

September 18, 2013

Mr. Robert deV. Frierson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave., NW  
Washington DC 20551

Ms. Monica Jackson  
Office of the Executive Secretary  
Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

Re: Supplemental Comments, 12 C.F.R. Part 229, Regulation CC: Docket No. R-1409, 76 Fed. Reg. 16862 (Mar. 25, 2011), Remotely Created Items, Funds Availability Schedule for Prepaid Cards and Mobile Deposits

Dear Mr. Frierson and Ms. Jackson,

We understand that finalizing the amendments to Regulation CC that were proposed in 2011 is on the regulatory agenda for the end of this year. That docket included questions about updates to the funds availability schedule to address modern check clearing methods, as well as the appropriate rules for certain forms of remotely created payment items. The National Consumer Law Center (on behalf of its low income clients), Consumer Action, Consumer Federation of America, Consumers Union, the nonprofit publisher of Consumer Reports, National Association of Consumer Advocates, and National Consumers League are writing to comment, or to update our earlier comments,<sup>1</sup> in that docket.<sup>2</sup> Although the comment period has closed, we hope that you will consider these comments in light of new developments that warrant further comment.

We urge the Consumer Financial Protection Bureau (CFPB) and Federal Reserve Board (FRB) to:

- Open a rulemaking to work towards the elimination of remotely created checks (RCCs) and remotely created payment orders (RCPOs) (called “electronically-created items” or “electronic image and information” by the FRB) in consumer transactions.
- In the interim, extend RCC warranties to RCPOs, clarify that RCPOs are covered by the protections of Regulation E, and improve monitoring of both RCCs and RCPOs.

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<sup>1</sup> In June 2011 Consumers Union and Consumer Federation of America filed comments in the Regulation CC docket to address proposals regarding the hold period for nonproprietary ATM deposits, non “on us” checks and checks from consumers with repeated overdrafts.

<sup>2</sup> Organizational descriptions are attached as an appendix. These comments were written by Lauren Saunders of the National Consumer Law Center and Laura Udis and Jean Ann Fox at the Consumer Federation of America.

- Treat remotely created items that bear a handwritten electronic “signature” in the same fashion as RCCs and RCPOs.
- Clarify the application of the Expedited Funds Availability Act (EFAA) to ensure that consumers have prompt access to deposits made on mobile and other devices through remote deposit capture (RDC) and to deposits to prepaid cards.

We also support, but will not further comment on, the FRB’s proposal to amend Regulation CC to:

- Eliminate nonlocal checks and extend the local check available schedule to all checks.
- Reduce the maximum hold period for nonproprietary ATM deposits.
- Exclude declined debit card transactions from the exception that allows banks to extend hold times for consumers who have had “repeated overdrafts.”
- Reduce the reasonable hold extension period for non “on us” checks to two business days.

We appreciate these efforts to give consumers faster access to funds that they deposit by check, which is especially important for families who are struggling to make ends meet without incurring overdraft fees.

## **1. RCCs and RCPOs Should Be Banned Entirely**

Remotely created checks (RCCs) and remotely created payment orders (RCPOs) (termed “electronically-created items” or “electronic image and information” by the FRB) should be banned entirely in consumer transactions (and possibly all transactions). We will address this subject briefly in these comments and will also soon send you a separate letter addressing the topic at greater length. You may also wish to review our recent comments to the Federal Trade Commission (FTC) in connection with the FTC’s proposal to ban use of RCCs and RCPOs in telemarketing sales.<sup>3</sup>

An RCC is “a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn.” 12 C.F.R. § 229.2(fff). Any merchant that obtains a consumer’s bank routing and account number can create and print an RCC with the proper software or the help of a third-party payment processor. The payee or payment processor then deposits the RCC into its bank account for collection. Once an RCC is introduced into the check clearing system, it is virtually indistinguishable from a traditional paper check.

An RCPO is the all-electronic version of an RCC. An RCPO never existed in printed paper form but is nonetheless deposited into and cleared through the check clearing system. A merchant or payment processor simply enters a bank account number and bank routing number into an

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<sup>3</sup> Comments of NCLC et al. to the Federal Trade Commission, 16 CFR Parts 310 [RIN 3084-AA98], Telemarketing Sales Rule, Project No. R411001 (Remotely Created Checks and Other Items) (submitted August 2, 2013), available at <http://www.nclc.org/images/pdf/rulemaking/ftc-telemarketing-rcc-comments-822013.pdf>.

electronic file that is transmitted to a financial institution for processing via the check clearing system. Like an RCC, an RCPO is indistinguishable from traditional paper checks that have been imaged. However, whether an RCPO is covered by the laws that protect checks, electronic transactions, both, or neither is unclear.

RCCs and RCPOs are used by payday lenders (storefront, internet and tribal), internet scammers, and merchants in high-risk industries such as gambling advice, psychic readings, pyramid sales, terminated merchants, pawn brokers, bail bondsmen, debt reduction services, and loan modifications. Our organizations have seen widespread use of RCCs and RCPOs to evade consumer protections, to compromise consumers' control over their bank accounts, and to facilitate unlawful, fraudulent, unfair, deceptive and abusive practices.

We recognize that RCCs, and possibly RCPOs, are used for some legitimate purposes. However, we believe that much of the continuing use of these payment devices is due to inertia and that safer electronic payment systems can substitute in these situations with lower risks.

We support the FTC's proposal to ban the use of RCCs and RCPOs in transactions covered by the Telemarketing Sales Rule (TSR). The FTC has outlined a compelling case describing the pervasive misuses of RCCs and RCPOs that justify a ban in telemarketing sales.

However, the TSR rule will not be effective without a ban that applies to depository institutions, which are outside the FTC's jurisdiction. Moreover, the FTC's rule will not apply to transactions that do not involve a telephone call and do not fall under the TSR. Yet the reasons to ban RCCs and RCPOs in those transactions are just as compelling.

RCCs and RCPOs should be banned because:

- They are too easy to use to debit bank accounts without consumer consent.
- They lack the consumer protections available for other electronic payment methods.
- They operate through the check clearing system, which lacks the systemic controls to police fraudulent and unlawful use.
- They are widely used to facilitate fraudulent and unlawful payments and to evade consumer protections and oversight.
- They are unnecessary in light of the wide availability of modern electronic payment systems.
- Their usefulness for a handful of legitimate uses is outweighed by their risks.
- A clean, complete ban will facilitate legal compliance.

Canada banned RCCs (calling them "tele-cheques") in 2004.<sup>4</sup> The National Association of Attorneys General called for their abolition in 2005.<sup>5</sup> In the last few years, the case for abolishing

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<sup>4</sup> While there is no specific rule or law barring them, the Canadian Payments Authority, which operates Canada's payment clearing system, prohibits their use. Canadian Payments Authority, "Prohibition of Tele-Cheques in the Automated Clearing Settlement System" (June 1, 2003), *available at*

RCCs and RCPOs has become even more compelling as automated clearinghouse transactions are now available in situations where RCCs/RCPOs were being used, and the evidence of abuses of RCCs and RCPOs has become overwhelming. The FTC has compiled an impressive case against RCCs and RCPOs in its proposed TSR rule,<sup>6</sup> and we will elaborate further in a separate letter shortly.

## **2. In the Interim, RCC Warranties Should Be Extended to RCPOs, Regulation E Coverage Should Be Clarified, and Both RCCs and RCPOs Should be More Carefully Monitored,**

While we believe that RCCs and RCPOs should be banned, we recognize that completely eliminating them from the payment system will take some time. In the interim, we support the proposal in this docket to amend Regulation CC to require originating banks to warrant the validity of RCPOs in the same manner as currently required for RCCs. We urge the CFPB to dispel any doubt that RCPOs are covered by Regulation E. The FRB should also require more monitoring of RCCs and RCPOs.

RCPOs are subject to all of the same dangers as RCCs, and originating banks should have the same responsibility to determine their validity. An originating bank that submits an RCPO to a receiving bank should be required to warrant the validity of the instrument and to indemnify the receiving bank if the item is unauthorized. Originating banks are in the best position to conduct due diligence as to their clients', and their clients' clients', use of RCPOs and to monitor return rates to ensure that the items are not being used for fraudulent or unlawful purposes.

It is essential, however, to make clear that such an amendment will not cast doubt on court or regulator determinations that RCPOs are also covered by the Electronic Fund Transfer Act (EFTA) and Regulation E.<sup>7</sup> That is, consumers should be permitted to exercise their rights under Regulation E, and the consumer's bank should be required to honor those rights and follow Regulation E, regardless of how the warranties operate among the banks that process the RCPO. Regulation E protections are especially important given that the UCC likely does not apply to items that were never in paper form.

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[http://www.cdnpay.ca/imis15/eng/Act\\_Rules/Automated\\_Clearing\\_Settlement\\_System\\_ACSS\\_Rules/eng/rul/policy\\_statement\\_telecheques.aspx](http://www.cdnpay.ca/imis15/eng/Act_Rules/Automated_Clearing_Settlement_System_ACSS_Rules/eng/rul/policy_statement_telecheques.aspx).

<sup>5</sup> National Association of Attorneys General, Comment to the FRB Docket No. R-1226 (Proposed Amendment to Regulation CC/Remotely Created Checks) (May 9, 2005), available at [http://www.federalreserve.gov/SECRS/2005/May/20050512/R-1226/R-1226\\_264\\_1.pdf](http://www.federalreserve.gov/SECRS/2005/May/20050512/R-1226/R-1226_264_1.pdf); see also Oversight of Telemarketing Practices and the Credit Repair Organizations Act: Hearing Before the Senate Commerce, Science & Transp. Comm. (July 31, 2007) (testimony of Richard Johnson, Member of the Board of Directors, AARP, available at [http://www.commerce.senate.gov/public/?a=Files.Serve&File\\_id=b8655fb6-b7a3-457b-b675-69830ddea5ee](http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=b8655fb6-b7a3-457b-b675-69830ddea5ee)

<sup>6</sup> Federal Trade Commission, Telemarketing Sales Rule Notice of Proposed Rulemaking, 16 CFR Part 310, RIN: 3084-AA98, 78 Fed. Reg. 41200 (July 9, 2013) ("FTC 2013 TSR Proposal").

<sup>7</sup> See, e.g., Fed. Trade Comm'n v. Johnson, 2013 WL 800257 (D. Nev. Mar. 1, 2013) ("Persuasive is a notice issued by the Retail Payments Office of the Federal Reserve to financial institutions that it views transactions like the ones authorized by Elite Debit's protocol as 'electronically originated consumer payments [that] fall under the requirements of the Electronic Fund Transfer Act and Regulation E, not under check law.' (See dkt. no. 585-1 at 2.)").

We appreciate the FRB's statement in the proposal that coverage under Regulation CC does not preclude a determination that RCPOs are also "electronic fund transfers" (EFTs) covered under Regulation E.<sup>8</sup> We also support the way in which the FRB's proposal handled the issue – not by including RCPOs in the definition of remotely created check, but instead by including commentary stating that items that purport to be RCCs are subject to RCC warranties as if they were checks.<sup>9</sup>

In order to avoid any confusion, especially by courts that may not read the discussion in the proposed rule, we suggested that the Commentary be further amended to state explicitly that treating RCPOs as RCCs for warranty purposes does not preclude a finding that they are also subject to Regulation E. That is, at the end of Proposed Commentary Section 229.34-1, we propose the following additional language:

The fact that an electronic image and information transferred as an electronic collection item is treated as a check for these purposes does not preclude a finding that an item that was not derived from a paper check is an electronic fund transfer subject to Regulation E.

Similarly, at the end of Proposed Commentary Section 229.34(c)-5, we propose the following additional language:

The fact that an electronic image and information transferred as an electronic collection item is subject to the warranties for a remotely created check does not preclude a finding that an item that was not derived from a paper check is an electronic fund transfer subject to Regulation E.

Alternatively, commentary could be added to the definition of RCCs to make clear that RCPOs are not checks or RCCs. We fear that, absent such clear language in the Commentary, a court might mistakenly conclude that RCPOs should be treated as checks not only for warranty purposes but for Regulation E purposes as well. This clarification is especially important because it may not be obvious to all courts that the definition of "remotely created checks" in Regulation CC requires that the check be reduced to paper form.<sup>10</sup>

More directly, the CFPB should make clear – through a Bulletin, revised Commentary, or in some other fashion – that RCPOs are covered by Regulation E. An examination of Regulation E plainly leads to that conclusion. RCPOs are a transfer of funds initiated through a computer. 12 C.F.R. § 1005.3(b)(1). Because they were never reduced to paper form, they do not fall under the

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<sup>8</sup> 76 Fed. Reg. at 16866.

<sup>9</sup> Proposed Commentary Sections 229.34-1, 229.34(c)-5.

<sup>10</sup> Regulation CC defines a "remotely created check" as "a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn." 12 C.F.R. § 229.2(fff). "Check," in turn, is defined to include a "demand draft" – a term that is not defined in Regulation CC – including a demand draft that is not negotiable. 12 C.F.R. § 229.2(k), (k)(7).

Regulation E exclusion for payments that originated “by check, draft, or similar paper instrument.” *Id.* § 1005.3(c)(1). One court has already held that RCPOs are covered by Regulation E.<sup>11</sup>

Nonetheless, regulators have expressed uncertainty about Regulation E coverage.<sup>12</sup> RCPOs are processed through the check system and are indistinguishable from RCCs, leading to potential confusion about their treatment.

While a CFPB determination is not necessary to Regulation E coverage where an item clearly falls within the scope of the regulation, to avoid any misunderstanding, the CFPB should state explicitly that RCPOs are covered by Regulation E. Entities that take advantage of the efficiencies of electronically processed payments should be required to provide the consumer protections adopted for electronic fund transfers, especially as the UCC likely does not cover electronic items.

Pending eventual action to eliminate RCCs and RCPOs from the payment system, the FRB should also take more concrete steps to require payees and originating banks to monitor the use of RCCs and RCPOs. The Federal Reserve Bank of Atlanta, for example, has suggested requiring “every bank to collect and report to its primary federal regulator on a frequent basis each instance in which any of its customers deposited significant numbers of checks that resulted in an abnormal number or rate of returns.”<sup>13</sup> Methods could also be developed to distinguish RCCs and RCPOs from traditional paper checks. More extensive monitoring of RCCs and RCPOs will both reduce misuse and also yield information crucial to further regulatory efforts.

### 3. Electronically “Signed” Images Should Be Treated the Same as RCCs and RCPOs

The 2011 proposal describes a new form of RCC or RCPO:

[T]he drawer’s bank (the paying bank) might supply a smart-phone application through which the drawer is able to execute a “handwritten” signature on the phone’s screen, and through which the signature is attached to an electronic “check” that the drawer sends via the Internet to the payee, for the payee’s subsequent electronic deposit with its bank.<sup>14</sup>

This possibility is even more likely two years later with the spread of tablets, laptops and desktop computers that have touch screens.

An item with such a “handwritten” signature might arguably fall outside the Regulation CC definition of “remotely created check.” One could argue that the item does “bear a signature

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<sup>11</sup> See *Fed. Trade Comm’n v. Johnson*, 2013 WL 800257 (D. Nev. Mar. 1, 2013).

<sup>12</sup> The FRB’s 2011 Regulation CC proposal referred to a possible “future” determination that RCPOs are subject to Regulation E. 76 Fed. Reg. at 16866; see also LTC 2013 TSR Proposal, 78 Fed. Reg. at 41205 & n. 61 (noting that the CFPB “has not yet determined whether such electronically-created items not derived from checks are electronic fund transfers subject to Regulation E”); Comments of Federal Reserve Bank of Atlanta to FTC re Telemarketing Sales Rule at 2 (Aug. 8, 2013) (“FRB of Atlanta TSR Comments”) (“We, similar to the Commission, recognize the lack of clarity around the legal framework governing RCPOs and the various implications that result should consumer RCPOs definitively become subject to the UETA.”)

<sup>13</sup> FRB of Atlanta TSR Comments at 4.

<sup>14</sup> 76 Fed. Reg. at 16865.

applied, or purported to be applied” by the drawer. Although the creator of the check, not the consumer, applied the printed electronic signature to the original paper check, once the item is imaged, it may appear to have a signature that purports to have been applied by the drawer. However, like a traditional remotely created check, the original check does not have an original signature.

It would be tempting to conclude that an item that was created after the consumer supplied a handwritten signature, albeit electronically, does not bear the same dangers as RCCs and RCPOs. But with advancing technology, obtaining that electronic signature, and applying it repeatedly to new items, could be as easy and deceptive as obtaining authorization (or purported authorization) to create an RCC or RCPO. As the Federal Reserve Bank of Atlanta recently commented: “Defrauders might evade the coverage of the [Federal Trade] Commission’s prohibition on RCCs simply by issuing payment orders that bear a signature instead of a printed legend.”<sup>15</sup> A consumer could be required to sign a payday loan agreement or other agreement, or to upload a handwritten signature, as part of an electronic transaction. Then the fine print of the contract would permit the lender to use that signature to create a RCC or RCPO. A consumer could be induced to “sign” in much the same way that consumers are induced to click “I agree” when they do not understand the full scope of the agreement. Any items that are created remotely using that signature by an entity other than the paying bank are subject to the same abuses and dangers of RCCs and RCPOs.

Moreover, it is hard to envision situations in which such electronically signed checks would be any more necessary or useful than RCCs or RCPOs. The ACH system and the card networks can substitute for RCCs and RCPOs, with much lower risks, in virtually every circumstance where those items are legitimately used today. The same is likely to be true of any new situation in which electronically signed checks might be used. PayPal, various P2P systems, and other newer payment systems can be used to transmit funds to persons and small businesses that are not equipped to accept electronic payments or cards directly.<sup>16</sup> It would defeat the purpose of banning or regulating RCCs and RCPOs if those rules could be evaded by substituting another item that escapes the scrutiny and protections of the electronic payment system as well as the rules that govern RCCs and RCPOs.

Similarly, as the FTC explained in its proposed TSR rule, the consumer protections and systemic monitoring of items transmitted through the check system are inferior to those for electronic payments processed through the ACH system and card networks. Merchants who wish to take advantage of the speed and convenience of electronic payments should have to extend the consumer protections that electronic payments receive. They should not have it both ways, benefiting from electronic processes but depriving consumers of appropriate protections.

Consequently, we believe that items that contain an electronically handwritten signature should be treated the same as RCCs and RCPOs – ideally banned, and in the interim, subject to the

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<sup>15</sup> FRB of Atlanta TSR Comments at 2.

<sup>16</sup> Checks generated by a consumer when bills are paid through a bank bill payment feature are created by the consumer’s bank and thus do not meet the definition of an RCC or RCPO.

same warranties. Just as the FRB explained with RCPOs, originating banks are in the best position to monitor returns and to ensure that their clients do not misuse such items.

In order to ensure that electronically signed, remotely created items are subject to the RCC warranties, either the definition of “remotely created check” in Regulation CC, or the Commentary to that definition or elsewhere, should be amended to make clear that an item that holds an electronic rather than an original signature falls within the definition of an RCC. If the item was never reduced to paper, then it should fall within the treatment of electronically created items discussed elsewhere in these comments.

If there is any question that electronically signed items deserve different treatment from RCCs, we ask for the opportunity for further discussion and comment, along with consideration of how to ensure that such items are not used to replicate the problems of RCCs and RCPOs.

#### **4. Consumers Should Have Prompt Access to Funds Deposited By Remote Deposit Capture**

The FRB proposes to amend the definition of “automated teller machine” to exclude mobile devices or computers at which consumers may take or upload a picture of the check through a process known as “remote deposit capture” (RDC). The proposal requires that an ATM be able to accept deposits of actual paper checks and cash in order to be considered an ATM.

The FRB did not explain the purpose of this amendment or its implications. But excluding RDC from the ATM definition creates an ambiguity as to whether and how the funds availability schedule applies to RDC deposits. Thus, it is not clear when those funds must be made available to consumers.

Whether by including RDC in the definition of ATM, or by clarifying the treatment of RDC separately, the CFPB and FRB must ensure that consumers who deposit funds by RDC have prompt access to those funds. Consumers are being hit with a barrage of advertising promoting RDC. They should not be steered to a method that results in a delay in access to their money.

We generally believe that consumers should have access to funds deposited by RDC on the same schedule as for deposits at the bank’s ATMs. A check deposited by RDC is done so through an app or website provided by the consumer’s bank and is transmitted immediately.

However, we recognize that RDC deposits present fraud concerns. If – and only if – necessary to address serious fraud risks, RDC deposits could be subject to a one day delay in funds availability from the schedule required for deposits at proprietary ATMs. As experience with RDC grows and fraud prevention techniques improve, hopefully any delay can be eliminated.

## **5. Checks Deposited to Prepaid Cards Should be Covered under the Expedited Funds Availability Act**

In order to maintain the integrity of the expedited funds schedule and to reflect other technological developments, we also urge the IFRB to amend Regulation CC to clarify that the expedited funds schedule applies to checks deposited onto prepaid cards. The consumers who use prepaid cards tend to be lower income or credit-challenged consumers who especially need prompt access to their funds.

It is presently unclear whether prepaid card accounts are considered to be “accounts” within the meaning of Regulation CC.<sup>17</sup> Regulation CC relies on Regulation D’s definition of “transaction account.”<sup>18</sup> The wording of that definition appears broad enough to encompass prepaid cards, even if the funds are held in subaccounts under a master account that is not in the consumer’s name. However, Regulation D has broader purposes, such as determining capitalization requirements, which could lead to double counting if both the master account and subaccount were considered to be accounts. Moreover, Regulation CC applies to “banks,”<sup>19</sup> and not all prepaid cards are issued by depository institutions.

At least one prepaid card issuer, American Express, applies a lengthy 10-day hold time to checks deposited onto its Bluebird prepaid cards. JP Morgan Chase, on the other hand, appears to apply the regular EFAA hold times to checks deposited onto its Liquid card. Whether such differences are due to the fact that Bluebird is not offered through American Express’s bank, or that its deposits are entirely through RDC rather than through ATMs, is not clear. This distinction creates an unlevel playing field and unequal protections for users of different cards.

While RDC deposits may warrant slightly different treatment from ATM deposits, as discussed above, we do not believe that holders of prepaid card accounts should be treated any differently from consumers who hold traditional bank accounts. Hold times for deposited funds should be determined by the type and manner of deposit as set forth in Regulation CC, not by the type of underlying account. We see no regulatory or practical reason to treat deposits to prepaid cards any differently than deposits to bank accounts, and the policy reasons for giving prepaid card consumers prompt access to their funds are compelling. We ask that the IFRB and CLPB clarify Regulation CC to include prepaid card accounts in the “accounts” protected by the EFAA and implementing regulations.

## **6. Consumers Should Receive Better Information to Prevent Check Scams**

We appreciate the effort to improve the notices that consumers receive about funds availability policies. However, the proposed notices fail to address a crucial issue about the distinction between funds availability and check clearing. We ask that the CLPB and the IFRB study

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<sup>17</sup> 12 C.F.R. § 220.2(a).

<sup>18</sup> 12 C.F.R. § 204.2(e).

<sup>19</sup> 12 C.F.R. § 229.2(c).

ways to inform consumers that a check may still bounce even after the funds are made available, and that, if the check is returned, the consumer will be responsible for any funds that have been withdrawn.

Fake check scams were the top consumer scam reported in 2012 to the National Consumer League's fraud complaint site.<sup>20</sup> The scams rely on the distinction between fund availability and the full clearing of a check to induce consumers to cash and draw on fraudulent checks that are subsequently returned. Common examples of these scams are the Nigerian check scam and the counterfeit check scam involving an overpayment for an item the consumer is selling.<sup>21</sup> These scams also take advantage of the fact that many consumers are unaware that they can be held liable for funds that they are permitted to withdraw against checks that later bounce.

In 2008, to support a public education campaign about fake check scams, Consumer Federation of America commissioned a consumer survey on understanding of check cashing rules. The study revealed that 59 percent of the respondents believed that financial institutions confirm that a check is good before allowing the funds to be withdrawn, and 39 percent thought that if they deposited a check and withdrew some of the funds, and it was later discovered that the check was phony, the person who gave it to them would be responsible to pay the money back to their financial institution.<sup>22</sup>

The funds availability notices should inform consumers that a check could still be returned even if funds are made available. Consumers should be told how to determine when a check will have fully cleared. Furthermore, the notice should make clear that consumers will be responsible for any funds that are withdrawn against a deposit that is reversed.

Better information about the distinction between check hold times and the full clearing of a check should be communicated not only in notices to consumers but also through improved teller information and training. For example, one of the writers of these comments recently attempted to determine if a deposited check had fully cleared. Neither the bank's customer service representatives, nor a supervisor, understood the distinction between funds availability and check clearing and could not answer if or when the check had been paid by the originating bank.

Fake check scams continue to be a problem for consumers. Improving consumer understanding of the check clearing process could help avoid some of these scams. It would also make consumers more cautious about other situations in which they might be asked to cash a check, such as when a friend or acquaintance asks them to do so as a favor.

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<sup>20</sup> National Consumers League, "Familiar Faces in 2012 Top Scams Report," available at <http://www.nclnet.org/personal-finance/64-fraud/769-familiar-faces-in-2012-top-ten-scams-report>.

<sup>21</sup> These scams are described in the recent comments of Vermont Assistant Attorney General Eliot Burg, on behalf of several attorneys general, to the Federal Trade Commission on the Telemarketing Sales Rule, 16 CFR Part 10, Project No. R411001 (Aug. 8, 2013), available at <http://ftc.gov/os/comments/isranifraudnprm/00035-86301.pdf>

<sup>22</sup> See Consumer Federation of America, "Tear Up" Fake Check Scams (May 2009), available at <http://www.consumerfed.org/elements/www.consumerfed.org/file/CFA%20Fake%20Check%20Scams%20Fact%20Sheet.pdf>.

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Thank you for the opportunity to submit these comments. Please contact Lauren Saunders at [lsaunders@nclc.org](mailto:lsaunders@nclc.org), (202) 595-7845, or Laura Udis at [ludis@consumerfed.org](mailto:ludis@consumerfed.org), 202-939-1004, if you have any questions.

Yours very truly,

National Consumer Law Center (on behalf of its low income clients)  
Consumer Action  
Consumer Federation of America  
Consumers Union, the policy and advocacy arm of *Consumer Reports*  
National Association of Consumer Advocates  
National Consumers League

## Attachment: Descriptions of Commenters

Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

**Consumer Action** has been a champion of underrepresented consumers nationwide since 1971. A nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change.

By providing financial education materials in multiple languages, a free national hotline and regular financial product surveys, Consumer Action helps consumers assert their rights in the marketplace and make financially savvy choices. More than 8,000 community and grassroots organizations benefit annually from its extensive outreach programs, training materials, and support.

The **Consumer Federation of America** is an association of nearly 300 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

**Consumers Union** is the public policy and advocacy division of Consumer Reports. Consumers Union works for telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

The **National Association of Consumer Advocates (NACA)** is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers.

**National Consumers League**, founded in 1899, is the nation's pioneering consumer organization. Our non-profit mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad.