



1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

*World-Class Solutions,
Leadership & Advocacy
Since 1875*

Nessa Feddis
Senior Federal Counsel
Phone: 202-663-5433
nfeddis@aba.com

By electronic delivery

July 14, 2005

Ms. Jennifer J. Johnson
Secretary
Board of the Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

**Re: Docket No R-1226
Request for comment
Survey on check processing and funds
availability
10 May 2005 *Federal Register* 24581**

Dear Ms. Johnson,

The American Bankers Association ("ABA") is pleased to submit our comments to the Federal Reserve Board's ("Board") request for comment on its draft survey intended to assist the Board in its study of the impact of the Check 21 Act on various aspects of check processing, including funds availability. The Check 21 Act requires the Board to conduct the study and report the results to Congress by April 28, 2007. Specifically, Congress directed the Board to study and report to Congress on:

1. The percentage of total checks cleared in which the paper check is not returned to the paying bank;
2. The extent to which banks make funds available to consumers for local and nonlocal checks prior to the expiration of maximum hold periods;
3. The length of time within which depository banks learn of the nonpayment of local and nonlocal checks;
4. The increase or decrease in check-related losses over the study period; and
5. The appropriateness of the time periods and amount limits applicable under Sections 603 and 604 of the Expedited Funds Availability Act, as in effect on the date of enactment of the Check 21 Act.

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this

rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

Overall, ABA believes that the questions are appropriately focused. Our comments address clarification of terms, modifications that take into account how banks generally track check information, and the need to allow an option of "not available" where appropriate.

Question 2.2

The question asks banks to specify the level of check losses during 2005 and to include "the value of the checks" that resulted in a loss. We suggest that the question ask about the "amount of losses" rather than the value of the checks. Banks do not track check losses on the basis of the value of the check, i.e., the amount written on the check. Rather, they track according to the loss. We agree with the clarification that it include losses before recoveries.

Also, many banks do not track losses according the federal funds availability schedule associated with particular types of checks. Accordingly, to ensure a response where the total is available, the survey should allow an option for the total amount for those who lack such data. In addition, it would be helpful to list which checks are included in the "next-day availability checks," as many banks provide next day availability on most checks and may need clarification.

Question 2.4

This question asks for check losses acting as bank of first deposit based on whether the losses were from checks subject to the midnight deadline or checks subject to warranty claims by the paying bank. Banks generally do not track losses on this basis. In fact, banks sometimes receive warranty claims with the cash letters. If the question is retained, the respondent should be able to check "not available."

Question 2.5

This question asks banks to specify the level of check losses as the bank of first deposit, based on the age of the account. It lists six time periods, (up to 30 days, 31 to 90 days, etc.). Most banks do not break down account age so specifically. One hundred and eighty one days and newer is typical. The answers should be designed to allow banks to combine time periods or explain in a selection of "other."

Question 2.6

This question asks respondents to specify check losses as paying bank by presentment method, that is, paper presentment or electronic presentment. First, in part (a), to avoid confusion, the question should clarify that paper presentment includes electronic check presentment, as

paper presentment is a condition of this type of presentment. It should also clarify that it excludes checks converted into automated clearing house (“ACH”) transactions.

Because of the format and order of selections, it is also not clear in part (a) that the first row is asking for the totals for the “original” and “substitute” subparts. A category for total is necessary because at this time most banks do not make a distinction between originals and substitute checks when measuring check fraud losses. We suggest that the option for “total” follow the subparts, as this will make it clearer that the option is available.

Part (b) should clarify that check conversion into ACH is included in electronic presentment and that electronic check presentment is not and provide an option for “total” after the subparts (i) and (ii). It should also re-label subpart (a) as (i).

Question 2.7

This question asks whether the bank experienced more or less check fraud losses in 2005 compared to 2004. We suggest that the question be further broken down and designate whether the losses were as bank of first deposit or paying bank, with an option for the total.

Question 3.1

See comments to 2.6 with regard to clarification of the meanings of electronic and check presentment and placing the “total” option after the subparts.

Question 3.2

See comments to 2.2.

Question 4.2

The question asks respondents to explain their published funds availability policies. One of the categories is “next-day availability checks.” However, banks may assign different availability schedules to items subject to the federal next-day availability. For example, some banks may provide same business day for on-us items, but next-day availability for cashiers’ checks. Accordingly, the question should list the types of checks and allow a separate response for each type of next-day-availability check.

Question 4.4

This question asks respondents to indicate their actual funds availability practices. We appreciate the value of obtaining this information as in many cases, actual availability may be sooner than the bank’s published schedule. However, such information may be difficult to obtain. In many instances, the decision to provide earlier availability is a case-by-case, or account-by-account basis, as determined by the

individual branch. This would mean tracking by deposit or account, which is not done. While banks cannot provide data by deposit type for these reasons, some banks may make a distinction based on a specific account product, though in these cases, the customer may receive a separate funds availability schedule.

For these reasons, a more general question may deliver better information. The survey could ask, for example, whether the bank makes exceptions, by deposit or account, and an estimate of the frequency of such exceptions, if it is available.

Question 4.5

This question asks what percent of check deposits are subject to exception holds. As with the prior question, it is unlikely that most banks will have specific data because exceptions are often made case-by-case at the branch level, though some banks will generally always place holds for large dollar checks (those over \$5,000) and new accounts.

Question 5.1

This question seeks information about the number of business days it takes for a check to be returned to the bank of first deposit. The question should make very clear that estimates and samples are permitted, because it is unlikely that banks track all returned checks methodically or routinely. The Board should also recognized that return times for categories of checks may vary depending on the how the check was routed for processing. The Board should also considering working with select individual banks to get more precise information.

ABA appreciates the opportunity to comment on this important study. We also offer any additional assistance the Board believes may be helpful in obtaining information that would be useful in completing the study.

Regards,

A handwritten signature in black ink that reads "Nessa E. Feddis". The signature is written in a cursive style with a large, looped 'N' and 'F'.

Nessa Eileen Feddis