

Check 21 Basics:

A Quick Guide for Consumer Advocates



Recently, there has been a flurry of attention around Check 21, the new banking law that took effect on October 28, 2004. Known formally as the Check Clearing for the 21st Century Act, this federal law was designed to make the nation's check processing system faster and more efficient. By authorizing a new instrument called a substitute check, Check 21 enables electronic check exchange. Rather than the costly and inefficient process of physically transporting paper checks from one bank to another, banks can now capture a picture of a check and send it electronically.

The following quick reference guide answers commonly asked questions about how this new law affects consumers. For more information, please visit the Federal Reserve Bank of Boston's Check 21 website: www.bos.frb.org/consumer/check21 or call the Boston Fed's consumer hotline at (617) 973-3755.

Q. What is a substitute check?

A. A substitute check is a paper copy of the front and back of an original check. Under Check 21, this copy has the same legal status as the original check, as long as it accurately represents all of the information on the front and back of the original check and includes the following statement:

This is a legal copy of your check. You can use it the same way you would use the original check.

Consumers who were previously receiving cancelled checks with their statements may now receive a mixture of cancelled original and substitute checks. Similarly, consumers who received image statements containing pictures of original checks may now receive some images of substitute checks. Note that although an image of a substitute check will also reflect the statement above, a check image is not the legal equivalent of an original check under Check 21.

Q. Do consumers still need an original check as proof of payment?

A. No. A substitute check, which is legally equivalent to the original check, as well as a check image or a line item statement, may be used as proof of payment. An original paper check is not necessary.

Q. Can consumers demand original checks from their banks?

A. No. Federal law does not require a bank to provide cancelled checks to consumers, although banks may choose to provide them upon request as a service to their customers. In Massachusetts, however, state law grants Commonwealth consumers the right to receive cancelled checks, or their legal substitutes, free of charge.

Q. What happens to the original checks?

A. When substitute checks are created, the original checks are removed from the collection and return process. Check 21 does not impose any requirements on banks to retain the original checks. The bank that removes the original check from circulation may either keep the check for its records or destroy it.

Q. How will Check 21 affect the speed at which checks are processed?

A. Since banks no longer have to physically transport checks for processing, checks will be paid more quickly. Therefore, it is important that consumers have sufficient funds in their checking accounts at the time they write a check.

Q. If checks are processed more quickly, does that mean that when a check is deposited in a consumer's account, the money is available sooner?

A. Not necessarily. The Expedited Funds Availability Act, not the Check 21 Act, sets the maximum time periods that a bank can hold deposited funds. The Federal Reserve Board may adjust these hold times if/when the processing time for checks improves substantially enough to warrant adjustment.

Q. What are a consumer's rights if a loss is suffered related to a substitute check? For example, what if the substitute check is not the legal equivalent of the original check? What if both the original check and the substitute check are paid?

A. In these cases, a bank may be liable for damages related to the substitute check, including the amount of loss suffered (up to the amount of the check), interest, and expenses such as attorney's fees. Check 21 mandates a special refund procedure called expedited recredit for consumers who receive substitute checks. This procedure is intended to restore these consumers to the position they would have been in had they received original checks.

Consumers who suffer losses related to a substitute check can file a special refund claim with a bank if they believe:

1. A substitute check was incorrectly charged to their account;
2. They lost money as a result of a substitute check being charged to their account; and
3. They need the original check or a sufficient copy to show that a substitute check was incorrectly charged to their account.

To file, consumers should contact their bank as soon as possible and no later than 40 days from the date they receive an erroneous statement or substitute check. A consumer who makes an untimely claim is not entitled to recover losses using the expedited recredit procedure. He or she may, however, have rights under other consumer protection laws.

Banks must investigate expedited recredit claims promptly. If a bank cannot determine the validity of a claim within 10 business days, the bank must refund the amount of the claim, up to \$2,500. If the claim is not resolved within 45 days, the bank is obligated to re-credit any remaining balance, including interest if applicable.

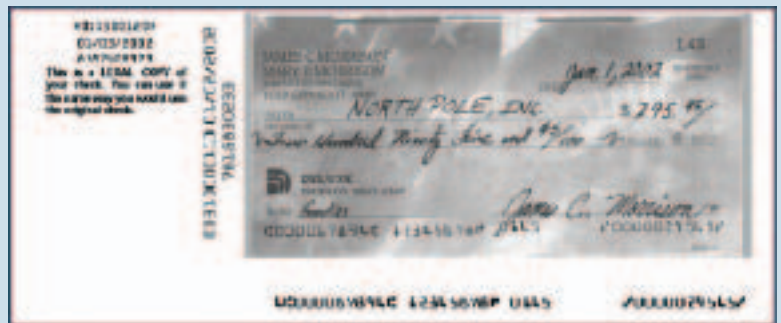
Q. Are there any other consumer protections under Check 21 that consumers should know about?

A. Yes. Consumers who receive substitute checks or representations of substitute checks are protected under the Check 21 substitute check warranty provisions. Banks must warrant that:

1. Each substitute check meets all Check 21 requirements, rendering it legally equivalent to the original check; and
2. Consumers will not be asked to make duplicative payments on a check as a result of the creation of a substitute check. Additionally, Check 21 protects consumers against loss incurred by the receipt of a substitute check in lieu of an original check.

In all, the consumer protection provisions of Check 21 are simply added safeguards to address issues that may arise from substitute checks. The preexisting federal and state check laws remain unchanged and continue to protect consumers against unauthorized, fraudulent, and erroneous check payments.

A Substitute Check



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