

## CHECK 21 AND ELECTRONIC CHECK CONVERSION

To facilitate check truncation and electronic check exchange, the *Check 21 Act* authorizes a new negotiable instrument called a "**substitute check**." A substitute check is a paper reproduction of the original check that contains an image of the front and back of the original check and can be processed just like the original check. The *Check 21 Act* provides that a properly prepared substitute check is the legal equivalent of the original check for all purposes. The *Check 21 Act* does not require any bank to create substitute checks or to accept checks electronically. The *Check 21 Act* includes new warranties, an indemnity, and expedited re-credit procedures that protect substitute check recipients. *Check 21* became effective on October 28, 2004.

### What to expect from the *Check 21* law and check conversion

**Your check will clear the bank faster than usual.** Be aware that if sufficient funds to cover your check are not in your account at the time that you send your check, there is an increased risk that your check will bounce. Banks are not required to make funds available to you on your deposited checks any faster than the law permits, even if a check has already cleared the issuing bank.

**Your original check will be destroyed after it is scanned to create a substitute check. The substitute check serves as the legal copy, and the original document will no longer be on file with your bank.**

## FREQUENTLY ASKED QUESTIONS

### General Questions

#### What is Check Truncation?

Check truncation refers to removing an original paper check from the check collection or return. With *Check 21*, a substitute check or an electronic image of the original paper check replaces the original check in the collection or return process and is cleared through the check-clearing network.

#### What is *Check 21* and what is its basic purpose?

*Check 21* is a federal law that is designed to enable banks to handle more checks electronically, which should make check processing faster and more efficient. Today, banks often must physically move original paper checks from the bank where the checks are deposited to the bank that pays them. This transportation can be inefficient and costly.

#### How will *Check 21* make check processing more efficient?

Instead of physically moving paper checks from one bank to another, *Check 21* will allow banks to process more checks electronically. Banks can capture a picture of the front and back of the check along with the associated payment information and transmit this information electronically. If a receiving bank or its customer requires a paper check, the bank can use the electronic picture and payment information to create a paper "substitute check." This process enables banks to reduce the cost of physically handling and transporting original paper checks which can be very expensive.

### **Is electronic check processing secure?**

Electronic check processing is not new to the financial industry and is a safe and reliable way of processing payments. It uses technology that has been developed and tested to process your check information securely.

### **Does *Check 21* mean that customers can't get their checks back in their account statements?**

No. *Check 21* does not require customers to stop receiving checks back in their account statements. The contents of an account statement will continue to be governed by the account agreement between the bank and its customer. Rather, when banks have agreed to provide paid checks in statements, *Check 21* permits the bank to provide either the original check or a substitute check.

### **What changes can I expect when *Check 21* goes into effect?**

You will notice a change only if you receive a substitute check when you were expecting an original check. For example, if you receive canceled checks with your account statement, you might begin to receive a mixture of canceled original and substitute checks. If you receive image statements (pictures of several checks on a single page), you also may notice that some of the pictures are of substitute checks.

### **Will *Check 21* increase the speed with which checks are cleared between banks?**

The speed of check-processing already has increased in response to check-system improvements other than *Check 21*. Thus, even now, once a check is deposited with a bank, it is almost always delivered overnight to the paying bank and debited from the check writer's account the next business day. Check-processing speeds should continue to increase, over time, as banks make further operational changes in response to *Check 21*. That means money may be deducted from your checking account faster. Before you write a check, it's always best to make sure your checking account has enough money in it to cover the check.

### **What is the difference between *Check 21* and programs that convert checks to electronic payments?**

A check you write may be processed as a check. In that case, your rights are governed by check laws and regulations. Some merchants, however, may use your check as a source of information to create an electronic fund transfer. You must receive notice that your check may be processed this way. Electronic fund transfers are governed by different laws and have different consumer rights than check payments.

### **How is check truncation different from check conversion?**

“Check conversion” is a term that generally refers to converting a “source document” (a check) into an Electronic Funds Transfer (EFT) transaction for clearing through an electronic payment network, such as the Automated Clearing House (ACH) or debit card networks. In the process, the check is used only as a source of information and is not processed as a check payment. The provisions of *Check 21* do not apply to EFTs. Instead, the clearings of EFTs are subject to Regulation E and the NACHA Rules. The types of check conversions you may be familiar with include:

Accounts Receivable Check (ARC) conversion occurs when a consumer mails a check (e.g., the consumer’s payment of his or her monthly phone bill) to a company that, in turn, converts it to an electronic transaction and clears it through the [ACH](#) network. Generally, the consumer’s financial institution lists the item on the consumer’s monthly statement as an electronic debit item and does not provide an image of the item.



### **When is a substitute check legally the same as the original check?**

To be the legal equivalent of the original check, the substitute check must meet each of the requirements described in the previous paragraph and, in addition, must (1) accurately represent all the information from the original check (i.e., must bear a legible image of the original check), and (2) bear the legend “This is a legal copy of your check. You can use it the same way you would use the original check.”

### **May I use a substitute check as proof of payment?**

Yes. You may use a substitute check as proof of payment because it is legally the same as the original check. For instance, the IRS will accept your substitute check as proof of payment. If you do not have a substitute check but have a copy of an original check or a copy of a substitute check, you usually may use these documents as proof of payment.

### **What is the difference between an Image Replacement Document (IRD) and a substitute check?**

IRD is a technical term used by the banking industry in ANS X9.100-140 to refer to substitute checks. The term IRD formerly included other documents used to replace original checks, such as photocopies in lieu used when an original check was lost or destroyed, but ANS X9.100-140 was changed so that the term now only refers to substitute checks.

### **May I demand a substitute check from my bank instead of a copy?**

Your bank may provide you with a substitute check, but it is not required by law to do so. If your bank does not provide you with a substitute check, you usually may use a copy of an original check or a copy of a substitute check as your proof of payment.

### **Is my bank required to tell me about substitute checks?**

Only the institution’s consumer customers who receive paid checks or substitute checks along with their periodic account statements are required to get the notice. Any new consumer customers, who will get back paid original or paid substitute checks in their periodic statement, must get the notice at the time the consumer relationship is established.

Banks must also provide this disclosure when a consumer requests an original check or a copy of a check and receives a substitute check. In addition, the bank must provide this disclosure if a check the consumer has deposited is returned unpaid to the consumer in the form of a substitute check.

## **Original Checks**

### **Can I still get my canceled checks back?**

If you get your canceled checks back with your account statements today, you will continue to receive canceled checks unless your bank notifies you otherwise. The only difference will be that some of the canceled checks that you receive may be substitute checks. You can use a substitute check the same way you would use an original check, such as for recordkeeping and proof-of-payment purposes.

### **Can I get my original check if I need it?**

Banks are not required currently to keep your original check for any specific length of time, and *Check 21* does not add any new retention requirements. In many cases, the original check may be destroyed. If you request your original check from your bank, your bank may provide you with the original check, a substitute check, or a copy of the check.

### **Can I prevent others from using my original check to create a substitute check?**

No. Generally, any check can be used to create a substitute check, except a foreign check. Banks and their customers must accept a substitute check as if it were the original check because the substitute check is legally the same as the original check.

### **What if I receive a substitute check representing a fraudulent original check?**

Check law provides protections against fraudulent checks so that generally you are not responsible if you notify the bank in a timely fashion. This is the case whether you receive an original check, a substitute check, an image statement, or a line item on your account statement. If you receive a substitute check of a fraudulent original check, you may have additional rights under *Check 21*. Contact your bank for more information.

## **Consumer Protection**

### **How am I protected under *Check 21*?**

Check law protects you against erroneous and unauthorized check payments. In addition, *Check 21* contains a number of new protections for consumers. For example, *Check 21* contains a special refund procedure (called “expedited re-credit”) for a consumer who suffers a loss related to a substitute check he or she received.



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