

The Onus of 'On Us' Checks by Theodore Kelly

An “on-us” check is one that is drawn on an account held at the same bank at which it is presented. That is, the bank is both the depository bank and the payor bank. In simple terms, the opposite of an on-us check is a transit check. A transit check is presented at another financial institution and subsequently sent to the payor bank through a clearing process for settlement. On-us checks carry different risks than transit checks, creating distinct responsibilities, particularly regarding wrongful dishonor and funds availability.

No federal requirement obliges banks to pay on-us checks 'over the counter'. If a non-customer physically presents an on-us check to “Bank of Snow”, there is no explicit requirement for the bank to pay that item (at least from a federal standpoint). Of course, most banks contractually agree to pay duly presented and properly payable items, so refusing an on-us check may incur legal risk from the drawer. That’s not to say the bank is prohibited from dishonoring this type of check for a valid reason, such as insufficient funds in the drawer’s account or failure of the payee to provide reasonable identification; but wrongful dishonor may occur in the absence of a valid reason. See UCC 3-501, 3-502, and UCC 4-402.

Wrongful dishonor occurs when a bank lacks a valid reason for refusing its obligation to pay an item according to its terms. And a bank may be held liable for damages proximately caused by its refusal. See UCC 4-402. Further, some states require banks to pay ‘on us’ checks without regard to whether the payee is a customer (provided the check is properly payable and the payee provides reasonable identification). That is, if the bank would otherwise cash an on-us check for a customer, some states require banks to do the same for non-customers. Further, a bank’s agreement with its customer may not disclaim responsibility for lack of good faith or to limit potential damages. Improper intervention between a customer’s promised payment to another party may evidence a lack of good faith, or worse, increased liability for proximate damages if bad faith can be proved. See UCC 4-103.

If the above isn't enough to initiate a conversation with bank counsel, my compliance colleagues may want to consider the UDAAP ramifications associated with disparate treatment. Let’s say your bank has a policy of cashing an on-us check for non-customers for \$5.00. Simultaneously, the bank requires customers to deposit on-us checks and will only make those funds available according to its Funds Availability Policy. Refusing to pay an on-us check to a customer according to the same terms as a non-customer would likely incur UDAAP risks. For instance, if a customer’s account is overdrawn, but they merely want to cash the on-us check to prevent an offset of those funds, is it “fair” to not provide the same service to customers as the bank does to non-customers? Probably not. A customer could easily endorse the check to a third-party non-customer or deposit it at another financial institution to avoid the bank’s offset of funds. I certainly don’t want to be the person trying to explain the “countervailing benefits to consumers or competition” that somehow outweigh the injurious effects of this type of policy.

Of course, these analyses are dependent on your bank's specific policies, agreements, and the relevant federal and state authorities – it's uncertain whether the practices described above *will* result in administrative or civil liability. Determination of whether a violation even exists is left to the factfinder (i.e., auditor/examiner or judge/jury). That said, banks should consider implementing policy changes and other controls to bring any identified risks within the limits of their risk appetite (along with safety & soundness considerations). We always recommend consulting with bank counsel for guidance relating to legal risks.

So, we've discussed cashing on-us checks. Well, what if a customer deposits an on-us check? There is a question of the appropriate 'funds availability' timeline for a deposit versus cashing an on-us check. Regulation CC generally requires a bank to make funds available to their customers as soon as the material risks associated with the type and amount of the check subside. The timelines act as a balance of safety & soundness and consumer protection risks. When a customer deposits an on-us check, the risk is relatively low because the bank can almost immediately determine that the check is authentic and that funds are available in the drawer's account. When a customer deposits a transit check, the risk is much greater because the check could be altered, fraudulent, stolen, there may be insufficient funds, the clearinghouse or payor bank may have a system issue that delays settlement, etc. Because the risk is much lower, funds from on-us checks must generally be made available no later than the next business day following the banking day of deposit. See [Comment 4 – 229.10\(c\)](#). A final word on funds availability – remember that banks are not permitted to invoke the 'holds on other funds' rule when cashing on-us checks for customers. See [Comment 3 - 229.19\(e\)](#).

The handling of on-us checks presents unique challenges for banks, particularly regarding wrongful dishonor and funds availability. While federal regulations may not explicitly mandate the payment of on-us checks to non-customers, banks often have contractual obligations to do so. Additionally, state laws and UDAAP considerations may necessitate equitable treatment of customers and non-customers in on-us check cashing policies. Banks should carefully navigate these complexities by establishing clear procedures for on-us check handling and consulting bank counsel and your friendly neighborhood compliance advisors for guidance.