

CHECK CLEARING FOR THE 21ST CENTURY ACT

JUNE 2, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 1474]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred 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 considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	2
Purpose and Summary	10
Background and Need for Legislation	11
Hearings	12
Committee Consideration	12
Committee Votes	12
Committee Oversight Findings	13
Performance Goals and Objectives	13
New Budget Authority, Entitlement Authority, and Tax Expenditures	13
Committee Cost Estimate	13
Congressional Budget Office Cost Estimate	13
Federal Mandates Statement	14
Advisory Committee Statement	15
Constitutional Authority Statement	15
Applicability to Legislative Branch	15
Exchange of Committee Correspondence	15
Section-by-Section Analysis	16
Changes in Existing Law Made by the Bill, as Reported	19

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.

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

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(B) directed that the exercise of such authority by the Board superseded any State law, including the Uniform Commercial Code, as in effect in any State.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

(c) **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. 2. 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) **CLAIMANT BANK.**—The term “claimant bank” means a bank that submits a claim for recredit under section 7 to an indemnifying bank.

(B) **COLLECTING BANK.**—The term “collecting bank” means any bank handling a check for collection except the paying bank.

(C) **DEPOSITARY BANK.**—The term “depository 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.

(D) **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.

(E) **RETURNING BANK.**—

(i) **IN GENERAL.**—The term “returning bank” means a bank (other than the paying or depository 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 5 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)(3) 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. 3. 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 agreement with the recipient, so long as a bank has made the warranties in section 4 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. 4. 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 depository 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 3(b); and

(2) no depository 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. 5. 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 depository 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 4.

(2) **AMOUNT IN ABSENCE OF BREACH OF WARRANTY.**—In the absence of a breach of a warranty provided under section 4, 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.**—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.

(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 accu-

rately 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 the original check or such copy is provided to the indemnified party; and

(B) have a right to the return of any funds the bank 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 assistance 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. 6. 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) 30-DAY PERIOD.—Any claim under paragraph (1) with respect to a consumer account may be submitted by a consumer before the end of the 30-day period beginning on the later of—

(A) the date on which the consumer receives the periodic statement of account for such account which contains information concerning the transaction giving rise to the claim; or

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

(3) EXTENSION UNDER EXTENUATING CIRCUMSTANCES.—If the consumer's ability to submit the claim within the 30-day period under paragraph (2) is delayed due to extenuating circumstances, including extended travel or the illness of the consumer, the 30-day period shall be extended for a total not to exceed 30 additional days.

(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.—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.

(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 provided to the consumer the original check, a substitute check, or a copy of the original check and demonstrates that the substitute check was properly charged to the consumer's 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 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 5 or 9.

(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. 7. 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 6 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 6 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 6, 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 3(b); or

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

(3) CLAIM IN WRITING.—An indemnifying bank may, in the bank's discretion, require the claimant bank to submit in writing the information required by paragraph (1), including a copy of the written claim, if any, that the consumer submitted in accordance with section 6(b).

(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 5 or 9 with respect to such check.

(3) REFUND TO INDEMNIFYING BANK.—If a claimant bank reverses, in accordance with section 6(e), a recredit previously made to a consumer account under section 6(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 5(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 5(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. 8. DELAYS IN AN EMERGENCY.

Delay by a bank beyond the time limits prescribed or permitted by this Act is 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. 9. MEASURE OF DAMAGES.

(a) LIABILITY.—

(1) IN GENERAL.—Except as provided in section 5, 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 6 or 7.
- (b) COMPARATIVE NEGLIGENCE.—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.

SEC. 10. 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 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 6 for expedited recredit constitutes timely notice of a claim by the consumer for purposes of subsection (b).

SEC. 11. CONSUMER AWARENESS.

- (a) IN GENERAL.—Each bank shall provide, in accordance with subsection (b), a brief notice about substitute checks that describes—
 - (1) the process of check substitution and how the process may be different than the check clearing process with which the consumer may be familiar; and
 - (2) a description of the consumer recredit rights established under section 6 when a consumer believes in good faith that a substitute check was not properly charged to the consumer's account.
- (b) DISTRIBUTION.—
 - (1) EXISTING CUSTOMERS.—With respect to consumers that are customers of a bank on the effective date of this Act, 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, 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.
- (c) MODEL LANGUAGE.—
 - (1) IN GENERAL.—No later than 1 year after the date of enactment of this Act, the Board shall publish model forms and clauses that a depository institution may use to describe each of the elements required by subsection (a).
 - (2) SAFE HARBOR.—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. 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. 12. 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. 13. VARIATION BY AGREEMENT.

(a) SECTION 7.—Any provision of section 7 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. 14. REGULATIONS.

(a) IN GENERAL.—The Board may, by regulation, clarify or otherwise implement the provisions of this Act or may modify the requirements imposed by this Act with respect to substitute checks to further the purposes of this Act, including reducing risk, accommodating technological or other developments, and alleviating undue compliance burdens.

(b) BOARD MONITORING OF CHECK COLLECTION AND RETURN PROCESS; ADJUSTMENT OF TIME PERIODS.—

(1) MONITORING OF CHECK COLLECTION AND RETURN PROCESS.—The Board shall monitor the extent to which—

(A) original checks are converted to substitute checks in the check collection and return process, and

(B) checks are collected and returned electronically rather than in paper form.

(2) ADJUSTMENT OF TIME PERIODS.—The Board shall exercise the Board's authority under section 603(d)(1) of the Expedited Funds Availability Act to reduce the time periods applicable under subsections (b) and (c) of section 603 of such Act for making funds available for withdrawal, when warranted.

(c) PUBLICATION OF SCHEDULE BY BOARD FOR CHECK TRANSPORTATION SERVICES.—Section 11A(b) of the Federal Reserve Act (12 U.S.C. 248a(b)) is amended—

(1) by striking “and” at the end of paragraph (7);

(2) by redesignating paragraph (8) as paragraph (9); and

(3) by inserting after paragraph (7) the following new paragraph:

“(8) check transportation services; and”.

SEC. 15. EFFECTIVE DATE.

This Act shall take effect at the end of the 18-month period beginning on the date of the enactment of this Act, except as otherwise specifically provided in this Act.

PURPOSE AND SUMMARY

H.R. 1474, the Check Clearing for the 21st Century Act, or “Check-21,” modernizes the U.S. payments system by making it easier for check images to be transported electronically between financial institutions for payment. The legislation provides for the creation of a new negotiable instrument, the substitute check, which will facilitate electronic presentment of checks while also ensuring that individuals or banks that do not wish to accept electronic images can receive a paper check.

H.R. 1474 will facilitate the electronic transfer of images for presentment, obviating the need for physical transfer of the original check. The legislation authorizes banks to create substitute checks, which would be utilized in place of an original paper check that has been truncated when an individual or a bank does not agree to accept an electronic image. The legislation requires that a substitute check accurately represent all the information on the front and back of the original check as of the time it was truncated. Additionally, a substitute check must bear all the endorsements of the banks that handled the original check or the electronic image and must clearly indicate that it is a legal copy of the original.

Under the bill, a bank that transfers, presents or returns a substitute check and receives payment, warrants to the depositor, or any subsequent collecting bank, that the substitute check is legally equivalent to the original and that no one will receive presentment on a check that has already been paid. This will help prevent double debiting by providing consumers with assurances that they will

not be required to pay on a check more than once, and requiring banks to develop systems to limit double debits.

Additionally, the legislation requires a bank to indemnify, or make whole, a consumer who suffers a loss due to the receipt of a substitute check instead of the original.

H.R. 1474 also provides for a right of expedited recredit if a customer asserts that the electronic check or substitute check was improperly charged against their account. The legislation spells out specific procedures for banks to follow when evaluating and granting a recredit.

BACKGROUND AND NEED FOR LEGISLATION

It is estimated that 42.5 billion checks are processed in the United States every year. While some are processed electronically, millions of paper checks are physically transported between banks every day for processing and presentment. This system relies on the steady flow of air and ground traffic in order to ensure that checks reach paying banks in a timely manner. The events of September 11, 2001, halted air traffic in the United States, and as a result hundreds of millions of checks did not move, stalling the U.S. payment system.

Today electronic presentment often occurs through “on us” payments, where banks clear checks within their own organization. A bank may create electronic copies of checks and then send them from the recipient branch to the paying branch within the same financial institution. Additionally, banks owned by different parent institutions can agree to exchange checks electronically eliminating the need for physical presentment. The complexity of check truncation agreements, and the difficulty in achieving uniformity, has limited their widespread implementation.

H.R. 1474 was introduced by Representatives Hart, Ford and Ferguson after consultation with the U.S. Federal Reserve (Fed), financial institutions, technology providers, and consumer groups.

By encouraging electronic imaging, Check 21 will significantly reduce the cost of presentment of checks and will enable the payments system to operate more effectively. Expediting this process through electronic presentment will give payees access to their funds more quickly and float will be reduced. Further, by providing for the creation of substitute checks, H.R. 1474 enables institutions that do not have the desire or the technological capacity to move to an electronic check presentment system to continue to process payments uninterrupted.

There are many consumer benefits which should result from the implementation of H.R. 1474. Under the current system banks are limited in their ability to place ATMs in remote locations because any checks deposited at these machines must be picked up and transported on a daily basis. Under Check 21 there is a reduced need for the physical transportation of checks, which will encourage banks to place ATMs that scan deposited checks and electronically transport them in geographically remote locations. With a greater number of checks imaged and posted on the web site of a bank, more customers will be able to review their accounts on a near “real time” basis, enhancing fraud prevention and consumer convenience.

Finally, it is important to note that consumer protections relating to checks are spelled out in part 229 of title 12 of the Code of Federal Regulations and articles 3 and 4 of the Uniform Commercial Code (U.C.C.). Under H.R. 1474, these protections, and all other settled check law, will continue to apply substitute checks. The provision for the measure of damages in the bill mirrors part 229 of title 12 of the Code of Federal Regulations and the Uniform Commercial Code. Additionally, under the indemnity provisions, a person will be covered for the amount of any loss proximately caused by the breach of warranty. In the absence of a breach of warranty the indemnity will be the amount of the loss up to the substitute check and any interest and expenses.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on Tuesday, April 8, 2003 on H.R. 1474, the "Check Clearing for the 21st Century Act". The following witnesses testified: The Honorable Roger W. Ferguson, Vice-Chairman, Board of Governors of the Federal Reserve System; Mr. C.R. Cloutier, President and CEO, MidSouth Bank, NA, on behalf of Independent Community Bankers of America and America's Community Bankers; Mr. Grant Cole, Senior Vice President and Senior Change Management Executive, Transaction Services, Bank of America, on behalf of American Bankers Association, Consumer Bankers Association, the Electronic Check Clearing House Organization, and the Financial Services Roundtable; Mr. Dale Dentlinger, Director, ETRADE Access, ETRADE Bank; Ms. Janell Mayo Duncan, Legislative and Regulatory Counsel, Consumers Union; Mr. Joseph Kniceley, Vice President, Payment Solutions, NCR Corporation; Ms. Celia C. Woodham, Director of Operations, Chartway FCU, on behalf of Credit Union National Association.

COMMITTEE CONSIDERATION

On May 14, 2003, the Subcommittee on Financial Institutions and Consumer Credit met in open session and approved H.R. 1474 for full Committee consideration, as amended, by a voice vote.

On May 20, 2003, the Committee on Financial Services met in open session and ordered H.R. 1474 reported to the House, with an amendment, with a favorable recommendation by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken in conjunction with the consideration of this legislation. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

The following amendment was also considered by the Committee:

An amendment by Mr. Watt, no. 1, clarifying the application of current law, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The Federal Reserve and U.S. financial institutions will utilize H.R. 1474 to expedite the transportation of checks through the payments system and while ensuring that individuals and banks that do not have the technological capabilities to accept electronic images will be able to receive paper checks in the form of a substitute check.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 30, 2003.

Hon. MICHAEL G. OXLEY,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1474, the Check Clearing for the 21st Century Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Booth (for revenues) and Victoria Heid Hall (for the state and local government impact).

Sincerely,

BARRY B. ANDERSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 1474—Check Clearing for the 21st Century Act

H.R. 1474 would alter the process of clearing checks. It would allow a depository institution that has a check presented to it to choose on its own to provide to the paying depository institution a paper copy of the check, called a “substitute check,” rather than the original check itself. The substitute check would be the legal equivalent of the original check. Under current law, the depository institution presented with the check must transmit the original check to the paying institution for settlement, unless the two institutions have entered into an agreement for transmission of a paper copy of the check or the electronic information from the check.

CBO estimates that enacting H.R. 1474 would have a negligible effect on federal revenues through its effects on the Federal Reserve’s income and expenses from its check processing operations. The Federal Reserve remits its net income to the Treasury, and those payments are classified as governmental receipts, or revenues, in the federal budget. Any additional income or costs to the Federal Reserve, therefore, can affect the federal budget. By reducing the transportation costs associated with clearing checks, the bill would reduce the costs that the Federal Reserve incurs in providing check processing services to depository institutions. It could change the Federal Reserve’s costs of processing checks in other ways, as well. However, the Federal Reserve is required by law to charge the depository institutions for its check processing services. Based on information provided by the Board of Governors of the Federal Reserve System, CBO estimates that any reductions to the Federal Reserve’s costs as a result of H.R. 1474 would result in a nearly equal reduction in its income. As a result, CBO estimates that H.R. 1474 would have a negligible effect on the Federal Reserve’s net income and, hence, on federal revenues.

H.R. 1474 provides that the substitute check would be the legal equivalent of the original check under any provision of federal or state law. H.R. 1474 would thereby preempt state laws, including the Uniform Commercial Code, to the extent that such laws require an original check. Such a preemption of state law is a mandate under the Unfunded Mandates Reform Act (UMRA). CBO estimates that enacting this mandate would impose no costs on state, local, or tribal governments and that its costs, therefore, would not exceed the threshold established in UMRA (\$59 million in 2003, adjusted for inflation). The bill contains no new private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Mark Booth (for federal revenues) and Victoria Heid Hall (for the state and local government impact). This estimate was approved by G. Thomas Woodward, Assistant Director for Tax Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the defense and general welfare of the United States), and clause 3 (relating to the power to regulate foreign and interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, May 22, 2003.

Hon. MICHAEL OXLEY,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR CHAIRMAN OXLEY: In recognition of the desire to expedite floor consideration of H.R. 1474, the "Check Clearing for the 21st Century Act," the Committee on the Judiciary hereby waives consideration of the bill. Certain provisions of the bill relating to the litigation of claims relating to check clearing fall within the Committee on the Judiciary's Rule X jurisdiction. However, given the need to expedite this legislation, I will not seek a sequential referral based on their inclusion.

The Committee on the Judiciary takes this action with the understanding that the Committee's jurisdiction over these provisions is in no way diminished or altered. I would appreciate your including this letter in your committee report on H.R. 1474 and in the Congressional Record during consideration of H.R. 1474 on the House floor.

Sincerely,

F. JAMES SENSENBRENNER, Jr., *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE FINANCIAL SERVICES,
Washington, DC, May 22, 2003.

Hon. MICHAEL F. JAMES SENSENBRENNER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR CHAIRMAN SENSENBRENNER: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 1474, the Check Clearing for the 21st Century Act.

I acknowledge your committee's jurisdictional interest in this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Committee on the Judiciary with respect to its jurisdictional prerogatives on this or similar legislation. I will include a copy of your letter and this response in the Committee's report on the bill and the Congressional Record when the legislation is considered by the House.

Thank you again for your assistance.

Sincerely,

MICHAEL G. OXLEY, *Chairman.*

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title; Findings; Purposes

This section establishes the short title of the bill, the "Check Clearing for the 21st Century Act", and provides the findings and purposes of the legislation.

Section 2. Definitions

This section defines the terms used in the legislation including: "substitute check," "reconverting bank," "collecting bank," "depository bank," and "truncate."

Section 3. General Provisions Governing Substitute Checks

This section allows a person to deposit, present or send for collection or return a substitute check without an agreement with the recipient. This section accords a substitute check legal equivalence with an original check if the substitute check: (1) accurately represents all of the information on the front and back of the original check at the time the original check was truncated; and (2) contains the following legend: "This is a legal copy of your check. You can use it the same way you would use the original check."

Additionally this section mandates that a reconverting bank—defined as the bank that creates a substitute check, or, if a substitute check is created elsewhere, the first bank that transfers or presents the substitute—ensure that the substitute check bears all the endorsements applied by parties that previously handled the check and shall identify itself as the reconverting bank.

Substitute checks will be subject to all laws which currently apply to checks including the U.C.C. and Regulation CC. A substitute check that satisfies all the requirements provided in section 3(b) will be treated as the legal equivalent of the original check. The substitute check, therefore, will be subject to any provision of existing check law, including any provision in existing law that relates to the protection of customers, as if the substitute check were the original check. The bill is not intended to result in fewer protections for customers who are provided their substitute checks than they currently have using paper checks.

Section 4. Substitute Check Warranties

This section 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.

The Committee intends that this language allow depositing customers of a bank to create substitute checks with the same legal protections for recipients under this legislation as if they had been converted by a financial institution at the point of first deposit. If a bank allows its depositing customer to create substitute checks, the bank is warrantor for the substitute checks created by its depositing customer. For example, if a grocery store creates a substitute check, the bill makes the grocery store's bank, and not the grocery store, responsible for the section 4 warranties. A bank may choose to pass along, by agreement with the depositor that creates the substitute check, any liability it may incur due to the depositor in this regard. The Committee believes that requiring a bank's credit to stand behind a substitute check will provide strong protections when paper checks are removed from the system at the point of sale or purchase before they are deposited at, or presented to a financial institution.

Section 5. Indemnity

A transferee is indemnified up to either the amount of the loss proximately caused by a 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.

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, then that party's indemnification will be reduced by the amount attributable to the negligence or bad faith.

If the original check or a copy of the original check (including an image or substitute check) is produced, then the indemnifying bank will be liable only for losses covered by the indemnity up to the time the original check, substitute check or sufficient copy is provided to the indemnified party, and has the right to any funds paid under the indemnity in excess of the losses.

Section 6. Expedited Recredit for Consumers

This section provides that a consumer may make a claim for a recredit if he or she asserts that the bank charged the consumer's account improperly or the consumer has a warranty claim with respect to the substitute check. The consumer must show that he or she 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.

The consumer is required to make a claim for expedited recredit within 30 days of receiving their periodic statement or receiving the substitute check, whichever is later. Under extenuating circumstances, including extended travel or illness of the consumer, the consumer will have an additional 30 days to make the claim.

A bank must recredit a consumer's account within one day of determining that the consumer's claim is valid. If the bank has not determined the validity of the claim within 10 business days, the bank must recredit the lesser of the amount charged, or \$2,500 plus accrued interest, and any remaining amount must be recredited within 45 calendar days.

A bank may institute safeguard exceptions and delay a recredit on claims made on new accounts, on accounts that have repeated overdrafts, when a bank has a reasonable cause to believe that the claim is fraudulent, or in emergency situations. A bank that delays the availability of or reverses a recredit must notify the customer promptly.

Notices of invalid claims, recredit and reversal of recredit must be made to consumers no later than the day following the day on which the bank makes these determinations.

Section 6(h) clarifies that a consumer who has an agreement to receive substitute checks as a matter of course may make a claim for an expedited recredit regardless of whether the consumer has retained, lost, did not receive, or otherwise is not currently in possession of the substitute check. It is not necessary for a consumer to be in possession of a substitute check to receive an expedited recredit.

Many bank customers today have agreed to receive check image statements or other descriptive statements in lieu of receiving back their original checks. Customers participating in these check image or other check truncation programs would not receive a substitute check from their bank because the substitute check is only delivered to a consumer in "substitution" of an original paper check. Accordingly, because no substitute check would be provided, the expedited recredit provisions would not apply to existing check image and truncation programs.

Section 7. Expedited Recredit Procedures for Banks

Section 7 authorizes 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. The claim must be made within 120 days of the transaction. This claim may be required to be in writing and must describe the claim, demonstrate a loss, and describe why production of the original check, or a better copy of the check, is necessary.

The indemnifying bank has 10 business days to produce the original check, another substitute check, or a copy of the original check, recredit the amount to the claimant bank, or provide information as to why the indemnifying bank will not perform these services.

A recredit does not abrogate other liabilities the indemnifying bank may incur.

Section 8. Delays In An Emergency

This section provides that delays in compliance with the provisions of this legislation will be excused if they are 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 if the bank used such diligence as the circumstances require.

Section 9. Measure of Damages

Except as provided in section 5, this section provides that any person who breaches a warranty or fails to comply with the Act or

regulations promulgated pursuant to its provisions, will be liable for the lesser of the amount of the loss or the amount of the substitute check plus interest and expenses. A comparative negligence standard applies for the determination of damages.

Section 10. Statute of Limitations and Notice of Claim

Section 10 provides that claims may be brought up to one year from the date the injured party first learns of, or should reasonably have learned of, the facts giving rise to the cause of action.

Section 11. Consumer Awareness

Under this section, each bank is directed to provide a brief document to its current customers and new customers when the relationship is initiated describing the process of check substitution and the recredit rights. The Fed is required to publish model forms and clauses for banks to use when making these notices within 1 year of the date of enactment of this legislation. However, banks are not required to use the model forms.

Section 12. Effect on Other Law

Section 12 provides that the provisions of this bill supersede any inconsistent Federal or State laws, but only to the extent of the inconsistency.

Section 13. Variation by Agreement

This section provides that only provisions of section 7 may be varied by the banks involved.

Section 14. Regulations

This section authorizes the Fed to promulgate regulations related to the operation of this legislation. This section further directs the Federal Reserve Board to monitor the check collection and return process and exercise its authority under the Expedited Funds Availability Act to reduce the time periods for making funds available for withdrawal, when warranted. This section amends the Federal Reserve Act to require the Fed to report on the fees associated with its check transportation services.

Although Check 21 gives the Board authority to adopt implementing regulations, the Committee recognizes that the Secretary of the Treasury has broad and long-standing authority to establish and administer the rules that govern payments disbursed by Treasury, including Treasury checks. Check 21 does not affect the Secretary's authority to regulate Treasury checks, to the extent those regulations are not inconsistent with this legislation. The Treasury cannot adopt regulations, for example, that would condition the payment of a substitute Treasury check on the subsequent delivery of the original check.

Section 15. Effective Date

Section 15 provides that the legislation will take effect 18 months from the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 11A OF THE FEDERAL RESERVE ACT

PRICING OF SERVICES

SEC. 11A. (a) * * *

(b) The services which shall be covered by the schedule of fees under subsection (a) are—

(1) * * *

* * * * *

(7) Federal Reserve float; **and**

(8) *check transportation services; and*

[(8)] (9) any new services which the Federal Reserve System offers, including but not limited to payment services to effectuate the electronic transfer of funds.

* * * * *

