

Comment from SSA Baltimore Federal Credit Union regarding proposed amendments to Regulation CC that would define “remotely created checks” and shift liability for unauthorized remotely created checks to the depository bank.

The SSA Baltimore Federal Credit Union is in favor of extending the midnight deadline imposed by the UCC to return unauthorized remotely created checks to 60 days. It is our feeling that extending this deadline to 60 days would align it with the similar deadline for ACH transactions that is for the same amount of time. Since the information needed to initiate a remotely created check is similar to the information needed to initiate an ACH transaction, we feel that the deadline to return each of these items should be similar as well. We feel strongly that this solution would provide financial institutions with sufficient time to identify remotely created checks, determine if the checks are authorized, and return them to the depository bank if they are unauthorized. These unauthorized remotely created checks could be returned through the regular channels of the check processing system. As long as these items are returned within the given time frame, the depository bank will have to assume any liability that results from the disputed items.

Other possible solutions that were suggested, such as allowing the individual state legislatures to adopt the UCC amendments, allow for a great deal of inconsistency among the states. It could also take a considerable amount of time for all states to adopt these measures. Also, if a depository bank were located in a particular state that did not adopt such an amendment, that depository bank would be protected, and would not have to reimburse a paying institution, based solely on the state in which they are located. The same depository bank would be liable under similar circumstances if they were located in a state that adopted the amendments. Further discussions would be required to determine what the rules would be for financial institutions with branches that span multiple states – some that have adopted the amendments and some that have not.

Incorporating a MICR line identifier to signal remotely created checks will make identifying these checks easier for the paying institution, but contacting the customer by the midnight deadline to determine if the checks are authorized or not will still be a problem. The addition of an identifier in the MICR line without also extending the midnight deadline will not allow paying banks enough time to determine if all of their remotely created checks are authorized or not. The MICR line identifier will make it easier to identify the remotely created checks, should there be another requirement similar to the existing requirement in Reg E stating that monthly notification is required for any account that has electronic transactions. Contacting customers that have remotely created checks that hits their account would still be very time consuming and difficult if the midnight deadline were not extended. However, if the deadline to return unauthorized checks were extended, customers could notify the paying institutions themselves when they have an unauthorized charge that they notice in their account, or on their statement. The item could then be returned through the usual means as long as the extended time period has not expired.

In conclusion, we feel that the best approach to resolving this issue is to extend the midnight deadline to 60 days. This solution offers paying institutions the best opportunity to identify unauthorized remotely created checks and to return them to the depository institution from which they originated. Under this scenario, paying institutions will receive ample time to speak to customers who dispute these items and resolve these disputes in a time frame that is suitable to all parties involved.