

From: "Kathy Pieper" <kpieper@csbloyal.com> on 03/12/2004 03:40:51 PM
Subject: Availability of Funds and Collection of Checks

Our bank strongly agrees with the following WACHA comments regarding “Remotely Created Drafts”:

Remotely-Created Demand Drafts

The FRB seeks comment on whether to incorporate into Regulation CC the latest NCCUSL amendments to UCC 3&4 relating to “remotely-created demand drafts” (also known as “demand drafts” or “pre-authorized drafts”). In summary, the amendments to UCC 3&4 would establish a new transfer and presentment warranty for remotely created demand drafts whereby the transferor warrants that “the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.”

WACHA’s understanding from its members, and from discussions with Federal agencies and law enforcement, is that unauthorized demand drafts are being used extensively to commit fraud against consumers and businesses. Demand drafts saddle paying banks with significant costs and customer service issues when the authorization is in dispute and has to be researched. Moreover, collecting on an unauthorized demand draft is difficult for the payor and paying bank since the item almost certainly is not discovered until after the midnight deadline for its return has passed.

We have surveyed our membership and one financial institution commented that over 90% of the drafts that were presented were fraudulent. In many cases over 50% the consumer is advised to close out the account and order new checks so it is an additional expense to the consumer.

For these reasons, WACHA strongly supports adding an authorization warranty for demand drafts to Regulation CC since this would clarify where the responsibility for obtaining proper authorization lies and which party(ies) would be accountable in the event of a disputed authorization. Moreover, by adopting such a warranty under Regulation CC, which we believe the FRB has the authority to do, the warranty would apply uniformly across the Nation’s check collection mechanism, regardless of state or means of collection.

We also support the request in the Industry Response that the final rule on this matter apply this warranty to all demand drafts, not just demand drafts that are drawn against consumer accounts. We see no basis for distinguishing between consumer and non-consumer accounts in this regard. Finally, we too would recommend that the warranty under Regulation CC warrant that the item is authorized according to all the terms of the item, not just the amount of the item.

The Industry Response seeks a separate proposal and request for comment from the FRB on adopting this new warranty under Regulation CC. WACHA believes the prompt issuance of such a proposal will stimulate industry efforts to develop efficient means to pursue and collect on warranty violations on behalf of accountholders.

Please consider this request.

Thank you.

Sincerely,
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