Congress of the United States
Washington, DC 20515

June 11, 2007

The Honorable JoAnn Johnson
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Dear Chairman Johnson:

According to a recent New York Times report, financial institutions are processing unsigned checks (i.e., "remotely created checks") generated by fraudsters in the names of unsuspecting victims, a practice that is enabling the perpetration of schemes that are draining millions of dollars from the bank accounts of vulnerable Americans, including the elderly and individuals with chronic, debilitating diseases ("Bilking the Elderly, with a Corporate Assist", May 20, 2007, A1).

While the criminal behavior detailed in this report is shocking, it is not unfamiliar to federal regulators and law enforcement authorities. We understand that in 2005 the Attorneys General of 35 states urged the Federal Reserve to prohibit financial institutions from accepting remotely created checks – also known as "demand drafts" - as a form of payment, noting their widespread use by fraudsters. Specifically, in their May 9, 2005 letter to the Board of Governors of the Federal Reserve System during the comment period for the Board's adoption of a final rule amending Regulation CC regarding remotely created checks, the Attorneys General stated that "[D]emand drafts are frequently used to perpetrate fraud on consumers…such drafts should be eliminated in favor of electronic funds transfers that can serve the same payment function."[1] In their letter sent more than two years ago, the Attorneys General specifically cited the Office of the Comptroller of the Currency's description of how telemarketers prey upon consumers using remotely created checks, describing a scheme quite similar to the one contained in the news report cited above:

> "The criminal calls a consumer and announces that the consumer has won a cash prize. The criminal explains that, to deposit the prize in the "winnner's" account, he or she needs the account information. Once the consumer provides the account information, the criminal prepares demand drafts and withdraws funds from the account."

We are deeply troubled by the practices described in the New York Times report and the harm suffered by the victims. Moreover, we are disturbed that the acceptance of remotely created checks is still permitted, in light of previous warnings by the Attorneys General, the Office of the Comptroller of the Currency, the National Automated Clearing House Association

[1] National Association of Attorneys General, Letter to Board of Governors of the Federal Reserve System, re: Docket No. R-1226 (Proposed Amendment to Regulation CC/Remotely Created Checks, May 9, 2005.

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and others that remotely created checks are being widely used to perpetrate fraud. Accordingly, we request your responses to the questions that follow.

(1) Does the National Credit Union Administration consider the acceptance of remotely created checks a safe and sound banking practice? If yes, why? If not, why not? Do you believe that the benefits to the national economy associated with the acceptance of remotely created checks by financial institutions outweighs the costs to consumers incurred when such drafts are used fraudulently by criminals? If so, on what basis does your agency make this determination?

(2) Does your agency monitor the amount of fraud associated with the use of remotely created checks, and if so what is the extent of that fraud (as a percentage of assets, accounts, or some other relevant measure)?

(3) Has the amount of fraud been increasing or decreasing?

(4) How does the amount of fraud associated with this activity compare with amount of fraud associated with other products?

(5) Who bears the risk of loss in instances of fraud related to remotely created checks (i.e, are there limits on a consumer's exposure as there are in credit card transactions?) Do these limits arise from state law or federal law? Do the protections apply equally to all financial institutions regardless of charter?

(6) Why should an individual unknown to an account holder, without the account holder's knowledge and without any information other than the account number, be permitted to withdraw funds belonging to the account holder through the use of a remotely created check? According to the comment letter from the Attorneys General referenced above, there are ready substitutes for remotely created checks that are less susceptible to fraud, such as electronic funds transfers and other mechanisms, that can serve the same payment function. Does your agency disagree with the Attorneys General? If yes, why? If no, what actions are you taking to address this practice?

(7) How widespread is the use of remotely created checks in the national economy? Are you aware of the approximate percentage of transactions effectuated through the financial institutions subject to your regulatory oversight that utilize remotely created checks? If the elimination of remotely created checks were proposed, does your agency expect significant opposition from companies that use these instruments? On what basis does your agency make this judgment? Some countries such as Canada have banned the use of remotely created checks because they are readily available tools for fraudsters. Are there unique needs of our national economy that necessitate the use of remotely created checks despite the fraud risks? If yes, what are these unique needs, and how do they differ from those of Canada, which appears to have a well-functioning financial services sector notwithstanding its decision to eliminate use of remotely created checks?

(8) Rather than issue a final rule amending Regulation CC in a manner that would include a ban on or substantially restrict the use of remotely created checks to prevent fraud, the Federal Reserve instead established new requirements for financial institutions when they accept remotely created checks. In its response to the Attorneys General comments in support of the prohibition of remotely created checks, the Federal Reserve asserted that a ban was not appropriate

because "The Board believes its rule provides effective protections against unauthorized remotely created checks while still allowing for the legitimate use of those checks." Does your agency believe that there are currently effective protections in place to prevent fraud perpetrated through the use of remotely created checks? On what basis does your agency make this determination? Does your agency have evidence that demonstrates that most of the financial institutions subject to your agency's regulatory jurisdiction are complying with these requirements? If yes, what is this evidence? If your agency either does not have sufficient evidence to make a determination of compliance rates or has evidence to suggest low compliance, what is your agency doing to increase compliance with these requirements?

(9) How often does your agency assess the level of financial institutions' compliance with these requirements? Who is responsible for enforcing violations of these requirements? What enforcement actions have you taken? Are you aware of actions by others? Based on your experience, what additional regulatory measures can be implemented to combat fraud using these instruments

(10) Does your agency believe that use of these instruments can and should be further restricted in order to prevent fraud?

(11) Has your agency established regulations substantially similar to the Federal Reserve rules mentioned in Question 8? If not, what approach has your agency taken with respect to remotely created checks to address the potential for fraud?

(12) What are a consumer's options for recovering his or her funds after becoming a victim of this type of fraud, how long does resolution take and at what cost to the consumer? Do the same options exist for all consumers (regardless of state of residence or financial institution involved)?

(13) We have been informed by the Federal Trade Commission (FTC) that FTC staff has contacted the appropriate federal banking regulators to discuss the activities described in the New York Times article cited above. Is your agency currently investigating these activities? If yes, what is the current status of your agency's investigation? If not, why not?

Thank you for your prompt attention to this matter. Please provide answers to the questions above within 15 business days, or no later than July 2, 2007. If you have questions about this request, please have a member of your staff contact Mark Bayer on Rep. Markey's staff at 202-225-2836 or Michael Beresik on the staff of the Committee on Financial Services at 202-225-4247.

Sincerely,

Edward J. Markey

Barney Frank