasters (hurricanes, and earthquakes) as well as terrorist threats can have a detrimental impact on the timely transportation of paper across the country. Electronic processing can help mitigate some of these issues and provide a more stable banking infrastructure. Merchants may also gain efficiencies in their banking practices. The efficiencies, which will be gained over the long term rather than immediately, will reduce banks’ overhead costs, and those savings will help consumers. The fact that consumers benefit from cost reductions in a competitive market is a basic and proven tenet of economics.

Second, many of your suggestions and concerns assume that on 28 October 2004, check processing will suddenly and quite completely

<sup>1</sup> See: [http://www.consumersunion.org/pub/core\\_financial\\_services/001317.html](http://www.consumersunion.org/pub/core_financial_services/001317.html)

convert to a substitute check environment, as though with the flip of a switch. The changes Check 21 will bring will be gradual over the course of a number of years. Check 21 does not require banks to send or accept checks electronically and many will not be doing so until many months or even years after October 28. Moreover, many consumers will notice little if any change, as the vast majority of bank customers today – and virtually all credit union members – do not receive their original cancelled checks. These customers are accustomed to and comfortable with images. For those who continue to receive original checks with their statements, any changes will be gradual as they begin to see substitute checks mixed in with their original cancelled checks. Consumers should not be led to believe that the handling of their substitute checks will be any different in this regard from their original checks. Keep in mind, at one time consumers received credit card receipts with their card statements. They were gradually phased out with little notice or consequence. The fact that the changes of Check 21 will be gradual will alleviate many of the concerns you raise.

**Handling disputes.** You express concerns about resolution of check disputes in a Check 21 environment, but for the most part, it will be *status quo* for consumers. While the technical, legal details may vary, consumers, by law, generally are not responsible for unauthorized transactions, whether they receive back an original check, a substitute check, or a copy of either. Different laws use different terms, but whether it is called a recredit, a refund, or stated in some other fashion, the results are the same: generally, the consumer gets back the money in a timely fashion. To suggest otherwise is a disservice to consumers who will be misled into believing that they lack rights and will not know to exercise them. And customer service pressures as well a potential significant liability under state law ensure that banks resolve check disputes expeditiously, whether or not that law states a specific schedule. State check laws, which remain in effect, work. Banks have a good track record for investigating and resolving complaints in a timely fashion.

**Fees for substitute checks.** Many banks today already provide at least a certain number of copies of checks without charge, and customers who have access to images of checks online may print out copies without charge. We anticipate that requests for substitute checks will be treated in the same way. There is no indication that the banking industry would charge a special fee just because an item is a substitute check. Bank fees are subject to market forces and as mentioned previously, this is a highly competitive market. In addition, customers will generally not need substitute checks for proof of payment because the IRS, courts, merchants, landlords and others have accepted copies and images of checks as proof of payment for decades.

**Providing faster access to deposits.** Your letter notes that “Check 21 is widely expected to speed up check clearing” and asks banks to make

funds available on the earlier of the date required by law or the date “the check depositing those funds actually clears.” Again, we do not expect that banks will move to electronic check processing overnight. Thus, check processing will not uniformly speed up immediately. More importantly, the vast majority of banks already allow access to deposits earlier than the law requires: most banks generally allow consumers to withdraw funds on the day of deposit or the day after deposit, for funds drawn on both local and nonlocal checks. Finally, federal law does indeed require the Federal Reserve Board to reduce the statutory funds availability schedules as check processing speeds up. Section 603(d) of the Expedited Funds Availability Act mandates that the Federal Reserve Board “reduce the time periods” to periods which allow banks to learn of nonpayments of “most items of each category of check.” We expect the Board to do so once check processing times in fact improve.

**Providing a substitute check for proof of payment.** You suggest that only substitute checks are acceptable as proof of payment and that copies and images of checks are not usable for this purpose. For decades, the IRS, landlords, merchants, and others have accepted copies and images of checks as proof of payment. Again, this will be *status quo* and it would be inappropriate to alarm consumers that a copy or image of a check or of a substitute check can no longer be used as proof of payment when most consumers today, including virtually all credit union members, receive images or copies that they rely on to prove payment.

**Effect on float.** You have expressed concern that the number of bounced checks will increase dramatically after October 28 on the assumption that after that date, float will significantly and suddenly be reduced, possibly to hours. We are certain you would agree that consumers should be discouraged from writing checks when they do not have enough money in their account.

Again, there is no cause for alarm. For banks that do image processing, float may shrink for processing out of town checks, but local checks will clear in virtually the same time as today. The effect on float is directly related to the level of industry adoption of electronic exchange of checks, which, we have noted earlier, is not a “flip of the switch” event. As already mentioned, the transition to substitute checks will be gradual rather than immediate. Moreover, float in many cases is already very short so any further shortening will be negligible. Furthermore, those consumers who rely on float will adapt as they have in the past to reductions in float. There is no reason to believe that they will not similarly adapt to any further reductions in float.

**Waiving overdraft charges.** An overdraft fee serves as a deterrent to keep customers from bouncing checks – much like a parking ticket. Your request to waive overdraft charges could encourage irresponsible behavior and assumes that electronic processing will be universally

adopted in a couple of months and that it will universally speed up the processing of all checks, which we have already stated, is not the case. Again, the transition to image exchange of checks will be gradual rather than immediate and will take years to achieve.

**Informing consumers.** We agree with your suggestion that banks educate *all* customers about Check 21, whether or not the law requires it. ABA has provided to its members a model brochure and other educational materials and suggestions to ensure that bank customers understand the implications of Check 21. Many banks plan to provide information above and beyond what the law requires and will send notices to all of their customers as well as provide information on their web sites and in branches.

**Conclusion.** Thank you for the opportunity to explain the benefits and procedures of Check 21 as well as how it will affect consumers. For the most part, the Check 21 effective date of October 28 will pass unnoticed by consumers. We hope that these clarifications are helpful and would be happy to discuss any additional concerns you have about Check 21.

Regards,

Nessa Eileen Feddis