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108TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 108–291

CHECK CLEARING FOR THE 21ST CENTURY ACT

OCTOBER 1, 2003.—Ordered to be printed

Mr. OXLEY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 1474]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1474), to facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Check Clearing for the 21st Century Act" or the "Check 21 Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings; purposes.
Sec. 3. Definitions.
Sec. 4. General provisions governing substitute checks.
Sec. 5. Substitute check warranties.
Sec. 6. Indemnity.
Sec. 7. Expedited recredit for consumers.
Sec. 8. Expedited recredit procedures for banks.
Sec. 9. Delays in an emergency.
Sec. 10. Measure of damages.
Sec. 11. Statute of limitations and notice of claim.
Sec. 12. Consumer awareness.
Sec. 13. Effect on other law.

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Sec. 14. Variation by agreement.
Sec. 15. Regulations.
Sec. 16. Study and report on funds availability.
Sec. 17. Statistical reporting of costs and revenues for transporting checks between Federal Reserve banks.
Sec. 18. Evaluation and report by the Comptroller General.
Sec. 19. Depositary services efficiency and cost reduction.
Sec. 20. Effective date.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—The Congress finds as follows:

(1) In the Expedited Funds Availability Act, enacted on August 10, 1987, the Congress directed the Board of Governors of the Federal Reserve System to consider establishing regulations requiring Federal reserve banks and depository institutions to provide for check truncation, in order to improve the check processing system.

(2) In that same Act, the Congress—

(A) provided the Board of Governors of the Federal Reserve System with full authority to regulate all aspects of the payment system, including the receipt, payment, collection, and clearing of checks, and related functions of the payment system pertaining to checks; and

(B) directed that the exercise of such authority by the Board superseded any State law, including the Uniform Commercial Code, as in effect in any State.

(3) Check truncation is no less desirable in 2003 for both financial service customers and the financial services industry, to reduce costs, improve efficiency in check collections, and expedite funds availability for customers than it was over 15 years ago when Congress first directed the Board to consider establishing such a process.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To facilitate check truncation by authorizing substitute checks.

(2) To foster innovation in the check collection system without mandating receipt of checks in electronic form.

(3) To improve the overall efficiency of the Nation's payments system.

SEC. 3. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) ACCOUNT.—The term "account" means a deposit account at a bank.

(2) BANK.—The term "bank" means any person that is located in a State and engaged in the business of banking and includes—

(A) any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act);

(B) any Federal reserve bank;

(C) any Federal home loan bank; or

(D) to the extent it acts as a payor—

(i) the Treasury of the United States;

(ii) the United States Postal Service;

(iii) a State government; or

(iv) a unit of general local government (as defined in section 602(24) of the Expedited Funds Availability Act).

(3) BANKING TERMS.—

(A) COLLECTING BANK.—The term "collecting bank" means any bank handling a check for collection except the paying bank.

(B) DEPOSITARY BANK.—The term "depositary bank" means—

(i) the first bank to which a check is transferred, even if such bank is also the paying bank or the payee; or

(ii) a bank to which a check is transferred for deposit in an account at such bank, even if the check is physically received and indorsed first by another bank.

(C) PAYING BANK.—The term "paying bank" means—

(i) the bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection; or

(ii) the bank at or through which a check is payable and to which the check is sent for payment or collection.

(D) RETURNING BANK.—

(i) IN GENERAL.—The term "returning bank" means a bank (other than the paying or depositary bank) handling a returned check or notice in lieu of return.

(ii) TREATMENT AS COLLECTING BANK.—No provision of this Act shall be construed as affecting the treatment of a returning bank as a collecting bank for purposes of section 4–202(b) of the Uniform Commercial Code.

(4) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(5) BUSINESS DAY.—The term "business day" has the same meaning as in section 602(3) of the Expedited Funds Availability Act.

(6) CHECK.—The term "check"—

(A) means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection or return, including a substitute check and a travelers check; and

(B) does not include a noncash item or an item payable in a medium other than United States dollars.

(7) CONSUMER.—The term "consumer" means an individual who—

(A) with respect to a check handled for forward collection, draws the check on a consumer account; or

(B) with respect to a check handled for return, deposits the check into, or cashes the check against, a consumer account.

(8) CONSUMER ACCOUNT.—The term "consumer account" has the same meaning as in section 602(10) of the Expedited Funds Availability Act.

(9) CUSTOMER.—The term "customer" means a person having an account with a bank.

(10) FORWARD COLLECTION.—The term "forward collection" means the transfer by a bank of a check to a collecting bank for settlement or the paying bank for payment.

(11) INDEMNIFYING BANK.—The term "indemnifying bank" means a bank that is providing an indemnity under section 6 with respect to a substitute check.

(12) MICR LINE.—The terms "MICR line" and "magnetic ink character recognition line" mean the numbers, which may include the bank routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with generally applicable industry standards.

(13) NONCASH ITEM.—The term "noncash item" has the same meaning as in section 602(14) of the Expedited Funds Availability Act.

(14) PERSON.—The term "person" means a natural person, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization.

(15) RECONVERTING BANK.—The term "reconverting bank" means—

(A) the bank that creates a substitute check; or

(B) if a substitute check is created by a person other than a bank, the first bank that transfers or presents such substitute check.

(16) SUBSTITUTE CHECK.—The term "substitute check" means a paper reproduction of the original check that—

(A) contains an image of the front and back of the original check;

(B) bears a MICR line containing all the information appearing on the MICR line of the original check, except as provided under generally applicable industry standards for substitute checks to facilitate the processing of substitute checks;

(C) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and

(D) is suitable for automated processing in the same manner as the original check.

(17) STATE.—The term "State" has the same meaning as in section 3(a) of the Federal Deposit Insurance Act.

(18) TRUNCATE.—The term "truncate" means to remove an original paper check from the check collection or return process and send to a recipient, in lieu of such original paper check, a substitute check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without subsequent delivery of the original paper check.

(19) UNIFORM COMMERCIAL CODE.—The term "Uniform Commercial Code" means the Uniform Commercial Code in effect in a State.

(20) OTHER TERMS.—Unless the context requires otherwise, the terms not defined in this section shall have the same meanings as in the Uniform Commercial Code.

SEC. 4. GENERAL PROVISIONS GOVERNING SUBSTITUTE CHECKS.

(a) NO AGREEMENT REQUIRED.—A person may deposit, present, or send for collection or return a substitute check without an agree-

ment with the recipient, so long as a bank has made the warranties in section 5 with respect to such substitute check.

(b) LEGAL EQUIVALENCE.—A substitute check shall be the legal equivalent of the original check for all purposes, including any provision of any Federal or State law, and for all persons if the substitute check—

(1) accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and

(2) bears the legend: "This is a legal copy of your check. You can use it the same way you would use the original check.".

(c) ENDORSEMENTS.—A bank shall ensure that the substitute check for which the bank is the reconverting bank bears all endorsements applied by parties that previously handled the check (whether in electronic form or in the form of the original paper check or a substitute check) for forward collection or return.

(d) IDENTIFICATION OF RECONVERTING BANK.—A bank shall identify itself as a reconverting bank on any substitute check for which the bank is a reconverting bank so as to preserve any previous reconverting bank identifications in conformance with generally applicable industry standards.

(e) APPLICABLE LAW.—A substitute check that is the legal equivalent of the original check under subsection (b) shall be subject to any provision, including any provision relating to the protection of customers, of part 229 of title 12 of the Code of Federal Regulations, the Uniform Commercial Code, and any other applicable Federal or State law as if such substitute check were the original check, to the extent such provision of law is not inconsistent with this Act.

SEC. 5. SUBSTITUTE CHECK WARRANTIES.

A bank that transfers, presents, or returns a substitute check and receives consideration for the check warrants, as a matter of law, to the transferee, any subsequent collecting or returning bank, the depositary bank, the drawee, the drawer, the payee, the depositor, and any endorser (regardless of whether the warrantee receives the substitute check or another paper or electronic form of the substitute check or original check) that—

(1) the substitute check meets all the requirements for legal equivalence under section 4(b); and

(2) no depositary bank, drawee, drawer, or endorser will receive presentment or return of the substitute check, the original check, or a copy or other paper or electronic version of the substitute check or original check such that the bank, drawee, drawer, or endorser will be asked to make a payment based on a check that the bank, drawee, drawer, or endorser has already paid.

SEC. 6. INDEMNITY.

(a) INDEMNITY.—A reconverting bank and each bank that subsequently transfers, presents, or returns a substitute check in any electronic or paper form, and receives consideration for such transfer, presentment, or return shall indemnify the transferee, any subsequent collecting or returning bank, the depositary bank, the drawee, the drawer, the payee, the depositor, and any endorser, up to the amount described in subsections (b) and (c), as applicable, to the extent of any loss incurred by any recipient of a substitute check if

that loss occurred due to the receipt of a substitute check instead of the original check.

(b) INDEMNITY AMOUNT.—

(1) AMOUNT IN EVENT OF BREACH OF WARRANTY.—The amount of the indemnity under subsection (a) shall be the amount of any loss (including costs and reasonable attorney's fees and other expenses of representation) proximately caused by a breach of a warranty provided under section 5.

(2) AMOUNT IN ABSENCE OF BREACH OF WARRANTY.—In the absence of a breach of a warranty provided under section 5, the amount of the indemnity under subsection (a) shall be the sum of—

(A) the amount of any loss, up to the amount of the substitute check; and

(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation).

(c) COMPARATIVE NEGLIGENCE.—

(1) IN GENERAL.—If a loss described in subsection (a) results in whole or in part from the negligence or failure to act in good faith on the part of an indemnified party, then that party's indemnification under this section shall be reduced in proportion to the amount of negligence or bad faith attributable to that party.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

(d) EFFECT OF PRODUCING ORIGINAL CHECK OR COPY.—

(1) IN GENERAL.—If the indemnifying bank produces the original check or a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated) or is otherwise sufficient to determine whether or not a claim is valid, the indemnifying bank shall—

(A) be liable under this section only for losses covered by the indemnity that are incurred up to the time that the original check or copy is provided to the indemnified party; and

(B) have a right to the return of any funds it has paid under the indemnity in excess of those losses.

(2) COORDINATION OF INDEMNITY WITH IMPLIED WARRANTY.—The production of the original check, a substitute check, or a copy under paragraph (1) by an indemnifying bank shall not absolve the bank from any liability on a warranty established under this Act or any other provision of law.

(e) SUBROGATION OF RIGHTS.—

(1) IN GENERAL.—Each indemnifying bank shall be subrogated to the rights of any indemnified party to the extent of the indemnity.

(2) RECOVERY UNDER WARRANTY.—A bank that indemnifies a party under this section may attempt to recover from another party based on a warranty or other claim.

(3) DUTY OF INDEMNIFIED PARTY.—Each indemnified party shall have a duty to comply with all reasonable requests for as-

sistance from an indemnifying bank in connection with any claim the indemnifying bank brings against a warrantor or other party related to a check that forms the basis for the indemnification.

SEC. 7. EXPEDITED RECREDIT FOR CONSUMERS.

(a) RECREDIT CLAIMS.—

(1) IN GENERAL.—A consumer may make a claim for expedited recredit from the bank that holds the account of the consumer with respect to a substitute check, if the consumer asserts in good faith that—

(A) the bank charged the consumer's account for a substitute check that was provided to the consumer;

(B) either—

(i) the check was not properly charged to the consumer's account; or

(ii) the consumer has a warranty claim with respect to such substitute check;

(C) the consumer suffered a resulting loss; and

(D) the production of the original check or a better copy of the original check is necessary to determine the validity of any claim described in subparagraph (B).

(2) 40-DAY PERIOD.—Any claim under paragraph (1) with respect to a consumer account may be submitted by a consumer before the end of the 40-day period beginning on the later of—

(A) the date on which the financial institution mails or delivers, by a means agreed to by the consumer, the periodic statement of account for such account which contains information concerning the transaction giving rise to the claim; or

(B) the date on which the substitute check is made available to the consumer.

(3) EXTENSION UNDER EXTENUATING CIRCUMSTANCES.—If the ability of the consumer to submit the claim within the 40-day period under paragraph (2) is delayed due to extenuating circumstances, including extended travel or the illness of the consumer, the 40-day period shall be extended by a reasonable amount of time.

(b) PROCEDURES FOR CLAIMS.—

(1) IN GENERAL.—To make a claim for an expedited recredit under subsection (a) with respect to a substitute check, the consumer shall provide to the bank that holds the account of such consumer—

(A) a description of the claim, including an explanation of—

(i) why the substitute check was not properly charged to the consumer's account; or

(ii) the warranty claim with respect to such check;

(B) a statement that the consumer suffered a loss and an estimate of the amount of the loss;

(C) the reason why production of the original check or a better copy of the original check is necessary to determine the validity of the charge to the consumer's account or the warranty claim; and

(D) sufficient information to identify the substitute check and to investigate the claim.

(2) CLAIM IN WRITING.—

(A) IN GENERAL.—The bank holding the consumer account that is the subject of a claim by the consumer under subsection (a) may, in the discretion of the bank, require the consumer to submit the information required under paragraph (1) in writing.

(B) MEANS OF SUBMISSION.—A bank that requires a submission of information under subparagraph (A) may permit the consumer to make the submission electronically, if the consumer has agreed to communicate with the bank in that manner.

(c) RECREDIT TO CONSUMER.—

(1) CONDITIONS FOR RECREDIT.—The bank shall recredit a consumer account in accordance with paragraph (2) for the amount of a substitute check that was charged against the consumer account if—

(A) a consumer submits a claim to the bank with respect to that substitute check that meets the requirement of subsection (b); and

(B) the bank has not—

(i) provided to the consumer—

(I) the original check; or

(II) a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check, as of the time at which the original check was truncated; and

(ii) demonstrated to the consumer that the substitute check was properly charged to the consumer account.

(2) TIMING OF RECREDIT.—

(A) IN GENERAL.—The bank shall recredit the consumer's account for the amount described in paragraph (1) no later than the end of the business day following the business day on which the bank determines the consumer's claim is valid.

(B) RECREDIT PENDING INVESTIGATION.—If the bank has not yet determined that the consumer's claim is valid before the end of the 10th business day after the business day on which the consumer submitted the claim, the bank shall recredit the consumer's account for—

(i) the lesser of the amount of the substitute check that was charged against the consumer account, or $2,500, together with interest if the account is an interest-bearing account, no later than the end of such 10th business day; and

(ii) the remaining amount of the substitute check that was charged against the consumer account, if any, together with interest if the account is an interest-bearing account, not later than the 45th calendar day following the business day on which the consumer submits the claim.

(d) AVAILABILITY OF RECREDIT.—

(1) NEXT BUSINESS DAY AVAILABILITY.—Except as provided in paragraph (2), a bank that provides a recredit to a consumer

account under subsection (c) shall make the recredited funds available for withdrawal by the consumer by the start of the next business day after the business day on which the bank recredits the consumer's account under subsection (c).

(2) SAFEGUARD EXCEPTIONS.—A bank may delay availability to a consumer of a recredit provided under subsection (c)(2)(B)(i) until the start of either the business day following the business day on which the bank determines that the consumer's claim is valid or the 45th calendar day following the business day on which the consumer submits a claim for such recredit in accordance with subsection (b), whichever is earlier, in any of the following circumstances:

(A) NEW ACCOUNTS.—The claim is made during the 30-day period beginning on the business day the consumer account was established.

(B) REPEATED OVERDRAFTS.—Without regard to the charge that is the subject of the claim for which the recredit was made—

(i) on 6 or more business days during the 6-month period ending on the date on which the consumer submits the claim, the balance in the consumer account was negative or would have become negative if checks or other charges to the account had been paid; or

(ii) on 2 or more business days during such 6-month period, the balance in the consumer account was negative or would have become negative in the amount of $5,000 or more if checks or other charges to the account had been paid.

(C) PREVENTION OF FRAUD LOSSES.—The bank has reasonable cause to believe that the claim is fraudulent, based on facts (other than the fact that the check in question or the consumer is of a particular class) that would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent.

(3) OVERDRAFT FEES.—No bank that, in accordance with paragraph (2), delays the availability of a recredit under subsection (c) to any consumer account may impose any overdraft fees with respect to drafts drawn by the consumer on such recredited amount before the end of the 5-day period beginning on the date notice of the delay in the availability of such amount is sent by the bank to the consumer.

(e) REVERSAL OF RECREDIT.—A bank may reverse a recredit to a consumer account if the bank—

(1) determines that a substitute check for which the bank recredited a consumer account under subsection (c) was in fact properly charged to the consumer account; and

(2) notifies the consumer in accordance with subsection (f)(3).

(f) NOTICE TO CONSUMER.—

(1) NOTICE IF CONSUMER CLAIM NOT VALID.—If a bank determines that a substitute check subject to the consumer's claim was in fact properly charged to the consumer's account, the bank shall send to the consumer, no later than the business day following the business day on which the bank makes a determination—

(A) the original check or a copy of the original check (including an image or a substitute check) that—

(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or

(ii) is otherwise sufficient to determine whether or not the consumer's claim is valid; and

(B) an explanation of the basis for the determination by the bank that the substitute check was properly charged, including a statement that the consumer may request copies of any information or documents on which the bank relied in making the determination.

(2) NOTICE OF RECREDIT.—If a bank recredits a consumer account under subsection (c), the bank shall send to the consumer, no later than the business day following the business day on which the bank makes the recredit, a notice of—

(A) the amount of the recredit; and

(B) the date the recredited funds will be available for withdrawal.

(3) NOTICE OF REVERSAL OF RECREDIT.—In addition to the notice required under paragraph (1), if a bank reverses a recredited amount under subsection (e), the bank shall send to the consumer, no later than the business day following the business day on which the bank reverses the recredit, a notice of—

(A) the amount of the reversal; and

(B) the date the recredit was reversed.

(4) MODE OF DELIVERY.—A notice described in this subsection shall be delivered by United States mail or by any other means through which the consumer has agreed to receive account information.

(g) OTHER CLAIMS NOT AFFECTED.—Providing a recredit in accordance with this section shall not absolve the bank from liability for a claim made under any other law, such as a claim for wrongful dishonor under the Uniform Commercial Code, or from liability for additional damages under section 6 or 10.

(h) CLARIFICATION CONCERNING CONSUMER POSSESSION.—A consumer who was provided a substitute check may make a claim for an expedited recredit under this section with regard to a transaction involving the substitute check whether or not the consumer is in possession of the substitute check.

(i) SCOPE OF APPLICATION.—This section shall only apply to customers who are consumers.

SEC. 8. EXPEDITED RECREDIT PROCEDURES FOR BANKS.

(a) RECREDIT CLAIMS.—

(1) IN GENERAL.—A bank may make a claim against an indemnifying bank for expedited recredit for which that bank is indemnified if—

(A) the claimant bank (or a bank that the claimant bank has indemnified) has received a claim for expedited recredit from a consumer under section 7 with respect to a substitute check or would have been subject to such a claim had the consumer's account been charged;

(B) the claimant bank has suffered a resulting loss or is obligated to recredit a consumer account under section 7 with respect to such substitute check; and

(C) production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the customer account or any warranty claim connected with such substitute check.

(2) 120-DAY PERIOD.—Any claim under paragraph (1) may be submitted by the claimant bank to an indemnifying bank before the end of the 120-day beginning on the date of the transaction that gave rise to the claim.

(b) PROCEDURES FOR CLAIMS.—

(1) IN GENERAL.—To make a claim under subsection (a) for an expedited recredit relating to a substitute check, the claimant bank shall send to the indemnifying bank—

(A) a description of—

(i) the claim, including an explanation of why the substitute check cannot be properly charged to the consumer account; or

(ii) the warranty claim;

(B) a statement that the claimant bank has suffered a loss or is obligated to recredit the consumer's account under section 7, together with an estimate of the amount of the loss or recredit;

(C) the reason why production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the consumer account or the warranty claim; and

(D) information sufficient for the indemnifying bank to identify the substitute check and to investigate the claim.

(2) REQUIREMENTS RELATING TO COPIES OF SUBSTITUTE CHECKS.—If the information submitted by a claimant bank pursuant to paragraph (1) in connection with a claim for an expedited recredit includes a copy of any substitute check for which any such claim is made, the claimant bank shall take reasonable steps to ensure that any such copy cannot be—

(A) mistaken for the legal equivalent of the check under section 4(b); or

(B) sent or handled by any bank, including the indemnifying bank, as a forward collection or returned check.

(3) CLAIM IN WRITING.—

(A) IN GENERAL.—An indemnifying bank may, in the discretion of the bank, require the claimant bank to submit the information required by paragraph (1) in writing, including a copy of the written or electronically submitted claim, if any, that the consumer provided in accordance with section 7(b).

(B) MEANS OF SUBMISSION.—An indemnifying bank that requires a submission of information under subparagraph (A) may permit the claimant bank to make the submission electronically, if the claimant bank has agreed to communicate with the indemnifying bank in that manner.

(c) RECREDIT BY INDEMNIFYING BANK.—

(1) PROMPT ACTION REQUIRED.—No later than 10 business days after the business day on which an indemnifying bank receives a claim under subsection (a) from a claimant bank with respect to a substitute check, the indemnifying bank shall—

(A) provide, to the claimant bank, the original check (with respect to such substitute check) or a copy of the original check (including an image or a substitute check) that—

(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or

(ii) is otherwise sufficient to determine the bank's claim is not valid; and

(B) recredit the claimant bank for the amount of the claim up to the amount of the substitute check, plus interest if applicable; or

(C) provide information to the claimant bank as to why the indemnifying bank is not obligated to comply with subparagraph (A) or (B).

(2) RECREDIT DOES NOT ABROGATE OTHER LIABILITIES.—Providing a recredit under this subsection to a claimant bank with respect to a substitute check shall not absolve the indemnifying bank from liability for claims brought under any other law or from additional damages under section 6 or 10 with respect to such check.

(3) REFUND TO INDEMNIFYING BANK.—If a claimant bank reverses, in accordance with section 7(e), a recredit previously made to a consumer account under section 7(c), or otherwise receives a credit or recredit with regard to such substitute check, the claimant bank shall promptly refund to any indemnifying bank any amount previously advanced by the indemnifying bank in connection with such substitute check.

(d) PRODUCTION OF ORIGINAL CHECK OR A SUFFICIENT COPY GOVERNED BY SECTION 6(d).—If the indemnifying bank provides the claimant bank with the original check or a copy of the original check (including an image or a substitute check) under subsection (c)(1)(A), section 6(d) shall govern any right of the indemnifying bank to any repayment of any funds the indemnifying bank has recredited to the claimant bank pursuant to subsection (c).

SEC. 9. DELAYS IN AN EMERGENCY.

A delay by a bank beyond the time limits prescribed or permitted by this Act shall be excused if the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of a bank and if the bank uses such diligence as the circumstances require.

SEC. 10. MEASURE OF DAMAGES.

(a) LIABILITY.—

(1) IN GENERAL.—Except as provided in section 6, any person who, in connection with a substitute check, breaches any warranty under this Act or fails to comply with any requirement imposed by, or regulation prescribed pursuant to, this Act with respect to any other person shall be liable to such person in an amount equal to the sum of—

(A) the lesser of—

(i) the amount of the loss suffered by the other person as a result of the breach or failure; or

(ii) the amount of the substitute check; and

(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.

(2) OFFSET OF RECREDITS.—The amount of damages any person receives under paragraph (1), if any, shall be reduced by the amount, if any, that the claimant receives and retains as a recredit under section 7 or 8.

(b) COMPARATIVE NEGLIGENCE.—

(1) IN GENERAL.—If a person incurs damages that resulted in whole or in part from the negligence or failure of that person to act in good faith, then the amount of any liability due to that person under subsection (a) shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

SEC. 11. STATUTE OF LIMITATIONS AND NOTICE OF CLAIM.

(a) ACTIONS UNDER THIS ACT.—

(1) IN GENERAL.—An action to enforce a claim under this Act may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 1-year period beginning on the date the cause of action accrues.

(2) ACCRUAL.—A cause of action accrues as of the date the injured party first learns, or by which such person reasonably should have learned, of the facts and circumstances giving rise to the cause of action.

(b) DISCHARGE OF CLAIMS.—Except as provided in subsection (c), unless a person gives notice of a claim to the indemnifying or warranting bank within 30 days after the person has reason to know of the claim and the identity of the indemnifying or warranting bank, the indemnifying or warranting bank is discharged from liability in an action to enforce a claim under this Act to the extent of any loss caused by the delay in giving notice of the claim.

(c) NOTICE OF CLAIM BY CONSUMER.—A timely claim by a consumer under section 7 for expedited recredit constitutes timely notice of a claim by the consumer for purposes of subsection (b).

SEC. 12. CONSUMER AWARENESS.

(a) IN GENERAL.—Each bank shall provide, in accordance with subsection (b), a brief notice about substitute checks that describes—

(1) how a substitute check is the legal equivalent of an original check for all purposes, including any provision of any Federal or State law, and for all persons, if the substitute check—

(A) accurately represents all of the information on the front and back of the original check as of the time at which the original check was truncated; and

(B) bears the legend: 'This is a legal copy of your check. You can use it in the same way you would use the original check.'; and

(2) the consumer recredit rights established under section 7 when a consumer believes in good faith that a substitute check was not properly charged to the account of the consumer.

(b) DISTRIBUTION.—

(1) EXISTING CUSTOMERS.—With respect to consumers who are customers of a bank on the effective date of this Act and who receive original checks or substitute checks, a bank shall provide the notice described in subsection (a) to each such consumer no later than the first regularly scheduled communication with the consumer after the effective date of this Act.

(2) NEW ACCOUNT HOLDERS.—A bank shall provide the notice described in subsection (a) to each consumer who will receive original checks or substitute checks, other than existing customers referred to in paragraph (1), at the time at which the customer relationship is initiated.

(3) MODE OF DELIVERY.—A bank may send the notices required by this subsection by United States mail or by any other means through which the consumer has agreed to receive account information.

(4) CONSUMERS WHO REQUEST COPIES OF CHECKS.—Notice shall be provided to each consumer of the bank that requests a copy of a check and receives a substitute check, at the time of the request.

(c) MODEL LANGUAGE.—

(1) IN GENERAL.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Board shall publish model forms and clauses that a bank may use to describe each of the elements required by subsection (a).

(2) SAFE HARBOR.—

(A) IN GENERAL.—A bank shall be treated as being in compliance with the requirements of subsection (a) if the bank's substitute check notice uses a model form or clause published by the Board and such model form or clause accurately describes the bank's policies and practices.

(B) DELETION OR REARRANGEMENT.—A bank may delete any information in the model form or clause that is not required by this Act or rearrange the format.

(3) USE OF MODEL LANGUAGE NOT REQUIRED.—This section shall not be construed as requiring any bank to use a model form or clause that the Board prepares under this subsection.

SEC. 13. EFFECT ON OTHER LAW.

This Act shall supersede any provision of Federal or State law, including the Uniform Commercial Code, that is inconsistent with this Act, but only to the extent of the inconsistency.

SEC. 14. VARIATION BY AGREEMENT.

(a) SECTION 8.—Any provision of section 8 may be varied by agreement of the banks involved.

(b) NO OTHER PROVISIONS MAY BE VARIED.—Except as provided in subsection (a), no provision of this Act may be varied by agreement of any person or persons.

SEC. 15. REGULATIONS.

The Board may prescribe such regulations as the Board determines to be necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the provisions of this Act.

SEC. 16. STUDY AND REPORT ON FUNDS AVAILABILITY.

(a) STUDY.—In order to evaluate the implementation and the impact of this Act, the Board shall conduct a study of—

(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 depositary 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 this Act.

(b) REPORT TO CONGRESS.—Before the end of the 30-month period beginning on the effective date of this Act, the Board shall submit a report to the Congress containing the results of the study conducted under this section, together with recommendations for legislative action.

SEC. 17. STATISTICAL REPORTING OF COSTS AND REVENUES FOR TRANSPORTING CHECKS BETWEEN RESERVE BANKS.

In the annual report prepared by the Board for the first full calendar year after the date of enactment of this Act and in each of the 9 subsequent annual reports by the Board, the Board shall include the amount of operating costs attributable to, and an estimate of the Federal Reserve banks' imputed revenues derived from, the transportation of commercial checks between Federal Reserve bank check processing centers.

SEC. 18. EVALUATION AND REPORT BY THE COMPTROLLER GENERAL.

(a) STUDY.—During the 5-year period beginning on the date of the enactment of this Act, the Comptroller General of the United States shall evaluate the implementation and administration of this Act, including—

(1) an estimate of the gains in economic efficiency made possible from check truncation;

(2) an evaluation of the benefits accruing to consumers and financial institutions from reduced transportation costs, longer hours for accepting deposits for credit within 1 business day, the impact of fraud losses, and an estimate of consumers' share of the total benefits derived from this Act; and

(3) an assessment of consumer acceptance of the check truncation process resulting from this Act, as well as any new costs incurred by consumers who had their original checks returned with their regular monthly statements prior to the date of enactment of this Act.

(b) REPORT TO CONGRESS.—Before the end of the 5-year period referred to in subsection (a), the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the evaluation conducted pursuant to subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.

SEC. 19. DEPOSITARY SERVICES EFFICIENCY AND COST REDUCTION.

(a) FINDINGS.—The Congress finds as follows:

(1) The Secretary of the Treasury has long compensated financial institutions for various critical depositary and financial agency services provided for or on behalf of the United States by—

(A) placing large balances, commonly referred to as "compensating balances", on deposit at such institutions; and

(B) using imputed interest on such funds to offset charges for the various depositary and financial agency services provided to or on behalf of the Government.

(2) As a result of sharp declines in interest rates over the last few years to record low levels, or the public debt outstanding reaching the statutory debt limit, the Department of the Treasury often has had to dramatically increase or decrease the size of the compensating balances on deposit at these financial institutions.

(3) The fluctuation of the compensating balances, and the necessary pledging of collateral by financial institutions to secure the value of compensating balances placed with those institutions, have created unintended financial uncertainty for the Secretary of the Treasury and for the management by financial institutions of their cash and securities.

(4) It is imperative that the process for providing financial services to the Government be transparent, and provide the information necessary for the Congress to effectively exercise its appropriation and oversight responsibilities.

(5) The use of direct payment for services rendered would strengthen cash and debt management responsibilities of the Secretary of the Treasury because the Secretary would no longer need to dramatically increase or decrease the level of such balances when interest rates fluctuate sharply or when the public debt outstanding reaches the statutory debt limit.

(6) An alternative to the use of compensating balances, such as direct payments to financial institutions, would ensure that payments to financial institutions for the services they provide would be made in a more predictable manner and could result in cost savings.

(7) Limiting the use of compensating balances could result in a more direct and cost-efficient method of obtaining those services currently provided under compensating balance arrangements.

(8) A transition from the use of compensating balances to another compensation method must be carefully managed to prevent higher-than-necessary transitional costs and enable participating financial institutions to modify their planned investment of cash and securities.

(b) AUTHORIZATION OF APPROPRIATIONS FOR SERVICES RENDERED BY DEPOSITARIES AND FINANCIAL AGENCIES OF THE UNITED STATES.—There are authorized to be appropriated for fiscal years beginning after fiscal year 2003 to the Secretary of the Treasury such sums as may be necessary for reimbursing financial institutions in their capacity as depositaries and financial agents of the United States for all services required or directed by the Secretary

of the Treasury, or a designee of the Secretary, to be performed by such financial institutions on behalf of the Secretary of the Treasury or another Federal agency, including services rendered before fiscal year 2004.

(c) ORDERLY TRANSITION.—

(1) IN GENERAL.—As appropriations authorized in subsection (b) become available, the Secretary of the Treasury shall promptly begin the process of phasing in the use of the appropriations to pay financial institutions serving as depositaries and financial agents of the United States, and transitioning from the use of compensating balances to fund these services.

(2) POST-TRANSITION USE LIMITED TO EXTRAORDINARY CIRCUMSTANCES.—

(A) IN GENERAL.—Following the transition to the use of the appropriations authorized in subsection (b), the Secretary of the Treasury may use the compensating balances to pay financial institutions serving as depositaries and financial agents of the United States only in extraordinary situations where the Secretary determines that they are needed to ensure the fiscal operations of the Government continue to function in an efficient and effective manner.

(B) REPORT.—Any use of compensating balances pursuant to subparagraph (A) shall promptly be reported by the Secretary of the Treasury to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) REQUIREMENTS FOR ORDERLY TRANSITION.—In transitioning to the use of the appropriations authorized in subsection (b), the Secretary of the Treasury shall take such steps as may be appropriate to—

(A) prevent abrupt financial disruption to the functions of the Department of the Treasury or to the participating financial institutions; and

(B) maintain adequate accounting and management controls to ensure that payments to financial institutions for their banking services provided to the Government as depositaries and financial agents are accurate and that the arrangements last no longer than is necessary.

(4) REPORTS REQUIRED.—

(A) ANNUAL REPORT.—

(i) IN GENERAL.—For each fiscal year, the Secretary of the Treasury shall submit a report to the Congress on the use of compensating balances and on the use of appropriations authorized in subsection (b) during that fiscal year.

(ii) INCLUSION IN BUDGET.—The report required under clause (i) may be submitted as part of the budget submitted by the President under section 1105 of the title 31, United States Code, for the following fiscal year and if so, the report shall be submitted concurrently to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) FINAL REPORT FOLLOWING TRANSITION.—

(i) IN GENERAL.—Following completion of the transition from the use of compensating balances to the use of the appropriations authorized in subsection (b) to pay financial institutions for their services as depositaries and financial agents of the United States, the Secretary of the Treasury shall submit a report on the transition to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(ii) CONTENTS OF REPORT.—The report submitted under clause (i) shall include a detailed analysis of—

(I) the cost of transition;

(II) the direct costs of the services being paid from the appropriations authorized in subsection (b); and

(III) the benefits realized from the use of direct payment for such services, rather than the use of compensating balance arrangements.

(d) TECHNICAL AMENDMENT.—The 2d undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 412) is amended—

(1) in the 3d sentence, by inserting "or any other asset of a Federal reserve bank" before the period at the end; and

(2) in the last sentence, by inserting ", or are otherwise held by or on behalf of," after "in the vaults of".

(e) EFFECTIVE DATE.—Notwithstanding section 20, this section shall take effect on the date of the enactment of this Act.

SEC. 20. EFFECTIVE DATE.

This Act shall take effect at the end of the 12-month period beginning on the date of the enactment of this Act, except as otherwise specifically provided in this Act.

And the Senate agree to the same.

For consideration of the House bill and the Senate amendment, and modifications committed to conference:

MICHAEL G. OXLEY,
SPENCER BACHUS,
STEVEN C. LATOURETTE,
MELISSA A. HART,
PATRICK J. TIBERI,
BARNEY FRANK,
HAROLD E. FORD, Jr.,
Managers on the Part of the House.

RICHARD C. SHELBY,
ROBERT F. BENNETT,
WAYNE ALLARD,
PAUL S. SARBANES,
TIM JOHNSON,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1474), to facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment.

The Managers on the part of the House and the Senate met on October 1, 2003 (the House chairing), and reconciled the differences between the House bill and the Senate amendment.

The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SHORT TITLE; TABLE OF CONTENTS; FINDINGS AND PURPOSES

House Bill

Section 1 of the House bill establishes the short title of the bill, the "Check Clearing for the 21st Century Act," or the "Check 21 Act", and provides the findings and purposes of the legislation.

Senate Amendment

Section 1 of the Senate amendment provides the short title of the bill, the "Check Truncation Act of 2003", and a table of contents. Section 2 of the Senate amendment also provides the findings and purposes of the legislation.

Conference Agreement

The Senate recedes to the House.

DEFINITIONS

House Bill

Section 2 of the House bill defines certain terms, including "substitute check," "reconverting bank," "collecting bank," "depositary bank," "claimant bank," and "truncate."

Senate Amendment

Section 3 of the Senate amendment defines certain terms, including "indemnifying bank", "MICR line", "reconverting bank", "truncate" and "substitute check".

Conference Agreement

The House recedes to the Senate with an amendment removing the definition of "claimant bank".

GENERAL PROVISIONS GOVERNING SUBSTITUTE CHECKS

House Bill

Section 3 of the House bill allows a person to deposit, present, or send for collection or return a substitute check without an agreement with the recipient. This section mandates that a substitute check have the legal equivalence of an original check if the substitute check: (i) accurately represents all of the information on the front and back of the original check at the time the original check was truncated; and (ii) contains the legend "this is a copy of your check. You can use it the same way you would use the original check."

The reconverting bank must ensure that the substitute check bears all the endorsements applied by all of the parties that previously handled the check and must identify itself as the reconverting bank.

Senate Amendment

Section 4 of the Senate amendment allows a person to deposit, present or send for collection or return a substitute check without an agreement with the recipient. This section mandates that a substitute check have the legal equivalence of an original check if the substitute check: (i) accurately represents all of the information on the front and back of the original check at the time the original check was truncated; and (ii) contains the legend "this is a copy of your check. You can use it the same way you would use the original check."

The reconverting bank must ensure that the substitute check bears all the endorsements applied by all of the parties that previously handled the check and shall identify itself as the reconverting bank.

Conference Agreement

This provision is not in disagreement.

SUBSTITUTE CHECK WARRANTIES

House Bill

Section 4 of the House bill provides that a bank that transfers, presents or returns a substitute check and receives consideration for the check is deemed to have warranted that the substitute check meets all requirements for legal equivalence and that no entity will be asked to make a payment on a check already paid.

Senate Amendment

Section 5 of the Senate amendment states that a bank that transfers, presents or returns a substitute check and receives consideration for the check is deemed to have warranted that the substitute check meets all requirements for legal equivalence and that no entity will be asked to make a payment on a check already paid.

Conference Agreement

This provision is not in disagreement.

INDEMNITY

House Bill

Section 5 of the House bill grants an indemnity to the transferee by a reconverting bank and each bank that subsequently transfers, presents or returns a substitute check and receives consideration for the transfer, presentment, or return up to either the amount of the loss proximately caused by the breach of the warranty provided in section 4 or, in the absence of such a breach, the amount of any loss up to the amount of the substitute check plus any interest or expenses.

This section also allows for comparative negligence if a loss results in whole or in part from the negligence or failure to act in good faith on the part of the indemnified party, reducing that party's indemnification by the amount of negligence or bad faith.

Senate Amendment

Section 6 of the Senate amendment bill grants an indemnity to the transferee by a reconverting bank and each bank that subsequently transfers, presents or returns a substitute check and receives consideration for such transfer, presentment or return up to either the amount of the loss proximately caused by the breach of the warranty provided in section 4 or, in the absence of such a breach, the amount of any loss up to the amount of the substitute check plus any interest or expenses.

This section also allows for comparative negligence if a loss results in whole or in part from the negligence or failure to act in good faith on the part of the indemnified party, reducing that party's indemnification by the amount of negligence or bad faith. Section 6(c)(2) of this section states that nothing in the comparative negligence provisions of section 6(c)(1) reduces consumer's rights under other laws.

Conference Agreement

The House recedes to the Senate.

EXPEDITED RECREDIT FOR CONSUMERS

House Bill

Section 6 of the House bill provides an expedited recredit to a consumer if the consumer asserts that the bank charged the customer's account improperly or the customer has a warranty claim with respect to the substitute check. The customer must show that they suffered a loss and that the production of the original or a better copy of the original is necessary to determine the validity of any claim. This claim must be made within 30 days after receiving their periodic statement and may have an additional 30 days to file a claim under extenuating circumstances. According to this section, if the bank has not determined if the claim is valid within 10 business days, the bank must recredit the lesser of the amount charged, or $2,500 with interest and any remaining amount must be recredited within 45 calendar days. Additionally, a consumer does not have to be in possession of the substitute check in order to make a claim.

Senate Amendment

Section 7 of the Senate amendment requires the consumer to make a claim for expedited recredit within 40 days after the bank transmits the periodic statement or receipt of the substitute check, whichever is later. Under extenuating circumstances, including extended travel or illness of the consumer, the bank shall extend the period for a reasonable amount of time.

Section 7(c)(1)(B) requires that banks do not have to provide copies of documentation relied upon in denying an expedited recredit claim. Instead, a bank must provide a statement of right of the consumer to request such documentation.

Conference Agreement

The Conference Agreement consists of the Senate provisions relating to (1) the time period for expedited recredit; (2) the extension of the time period for expedited recredit; and (3) allowing electronic submission of expedited recredit claims. Further, the Conference Agreement provides that, when resolving customer claims, the delivered copy of the original check must read that the check "accurately represents all the information" on the original check standard and that the bank does not have to provide copies of documentation relied upon in denying expedited recredit claim. Instead, a bank must provide a statement of the right of the consumer to request such documentation.

The Conference Agreement also adopts the House provision providing that a consumer who receives a substitute check does not need to currently have the substitute check to make a claim for expedited recredit.

EXPEDITED RECREDIT PROCEDURES FOR BANKS

House Bill

Section 7 of the House bill permits a bank to make a claim against an indemnifying bank for an expedited recredit if the claimant's customer has made a claim for recredit, the claimant

bank has suffered a loss, and production of the original check, a substitute check or a better copy of the check is necessary to determine the validity of the charge. This claim must be made within 120 days of the transaction. This claim must be in writing and must describe the claim and demonstrate a loss.

Senate Amendment

Section 8 of the Senate amendment permits a bank to make a claim against an indemnifying bank for an expedited recredit if the claimant's customer has made a claim for recredit, the claimant bank has suffered a loss, and production of the original check, a substitute check or a better copy of the check is necessary to determine the validity of the charge. This claim must be made within 120 days of the transaction. This claim must be in writing and must describe the claim and demonstrate a loss.

Conference Agreement

This provision is not in disagreement.

DELAYS IN AN EMERGENCY

House Bill

Section 8 of the House bill permits delays in compliance with the provisions of this legislation if they are caused by circumstances beyond the control of a bank, and if the bank used such diligence as the circumstances require.

Senate Amendment

Section 9 of the Senate amendment permits delays in compliance with the provisions of this legislation if they are caused by circumstances beyond the control of a bank, and if the bank used such diligence as the circumstances require.

Conference Agreement

This provision is not in disagreement.

MEASURE OF DAMAGES

House Bill

Section 9 of the House bill makes persons who breach a warranty or fail to comply with the bill, or regulations under the bill, liable for the lesser of the amount of the loss or the amount of the substitute check plus interest and expenses. This section applies a comparative negligence standard for the determination of damages.

Senate Amendment

Section 10 of the Senate amendment makes persons who breach a warranty or fail to comply with the bill, or regulations under the bill, liable for the lesser of the amount of the loss or the amount of the substitute check plus interest and expenses. This section applies a comparative negligence standard for the determination of damages.

The amendment also provides that nothing in the comparative negligence provision of section 10(b)(1) reduces consumer's rights under other laws.

Conference Agreement

The House recedes to the Senate.

STATUTE OF LIMITATIONS AND NOTICE OF CLAIM

House Bill

Section 10 of the House bill provides for a 1 year statute of limitations from the time that the customer learns of the claim.

Senate Amendment

Section 11 of the Senate amendment provides for a 1 year statute of limitations from the time that the customer learns of the claim.

Conference Agreement

This provision is not in disagreement.

CONSUMER AWARENESS

House Bill

Section 11 of the House bill requires that each bank provide notice to its customers describing the process of check substitution and a description of the consumer recredit provision. This section applies to both new and existing customers.

Senate Amendment

Section 12 of the Senate amendment states that notice to consumers only has to be sent if consumers get their original checks or substitute checks back in their periodic statements.

Banks also must provide notice to customers that request a copy of a check and receive a substitute check from the bank.

Banks must provide customers that receive original checks or substitute checks with a brief informative notice for the first three years that the Act is in effect.

Conference Agreement

The Conference Agreement adopts the House position regarding the permanence of the consumer notice provisions.

The Conference Agreement also merges language from Senate section 12(b)(1)(C) and House section 11(b). The Conference Agreement adopts the Senate provision regarding the 9 month time frame within which the FRB must publish model language and requiring notice to include (i) description of substitute check process; and (ii) description of consumer recredit rights.

EFFECT ON OTHER LAW

House Bill

Section 12 of the House bill supersedes any inconsistent Federal or State laws to the extent of the inconsistency.

Senate Amendment

Section 13 of the Senate amendment supersedes any inconsistent Federal or State laws to the extent of the inconsistency.

Conference Agreement

This provision is not in disagreement.

VARIATION BY AGREEMENT

House Bill

Section 13 of the House bill permits provisions of section 7 to be varied by the banks involved.

Senate Amendment

Section 17 of the Senate amendment permits provisions of section 8 to be varied by the banks involved.

Conference Agreement

The Conference Agreement makes only technical changes related to cross-references and maintains the substance of both provisions.

REGULATIONS

House Bill

Section 14 of the House bill allows the Federal Reserve to write regulations related to the operation of this legislation. Additionally, the Federal Reserve is required to report on the increased speed of check processing and the prices it charges for transportation services.

Senate Amendment

Sections 14 and 15 of the Senate amendment allows the Federal Reserve to regulate the operation of this legislation. However, it differs in the study and monitoring of funds available. The Senate amendment mandates a study of implementation of the Act, including impact on funds availability.

Conference Agreement

The Conference Agreement adopts the Senate provisions regarding the authority of the Federal Reserve to issue regulations as it deems necessary to implement, prevent, circumvent or evasion of, or facilitate compliance with the legislation and the reporting requirements.

The Conferees also agree to a provision which requires the Federal Reserve Board to publish statistical data on costs and revenue related to transporting commercial checks (exclusive of the checks the reserve banks handle as fiscal agents) between Federal Reserve Bank offices by air or ground couriers. In the past, such statistics have been of interest to certain organizations. This provision does not mandate specific methodologies for imputing or estimating revenues. Further, this section does not change the Monetary Control Act's requirement that the Federal Reserve Banks, over the long run, recover the costs of their priced services or affect

the Federal Reserve Board's ability under its pricing principles to determine what constitutes a major service category.

The House recedes to the Senate on a funds availability study.

EVALUATION AND REPORT BY THE COMPTROLLER GENERAL

House Bill

The House bill contains no similar provision.

Senate Amendment

Section 16 of the Senate amendment provides for the Comptroller General of the United States to evaluate the implementation and administration of this bill within 5 years.

Conference Agreement

The House recedes to the Senate.

DEPOSITARY SERVICES EFFICIENCY AND COST REDUCTION

House Bill

The House bill contains no similar provision.

Senate Amendment

The Senate amendment contains no similar provision.

Conference Agreement

The Conference Agreement includes language requested by the Department of Treasury which authorizes the Treasury Department to directly compensate financial institutions that provide depositary services to the Federal Government.

Additionally, the Conference Agreement includes language requested by the Federal Reserve Board to effect technical changes to the Federal Reserve Act in the way currency is collateralized which will allow for greater liquidity in case of a national emergency.

EFFECTIVE DATE

House Bill

Section 15 establishes the effective date as 18 months after the date of enactment.

Senate Amendment

Section 18 establishes the effective date as 12 months after the date of enactment.

Conference Agreement

The House recedes to the Senate.

For consideration of the House bill and the Senate amendment, and modifications committed to conference:

MICHAEL G. OXLEY,
SPENCER BACHUS,
STEVEN C. LATOURETTE,
MELISSA A. HART,
PATRICK J. TIBERI,
BARNEY FRANK,
HAROLD E. FORD, Jr.,
Managers on the Part of the House.

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WAYNE ALLARD,
PAUL S. SARBANES,
TIM JOHNSON,
Managers on the Part of the Senate.

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