

RESCINDED

Check 21
Program

This document and any attachments are superseded by Comptroller's Handbook - Consumer Compliance - Depository Services.

EXAMINATION OBJECTIVES

To evaluate the savings association's compliance with Check 21 notice content and timing requirements (general consumer awareness disclosures regarding substitute checks and notices that respond to a consumer's expedited recredit claim regarding a substitute check error).

To assess whether the savings association complies with timing requirements for acting on a substitute check expedited recredit claim.

EXAMINATION PROCEDURES

LEVEL I

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1. Review the Matters Requiring Board Attention and Corrective Actions from the three or four previous ROEs to ensure that the board and management have taken appropriate corrective action where necessary and persistent problems have not recurred.

2. Obtain copies of the documents associated with the savings association's Check 21 compliance, including but not limited to the following:

- Consumer awareness disclosure(s).
- Sample(s) of substitute checks, *if available*.
- Direct mail correspondence, statement stuffers, or other notices describing Check 21/substitute check implementation to consumers.
- Any other relevant documents.

3. Determine the individuals within the savings association who may have responsibilities associated with Check 21. The following represents a nonexhaustive listing:

- New accounts personnel

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Check 21 Program

WKP. REF.

- Employee training department employees
- Internal auditors, reviewers
- Deposit operations and bookkeeping personnel.

4. Review the savings association's training manual, internal audit or similar reports for Check 21, written procedures given to employees detailing their responsibilities under the regulation, and other similar materials.

5. Determine the training methods employed by the savings association in conveying specific responsibilities to employees.

Consumer Awareness Disclosure (§ 229.57)

Note: Appendix C of Regulation CC provides model disclosure language.

6. Determine whether the savings association distributes only a single version of its Consumer Awareness Disclosure or whether it maintains variations, depending on the circumstances giving rise to distribution.

7. Verify that the savings association's disclosure notice contains the following language:

- A statement that a substitute check is the legal equivalent of an original check (§ 229.57(a)(1)).
- An explanation of the consumer recredit rights that apply when a consumer in good faith believes that a substitute check was not properly charged to his or her account (§ 229.57(a)(2)).

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Check 21 Program

WKP. REF.

8. Review Level II procedures and perform those necessary to test, support, and present conclusions derived from performance of Level I procedures.

LEVEL II

Consumer Awareness Disclosure (§ 229.57)

Timing and Distribution

9. A savings association is required to provide its consumer customers with a Consumer Awareness Disclosure prior to the receipt of a substitute check.

- For those who receive cancelled checks with periodic statements:

- Existing customers as of October 28, 2004

Determine that the savings association provided the disclosure no later than the first regularly scheduled communication with the consumer after October 28, 2004 (for each consumer who is a customer of the savings association on that date) (§ 229.57(b)(1)(i)).

- New customers after October 28, 2004

Determine that the savings association provided the disclosure at the time the customer relationship was established (§ 229.57(b)(1)(ii)).

- For those who do not receive cancelled checks with periodic statements and who will receive substitute checks on an occasional basis only:

- Upon customer request for an original check or a copy of a check

Determine that the savings association provided the disclosure to a consumer customer who requested an original check or a copy of a check and received a substitute check in response (§ 229.57(b)(2)(i)).

- Upon customer's receipt of a returned substitute check

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Check 21 Program

WKP. REF.

Determine that the savings association provided the disclosure to a consumer who received a returned substitute check (at the time the savings association provided such substitute check) (§ 229.57(b)(2)(ii)).

Mode of Delivery of Information (§ 229.58)

10. Determine whether the savings association employed one of the following in delivering its Consumer Awareness Disclosure(s):
- U.S. mail
 - Any other means to which the recipient agreed to receive account information, including electronically.
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Expedited Recredit for Consumers (§ 229.54)

11. Obtain copies of the documents associated with the association's Check 21 expedited recrediting process, including but not limited to the following:
- Notice of valid claim and refund
 - Notice of provisional refund
 - Denial of claim
 - Reversal of refund.
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12. Determine whether any savings association customer has raised a Check 21-related claim of loss since the last examination.
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Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Check 21 Program

WKP. REF.

13. Ensure that your review meets the Objectives of this Handbook Section. State your findings and conclusions, and appropriate recommendations for any necessary corrective measures, on the appropriate work papers and report pages.
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14. If you are not able to conclude that the savings association's policies and procedures are sufficiently rigorous to satisfy compliance with Check 21, proceed to Level III to analyze in detail the recrediting processes of the association.
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LEVEL III

15. Determine whether any customer has raised a Check 21-related claim since the last examination and review for the following. (In associations where multiple Check 21-related claims have been raised and resolved, you need only review a sampling sufficient to ensure that their processing is consistent and in compliance with Subpart D.)

*Necessary preconditions – consumer must allege **all** of these (§§ 229.54(a)(1)-(4))*

- Was the consumer's account charged for a substitute check that was provided to the consumer? (The consumer need not be in possession of the substitute check at the time of claim submission.)
- Was the consumer's account not properly charged? (Alternatively, a consumer's account could be properly charged yet still give rise to a warranty claim, for example, in the case of a substitute check image that is illegible.)
- Did the consumer suffer a resulting financial loss?
- Was the production of the original check or a sufficient copy necessary to determine whether or not the consumer's claim was valid?

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Check 21 Program

WKP. REF.

Procedural steps for consumer's claim

- Did the consumer submit a timely claim (§ 229.54(b)(1))?
- Did the claim contain a description of the claim, a statement and estimate of loss, the reason why the original check or a sufficient copy is necessary, and sufficient information for the savings association to investigate (§ 229.54(b)(2))?
- If a consumer attempted to make a claim but failed to provide all of the necessary information (as listed above), did the association inform the consumer that the claim was incomplete and identify the information that was missing (§ 229.54(b)(2)(D)(ii))?
- Was the claim submitted in a form acceptable to the savings association?
- Did the savings association compute the time for action accurately (§ 229.54(b)(3))?

If the savings association concluded that (1) all necessary prerequisites to the filing of a consumer claim existed; and (2) that the consumer followed the appropriate steps in filing the claim, verify that the savings association provided the following appropriate response:

Claim deemed valid:

In the event of a valid consumer claim, determine whether the savings association did all of the following:

- Recredited the account for the amount of the loss, up to the amount of the substitute check (plus interest, if applicable), no later than the end of the business day after the banking day on which the association made its determination (§ 229.54(c)(1)(i)).
- Drafted a notice of recredit stating (1) the amount of the recredit and (2) the date on which funds would be available for withdrawal (§ 229.54(e)(1)(i) and (ii)).
- Sent the notice no later than the business day after the banking day on which the recredit occurred (§ 229.54(e)(1)).

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Check 21 Program

WKP. REF.

Claim deemed invalid:

In the event of an invalid consumer claim, determine whether the savings association did all of the following:

- Sent a notice stating that the claim was invalid and included the original check or a sufficient copy (§ 229.54(e)(2)(i)).
- Demonstrated to the consumer that the substitute check was properly charged (or that the consumer's warranty claim is not valid) (§ 229.54(e)(2)(ii)).
- Included the information or documents (in addition to the original check), if any, relied upon by the savings association in making its determination (or a statement that the consumer may request such) (§ 229.54(e)(2)(iii)).

Claim not resolved within initial 10 days, pending further investigation:

If the savings association could not resolve the claim before the end of the 10th business day after the banking day on which the association received the claim, determine whether the association did all of the following:

- Recredited the consumer's account for the amount of the loss, up to the lesser of the amount of the substitute check or \$2,500 (plus interest, if applicable) (§ 229.54(c)(3)(i)(A)).
- Drafted a notice of recredit stating (1) the amount of the recredit and (2) the date on which funds would be available for withdrawal (§ 229.54(e)(1)(i) and (ii)).
- Recredited the consumer's account for the remaining amount of the loss, if any, up to the amount of the substitute check (plus interest, if applicable), no later than the end of the 45th calendar day after the banking day on which the savings association received the claim (§ 229.54(c)(3)(ii)).
- Sent the notice of recredit no later than the business day after the banking day on which the recredit occurs (§ 229.54(e)(1)).

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Check 21 Program

WKP. REF.

Claim resulting in reversal of recredit:

In some instances it may be necessary for a savings association to reverse a recredit made previously to a consumer's account (plus any interest paid, if applicable). If such a circumstance has occurred, determine whether the association did all of the following:

- Concluded that the consumer's claim was not valid (§ 229.54(c)(4)(i)).
- Drafted a notice of reversal of recredit (§ 229.54(e)(3)), accompanied by the following:

The original check or a sufficient copy (§ 229.54(e)(2)(i)).

Information or explanation to demonstrate to the consumer that the substitute check was properly charged (or that the consumer's warranty claim is not valid) (§ 229.54(e)(2)(ii)).

Information or documents (in addition to the original check or a sufficient copy), if any, on which the savings association relied in making its determination (or a statement that the consumer can request such) (§ 229.54(e)(2)(iii)).

A description of the amount of the reversal, including both the amount of the recredit and the amount of interest paid on the recredited amount, if any, being reversed (§ 229.54(e)(3)(i)).

The date on which the savings association made the reversal. (§ 229.54(e)(3)(ii))

- Sent the notice no later than the business day after the banking day on which the savings association made the reversal (§ 229.54(e)(3)).

Availability of recredited funds:

Under circumstances detailed above, where the savings association determined that it was appropriate to recredit its customer's account, determine whether the association took the following actions:

- *Next day availability* – Did the savings association make any recredited amount available for withdrawal no later than the start of the business day after the banking day on which the recredit was provided (§ 229.54(d)(1))?

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Check 21 Program

WKP. REF.

- *Safeguard exceptions* – If necessary for reasons of (1) new account status, (2) overdrawn account status, or (3) well-reasoned suspicion of fraud, did the savings association invoke its right to delay immediate availability of recredited funds?

If so, was the delay invoked because the savings association had not yet determined the validity of the claim?

Were the funds made available no later than the business day after the banking day on which the final determination was made **OR** the 45th calendar day after the savings association received the claim, whichever occurred earlier (§ 229.54(d)(2))?

- *Overdraft fees* – If the savings association chose to invoke its right to delay immediate availability of recredited funds, did it refrain from imposing an overdraft fee until the appropriate five-day period had elapsed (§ 229.54(d)(3))?

EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	