

# Check Relevance Sustains Issues Facing the Industry

*Don't Exclude Checks from Payments Strategic Planning Just Yet*

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## Executive Summary<sup>1</sup>

Payment industry leaders and professionals, regardless of segment or service focus, have a broad strategic interest in ensuring the overall and ongoing efficiency, safety, and soundness of the payments system across all payment types, including check, even as these volumes decline. Importantly, check continues into its fourth century and is expected to remain relevant to U.S. commerce for years to come. Despite continuing predictions of demise, check payments persist as they have attributes users find beneficial in certain use cases, such as medical/insurance payments and reimbursements, collect on delivery (COD) scenarios, certain payments to schools and small businesses, charitable contributions, and others. As such, checks will likely remain relevant until another payment type encompasses key attributes including —

- Ability for any bank account holder to be able to make a payment without payee's financial information.<sup>2</sup>
- Ability for anyone to accept that form of payment.
- Capacity to carry unstructured or complex data along with the payment.
- Convenience and cost effectiveness for existing users

While overall check volumes are consistently declining, current check use remains an important component of all noncash payment types, and the average value of a check payment has steadily risen since 2000.<sup>3</sup> Checks are likely to remain a significant payment instrument for the foreseeable future, especially by total aggregate value. In 2020, check payments, according to the most recent Federal Reserve Payments Study report, accounted for 22.91% of the value of all noncash retail payments.<sup>4</sup> Check payments are also complex, reaching more than 10,000 financial institutions (FIs), and evolving over time to be subject to multiple laws and rule sets and incorporating technology like remote deposit capture (RDC) and image exchange. FIs should consider this complexity and ensure staff are well trained and understand obligations under check law.

Check's durability, importance, and complexity present industry leaders with a clear opportunity to engage in meaningful dialogue on strategic approaches to help address key operational and legal issues currently facing check, which will help to ensure safety and soundness, such as —

- A quickening erosion of check expertise through retirement, amplified by less tenured staff choosing other career paths.

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<sup>1</sup> This paper has been produced through a partnership between ECCHO staff (Jenny Johnson) and Federal Reserve Financial Services staff (Dave Brangaccio, Kathryn Karnes, and Michael Williams) for education and discussion on aspects of the nation's check payment system and important check related issues and topics. The views expressed are solely those of the authors.

<sup>2</sup> Multiple types of FI accounts, with various conditions, allow for check writing; check receivers (payees) without an account at an FI can use a check cashing service

<sup>3</sup> 2000 – 2019 Federal Reserve Payments Studies

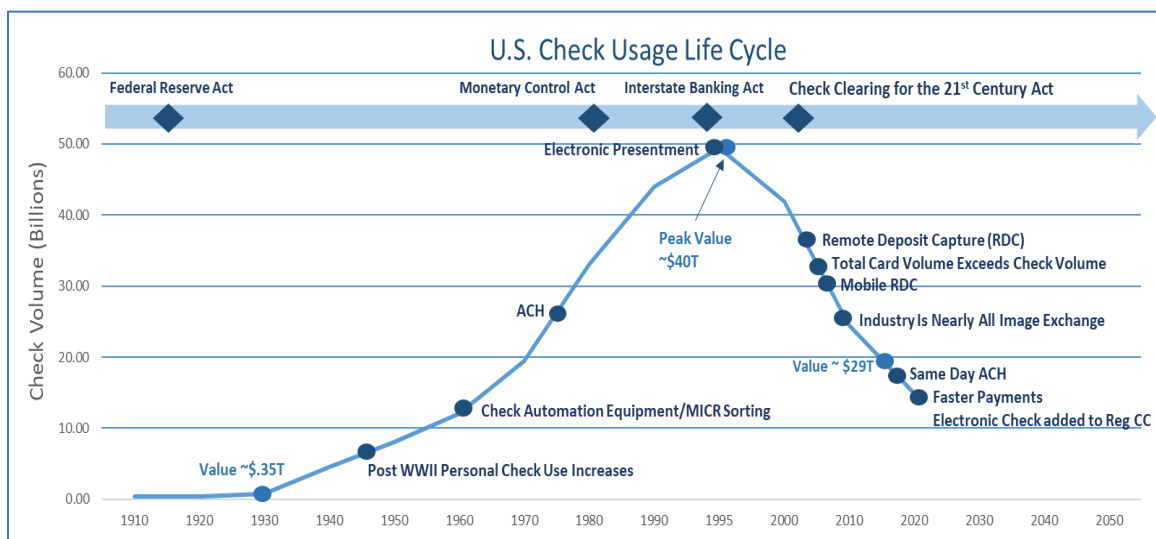
<sup>4</sup> "Developments in Noncash Payments for 2019 and 2020: Findings from the Federal Reserve Payments Study," December 2021

- Less emphasis on ongoing check education and training resulting in check operations departments with reduced check expertise. This was evidenced by a trend in late returns<sup>5</sup> after UCC and Regulation CC deadlines, among other prevalent warranty breaches.
- An increase in mobile deposit capture related duplicates, accounting for over one-quarter of all check adjustment cases handled by the Federal Reserve as a Paid Item (PAID) adjustment<sup>6</sup> over the last year and giving rise to more RDC indemnity and Holder in Due Course claims.
- Risk from non-check items, such as Electronically Created Items (ECIs) as defined by Regulation CC, being exchanged across the check payment system despite Federal Reserve Banks Operating Circular No. 3, Collection of Cash Items and Returned Checks (OC3) and ECCHO Rules provisions that do not permit such exchange.
- Potential updates to the Uniform Commercial Code (UCC) to address emerging technologies and changes in electronic check usage – while revisions are often necessary and beneficial, potential updates should continue to be considered by industry stakeholders to provide thoughtful comment to help contribute to the most beneficial outcome and avoid unintended consequences.

Ultimately, FIs and service providers have a long-term interest in addressing these issues and others, and they should consider incorporating direction and outcomes for check into overall payments strategic planning. Given the continued role of checks today, FIs and service providers would be well-served to include check clearing considerations in overall payments strategies.

## Historical Check Use: How We Got Here

The chart below displays key milestones in domestic check since the start of the 20<sup>th</sup> century.



Source: Federal Reserve and ECCHO Collaboration

<sup>5</sup> Internal Federal Reserve data

<sup>6</sup> Ibid.

Within the United States, personal check usage through the 1940s had largely been higher-income driven prior to the economic growth experienced after WWII, which saw increasing affluence and a rise in check writing by everyday consumers.<sup>7</sup> The simplicity of check use, combined with banking system stability and advancements in check clearing efficiency, helped to make check an attractive payment method, peaking at nearly 50 billion checks annually with a value of approximately \$40 trillion in the mid-1990s.

Although usage has long since peaked, the industry has continued to innovate and enhance check payments. Check clearing has transformed from paper to electronic image exchange and achieved great efficiencies across time. By law checks can never be fully electronic: the Uniform Commercial Code (UCC) and Regulation CC require that a check must originate as a paper instrument.

Since the peak usage of the mid-1990s, checks have declined in prominence as a noncash retail payment type in part due to migration to other payment types for lower value transactions. Between 2000 and 2018 checks fell from the most commonly used noncash retail payment type to the fourth, behind non-prepaid debit cards, credit cards, and ACH debit transfers. The decline in total value of check payments has been less dramatic as checks represented \$25.8 trillion dollars of payments in 2018, leaving checks behind only ACH credit transfers in terms of value.<sup>8</sup> Federal Reserve check clearing data, publicly available, shows a 2010 to 2020 decline in volume of 51% with a corresponding decline in value of just over 10%. Not surprisingly, the average check value during that same period rose from \$1,144 to \$2,091, nearly an 83% increase.<sup>9</sup>

## Check's Attributes Help Sustain Current Use

Consumers find convenience in several use cases and some businesses find it less expensive to pay by check rather than invest in updating legacy systems. While checks are not on the cutting edge of payments innovation, consumers and businesses still use checks for various payments for a number of reasons:

- Checks are ubiquitous — everyone can accept a check and almost anyone can write a check. Payees and payors don't need any specific technology or setup.
- Checks remain integral to the payments process of many small to large businesses as legacy systems, including billing, are difficult and costly to replace.
- Checks can support unstructured or complex accompanying data alongside the payment. For this reason, they have long been preferred for applications with detailed invoices like hospital billing, bills of lading, insurance claim payments, and other such uses.
- Checks are sometimes a more convenient and cost-effective option in certain scenarios and use cases. Often, there is no fee to either the payee or payor for a check transaction.

Additionally, various check collection and clearing models have evolved, contributing to payment transaction ease for both the payee and the payor, and have helped to sustain ubiquity. There are

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<sup>7</sup> "The role of the Federal Reserve in the payments system," Conference Series; [Proceedings], Federal Reserve Bank of Boston, vol. 45(Oct), Paul M. Connolly & Robert W. Eisenmenger, 2000.

<sup>8</sup> 2019 FR Payments Study

<sup>9</sup> [https://www.federalreserve.gov/paymentsystems/check\\_commcheckcolannual.htm](https://www.federalreserve.gov/paymentsystems/check_commcheckcolannual.htm)

several basic types of check collection models represented in the graphic below, with multiple possible service arrangement relationships existing between and amongst providers to facilitate the collection and clearing process.



*Source: Federal Reserve and ECCHO Collaboration*

The simplest configuration is an On-Us relationship, where the writer and receiver of the check belong to the same FI, and no interbank clearing is needed to process the payment. Where the writer and receiver of the check each have their accounts with differing FIs, interbank clearing is necessary and can be achieved in several ways:

- Through an intermediary FI, typically larger, acting on behalf of another (a correspondent relationship).
- A direct exchange agreement between two FIs.
- Use of a clearing house or exchange where multiple FIs are members.
- Use of a third-party processor or aggregator to facilitate collection and subsequent sending of payments for clearing
- Federal Reserve System check services.

## From the Pandemic to the Future

### Volumes and Values

In 2020, check volume fell more quickly than in previous years due to the impact of COVID-19. However, the steeper decline likely had more to do with the occasions for check writing being temporarily disrupted versus a new permanent change in the rate of decline. The pandemic drove widespread rent moratoriums, church and religious center closures, restaurant and other small business closures, and reduced use of home services such as house cleaning and landscaping, which are use cases that often utilize check. On the other hand, the federal government issued many Economic Impact Payments (EIP) and Child Tax Credits (CTC) via check, which drove spikes in payment volume.

From a volume driver perspective, McKinsey's most recent Digital Payments Consumer Survey, undertaken in 2020, found that three-quarters of consumers used some type of digital payment method, with use of multiple digital payment methods increasing during the pandemic, even among older (55+) consumers. The McKinsey survey also showed a full one-third of consumers surveyed indicated they were increasing contactless card and mobile wallet use for payments made at brick-and-mortar point of sale locations.<sup>10</sup> Use of checks for business-to-business (B2B) payments has undergone pandemic-related changes in the way business check payments are processed and there is potential for acceleration in the migration away from check for B2B payments. From a B2B check volume standpoint,

<sup>10</sup> McKinsey & Company, November 2020, [Digital Payments Consumer Survey](#)

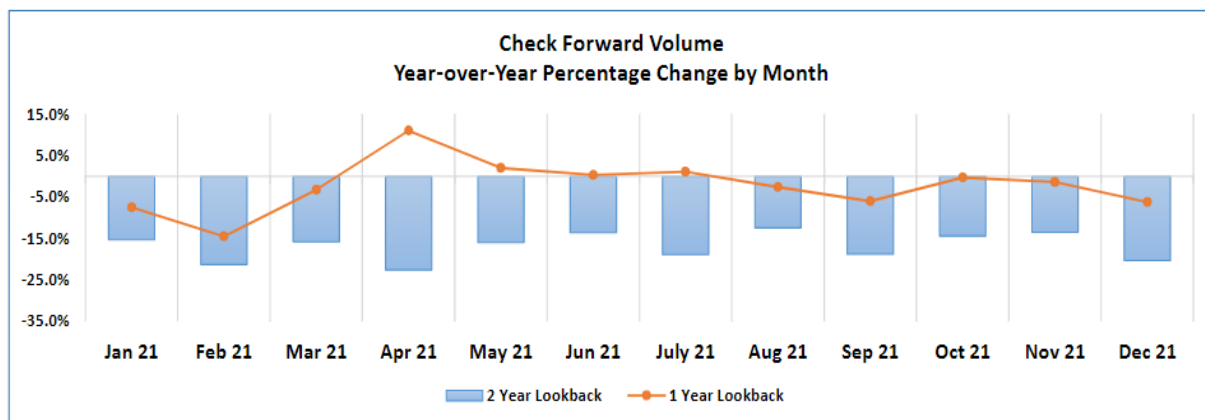
data from Mastercard® indicates a direct correlation between the pandemic and adoption of electronic forms of B2B payment. The majority of those surveyed as part of a 2020 small business study conducted by Mastercard cited the pandemic as a catalyst to become more digital relative to payments due to cash flow and collection issues. One-half of respondents indicated they had added a digital service for collecting payments and one-quarter of those surveyed indicated a reduction in the use of checks for receiving payments.<sup>11</sup> At the same time, one tool supporting check usage has been remote deposit capture, which experienced a significant uptick in use in 2020 and 2021, with more FIs offering the service, and a willingness by bank customers that had never utilized the service to give it a try.

### Federal Reserve Perspective on Pandemic Volume

The following chart compares, on a percentage basis, 2021 Federal Reserve forward check collection volume, excluding government items, with each of the two preceding years.

- 2020 as displayed by the orange line.
- 2019 (pre-pandemic) as displayed by the blue bars.

Additionally, the data is adjusted for the number of business days and 2021 as compared with 2019 to preserve seasonality and help put the volatility of 2020 into perspective.



Source: Federal Reserve Data

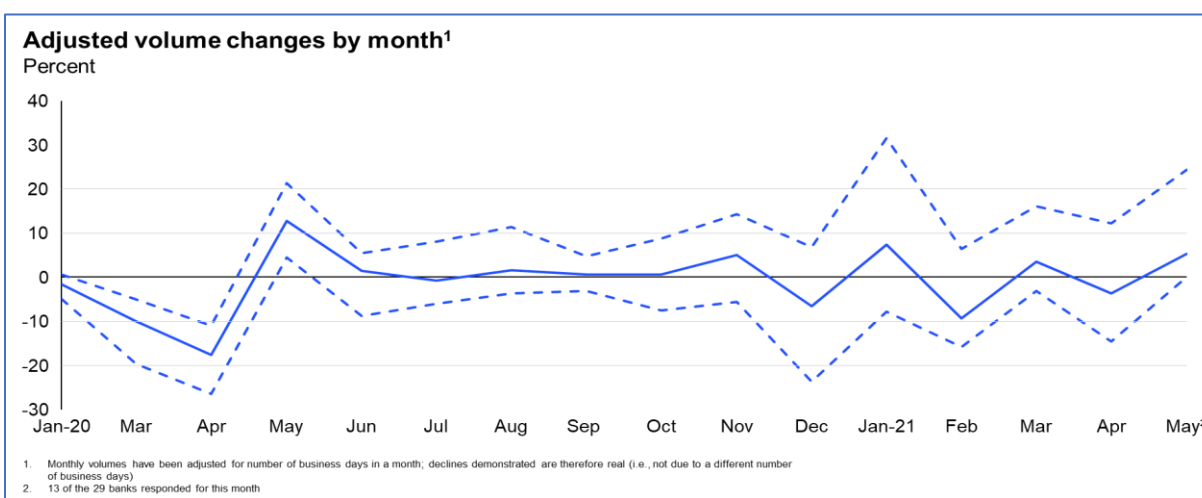
For most months in 2021, Federal Reserve forward collection volume was between 12% and 20% lower than it was in the same month in 2019, as seen in the two-year lookback, primarily a result of the steep drop-off in volume at the outset of the pandemic. It is worth noting that, pre-pandemic, the Federal Reserve was experiencing between a 7-8% average annual decline in volume. Factors contributing to a decline in 2020 check writing included increases in unemployment, the pandemic's toll on small- and medium-sized businesses and rent moratoriums.

In contrast, 2021 volume declined just 2.5% relative to 2020, with some months experiencing year-over-year volume growth, as seen in the one-year lookback. The modest decline in 2021 Federal Reserve forward check volume was likely due to the downstream effects of the distribution of the second and third rounds of Economic Impact Payments (EIP), commonly referred to as "stimulus payments," in January and March of 2021, respectively. Other contributing factors were a generally improving economy with corresponding reductions in unemployment.

<sup>11</sup> <https://www.mastercard.com/news/press/2020/august/mastercard-study-shows-covid-19-a-catalyst-for-digital-b2b-payments-adoption/>

## ECCHO Pandemic Check Volume Survey of Exchanges Among Its Members

Beginning in 2020, ECCHO, in partnership with McKinsey & Company, conducted several surveys of its members' volumes to gain perspective on the effects of pandemic-driven changes to consumer behavior relative to check usage. The results of an ECCHO/McKinsey survey are presented below as a percentage of change month over month. For the FIs in the survey, volumes reached their biggest dip in April 2020 around the nationwide shutdown. The largest month over month recovery in check volume occurred in January 2021. The month over month analysis of ECCHO member volumes revealed marked increases in check volumes following stimulus payouts, indicating that payouts in fact stimulated spending, aligning with Federal Reserve data. These upsurges were followed by dips in volumes, resulting in erratic volume swings as illustrated in the chart below.



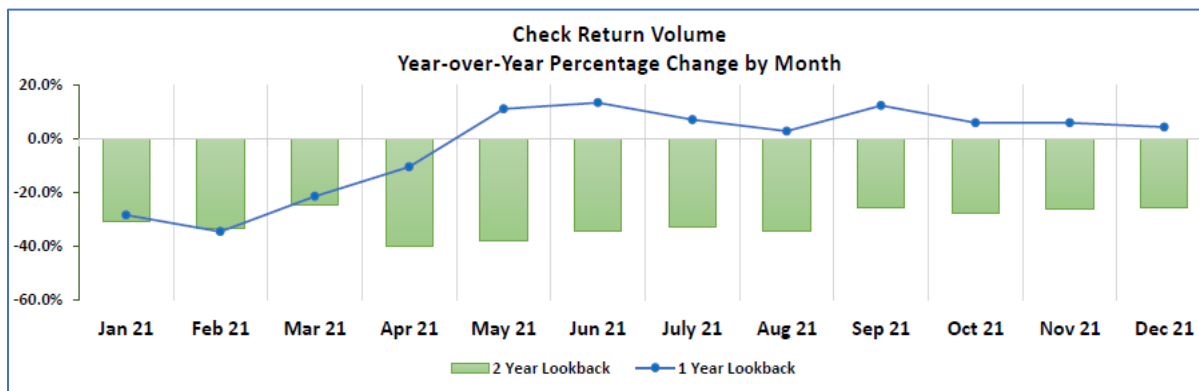
Source: ECCHO/McKinsey Survey Data<sup>12</sup>

Though the survey participants saw an average decrease of about 14% from the beginning of the pandemic to May 2021, individual FIs encountered a variety of experiences across the pandemic from double-digit decreases to double-digit increases due to bank-specific factors (e.g., mergers, customer demographics). It is interesting to note that more FIs reported increases in volumes rather than decreases in six of the nine months from September 2020 to May 2021, though the declines tended to be larger than the increases.

## Check Returns: Federal Reserve Perspective

The below chart shows Federal Reserve return collection data and provides both one-year and two-year lookbacks the same way as the previously discussed Federal Reserve chart.

<sup>12</sup> McKinsey & Company, September 2021, Trends in Checks

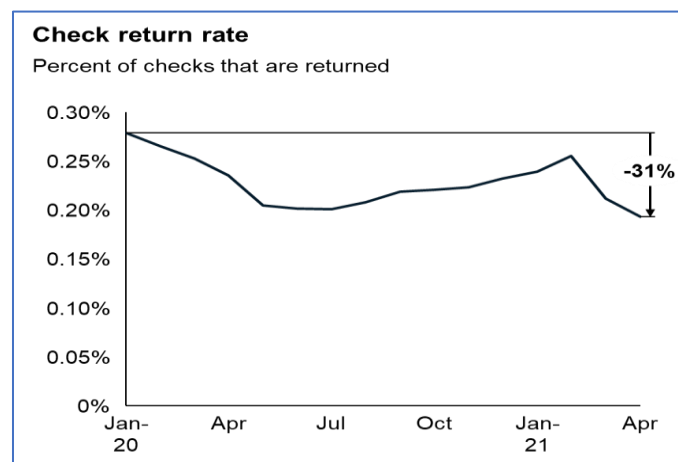


Source: Federal Reserve Data

Volumes declined significantly in 2020 compared to pre-pandemic, due to customer behavior and uncertainty during the pandemic. The rounds of EIP added money to consumer accounts, providing more of a cushion against check returns, with return volume bottoming in May 2020 and again in April 2021, in the aftermath of the first and third rounds of EIP. Federal Reserve return volumes stabilized over the final eight months of 2021, experiencing year-over-year growth in each of those months.

### Check Returns: ECCHO Survey Reports Historically Low Pandemic Return Rates

Since the start of the pandemic, as discussed above, the overall number of returned checks has decreased for various reasons, recognizing there have been fluctuations across the pandemic that loosely mirror swings in forward volume. While the Federal Reserve data describes changes in return volumes, additional insight can be gained from examining changes in return rates. Average check return rates, according to the ECCHO/McKinsey survey (January 2020-April 2021), ranged between .2% to just below .3% over the survey period, which are historically low levels (see chart below).



Source: ECCHO/McKinsey Survey Data<sup>13</sup>

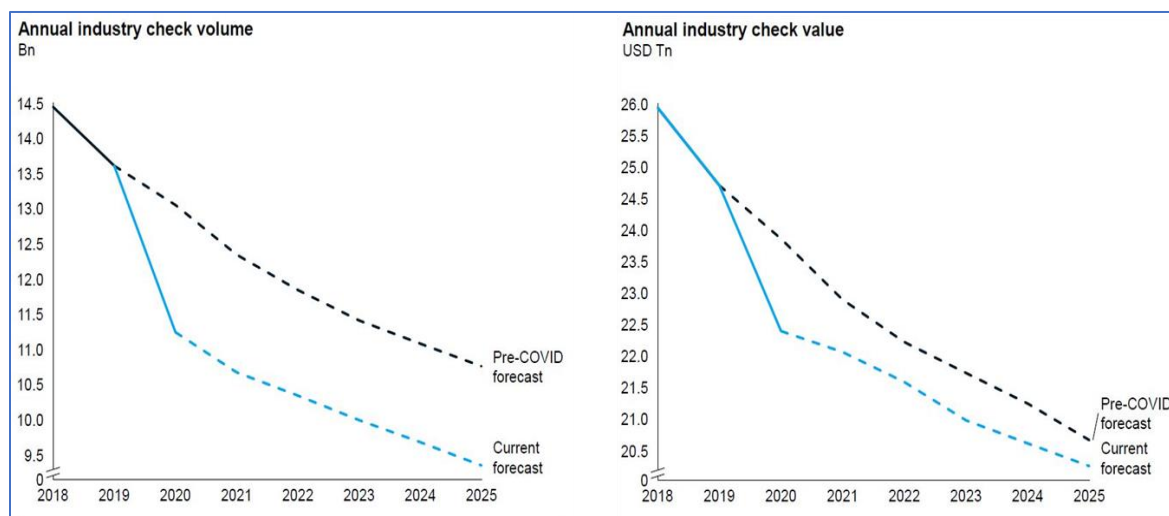
Survey participants experienced some fluctuations across the period with a new low occurring in April 2021. A potential contributor to historically low rates was a willingness on the part of some FIs to alter their check return policies to help accommodate customers during the initial pandemic waves.

<sup>13</sup> Ibid.



## The Relationship Between Volumes and Value

Even though the pandemic caused a step down in check use, the overall rate of decline forecast through to 2025 is generally in line with pre-pandemic levels. From a value perspective, the Federal Reserve alone processed approximately \$8.7T to \$8.8T in check value in 2021, with the average value of a check payment at approximately \$2,400. As seen in the charts below, the forecast rate of decline in the total value of all national check payments through 2025 is less than the forecast rate of decline in volume.



Source: McKinsey & Company<sup>14</sup>

The increasing average value of a check evidences transition of lower value use cases to other payment types while higher value use cases remain. This may be happening because there are substitution payment types perceived to be acceptable for low-value payments but not for some high-value payments. Typical high-value use cases for checks include insurance payouts, medical payments, and mortgage and rent payments.

## Check Payments: A Matter of Relevancy

While ongoing check volume decline seems to be the most frequent topic of conversation within the industry, how long check remains relevant is potentially the more appropriate question since total check payments value remains significant as noted above. Even when check payment volumes reach a relatively small number, the total value may still be significant. For example, *Digital Check* theorized that annual check volume could be as low as 500 million to 3 billion checks a year by the 2040s.<sup>15</sup> At those volumes and using the current average value of a check payment, the total value of all check payments would still be \$1.2T to \$7.2T -- a significant value to U.S. commerce.

Additionally, as corroborated by Federal Reserve Bank of St. Louis data<sup>16</sup>, the level of total deposit value has been steadily rising since the Great Recession, and consumer deposit levels have reached an all-time high during the pandemic. Many consumers and businesses still access that value via check writing, even if with less frequency than in the past. The need to efficiently clear checks to all 10,000 U.S. endpoints remains despite the decline in the total number of checks being written. The total value of check payments is a key consideration as is accessibility with the large number of endpoints involved to clear all check writing activity. On these two points, it would be helpful for the industry to focus on several key issues facing check, which are outlined below.

<sup>14</sup> McKinsey & Company, June 2021, [McKinsey U.S. Payments Map](#)

<sup>15</sup> "The Disappearing Check: Assessing the Decline," Digital Check, 2015

<sup>16</sup> <https://fred.stlouisfed.org/series/DPSACBW027SBOG>

## Key Issues Facing Check

### Check Knowledge is Leaving the Building

Check is a complicated payment system. Not only are there multiple regulations, rule sets, agreements to live under, and case law to consider, those rules and regulations have been interwoven across time and refer to and rely on each other. Depending on the complexity of a given exception, check staff may not be able to resolve with one single reference and should understand the complete legal framework that governs check and, for example, how the concepts in UCC are built upon in Regulation CC. Because of this interconnectivity, knowledge of check rules and legal requirements is acquired over time through experience or careful study.

Traditionally, as people retired out of check, there have been experienced people to take their place. Because check is a declining business, it is no longer as generously staffed, nor is it as likely a chosen career path for those rising through the ranks, resulting in a knowledge deficit that impedes banks' ability to combat check risk and fraud. As long as checks flow through the system without incident, the risk is relatively low; however, when exceptions occur and warranties are breached, things get complicated. Determining how to resolve the problem and appropriately allocate liability between banks requires time and expertise because of the complex environment (e.g., warranties, the set of rules under which the item was exchanged, timing of the incident, relationships of parties to the exchange, and specific facts and case circumstances).

At its core, check collection and clearing is a collaborative effort. An individual FI doesn't only clear checks with itself in an On-Us arrangement; it also exchanges checks with other FIs and coordinates with those FIs across the country to achieve payment finality. There is a real need for check experts at each FI and lack of expertise may leave vulnerabilities to —

- Losses because the problem was not resolved (e.g., due to missed deadline).
- Lack of compliance with laws, regulations and other legal obligations.
- Decreased productivity due to lack of resolution knowledge.
- Refusing claims for which the bank is liable.
- Paying claims for which the bank is not liable.
- Increased fraud losses due to lack of proper detection and monitoring programs.
- Inability to anticipate issues which lead to exceptions.
- Loss of industry relationships critical to interbank communication and amicable resolution of exceptions.

Check education is an integral part of check operations, returns and adjustments, front-line compliance, and risk management. Check expertise is key to reducing losses and improving efficiencies, and FIs benefit from understanding the warranties and obligations of each party to the exchange in order to effectively resolve exceptions and claims.

## Late Returns: A Potential Outcome of Departing Knowledge and Expertise

One needs to look no further than the recent issue with late returns to understand the importance of re-infusing the industry with check expertise. In recent years, banks have increasingly flooded the check payment system with returns that are sent after legal deadlines have passed. Late returns can be costly to the industry and cause transactional ambiguity. Check processing staff may be unaware of the warranties that their bank makes to provide timely returns. Many may incorrectly believe that fraudulent items can be returned after the legal deadlines, but that is not the case. The UCC requires the paying bank to pay or return all items by midnight of the banking day following the banking day of presentment (UCC 4-301, 4-302) and Regulation CC requires the paying bank to return checks “in an expeditious manner” (§ 229.31(b)) generally so that it will be received by the depository bank by 2:00 p.m. (local time of depository bank) on the second business day after the banking day of presentment. Fraudulent items must adhere to the regulatory return deadlines - even if a bank learns of them after the deadlines have passed.

Since paying banks must return checks within the deadlines, depository banks are within their rights to make late return claims when a return falls outside of regulatory requirements. It is then possible for paying banks to incorrectly disclaim legitimate late return claims made by depository banks based on the misconception that fraudulent items can be returned after the deadlines. Though returns are not permissible outside of the UCC/Regulation CC deadlines, remedies may be available to the paying bank if it learns of a fraudulent item after the return deadline has passed that is the result of a warranty breach. Returning an item on time is one way to resolve a breach of warranty. Other ways to make warranty claims include creating an adjustment or dealing directly through a demand or claim letter. Federal Reserve Financial Services and ECCHO, in collaboration, have made great strides on this issue from 2020 through 2021 through a program to educate the industry and improve the information associated with late returns so that paying banks understand their obligations, and liability and loss may be correctly placed on the responsible party. Late return claims had been increasing since 2012 and were down 27% in 2020, in part as a result of the education initiative.

## Duplicates: Managing Risk Associated with Remote Deposit Capture

Since the introduction of remote deposit capture (RDC), the customer has had the ability to make multiple deposits of the same check resulting in what is referred to in the industry as “a duplicate.” An increase in duplicates occurred when banks offered customers the ability to make deposits via mobile devices and the ability to maintain possession of the physical check. This opened the door to fraudsters to also deposit the check elsewhere or present to a check casher. Duplicate presentment continues to be one of the more common warranty breaches. In fact, duplicate related adjustments comprised over one quarter of all check adjustments handled by the Federal Reserve across the past year, lagging only behind encoding errors.<sup>17</sup> RDC indemnity claims, and Holder in Due Course claims are also increasing as a result of duplicate check deposits.

To address the risk associated with duplicates, FIs may wish to consider mitigation practices. Risk mitigation strategies should balance the automated return of duplicates through the return system with human intervention and research. In fact, automated return of duplicates can lead to additional claims like RDC indemnity and Holder in Due Course claims. To effectively resolve a duplicate, one has to understand all the facts and circumstances of that case. Ultimately the best way to prevent duplicates is for depository banks to use effective Know Your Customer (KYC) practices and other risk controls to mitigate the ability of fraudsters to introduce duplicates in the first place.

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<sup>17</sup> Internal Federal Reserve data

## Electronically Created Items (ECIs): the Check that is Not a Check

Another issue is non-check payments that are riding the check rails—specifically ECIs. Regulation CC 229.2(hhh) defines an ECI as “an electronic image that has all the attributes of an electronic check or electronic returned check but was created electronically and not derived from a paper check”.

In contrast, Regulation CC 229.2(ggg) defines an Electronic Check/Electronic Returned Check to “mean an electronic image of, and electronic information derived from, a paper check or paper returned check, respectively, that—(1) is sent to a receiving bank pursuant to an agreement between the sender and the receiving bank; and (2) conforms with ANSI X9.100-187, unless the Board by rule or order determines that a different standard applies or the parties otherwise agree.” The Electronic Check warranty goes a bit further to stipulate that banks warrant “The electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated”, with the original check being defined as “the first *paper* check issued with respect to a particular payment transaction.” (Regulation CC 229.34(a)(1)(i) and 229.2(ww)) In layman’s terms, the difference between an Electronic Check and an ECI is the fact that an ECI is created electronically and not derived from a paper check.

In 2018, the Federal Reserve Board revised Regulation CC to create the ECI Indemnity to provide some protection to banks receiving ECIs by shifting certain losses to banks that transfer/present an ECI (and ultimately to the Depository Bank, the first bank that transfers the ECI).<sup>18</sup> The ECI indemnity (Regulation CC 229.34(g)) covers losses that result from the fact that —

- (1) The electronic image or electronic information is not derived from a paper check;
- (2) The person on whose account the electronically-created item is drawn did not authorize the issuance of the item in the amount stated on the item or to the payee stated on the item (for purposes of this paragraph (g)(2), “account” includes an account as defined in section 229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank); or
- (3) A person receives a transfer, presentment, or return of, or otherwise is charged for an electronically-created item such that the person is asked to make payment based on an item or check it has already paid.

ECIs are not allowed for exchange under Federal Reserve Operating Circular 3, Collection of Cash Items and Returned Checks (OC3) or the ECCHO Rules. Some banks may accept the risk associated with sending ECIs, including with respect to the warranties and indemnities made under Regulation CC, Federal Reserve, and ECCHO Rules. FIs that send ECIs (notwithstanding their ineligibility for exchange through the Reserve Banks or under ECCHO Rules) and those that receive them may deal with various potential difficulties or issues associated with ECIs including —

- Detecting ECIs – it is very difficult to identify an item as an ECI without asking the creator.
- Protecting consumers – questions exist about whether Regulation E protections potentially apply to ECIs.
- Lacking legal status under the law – since ECIs are not checks (or Electronic Checks), most aspects of the check legal framework do not apply to ECIs (i.e., a Depository Bank could receive the return of an ECI anytime since expeditious return requirements don’t apply).

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<sup>18</sup> The indemnity is provided by “each bank that transfers or presents an electronically-created item and receives a settlement or other consideration” and is made to “each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank” for certain specified losses set forth in 12 CFR 229.34(g).

- Managing and detecting fraud – since ECIs are created electronically and are relatively new, the fraud risks are unknown.

There is a risk that ECIs are flowing through any given FI's image cash letters without their knowledge. It is important to educate bank employees and other stakeholders about the risks of ECIs.

### Potential Future Changes to the Uniform Commercial Code (UCC)

The Uniform Law Commission (ULC) and the American Law Institute (ALI), the sponsors of the UCC, are considering updates to the UCC to address emerging technologies. The UCC and Emerging Technologies Drafting Committee has been chartered to work on these UCC amendments and initially proposed several changes within Articles 3 & 4 (negotiable instruments, bank deposits/collections). The committee has worked through several versions of the draft. Much of the focus of the Drafting Committee's work has been on topics such as virtual currencies and controllable electronic records, as well as other changes to article 9 (secured transactions). After careful consideration and with input from the industry, proposed changes are moving forward to two sections in UCC Article 3 with regards to check:

- **SECTION 3-105. ISSUE OF INSTRUMENT.**  
Description of change: The proposed amendments would add language providing that a check can be electronically delivered by the drawer to the payee only if agreed to by the payee of a check (e.g., where the payee offers electronic delivery through an app as an accommodation to the drawer such as for payment of rent) and the image/information are sufficient to create an Electronic Check as defined by Regulation CC. This approach keeps the payee (and in effect the BOFD) in control and does not allow a drawer to unilaterally choose to deliver checks electronically.
- **SECTION 3-309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT and Section 3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION.**  
Description of Change: When a check is deposited via image (e.g., by the payee through a mobile app), the physical check is often intentionally destroyed. If the check image was never received by the depository bank due to an error in transmission, and hence no credit was posted to the depositor's account, it is unclear under existing law whether the intentional destruction of the original paper check results in a discharge under § 3-604. The proposed amendments would address this by indicating that purposeful destruction of a paper check in connection with a truncation process, even if by the payee, does not prevent the payee from enforcing the destroyed check if the payee can prove the terms of the check.

UCC revisions follow a different process than federal statutes (enacted by Congress) or regulations (issued by federal regulatory agencies pursuant to their statutory authority). UCC draft revisions are developed by the drafting committee with input from state-appointed commissioners, legal experts, advisors, and observers. Any interested party may become an observer. The UCC revisions typically are considered at two ULC annual meetings and, if approved by the ULC and ALI, are then submitted for consideration by state legislatures for enactment. The Drafting Committee's recommendations were the subject of a first reading at the National Conference of Commissioners on Uniform State Laws July 2021 annual meeting. If ultimately approved by the National Conference of Commissioners on Uniform State Laws, the changes are submitted for consideration by the state legislatures for enactment.

## Potential Future Issues for Consideration and Conclusion

While the above outlined issues are important, they are not meant to be all-inclusive. Other key issues likely exist that may also deserve industry-wide consideration and discussion, some in the near future. However, the main point is that the issues facing check will remain important to the payment system as long as check remains a relevant payment type. Significant dollar value continues to flow through a mature and complex operational and regulatory check system each day as consumers and businesses choose to write checks for various payment use cases. Checks will be persistent as a noncash payment type as long as users perceive benefit for certain types of payments.

Given the continued value, in particular, of checks written, FIs and service providers should include check clearing considerations in approaches to moving the payment system forward as they develop overall payments strategies. While true that new generations using the payment system will likely never even begin writing checks, a trend which is already beginning, there remains a significant level of check use in U.S. commerce that sustains the issues outlined in this paper. Strategies for managing the overall safety and soundness of the payment system are stronger when approaches are also developed to address the key issues facing check.

This paper discusses just a few of the examples of how the check continues to adapt. The check would not have persevered had it not evolved over a 400-year existence. Though check continues to significantly decline in volumes, it will likely remain in use for the foreseeable future.