strength in members.

March 14, 2023

Office of the Comptroller of the Currency
Attn.: Hon. Michael Hsu, Actg. Comptroller
400 7th Street Street
Washington, DC 20219

Federal Deposit Insurance Corporation
Attn.: Hon. Martin J. Gruenberg, Chairman
550 17th Street NW
Washington, DC 20429

Bd of Governors of the Federal Reserve System
Attn.: Hon Jerome H. Powell, Chairman
20th Street and Constitution Avenue NW
Washington, DC 20551

New York State Dept. of Financial Services
1 State Street
New York, NY 10004-1511

Re.: *Fraudulently Altered Checks and UCC §4-207 Transfer Warranties*

Dear Banking Regulators:

The New York Credit Union Association ("NYCUA"), a trade association representing all New York credit unions and their more than 6 million consumer members, writes to seek a solution to a problem that is plaguing many of our state's credit unions. Recently, our credit union members have reported a significant rise in fraudulently altered checks being drawn on their members' accounts. This issue has been recognized by credit union regulators, the United States Postal Service ("USPS") and law enforcement.

In sum, in these scenarios, a credit union member places a check in the custody of the USPS for delivery to a recipient. This check is then intercepted by a criminal, who alters the payee and dollar amount on the check; and deposits it into another account. These accounts are typically fraudulently established and emptied quickly; and it becomes difficult to trace the perpetrator or retrieve the funds.

The NYCUA is bringing our membership's concerns to your attention because these fraudulent checks are often deposited into accounts at the nation's largest banks and the process to ascertain liability for the fraud losses and obtain reimbursement should be straight-forward; but has been disturbingly protracted. It takes months for a depository bank to respond to credit union inquiries and often requires multiple communications, or even the credit union filing a lawsuit to gain the attention of the offending bank. The credit unions are then left to deal with their members who are angry at being the victims of this fraudulent activity which anger is exacerbated by this delay. Ultimately, the credit union absorbs this loss because of the bank's failure to timely respond or to even respond at all. This undoubtedly affects the public confidence in these traditionally small financial institutions; despite New York's laws being clearly in the drawee credit union's favor.

Under New York's Uniform Commercial Code ("UCC"), a breach of warranty claim exists against the depository bank, who is in the best position to discover the fraudulent alteration and to stop the clearing process to prevent the loss. Specifically, pursuant to UCC §§4-207(2) and (3), the depository financial institution warrants to the drawee financial institution that the check is authentic, authorized, and free of alterations to the drawee credit union/bank. This statute clearly holds that the depository financial institution is liable for damages for breach of warranty in an amount equal to the loss suffered due to the breach [but not more than the amount of the check], plus expenses and any lost interest incurred; yet when claims are made to the nation's largest banks, they are generally ignored.

At the outset, these large banks are enabling the crimes to occur by failing to prevent the fraudulent accounts from being opened in the first place; but they are then perpetuating the damage and expense to the drawee credit unions by neglecting to reasonably address the warranty claim, once it is filed. Unfortunately, there does not appear to be any statutory timeframes for the resolution of these warranty claims [which the large banks are likely aware of], but these unreasonable delays are egregious and causing significant damage to the credit unions and their members.

While the NYCUA is sensitive to the regulators general position that it is not your responsibility to get in the middle of arguments between financial institutions that you regulate, we are not asking for such intervention. We are encouraging regulators to explore policymaking to establish specific timeframes for the depository financial institutions to confirm receipt of these warranty reimbursement claims, and to bring them to closure within a reasonable time-period. Under UCC §4-207(d), the victim is encouraged to assert the warranty claim within 30 days of discovery of the breach, and the NYCUA would suggest that a similar 30-day period be established to respond to any inquiry; and then no longer than 90 days to bring the matter to a final resolution. After that, if the depository bank does not successfully bring closure, then it should be penalized in some more meaningful way, which would include costs and attorneys' fees, particularly if a lawsuit is required.

In addition, the NYCUA joins with the Community Bankers Association of Illinois, in respectfully requesting that joint supervisory guidance, and any subsequent policymaking, include a requirement that the largest financial institutions be required to provide a contact name, dedicated phone and fax number, and email address, so that credit unions can effectively communicate with these banks. This information will provide access to submit the warranty claim in a timely fashion to start the clock on compliance by the larger banks.

The NYCUA and its member credit unions believe that regulators have a responsibility to address this issue caused predominantly by lapses and compliance failures by the nation's largest banks and we urge you to initiate joint supervisory guidance to ensure that fraudulent check warranty claims are resolved promptly and reasonably. If they are not, then these banks need to be held accountable for undermining the public's confidence in the banking and financial system of New York State, as well as the entire country.

The New York credit union community is committed to working together to attempt to limit the damage and exposure to all financial institutions as a result of this growing issue.

Respectfully submitted,

William J. Mellin
President/CEO
New York Credit Union Association

cc.: National Credit Union Administration
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Consumer Financial Protection Bureau
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Washington, DC 20552

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