



Building Success. Together.

TACKLING CHECK FRAUD PROCESSING CHALLENGES

Understanding the Rules Surrounding Returns



Jim Hitchcock
Vice President, Fraud Mitigation
American Bankers Association

Jim serves as the association's primary expert on fraud mitigation activities and programs. In this role, he identifies and tracks key fraud topics and trends, develops fraud prevention strategies, and finds opportunities to develop capabilities and partnerships that provide products and services to banks. Prior to joining ABA during June 2021, Jim was a Director in the Capital One Anti-Money Laundering Department serving in a Fraud Advisory role. Jim began his banking journey during February 2016 after a career in Federal law enforcement with the U.S. Department of Defense Inspector General (Investigations) and U.S. Secret Service.



Scott Jones
Partner
Adams and Reese LLP

Scott is a payments lawyer and partner at Adams and Reese LLP. He began his practice as a litigator and now advises financial institutions on risk-minimization and best practices for avoiding litigation. He regularly advises financial institutions throughout the United States on payment systems, payments fraud, and bank operations, including treasury management services, wire transfers, ACH transactions, Internet banking, mobile banking, checks, and emerging payment systems. Scott also advises and represents financial institutions in payments-related litigation.

DISCLAIMER

THIS PRESENTATION IS FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY. IT IS PRESENTED WITH THE UNDERSTANDING THAT THE PRESENTER IS NOT PROVIDING YOU WITH LEGAL, ACCOUNTING, OR OTHER PROFESSIONAL SERVICES. IF YOU REQUIRE LEGAL ADVICE OR OTHER EXPERT ASSISTANCE, YOU SHOULD SEEK THE SERVICES OF A COMPETENT PROFESSIONAL.

Estimated Fraud Attempts

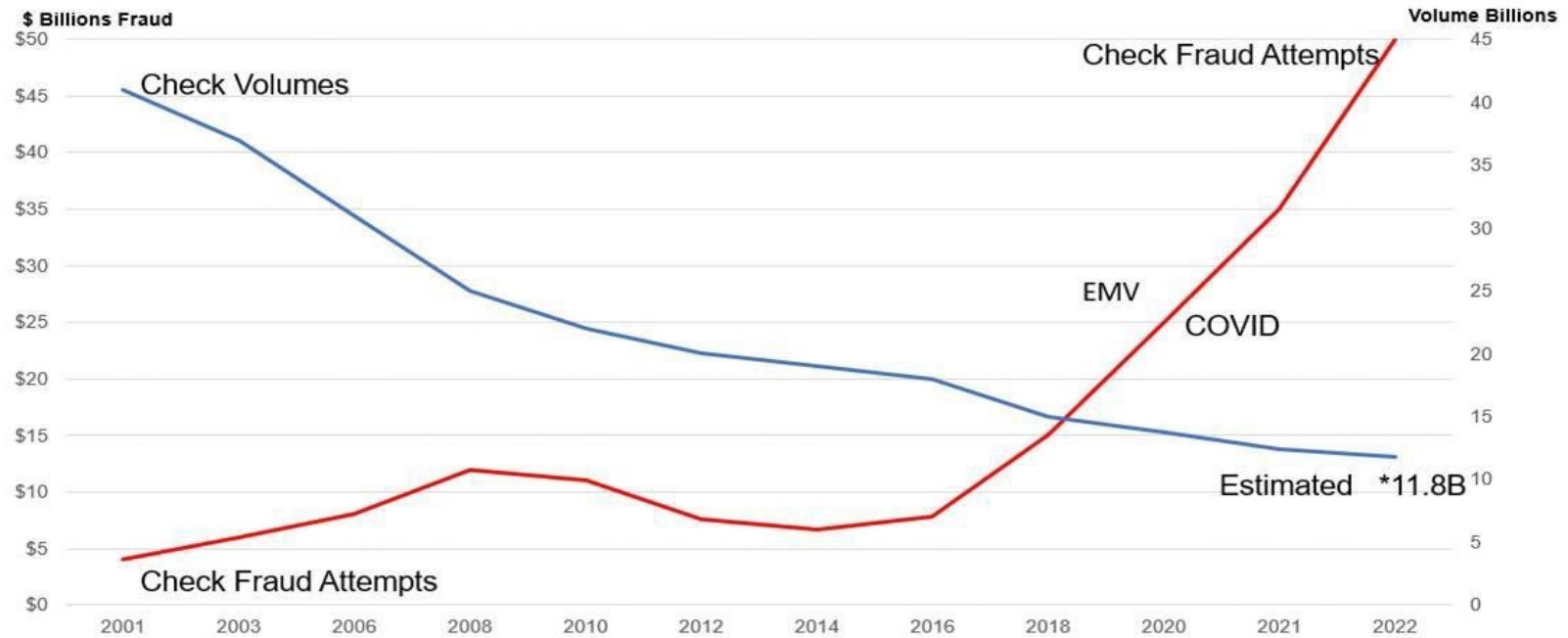
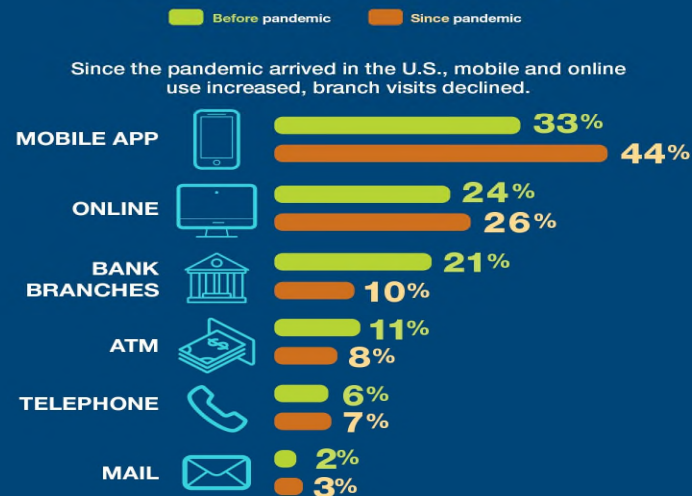


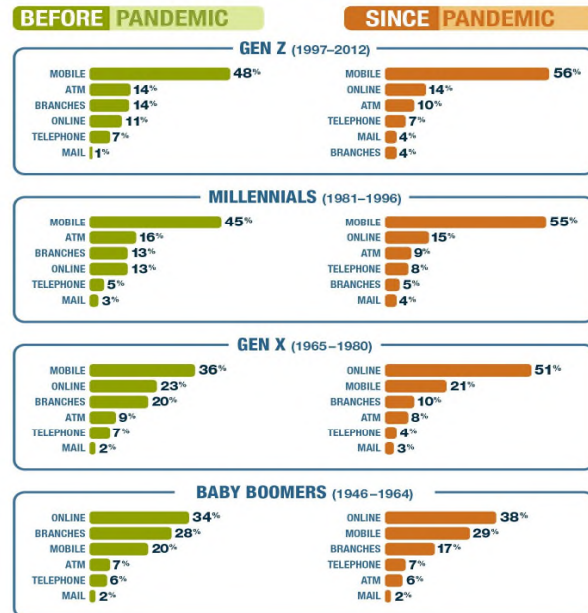
Chart created by OrboGraph: Sources: Multiple news publications, FED check volume research, additional 3rd party sources, internal resources

Shift to Digital Defenses

How Americans Bank: Before and During COVID-19



Different Generations Bank Differently



ABA Sponsored Morning Consult poll Oct 2021

Took Eye off the Basics – Check Fraud

Problem

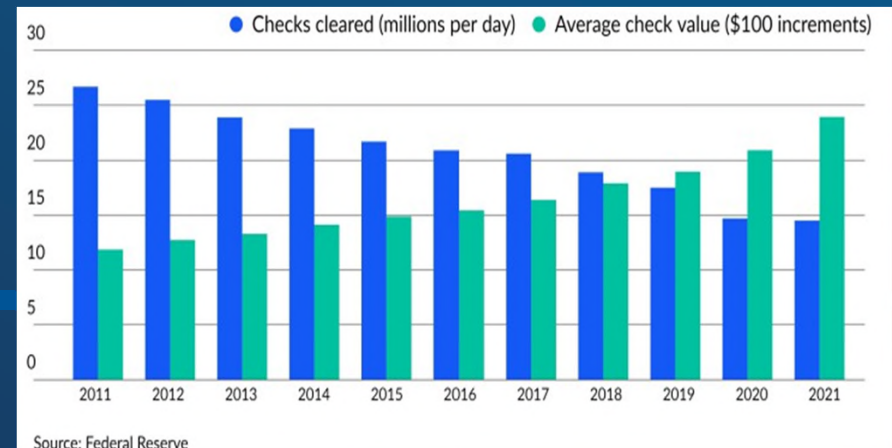
- Per Catalyst Corporate, who represents 1,400 Federal Credit Unions, Check fraud accounted for **66% of payment fraud**, followed by 39% for wire transfers in 2021

FinCEN SAR Statistics

Suspicious Activity Category	Suspicious Activity Type	2014	2020	2021
Fraud	ACH	24,904	143,269	176,911
	Check	96,786	216,963	249,802
	Credit/Debit card	75,496	132,925	140,327

Challenges

- Creating backlogs in check warranty claims
- Availability of funds (Rec CC & Check 21)
- Average check value doubled last decade



Numerous, Unique Deposit Channels Present Detection Challenges & Delays


Deposit Channels



Types / Trends

1. Stolen Checks
 - “Washed”, altered or forged
2. Counterfeit
 - Difficult to detect (All Channels)
3. Remote Deposit Capture
 - Anonymity & Easy
4. ATM Deposit
 - No Real Time Interaction
 - Less Monitoring



**UNITED STATES POSTAL
INSPECTION SERVICE**

ABOUTCAREERSTIPS & PREVENTION**NEWS**REPORT

Scam Article


Check Washing

Last updated 05/01/2019National

Have you ever sent a check that was cashed, but the recipient said it never arrived? You may be the victim of check washing. Check washing scams involve changing the payee names and often the dollar amounts on checks and fraudulently depositing them. Occasionally, these checks are stolen from mailboxes and washed in chemicals to remove the ink. Some scammers will even use copiers or scanners to print fake copies of a check. In fact, Postal Inspectors recover more than \$1 billion in counterfeit checks and money orders every year, but you can take steps to protect yourself.

Check Washing (Identity Theft)

A gang of scammers started an illegal check washing scam to bankroll their drug habit. Watch to learn more about check washing.

**Check Washing (Identity Theft)**

Watch laterShare

What's Happening on the Street

Keith BieryGolick
Cincinnati Enquirer
Published 11:02 p.m. ET Oct. 24, 2022 | Updated 5:01 a.m. ET Oct. 25, 2022



Mail theft has increased in many places across the country since 2020. TechT / iStock via Getty Images

Armed robberies of mail carriers have been reported this year in Norwood, Covington, College Hill, Madeira and elsewhere. It's part of a trend in Greater Cincinnati and across the country.

Criminals are targeting mail carriers specifically for what's called arrow keys.

Check fraud spikes: Chicago sees jump in checks stolen from mailboxes, 'washed' and cashed for thousands of dollars

Midge Laurin mailed a \$30 check that was intercepted, rewritten and cashed to someone else for \$9,475. The scheme leaves many victims struggling for months to recover their losses.

By David Strawn | Oct 12, 2022, 9:30am CDT

SHARE



Francis Laurin and his wife, Midge Laurin, were victims of a check-washing scam. | Pat Nabong/Sun-Times



VIEW INVENTORY

Professionally managed portfolio

More Stories



WLTW
star Map
Cincinnati
NEWS

Here Are
Gifts For
Best Tech

Los Angeles Times

56 arrested in alleged \$5-million stolen check scheme targeting hundreds of Californians

October 7, 2022 | 2 min read



California Atty. Gen. Rob Bonta, shown at an event in Playa del Rey in April, announced Friday that 56 people were arrested in connection with an alleged \$5-million stolen check scheme that targeted hundreds of Californians. (Gary Comstock/Los Angeles Times)

Fifty-six people have been arrested in connection with the theft of nearly \$5 million from hundreds of California residents in a widespread stolen check scheme, authorities said Friday.

The suspects began operating the scheme in 2018 and targeted more than 750 victims across several counties, including Los Angeles and San Bernardino counties, state Atty. Gen. Rob Bonta said in a release.

AP Photo, Richard

Stealing checks from U.S. Mail a \$1 million enterprise in Galveston alone

By TRACE HARRIS and JOSÉ MENDIOLA The Daily News Sep 30, 2022 | Updated Oct 3, 2022 | 15



Service box at Bob Lyons Post Office in Galveston on Wednesday. More than 100 checks were stolen from the box in January 2020.

United States Department of Justice

THE UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF NEW YORK

GALVESTON

HOME ABOUT PRIORITIES NEWS RESOURCES PROGRAMS EM

U.S. Attorneys » Southern District of New York » News » Press Releases

Department of Justice

U.S. Attorney's Office

Southern District of New York

SHARE

FOR IMMEDIATE RELEASE

Thursday, September 29, 2022

Multiple U.S. Postal Service Employees And Others Arrested For \$1.3 Million Fraud And Identity Theft Scheme

Damian Williams, United States Attorney for the Southern District of New York, Daniel B. Brubaker, Inspector-in-Charge, New York Division of the United States Postal Inspection Service ("USPIS"), and Matthew Modafferi, Special Agent-in-Charge of the Northeast Area Field Office of the United States Postal Service, Office of Inspector General ("USPS-OIG"), announced today the unsealing of an indictment charging JOHNNY DAMUS, a/k/a "Ace," RASHAAN RICHARDS, a/k/a "Jay Dee," a/k/a "JD," a/k/a "Payso," DEVON RICHARDS, a/k/a "Dev," CONRAD HERON, a/k/a "Conny Cash," LOUIS JEUNE VERLY, a/k/a "Luis Jesus Virola," KAREEM SHEPHERD, a/k/a "Reem," a/k/a "Marcus Ford," a/k/a "Frank James," FABIOLA MOMPOINT, a/k/a "Lady Fab," NATHANAELOU FOUCAULT, and JOHNATHAN PERSAUD, a/k/a "Junzie-J," in connection with their theft and unauthorized use of credit cards to defraud several national financial institutions, credit card companies, and major retailers, resulting in more than \$1.3 million in intended losses as well as the theft of hundreds of identities. As alleged, the defendants conspired to steal credit cards from the mail; use those stolen credit cards at a variety of stores, including high-end retailers; and sell some of the merchandise purchased with the stolen cards on the website LuxurySnob.com ("LuxurySnob").

BANK OF FIRST DEPOSIT V. DRAWEE BANK: WHO BEARS THE LOSS?

An Overview of Check Fraud Legal Rights and Remedies

Alteration vs. Counterfeit Checks

- Alteration (3-407) – An unauthorized change in a check that modifies the obligation of a party
- Counterfeit Check – A fraudulently created check with a forged drawer signature (1-201(41) unauthorized signature)
- A paying Bank may only pay a check that is properly payable (4-401). Neither altered checks nor forged checks are properly payable.

Altered Checks

UCC – Presentment and Transfer Warranties (UCC 4-207, 4-208)

- No alterations
- No forged or unauthorized endorsements
- Person is entitled to payment
- Depository Bank has no knowledge that the check contains a forged drawer signature
- Depository Bank liable
- 3 year statute of limitations

Counterfeit Checks

- An unauthorized check not issued by the drawer
- Contains a forged or unauthorized signature
- No presentment or transfer warranty
- Drawer Bank liable
- Must meet midnight deadline for return
- 1 year statute of limitations (may be reduced by agreement)

The Ever-Present Conflict

- Depository Bank claims counterfeit
- Drawee Bank claims alteration
- Who is correct?

A History of the Conflict

2 Cases in 2006 Reached Different Results

- *Wachovia v. Foster Bancshares, Inc.*, 457 F.3d 619 (7th Cir. July 24, 2006)
(presumption of alteration)

“So the case comes down to whether, in cases of doubt, forgery should be assumed or alteration should be assumed. If the former, Foster wins, and if the latter, Wachovia. It seems to us that the tie should go to the drawer bank, Wachovia.”

- *Chevy Chase Bank v. Wachovia*, 208 Fed. Appx. 232 (4th Cir. Dec. 6, 2006)
(presumption of counterfeit)

“Wachovia may not recover on its claim for breach of warranty unless it proves that the check it received from Chevy Chase was altered.”

Reg CC to the Rescue! (maybe not ???)

- Presumption of alteration when there is a conflict as to whether a check was altered or is counterfeit
- The presumption is applicable only to substitute checks or electronic checks where the original is not available
- The presumption is applicable to banks only
- The presumption is not applicable if contrary to federal statute or regulation
- The presumption is a rebuttable presumption

So what action is required?

Action by Drawee Bank <i>The Midnight Deadline</i>	Action by Bank of First Deposit <i>Breach of Warranty Claim</i>
Forged Drawer Signature	Altered Items
Counterfeit Item	Forged Payee Endorsement

Every financial institution will face both situations!

Be a good a good citizen!

A Recent Case Highlighting a Growing Problem

Provident Savings Bank v. Focus Bank – July 2021 (Missouri)

- Focus Bank = Drawee Bank
- Provident Bank = BOFD
- Counterfeit or Alteration?
- Midnight deadline? Or Breach of Warranty Claim?

Reg. CC Warranty Regarding Electronic Checks and Electronic Returned Checks (§ 229.34)

Each bank that transfers or presents an electronic check or electronic returned check and receives a settlement or other consideration for it warrants [to the transferee bank, any subsequent collecting bank, the paying bank, and the drawer] that -

(i) 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 and the electronic information includes an accurate record of all MICR line information required for a substitute check under § 229.2(aaa) and the amount of the check, and

(ii) No person will receive a transfer, presentment, or return of, or otherwise be charged for an electronic check or electronic returned check, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid.

Jim Hitchcock
American Bankers Association
VP, Fraud Mitigation
Email: jhitchcock@aba.com
Tel: 302-300-5025

Scott Jones
Adams and Reese LLP
Partner
Email: scott.jones@arlaw.com
Tel: 202-478-1226

