



**Federal Deposit Insurance Corporation**  
550 17th Street NW, Washington, D.C. 20429-9990

**Financial Institution Letter**  
**FIL-116-2004**  
**October 27, 2004**

## Check Clearing for the 21<sup>st</sup> Century Act Final Amendments to the Federal Reserve Board's Regulation CC

**Summary:** *The Federal Reserve Board (FRB) has finalized amendments to Regulation CC that are necessary to implement the Check Clearing for the 21st Century Act (Check 21 Act). The Act becomes effective on October 28, 2004.*

### Suggested Distribution:

FDIC-Supervised Banks (Commercial and Savings)

### Suggested Routing:

Chief Executive Officer  
Compliance Officer

### Related Topics:

FRB Regulation CC

**Attachments:** FRB Model "Substitute Check Policy Disclosure," published as Appendix C5-A to Regulation CC

### Contacts:

Examination Specialist William H. Henley at (202) 898-6513, or [WiHenley@fdic.gov](mailto:WiHenley@fdic.gov), or Examination Specialist Donald Saxinger at (202) 898-6521, or [DSaxinger@fdic.gov](mailto:DSaxinger@fdic.gov). Consumer compliance issues, please contact Acting Senior Policy Analyst Rita Ross at (202) 898-3842, or [RRoss@fdic.gov](mailto:RRoss@fdic.gov) or Compliance Section Chief April Breslaw at (202) 898-6609, or [ApBreslaw@fdic.gov](mailto:ApBreslaw@fdic.gov).

### Note:

FDIC Financial Institution Letters (FILs) may be accessed from the FDIC's Web site at [www.fdic.gov/news/news/financial/2004/index.html](http://www.fdic.gov/news/news/financial/2004/index.html).

To receive FILs electronically, please visit <http://www.fdic.gov/about/subscriptions/index.html>.

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 801 17th Street, NW, Room 100, Washington, DC 20434 (1-877-275-3342 or 202-416-6940).

### Highlights:

- The Check 21 Act facilitates check truncation and electronic check exchange by authorizing a new negotiable instrument called a "substitute check," which is the legal equivalent of an original check for all purposes.
- The Check 21 Act does not require any bank to create substitute checks or to accept checks electronically. However, it does require banks to accept a legally equivalent substitute check in place of an original check after the Check 21 Act's effective date of October 28, 2004.
- The FRB has issued final amendments to Regulation CC to implement the Check 21 Act. The amendments:
  - (1) Set forth the requirements of the Check 21 Act that apply to financial institutions;
  - (2) Provide a model disclosure and model notices relating to substitute checks; and
  - (3) Set forth financial institution endorsement and identification requirements for substitute checks.
- Answers to frequently asked questions posed by financial institutions can be found at <http://www.fdic.gov/regulations/resources/21actfaq/index.html>.
- Answers to consumer questions can be found at [www.federalreserve.gov/paymentsystems/truncation/faqs.htm](http://www.federalreserve.gov/paymentsystems/truncation/faqs.htm).

CHECK CLEARING FOR THE 21<sup>ST</sup> CENTURY ACT  
Final Amendments to the Federal Reserve Board's Regulation CC

The Federal Reserve Board has issued final amendments to Regulation CC necessary to implement the Check Clearing for the 21st Century Act (Check 21 Act). The Check 21 Act becomes effective on October 28, 2004.

On May 21, 2004, the Federal Deposit Insurance Corporation (FDIC) notified institutions under its supervision to prepare for Check 21 Act operational changes (see FIL-54-2004). On July 26, 2004, the Federal Reserve Board issued a final rule and commentary to implement the Check 21 Act.

The purpose of the Check 21 Act, enacted on October 28, 2003, is to facilitate check truncation and electronic check exchange, and to authorize a new negotiable instrument called a "substitute check." A substitute check is a paper reproduction of the original check containing an image of the front and back of the original check that can be processed in the same manner as the original check.

Although the Check 21 Act provides that a properly prepared substitute check is for all purposes the legal equivalent of the original check, financial institutions are not required to create substitute checks or to accept checks electronically. The Check 21 Act, however, includes new warranties, an indemnity and expedited recredit procedures that protect substitute check recipients.

Specifically, the final rules:

- Set forth the requirements of the Check 21 Act that apply to financial institutions;
- Provide a model disclosure and model notices relating to substitute checks; and
- Set forth financial institution endorsement and identification requirements for substitute checks.

The complete rules, which are published as amendments to Regulation CC, can be found at: <http://www.federalreserve.gov/boarddocs/press/bcreg/2004/20040726/>. Attached is the Federal Reserve Board's model "Substitute Check Policy Disclosure" for consumers, which has been published as Appendix C-5A to the rules.

Michael J. Zamorski  
Director  
Division of Supervision and Consumer Protection

## ATTACHMENT

Regulation CC  
Appendix C-5A

Substitute Check Policy Disclosure  
Substitute Checks and Your Rights

### IMPORTANT INFORMATION ABOUT YOUR CHECKING ACCOUNT

#### **Substitute Checks and Your Rights**

##### *What is a substitute check?*

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

##### *What are my rights regarding substitute checks?*

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to (amount, not lower than \$2,500) of your refund (plus interest if your account earns interest) within (number of days, not more than 10) business days after we received your claim and the remainder of your

refund (plus interest if your account earns interest) not later than (number of days, not more than 45) calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

***How do I make a claim for a refund?***

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at (contact information, for example phone number, mailing address, e-mail address). You must contact us within (number of days, not less than 40) calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include:

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check [and/or] the following information to help us identify the substitute check: (identifying information, for example the check number, the name of the person to whom you wrote the check, the amount of the check).