September 11, 2026

William Henning, Chair
Joint Study Committee on UCC Articles 3, 4, and 4A (Payment Fraud)
American Law Institute and Uniform Law Commission
Via e-mail

Re: Allocation of check and wire fraud losses under Articles 3, 4, and 4A of the Uniform Commercial Code

Dear Professor Henning:

The Independent Community Bankers of America ("ICBA")[1] appreciates the opportunity to submit recommendations on the allocation of check and wire fraud losses under the Uniform Commercial Code ("Code"). ICBA represents community banks across the country, and payment fraud has become an intense and continuing source of frustration for them. What follows reflects what community banks have reported and documented.

The scale of the problem, particularly related to check fraud, is a matter of public record. FinCEN reported that suspicious activity reports for check fraud roughly doubled, from over 350,000 in 2021 to more than 680,000 in 2022, and its September 2024 analysis identified more than $688 million in reported suspicious activity involving check fraud linked to mail theft in a single six-month period. Of the reports it analyzed, 44 percent involved altered checks and 26 percent involved checks used as templates for counterfeits.

Recommendations

1. **Counterfeit item definition and warranty.** ICBA recommends that Article 3 define a counterfeit item: an item that purports to be, but is not, drawn or issued by the person shown on it as drawer or issuer. Section 3-407 defines alteration, while the Code carries no companion definition of the counterfeit. The distinction between alteration and counterfeit can determine who bears the loss.

   Sections 3-417 and 4-208 should give a drawee bank that pays a counterfeit item a warranty claim against the depositary bank. The committee should consider an ordinary care defense based on account opening, acceptance of the deposit, and operation of the account. The bank of first deposit is often better positioned to identify and prevent a fraudulent item at the point it enters the collection system, since it opened the account, controls the hold, and monitors the activity.

[1] The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at icba.org.

A statutory safe harbor should describe the practices careful banks already run: documented customer identification, deposit review suited to the channel, and manual review above a reasonable, risk based threshold the bank documents in writing. It should also cover exception holds for new and unseasoned accounts and for suspicious items, and monitoring against the expected profile of the account. Community banks follow these practices every day, and as depositary banks they would answer under this warranty themselves.

The new claim should operate between the banks involved in the collection and payment of the item, without changing customers' existing rights. The committee should consider appropriate limitations, notice requirements, and defenses consistent with the Code's existing warranty framework. Private clearinghouse rules already provide a similar warranty, but only between banks that have agreed to them.

The committee will recognize that this revisits *Price v. Neal*. ICBA does not propose to unsettle finality. The Code already accommodates targeted warranty remedies, and the premise that a drawee examines its drawer's signature does not reflect today's technology and automated processing.

2. **Uniform standards of conduct for interbank warranty claims.** ICBA asks for new Article 4 language governing the warranty claims process. A claim should receive a timely acknowledgment and substantive response. The committee should consider defined timeframes, such as acknowledgment within 15 business days and a substantive response within 30 business days.

   No bank should be permitted to defeat an otherwise valid claim through requirements (e.g., forms, officer signatures, hold harmless agreements, or releases) or delays unrelated to the merits. Each side should owe the other reasonable cooperation in good faith, including assistance in tracing and recovering identifiable proceeds. The committee should also consider appropriate consequences for claims that are ignored or wrongfully denied, which could include a rebuttable presumption, interest, or reasonable collection costs.

   Community banks report claims denied for want of a particular officer's signature, and determinations that take months—sometimes more than a year—with silence in between. The section should be drafted so agreement cannot vary it, just as the Code already forbids disclaiming the check warranties themselves. ICBA urged an interbank claims process of this kind in congressional testimony in March.[2]

3. **Ordinary care for image and mobile deposit channels.** The Code should provide, in section 3-103 or its comments and in the comments to section 4-202, that ordinary care for a check taken through an image or mobile channel includes matching the payee name to the deposit account and reviewing whether the item bears an appropriate indorsement. Review of large or unusual items belongs in the same standard. The standard should apply whether the item proves altered or

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[2] ICBA, Testimony of Gay G. Dempsey on Behalf of the Independent Community Bankers of America Before the U.S. House of Representatives Committee on Financial Services Subcommittee on Financial Institutions, https://www.icba.org/w/icba-testimony-for-hfsc-hearing-on-fraud.

counterfeit. Federal availability requirements, account agreements, and bank policies should work together to preserve reasonable opportunities for fraud review in these channels.

Community banks often cap mobile deposits and manually review large items. Community banks report items of $50,000 and even $100,000 moving through other institutions' mobile channels in circumstances where the applicable restrictions or review controls were not apparent to the reporting bank.

4. **Warranty parity for official checks.** The alteration warranty of sections 3-417 and 4-208 should extend to a bank paying its own official check, which today receives only a warranty that the presenter is entitled to enforce the item. The counterfeit warranty in Recommendation 1 should be drafted to reach items that merely purport to be a bank's official checks, so that characterization no longer decides the claim.

   Community banks that issue official checks through a processor see only the check number, date, and amount—never the payee—so the issuing bank cannot catch the alteration and has no claim against the bank that could have.

5. **Beneficiary name mismatches under section 4A-207.** Section 4A-207 governs misdescription of a beneficiary, where the name and the account number on a payment order do not match. The section lets the beneficiary's bank rely on the number alone and credit the funds to that account, and the bank is responsible only if it actually knew of the mismatch.

   Community banks report wires credited to the wrong account and beneficiary banks that deny responsibility once the transfer is complete, on the assumption that releasing the funds ends their liability. Screening software now flags these mismatches, but a flag no employee reviews may not establish the knowledge required by the existing rule. The rule may therefore provide insufficient incentive to review reliable alerts.

   ICBA recommends that the Code address the effect of mismatch information generated by a beneficiary bank's own systems. A bank's failure to review reliable alerts generated by its own systems should be relevant in determining whether it had notice of, or acted reasonably in response to, a mismatch. At the same time, a bank that maintains and reasonably follows appropriate review procedures should retain the protection of section 4A-207 when those procedures do not identify a mismatch.

6. **Account takeover and recovery under Article 4A.** ICBA proposes two measures for schemes in which criminals access a customer's own device and route the proceeds to accounts opened for that purpose. These measures should apply to funds transfers governed by Article 4A.

   First, refresh the official comments on commercially reasonable security procedures to speak to multifactor authentication, out of band verification of changed payment instructions, and review of anomalous orders. The framework of sections 4A-202 and 4A-203 is sound and should remain.

   Second, the Code should establish reasonable responsibilities for a beneficiary's bank when it receives credible notice that fraudulent proceeds may remain in an account, including cooperation in tracing and recovery. The committee should determine the appropriate conditions, protections, and limits.

7. **Safe harbor for protective action taken in good faith.** A bank that pauses an item or payment order in good faith to investigate suspected fraud, keeps an appropriate record, and promptly notifies its customer should receive reasonable protection from liability. That protection should be limited in duration and coordinated with applicable federal hold and availability requirements.

   For funds transfers governed by Article 4A, the Code should address potential liability arising from a reasonable investigative delay. For checks and other items, it should address the corresponding risk of claims for wrongful dishonor.

   Community banks report circumstances in which uncertainty about potential liability may discourage a reasonable investigative delay. Statutory clarification is appropriate because existing liability rules may discourage reasonable protective action. H.R. 9331, the Strengthening Transaction Oversight and Preventing Payments Fraud Act of 2026 ("STOP Payments Fraud Act"), would relieve a bank of its federal availability obligation without touching its Code liability, leaving potential liability under the Code, which is the gap this recommendation addresses.

8. **Coordination with federal law.** Revisions to the Code should be coordinated with applicable federal banking law, including federal funds availability and hold requirements and requirements governing check returns. The committee's report should recognize that need, taking notice of the banking agencies' request for information on payments fraud and of H.R. 9331.

Related measures that depend on federal or other state law

Several related measures would require coordination with federal law or with state law outside the Code. ICBA flags them so the record reflects how the recommendations fit into the larger effort.

1. **The midnight return deadline.** Fraud often surfaces only when the customer's statement arrives, as much as thirty days after presentment. The deadline itself is an Article 4 rule and is therefore within the committee's reach.

   The practical constraint is a different one: federal return and availability requirements operate alongside that deadline, so lengthening it in the Code alone could put the state and federal frameworks out of step. Any change would need to be coordinated with the Federal Reserve. ICBA raises the point because it bears on the committee's work, and Recommendations 1 and 2 address the underlying concern by other means.

2. **Availability of official checks.** Counterfeiters often label fakes as cashier's checks to take advantage of the expedited availability associated with qualifying official checks. This can force a bank to release funds before fraud is discovered. As introduced, H.R. 9331 would have allowed these checks to move to the second business day.

The version approved by the House Financial Services Committee on June 30, 2026, by a 51–0 vote and reported on September 1 takes a different approach: it would direct the Federal Reserve Board, jointly with the Director of the Consumer Financial Protection Bureau, to determine class by class whether parity of availability should apply to a given class of checks during times of material fraud losses. The bill would separately add a fraud exception to the availability requirements.

3. **Federal Reserve operational tools.** ICBA's comment on the interagency payments fraud RFI asked for a check image verification service, a confirmation of payee service, and a fraud contact directory, and its testimony urged that Federal Reserve check services that help detect fraud not be discontinued.[3]

   Community banks also ask whether the Reserve Banks' existing adjustments process under Operating Circular 3 could carry warranty claims for counterfeit and altered items, which today travel by letter between banks and stall without a common channel to move through. Recommendation 2 sets the standard of conduct for those claims regardless of transmission mechanism.

4. **Protective outreach beyond the account.** Reaching a trusted individual who is not a signer on the account is the province of state financial exploitation statutes, which a number of states have adopted. Recommendation 7 provides protection for the bank that pauses in good faith to investigate.

Taken together, these recommendations principally allocate losses and establish standards of conduct between banks. They would substantially improve community banks' ability to mitigate payments fraud.

ICBA thanks the committee for its attention to these recommendations and welcomes the chance to discuss any of them, and to supply drafting detail or further community bank experience, as the work proceeds. Please feel free to reach out to me at scott.anchin@icba.org at any time.

Respectfully submitted,

/s/

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[3] ICBA, ICBA Letter Responding to Banking Agencies' RFI on Payments Fraud, https://www.icba.org/w/icba-letter-responding-to-banking-agencies-rfi-on-payments-fraud.