IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

NOTICE OF FILING OF THE SIXTEENTH QUARTERLY REPORT FOR THE DEPARTMENT OF THE TREASURY

The Department of the Treasury has prepared its *Sixteenth Quarterly Report on Actions Taken By the Department of the Treasury to Retain IIM-Related Documents Necessary For an Accounting* and submits it to the Court in accordance with this Court's Order of December 21, 1999.

A copy of the report is attached hereto.

Dated: December 1, 2003

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Associate Attorney General
PETER D. KEISLER
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

/s/ John T. Stemplewicz
SANDRA P. SPOONER
D.C. Bar No. 261495
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Counsel
GLENN D. GILLETT
Trial Attorney
Commercial Litigation Branch
Civil Division

P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7162 (phone)
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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2003 the foregoing *Notice of Filing of the Sixteenth Quarterly Report for the Department of the Treasury* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

/s/ Sean P. Schmergel
Sean P. Schmergel

DEPARTMENT OF THE TREASURY
BUREAU OF THE PUBLIC DEBT
WASHINGTON, DC 20239-0001

December 1, 2003

MEMORANDUM FOR: ROBERT D. McCALLUM, JR.
ASSOCIATE ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION

FROM: BRIAN L. FERRELL
CHIEF COUNSEL
BUREAU OF THE PUBLIC DEBT
DEPARTMENT OF THE TREASURY

SUBJECT: SIXTEENTH QUARTERLY REPORT
COBELL, ET AL. v. NORTON, ET AL.

Included with this cover memorandum is the "Sixteenth Quarterly Report on Actions Taken by the Department of the Treasury to Retain IIM-Related Documents Necessary for an Accounting" (the "Report"). The Report has been prepared by the Department of the Treasury pursuant to the Court Order and Opinion in *Cobell, et al. v. Babbitt, et al.* (D.D.C. CV No. 96-1285), filed December 21, 1999.

The Report includes information concerning the Financial Management Service, ("FMS"), Bureau of the Public Debt ("BPD") and certain Departmental Offices ("DO"). The Report was prepared based on information provided by a number of program offices from the above-described organizations. The preparation of the Report included circulation of drafts of the Report to program offices that are responsible for the actions described in the Report. Comments were received from those offices and incorporated in the Report.

Prior to submitting the Report to the Department of Justice, senior officials of FMS, BPD and DO reviewed a final draft of the Report.

The Department of the Treasury stands ready, in accordance with the Court's order, to respond to any questions or concerns the Court may have after reviewing the Report and attachments thereto.

SIXTEENTH QUARTERLY REPORT ON ACTIONS TAKEN BY THE DEPARTMENT OF THE TREASURY TO RETAIN IIM-RELATED DOCUMENTS NECESSARY FOR AN ACCOUNTING

Cobell, et al. v. Norton, et al.
D.D.C. CV No. 96-1285
December 1, 2003

This is the Department of the Treasury's ("Treasury") Sixteenth Quarterly Report, filed pursuant to the Court's December 21, 1999 Order ("Order") in the above-captioned case. It covers activities occurring over a three-month period from September 1, 2003 to December 1, 2003. The Order requires Treasury to report on the steps it has taken since the last quarterly report to rectify a single breach of its trust responsibilities, namely the destruction of IIM trust materials after their age exceeded six years and seven months. Cobell, et al. v. Babbitt, et al., 91 F. Supp. 2d 1, 50, 59 (D.D.C. 1999).

Treasury continues to preserve IIM-related documentation pursuant to the Court's August 12, 1999 Order, which defines the trust records that Treasury must retain. Treasury also continues to supply payment information to support Interior's ongoing historical accounting projects. During the past quarter, Treasury also assisted Interior's efforts to comply with requirements of the Court's September 25, 2003 Structural Injunction pertaining to indexing of records.

As previously reported in Treasury's Fourteenth Quarterly Report filed June 2, 2003, in April 2003, Treasury, through Justice, informed the Special Master of the status of pending legislation known as the Check Truncation Act ("the Act" or "Check 21") and the impact it would have on Treasury's handling of Cobell-related checks, if enacted. The Act passed the House on October 8, 2003 and the Senate on October 15, 2003, and was signed into law by the President on October 28, 2003. Justice informed the Special Master of the passage of the new law in a letter issued on November 18, 2003. (See Attachment A.)

The Departmental Offices (DO) IT Email Archive Project Team reported in October 2003 that it had successfully completed archiving all active DO email accounts. The project has achieved its original goals by implementing an email archive solution that has stabilized and improved email system performance, meets record retention requirements arising from the Cobell litigation, and resumes maintenance processes on DO's email record database. As a next step, Departmental Offices IT will execute both the ESEUTIL and ISINTEG Microsoft Exchange utilities on a copy of DO's Exchange database in order to identify database and logic errors. We anticipate that this process will take several months. Reports from those utility programs are expected to indicate the extent of errors or corruption, if any, contained in DO's Exchange database prior to beginning the archive process.

The Federal Reserve Bank of San Francisco reported on August 29, 2003 that it had located one box of records that previously was reported missing on May 16, 2001. (See Attachment B.)

INDEX TO ATTACHMENTS
The Department of the Treasury's Sixteenth Quarterly Report
December 1, 2003

Attachment A	November 18, 2003 letter from Glenn D. Gillett, U.S. Department of Justice, to Alan L. Balaran, Special Master, concerning passage of the Check Truncation Act or "Check 21"
Attachment B	August 29, 2003 letter from the Director of the Federal Reserve Bank of San Francisco to the Commissioners of FMS and BPD, reporting finding one box of records previously reported missing

Attachment A

U.S. Department of Justice
Civil Division

Regular Mail:
P.O. Box 875
Ben Franklin Station
Washington, DC 20044-0875

Express Delivery:
1100 L Street, N.W.
Room 10018
Washington, DC 20005

Glenn D. Gillett
Trial Attorney

Tel.: (202) 514-7162
Facsimile: (202) 307-0494
E-mail:glenn.gillett@usdoj.gov

VIA FACSIMILE

Alan L. Balaran, Special Master
1717 Pennsylvania Avenue, N.W., 13th Floor
Washington, D.C. 20006

RE: Cobell, et al. v. Norton, et al. Civil Action No. 96-1285

Dear Mr. Balaran:

I am writing as a follow-up to the April 7, 2003 letter (see Tab 1) which advised you about pending legislation referred to as the Check Truncation Act or "Check 21." That legislation, as previously described, permits banks of first deposition to capture the digital image of checks (including Treasury checks), present the data electronically for collection and then destroy the original checks.

Check 21 has now been passed by Congress, was signed into law on October 28, 2003 and will become effective October 28, 2004. Throughout the bill's consideration, the Department of the Treasury sought to inform House and Senate staff members about the *Cobell* litigation, Treasury's related document retention obligation and the legislation's possible impact on those obligations. The Senate report on "Check 21" reflects the fact that these concerns were brought to their attention (see Tab 2, page 5, "Section 14. Regulations").

I want to reiterate Treasury's plan in light of the legislation's enactment. As stated in the April 7, 2003 letter, Treasury plans on obtaining the digital image of Cobell-related Treasury checks and include the data from those checks in the ODES and OATS systems.

Sincerely,

Glenn D. Gillett
Trial Attorney
Commercial Litigation Branch
Civil Division

cc Keith Harper
Dennis Gingold

United States Department of Justice
Civil Division
Commercial Litigation Branch

BRIAN L. FERRELL
SPECIAL ATTORNEY

P.O. BOX 875, BEN FRANKLIN STATION
WASHINGTON, D.C. 20044-0875

TEL: (202) 691-3715
FAX: (202) 208-1566

April 7, 2003

VIA FACSIMILE

Alan L. Balaran, Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006

RE: Cobell et al. v. Norton et al. Civil Action No. 96-1285

Dear Mr. Balaran:

Pleased be advised that there is legislation being considered by Congress that would change the way checks are processed in the United States. This act, referred to as the Check Truncation Act, is being proposed to address the virtual standstill in check movement in the days following September 11, 2001. The act would encourage the use of information technology to make check processing and collection more efficient by enabling banks of first deposit to capture the digital image of checks, present the data electronically for collection and to destroy the checks. There is more detailed information about this proposed legislation on www.federalreserve.gov/boarddocs/testimony/2003. There you will find Congressional testimony from April 3, 2003, of Roger W. Ferguson, Jr., Vice Chairman of the Federal Reserve Board.

This legislation, if enacted, would impact Treasury's handling of *Cobell*-related checks because Treasury checks, like all other checks, would be subject to this legislation. Treasury officials have met with Congressional staffers on both the House and Senate sides to discuss the affect this legislation would have on Treasury's responsibilities under the *Cobell* litigation.

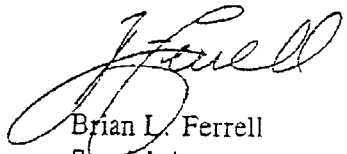
If the Check Truncation Act passes and Treasury checks are no longer being forwarded to Federal Reserve Banks, Treasury would plan to obtain the digital image of *Cobell*-related checks and include the data from those checks in the ODES and OATS systems.

I will keep you informed on the status of this proposed legislation.

TAB 1

Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Brian L. Ferrell
Special Attorney

cc: Dennis Gingold, Esq.(via facsimile)

19-010

Calendar No. 168

108TH CONGRESS

Report

SENATE

1st Session

108-79
CHECK TRUNCATION ACT OF 2003

June 25, 2003- Ordered to be printed
Mr. SHELBY, from the Committee on Banking, Housing, and Urban Affairs, submitted the following
REPORT
[To accompany S. 1334]
[Including cost estimate of the Congressional Budget Office]

The Committee on Banking, Housing, and Urban Affairs, reported an original bill (S. 1334) to facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

INTRODUCTION

On June 18, 2002, the Senate Committee on Banking, Housing, and Urban Affairs considered original legislation entitled `The Check Truncation Act of 2003', a bill to facilitate the use of check truncation and the electronic collection and return of checks. The Committee voted unanimously to report the bill, as amended by a managers' amendment that was adopted by voice vote, to the Senate for consideration.

TAB 2

PURPOSE OF THE LEGISLATION

Under current law, banks must physically present and return original checks to receive payment unless the bank has an agreement with another bank to do so by electronic means. The electronic process for transmitting information allows banks which have these voluntary agreements to stop, or truncate, the flow of paper checks. Some banks have such agreements and have been able to take advantage of electronic processing using advanced imaging technology. However, since there are over fifteen thousand banks, thrifts, and credit unions, it is extremely difficult to obtain electronic agreements on a large scale, which has hampered the industry's ability to achieve substantial further improvements in the check collection and return process. As a result, billions of checks continue to be either trucked or flown across the country to complete the clearing process. Given the availability of inexpensive electronic transmissions media, this enormous dependence on ground and air transportation systems makes very

little sense. The terrorist attacks on September 11, 2001, underscored the importance of increasing flexibility in the payment system. Truncation could be used to make the process less expensive over the long term. While the bank must make an initial technology investment, the bank saves money on processing and transportation of paper checks.

This bill is designed to facilitate check truncation without requiring banks to fully convert to an electronic process on either end of the clearing process. The primary change in current law is that banks could use electronics to streamline the check collection and return process even in cases in which they do not have electronic exchange agreements. For those banks which do not choose to use an electronic system, a new instrument or 'substitute check' would be created from the electronic check image for delivery to that bank. The substitute check would be the legal equivalent of the original check and could be processed by receiving banks just as original paper checks are today. The substitute check, would be machine readable and would bear a magnetic-ink character (MICR) line. It would also include an image of the front and the back of the original check. The bill also imposes warranty and indemnity obligations, which are intended to compensate consumers, banks, and other processors for losses caused by the creation of the substitute check. Finally, the proposal also provides an expedited recredit provision for consumer accounts in cases where consumers make claims against their banks for improper charges to their accounts for substitute checks that are provided to the consumers.

The bill would apply existing check law, including the Uniform Commercial Code (UCC) and the Federal Reserve Board's Regulation CC, to substitute checks which would be legally equivalent to the original checks.

The Federal Reserve Board believes that the proposed legislation may result in substantial payments system benefits. Banks could use substitute checks to collect and return checks more quickly and to reduce the banking industry's reliance on the physical transportation of checks. Banks might also be able to reduce their infrastructure costs because their branch and ATM networks would no longer need to be tied geographically to their processing centers. Banks' customers may also benefit from these infrastructure changes if they enable banks to offer broader deposit options, later cutoff hours, more timely information, and faster check collection and return.

Credit unions have been using a truncation process since the mid-1970s. Of the checks written, credit unions process roughly 10 percent. Of the credit unions that offer checking (share draft) accounts, 91 percent truncate checks, according to the Credit Union National Association (CUNA). For credit unions, generally the check proceeds through the clearing process to the point where it is truncated or held by either the credit union or its corporate credit union or other processor. At that point, the information on the draft is stored electronically and printed on the member's monthly statement. In some cases, electronic images of the draft are returned with the statement, but that is not required.

HEARINGS

The Banking Committee's action followed a hearing on the check truncation proposal. On April 3, 2003, the Committee heard testimony regarding the Federal Reserve Board proposal on Check Truncation. The witnesses testifying were Vice Chairman Roger Ferguson, Board of Governors of the Federal Reserve System; Ms. Lindsay Alexander, President and Chief Executive Officer of the NIH Federal Credit Union, representing the Credit Union National Association; Ms. Janell Mayo Duncan, Legislative and Regulatory Counsel from Consumers Union; and Mr. Danne Buchanan, Executive Vice President from Zions Bancorporation, representing the American Bankers Association, the Financial Services Roundtable, America's Community Bankers, Independent Community Bankers of America and the

Consumer Bankers Association.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

The proposed Act is known as the Check Truncation Act of 2003.

Section 2. Findings and purposes

The purposes of this Act are to facilitate check truncation by authorizing substitute checks; to foster innovation in the check collection system without mandating receipt of checks in electronic form; and to improve the overall efficiency of the Nation's payments system.

Section 3. Definitions

This section defines the terms used in the Act including `indemnifying bank', `MICR line', `reconverting bank', `truncate' and `substitute check'.

Section 4. General provisions governing substitute checks

This section permits a person to send a substitute check without the agreement of the recipient and provides legal authority for fully negotiable substitute checks to the extent that a bank makes the substitute check warranties pursuant to the requirement as of Section 5. A substitute check that complies with the requirements of this section is the legal equivalent of the original check. Substitute checks will be subject to the Uniform Commercial Code, Reg. CC and other applicable Federal or State law.

Section 5. Substitute check warranties

The section creates warranties pertaining to substitute checks. A bank that transfers, presents or returns a substitute check and receives payment, warrants that: the check complies with the requirements for legal equivalence under Section 4 of the Act, and; the person that makes payment based on receipt of the substitute check will not receive another version of that check for payment.

Section 6. Indemnity

This section provides indemnities for banks or consumers who receive substitute checks. Any bank that creates a substitute check, and any bank that receives payment for transfer of either an electronic or paper version of that check indemnifies all subsequent persons who receive the substitute check and incur a loss due to the receipt of the substitute check instead of an original check. Damages are limited to the amount of the check (along with interest and attorney fees) unless the indemnifying bank breaches a warranty imposed under Section 5, at which point the claimant is entitled to receive the amount of the loss proximately caused by the breach. Comparative negligence can be counter-claimed to limit damages.

This Act provides a comparative negligence standard for a person making an indemnity claim under this section or seeking damages under section 9. If the person's losses resulted in whole or in part from that person's own negligence or failure to act in good faith, then the damages due to that person are reduced in proportion to the amount of negligence or bad faith attributable to that person.

These comparative negligence provisions are not intended to reduce the rights of a consumer or any other person under the UCC. Rather, these provisions are intended to clarify that the same principles that are currently incorporated in existing law, such as Regulation CC, the UCC, and common law, will continue to apply under the Act. The Congress anticipates that, in the absence of fraud, the comparative negligence provisions generally will not be applicable to consumer check users.

Section 7. Expedited recredit for consumers

This section provides that a consumer may make a claim for a recredit if he or she asserts that the bank charged the consumer's account improperly or the consumer has a warranty claim with respect to the substitute check that was provided to the consumer. The consumer must show that he or she suffered a loss and that the production of the original or a better copy of the original is necessary to determine the validity of the claim.

The consumer is required to make a claim for expedited recredit within 40 days after the financial institution transmits the periodic statement or receipt of the substitute check, whichever is later. Under extenuating circumstances, including extended travel or illness of the consumer, the financial institution shall extend the period for a reasonable amount of time.

A bank must recredit a consumer's account within one day of determining that the consumer's claim is valid. If the bank has not determined the validity of the claim within 10 business days, the bank must recredit the lesser of the amount charged, or $2,500 plus accrued interest, and any remaining amount must be recredited within 45 calendar days.

A bank may delay the availability of the recredit on claims made on new accounts, on accounts that have repeated overdrafts, when a bank has a reasonable cause to believe that the claim is fraudulent, or in emergency situations. A bank that delays the availability of or reverses a recredit must notify the customer promptly. Notices of invalid claims, recredit and reversal of recredit must be made to consumers no later than the day following the day on which the bank makes these determinations.

Section 8. Expedited recredit procedures for banks

Section 8 authorizes a bank to make a claim against an indemnifying bank for an expedited recredit if the claimant bank's customer has made a claim for recredit; the claimant bank has suffered a loss; and production of the original check or a better copy of the original check is necessary to determine the validity of the charge. The claim must be made within 120 days of the transaction and the indemnifying bank has 10 business days to produce the original check or a better copy of the original check. The indemnifying bank must also recredit the amount to the claimant bank, or provide information as to why the indemnifying bank does not have to provide a recredit. A recredit does not abrogate other liabilities the indemnifying bank may incur.

Section 9. Delays in an emergency

This section permits banks to delay the time limits prescribed in the Act, if the payment system or telecommunications networks are interrupted by an emergency beyond the control of the bank, if the bank uses such diligence as circumstances require.

Section 10. Measure of damages

This section sets out that, except as provided in Section 6, damages are limited to the lesser of the amount of the check, or amount of loss suffered due to violation of the Act, plus interest and expenses. Comparative negligence applies, and this subsection does not affect the rights of the consumer under the UCC or other applicable Federal or State law.

Section 11. Statute of limitations and notice of claim

This section requires that an action must be brought within one year of when the claimant learned, or should have learned, of the facts and circumstances giving rise to the action. Notice of claim must be given to the bank within 30 days of when a person has reason to know of the claim. A recredit claim under Section 7 constitutes notice for the purposes of this Section.

Section 12. Consumer awareness

The section requires that banks must provide customers that receive original checks or substitute checks with a brief informative notice for the first three years that the Act is in effect. This notice will make customers aware of the legal status of substitute checks and the framework for the recredit process. By three months prior to the effective date of this Act, the Fed will make available model forms of such notice that banks may use.

Section 13. Effect on other law

This section preempts any provision of Federal or State law only to the extent of the inconsistency.

Section 14. Regulations

This section authorizes the Federal Reserve Board to promulgate final regulations necessary for implementation of this Act. Although the CTA gives the Board authority to adopt implementing regulations, the Committee recognizes that the Secretary of the Treasury has broad and long-standing authority to establish and administer the rules that govern payments disbursed by Treasury, including Treasury checks. The CTA does not affect the Secretary's authority to regulate Treasury checks, to the extent those regulations are not inconsistent with this Act. The Treasury cannot adopt regulations, for example, that would condition the payment of a substitute Treasury check on the subsequent delivery of the original check.

The Committee acknowledges the Department of Treasury's concern about the legislation's impact on its ability to continue complying with its ongoing responsibilities and court orders in the Cobell et al v. Norton et al case. Treasury is currently operating under a Court order that it retain, among other documents, original Treasury checks for the duration of the litigation unless, and until, relieved of that obligation by the Court. Noting that no judicial relief has yet been granted, Treasury views as problematic the Act's provisions permitting banks, at their discretion, to retain only digital images of checks while destroying original paper checks.

Section 15. Study and report on funds availability

No later than 30 months following the effective date of this Act, the Federal Reserve will provide the Congress with an evaluation of the implementation and impact of this Act. The study will address issues that the Federal Reserve monitors as part of its regulatory responsibilities under the Expedited Funds

Availability Act.

Section 16. Evaluation and report by the Comptroller General

The Comptroller General will also report on the implementation and administration of this Act, no later than five years after enactment.

Section 17. Variation by agreement

This section provides that only provisions of section 8 may be varied by the banks involved. That is, banks could contractually vary the interbank recredit provisions and only those provisions.

Section 18. Effective date

This Act shall become effective one year after the date of enactment.

CHANGES IN EXISTING LAW

On June 18, 2003, the Committee unanimously approved a motion by Senator Shelby to waive the Cordon rule. Thus, in the opinion of the Committee, it is necessary to dispense with the requirement of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b), rule XXVI, of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact of the bill.

The Act establishes a framework which would enable banks to achieve many of the benefits of electronic check processing without mandating that any bank receive checks in electronic form. Banks would be able to truncate, or stop, the flow of checks, process them electronically, and create machine-readable substitute checks, if necessary, that would be the legal equivalent of the original checks. Substitute checks could be processed by receiving banks just as original paper checks are today, thereby not significantly affecting the operations of banks that do not wish to participate in the electronic collection or return of checks. By permitting choice of processing method, the Act represents regulatory reform and should result in reduced costs to the financial services industry and consumers over the long term.

Congress intends this Act to leave a bank and its customer in substantially the same legal and practical position regardless of whether or not a substitute check is used. The Act's warranty, indemnity, and expedited recredit provisions, which provide rights to recipients of substitute checks in the event that they incur a loss due to the receipt of a substitute check instead of the original check, accomplish this purpose.

The Act will improve the efficiency of the payments system by enabling banks to expand the use of electronics in the collection and return of checks, reducing the industry's reliance on transportation to move checks across the nation. Had the provisions of this proposed Act been in effect when air traffic came to a standstill due to the terrorist attacks on September 11, 2001, banks would have been able to reduce the impact of the disruption in air transportation on the check collection system. Because the Act

seeks to provide choice of clearing mechanism and update the clearing process, the Committee believes that this legislation will have a favorable regulatory impact.

COST OF LEGISLATION

Section 11(b) of rule XXVI of the Standing Rules of the Senate, and Section 403 of the Congressional Budget Impoundment and Control Act, require that each committee report on a bill contain a statement estimating the cost of the proposed legislation. The Congressional Budget Office has provided the following cost estimate and estimate of costs of private-sector mandates.

U.S. Congress,

Congressional Budget Office,

Washington, DC, June 24, 2003.

Hon. RICHARD C. SHELBY,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Check Truncation Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Booth (for revenues), Matthew Pickford (for spending), and Victoria Heid Hall and Greg Waring (for the state and local government impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN, DIRECTOR.

Enclosure.

Check Truncation Act of 2003

The Check Truncation Act of 2003 would alter the process of clearing checks. It would allow a depository institution that has a check presented to it to choose on its own to provide to the paying depository institution a paper copy of the check, called a 'substitute check,' rather than the original check itself. The substitute check would be the legal equivalent of the original check. Under current law, the depository institution presented with the check must transmit the original check to the paying institution for settlement, unless the two institutions have entered into an agreement for transmission of a paper copy of the check or the electronic information from the check. In addition, the bill would require the Board of Governors of the Federal Reserve System and the General Accounting Office (GAO) to conduct studies on aspects of the check-clearing process and the implementation of this legislation.

CBO estimates that enacting the bill would have a negligible effect on federal revenues through its effects on the Federal Reserve's income and expenses from its check-processing operations and its expenses in producing the mandated study. The Federal Reserve remits its net income to the Treasury, and those payments are classified as governmental receipts, or revenues, in the federal budget. Any

additional income or costs to the Federal Reserve, therefore, can affect the federal budget. By reducing the transportation costs associated with clearing checks, the bill would reduce the costs that the Federal Reserve incurs in providing check-processing services to depository institutions. It would change the Federal Reserve's costs of processing checks in other ways, as well. However, the Federal Reserve is required by law to charge the depository institutions for its check-processing services. Based on information provided by the Board of Governors of the Federal Reserve System, CBO estimates that any reductions to the Federal Reserve's costs of check clearing as a result of the bill would result in a nearly equal reduction in its income. Furthermore, CBO estimates that any additional expenses incurred by the Federal Reserve in order to produce the mandated report would be negligible. As a result, CBO estimates that the bill would have a negligible effect on the Federal Reserve's net income and, hence, on federal revenues.

In addition to mandating that the Federal Reserve produce a study, the legislation would require GAO to report on the implementation of this bill, including gains in economic efficiency and benefits to consumers and financial institutions made possible from check truncation. Based on information from GAO, CBO expects that new reporting requirements would cost less than $500,000, assuming the availability of appropriated funds.

The bill provides that a substitute check would be the legal equivalent of the original check under any provision of federal or state law. It would thereby preempt state laws, including the Uniform Commercial Code, to the extent that such laws require an original check. Such a preemption of state law is a mandate under the Unfunded Mandates Reform Act (UMRA). CBO estimates that enacting this mandate would impose no costs on state, local, or tribal governments and that its cost, therefore, would not exceed the threshold established in UMRA ($59 million in 2003, adjusted for inflation). The bill contains no new private-sector mandates as defined in UMRA.

On May 30, 2003, CBO transmitted a cost estimate for H.R. 1474, the Check Clearing for the 21st Century Act, as reported by the House Committee on Financial Services. CBO estimated that, like the Check Truncation Act of 2003, H.R. 1474 also would have a negligible effect on the federal budget.

The CBO staff contacts for this estimate are Mark Booth (for federal revenues), Matthew Pickford (for federal spending), and Victoria Heid Hall and Greg Waring (for the state and local government impact). This estimate was approved by G. Thomas Woodward, Assistant Director for Tax Analysis, and Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

Federal Reserve Bank of San Francisco
Fiscal Agent of the United States
San Francisco, CA 94120

Attachment B

August 29, 2003

Mr. Richard L. Gregg
Commissioner
Department of the Treasury
Financial Management Service
Washington, DC 20227

Mr. Van Zeck
Commissioner
Department of the Treasury
Bureau of Public Debt
999 E Street
Washington, DC 20239-0001

Dear Mr. Gregg and Mr. Van Zeck:

This letter is to update you on our list of boxes that were reported missing in our letter to you dated May 16, 2001. The following box has been found in the San Francisco Office:

093925650	Gov't Blk #0681-0682	3/9/99

Our Audit Department has examined and cleared this box and it will be returned to storage.

A report of the missing and destroyed material is enclosed. If you have any questions, please feel free to contact me at (415) 974-2387.

Sincerely,

Paulette Wallace

Paulette Wallace
Director
Federal Reserve Bank of San Francisco

Enclosure

C: Robert Parry, President
John Moore, First Vice President
Robert Wiley, Group Vice President
Susan Sutherland, Senior Vice President
John Parrish, General Auditor
Lee Dwyer, Vice President
Jimmy Kamada, Director

August 27, 2003

Margarita,

Iron Mountain has located Box 093925650, which has been unlocatable since the time of the Iron Mountain Records Inventory audit performed June through September of the year 2001. Robert Schock, has inventoried the contents of the box and affixed the audit label to it.

Located boxes

Location	Box Number and Description	Date Rec'd from IMRM
San Francisco	• Box 77078323 – LL 532 Securities Surrendered for Redemption or Exchange	09/05/01
	• Box 77133569 – Savings Bonds Correspondence	08/29/01
	• Box 093942997 – Gov't Blk#2021-2021 Control Box	08/29/01
	• Box 77075738 – Treasurer of the USA Bank Entries	08/29/01
	• Box 128384351 – Checks RSTL, records (08/09/00)	08/29/01
	• Box 50822488 – Daily Work Envelopes	04/08/02
	• Box 80493676 – Treasury Direct – IAS Entries	05/17/02
	• Box 80508295 – Bank Entries – IAS Entries	05/21/02
	• Box 77085756 – Gov't Trans285-86 HSR Control	05/03/03
	• Box 093925650 – Gov't Blk# 0681-0682	08/18/03

Federal Reserve Bank of San Francisco
Fiscal Agent of the United States
San Francisco, California 94105

May 16, 2001

Mr. Richard L. Gregg
Commissioner
Department of the Treasury
Financial Management Services
Washington, DC 20227

Mr. Van Zeck
Commissioner
Department of the Treasury
Bureau of the Public Debt
999 E Street
Washington, DC 20239-0001

Dear Mr. Gregg and Zeck:

This letter is to notify you that we have determined that we are missing documents in the San Francisco, Portland and Seattle offices. The type of material and related dates are provided in the enclosed report. In addition, we have destroyed supporting documents, where this may have existed, relating to government agencies' deposits of currency. Supporting documents for these deposits are rare and when provided, typically list the denominations included in a deposit.

In addition, we believe that documents for adjustment activities related to Treasury checks and government agency deposits may not have been retained in the San Francisco, Salt Lake City and Seattle offices. Some of this material is related to requests originated by the Treasury for processed Treasury checks, as well as adjustment requests for commercial checks deposited by government agencies. A full report concerning the adjustment-related documentation will be provided to you by May 18.

A report concerning this missing and destroyed material is enclosed for your use. If you have any questions concerning this report, please feel free to contact me at 415-974-2398.

Sincerely,

Lee C. Dwyer
Vice President
Federal Reserve Bank of San Francisco

Response to FMS and BPD Questions

May 16, 2001

1. A description of the records that were destroyed both as to the content and time period with as much specificity as possible;

   Following a detailed, day-by-day review of the materials in the Twelfth District's offices, we have determined that some materials for the following specific dates are missing or were destroyed, as follows:

Missing Material		
Location	Form/Document	Dates
San Francisco	a) Box 69937483 – Treasurer of USA Bank Entries b) Box 69943$03 - PD 5174 30 Yr Bond c) Box 77077052 – Treasure of USA Bank Entries d) Box 77078323 – LL532 Securities Surrendered for Redemption or Exchange e) Box 77133569 – Savings Bonds Correspondence f) Box 77133592 – Treasurer of USA Bank Entries g) Box 77133598 – Treasurer of USA Bank Entries h) Box 80493676 – IAS Entries i) Box 77135512 – LA Roll Film #1823-1860 j) Box 093925650 – Govt Blk#0681-0682 Control Box k) Box 093942997 – Govt Blk#2021-2024 Control Box l) Box 77085756 – Govt Tran5285-86 HSR BX m) Box 50822488 – Daily Work Folders n) Box 80508295 – Bank Entries – IAS entries o) Box 116700977 – Checks RSTL records p) Box 128384351 – Checks RSTL records q) Checks Fine Sort box – EZ entries r) Checks RCPC Settlement (RSTL) box (form 215) s) Checks RCPC Settlement (RSTL) box (box found, but forms 215's not enclosed) t) Box 77075738 – Treasurer of the USA Bank Entries[1] u) FMS 62 forms	a) 5/11 – 5/18/98 b) 2/16-8/16/94 c) 8/14-8/21/96 d) 7/1-8/15/96 e) 1/1/90-12/31/93 f) 6/16-6/24/98 g) 4/6-4/14/98 h) 9/1-10/30/96 i) 1/3-2/25/94 j) 3/9/99 k) 7/21/98 l) 11/17/97 m) 8/1-8/31/99 n) 1/1-2/28/99 o) 3/3/00 p) 8/9/00 q) 10/10/00 r) 11/3/00 s) 8/16/00 t) 1 /2–9/97 u) 4/8-12/93 and 4/22/93
Portland	a) PD 5270 b) SF 5515 c) SF 215	a) 4/14/00, 12/27/00 b) 4/14/00, 6/8/00, 12/27/00 c) 6/16/00, 12/4/00

[1] This box was located and examined as part of the audit review process; however, the vendor was unable to locate the box when it was requested at a later date.

Missing Material		
Location	Form/Document	Dates
Seattle	a) Bills (PD5176-1 13-week Tender; PD5176-2 26-week Tender; PD5176-3 52-week Tender) b) Notes/Bonds (PD 5174-1 2/3 Note Tender; PD 5174-3 5/10 Note Tender; PD 5174-4 Bond Tender; PD 5381 rev 10/98 Bill, Note & Bond) c) PD5178 Transaction Request d) PD5179 Security Transfer Request e) PD5180 Reinvestment Request f) PD5182 New Account Request g) PARS Activity Report[2]	a) 7/92-7/93 b) 7/92-12/92 c) 7/92-11/92 d) 7/92-12/92 e) 7/92-12/92 f) 7/92-12/94 g) 7/97-12/97
	SF 215 and SF 5515 forms and supporting documentation for government agency deposits of cash (list of currency by denomination)[3]	1994: 6/7, 6/8, 9/13, 10/26 1995: 1/6, 4/11, 4/25, 10/12, 10/17, 11/1 1996: 2/14, 4/4, 4/22, 4/23, 8/9, 8/12, 8/15, 8/30, 9/19, 12/27 1997: 5/12, 7/2, 8/1 1998: 4/23, 5/18, 9/25 1999: 5/5, 12/23 2000: 1/28, 2/18, 3/27, 5/17, 5/18, 5/19, 7/17, 9/19
	a) SF 215, 5515, PD 5270 b) FMS 62	a) 4/11/95 and 5/28/98 b) 8/21/98
Destroyed Material		
San Francisco	Supporting documentation for government agency deposits of cash (list of currency by denomination)[3]	11/1/92 to 12/31/93 and 9/1/96 to 10/31/96

2. When the destruction took place, who authorized the destruction and the basis for that authorization of destruction;

[2] PARS reports are generated from a Treasury application and used to balance securities holdings at the aggregate level. The reports do not provide information at the transaction level.
[3] It is rare that a government agency provide supporting documentation with a deposit of currency. This documentation may be a listing of the cash deposit by denomination (i.e., the number of $1 bills, $5 bills, etc.).