



May 3, 2005

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Dear Ms. Johnson:

Thank you for the opportunity to comment on the Federal Reserve Board's proposed amendments to Regulation CC which relate to "remotely created checks" (RCCs). The proposal indicates that a remotely created check is used when a consumer provides authorization to a payee to withdraw funds from his or her account, but does not provide an authentication standard agreed upon by the consumer and his or her bank, such as the customer's signature on a check.

This proposal intends to reduce potential fraud in such transactions by creating "transfer and presentment warranties" for RCCs. Specifically, the Board proposes to require banks that initially receive and deposit RCCs on behalf of their customers to warrant or confirm that the remotely created check drawn from a consumer's account was in fact authorized by that consumer. The proposed amendment would ultimately shift liability for losses that result from the use of unauthorized remotely created checks from the consumer's bank (the paying bank) to the financial institution that receives and deposits the RCC.

Currently, a RCC is subject to state law on negotiable instruments, specifically Articles 3 and 4 of the Uniform Commercial Code (UCC) as adopted in each state. In recognition of particular problems regarding RCCs, the National Conference of Commissioners of Uniform State Laws (NCCUSL) and the American Law Institute approved revisions to the UCC that specifically address remotely created checks. The UCC revisions require (similar to the Regulation CC amendments) that a person who transfers a remotely-created consumer item to warrant that the person on whose account the item is drawn actually authorized the issuance of the item in the amount for which the item is drawn. The Board notes that its proposal closely tracks the UCC revisions approved by NCCUSL. Despite the proposed change to the UCC, to date, according to the proposal, 14 states have enacted the statutory revisions.

The Federal Reserve notes in the proposal that the state-by-state approach to the adoption of the remotely created check warranties complicates the trail of liability for remotely created checks collected across state lines, because the bank that presents the check may not be subject to the same rules as the paying bank. They also highlight that the check collection and return system operates nationally, and accordingly, for the remotely created check warranties to be effective and to prevent conflicts among the warranties as they apply to banks, the warranties must likewise apply uniformly and nationwide.

CONFERENCE OF STATE BANK SUPERVISORS

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The Conference of State Bank Supervisors (CSBS)¹ appreciates the opportunity to comment and to be of assistance on this issue. The proposed changes raise important policy questions relating to uniform rules that govern remotely created checks. We agree with the Federal Reserve Board that these changes would likely reduce fraud in processing RCCs. We also understand that consistency is necessary to clarify financial institutions' rights and to simplify processing issues. CSBS would, however, caution the Federal Reserve Board about taking any type of action that could transfer the historic state role in this area to a federal level.

CSBS, in our role as the voice of nation's 54 state bank commissioners, coordinates frequently with the National Conference of State Legislatures and the National Governors Association. We have brought this issue to their attention and will continue serve as a resource on this issue for those organizations as necessary. As always, CSBS also stands ready to work with the Federal Reserve staff as you consider the appropriateness of these proposed changes.

Best personal regards,

A handwritten signature in cursive script that reads "Neil Milner".

Neil Milner, CAE
President and CEO

¹ CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation's 6,300 state chartered commercial and savings banks and over 400 state-licensed branches and agencies of foreign banks.